

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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AUG 16 9 54 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Division of Culture and History
AGENCY: Department of Education and the Arts TITLE NUMBER: 82

CITE AUTHORITY § 29-1-8(d)

AMENDMENT TO AN EXISTING RULE: YES NO

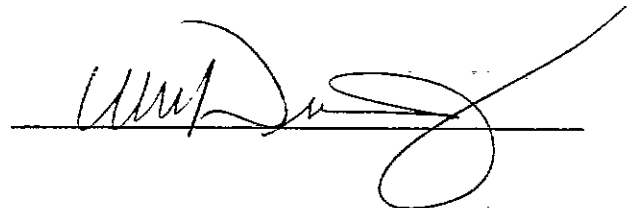
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Standards and Procedures for granting
permits to excavate archaeological sites and unmarked graves

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Standards and Procedures for granting permits to excavate
 Rule Title: archaeological sites and unmarked graves

Type of Rule: Legislative Interpretive Procedural
 Division of Culture and History

Agency: Department of Education and the Arts

Address: Cultural Center, Capitol Complex
Charleston, West Virginia 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0			
CURRENT EXPENSE	0	0			
REPAIRS & ALTERNATIONS	0	0			
EQUIPMENT	0	0			
OTHER	0	0			

2. Explanation of above estimates:

New regulations will not increase the costs to this agency over normal costs of running the programs.

3. Objectives of these rules:

Set up procedures for implementing the requirements of HB 2671

Rule Title: Standards and Procedures for granting permits to excavate archaeological sites and unmarked graves

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None --

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

None

C. Economic Impact on Citizens/Public at Large.

None that we know of.

Date: _____

Signature of Agency Head or Authorized Representative

cc: William G. Farrar

DATE: August 13, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: W. M. Drennen, Jr., Commissioner

LEGISLATIVE RULE TITLE: Standards and procedures for granting permits to excavate archaeological sites and unmarked graves

1. Authorizing statute(s) citation 29-1-8(d)

2. a. Date filed in State Register with Notice of Hearing

7 July 1993

b. What other notice, including advertising, did you give of the hearing?

Press release to list attached I

General mailing to list attached II

c. Date of Hearing(s) 9 August 1993

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

13 August 1993

f. Name and phone number(s) of agency person(s) to contact for additional information:

Frédrick Armstrong 558-0220

William G. Farrar 558-0220

Rebecca Payne 238-1300

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not applicable

d. Attach findings and determinations and reasons:

Attached

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TITLE 82 OFFICE OF WEST VIRGINIA
LEGISLATIVE RULES SECRETARY OF STATE
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 or activities undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder and projects being undertaken in compliance with §106 of the National Historic Preservation act of 1966, as amended, or subsection a, section five of chapter 29 of the West Virginia Code.

1.2. Authorization. -- W. Va. Code § 29-1-8(d) ~~§§ 29-1-5(a) and (b), 29-1-6 (b), 29-1-7).~~

1.3. Filing 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. "Cultural Affiliation" means the relationship of shared group identity which can be reasonably traced historically or

1 prehistorically between a present day group and an identifiable
 2 earlier group.

3
 4 2.5. "Lineal Descendants" means any individuals tracing his or her
 5 ancestry directly or by proven kinship.

6
 7 2.6. "Proven Kinship" means the relationship among people that
 8 exists because of genetic descent, which includes racial descent.

9
 10 ~~2.4. "Proven Kinship" means the relationship among people that~~
 11 ~~exists because of genetic (which includes racial) descent, or~~
 12 ~~marriage, in the case of Native American remains also includes persons~~
 13 ~~who are designated by the director as acceptable and responsible~~
 14 ~~representatives of an organization dedicated to and knowledgeable in~~
 15 ~~Native American religious and cultural values.~~

16
 17 2.7. 2.5. "Burial Grounds" mean a location where during history or
 18 prehistory human bodies or skeletal remains are entombed in visibly
 19 marked or unmarked graves and may include objects or artifacts with
 20 them.

21
 22 2.8. 2.6. "Grave Goods" mean artifacts found in association with a
 23 human burial.

24
 25 2.9. 2.7. "Professional Archaeologist" means an individual meeting
 26 the qualifications specified in the Secretary of the Interior's
 27 Standards for the Recovery of Archaeological Data (36 CFR 66).

28
 29 2.10. 2.8. "Avocational Archaeologist" means an individual whose
 30 vocation is in a field different than archaeology and who does not
 31 have a degree in the subject.

32
 33 2.11. 2.9. "Permit" means a written authorization issued by the
 34 Director of Historic Preservation Archives and History, or designee,
 35 to conduct excavations of historic and prehistoric ruins,
 36 archaeological sites, burial grounds, human skeletal remains, and
 37 unmarked graves, and to remove or alter grave markers. A permit shall
 38 be valid for one designated site.

39
 40 2.12. 2.10. "Emergency Condition" means any unforeseen discovery
 41 of human remains.

42
 43 2.13. 2.11. "Excavation" means the controlled removal of dirt to
 44 uncover and retrieve artifacts or human skeletal remains.

45
 46 2.14. 2.12. "Surface Survey" means an activity that involves
 47 traversing the land for the purpose of locating archaeological sites
 48 as revealed by artifacts found on the surface of the ground.

49
 50 2.15. 2.13. "Historical or Archaeological Significance" means
 51 sites, ruins, burial grounds, or unmarked graves having significance
 52 determined by applying the criteria of eligibility for the National
 53 Register of Historic Places found in 36 CFR 60.

1 ~~2.16. 2-14.~~ "Director" means Director of Historic Preservation
2 Archives and History or authorized representative.

3
4 2.17. "Evidence of descent" means evidence of a kin or cultural
5 affiliation between a present-day individual or Indian Tribe and human
6 remains and cultural items which shall be established by using the
7 following types of evidence: Geographical, kinship, biological,
8 archeological, anthropological, linguistic, folklore, oral tradition,
9 historical, or other relevant information or expert opinion.

10
11 §82-3-3. Permits to excavate historic and prehistoric ruins and
12 archaeological sites.

13
14 3.1. Any person proposing to excavate a ruin or site shall request
15 a permit application form from the Director at the Division of Culture
16 and History, The Cultural Center, Capitol Complex, Charleston, W. Va.
17 25305. They may call the Cultural Center at 558-0240 for further
18 information. Permits will be issued on a project by project basis.
19 The form will provide for and require the following information:

20
21 3.1.1. Documentation of the property owner's or property
22 manager's, in the case of publicly owned land, permission to excavate.
23 Recovered artifacts remain the property owner's, except in the case of
24 publicly owned land, unless they forfeit their rights to them in
25 writing.

26
27 3.1.2. The applicant's qualifications. A professional
28 archaeologist will submit a resume, if not already on file at the
29 State Historic Preservation Office. Avocational archaeologists will
30 submit a letter explaining their past accomplishments as an
31 avocationalist.

32
33 3.1.3. An excavation plan detailing the methodologies and
34 techniques by which the excavations will be conducted and the reasons
35 and objectives for excavation or removal and the benefits expected to
36 be obtained from the contemplated work.

37
38 3.1.4. The facility where recovered material and excavation
39 records will be curated.

40
41 3.1.5. A plan to restore the site to its former condition prior
42 to excavations when the site is not intended to altered or destroyed.

