



RULE-MAKING ORDER

JR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Archaeology and Historic Preservation

Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules
Immediately upon filing.

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: The Office of Archaeology and Historic Preservation became an independent Department of Archaeology and Historic Preservation effective July 24, 2005, per Laws of 2005, ch. 333. Rules are needed for the entirety of the department's functions, to implement its authority and serve its constituents and to function as a separate state agency pursuant to Senate Bill 5056 (Laws of 2005, ch. 333). All rules contain housekeeping changes, such as updated department contact information. WAC 25-48 will implement changes made to RCW 27.53 by House Bill 1189 (Laws of 2002, ch. 211). The rules will create guidelines under which the DAHP may issue penalties for violations of RCW 27.53 and set standards and procedures for notification and hearings on those penalties.

Citation of existing rules affected by this order:

Repealed: WAC 25-040
Amended: WAC 25-48, WAC 25-46, WAC 25-42 and WAC 25-12
Suspended:

Statutory authority for adoption: RCW 27.34.220; RCW 27.53.140; RCW 43.21C.120

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 05.20.077 on Oct. 4, 2005 (date).
Describe any changes other than editing from proposed to adopted version: 25-48-130 Will allow law enforcement officers to view permits if requested; defined "repository"; clarified that a private landowner should signify his/her intent to keep an archaeological collection from his/her property in writing; clarified items required of a permit applicant by using more appropriate and accurate vocabulary.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:
That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Date adopted: 02/15/06

NAME (TYPE OR PRINT)
Allyson Brooks, Ph.D.

SIGNATURE

TITLE
State Historic Preservation Officer

CODE REVISER USE ONLY

STATE OF WASHINGTON
FEB 15 2006
3:15
06-06-001
KR

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>58</u>	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	Amended	_____	Repealed	_____
-----	---------	-------	----------	-------

The number of sections adopted in the agency's own initiative:

New	<u>58</u>	Amended	_____	Repealed	_____
-----	-----------	---------	-------	----------	-------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>12</u>	Amended	<u>44</u>	Repealed	<u>1</u>
-----	-----------	---------	-----------	----------	----------

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-010 Definitions. The definitions of the words and terms of WAC 197-11-700 through 197-11-799 are made a part of this chapter along with the following additions:

(1) "~~((office))~~ Department" means the Washington state ~~((office))~~ department of archaeology and historic preservation.

(2) "Director" means the state historic preservation officer as provided for in chapter 27.34 RCW.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-020 Impact of SEPA on ~~((office))~~ department. The ~~((office))~~ department fully endorses the intent and purpose of SEPA and will make every effort to implement and fulfill the intent and requirements of SEPA and the SEPA rules. The capacity of the ~~((office))~~ department to provide full service to the public and other agencies is limited by funds and ~~((manpower))~~ staffing. The ~~((office))~~ department will make every effort to implement SEPA in the best manner possible with the resources available.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-030 Purpose. (1) The purpose of this chapter is to implement chapter 197-11 WAC, SEPA rules, as applicable to the ~~((office))~~ department.

(2) These policies and procedures are developed to implement SEPA in a manner which reduces duplication, establishes effective and uniform guidelines, encourages public involvement, and promotes certainty with respect to the requirements of the act.

(3) These policies and procedures are not intended to cover compliance by the ~~((office))~~ department with respect to the National Environmental Policy Act of 1969 (NEPA). In those situations where the ~~((office))~~ department is required by federal law or regulations to perform some element of compliance with NEPA, compliance will be governed by the applicable federal statute and regulations.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-040 Scope and coverage of this chapter. (1) It is the intent of the ((office)) department that compliance with this chapter shall constitute complete procedural compliance with SEPA for all actions as defined in WAC 197-11-704.

(2) This chapter applies to all actions as defined in WAC 197-11-704 and applies to all activities of the ((office)) department. Furthermore, although these guidelines normally do not apply to actions of the ((office)) department exempted under WAC 197-11-800, the ((office)) department accepts the responsibility of attempting to follow the intent of SEPA and its decision making process for exempt actions.

(3) To the fullest extent possible, the ((office)) department shall integrate procedures required by this chapter with existing planning and permitting procedures. These procedures should be initiated early, and undertaken in conjunction with other governmental operations to avoid lengthy time delays and unnecessary duplication of effort.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-050 Agency policy--Substantive authority and mitigation. (1) ~~((The overriding))~~ It is the policy of the ((office is)) department to avoid or mitigate adverse environmental impacts which may result from its decisions. ~~((This policy results from:~~

~~(a) The legislated duty of the office to preserve and protect the heritage of the state in a manner that does not impair the resource (RCW 27.34.200); and~~

~~(b) Recognition of the fact that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment (RCW 43.21C.020(31)).)~~

(2) If an action is subject to SEPA, including an activity or activities requiring a permit from the ((office)) department, and is reasonably likely to have an adverse environmental impact as identified in an environmental document, the ((office)) department will:

(a) Require reasonable alternatives to the action and/or proven measures which will mitigate or eliminate the identified potential adverse impact, and make such alternatives and/or proven mitigation measures conditions of the ((office's)) department's approval; or

(b) Deny the proposal if significant adverse impacts as identified in a final or supplemental environmental impact statement prepared under chapter 197-11 WAC are not satisfactorily avoided or mitigated by proven techniques.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-060 Timing of the SEPA process. (1) The environmental review process will normally begin upon receipt of a determination of nonsignificance (DNS), determination of significance (DS), scoping notice, or draft environmental impact statement (DEIS) when another agency is the lead agency. When the ((office)) department is the lead agency for nonagency actions, review will begin upon receipt of a complete permit application and a complete environmental checklist. The department typically requests plans, a location map, and a project description, pursuant to WAC 197-11-100, but may request additional information of the applicant as needed to make a threshold determination. The applicant should submit this information with the checklist so that review may proceed expeditiously. For agency actions, environmental review will normally begin when the proposed action is sufficiently developed to allow preliminary decisions.

(2) Upon written request of an applicant, preliminary environmental review will be conducted prior to receipt of detailed project plans and specifications. In such instances, the applicant shall submit information judged by the ((office)) department to be sufficient to make a preliminary review.

(3) The preliminary review will be advisory only and not binding upon the ((office)) department. Final review and determination will be made only upon receipt of detailed project plans and specifications.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-070 Summary of information which may be required of an applicant. (1) The applicant for each project for which the ((office)) department is the lead agency shall submit a complete environmental checklist along with a complete application for the required approval.

(2) After review of the environmental checklist, the ((office)) department may require the applicant to submit additional information necessary to properly evaluate the potential environmental impacts of the project. Field investigation or research may be required of the applicant or conducted by the ((office)) department at the applicant's cost.

(3) A draft and final EIS is required for each project for which a determination is made that the proposal will have a probable significant adverse impact on the environment.

Preparation of the EIS((s)) is the responsibility of the ((office)) department, by or under the direction of its responsible official, as specified by ((office)) department procedures. No matter who participates in the preparation of the EIS, it is the EIS of the ((agency)) department. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

(4) The ((office)) department may have an EIS prepared by ((office)) department staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the ((office)) department. The ((office)) department shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(5) If a person other than the ((office)) department is preparing the EIS, the ((office)) department shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency and the public;

(b) Assist in obtaining any information on file with other agencies that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the ((office)) department that relate to the subject of the EIS, under RCW 42.17.250 through 42.17.340.

(6) Normally, the ((office)) department will prepare an EIS((s)) for its own proposals.

(7) For applicant proposals, the ((office)) department normally will require the applicant to prepare or help prepare the EIS at the applicant's expense, under provisions of this chapter and chapter 197-11 WAC. Expenses shall include fees of any consultants, if required, the ((office's)) department's consultation time and cost of any required materials. A performance bond in an amount specified by the ((office)) department may be required of the applicant to ensure payment of the ((office's)) department's expenses.

(8) The ((office)) department may require an applicant to provide information that the ((office)) department does not possess, including specific investigations. ~~((The applicant is not required to supply information that is not required under this chapter and chapter 197-11 WAC.))~~

(9) A supplemental EIS shall be prepared as an addition to either the draft or final EIS if the ~~((office decides))~~ department determines that:

(a) There are substantial changes to a proposal which will have a probable significant adverse environmental impact; or

(b) There is significant new information relative to the probable significant environmental impact of a proposal; or

(c) ~~((Its))~~ Written comments on the DEIS warrant additional ((discussion for the purposes of its action than that found in the lead agency's FEIS)) environmental review.

