

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: CULTURE & HISTORY TITLE NUMBER: 82

AMENDMENT TO AN EXISTING RULE: YES\_\_\_, NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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

TITLE OF RULE BEING PROPOSED: PERMITS TO EFFECT ARCHEOLOGICAL SITES  
AND UNMARKED GRAVES

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 637

SECTION §64-4-3, PASSED ON MARCH 9, 1991

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: APRIL 17, 1991

*Leigh Mc Lowan* (j)

82 CSR 3

TITLE 82  
LEGISLATIVE RULES  
DIVISION OF CULTURE AND HISTORY

SERIES 3

STANDARDS AND PROCEDURES FOR GRANTING PERMITS TO EXCAVATE  
ARCHAEOLOGICAL SITES AND UNMARKED GRAVES

§82-3-1. GENERAL.

1.1 Scope - This legislative rule establishes the procedures by which permits are issued for the excavation of historic and prehistoric ruins and archaeological sites; burial grounds, human skeletal remains and unmarked graves; and the removal or alteration of grave markers. Additionally, it establishes the method by which property tax exemptions for unmarked graves are determined and the methods for disposing of skeletal remains and associated artifacts claimed by descendants and those remains and artifacts not claimed. Not included within the scope of this legislative rule are collections of artifacts from historic or prehistoric ruins, burial grounds, archaeological sites or unmarked graves acquired prior to the effective date of H.B. 4752, June 8, 1990 or of artifacts collected from the surface of the ground through surface survey.

1.2. Authorization - WV Code 29-1-5(a) and (b); 29-1-6(b); 29-1-7

1.3. File Date -

1.4. Effective Date -

§82-3-2. DEFINITIONS.

2.1. "Archaeology" means the systematic, scientific study of past cultures through examination of material remains.

2.2. "Ruins" mean the remnants of structures constructed by humans during historic or prehistoric times.

2.3. "Sites" mean areas occupied for various durations by humans throughout history and prehistory including, but not limited to, campsites, villages, dwellings, rock shelters and industrial complexes.

2.4. "Proven Kinship" means the relationship among people that exists because of genetic (which includes racial) descent, or marriage; in the case of Native American remains also includes persons who are designated by the director as acceptable and responsible representatives of an organization dedicated to and knowledgeable in Native American religious and cultural values.

2.5. "Burial Grounds" mean a location where during history or prehistory human bodies or skeletal remains are entombed in visibly marked or unmarked graves and may include objects or artifacts with them.

2.6. "Grave Goods" mean artifacts found in association with a human burial.

2.7. "Professional Archaeologist" means an individual meeting the qualifications specified in the Secretary of the Interior's Standards for the Recovery of Archaeological Data (36 CFR 66).

2.8. "Avocational Archaeologist" means an individual whose vocation is in a field different than archaeology and who does not have a degree in the subject.

2.9. "Permit" means a written authorization issued by the Director of Archives and History, or designee, to conduct excavations of historic and prehistoric ruins, archaeological sites, burial grounds, human skeletal remains, and unmarked graves, and to remove or alter grave markers. A permit shall be valid for one designated site.

2.10. "Emergency Condition" means any unforeseen discovery of human remains.

2.11. "Excavation" means the controlled removal of dirt to uncover and retrieve artifacts or human skeletal remains.

2.12. "Surface Survey" means an activity that involves traversing the land for the purpose of locating archaeological sites as revealed by artifacts found on the surface of the ground.

2.13. "Historical or Archaeological Significance" means sites, ruins, burial grounds, or unmarked graves having significance determined by applying the criteria of eligibility for the National Register of Historic Places found in 36 CFR 60.

2.14 "Director" means Director of Archives and History or authorized representative.

### §82-3-3. PERMITS TO EXCAVATE HISTORIC AND PREHISTORIC RUINS AND ARCHAEOLOGICAL SITES.

3.1. Any person proposing to excavate a ruin or site shall request a permit application form from the Director at the Division of Culture and History, The Cultural Center, Capitol Complex, Charleston, WV 25305. They may call the Cultural Center at 348-0240 for further information. Permits will be issued on a project by project basis. The form will provide for and require the following information:

3.1.a. Documentation of the property owner's or property manager's, in the case of publicly owned land, permission to excavate. Recovered artifacts remain the property owner's, except in the case of publicly owned land, unless they forfeit their rights to them in writing.

3.1.b. The applicant's qualifications. A professional archaeologist will submit a resume, if not already on file at the State Historic Preservation Office. Avocational archaeologists will submit a letter explaining their past accomplishments as an avocationalist.