43
44 3.2. Upon review of the permit application by the Director, a
45 written response to the applicant will be forwarded within thirty (30)
46 days of receipt of the application. Permits may be issued for up to
47 two (2) years and may be suspended or revoked at any time for failing
48 to meet terms and conditions of the permit. The Director shall be
49 allowed access to any excavation of a site or ruin to observe whether
50 conditions and terms of the permit are being met.

51
52 Permits may be denied for reasons including, but not limited to,
53 failure to provide a completed application form, inadequate

1 justification for excavating a site or ruins, or inability to complete
2 satisfactorily a previous excavation. The reasons for denial shall be
3 written down and forwarded to the applicant within thirty days of
4 receipt of the application. Applicants denied a permit may appeal the
5 decision by requesting a hearing before a regularly scheduled meeting
6 of the Archives and History Commission. Such hearing shall be held in
7 accordance with W. Va. Code §§29A-5-1 et. seq.

8
9 3.3. If a permit is granted, an annual progress report shall be
10 submitted on the anniversary date of the permit, if applicable, and a
11 final report of the excavation will be submitted upon completion of
12 fieldwork. The deadline for final reports will vary depending upon
13 the nature of the project. Professionals will submit reports of the
14 quality recommended in the Secretary of Interior's Standards and
15 Guidelines for Archaeology and Historic Preservation (36 CFR 68).
16 Avocationalists are not expected to submit reports of professional
17 quality, but they shall minimally include information on site location
18 and conditions, relevant background information, all field
19 observations (stratigraphy, features, etc.), and analyses and results.
20 The Director may request that reports be written for publication to be
21 read by the general public, or in other ways disseminate the
22 information recovered through permitted excavations to the general
23 public.

24
25 ~~3.4. If a permit is granted, the Director shall specify the~~
26 ~~approximate methods by which descendants of the deceased and those of~~
27 ~~proven kinship shall be notified.~~

28
29 §82-3-4. Permits to excavate burial grounds, human skeletal remains
30 and unmarked graves.

31
32 4.1. After the Director has been notified of the discovery of
33 skeletal remains, grave artifacts or grave markers, the director shall
34 cause an on-site inspection of the disturbance to be made to determine
35 the potential for archaeological significance of the site. If the
36 director determines that the site has potential historical or
37 archaeological significance and after alternatives to excavation have
38 been examined, a permit application form for the archaeological
39 excavation or removal of the remains must be filed. In cases where
40 discovery is unforeseen, an on-site inspection shall be made within ten
41 (10) working days and the determination of potential historical or
42 archaeological significance shall be made as soon as is reasonable,
43 but shall not exceed sixty (60) days. burial grounds, human skeletal
44 remains, or unmarked graves and determined them to have archaeological
45 significance, and after alternatives to excavation have been examined,
46 and attempts to notify descendants of the deceased and those of proved
47 kinship have been made, the director, may, upon receipt of a completed
48 permit application form, issue a permit to excavate the burial
49 grounds, human skeletal remains, or unmarked graves. Permits to
50 excavate burials will be made available for review by the public upon
51 request. When the Director, or designee, determines that emergency
52 conditions exist, a permit may be issued without having received an
53 application form, provided that the terms and conditions for

1 excavating are formally agreed to at a more convenient time. An
2 application form will provide for and require the following
3 information:

4
5 4.1.1. Documentation of the property owner's or property
6 manager's in the case of publicly owned land, permission to excavate.
7 Recovered artifacts remain the property owner's, except in the case of
8 publicly owned land, unless they forfeit their rights to them in
9 writing.

10
11 4.1.2. The applicant's qualifications. A professional
12 archaeologist will submit a resume, if not already on file at the
13 State Historic Preservation Office. Avocational archaeologists will
14 submit a letter explaining their past accomplishments as an
15 avocationalist.

16
17 4.1.3. An excavation plan detailing the methodologies and
18 techniques by which the excavations will be conducted and the reason
19 and object for excavation the burial grounds, human skeletal remains,
20 or unmarked graves and the benefits expected to be obtained from the
21 contemplated work; except when discovered through construction
22 activities.

23
24 4.1.4. The facility where recovered material and excavation
25 records will be curated.

26
27 4.1.5. A plan to restore the site to its former condition prior
28 to excavations when the site is not intended to be altered or
29 destroyed.

30
31 4.2. Prior to the issuance of a permit for the disturbance of human
32 skeletal remains, grave artifacts, or grave markers, the director
33 shall convene and chair an ad hoc committee to develop permit
34 conditions. The committee shall be comprised of the chair and 6 or 8
35 members representing known or presumed lineal descendants, private and
36 public organizations which have cultural affiliation to the presumed
37 contents of the site, the Council for West Virginia Archaeology and
38 the West Virginia Archaeological Society. At least two (2) persons
39 shall represent each of these groups with the remaining vacancies to
40 be chosen at the discretion of the Director from these groups
41 according to the presumed cultural affiliation of the site. In the
42 case of Native American sites, the ad hoc committee shall be comprised
43 of the chair and 6 or 8 members representing the Council for West
44 Virginia Archaeology, the West Virginia Archaeological Society, and
45 known or presumed lineal descendants, preferably with cultural
46 affiliation to tribes that existed in the geographic area that is now
47 West Virginia. At least two (2) persons shall represent each of these
48 groups with the remaining vacancies to be chosen at the discretion of
49 the director from these groups according to the presumed cultural
50 affiliation of the site. The ad hoc committee must be formed within
51 thirty days of application, must meet within sixty days of
52 application, and must render a decision within ninety days of
53 application.

1 All such permits shall at a minimum address the following
2 conditions:

3
4 4.2.1. The methods by which lineal descendants of the deceased
5 are notified prior to the disturbance.

6
7 4.2.2. The respectful manner in which the remains, artifacts or
8 markers are to be removed and handled.

9
10 4.2.3. Scientific analysis of the remains, artifacts or markers
11 and the duration of those studies.

12
13 4.2.4. The way in which the remains may be reburied in
14 consultation with any lineal descendants, when available.

15
16 4.2.5. The methods for the respectful curation of recovered
17 items.

18
19 4.2.6. Such other conditions as the director may deem
20 necessary.

21
22 ~~4.2. Upon review of the permit application by the Director, a~~
23 ~~written response to the applicant will be forwarded within thirty days~~
24 ~~of having received the application.~~

25
26 4.3. Permits shall be issued for up to two (2) years and may be
27 suspended or revoked at any time due to failure of meeting terms and
28 conditions of the permit. The Director and members of the ad hoc
29 committee shall be allowed access to any excavation of burial grounds,
30 human skeletal remains, or unmarked graves to observe whether
31 conditions and terms of the permit are being met.

32
33 ~~4.3.1. 4.2.3.~~ Permits may be renewed for a period of six months if
34 a letter requesting such a renewal and the reasons for the renewal
35 request are submitted to the Director.

36
37 ~~4.4. 4.2.1.~~ Permits may be denied from being issued for reasons
38 including, but not limited to, failure to provide a completed
39 application form, inadequate justification for excavating burial
40 grounds, human skeletal remains, or unmarked graves, or inability to
41 complete satisfactorily a previous excavation. The reasons for
42 denying a permit shall be written down and forwarded to the applicant,
43 ~~within thirty (30) days of having received the application.~~
44 Applicants denied a permit may appeal the decision by requesting a
45 hearing before a regularly scheduled meeting of the Archives and
46 History Commission. Such hearing shall be held in accordance with W.
47 Va. Code §§29A-5-1 et. seq.