The provisions of subsections (3), (4), (5), (6), (7), and (8)

of this section except for the first sentence of subsection (3) of this section, also pertain to a supplemental EIS or addendum.

(10) Upon the written request of an applicant for a project for which the ~~((office))~~ department is the lead agency, the ~~((office))~~ department will consider initiating environmental review and preparation of an EIS at the conceptual stage as opposed to the final detailed design state.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-080 Assumption of lead agency status. (1) Whenever the ~~((office feels))~~ department determines that a DNS issued by another lead agency is inappropriate and that the proposal in question could cause significant harm to the resources under ~~((its))~~ the department's jurisdiction, the ~~((office))~~ department will assume lead agency status per WAC 197-11-948.

(2) Within ten days of assuming lead agency status, the ~~((office))~~ department will notify the proponent of the proposal in writing as to the reasons for its assumption of lead agency status.

(3) Prior to preparation of an EIS for the proposal, the ~~((office))~~ department will consult with the proponent and give the proponent an opportunity to modify or change the proposal in such a way that an EIS may not be necessary as outlined in WAC 197-11-360(4).

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-090 Designation of responsible official. Under normal circumstances, the responsible official is the director or ~~((his))~~ the director's designee. The responsible official shall carry out duties and functions for the purpose of assuring the ~~((office's))~~ department's compliance with SEPA and SEPA guidelines. The responsible official may delegate duties and functions assigned under this chapter and chapter 197-11 WAC; the responsible official alone, however, is wholly responsible for proper accomplishment of such duties and functions.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-100 Mitigated DNS. (1) An applicant may ask the ((office)) department whether issuance of a DS is likely for a proposal. This request for early notice must:

- (a) Be written;
- (b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the ((office)) department is lead agency; and
- (c) Precede the ((office's)) department's actual threshold determination for the proposal.

(2) The responsible official shall respond in writing to the request within ten working days of receipt of the letter((7)). The response shall:

- (a) ~~((Be written;~~
- ~~((b)))~~ State whether the ((office)) department is considering issuance of a DS; ~~((c))~~ and, if so, indicate the general or specific area(s) of concern that led the ((office)) department to consider a DS; and

~~((d))~~ (b) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The ((office)) department shall not continue with the threshold determination until receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the ((office)) department will make its threshold determination based on the changed or clarified proposal((7)).

(a) If the ((office's)) department's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the ((office shall)) department will issue a DNS and circulate the DNS for review and comments ~~((as in))~~ per WAC 197-11-340(2).

(b) If the ((office)) department indicated general or specific areas of concern but did not indicate specific mitigation measures that would allow it to issue a DNS, the ((office)) department shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The ((office)) department may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the ((office)) department shall issue a DNS and circulate it for review and comment under WAC 197-11-340(2).

(6) When an applicant changes or clarifies the proposal, the clarification or changes may be included in written attachments to

the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s) the ((office)) department may require the applicant to submit a new checklist.

(7) The ((office)) department may change or clarify features of its own proposals before making the threshold determination.

(8) The ((office's)) department's written response under subsection (2) of this section shall not be constructed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the ((office)) department to consider the clarification or changes in the threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes. Unless the ((office's)) department's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-110 SEPA public information center. The ((office)) department designates its main ((office)) department as its SEPA public information center. The mailing address is ((~~111 West 21st Ave.~~)) P.O. Box 48343, Olympia, Washington 98504-8343; telephone ((~~+206 753-5010~~)) 360-586-3065.

AMENDATORY SECTION (Amending Order 10, filed 6/5/86)

WAC 25-42-120 Public notice. (1) When required under chapter 197-11 WAC, the ((office)) department will give public notice by one or more of the following methods as appropriate for the specific circumstances:

(a) Notifying public and private groups and agencies and tribes with known interest in a certain proposal or in the type of proposals being considered;

(b) Notifying individuals with known interest in a certain proposal or in the type of proposal being considered;

(c) Publication in a newspaper of general circulation in the area in which the proposal will be implemented; and/or

(d) ((~~Notifying the news media, and/or~~

(e)) Posting on the property site in question.

(2) The (~~office~~) department may require an applicant to perform the public notice requirements at the applicant's expense.

AMENDATORY SECTION (Amending Order 6, filed 5/30/80)

WAC 25-12-020 Definitions. (1) Public records. "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency, regardless of physical form or characteristics.

(2) Writing. Writing means handwriting, typewriting, printing, photostating, and every other means of recording, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) Advisory council on historic preservation. The advisory council on historic preservation is the council established pursuant to RCW (~~(43.51A.110)~~) 27.34.250 through 27.34.280, and is hereinafter referred to as the "council."

(4) (~~(office)~~) Department of archaeology and historic preservation. The (~~(office)~~) department of archaeology and historic preservation is that agency established pursuant to RCW (~~(43.51A.030)~~) 27.34.210, and is hereinafter referred to as the "~~(office)~~ department." The (~~(office)~~) department provides staff for the council.

(5) State historic preservation officer. The state historic preservation officer is that person appointed pursuant to RCW (~~(43.51A.060)~~) 27.34.210 to implement the purposes of that chapter, and hereinafter referred to as "SHPO."

(6) (~~(Professional public.~~ The professional public includes individuals, government agencies, or private businesses which, as a means of providing livelihood or fulfilling legal obligations, are available to prepare nominations to the state and national registers of historic places. The professional public is further identified in WAC 25-12-050(2).

(7) ~~Nonprofessional public.~~ The nonprofessional public includes individuals, organizations, government agencies, or private businesses not identified as provided in WAC 25-12-050(2).) State register. These are buildings, sites, structures, objects or districts which are listed on the Washington Heritage Register of Historic Places, and is hereinafter referred to as the "state register."

AMENDATORY SECTION (Amending Order 6, filed 5/30/80)

WAC 25-12-030 Description of purpose and staff. The council is of an advisory nature for the governor and the ~~((office)) department~~. Financial and administrative services including those related to budgeting, accounting, financial reporting, personnel and procurement shall be provided to the council by the ~~((office)) department~~. The administrative location of the council and that of its staff is at the ~~((Office)) Department~~ of Archaeology and Historic Preservation, ~~((111 West 21st Avenue)) P.O. Box 48343~~, Olympia, Washington 98504-8343. The council meets on the last Friday of every ~~((third)) fourth~~ month unless otherwise agreed by a majority of the members of the council.

AMENDATORY SECTION (Amending Order 6, filed 5/30/80)

WAC 25-12-050 Procedures--Nominations ~~((proposed by the professional public)) to state and/or National Register.~~ (1) Any member((s)) of the ((professional)) public may submit ((completed)) nominations directly to the SHPO for review and evaluation. The opportunity to review drafts of the nomination is ((encouraged)) required to promote the rapid handling of the complete document.

(2) The SHPO shall prepare and maintain a list of ~~((the)) qualified professional ((public to identify those who can submit nominations under this section and for referrals as provided in WAC 25-12-040(3))) consultants who meet and/or exceed the Secretary of the Interior's Historic Preservation Professional Qualification Standards (48 FR 44716)~~. Inclusion on the list shall be limited to those individuals ~~((, governmental agencies, or private businesses that)) who~~ have demonstrated an ability to prepare nominations consistent with WAC 25-12-060(3) and 36 CFR Part 60.

(3) Any nomination developed under this section shall be treated as outlined in WAC 25-12-060.

AMENDATORY SECTION (Amending Order 6, filed 5/30/80)

WAC 25-12-060 ~~((Procedures--)) Nomination--Process.~~ The following is a statement of the general course and method followed in the nomination and designation of historic properties to the state or National Register.

(1) The SHPO shall not schedule any nomination for review by the council if the nomination is poorly prepared, incomplete in any manner, or ~~((treats)) for~~ a property that does not appear to be eligible for the state or national registers of historic places.

The agenda shall be established by the SHPO in cooperation and consultation with the chairperson of the council.

(2) The SHPO may return any nomination to the originator for correction, or for additional information of any kind required for completion and accuracy.

