

Title 21 – Archaeological and Cultural Resources

Chapter 1 – Archaeological Excavation and Removal

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Legislative History

Enacting:

Regulating Archaeological and Cultural Resources, Ord. 193 (11/5/03), BIA (11/12/02).

Repealed or Superseded:

Amendment to Ord. 58, Ord. unnumbered (7/12/89), Enacting Res. 89-7-65, BIA (3/26/90).

Swinomish Cultural and Environmental Protection Agency, Ord. 58, Enacting Res. 88-4-18 (4/5/88), BIA (3/26/90).

Rescinded:

Archaeology and Historic Preservation Ordinance, Ord. 62, Enacting Res. 89-7-64 (7/12/89), BIA (rescinded 6/27/90).

21-01.010 Purpose and Scope.

The purpose of this Chapter is to establish application and review procedures for the issuance of archaeological excavation and removal permits.

[History] Ord. 193 (11/5/03).

21-01.020 Authority.

The Swinomish Indian Tribe's authority to enact this Chapter is provided in Article VI, Section I(k), (l), and (q) of the Swinomish Constitution.

[History] Ord. 193 (11/5/03).

21-01.030 Applicability.

- (A) This Chapter is applicable to:
 - (1) Any individual, partnership, corporation, association, trust, or other form of organization or entity, whether operating for profit or for other purposes, and whether private, public, tribal or governmental;
 - (2) Any tribal, state or local government or unit or subdivision thereof; and
 - (3) Any subordinate agency, subsidiary, representative, officer or agent or any of the foregoing, and any combination of the foregoing.
- (B) This Chapter is applicable to the alteration, digging, excavating, or removal of archaeological resources from reservation lands, to the extent permitted by federal law, and the removal of petroglyphs or pictographs of prehistoric peoples or archaeological resources.

[History] Ord. 193 (11/5/03).

21-01.040 Definitions.

Unless the context clearly requires otherwise, the definitions in this Section apply throughout this Chapter:

- (A) **“Archaeological resource”** means any material remains of human life or activities that are of archaeological interest. This shall include all sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls, grinding stones, knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material.
- (B) **“Archaeology”** means the systematic, scientific study of history through the recovery of remains and relics from early life and culture.

- (C) **“Funerary object”** means objects that, as a part of the death rite or ceremony, are reasonably believed to have been placed with individual human remains either at the time of death or burial.
- (D) **“G^wcdʔadad Committee”** means the Swinomish Senate committee charged with responsibilities relating to culture, which was formerly known as the Swinomish Cultural and Environmental Protection Agency. **“G^wcdʔadad,”** translated into English, means teachings of one’s ancestors.
- (E) **“Historic”** means peoples and cultures who are known through written documents in their own or other languages.
- (F) **“Mitigation”** means:
- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
 - (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
 - (5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
 - (6) Monitoring the impact and taking appropriate corrective measures.
- (G) **“Of archaeological interest”** means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.
- (H) **“Prehistoric”** means peoples and cultures who are unknown through contemporaneous written documents in any language.
- (I) **“Professional archaeologist”** means a person has designed and executed an archaeological study as evidenced by a thesis or dissertation, and has been awarded an advanced degree, such as an M.A., M.S., or Ph.D., from an accredited institution of higher education in archaeology, anthropology, or history or other germane discipline with a specialization in archaeology: has a minimum of one (1) year of field

experience with at least twenty-four (24) weeks of field work under the supervision of a professional archaeologist including no more than twelve (12) weeks of survey or reconnaissance work, and at least eight (8) weeks of supervised laboratory experience. Twenty (20) weeks of field work in a supervisory capacity must be documentable with a report produced by the individual on the fieldwork.

- (J) **“Reservation”** means the Swinomish Indian Reservation and includes any and all lands within the exterior boundaries of the Swinomish Reservation.
- (K) **“Revocation”** means the termination of a permit under this Chapter.
- (L) **“Site restoration”** means to repair the archaeological property to its pre-excavation vegetational and topographic state.
- (M) **“Suspension”** means the abeyance of a permit under this Chapter for a specified period of time.

[History] Ord. 193 (11/5/03).

21-01.050 Application Requirements and Forms.