48
49 ~~4.2.2. The Director, in considering permits to excavate remains~~
50 ~~or grave goods shall consult with an organization recognized by the~~
51 ~~Director as representing the religious and cultural concerns and~~
52 ~~interests of Native Americans.~~

53

1 ~~4.5.~~ ~~4.3.~~ If a permit is granted, an annual progress report shall
2 be submitted on the anniversary date of the permit, if applicable, and
3 a final report of the excavations will be submitted upon completion of
4 fieldwork. The deadline for final reports will vary depending upon the
5 nature of the project. Professionals will submit reports of the
6 quality recommended in the Secretary of Interior's Standards and
7 Guidelines for Archaeology and Historic Preservation (36 CFR 68).
8 Avocationalists are not expected to submit reports of professional
9 quality, but they shall minimally include information on site location
10 and conditions, relevant background information, all field
11 observations (stratigraphy, features, etc.), and analyses and results.
12 The Director may request that reports be written for publication to be
13 read by the general public, or in other ways disseminate the
14 information recovered through permitted excavations to the general
15 public.

16
17 ~~4.4.~~ ~~If a permit is granted, the Director shall specify the~~
18 ~~approximate methods by which descendants of the deceased and those of~~
19 ~~proven kinship shall be notified.~~

20
21 §82-3-5. Permits for the removal or alteration of grave markers.

22
23 5.1. Any person proposing to remove or alter the appearance of a
24 grave marker shall request a permit application form from the
25 Director. The form will provide for and require the following
26 information:

27
28 5.1.1. When applicable, written authorization from the cemetery
29 authority or caretaker for removal or alteration of a grave marker.

30
31 5.1.2. Evidence of attempts to notify descendants prior to
32 removing or altering the grave marker.

33
34 5.1.3. The purpose for removing or altering the grave marker.

35
36 5.1.4. The methods for recording the grave marker prior to its
37 removal or alteration. They may include, but not be limited to,
38 photographs, rubbings, and maps showing the location of the marker in
39 relationship to surrounding markers or objects.

40
41 §82-3-6. Disposition of skeletal remains and associated artifacts
42 when claimed by lineal descendants.

43
44 ~~6.1.~~ ~~In the case of human skeletal remains and associated~~
45 ~~artifacts from apparent Native American origin, reburial shall be done~~
46 ~~in consultation and cooperation with an organization recognized by the~~
47 ~~Director as representing the religious and cultural concerns and~~
48 ~~interests of Native Americans.~~

49
50 ~~6.2.~~ ~~In the case of human skeletal remains and associated~~
51 ~~artifacts from an origin other than Native American, 6.1. The lineal~~
52 ~~descendants of a deceased individual shall file a claim of legitimacy~~

1 and provide the Director with documentation and/or evidence of
2 descent.

3
4 6.1.1. 6-2-1. Based upon evidence submitted by the descendants
5 of a deceased individual pursuant to section 6.1. 6-2-1., the Director
6 shall make a written determination of the legitimacy of a claim of
7 descent and state the reasons therefore.

8
9 6.1.2. 6-2-2. A descendent may appeal an adverse determination
10 of legitimacy by the Director to the Archives and History Commission
11 by filing notice of appeal with the Commission twenty (20) days prior
12 to the next regularly scheduled meeting.

13
14 6.1.2.a. 6-2-3. The filing of a notice of appeal with the
15 Commission shall stay any action to dispose of or rebury the claimed
16 remains and associated artifacts and grave goods.

17
18 6.1.2.b. 6-2-4. Upon receipt of a notice of appeal, the
19 Commission shall provide the descendent with a hearing at the next
20 regularly scheduled meeting of the Commission. Such hearing shall be
21 held in accordance with W. Va. Code §29A-5-1 et. seq.

22
23 6.2. 6-3. Upon determination of a legitimate claim to the remains
24 and grave goods, a written agreement between the Director in
25 consultation with the ad hoc committee, the permittee and the
26 descendent of the deceased shall be executed detailing the method by
27 which the remains and any associated artifacts and grave goods shall
28 be disposed of or reburied.

29
30 §82-3-7. Disposition of skeletal remains and associated artifacts
31 when not claimed by descendants.

32
33 7.1. When human skeletal remains are not claimed by descendants,
34 the Director in consultation with the ad hoc committee has the option
35 to rebury the remains after archaeological investigations have been
36 completed, or to accession them into the state museum where they will
37 be cared for with dignity and respect as determined by the Director
38 and interested parties. ~~Reburial will be the preferred option unless~~
39 ~~a strong case against such action is presented.~~

40
41 §82-3-8. Procedures for establishing property tax exemptions for
42 burial grounds and unmarked graves.

43
44 8.1. When a private property owner has evidence for the presence
45 of a burial ground or unmarked grave on his or her property, they may
46 apply for a tax exemption in the manner outlined below.

47
48 8.1.1. The property owner shall submit a letter to the Director
49 seeking a determination of the suspected burial ground or unmarked
50 graves authenticity and eligibility for tax exemption.

51

1 8.1.2. A response to the letter shall be made within thirty
2 (30) days about the availability of an archaeologist from the Division
3 of Culture and History to make the determination.

4
5 8.1.3. Upon completion of archaeological fieldwork to determine
6 the location and extent of the burial ground, a response shall be
7 prepared, after which, if verifying the presence of the burial ground,
8 a certificate of authenticity will be issued to the property owner.
9 The certificate may then be presented to the county assessor for
10 processing.

11
12 8.1.4. The property owner has the option to establish a
13 protective easement of the burial ground or unmarked grave by making
14 arrangements with officials from the Division of Culture and History.

15
16

Title 82
Legislative Rules
Division of Culture and History

Series 3
Standards and Procedures for Granting Permits to
Excavate Archaeological Sites and Unmarked Graves

SUMMARY

H.B. 2671 necessitated amendments to SCR 82-3.

Amendments include the following:

82-3-1. General.

Inclusion of statutory language regarding projects not included within the scope of the legislative rule.

Correction to specify authorization.

82-3-2. Definitions.

Inclusion of statutory language of definitions for the following:

2.4. "Cultural Affiliation"

2.5. "Lineal Descendants"

2.6. "Proven Kinship"

Inclusion of definition for "evidence of descent" to describe types of evidence which may be provided.

82-3-3. Permits to excavate historic and prehistoric ruins and archaeological sites.

Deletion of 3.4 which did not apply to ruins and sites.

82-3-4. Permits to excavate burial grounds, human skeletal remains and unmarked graves.

4.1. Inclusion of statutory language concerning discovery of skeletal remains, grave artifacts or grave markers, and incorporating time limitations for onsite inspections by staff.

4.2. Inclusion of statutory language concerning convening of an ad hoc committee to develop permit conditions, specifying composition of that committee and minimal conditions of the permit. Also added statutory language concerning time limits for work of the committee.

4.3. Further defines role of ad hoc committee.

82-3-6. Disposition of skeletal remains and associated artifacts when claimed by lineal descendants.

6.2. Further defines role of ad hoc committee.

82-3-7. Disposition of skeletal remains and associated artifacts when not claimed by descendants.