(3) The SHPO shall prepare and distribute standards of acceptability for nominations, (~~((such standards to be not more restrictive than those promulgated by the Heritage Conservation and Recreation Service for the conduct of the))~~) for both the state and National Register programs.

(4) The SHPO will notify the owner of the property and the most appropriate local jurisdiction or government of the date, time, and location of the review of the nomination by the council, such notification to occur not more than ~~((45))~~ 75 days nor less than 30 days prior to the scheduled meeting date.

(5) In the nomination of an historic district to the state or National Register where more than 50 property owners are involved, notification shall occur through a notice in a local newspaper of general circulation. The general notice shall be published at least 30 days, but no more than 75 days before the scheduled meeting date. In addition to formal legal notice, proponents of historic districts shall follow an additional notification process to be outlined by the council. For districts of less than 50 property owners, individual notification of the pending nomination will be sent.

(6) (~~Federally affected properties which have been determined under federal regulations to be ineligible for the National Register will be referred to the SHPO to be evaluated for inclusion on the State Register without referring the nomination to the council for further consideration.~~

~~(7))~~ Following council review, the council will transmit its recommendations to the SHPO. When the council has reviewed and approved a procedurally correct nomination and has forwarded it to the SHPO, the SHPO will submit the nomination to the National Register, unless, in his opinion, the SHPO considers the property one which does not meet the National Register criteria. A decision to submit a nomination to the National Register is within the discretion of the SHPO. All council determinations regarding nominations are advisory only. In each instance that the SHPO determines a nomination to be ineligible for inclusion in the National Register, he/she shall notify the council of this action at its next regularly scheduled meeting.

~~((8))~~ (7) The SHPO shall act upon all nominations reviewed by the council prior to its next regularly scheduled meeting, and shall report those actions to the council at that meeting.

(8) The council alone will determine if properties are eligible for listing on the state register at its regularly scheduled meetings.

AMENDATORY SECTION (Amending Order 6, filed 5, 1980)

WAC 25-12-070 Public records available. All public records of the council, as defined in WAC 25-18-020, are available for public inspection (~~(any [and])~~) and copying at the (~~(office)~~) department location described in WAC 25-12-030, pursuant to WAC 25-18-040 through 25-18-130, except as otherwise provided by RCW 42.17.310.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 25-12-040

Procedures--Nominations proposed by nonprofessional public.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Historic archaeological resources" means those properties, including, but not limited to all ships, or aircraft, and any part or the contents thereof and all treasure trove which are listed or, in the professional judgment of the department, 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.

(2) "State-owned aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters.

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

~~(4) "Office" means the office of))~~ archaeology and historic preservation ~~(, department of community development.~~

~~(5))~~ established in chapter 43. . . . RCW.

~~(4)~~ "Director" means the director of the department of ~~((community development))~~ archaeology and historic preservation or the director's designee.

~~((6))~~ ~~(5)~~ "Entity" means any person, firm, corporation, institution, or agency.

~~((7))~~ ~~(6)~~ "Previously unreported" means the historic archaeological resource and its location are not known to the ~~((office))~~ department and are not available from public records including but not limited to government records, historic records, or insurance claims.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-040 Registration forms. (1) Any person or entity who discovers a previously unreported historic archaeological resource abandoned for thirty years or more on, in, or under state-owned aquatic lands may register it with the department.

(2) Each registration of a previously unreported historic archaeological resource shall be submitted on the Submerged Historic Archaeological Resource Registration Form approved by the director. These registration forms may be obtained from the

((Office)) Department of Archaeology and Historic Preservation,
((~~Department of Community Development, 111 West 21st Avenue KL-11~~))
P.O. Box 48343, Olympia, Washington 98504-8343; telephone ((+360)
753-5010) 360-586-3065.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-060 Summary of information required for registration. (1) In order to be considered complete, each registration form shall include:

(a) A description of the historic archaeological resource sufficient to identify its historic association, identity, and integrity of its physical remains. Any historic information you have on the resource and the circumstances of its loss.

(b) Locational information including latitude, longitude, and depth, township, range, section and quarter section, and UTM.

(c) A copy of the relevant United States Coast and Geodetic Survey chart indicating the resource's location. The location of the resource plotted on a USGS topography map.

(d) A copy of a photograph or videotape documenting the existence of identifiable physical remains of the resource sufficient to establish its historic identity and integrity. If a photograph or videotape will not establish the existence of identifiable physical remains of the resource sufficient to establish its historic identity and integrity, the applicant may apply to the ((office)) department for permission to obtain a sample artifact for this purpose. In the event the applicant wishes to apply for such permission, the applicant shall be subject to some portions of WAC 25-48-030.

(2) Failure to supply this information to the satisfaction of the ((office)) department may result in the application being deemed incomplete or inadequate under WAC 25-46-100 and 25-46-120.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-080 Competing applications for the same resource. (1) When registration forms are submitted for the same resource by two or more entities, the applications shall be evaluated, accepted, or denied in sequence based upon the unique log number assigned by the department. The registration forms must be submitted via FedEx or other delivery service which records time and date of delivery.

(2) Notice will be sent by the department to each of the entities submitting the registration application for the same

resource notifying them of the competing application and the sequence in which they will be evaluated. No competing application will be evaluated until such time as the first pending application has been denied and all appeal rights of that applicant have been exhausted.

(3) When an historic archaeological resource has been registered with the department all subsequent registration applications for that resource within the five-year time period for right of first refusal will be issued a notice that the resource has already been registered and the applications are denied.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-100 Issuance of registration acceptance. (1) Each registration form shall be assigned a unique sequential log number upon date and time of receipt by the department and shall be evaluated in sequence.

(2) Upon receipt of the registration form, the office shall inform the applicant by registered mail within fourteen calendar days of any incomplete or inadequate information and afford the applicant twenty-one calendar days from the receipt of the notice to provide the missing or inadequate information, plus such time as may be authorized by the department for a sample artifact permit granted under WAC 25-46-060 (1)(d) and chapter 25-48 WAC.

(3) If the applicant does not supply the missing or inadequate information within the specified time period the application shall be considered void and a notice of denial sent to the applicant.

(4) The department will act upon a complete registration application within thirty-five calendar days of receipt and shall so notify the applicant. In all notifications of registration acceptance, the department shall specify:

(a) The name, address, and telephone number of the entity submitting the registration application((-));

(b) A description of the historic archaeological resource sufficient to identify its historic association and identity((-));

(c) The location of the resource including its latitude and longitude and depth((-));

(d) A statement of the director's opinion on the resource's eligibility to the Washington state register of historic places or the National Register of Historic Places((-));

(e) The date of the acceptance of the registration((-));

(f) The date of the expiration of the right for first refusal((-)); and

(g) That excavation or removal of any artifacts from the historic archaeological resource will require an archaeological excavation and removal permit and that granting of such a permit is not guaranteed.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-120 Registration denial. (1) If a registration application is denied, a written statement of the reasons for the denial will accompany the notice of registration denial to the applicant.

(2) Registration may be denied for the following reasons:

(a) The application is incomplete or inadequate and has not been completed or corrected pursuant to WAC 25-46-100;

(b) The resource does not qualify as an historic archaeological resource under WAC 25-46-020(1);

(c) The resource has already been registered;

(d) The resource and its location are already known to the ((office)) department or are part of the public record.

AMENDATORY SECTION (Amending Order 88-07, filed 11/4/88)

WAC 25-46-140 Appeals relating to registration. (1) Any affected person may request a hearing to appeal a denial of registration or extinguishment of a right of first refusal under WAC 25-46-160 to the director. ~~((Said request must be in writing and filed with the director within twenty-one calendar days of receipt of notice of registration denial or extinguishment.))~~ A request for a hearing shall be made by filing a written application for adjudicative proceeding with the department at the following address: Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. The application must be received by the department within twenty-one calendar days of the date of service of the notice of the denial or extinguishing. The application shall specify the issue or issues to be decided and indicate whether the requester desires a full adjudicative proceeding, a brief adjudicative proceeding, or an emergency adjudicative proceeding.

(2) When the department receives an application for adjudicative proceeding, it will immediately notify the director of its receipt and provide the director and the state archaeologist or the assistant state archaeologist with a copy of the application and the notice or document being appealed. The director thereupon will designate a presiding officer as follows:

(a) Where an application requests a full adjudicative proceeding, or where the director determines a full adjudicative proceeding is required, the director will designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW.

