

Chapter 25-46 WAC

REGISTRATION OF HISTORIC ARCHAEOLOGICAL RESOURCES ON STATE-OWNED AQUATIC LANDS

WAC

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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.

[Statutory Authority: RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-010, 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 archaeology and historic preservation established in chapter 43. . . . RCW.

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

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

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

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-020, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-020, filed 11/4/88.]

(2/15/06)

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 Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, Washington 98504-8343; telephone 360-586-3065.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-040, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-040, 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 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 department may result in the application being deemed incomplete or inadequate under WAC 25-46-100 and 25-46-120.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-060, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-060, 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 applica-

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tions 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.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-080, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-080, 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.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-100, filed 2/15/06, effective 3/18/06. Statutory Authority:

RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-100, 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 department or are part of the public record.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-120, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-120, 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. A request for a hearing shall be made by filing a written application for adjudication 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.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-140, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-140, filed 11/4/88.]

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.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-142, filed 2/15/06, effective 3/18/06.]

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.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-144, filed 2/15/06, effective 3/18/06.]

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).

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(6) Within seven business days after receiving an application for emergency adjudicative proceeding, the presiding officer 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.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-46-146, filed 2/15/06, effective 3/18/06.]

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.

(2/15/06)

[Statutory Authority: RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-160, filed 11/4/88.]

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.

[Statutory Authority: RCW 27.53.030, [27.53.]060 and 1988 c 124 §§ 1, 3, 5, 6, 7 and 10. WSR 88-23-005 (Order 88-07), § 25-46-180, filed 11/4/88.]