7.1. Further defines role of ad hoc committee. Also removes provision stating that reburial is the preferred option, which appears to be in conflict with the statute.

Legislators receiving copies of proposed rules and notice of public hearing
and comment period:

Senator J. D. Brackenrich
Senator Charles Felton
Senator David Grubb
Senator Joe Manchin
Senator Keith Wagner
Senator Larry Wiedebusch

Delegate Vicki Douglas
Delegate John Doyle
Delegate Brian Gallagher
Delegate Joe Martin
Delegate Jerry Mezzatesta
Delegate Harold Michael
Delegate James Rowe
Delegate W. Richard Staton

Attachment I
Press release -- notice of hearing
notice of public comment

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08-12-1993 15:50:33
SELECTION OF ALL SPOTS FOR WHICH: DELETED FROM DV SYSTEM

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Norman L. Hagan
c/o Route 257
Red House WV 25120

Mr. James D. ...
ONE Harwood ...
P. O. Box 205
Martinsburg WV 25105

Industrial News
100 Railroad Avenue
P. O. Box 180
Morgantown WV 26504

Weston County Journal/News
110 W. Main Street
Box 207
Kingwood WV 26107

The Greenbrier Valley Ranger
100 St. Louis Street
P. O. Box 471
Newburg WV 24921

The Mountain Messenger
112 N. Court Street
Lewisburg WV 24921

Coal Valley News
Box 508
Madison WV 25130

ATTN: Greg Walsh
WGLE
P. O. Box 671
Charleston WV 25302

The Pocahontas Times
100 Second Ave.
P. O. Box 117
Martinsburg WV 25105

Gasbell Record
P. O. Box 100
Martinsburg WV 25105

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			YES	NO
<i>opoke</i> Phonon. G. ...	43 Rd 1133, ...	Council ... WV Council on G.I. Burial Rights Inc.	X	<input checked="" type="checkbox"/>
<i>opoke</i> Ralph L. Chapman	HC 87 Bx 1136 Canaan on ... 26208	UCF ... NAICA of Ohio	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>opoke</i> Ramona Lively	223 Box 560 Dunbar, WV 25064			<input checked="" type="checkbox"/>
<i>opoke</i> Pat Leather ...	221 25129		
<i>opoke</i> ... David	At I Box St. ... WV 26589	Council WV ...	<input checked="" type="checkbox"/>	
<i>opoke</i> B W Penn	123 15143	<input checked="" type="checkbox"/>	
<i>opoke</i> Margaret ...	HC 87 26208	UNITED ...		<input checked="" type="checkbox"/>
<i>opoke</i> Clifford E Moore	305 ... 119 ... 26552	TRUST ...	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>opoke</i> John ...	1103 ... 755-3406	<input checked="" type="checkbox"/>	
<i>opoke</i> Dore ...	1055 ... 25171	<input checked="" type="checkbox"/>	

NAME	ADDRESS	ORGANIZATION	WILL YOU BE SPEAKING?	
			YES	NO
Ken A. M. Bricks	141 American Bldg Lexington, KY 40506-0102	CMVA		<input checked="" type="checkbox"/>
John L. Lublin	932 Churchill Dr. Chgo. W. 35314	Appalachian Business Publishing Society AAHS	?	
TAZ REED	2010 FREESTON CHAS 22333	AAHS		No
Steven Wick	110 Madison Pl. Lan. W. 22502	L.L.A.S.		<input checked="" type="checkbox"/>
DANIEL E HALL	5732 Victoria Ave Chas. W. 35339	WCHS president	X	<input checked="" type="checkbox"/>
Ermy Palmer	1211 Dunwoody Lane Dunwoody			<input checked="" type="checkbox"/>
Arnold Cygus	793 Boylston Dunwoody		?	
Alvina Whitcomb	89 GRUNION ST. Victory Bg. 14564		W	
John Smith	1305 Moore Ave. Dunbar, WV 25064	TASK Force Omega OF WV, INC.		No
Mary Olive Baskin	Same	TASK Force Omega		

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NAME	ADDRESS	ORGANIZATION	WILL YOU BE SPEAKING?	
			YES	NO
Miriam Steinman	Rt 1 Box 116, W. Va. 26456	concord citizens	?	?
Kathryn Foshay	RR 1 Box N 79 Newell, WV 26049	WV Bird Society	?	!
Mike Rind	Box 63 E/Myra 25063	W.B.C.		
CHARLES PITCHFORD	1509 CLARK RD CHARLESTON	WV B.C.		
Robert Thompson	449 Bay 578C Fairmont, WV 26554	WV Democrats	X	
William W. H. H.	Rt 8 Box 51 Fairmont, W. Va. 26551	United Pres. of WV.	Z	
Johnnie	# 11 Marie Terrace Charleston	WV B.C.		
Daniel Mott	802 Sherman St. Char. W. Va.	WVA S	✓	
David Hunter	810 A Harrison St. Char 25300	WVA S		X/?
Bob Williams	P.O. Box 213 INGLETON	CFWVA	?	

NAME	ADDRESS	ORGANIZATION	WILL YOU BE SPEAKING?	
			YES	NO
MOSTELLER, STEPHEN	P.O. BOX 1102 DUMFRIES, W.V. 25961			<input checked="" type="checkbox"/>
Richard H. Harker				<input type="checkbox"/>
Robert D. Tackler	Call Home Center 1900 Kenwood Bldg. Charleston, WV 25305	Call Home of History SHPs		<input checked="" type="checkbox"/>
Leigh Rosewood	Cultural Center 1900 Kenwood Bldg. F. Charleston, WV 25305	Call Home of History SHPs		<input checked="" type="checkbox"/>
Eric KAMMAN	''	D.S.H.F.P.		
Dan Alkale				
Frederick H. Armstrong	Archives + Hist's Bldg	Call Home of History		<input checked="" type="checkbox"/>
Rita DREWEN	Culture of History	Culture of History		

Responses to Public Comments

Title 82
Legislative Rules
Division of Culture and History

Series 3
Standards and Procedures for Granting Permits to
Excavate Archaeological Sites and Unmarked Graves

Written Comments -

Due to similarities in content, comments are presented by order of appearance in proposed amendments, with authors identified.

82-3-2. Definitions.

2.4. Dr. Freidin - Comment addressed by insertion of new definition "2.17. Evidence of descent".

2.5. Mr. Anderson and Dr. Maslowski - Comments reflect request for change in statutory language. Point not addressed by change in proposed amendments to rules.

2.6. Mr. Anderson, Dr. Freidin and Dr. Maslowski - Comments reflect request for change in statutory language. Point not addressed by change in proposed amendments to rules.

2.6. Dr. McBride - Comment reflects request for change in statutory language. Point not addressed by change in proposed amendments to rules.

2.11. Dr. McBride - Believed to be a procedural question which did not need to be addressed in rules.

2.16. Dr. Freidin - Qualifications of the director are established in WVC 29-1-8.

82-3-3. Permits to excavate historic and prehistoric ruins and archaeological sites.

3.3. Mr. Anderson - Comment reflects request for change in statutory language. Point not addressed by change in proposed amendments to rules.

3.4. Mr. Anderson and Dr. McBride - Comments addressed by striking subsection.

- continued -

Written Comments - continued

Page two

82-3-4. Permits to excavate burial grounds, human skeletal remains and unmarked graves.