(b) Where an application requests a brief adjudicative proceeding or emergency adjudicative proceeding, or where the director determines a brief adjudicative proceeding or emergency adjudicative proceeding is appropriate, the director will designate

a senior staff person in the department as presiding officer. The person designated shall not have participated in the matter and shall not be subject to the authority or direction of any person who has participated in the matter.

(3) Upon being designated, the presiding officer shall notify the requester, the state archaeologist, and the assistant state archaeologist of his or her name and business address and provide any other information required by chapter 34.05 RCW or 10-08 WAC, or this chapter.

(4) Upon receiving the notice required in subsection (3) of this section, the state archaeologist or the assistant state archaeologist shall immediately transmit to the presiding officer the application, together with any accompanying documents provided by the requester, and a copy of the notice or other document being appealed.

NEW SECTION

WAC 25-46-142 Adjudicative proceedings. (1) The department hereby adopts the model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, for use in adjudicative proceedings of agency action under this chapter.

(2) "Service" and "filing" of documents in adjudicative proceedings, brief adjudicative proceedings, and emergency adjudicative proceedings are defined as in RCW 34.05.010 and WAC 10-08-110.

(3) In the case of a conflict between the model rules of procedure and this chapter, the rules in this chapter shall take precedence.

(4) All factual determinations shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The burden in all proceedings is a preponderance of the evidence.

(a) In all proceedings contesting the denial of registration under WAC 25-46-120, the burden shall be on the applicant to establish that the application meets all applicable requirements and standards.

(b) In all proceedings contesting the extinguishing of a right of first refusal under WAC 25-46-160, the burden shall be on the person challenging the extinguishing to establish the timely exercise of its right of first refusal.

(c) In all other proceedings, the burden is on the state historic preservation officer to prove the alleged factual basis set forth in the notice.

NEW SECTION

WAC 25-46-144 Brief adjudicative proceedings. (1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where permitted by law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. A brief adjudicative proceeding is intended to serve as an inexpensive and efficient alternative where the issues can be decided by reference to writings and other documents without a full, formal hearing.

(2) A brief adjudicative proceeding may be used to review the following actions taken under this chapter:

(a) Denying an application for registration under WAC 25-46-120;

(b) Extinguishing a right of first refusal under WAC 25-46-160.

(3) An application for brief adjudicative proceeding shall include a written explanation of the applicant's view of the matter and a copy of any other documents the applicant wishes to have the presiding officer consider. Any response by the department shall be filed with the presiding officer and served on the applicant within fourteen days of receiving an application for a brief adjudicative proceeding.

(4) If the applicant desires an opportunity to make an oral statement to the presiding officer, a request to make an oral statement must be included in the application for a brief adjudicative proceeding. The presiding officer may grant a request to make an oral statement if the presiding officer believes the statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of his or her decision to grant or deny a request to make an oral statement. If the presiding officer grants any request to make an oral statement, all parties shall be entitled to make oral statements, and the presiding officer shall notify all parties of the time and place for hearing oral statements.

(5) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall serve upon each party a brief written statement of the reasons for the decision and information about any internal administrative review available.

(6) The presiding officer's brief written statement is an initial order. The initial order shall be the final order without further action unless within twenty-one days of the date of service a party requests administrative review of the initial order or the director initiates review of the initial order.

(7) If the presiding officer determines a more comprehensive hearing is warranted, or on the motion of any party, he or she may convert the proceeding to a full adjudicative proceeding by requesting in writing, with findings supporting the request, that the proceeding be so converted and that the director designate as

presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW. The director will act as soon as possible on the request.

(8)(a) A party may request review of the initial order by filing a written request with the director at the following address: Director, Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. A request for review of an initial order shall contain an explanation of the requester's view of the matter and a statement of reasons why the initial order is incorrect. The request must be received by the director and served on all other parties within twenty-one days of the date the initial order was served on the parties. A copy of the request must be served on the state archaeologist or the assistant state archaeologist.

(b) Any response to the request for review of an initial order shall be filed with the director and served on the requester within ten days after receiving the request.

(c) In response to a request for review of an initial order, the director shall immediately obtain the record compiled by the presiding officer. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(d) The reviewing officer may issue an order on review, which shall include a brief statement of the reasons for the decision and include a notice that judicial review may be available.

(e) A request for review of an initial order is deemed to have been denied if the reviewing officer does not issue an order on review within twenty days of the date the request for review of the initial order was filed with the director.

(9)(a) The director may initiate review of the initial order on his or her own motion, without notifying the parties. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(b) The reviewing officer shall obtain and review the record compiled by the presiding officer before taking action.

(c) The reviewing officer may not take any action on review less favorable to any party than in the initial order without giving that party notice and an opportunity to provide a written explanation of its view of the matter. The notice shall specify the deadline for that party to submit its written explanation.

(d) Any order on review shall be issued and served on the parties within twenty days of the date the initial order was served on the parties or within twenty days of the date a request for review of the initial order was filed with the director, whichever occurs later. If an order on review is not issued and served by the applicable deadline in this paragraph, the initial order becomes the final order.

NEW SECTION

WAC 25-46-146 Emergency adjudicative proceedings. (1) A respondent who receives a notice of registration denial under WAC 25-46-120 may request an emergency hearing under RCW 34.05.422 and 34.05.479 to contest the findings included in the notice of registration denial by filing an application for emergency adjudicative proceeding. A respondent who does not file an application for emergency adjudicative proceeding may contest the findings included in the notice of registration denial in a regularly scheduled adjudicative hearing.

(2) An application for emergency adjudicative proceeding must be received by the department within seven calendar days of the date of service of the notice of summary suspension. An application for emergency adjudicative proceeding received by the department more than seven calendar days after the date of service of the notice of registration denial shall be deemed an application for full adjudicative proceeding and will be scheduled accordingly.

(3) An application for emergency adjudicative proceeding shall include a written explanation of the applicant's view of registration denial and a copy of any other documents the applicant wishes to have the presiding officer consider.

(4) The presiding officer, in his or her discretion, may provide for telefacsimile or electronic service and filing of documents, using means that are similarly available to all parties, in the notice required in WAC 25-46-140(3).

(5) Upon receiving the notice required in WAC 25-46-140(3), the state archaeologist or the assistant state archaeologist shall immediately transmit to the presiding officer copies of any documents that were considered or relied upon in issuing the notice of summary suspension, in addition to the documents listed in WAC 25-46-140(4).

(6) Within seven business days after receiving an application for emergency adjudicative proceeding, the presiding office shall issue an order that either:

(a) Affirms that the registration denial is necessary to prevent or avoid immediate danger to the public health, safety or welfare including property; or

(b) Sets aside the summary suspension as unnecessary to prevent or avoid immediate danger to the public health, safety or welfare including property.

No other issue shall be decided in the emergency adjudicative proceeding. The order shall include a brief statement of findings of fact, conclusions of law, and policy reasons for the decision.

(7) The order is effective when signed by the presiding officer. The presiding officer shall promptly notify each party of the decision and serve each party with a copy of the order.

(8) If other issues remain to be decided, or if the respondent requests review of the order, the presiding officer may request that a full adjudicative proceeding be scheduled and that the director designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter

34.12 RCW. The request shall summarize the issues that remain to be decided. The director will act as soon as possible on the request. The order issued under this section becomes final unless within seven days of the date of issuance a full adjudicative proceeding is scheduled.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

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 and for the issuance of civil penalties as provided for in chapter ~~((s 27.44 and))~~ 27.53 RCW.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

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))~~ the human 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 who:

(a) Has designed and executed an archaeological study as evidenced by a thesis or dissertation~~((τ))~~ 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 from an accredited institution of higher education; and

(b) 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 less than twelve weeks of survey or reconnaissance work~~((τ))~~ and at least eight weeks of supervised laboratory experience. Twenty weeks of field work in a supervisory capacity must be documentable with a report on the field work 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; including the state's submerged lands under the Submerged Lands Act, 43 U.S.C. Sec. 1301 et seq.

(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 object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(9) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(10) "Archaeological resource" means any material remains of human life or activities which are of archaeological interest (~~(- This shall include)~~), including 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 grinding stones, knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material.

(11) "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.