- (A) Any person or entity covered by this Chapter proposing to excavate and/or remove archaeological resources from reservation lands, or proposing to remove petroglyphs or pictographs of prehistoric tribes or peoples, or archaeological resources, shall apply to the G^wχd^zadad Committee for a permit for the proposed work and shall not begin the proposed work until a permit has been issued.
- (B) Each application for a permit from the G^wχd^zadad Committee shall be submitted on the archaeological excavation and removal permit application form approved by the G^wχd^zadad Committee.

[History] Ord. 193 (11/5/03).

21-01.060 Summary of Information Required of an Applicant.

- (A) Each application for a permit shall include:
 - (1) The nature and extent of the work proposed, including how and why it is proposed to be conducted and the proposed methods for excavation and recovery, proposed time of performance, locational maps, and a completed site inventory form acceptable to the Washington State Office of Archaeology and Historic Preservation;
 - (2) An artifact inventory plan detailing the character of the expected data categories to be recovered including the proposed methods of inventorying the recovered data and proposed methods of cleaning, stabilizing, and curating of

species and recovered data consistent with the Secretary of the Interior's standards for archaeological curation;

- (3) A professional, scientific research design demonstrating that the work will be performed in a scientific and technically acceptable manner taking into account current scientific research issues and cultural resource management plans;
 - (4) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimum qualifications listed in this Chapter;
 - (5) A site security plan to assure the protection of the site and its contents during the public permit review and excavations process;
 - (6) A public participation plan detailing the extent of public involvement and dissemination of project results;
 - (7) A completed environmental checklist as required by the G^wχd^zadad Committee to assist in making a threshold determination and to initiate compliance; and
 - (8) Evidence of approval of the proposed work from the Bureau of Indian Affairs (BIA), if the work is to take place on land held in trust by the BIA for the benefit of the Tribe or individual tribal members.
- (B) The name of the museum, repository or other tribal, scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard, preserve, and allow for the future scientific access to these materials, which shall remain the property of the Swinomish Indian Tribal Community.
- (C) After review of the application, but prior to its submission to the Senate, the G^wχd^zadad Committee may require additional information to properly evaluate the proposed work and shall so inform the applicant. Field investigation or research may be required of the applicant or conducted by the G^wχd^zadad Committee at the applicant's cost. A bond in an amount specified by the G^wχd^zadad Committee may be required of the applicant to ensure payment of the professional expenses incurred by the G^wχd^zadad Committee. Advance notice of any anticipated cost shall be given to the applicant.

[History] Ord. 193 (11/5/03).

21-01.070 Issuance of Permit.

- (A) The G^wχd^zadad Committee will normally process a permit application within thirty (30) days of receipt of a complete permit application. Upon completion of its review, the G^wχd^zadad Committee will make a recommendation to the Senate regarding the issuance of a permit. The Senate shall either reject or accept the G^wχd^zadad Committee's recommendations and instruct the Committee either to issue the permit or reject the application. A permit may be issued for a specified period of time appropriate to the work to be conducted, upon determining that:
- (1) The applicant, or in the case of a group or organization, the individual proposed to be responsible for conducting the work, is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological methods and theory, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the minimum qualifications of a professional archaeologist;
 - (2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public and tribal interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;
 - (3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of reservation lands concerned;
 - (4) Evidence is submitted to the G^wχd^zadad Committee that any museum, repository, or other tribal, scientific or educational institution proposed as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records;
 - (5) Evidence that the applicant agrees to mitigate any archaeological damage that occurs during the excavations and recovery operations;
 - (6) Evidence that the applicant agrees to allow the Swinomish Indian Tribal Community access to, and ownership of, all artifacts and data recovered from archaeological sites; and
 - (7) After the granting of a permit and, when information filed with the G^wχd^zadad Committee becomes inaccurate in any way, or additions or deletions are necessary, the applicant or permittee shall submit full details of any such changes and/or correct any inaccuracy, together with copies of any additional required documents, with the G^wχd^zadad Committee within fifteen (15) days following the change. The G^wχd^zadad Committee reserves the right to

suspend or revoke a permit under this Chapter.

- (B) The Senate Chairman may issue a temporary permit immediately where delay could cause damage to an archaeological resource or site. Said permit shall be valid only for thirty (30) days.

[History] Ord. 193 (11/5/03).

21-01.080 Terms and Conditions of Permits.