4.1. Dr. Freidin - Proposed language intended to be outside timelimit and staff intends to respond at earliest possible time.

4.2. Mr. Anderson - Portions of comment pertaining to "known or presumed lineal descendants" reflect request for change in statutory language, therefore, not addressed by change in proposed amendments to rules.

4.2. Mr. Anderson and Dr. McBride - Portion of Mr. Anderson's comment pertaining to "The Cotiga 'rules'" and Dr. McBride's comment pertaining to "similar treatments for section 106, A.R.P.A." relate to activities specifically excluded from protection under this section of the West Virginia Code and these rules (see "1.1. Scope.")

4.2. Mr. Anderson and Dr. Freidin - Policy for establishing membership on ad hoc committee altered from "At least one (1) person" to "At least two (2) persons".

4.2. Dr. McBride - Role of ad hoc committee further developed as requested.

4.3. Dr. McBride - Comment incorporated to include access to excavation site by members of ad hoc committee.

82-3-6. Disposition of skeletal remains and associated artifacts when claimed by lineal descendants.

6.2. Dr. McBride - Role of ad hoc committee further developed as requested.

82-3-7. Disposition of skeletal remains and associated artifacts when not claimed by descendants.

7.1. Dr. McBride - Role of ad hoc committee further developed as requested.

7.1. Mr. Anderson, Dr. Freidin, Mr. Martin and Dr. Maslowski - Sentence concerning reburial is deleted as requested.

Responses to Public Comments

Title 82
Legislative Rules
Division of Culture and History

Series 3
Standards and Procedures for Granting Permits to
Excavate Archaeological Sites and Unmarked Graves

Oral Comments at Public Hearing - August 9, 1993

Comments are presented in order of speaker's appearance. If speaker gave comments at intervals throughout hearing, all comments are presented as if given at first appearance.

Mr. B.H. Penn - Portions of comments reflect request for change in definitions as stated in State statute. Portions of comments refer to disagreement with federal law and proposed federal regulations. Points not addressed by change in proposed amendments to rules.

Ms. Van Scyoc - Comments reflect objection to overall procedures begin in conflict and inconsistent with federal public law 101-601, Native America Graves Protection and Repatriation Act (N.A.G.P.R.A.). Objection partially addressed by adding "2.17. Evidence of descent."

4.2. Comment reflects objection to specification of the Council for West Virginia Archaeology and the West Virginia Archaeological Society, without specification of Native American groups. This objection was not addressed because of the ongoing emergence of representative bodies for Native Americans in West Virginia.

Kathryn Basham - Comments reflect objection to inconsistency with N.A.G.P.R.A. This federal law pertains to federal lands.

David Martin - 7.1. Sentence regarding reburial is deleted as requested.

Robert Maslowski - Comments reflect objection to inconsistency with N.A.G.P.R.A. This federal law pertains to federal lands.

Comment reflects request for consultation with all those with potential interest in the site in question versus those with direct interest and expertise, whether as descendent or based on scientific interest.

Other comments dealt generally with the following issues:

- concern for sanctity of burial grounds,
- intervention by government in issues related to traditional, historical or prehistorical tribal lands,
- lack of opportunity for participation in formulation of proposed amendments to the existing rules,
- lack of sufficient notice for comment, and
- inquiries concerning purpose of and need for H.B. 2671 and the

Comments from Dr. Kim A. McBride
101 American Building
Univ. of Kentucky
Lexington Ky 40506-0100

Phone 606-257-1944 Lm-606-233-4690

2.6 (page 2) does this conform w/ Smithsonian policy?

2.11 (page 2) Is it possible to have 1 permit cover more than 1 site - say for a testing project that would involve multiple sites? This seems the case for section 3.1, it may reduce paperwork.
(page 3)

Section 3.4 under 82-3-1 (4th page) - before 82-3-4 begins.

~~Section 3.4~~ This seems unclear - out of place - burial-related in the required permit section, ~~but~~ ^{burial burials} then get detailed treatment below in Section 82-3-4.

4.2. (page 5) - ^{ad hoc} committee's role could be more fully developed. - especially not clear if they are to be involved in sections 4.3, 6.2, 7.1 below, although they probably should be. This may be intended but is not clear to me as written.

4.3 (p. 6) ~~regarding~~ regarding access to the excavation - could this be extended to the committee also?

Section G.2 (page 8) + 7.1 - same " - add committee to director?

Kim McBride comments continued p. 2072.

I must admit not following a recent NAGPRA event as I might were I not specializing these days on historic sites - regardless - would just suggest a checking w/ folks at the federal level to try to insure compatibility with other policies - so that we would have similar treatments for Section 106, ARPA related + other work, the latter being what this bill covers. The point of proven kinship seems especially difficult.

Sorry for the trouble experienced due to this not being typed!
Good luck!

I know that the archaeologists struggling w/ this most intensely in Kentucky - as a subcommittee of the Kentucky Organization of Professional Archaeologists, are:

Dr. Mary Powell - UK Museum of Anthropology (606-257-8840)
Mr. Phil D. Blasi - Univ. of Louisville

or, also, at the Kentucky Heritage Council - Mr. David Pollack (606-584-7005)

Perhaps some of these people would be helpful in the next round. I will let them know I gave out their #s + work on this to you.

David H. Martin
802 Sherwood Rd.
Charleston, WV 25314

July 19, 1993

Frederick Armstrong
Archives and History
Cultural Center
1900 Kanawha Blvd. E.
Chas., WV 25305

Dear Fred,

In reviewing the proposed rules and regulations, Title 82, §82-3-1., I should like to point out a conflict between the proposed rules and the legislation mandating their promulgation.

§82-3-7.1. of the proposed rules states, "Reburial will be the preferred option unless a strong case against such action is presented." This is contrary to H.B. 2671, §29-1-8a., lines 328-339, which states " All human skeletal remains and grave artifacts found in unmarked graves on public or private land, and not subject to reburial, under the provisions of subsection (e) of this section, are held in trust for the people of West Virginia by the state and are under the jurisdiction of the director of historic preservation. All materials collected and not reburied through this section shall be maintained with dignity and respect for the people of the state under the care of the West Virginia state museum." (emphasis mine) Reburial is not the preferred option!

Sincerely,



David H. Martin,
Editor, FieldNotes, WVAS

RECEIVED AUG 06 1993



WEST VIRGINIA ARCHEOLOGICAL SOCIETY, Inc.

Member of
Eastern States Archeological Federation

22 Ashwood Drive
Vienna, WV 26105
August 4, 1993

Frederick Armstrong
Archives and History
Cultural Center
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Mr. Armstrong:

Following are my comments regarding: TITLE 82, LEGISLATIVE RULES, DIVISION OF CULTURE AND HISTORY, SERIES 3, STANDARDS AND PROCEDURES FOR GRANTING PERMITS TO EXCAVATE ARCHAEOLOGICAL SITES AND UNMARKED GRAVES AS MANDATED BY H.B. 2671.

Item 2.5 is self-contradictory in that it states lineal descendant as being someone who can trace their ancestry directly, and this is correct, but then "or by proven kinship" is attached. The definition of "proven kinship" is given in section 2.6 and it is surely not the same as lineal descent! Item 2.5 should be changed to read as presently given but with "or by proven kinship" omitted.