(12) "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.

(13) "Director" means the director of the department of ~~((community development))~~ archaeology and historic preservation or his or her designee.

(14) ~~((("Office" means the Washington state office of archaeology and historic preservation, department of community development-~~

~~(15)))~~ "Department" means the department of ~~((community development))~~ archaeology and historic preservation.

(15) "State historic preservation officer" means the director, who serves as the state historic preservation officer under RCW 43.334.020.

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

(17) "Revocation" means the termination of a permit under this chapter.

(18) "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.

(19) "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.

(20) "Person" means any individual, corporation, partnership, trust, institution, association, or other private entity; or any officer, employee, agent, department, or instrumentality of the state or any county, city, or other political subdivision of the state.

(21) "Permittee" means any person who holds an active archaeological excavation permit issued under RCW 27.53.060 and this chapter.

(22) "Respondent" means any person who has received a notice of violation under WAC 25-48-041, a notice of permit denial under WAC 25-48-105, a notice that a right of first refusal has been extinguished under WAC 25-48-108, or a notice of suspension or revocation under WAC 25-48-110, and who has filed an application for an adjudicative proceeding.

(23) "Repository" means a facility, including but not limited to, a museum, archeological center, laboratory, or storage facility managed by a university, college, museum, other educational or scientific institution of a federal, state or local government agency or Indian tribe that provides secure, environmentally controlled storage, for archaeological collections and their associated records making them available for scientific, educational and cultural needs.

(24) "Archaeological value" means the cost comparable volume archaeological excavation would be, including retrieving scientific information from the site before it was vandalized. This includes field work, lab analysis, background research and reporting, and curation of the collection and records.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-030 Scope and coverage of this chapter. (1) This chapter (~~(is applicable)~~) applies 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~~) as defined in WAC 25-48-020.

(2) This chapter (~~(is applicable)~~) applies to the alteration, digging, excavating, or removal of archaeological objects or sites or historic archaeological resources which have been abandoned thirty years or more, and to the removal of glyptic or painted records or archaeological resources from native Indian cairns or graves.

(3) This chapter does not apply to the removal of artifacts found exposed on the surface of the ground which are not historic archaeological resources or sites except when there will be removal of glyptic or painted records, or archaeological resources from native Indian cairns or graves.

(4) (~~This chapter is applicable as follows~~) The following sections of this chapter apply 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) (~~(7)~~) 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.

NEW SECTION

WAC 25-48-035 Delegation to state archaeologist and assistant state archaeologist. (1) The director's authority to determine violations of chapter 27.53 RCW and to impose civil penalties under RCW 27.53.095 and this chapter is delegated to the state archaeologist and the assistant state archaeologist, subject to review by the director as provided in WAC 25-48-120. This delegation of authority to the state archaeologist and the

assistant state archaeologist is in addition to any other delegation granted in statute, by rule, or otherwise in writing by the director.

(2) The director retains authority to review determinations made by the state archaeologist or the assistant state archaeologist under this chapter and to hear appeals of those determinations.

(3) The state historic preservation officer may delegate to subordinate staff in the office the functions and duties assigned in this chapter to the state historic preservation officer.

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

WAC 25-48-040 Agency policy. The overriding policy of the ((office)) department is to assure the protection of the archaeological resources of the state. This policy results from:

(1) The legislated duty of the ((office)) department to preserve and protect the heritage of the state in a manner that does not impair the resources (RCW 27.34.220); and

(2) ~~((Recognition of the fact that the public has an interest in the knowledge of the state's heritage and a responsibility to contribute to the preservation and enhancement of that heritage))~~ The public interest in the conservation, preservation, and protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources (RCW 27.53.010).

NEW SECTION

WAC 25-48-041 Notice of violation--Penalties. (1)(a) It is unlawful for any person to knowingly and willfully remove, alter, dig into, excavate or remove an archeological object or site or archeological resource without a permit required by RCW 27.53.060.

(b) It is unlawful for any person to knowingly and willfully fail to comply with the provisions of a permit issued by the state historic preservation officer under RCW 27.53.060.

(2) Pursuant to RCW 27.53.095, the state archaeologist or the assistant state archaeologist may issue a notice of violation to any person who knowingly and willfully violates RCW 27.53.060 or the provisions of a permit issued under RCW 27.53.060 and this chapter.

(3) The notice of violation shall impose a monetary penalty of five thousand dollars; provided, however, that the state archaeologist or the assistant state archaeologist may decrease the

penalty for the first or second violation upon a determination, supported by specific findings, that the circumstances of the violation warrant a lesser penalty than the statutory maximum. This determination shall be based on the factors set out in WAC 25-48-044. The monetary penalty for any subsequent violation will be five thousand dollars.

(4) In addition to any civil penalty imposed under this section, the notice of violation also shall require the respondent to pay the following costs, as determined under WAC 25-48-043:

(a) Reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation; and

(b) Reasonable site restoration costs.

(5) The notice of violation shall set forth the conduct determined to violate RCW 27.53.060 or a permit issued thereunder, the damage for which restoration is required, the amount of civil penalty assessed, and, if appropriate, the findings warranting a lesser penalty than the statutory maximum. If the reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation and the reasonable site restoration costs have been determined, they shall be set forth in the notice of violation; if those costs are determined after the notice of violation has been issued, those costs may be levied against the respondent by a later addendum to the notice of violation or in a final order following an adjudicative proceeding.

(6) The notice of violation shall inform the respondent of its right to request a hearing to contest the notice of violation.

(7) In addition to, and/or independent of any civil penalty imposed under this section, the state archaeologist or the assistant state archaeologist may refer any alleged violation to any federal, state, or county authority with jurisdiction over the act or acts alleged to constitute the violation.

NEW SECTION

WAC 25-48-043 Procedure for selecting a mutually agreed upon independent professional archaeologist investigator and for determining site restoration costs. (1) Pursuant to RCW 27.53.095, a person found to have violated chapter 27.53 RCW or a permit issued under RCW 27.53.060 shall pay the reasonable investigative costs incurred by an independent professional archaeologist investigating the alleged violation who has been mutually agreed to by the state archaeologist or the assistant state archaeologist and the respondent. The state archaeologist or the assistant state archaeologist and the respondent may agree to investigation by a qualified employee of the department.

(2) If the state archaeologist or the assistant state

archaeologist determines an agreement cannot be reached with the respondent under subsection (1) of this section, the independent professional archaeologist investigator shall be selected as follows:

(a) The state archaeologist or the assistant state archaeologist shall notify the respondent that an agreement cannot be reached and instruct the respondent to provide to the department, within five working days, the name, address, and telephone number of a professional archaeologist together with a summary of the professional archaeologist's professional qualifications. The respondent is responsible for all fees and costs billed by the professional archaeologist the respondent selects.

(b) The state archaeologist or the assistant state archaeologist shall select a professional archaeologist who is not employed or contractually bound to the office. The department is responsible for all fees and costs billed by the professional archaeologist the state archaeologist or the assistant state archaeologist selects.

(c) The professional archaeologists selected by the respondent and by the state archaeologist or the assistant state archaeologist shall jointly select a third professional archaeologist to investigate the alleged violation. Their selection must be communicated to the state archaeologist or the assistant state archaeologist and the respondent within ten working days. The state archaeologist or the assistant state archaeologist shall provide the professional archaeologist investigator with written authorization to conduct the investigation.

(d) The respondent is responsible for all fees and costs billed by the professional archaeologist investigator.

(3) The professional archaeologist investigator agreed to under subsection (1) or (2) of this section shall assess damage and disturbance to the archaeological resource or site caused by the conduct alleged in the notice of violation and prepare a written report containing the following information:

(a) A map and description of the site, indicating the location and extent of damage or disturbance;

(b) An estimate of the volume of soil disturbed;

(c) An inventory of artifacts and archaeological context and data damaged or disturbed;

(d) An estimate of the archaeological value of artifacts and samples damaged or disturbed;

(e) A summary of the site restoration actions required because of damage or disturbance;

(f) An estimate of site restoration costs, supported by a narrative or numerical explanation; and

(g) Any other information the state historical preservation officer reasonably may require.

(4) The written report required under subsection (3) of this section must be provided to the department, the respondent, the affected tribes, local government, and the property owner, within sixty calendar days of the date the professional archaeologist investigator is authorized by the state archaeologist or the

assistant state archaeologist to conduct the investigation.