3.1.c. An excavation plan detailing the methodologies and techniques by which the excavations will be conducted and the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work.

3.1.d. The facility where recovered material and excavation records will be curated.

3.1.e. A plan to restore the site to its former condition prior to excavations when the site is not intended to be altered or destroyed.

3.2.a. Upon review of the permit application by the Director, a written response to the applicant will be forwarded within thirty days of receipt of the application. Permits may be issued for up to two years and may be suspended or revoked at any time for failing to meet terms and conditions of the permit. The Director shall be allowed access to any excavation of a site or ruin to observe whether conditions and terms of the permit are being met.

3.2.b. Permits may be denied for reasons including, but not limited to, failure to provide a completed application form, inadequate justification for excavating a site or ruins, or inability to complete satisfactorily a previous excavation. The reasons for denial shall be written down and forwarded to the applicant within thirty days of receipt of the application. Applicants denied a permit may appeal the decision by requesting a hearing before a regularly scheduled meeting of the Archives and History Commission. Such hearing shall be held in accordance with W.Va. Code, §§29A-5-1 et. seq.

3.3. If a permit is granted, an annual progress report shall be submitted on the anniversary date of the permit, if applicable, and a final report of the excavation will be submitted upon completion of fieldwork. The deadline for final reports will vary depending upon the nature of the project. Professionals will submit reports of the quality recommended in the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR 68). Avocationalists are not expected to submit reports of professional quality, but they shall minimally include information on site location and conditions, relevant background information, all field observations (stratigraphy, features, etc.), and analyses and results. The Director may request that reports be written for publication to be read by the general public, or in other ways disseminate the information recovered through permitted excavations to the general public.

3.4. If a permit is granted, the Director shall specify the approximate methods by which descendants of the deceased and those of proven kinship shall be notified.

§82-3-4. PERMITS TO EXCAVATE BURIAL GROUNDS, HUMAN SKELETAL REMAINS AND UNMARKED GRAVES.

4.1. After the Director has been notified of the discovery of burial grounds, human skeletal remains, or unmarked graves and determined them to have archaeological significance, and after alternatives to excavation have been examined, and attempts to notify descendants of the deceased and those of proven kinship have been made; the Director, may, upon receipt of a completed permit application form, issue a permit to excavate the burial grounds, human skeletal remains, or unmarked graves. Permits to excavate burials will be made available for review by the public upon request. When the Director, or designee, determines that emergency conditions exist, a permit may be issued without having received an application form, provided that the terms and conditions for excavating are formally agreed to at a more convenient time. An application form will provide for and require the following information:

4.1.a. Documentation of the property owner's or property manager's in the case of publicly owned land, permission to excavate. Recovered artifacts remain the property owner's, except in the case of publicly owned land, unless they forfeit their rights to them in writing.

4.1.b. The applicant's qualifications. A professional archaeologist will submit a resume, if not already on file at the State Historic Preservation Office. Avocational archaeologists will submit a letter explaining their past accomplishments as an avocationalist.

4.1.c. An excavation plan detailing the methodologies and techniques by which the excavations will be conducted and the reason and object for excavating the burial grounds, human skeletal remains, or unmarked graves and the benefits expected to be obtained from the contemplated work; except when discovered through construction activities.

4.1.d. The facility where recovered material and excavation records will be curated.

4.1.e. A plan to restore the site to its former condition prior to excavations when the site is not intended to be altered or destroyed.

4.2.a. Upon review of the permit application by the Director, a written response to the applicant will be forwarded within thirty days of having received the application. Permits shall be issued for up to two years and may be suspended or revoked at any time due to failure of meeting terms and conditions of the permit. The Director shall be allowed access to any excavation of burial grounds, human skeletal remains, or unmarked graves to observe whether conditions and terms of the permit are being met.

4.2.b. Permits may be denied from being issued for reasons including, but not limited to, failure to provide a completed application form, inadequate justification for excavating burial grounds, human skeletal remains, or unmarked graves, or inability to complete satisfactorily a previous excavation. The reasons for denying a permit shall be written down and forwarded to the applicant within thirty days of having received the application. Applicants denied a permit may appeal the decision by requesting a hearing before a regularly scheduled meeting of the Archives and History Commission. Such hearings shall be held in accordance with W.Va. Code, §§29A-5-1 et seq.

4.2.c. The Director, in considering permits to excavate remains or grave goods shall consult with an organization recognized by the Director as representing the religious and cultural concerns and interests of Native Americans.