Item 2.6 should be eliminated from the rules and the law. It is racial politics at its worst. And even worse, it is so obtuse a definition that it fails to protect American Indian interests. There are many people in West Virginia who have traces of indian ancestry and by this definition they all qualify. Numbered among this multitude could be grave robbers (pot hunters): should they have a legitimate claim to burials and associated items because they might have a trace of indian ancestry? They could have as the law is now written! It would be far better to have only bonafide American Indians with papers and established tribal affiliations allowed to make claims for burials and associated items.

Item 3.1 requires an excavation permit from the DOCH to excavate any archaeological site, whether burial or non-burial, on private as well as public land. I disagree with the requirement for a permit to excavate non-burial sites on private land for two reasons: (1) non-burial sites on private property need not be included as it interferes with archaeology (property owners are loath to allow anyone on if the state needs to be involved), and (2) it is unconstitutional as it is a "taking". This section should involve only state property when it comes to permits for excavating non-burial sites, but for burial sites both private and public property should be included, as long as proven lineal descendants can claim prior knowledge of the burials.

Item 3.4 should apply when a permit to excavate a burial site is involved. I see no need for this Item when non-burial sites are to be excavated. If a burial is found while excavating, then this Item could apply provided lineal descendants can be identified.

There is the perception in the public realm that all archaeology involves the excavation of tombs, and this mindset seems to have played a role in the drafting of H.B. 2671. Most of archaeology does not involve burials. Very few of the thousands of sites in West Virginia contain burials. Most are campsites. Many of the sites are so old that any skeletal material that might have been there has decomposed entirely and not a trace remains. In light of these realities the permit requirement for non-burial sites is completely unnecessary and burdensome.

Another problem with the law is the loose definition of desendancy as determined by the term "proven kinship". Direct lineal descent is the only viable requirement for claims to burials and their contents. This is the requirement for any caucasian making claims to burials and it must be the same for American Indians. All should be treated equally under the law.

The West Virginia Archeological Society is not opposed to burial protection, especially where direct lineal descendants are proven and involved. However, there is the position that ancient burials are unique and should be considered differently than treated by present state and federal law. It is ridiculous for any group to claim burials thousands of years old, as any direct lineal desendancy cannot be proven. In Europe many ancient burials are excavated and displayed in museums without public condemnation. These are their precedents, but what's the concern? These ancients lived entirely different lives, had unique religions and beliefs, and any tie-in to present living individuals or groups is tenuous at best.

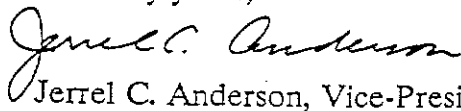
The same holds true in the Americas when it comes to ancient burials. By ancient, I mean anything older than 500 - 600 years. The archaeological record reveals many different groups across America and within any one locale over the 11,000 or more years of human prehistory. They were diverse in physical form, religion, living styles, and they migrated widely. Some practiced cremation, others full body burial, others offered human sacrifices with the burials, some burials are in mounds and others in pits. There is evidence of three different populations of people coming over the Bering land bridge, and these groups presumably blended into the many diverse peoples and cultures evident at the time of European entrance. And many of these groups despised each other and carried on long campaigns of warfare against one another. There was no one pan-Indian religion or brotherhood as many activists would have the public and officials believe today.

I urge you to consider my suggestions. I have read other state laws and have thought through this matter many times. The changes proposed would make the rules fairer to all parties and would cause a minimum of interference with archaeological research.

Unfortunately I will not be able to attend the public review on August 9, but I hope my written comments here will be considered.

Thank you for the opportunity to make suggestions and comments.

Sincerely yours,



Jerrel C. Anderson, Vice-President

CC: R. Maslowski
D. Hall
D. Martin
Representative Joe Martin

Item 4.2 has severe problems from the archaeological viewpoint. The wording, "known or presumed lineal descendants" should be changed to include only "known lineal descendants". Let us not presume anything! In the case of American Indian sites, the ad hoc committee makeup is not explicitly stated nor is the method for choosing members. Each group involved, be it the WVAS, CWVA, or American Indian group, should choose their own members for the committee. The makeup is 6 - 8 persons. Who will they be? The director chooses them and what will be their persuasions? A proper makeup would be for equal representation by the archaeological groups and American Indians and then perhaps one or two other persons qualified to make intelligent decisions concerning archaeological matters. They should be objective people and not guided by a particular persuasion. Also, the times involved for committee action are far too long. A decision should be rendered within 2 weeks of application. Many excavations are undertaken in salvage situations and time there is paramount to both the archaeology and the project involved (building drilling, etc.).

It should also be stated here that where excavations are being conducted by professional archaeologists there should be no conditions covering the excavation propounded by any non-archaeological group or individuals. I have been present at many professionally conducted excavations, and great care is taken with any skeletal material and associated items. The Cotiga "rules" were a travesty and an insult to the archaeological community and the state of West Virginia. Where the burials are definitely linked by direct lineal descent to living people there should be some agreement on burial handling and disposition, but there must not be a detailed list of demands on how the excavation is carried out. Let's have faith in our professional archaeologists.

Item 7.1 should be changed to eliminate the last add-on sentence: "Reburial will be the preferred option unless a strong case against such action is presented". Where ancient and scientifically valuable remains are involved, the preferred treatment should be curation. That is the mission of historic preservation! Such material could be of extreme importance down the road if new analysis techniques or knowledge is developed that could be used to greatly increase the information to be derived from the curated material.

These are my specific objections to the proposed rules. Attached is a copy of the proposed rules, and on it I have penciled in red the sections needing change or elimination. I would like to add some more concerns about the status of archaeology in West Virginia.

I and many members of our Society have serious reservations about H.B. 2671 and its negative stance towards and impact on archaeology. That law was intended to be a burial protection law but it ended up being an archaeology control act. The reason for this was a gross absence of input from the archaeological community during the writing and review of the law. It will continue to be a negative influence on archaeology within West Virginia.

I am an avocational archaeologist and a member of the local chapter of our state Society. We conduct excavations in the Parkersburg area especially when a site is about to be destroyed. It used to be easy to get permission from the landowner or developer to do such excavations, but since H.B. 2671 was passed, with its required permit procedure, we no longer get easy permission. No property owner wants state intrusion into the process and so denies permission to dig. The site gets destroyed and another, possibly important, chapter in our past is gone forever. This situation could easily be changed by eliminating the requirement for a permit to dig a non-burial site on private property. As I said before, such a requirement is unconstitutional and will be someday deliberated in our courts, I am sure. Why not just change the law and prevent such a situation from developing.

Public Hearing for New Rules and Regulations Governing Archaeology

Editor's note: The following is a transcription of the Division of Culture & History's proposed rules and regulations mandated by H. B. 2671. It should be read in conjunction with a copy of H. B. 2671, which can be obtained from the office of the legislative journal at the State Capitol. These rules are now open to public comment with a public hearing to be held **August 9, 1993, 5:30 pm** at the Cultural Center. Comments should be made in writing and directed to:

Fredrick Armstrong
Archives and History
Cultural Center
1900 Kanawha Blvd. E.
Chas., WV 25305.

TITLE 82
LEGISLATIVE RULES
DIVISION OF CULTURE AND
HISTORY

SERIES 3
STANDARDS AND PROCEDURES FOR
GRANTING PERMITS TO
EXCAVATE ARCHAEOLOGICAL
SITES AND UNMARKED GRAVES

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 collectors 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, or activities undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder and projects being undertaken in compliance with §1-6 of the National Historic Preservation act of 1966, as amended or subsection a section five of chapter 29 of the West Virginia Code.