(5) In determining the site restoration actions required because of damage or disturbance, the professional archaeologist investigator shall include the following, as necessary and appropriate:

(a) Landscaping to return the site to its original geography and configuration;

(b) Recovering, analyzing, and reporting on all archaeological materials damaged or disturbed by the alleged conduct;

(c) Data recovery excavations, if appropriate, or other type of mitigation activity;

(d) Preparing the archaeological materials for curation and the cost of curation or, if appropriate, reburial.

NEW SECTION

WAC 25-48-044 Penalties--Adjustments. (1) The state archaeologist or the assistant state archaeologist may decrease the penalty imposed under WAC 25-48-041(3) for the first or second violation upon a determination, supported by specific findings based on the following factors, that the circumstances of the violation warrant a lesser penalty:

(a) Whether the respondent's act or acts resulted in actual or potential harm to an archeological site, resource, or object, or to human remains;

(b) Whether the respondent's act or acts involve more than one human remains, the damage or disintegration of human remains, or the use of human remains for profit or other financial gain;

(c) Whether the notice of violation encompasses multiple acts that constitute separate violations of this chapter or chapter 27.53 RCW;

(d) Whether the respondent's act or acts reasonably appear to be part of a pattern of the same or similar conduct, whether or not that conduct previously resulted in any state or federal sanction;

(e) Whether the respondent voluntarily disclosed or reported an act or acts constituting a violation of this chapter or chapter 27.53 RCW;

(f) Whether the respondent voluntarily takes remedial measures to provide increased protection for an archeological site, resource, or object or for human remains;

(g) Whether the respondent voluntarily takes measures to reduce the likelihood the violation will be repeated.

(2) The state archaeologist or the assistant state archaeologist may negotiate an agreed settlement of the penalty with the respondent, on such terms and for such reasons as the state archaeologist or the assistant state archaeologist deems appropriate. Any prior negotiated settlement may be considered by the state archaeologist or the assistant state archaeologist in

determining the appropriate penalty for a subsequent violation.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

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 dig, alter, excavate, and/or remove archaeological objects and sites or historic archaeological resources, or proposing to remove glyptic or painted records of tribes or peoples, or archaeological resources from native Indian cairns or graves shall apply to the (~~office~~) department 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 department shall be submitted on the archaeological excavation and removal permit application form approved by the (~~director. These~~) state historic preservation officer. An application form(~~s~~) may be obtained from the (~~Office~~) Department of Archaeology and Historic Preservation, (Department of Community Development, 111 West 21st Avenue KL-11, Olympia, WA 98504; telephone (206) 753-5010) P.O. Box 48343, Olympia, WA 98504-8343; telephone 360-586-3065.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-060 Summary of information required of an applicant. (1) Each application for a permit shall include:

(a) Sufficient background information and summary of previous field investigation, research and data gaps about the site(s) proposed for excavation such that the reviewers have a comprehensive understanding of the site(s) and current research questions to be able to review the proposal as a complete document.

(b) 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, number and placement of excavation units, proposed excavation volumes, proposed time of performance, locational maps, and a completed site inventory form.

(~~(b)~~) (c) Summary of the environmental setting and depositional context, with an emphasis on vegetation, past and present available natural resources, geomorphology and formation processes, and their relationship to the archaeological deposits.

(d) 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 in 36 CFR Part 79.

~~((e))~~ (e) If human remains are proposed for recovery, a plan for their removal and disposition must be provided; if human remains are not proposed for recovery, a plan for responding to the inadvertent discovery of human remains must be provided.

~~((f))~~ (f) A professional, scientific research design, including research questions, demonstrating that the work and reporting will be performed in a scientific and technically acceptable manner ~~((taking into account current scientific research issues))~~ utilizing methods and techniques designed to address current scientific research questions and cultural resource management plans.

~~((g))~~ (g) 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.

~~((h))~~ (h) 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 individual(s) enumerated under ~~((d))~~ (g) of this subsection.

~~((i))~~ (i) Financial evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities and evidence of financial support for analysis and report writing.

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

~~((k))~~ (k) Evidence of an agreement for the proposed work from the owner, agency, or political subdivision with management responsibility over the land.

~~((l))~~ Evidence of filing of the proposed work with the Washington archaeological research center.

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

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

~~((o))~~ (m) A public participation plan detailing the extent of public involvement and dissemination of project results to the public, as appropriate. Examples of appropriate public dissemination can include, but not be limited to: Archaeology Month lectures, slide shows, anthropological conferences, school presentations, newspaper articles, if warranted.

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

~~((q))~~ (o) 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)) department 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)) department 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.

(p) Disclosure by the applicant of any previous violation of this chapter or any federal or state law regulating archaeological objects or sites, historic archaeological resources, glyptic or painted records, or native Indian cairns or graves. The applicant shall disclose any such violation by the applicant, by the individual(s) proposed to be responsible for conducting the work, or by the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, and shall provide details, dates, and circumstances of each violation.

(q) Disclosure by the applicant of outstanding archaeological excavation permits issued by the department to the applicant.

(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 meeting the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79, in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work other than human skeletal remains and funerary objects. The applicant((s)) 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)) wishes to take custody ((or otherwise dispose of the archaeological resources)) of the collection. The applicant shall submit written certification from the landowner stating this intention. If the landowner does not wish to take custody of the collection, the name of the university, museum, repository, or other scientific or educational institution in which the collection will be curated. The applicant((s)) 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) An applicant may temporarily curate a collection identified in subsection (2) or (3) of this section in a repository that meets the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79 until the appropriate Indian tribe has available facilities meeting the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79 into which the collection may be curated.

(5) 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. The applicant 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.

(6) After review of the application, the department 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 department at the applicant's cost. A bond in an amount specified by the department may be required of the applicant to ensure payment of the professional expenses incurred by the department. Advance notice of any anticipated cost shall be given to the applicant.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-070 Notification to Indian tribes. (1) Upon receipt of a completed application form for archaeological excavation of an archaeological site, native Indian cairn or grave, or the removal of glyptic or painted records, the department, at least thirty days before issuing such a permit under this chapter, shall notify any affected Indian tribe which may consider the site to be of historic or cultural significance.

(2) Notice by the department shall be sent to the chief executive officer or other designated official of the native Indian tribe. Any native Indian tribe or other native American group may supply the department in advance with sites or locations for which such tribe or group wishes to receive notice under this section.

(3) Upon request during the thirty-day period, the department may meet with official representatives of any native Indian tribe or group to discuss its interests, including, but not limited to, the proposed excavation methods.

Comments received from tribal representatives shall be considered by the department in the issuance or denial of the permit and the issuance of terms and conditions. Mitigation measures requested by the tribal representatives, including stipulations pertaining to the disposition of human remains, may be incorporated into the terms and conditions of the permit.

(4) When the ((office)) department determines that ((a)) an emergency permit applied for under this chapter must be issued immediately under WAC 25-48-095 because of an imminent threat of loss or destruction of an archaeological resource, the ((office)) department shall so notify the appropriate tribe(s).

(5) The tribes with whom the ((office)) department has consulted shall be promptly notified in writing of the issuance of the permit.

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

WAC 25-48-080 Public notice. (1) The ((office)) department will give public notice of a pending permit application by one or more of the following methods as appropriate for the specific circumstances in order to solicit public and scientific comment:

(a) Notifying public((7)) and private groups, tribes, and agencies with ((a)) known interest in a certain application or type of application being considered;

(b) Notifying individuals with known interest in a certain application or in the type of application being considered;

(c) Publication in a newspaper of general circulation in the area in which the application will be implemented;

(d) Notifying the news media; and/or

(e) Posting on the property site in question.

(2) Comments ((from such notified agencies, groups, entities or individuals)) on a pending application must be received by the department within thirty days of the notice. Comments may be mailed or faxed to the following address: Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. Arrangements for alternative delivery of comments may be made by calling 360-586-3065.

(3) Comments timely received shall be considered by the department in the issuance or denial of the permit application and the imposition of terms and conditions in the permit.

