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OFFICE OF WEST VIRGINIA
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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Culture and History 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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.



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4 SECRETARY OF STATE

TITLE 82
LEGISLATIVE RULES
DIVISION OF CULTURE AND HISTORY

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

10 §82-3-1. General.

11
12 1.1. Scope. -- This legislative rule establishes the procedures by
13 which permits are issued for the excavation of historic and
14 prehistoric ruins and archaeological sites; burial grounds, human
15 skeletal remains and unmarked graves; and the removal or alteration of
16 grave markers. Additionally, it establishes the method by which
17 property tax exemptions for unmarked graves are determined and the
18 methods for disposing of skeletal remains and associated artifacts
19 claimed by descendents and those remains and artifacts not claimed.
20 Not included within the scope of this legislative rule are collections
21 of artifacts from historic or prehistoric ruins, burial grounds,
22 archaeological sites or unmarked graves acquired prior to the
23 effective date of H.B. 4752, June 8, 1990 or of artifacts collected
24 from the surface of the ground through surface survey- or activities
25 undertaken in compliance with the federal Archaeological Resources
26 Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations
27 promulgated thereunder and projects being undertaken in compliance
28 with §106 of the National Historic Preservation act of 1966, as
29 amended, or subsection a, section five, article one of chapter 29 of
30 the West Virginia Code.

31
32 1.2. Authorization. -- W. Va. Code § 29-1-8(d) ~~§§ 29-1-5(a) and~~
33 ~~(b); 29-1-6 (b); 29-1-7).~~

34
35 1.3. Filing Date. --

36
37 1.4. Effective Date. --

38
39 §82-3-2. Definitions.

40
41 2.1. "Archaeology" means the systematic, scientific study of past
42 cultures through examination of material remains.

43
44 2.2. "Ruins" mean the remnants of structures constructed by humans
45 during historic or prehistoric times.

46
47 2.3. "Sites" mean areas occupied for various durations by humans
48 throughout history and prehistory including, but not limited to,
49 campsites, villages, dwellings, rock shelters and industrial
50 complexes.

51
52 2.4. "Cultural Affiliation" means the relationship of shared group
53 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.~~ 2.7. "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.~~ 2.8. "Grave Goods" mean artifacts found in association with a
 23 human burial.

24
 25 ~~2.9. 2.7.~~ 2.9. "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.~~ 2.10. "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.~~ 2.11. "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.~~ 2.12. "Emergency Condition" means any unforeseen discovery
 41 of human remains.

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

45
 46 ~~2.14. 2.12.~~ 2.14. "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.~~ 2.15. "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 proven
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 group applicable to the site. Any remaining
40 vacancies shall be chosen at the discretion of the director from the
41 applicable groups according to the presumed cultural affiliation of
42 the site. In the case of Native American sites, the ad hoc committee
43 shall be comprised of the chair and 6 or 8 members representing the
44 Council for West Virginia Archaeology, the West Virginia
45 Archaeological Society, and known or presumed lineal descendants,
46 preferably with cultural affiliation to tribes that existed in the
47 geographic area that is now West Virginia. At least two (2) persons
48 shall represent each of these groups with the remaining vacancies to
49 be chosen at the discretion of the director from these groups
50 according to the presumed cultural affiliation of the site. The ad
51 hoc committee must be formed within thirty days of application, must
52 meet within sixty days of application, and must render a decision
53 within ninety days of 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 descendents
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 descendents.

32
33 7.1. When human skeletal remains are not claimed by descendents,
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

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