1.2. Authorization. — W.Va. Code §§ 29-8(d)

§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 "Cultural affiliation" means the relationship of shared group identity which can be reasonably traced historically or pre historically between a present Day group and an identifiable earlier group.

2.5 "Lineal Descendants" means any individuals tracing his or her ancestry

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directly, or by proven kinship.

~~2.6 "Proven Kinship" means the relationship among people that exists because of genetic descent, which includes racial descent.~~

2.7. "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.

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

2.9. "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).

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

2.11. "Permit" means a written authorization issued by the Director of Historic Preservation 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.

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

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

2.14. "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.

2.15. "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.

2.16. "Director" means Director of Historic Preservation 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, W. Va. 25305. They may call the Cultural Center at 558-0240 for further informa-

tion. Permits will be issued on a project by project basis. The form will provide for and require the following information:

3.1.1. 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.

3.1.2. 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.

3.1.3. 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.

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

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

3.2. Upon review of the permit application by the Director, a written response to the applicant will be forwarded within thirty (30) days of receipt of the application. Permits may be issued for up to two (2) 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.

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. ^{to excavate a bur.}

§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 skeletal remains grave artifacts or grave markers, the director shall cause an on-site inspection of the disturbance to be made to determine the potential for archaeological significance of the site. If the director determines that the site has potential historical or archaeological significance and after alternatives to excavation have been examined, a permit application form for the archaeological excavation or removal of the remains must be filed. In cases where discover is unforeseen, an on-site inspection shall be made within ten (10) working days and the determination of potential historical or archaeological significance shall be made as soon as is reasonable but shall not exceed sixty (60) days. 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:

4.1.1. 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.

4.1.2. 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

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explaining their past accomplishments as an avocationalist.

4.1.3. An excavation plan detailing the methodologies and techniques by which the excavations will be conducted and the reason and object for excavation 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.

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

4.1.5. 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. Prior to the issuance of a permit for the disturbance of human skeletal remains, grave artifacts, or grave markers, the director shall convene and chair an ad hoc committee to develop permit conditions. The committee shall be comprised of the chair and 6 or 8 members representing known ~~presumed~~ lineal descendants, private and public organizations which have cultural affiliation to the presumed contents of the site, the Council for West Virginia Archaeology and the West Virginia Archaeological Society. At least one (1) person shall represent each of these groups with the remaining vacancies to be chosen at the discretion of the Director from these groups according to the presumed cultural affiliation of the site. In the case of Native American sites, the ad hoc committee shall be comprised of the chair and 6 or 8 members representing the Council for West Virginia Archaeology, the West Virginia Archaeological Society, and known ~~or presumed~~ lineal descendants, preferably with cultural affiliation to tribes that existed in the geographic area that is now West Virginia. At least one (1) person shall represent each of these groups with the remaining vacancies to be chosen at the discretion of the director from these groups according to the presumed cultural affiliation of the site. The ad hoc committee must be formed within thirty days of application, must meet within sixty days of application, and must render a decision within ninety days of application.

All such permits shall at a minimum address the following conditions:

4.2.1. The methods by which lineal descendants of the deceased are notified prior to the disturbance.

4.2.2. The respectful manner in which the remains, artifacts or markers are to be removed and handled.

4.2.3. Scientific analysis of the remains, artifacts or markers and the duration of

those studies.

4.2.4. The way in which the remains may be reburied in consultation with any lineal descendants when available.

4.2.5. The methods for the respectful curation of recovered items.

4.2.6. Such other conditions as the director may deem necessary.

4.3. Permits shall be issued for up to two (2) 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.

4.3.1. 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.

4.4. 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. 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.V. Va. Code §§29A-5-1 et. seq.

4.5. 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.

§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:

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

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

5.1.3. The purpose for removing or altering the grave marker.

5.1.4. 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 lineal descendants.

6.1. the lineal descendants of a deceased individual shall file a claim of legitimacy and provide the Director with documentation and/or evidence of descent.

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

6.1.2. 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 (20) days prior to the next regularly scheduled meeting.

6.1.2.a. 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.

6.1.2.b. 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-1 et. seq.

6.2. Upon determination of a legitimate claim to the remains and grave goods, a written agreement between the Director, the permittee and the descendent of the deceased shall be executed detailing the

continued from page 3

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 descendants.

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.

8.1.1. 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.

8.1.2. A response to the letter shall be made within thirty (30) days about the availability of an archaeologist from the Division of Culture and History to make

the determination.

8.1.3. 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.

8.1.4. 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.



SOCIOLOGY/ANTHROPOLOGY
400 Hal Greer Boulevard
Huntington, West Virginia 25755-2675
304/696-6700

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ARCHIVES & HISTORY

Mr. Fredrick Armstrong
Archives and History
Cultural Center
1900 Kanawha Boulevard East
Charleston
West Virginia 25305

Huntington, 5 August, 1993

Dear Mr. Armstrong,

I would like to respond to several points raised by Title 82-Series 3 regarding the legislative rules and the standards and procedures for granting excavation permits by the SHPO.

First, I have several questions and reservations concerning specific items in the legislation:

Section 2.4: it is not clear how 'reasonability' is to be defined and by whom, especially in relation to prehistoric cultures (by definition an archaeological construct);

Section 2.6: where 'proven kinship' is concerned, I would be interested to learn how genetic descent can be traced linking existing Native Americans with prehistoric peoples (noting that in Section 7.1 reburial of osteological material, the preferred option, would hinder complex DNA studies); are we to return to the dark days when 'culture' was used to support racial arguments ?;

Section 2.16: nothing is stated regarding the qualifications of the 'director' who will have to resolve complex anthropological and political issues;

Section 4.1: where on-site inspection of burials is concerned, I foresee countless problems, particularly when excavation is required urgently because of the weather and other unpredictable circumstances; it also is a gross intrusion of the bureaucracy in science, as well as somewhat presumptuous;

Section 4.2: on the composition of the committee for issuing permits to excavate burials, it not clear how many members will be drawn from the scientific community, that is professional archaeologists and palaeontologists; the 'director' is given far too much 'discretion' to pick members on the committee and to decide on the legitimacy of 'presumed cultural affiliation' of its Native American membership;

Section 7.1: the question of reburial is the most contentious segment of the new legislation; it is contrary to the spirit of the law



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which specifically emphasises the importance of preservation; with new techniques being developed to extract information from bone, such as DNA 'finger-printing', and more expected in the unpredictable future, vital data will be lost if bones are reburied; how much less would be known about dietary habits, palaeo-epidemiology, etc., if this policy had been in effect only fifteen years ago ?; in short, to 'prefer' reburial is contrary to science, and strikes even as 'anti-scientific' (a regrettable trend in this country, by the way).

These are just some of my reservations concerning the present legislative rules. I have great respect and sympathy for Native American rights and their desire to control their rich and varied cultures, both historic and prehistoric. I am, after all, an anthropologist who has dedicated himself to the study of native prehistoric cultures. But I am also a scientist with the duty to add to human knowledge, and to transmit it to others.

