

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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2009 JUL -5 PM 4: 14

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Culture and History TITLE NUMBER: 82

RULE TYPE: Legislative; CITE AUTHORITY WV Code 29-1-6b

AMENDMENT TO AN EXISTING RULE: YES NO 29-1-7

IF YES, SERIES NUMBER OF RULE BEING AMENDED: n/a

TITLE OF RULE BEING AMENDED: n/a

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: Permits to Effect Archeological Sites
and Unmarked Graves

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 6 AT 9:00 a.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Bill Farrar

Division of Culture & History

Cultural Center

Capitol Complex

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Permist to Effect Archeological Sites and Unmarked Graves

Type of Rule: Legislative Interpretive Procedural

Agency Div. Of Culture & History Address Cultural Center
Capitol Complex, Charleston, WV 25306

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 500	\$ 500
Personal Services					
Current Expense				500	500
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

There will be no additional costs to state government revenues as a result of implementing this rule. Current staff will carry out duties and travel costs will be paid from federal grant funds, to visit unmarked graves.

3. Objectives of these rules:

To protect unmarked graves and archeological sites by requiring a permit before any excavation, removal, destruction, or disturbance may take place.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

n/a

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

n/a

C. Economic Impact on Citizens/Public at Large.

n/a

Date: 7/5/90

Signature of Agency Head or Authorized Representative

William E. Loman

82 CSR 3

TITLE 82
LEGISLATIVE RULES
DIVISION OF CULTURE AND HISTORY

SERIES 3

PERMITS TO EFFECT ARCHAEOLOGICAL SITES AND
UNMARKED GRAVES

FILED
1990 JUL -5 PM 4: 11
STATE OF WEST VIRGINIA
SECRETARY OF STATE

§82-3-1. GENERAL.

1.1. Scope. -- This legislative rule establishes the procedures for issuing a permit to excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance; and issuing a determination verifying the location of an unmarked grave for tax exemption purposes.

1.2. Authority. -- WV Code §29-1-5(a) & (b); 29-1-6b; 29-1-7

1.3. Filing Date. -- July 5, 1990

1.4. Effective Date. --

§82-3-2. DEFINITIONS.

2.1. ruins: the remains of structures or markings made by humans during historic or prehistoric times.

2.2. sites: areas occupied by humans during historic and prehistoric times including, but not limited to burial grounds, campsites, villages, dwellings, caves, rock shelters and industrial complexes.

2.3. kinship: the legally recognized relationship among people that exists because of genetic descent, or marriage.

2.4. burial grounds: a location where, during historic or prehistoric times, human bodies or skeletal remains were buried in marked or unmarked graves, including objects or artifacts buried with them.

2.5. permit: a written authorization issued by the director of archives and history.

2.6. excavation: the controlled removal of dirt to study objects and artifacts for the purpose of learning about the past.

2.7. surface survey: an activity that involves a visual inspection of the land for the purpose of locating archaeological sites as revealed by artifacts found on the surface of the ground.

2.8. professional archaeologist: an individual who has a graduate degree in anthropology or archaeology and whose primary vocation is related to this discipline.

2.9. avocational archaeologist: an individual who does not have a graduate degree in anthropology or archaeology but who does conduct archaeological activities.

2.10. director: the director of the archives of history section of the division of culture and history.

2.11. effect: includes the excavation, removal, destruction or disturbance of a site.

§82-3-3. APPLICABILITY.

3.1. Permitted Activities. A permit must be obtained from the director to undertake the following activities:

3.1.a. Activities having an effect on:

3.1.a.A. historic or prehistoric ruins,

3.1.a.B. burial grounds, or

3.1.a.C. archaeological sites.

3.1.b. When determined by the director to have historical significance, activities effecting:

3.1.b.A. human skeletal remains,

3.1.b.B. unmarked graves,

3.1.b.C. grave artifacts, or

3.1.b.D. grave markers.

3.2. Exempted Activities. The following activities are exempt from the permit process in section four of these rules:

3.2.a. Projects effecting historic or prehistoric ruins or archaeological sites which are being undertaken in compliance with section 106 of the National Historic Preservation Act of 1966, as amended, or subsection (a), section five, article 1, chapter 29 of the West Virginia Code;

3.2.b. Archaeological investigations being undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 of 16 USC 470(aa)) and regulations promulgated thereunder; however, the supervising archaeologist shall --

3.2.b.A. notify, in writing, the director that such investigation is being undertaken and

3.2.b.B. file reports as are required in section six of these rules.