(4) In the discretion of the state archeologist or the assistant state archaeologist, a fifteen-day extension may be granted for additional comments. The party requesting the extension must make the request in writing within the original thirty-day comment period.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

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)) a person other than the applicant, the ((office)) department will:

(1) Notify the ((entity)) person 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)) person 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 WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-090 Issuance of permit. The ((office)) department 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)) department may issue a permit((7)) for a specified period of time appropriate to the work to be conducted((7)) upon determining that:

(1) The applicant, or in the case of an amateur society((7)) or other group or organization((7)) the individual proposed to be responsible for conducting the archaeological work((7) ~~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~~);

(a) Meets the minimum qualifications as a professional archaeologist specified in WAC 25-48-020(4);

(b) 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

(c) Has complied with current and past permits issued under RCW 27.53.060.

(2) The proposed archaeological 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 archaeological 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) Any Washington university, museum, repository, or other scientific or educational institution proposed as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records.

(5) Where the application is for a state-owned 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))~~ (vi) 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.

(vi) 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.

(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))~~ If information filed with the ((office)) department becomes inaccurate in any way((7)) or additions or deletions are necessary, the applicant or permittee shall ((submit)) provide the department with 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)) after the applicant or permittee becomes aware of the inaccuracy or need for change. The ((office)) department reserves the right to suspend or revoke a permit under the terms of WAC 25-48-110 or to amend a permit under WAC 25-48-100 if the new or corrected information warrants.

NEW SECTION

WAC 25-48-095 Emergency permits. (1) The department may issue an emergency permit immediately where delay could cause damage to an archaeological or historic resource or site, or to burial(s) or human remains.

(2) Before issuing an emergency permit, the department shall require the applicant to provide the information required in WAC 25-48-060. The department, in its discretion, may allow the applicant to provide the required information in abbreviated form.

(3) The emergency permit shall include the terms and conditions specified in WAC 25-48-100.

(4) The department may issue an emergency permit without complying with the notification requirements in WAC 25-48-070 and 25-48-080, except as provided in WAC 25-48-070(4).

(5) An emergency permit shall be valid for not more than thirty days. The department, in its discretion, may extend the emergency permit for an additional thirty days.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-100 Terms and conditions of permits. (1) In all permits issued, the ~~((office))~~ department 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 ~~((director))~~ department may specify such terms and conditions as deemed necessary, consistent with this chapter, to:

(a) Protect the public interest in the conservation, preservation, and protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources;

(b) Protect the public safety and other values and/or resources ~~((, to))~~;

(c) Secure work areas, ~~((to))~~ safeguard other legitimate land uses, and ~~((to))~~ limit activities incidental to work authorized under the permit.

~~((This may include))~~ (3) The department may require evidence

of sufficient bonding to cover cost of site restoration.

~~((3))~~ (4) The department may specify such terms and conditions as deemed necessary that are recommended by persons commenting within the comment period provided in WAC 25-48-080.

~~((5))~~ The ~~((office))~~ department may include in ~~((permits issued for archaeological work on native Indian cairns and graves or glyptic or painted records such terms and conditions as may be requested by the concerned native))~~ any permit such terms and conditions as requested by a concerned or affected Indian tribe.

~~((4))~~ (6) 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))~~ (7) 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))~~ (8) The permittee may request that the ~~((office))~~ department extend or modify a permit. Such a request will require compliance with all the provisions of this chapter.

~~((7))~~ (9) The permittee's performance under any permit issued for a period greater than one year shall be subject to review by the ~~((office))~~ department, at least annually.

(10) If at any time the department determines the terms and conditions of the permit are inadequate to provide the protections addressed under subsections (2) and (3) of this section, the department may add, amend, or delete the terms and conditions of the permit.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

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 as well as notice of the right to request a hearing. A permit may be denied ~~((for failure to adequately meet the requirements of an applicant under WAC 25-48-060 and/or the standards set forth in WAC 25-48-090))~~ if:

(1) The application does not meet the requirements and standards in WAC 25-48-060 and 25-48-090;

(2) The applicant or any individual proposed to be responsible for conducting the work or carrying out the terms and conditions of the permit has failed to meet the terms and conditions of a permit previously issued under this chapter; or

(3) The applicant or any individual proposed to be responsible for conducting the work or carrying out the terms and conditions of the permit has been found to have violated this chapter or any federal or state law regulating archaeological objects or sites, historic archaeological resources, glyptic or painted records, or native Indian cairns or graves.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

WAC 25-48-108 Right of first refusal--Discovery of new technology. (1) Any (~~(agency, institution,)~~) person(~~(, firm, or corporation which)~~) that has been denied a permit because the historic archaeological resource would be destroyed beyond mitigation by (~~(their)~~) its 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)~~) department 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)~~) department'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)~~) person a notice by certified mail, return receipt requested, that the (~~(entity's)~~) person's right of first refusal has been extinguished.

AMENDATORY SECTION (Amending WSR 90-01-091, filed 12/19/89, effective 1/19/90)

WAC 25-48-110 Suspension and revocation of permits. (1) The (~~(office)~~) state archaeologist or the assistant state archaeologist may suspend or revoke a permit issued pursuant to this chapter upon determining that the permittee has failed to meet any of the terms and conditions of the permit and upon at least twenty days written notice. In the case of emergencies which imminently threaten health, safety, or welfare including property, the (~~(office)~~) state archaeologist or the assistant state archaeologist may summarily suspend a permit by immediately issuing a written order which incorporates a finding to that effect.

(2) The ~~((office))~~ state archaeologist or the assistant state archaeologist shall provide the permittee with written notice ~~((and the notice of right to request a public hearing to the permittee))~~ of the suspension or revocation, the cause thereof, and in the case of a suspension, the length of the suspension and the requirements which must be met before the suspension will be removed. The notice shall inform the respondent of its right to request a hearing to contest the revocation or suspension. In addition, a notice of summary suspension shall inform the respondent of its right to request an emergency adjudicative proceeding.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

WAC 25-48-120 ~~((Appeals relating to permits.))~~ Administrative appeals. ~~((Any affected person may request a hearing to appeal a denial, suspension, or revocation of a permit or extinguishment of a right of first refusal under WAC 25-48-108 to the director. Said request must be in writing and filed with the director within twenty-one calendar days of receipt of notice of the denial, suspension, revocation, or extinguishment.))~~ (1) An applicant for or holder of a permit issued under this chapter may request a hearing to contest a penalty imposed under WAC 25-48-041, the terms and conditions imposed on a permit under WAC 25-48-100, a denial of a permit application under WAC 25-48-105, a suspension or revocation of a permit under WAC 25-48-110, or the extinguishing of a right of first refusal under WAC 25-48-108.

(2) A request for a hearing shall be made by filing a written application for adjudicative proceeding with the department at the following address: Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. The application must be received by the department within twenty-one calendar days of the date of service of the notice of the penalty, denial, suspension, revocation, or extinguishing. An application contesting the terms and conditions imposed on a permit under WAC 25-48-100 must be received by the department within twenty-one days of the date the permit was issued. The application shall specify the issue or issues to be decided and indicate whether the requester desires a full adjudicative proceeding, a brief adjudicative proceeding, or an emergency adjudicative proceeding.

(3) When the department receives an application for adjudicative proceeding, it will immediately notify the director of its receipt and provide the director and the state archaeologist or the assistant state archaeologist with a copy of the application and the notice or document being appealed. The director thereupon will designate a presiding officer as follows:

(a) Where an application requests a full adjudicative proceeding, or where the director determines a full adjudicative proceeding is required, the director will designate as presiding

officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW.

(b) Where an application requests a brief adjudicative proceeding or emergency adjudicative proceeding, or where the director determines a brief adjudicative proceeding or emergency adjudicative proceeding is appropriate, the director will designate a senior staff person in the department as presiding officer. The person designated shall not have participated in the matter and shall not be subject to the authority or direction of any person who has participated in the matter.

(4) Upon being designated, the presiding officer shall notify the requestor, the state archaeologist, and the assistant state archaeologist of his or her name and business address and provide any other information required by chapter 34.05 RCW, 10-08 WAC, or this chapter.

(5) Upon receiving the notice required in subsection (4) of this section, the state archaeologist or the assistant state archaeologist shall immediately transmit to the presiding officer the application, together with any accompanying documents provided by the requester, and a copy of the notice or other document being appealed.

NEW SECTION

WAC 25-48-121 Adjudicative proceedings. (1) The department hereby adopts the model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, for use in adjudicative proceedings of agency action under this chapter.