I am fearful of the disproportionate 'discretionary' power given to the 'director'. For example, should not a committee which includes scientists, determine matters of 'proven kinship' ? I am also concerned with the intrusion of 'political correctness' in matters of science, and the interference of the bureaucracy in the pursuit of knowledge. Certainly I would like to see an amicable arrangement between anthropologists and Native Americans where both parties can learn from each other. This legislation does not, in my opinion, achieve this compromise.

I thank you for your kind consideration of these views, and I am,

Respectfully yours,

Dr. Nicholas Freidin
Associate Professor of Anthropology
Secretary-Treasurer, Council for West
Virginia Archaeology

Mr. Fredrick Armstrong
Archives and History Division
Capitol Complex
Charleston, WV 25305

August 8, 1993

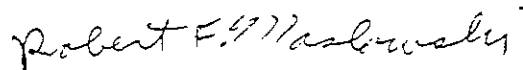
Dear Mr. Armstrong:

In reference to the Legislative Rules for the Division of Culture and History, Series 3, Standards and Procedures for Granting Permits to Excavate Archeological Sites and Unmarked Graves as mandated by H.B. 2671 I have the following comments:

Section 2.5 and 2.6 should be changed and proven kinship should be eliminated or properly defined.

Section 7.1 should be changed and the last sentence "Reburial will be the preferred option..." should be changed to reflect the language of the law or eliminated entirely.

Sincerely,



Dr. Robert F. Maslowski
President, Council For West Virginia Archaeology
P.O. Box 213
Milton, West Virginia 25541

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, or activities undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder and projects being undertaken in compliance with §106 of the National Historic Preservation act of 1966, as amended, or subsection a, section five of chapter 29 of the West Virginia Code.

1.2. Authorization. -- W. Va. Code § 29-1-8(d) §§ ~~29-1-5(a) and (b); 29-1-6 (b); 29-1-7~~.

1.3. Filing 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. "Cultural Affiliation" means the relationship of shared group identity which can be reasonably traced historically or

prehistorically between a present day group and an identifiable earlier group.

2.5. "Lineal Descendants" means any individuals tracing his or her ancestry directly or by proven kinship.

2.6. "Proven Kinship" means the relationship among people that exists because of genetic descent, which includes racial descent.

~~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.~~

2.7. 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.

2.8. 2.6. "Grave Goods" mean artifacts found in association with a human burial.

2.9. 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).

2.10. 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.

2.11. 2.9. "Permit" means a written authorization issued by the Director of Historic Preservation 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.

2.12. 2.10. "Emergency Condition" means any unforeseen discovery of human remains.

2.13. 2.11. "Excavation" means the controlled removal of dirt to uncover and retrieve artifacts or human skeletal remains.

2.14. 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.

2.15. 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.

2.16. ~~2.14.~~ "Director" means Director of Historic Preservation Archives and History or authorized representative.

2.17. "Evidence of descent" means evidence of a kin or cultural affiliation between a present-day individual or Indian Tribe and human remains and cultural items shall be established by using the following types of evidence: Geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

§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, W. Va. 25305. They may call the Cultural Center at 558-0240 for further information. Permits will be issued on a project by project basis. The form will provide for and require the following information:

3.1.1. 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.

3.1.2. 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.

3.1.3. 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.

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

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

3.2. Upon review of the permit application by the Director, a written response to the applicant will be forwarded within thirty (30) days of receipt of the application. Permits may be issued for up to two (2) 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.

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 skeletal remains, grave artifacts or grave markers, the director shall cause an on-site inspection of the disturbance to be made to determine the potential for archaeological significance of the site. If the director determines that the site has potential historical or archaeological significance and after alternatives to excavation have been examined, a permit application form for the archaeological excavation or removal of the remains must be filed. In cases where discovery is unforeseen, an on-site inspection shall be made within ten (10) working days and the determination of potential historical or archaeological significance shall be made as soon as is reasonable, but shall not exceed sixty (60) days. 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 proved 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:

4.1.1. 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.

4.1.2. 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.

4.1.3. An excavation plan detailing the methodologies and techniques by which the excavations will be conducted and the reason and object for excavation 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.

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

4.1.5. 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. Prior to the issuance of a permit for the disturbance of human skeletal remains, grave artifacts, or grave markers, the director shall convene and chair an ad hoc committee to develop permit conditions. The committee shall be comprised of the chair and 6 or 8 members representing known or presumed lineal descendants, private and public organizations which have cultural affiliation to the presumed contents of the site, the Council for West Virginia Archaeology and the West Virginia Archaeological Society. At least two ((2)) persons shall represent each of these groups with the remaining vacancies to be chosen at the discretion of the Director from these groups according to the presumed cultural affiliation of the site. In the case of Native American sites, the ad hoc committee shall be comprised of the chair and 6 or 8 members representing the Council for West Virginia Archaeology, the West Virginia Archaeological Society, and known or presumed lineal descendants, preferably with cultural affiliation to tribes that existed in the geographic area that is now West Virginia. At least two (2) persons shall represent each of these groups with the remaining vacancies to be chosen at the discretion of the director from these groups according to the presumed cultural affiliation of the site. The ad hoc committee must be formed within thirty days of application, must meet within sixty days of application, and must render a decision within ninety days of application.

All such permits shall at a minimum address the following conditions:

4.2.1. The methods by which lineal descendants of the deceased are notified prior to the disturbance.

4.2.2. The respectful manner in which the remains, artifacts or markers are to be removed and handled.

4.2.3. Scientific analysis of the remains, artifacts or markers and the duration of those studies.

4.2.4. The way in which the remains may be reburied in consultation with any lineal descendants, when available.

4.2.5. The methods for the respectful curation of recovered items.

4.2.6. Such other conditions as the director may deem necessary.

~~4.2. 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.~~

4.3. Permits shall be issued for up to two (2) years and may be suspended or revoked at any time due to failure of meeting terms and conditions of the permit. The Director and members of the ad hoc committee 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.

4.3.1. ~~4.2.3.~~ 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.

4.4. ~~4.2.1.~~ 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 (30) 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 hearing shall be held in accordance with W. Va. Code §§29A-5-1 et. seq.

~~4.2.2. 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.~~

~~4.5. 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:

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

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

5.1.3. The purpose for removing or altering the grave marker.

5.1.4. 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 lineal descendants.

~~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. In the case of human skeletal remains and associated artifacts from an origin other than Native American, 6.1. The lineal descendants of a deceased individual shall file a claim of legitimacy~~

and provide the Director with documentation and/or evidence of descent.

6.1.1. ~~6.2.1.~~ Based upon evidence submitted by the descendants of a deceased individual pursuant to section 6.2.1., the Director shall make a written determination of the legitimacy of a claim of descent and state the reasons therefore.

6.1.2. ~~6.2.2.~~ 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 (20) days prior to the next regularly scheduled meeting.

6.1.2.a. ~~6.2.3.~~ 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.

6.1.2.b. ~~6.2.4.~~ 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.

6.2. ~~6.3.~~ Upon determination of a legitimate claim to the remains and grave goods, a written agreement between the Director in consultation with the ad hoc committee, 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 descendants.

→ 7.1. When human skeletal remains are not claimed by descendants, the Director in consultation with the ad hoc committee 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.

8.1.1. 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.

8.1.2. A response to the letter shall be made within thirty (30) days about the availability of an archaeologist from the Division of Culture and History to make the determination.

8.1.3. 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.

8.1.4. 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.