

State of Washington

Department of Community Development
(agency name)

Administrative Order No. 88-07

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

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

Establishing registration procedures for previously unknown historic archaeological resources on state owned aquatic lands.

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

This action is taken pursuant to Notice No. 88-18-092

filed with the code reviser on Sept. 7, 1988. These rules shall take effect:

- [x] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
[] at a later date, such date being

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

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

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

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[x] (a) This rule is promulgated pursuant to RCW 27.53.030, 060; ch. 124 Laws of 1988, and is intended to administratively implement that statute, Sec. 1, 3, 5, 6, 7, & 10.

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

(agency) has authority to implement the provisions of

(name of act or RCW citation)

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

(agency)

as authorized in RCW

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

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

APPROVED AND ADOPTED October 13, 19 88

STATE OF WASHINGTON FILED

NOV 4 1988

By Chuck Clarke Director

Title

CODE REVISER'S OFFICE WSR 88-23-005

Chapter 25-46 WAC

REGISTRATION OF HISTORIC ARCHAEOLOGICAL RESOURCES ON STATE-OWNED
AQUATIC LANDS

WAC

25-46-010	Purpose.
25-46-020	Definitions.
25-46-040	Registration forms.
25-46-060	Summary of information required for registration.
25-46-080	Competing applications for the same resource.
25-46-100	Issuance of registration acceptance.
25-46-120	Registration denial.
25-46-140	Appeals relating to registration.
25-46-160	Right of first refusal to permit upon registration.
25-46-180	Severability.

NEW SECTION

WAC 25-46-010 PURPOSE. The purpose of this chapter is to establish registration procedures for previously unreported historic archaeological resources discovered on, in, or under state-owned aquatic lands as provided for in chapter 27.53 RCW.

NEW SECTION

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) "Director" means the director of the department of community development or the director's designee.

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

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

NEW SECTION

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 Historic Archaeological Resource Registration form approved by the director. These registration forms may be obtained from the Office of Archaeology and Historic Preservation, Department of Community Development, 111 West 21st Avenue KL-11, Olympia, Washington 98504; telephone (206) 753-5010.

NEW SECTION

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.

(b) Locational information including latitude, longitude, and depth.

(c) A copy of the relevant United States Coast and Geodetic Survey chart indicating the resource's location.

(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 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 WAC 25-48-030.

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

NEW SECTION

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.

(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.

NEW SECTION

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).

(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 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.

(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.

NEW SECTION

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 or are part of the public record.

NEW SECTION

WAC 25-46-140 APPEALS RELATING TO REGISTRATION. 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.

NEW SECTION

WAC 25-46-160 RIGHT OF FIRST REFUSAL TO PERMIT UPON REGISTRATION. (1) Any person, firm, corporation, institution, or agency that discovers and registers a previously unreported historic archaeological resource abandoned on, in, or under state-owned aquatic lands with the department shall have a right of first refusal to future excavation and recovery permits granted for the recovery of that resource subject to the provisions of chapter 27.53 RCW and chapter 25-48 WAC.

(2) Such right of first refusal shall exist for five years from the date of registration by the department. 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) Should another person, firm, corporation, institution, or agency apply for a permit to excavate or remove that resource or portions thereof, the person, firm, corporation, institution, or agency that registered the resource shall have sixty days from the receipt of notice 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 registered the resource does not exercise its first refusal right within sixty days of the receipt of notice, the department shall send to that entity a notice by certified mail, return receipt requested, that that entity's right of first refusal has been extinguished.

(5) If the entity that registered the historic archaeological resource does not exercise its right of first refusal within five years of the issuance of the registration acceptance the right lapses.

NEW SECTION

WAC 25-46-180 SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances shall not be affected.