(2) "Service" and "filing" of documents in adjudicative proceedings, brief adjudicative proceedings, and emergency adjudicative proceedings are defined as in RCW 34.05.010 and WAC 10-08-110.

(3) In the case of a conflict between the model rules of procedure and this chapter, the rules in this chapter shall take precedence.

(4) All factual determinations shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The burden in all proceedings is a preponderance of the evidence.

(a) In all proceedings contesting the denial of a permit application under WAC 25-48-108, the burden shall be on the applicant to establish that the application meets all applicable requirements and standards.

(b) In all proceedings contesting the extinguishing of a right of first refusal under WAC 25-48-108, the burden shall be on the person challenging the extinguishing to establish the timely exercise of its right of first refusal.

(c) In all other proceedings, the burden is on the state historic preservation officer to prove the alleged factual basis set forth in the notice.

NEW SECTION

WAC 25-48-122 Brief adjudicative proceedings. (1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where permitted by law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. A brief adjudicative proceeding is intended to serve as an inexpensive and efficient alternative where the issues can be decided by reference to writings and other documents without a full, formal hearing.

(2) A brief adjudicative proceeding may be used to review the following actions taken under this chapter:

(a) A notice of violation of the terms and conditions of a permit under WAC 25-48-041 (1)(b);

(b) A denial of a permit application under WAC 25-48-105;

(c) Extinguishing a right of first refusal under WAC 25-48-108.

(3) An application for brief adjudicative proceeding shall include a written explanation of the applicant's view of the matter and a copy of any other documents the applicant wishes to have the presiding officer consider. Any response by the department shall be filed with the presiding officer and served on the applicant within fourteen days of receiving an application for a brief adjudicative proceeding.

(4) If the applicant desires an opportunity to make an oral statement to the presiding officer, a request to make an oral statement must be included in the application for a brief adjudicative proceeding. The presiding officer may grant a request to make an oral statement if the presiding officer believes the statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of his or her decision to grant or deny a request to make an oral statement. If the presiding officer grants any request to make an oral statement, all parties shall be entitled to make oral statements, and the presiding officer shall notify all parties of the time and place for hearing oral statements.

(5) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall serve upon each party a brief written statement of the reasons for the decision and information about any internal administrative review available.

(6) The presiding officer's brief written statement is an

initial order. The initial order shall be the final order without further action unless within twenty-one days of the date of service a party requests administrative review of the initial order or the director initiates review of the initial order.

(7) If the presiding officer determines a more comprehensive hearing is warranted, or on the motion of any party, he or she may convert the proceeding to a full adjudicative proceeding by requesting in writing, with findings supporting the request, that the proceeding be so converted and that the director designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW. The director will act as soon as possible on the request.

(8)(a) A party may request review of the initial order by filing a written request with the director at the following address: Director, Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. A request for review of an initial order shall contain an explanation of the requester's view of the matter and a statement of reasons why the initial order is incorrect. The request must be received by the director and served on all other parties within twenty-one days of the date the initial order was served on the parties. A copy of the request must be served on the state archaeologist or the assistant state archaeologist.

(b) Any response to the request for review of an initial order shall be filed with the director and served on the requester within ten days after receiving the request.

(c) In response to a request for review of an initial order, the director shall immediately obtain the record compiled by the presiding officer. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(d) The reviewing officer may issue an order on review, which shall include a brief statement of the reasons for the decision and include a notice that judicial review may be available.

(e) A request for review of an initial order is deemed to have been denied if the reviewing officer does not issue an order on review within twenty days of the date the request for review of the initial order was filed with the director.

(9)(a) The director may initiate review of the initial order on his or her own motion, without notifying the parties. The director, at his or her sole discretion, may act as the reviewing officer or designate a reviewing officer who is authorized to grant appropriate relief upon review.

(b) The reviewing officer shall obtain and review the record compiled by the presiding officer before taking action.

(c) The reviewing officer may not take any action on review less favorable to any party than in the initial order without giving that party notice and an opportunity to provide a written explanation of its view of the matter. The notice shall specify the deadline for that party to submit its written explanation.

(d) Any order on review shall be issued and served on the parties within twenty days of the date the initial order was served on the parties or within twenty days of the date a request for

review of the initial order was filed with the director, whichever occurs later. If an order on review is not issued and served by the applicable deadline in this paragraph, the initial order becomes the final order.

NEW SECTION

WAC 25-48-123 Emergency adjudicative proceedings. (1) A respondent who receives a notice of summary suspension of a permit under WAC 25-48-110 may request an emergency hearing under RCW 34.05.422 and 34.05.479 to contest the findings included in the notice of summary suspension by filing an application for emergency adjudicative proceeding. A respondent who does not file an application for emergency adjudicative proceeding may contest the findings included in the notice of summary suspension in a regularly scheduled adjudicative hearing.

(2) An application for emergency adjudicative proceeding must be received by the department within seven calendar days of the date of service of the notice of summary suspension. An application for emergency adjudicative proceeding received by the department more than seven calendar days after the date of service of the notice of summary suspension shall be deemed an application for full adjudicative proceeding and will be scheduled accordingly.

(3) An application for emergency adjudicative proceeding shall include a written explanation of the applicant's view of the summary suspension and a copy of any other documents the applicant wishes to have the presiding officer consider.

(4) The presiding officer, in his or her discretion, may provide for telefacsimile or electronic service and filing of documents, using means that are similarly available to all parties, in the notice required in WAC 25-48-120(4).

(5) Upon receiving the notice required in WAC 25-48-120(4), the state archaeologist or the assistant state archaeologist shall immediately transmit to the presiding officer copies of any documents that were considered or relied upon in issuing the notice of summary suspension, in addition to the documents listed in WAC 25-48-120(5).

(6) Within seven business days after receiving an application for emergency adjudicative proceeding, the presiding office shall issue an order that either:

(a) Affirms that the summary suspension is necessary to prevent or avoid immediate danger to the public health, safety or welfare including property; or

(b) Sets aside the summary suspension as unnecessary to prevent or avoid immediate danger to the public health, safety or welfare including property.

No other issue shall be decided in the emergency adjudicative proceeding. The order shall include a brief statement of findings

of fact, conclusions of law, and policy reasons for the decision.

(7) The order is effective when signed by the presiding officer. The presiding officer shall promptly notify each party of the decision and serve each party with a copy of the order.

(8) If other issues remain to be decided, or if the respondent requests review of the order, the presiding officer may request that a full adjudicative proceeding be scheduled and that the director designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW. The request shall summarize the issues that remain to be decided. The director will act as soon as possible on the request. The order issued under this section becomes final unless within seven days of the date of issuance a full adjudicative proceeding is scheduled.

AMENDATORY SECTION (Amending Order 88-06, filed 11/4/88)

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 under RCW 27.53.060 to protect historic archaeological sites on aquatic lands:

Lake Washington.
Elliott Bay.
Columbia River Bar.

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

WAC 25-48-130 Display of permit. (1) The permit granted by the ((office)) department shall be either prominently displayed at all times upon the archaeological site being excavated during the permitted period, or carried on the person of the individual responsible for the field work, as specified in the permit.

(2) If more than one archaeological site is being excavated under a single permit, the permittee may obtain from the ((office)) department such copy or copies of his or her permit as may be necessary to display at each archaeological site being excavated.

(3) The director or his designee, including the state archaeologist and the assistant state archaeologist, may examine at any time the permit, work, and site at which such permitted work is being undertaken.

(4) Upon request, appropriate law enforcement officials may examine the permit, work and site at which such permitted work is being undertaken.

NEW SECTION

WAC 25-48-135 Procedure for collecting radiometric data without a permit. A professional archaeologist, as defined in WAC 25-48-020(4), may collect radiocarbon samples without first obtaining a permit under this chapter if the following conditions are met:

(1) The sample or samples must consist of charcoal or shell; no human or mammal bone may be sampled without a permit;

(2) Within ten working days following the sampling, the professional archaeologist must notify the department of the radiocarbon sampling; and

(3) Within thirty days of receiving copies of the results worksheets or their equivalent from the radiocarbon laboratory, the professional archaeologist must submit to the department copies of the results worksheets or their equivalent together with a brief written report documenting sampling and results.