4.2.d. Permits may be renewed for a period of six months if a letter requesting such a renewal and the reasons for the renewal request are submitted to the Director.

4.3. If a permit is granted, an annual progress report shall be submitted on the anniversary date of the permit, if applicable, and a final report of the excavations will be submitted upon completion of fieldwork. The deadline for final reports will vary depending upon the nature of the project. Professionals will submit reports of the quality recommended in the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR 68). Avocationalists are not expected to submit reports of professional quality, but they shall minimally include information on site location and conditions, relevant background information, all field observations (stratigraphy, features, etc.), and analyses and results. The Director may request that reports be written for publication to be read by the general public, or in other ways disseminate the information recovered through permitted excavations to the general public.

4.4. If a permit is granted, the Director shall specify the approximate methods by which descendants of the deceased and those of proven kinship shall be notified.

#### §82-3-5. PERMITS FOR THE REMOVAL OR ALTERATION OF GRAVE MARKERS.

5.1. Any person proposing to remove or alter the appearance of a grave marker shall request a permit application form from the Director. The form will provide for and require the following information:

5.1.a. When applicable, written authorization from the cemetery authority or caretaker for removal or alteration of a grave marker.

5.1.b. Evidence of attempts to notify descendants prior to removing or altering the grave marker.

5.1.c. The purpose for removing or altering the grave marker.

5.1.d. The methods for recording the grave marker prior to its removal or alteration. They may include, but not be limited to, photographs, rubbings, and maps showing the location of the marker in relationship to surrounding markers or objects.

#### §82-3-6. DISPOSITION OF SKELETAL REMAINS AND ASSOCIATED ARTIFACTS WHEN CLAIMED BY DESCENDENTS.

6.1. In the case of human skeletal remains and associated artifacts from apparent Native American origin, reburial shall be done in consultation and cooperation with an organization recognized by the Director as representing the religious and cultural concerns and interests of Native Americans.

6.2.a. In the case of human skeletal remains and associated artifacts from an origin other than Native American, the descendants of a deceased individual shall file a claim of legitimacy and provide the Director with documentation and evidence of descent.

6.2.b. Based upon evidence submitted by the descendants of a deceased individual pursuant to section 6.2.a., the Director shall make a written determination of the legitimacy of a claim of descent and state the reasons therefore.

6.2.c. A descendent may appeal an adverse determination of legitimacy by the Director to the Archives and History Commission by filing notice of appeal with the Commission twenty days prior to the next regularly scheduled meeting.

6.2.d. The filing of a notice of appeal with the Commission shall stay any action to dispose of or rebury the claimed remains and associated artifacts and grave goods.

6.2.e. Upon receipt of a notice of appeal, the Commission shall provide the descendent with a hearing at the next regularly scheduled meeting of the Commission. Such hearing shall be held in accordance with W.Va. Code § 29A-5-1 et.seq.

6.3. Upon determination of a legitimate claim to the remains and associated artifacts and grave goods, a written agreement between the Director, the permittee and the descendent of the deceased shall be executed detailing the method by which the remains and any associated artifacts and grave goods shall be disposed of or reburied.

#### §82-3-7. DISPOSITION OF SKELETAL REMAINS AND ASSOCIATED ARTIFACTS WHEN NOT CLAIMED BY DESCENDENTS.

7.1. When human skeletal remains are not claimed by descendants, the Director has the option to rebury the remains after archaeological investigations have been completed, or to accession them into the state museum where they will be cared for with dignity and respect as determined by the Director and interested parties. Reburial will be the preferred option unless a strong case against such action is presented.

#### §82-3-8. PROCEDURES FOR ESTABLISHING PROPERTY TAX EXEMPTIONS FOR BURIAL GROUNDS AND UNMARKED GRAVES.

8.1. When a private property owner has evidence for the presence of a burial ground or unmarked grave on his or her property, they may apply for a tax exemption in the manner outlined below.

8.1.a. The property owner shall submit a letter to the Director seeking a determination of the suspected burial ground or unmarked graves authenticity and eligibility for tax exemption.

8.1.b. A response to the letter shall be made within thirty days about the availability of an archaeologist from the Division of Culture and History to make the determination.

8.1.c. Upon completion of archaeological fieldwork to determine the location and extent of the burial ground, a response shall be prepared, after which, if verifying the presence of the burial ground, a certificate of authenticity will be issued to the property owner. The certificate may then be presented to the county assessor for processing.

8.1.d. The property owner has the option to establish a protective easement of the burial ground or unmarked grave by making arrangements with officials from the Division of Culture and History.