3.2.c. Surface surveys.

§82-3-4. PERMIT PROCESS.

4.1. Significant Unmarked Graves. Once notification has been received that an unmarked grave has been located, and the director has determined that the site has a potential for archaeological significance,

4.1.a. the director shall catalogue the site, and

4.1.b. if the site is to be effected, the person effecting the site shall obtain a permit from the director.

4.2. Permit Application. Any persons conducting activities as described in section three, subsection one of these rules shall make application to the director for a permit. The application shall include:

4.2.a. a map detailing the location of the site, and a current description of the site identifying any previous ground disturbance in the area;

4.2.b. a detailed description of the proposed activities giving reasons, anticipated benefits and a time schedule, not to exceed two years;

4.2.c. evidence of owner consent;

4.2.d. a description of alternatives to the activities that were considered;

4.2.e. a plan detailing the method and techniques by which the activities will be conducted;

4.2.f. applicant's qualifications to demonstrate knowledge and experience in proper archaeological procedures;

4.2.g. a curation plan;

4.2.h. a plan to reclaim the site, when it will not be substantially altered.

4.3. Issuance of Permits. If approved, permits shall be issued within 30 days of the receipt of application

4.4. Denial of Permits. If denied, a letter of explanation will be issued within 30 days of the receipt of application

4.5. Appeal Process. Applicants denied a permit may appeal the decision by requesting in writing, at least twenty-one days in advance, hearing before a regularly scheduled meeting of the Archives and History Commission.

4.6. Archives and History Access. When a permit is issued, the director shall be allowed access to any activity being permitted for compliance purposes.

§82-3-5. TAX EXEMPTION FOR UNMARKED GRAVES.

5.1. If a property owner believes that an unmarked grave is located on his property and wishes to apply for tax exemption, he shall:

5.1.a. submit to the director a map detailing the location of the suspected unmarked grave, and

5.1.b. provide the director with written or photographic documentation that a grave exists.

5.2. Upon confirming the location of the grave, the director will issue a letter to the property owner with a site map certifying the location.

§82-3-6. REPORTING REQUIREMENTS.

6.1. Annual Reports. Permit recipients shall submit annual reports to the director on July 15 of each year during the duration of the project.

6.2. Final Reports. Permit recipients shall submit a final report to the director within one year of the completion of the fieldwork.

6.2.a. Professional archaeologists shall submit reports meeting the specifications of the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR 68).

6.2.b. Avocational archaeologists shall submit reports that include:

6.2.b.A. information on site location and conditions;

6.2.b.B. relevant background information;

6.2.b.C. field observations, including but not limited to stratigraphy and features; and

6.2.b.D. analysis and results.

OFFICE OF THE SECRETARY OF EDUCATION
AND THE ARTS

1018 KANAWHA BOULEVARD, EAST
Suite 700
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE 304 348-2440

July 5, 1990

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OFFICE OF THE SECRETARY OF EDUCATION
AND THE ARTS

The Honorable Ken Hechler
Secretary of State
Capitol Complex
Charleston, WV 25305

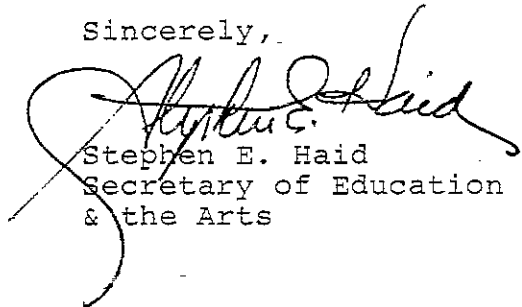
Dear Mr. Secretary:

Pursuant to West Virginia Code §5F-2-2, I hereby consent to the filing of proposed legislative rules for public comment by the Division of Culture and History, Archives and History Section, relating to:

- (a) Establishing procedures for issuing a permit to excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance; and issuing a determination verifying the location of an unmarked grave for tax exemption purposes.

A copy of the proposed rule is attached.

Sincerely,



Stephen E. Haid
Secretary of Education
& the Arts

Enclosure

cc: William M. Drennen, Jr.