- (A) In all permits issued, the office shall specify:
 - (1) The nature and extent of work allowed and required under the permit, including the duration, scope, location, and purpose of the work and list the type of items expected to be unearthed;
 - (2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;
 - (3) The name of any museum, repository, or other tribal, scientific or educational institutions in which any collected materials and data shall be deposited; and
 - (4) Reporting documentation requirements and site restoration and mitigation requirements.
- (B) The G^wχd^zadad Committee may specify such terms and conditions as deemed necessary, consistent with this Chapter, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under the permit. This may include sufficient bonding to cover the cost of site restoration.
- (C) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.
- (D) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.
- (E) The permittee may request that the G^wχd^zadad Committee extend or modify a permit. Such a request will require compliance with all the provisions of this Chapter and approval by the Senate.
- (F) The permittee's performance under any permit issued for a period greater than one (1) year shall be subject to review by the G^wχd^zadad Committee at least annually.

[History] Ord. 193 (11/5/03).

21-01.090 Permit Denial.

If a permit is denied, a written statement of the reasons for the denial will accompany the notice of permit denial to the applicant. A permit may be denied for failure to meet the standards required of an application under Section 21-01.060.

[History] Ord. 193 (11/5/03).

21-01.100 Reburial.

All Indian human remains and funerary objects unearthed within the exterior boundaries of the Reservation pursuant to a permit issued under this Chapter, repatriated to the Tribe, or within the possession of the Tribe shall be reburied in accordance with tribal customs under the supervision of the G^wχd^zadad Committee. The G^wχd^zadad Committee shall have the power and responsibility to resolve any issues or questions that arise under this Section, including a determination of whether an artifact is a funerary object.

[History] Ord. 193 (11/5/03).

21-01.110 G^wcđ^zadad Committee.

The G^wχd^zadad Committee shall have the power and responsibility to resolve any issues or questions that arise under this Chapter, including whether a family or religious group retains authority or ownership over any regalia or artifact unearthed within the exterior boundaries of the Reservation pursuant to a permit issued under this Chapter, repatriated to the Tribe, or within the possession of the Tribe.

[History] Ord. 193 (11/5/03).

21-01.120 Repealer.

Ordinance Nos. 58 and the unnumbered ordinance passed on July 12, 1989 are hereby repealed.

[History] Ord. 193 (11/5/03).

21-01.130 Severability.

[Reserved]

Appendix I – Archaeological Excavation Permit Application Form

1. Name of Applicant:	2. Date:
3. Address:	4. Telephone:
5. Site for which permit is requested:	
6. Date field work is proposed to begin:	
7. Date field work is proposed to end:	
8. Proposed dates for analysis and reportage:	
9. Location of collection for analysis:	
10. University, museum, or other institution in which the applicant proposes to curate all collections, records, photographs, and data:	
11. Will human remains be removed: <p align="center">Yes No</p>	

.....
Applicant

.....
Date

Appendix II – Attachments List

The archaeological excavation permit application form must be submitted with the following attachments separately numbered:

<u>Attachment</u>	<u>Information Required</u>
1	A completed site inventory form with attached U.S.G.S. quad map.
2	A description of the nature and extent of the excavation work proposed, including how and why it is proposed to be conducted.
3	A professional, scientific research design demonstrating that the work will be performed in a scientifically and technically acceptable manner taking into account current scientific research issues and cultural resource management plans.
4	The names and addresses of the individuals proposed to be responsible for conducting the work; institutional affiliation, if any; and resumes demonstrating evidence of education, training, experience, and publication of excavated results.
5	The names and addresses of the individuals proposed to be responsible for carrying out the terms and conditions of the permit (if different from the names provided in Attachment #4), indicating overall project staffing; organizational structure; and reporting, review and management authority.
6	Financial evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.
7	A plan for site restoration and evidence of plans to secure bonding to cover the cost of site restoration.
8	Evidence of approval of proposed work from the Bureau of Indian Affairs Office, if the work is to take place on tribal trust land.
9	A site security plan to assure the protection of the site and its contents during the public permit review and excavation period.
10	A public participation plan detailing the extent of public involvement and dissemination of project results.
11	Written certification of willingness to assume curatorial responsibility for the collection and to safeguard, preserve, and allow for future scientific access signed by an authorized official of the repository in which the applicant proposes to store all data, collections, records, and photographs generated by the excavation.
12	A signed agreement that allows the Swinomish Indian Tribal Community access to and ownership of all artifacts and data recovered from the archaeological site(s).
13	A completed environmental checklist as required by the G ^w χd ^z adad Committee to assist this office in making a threshold determination and to initiate compliance.