

PROFESSIONAL QUALIFICATIONS
MINIMUM CRITERIA FOR EXCEPTIONS

The following are criteria which must be met before the Director will consider granting an exception to the professional qualifications listing in North Dakota Administrative Code (NDAC) 40-2-2-05. However, the fact that these standards are met does not necessarily mean that an individual will be granted an exception; it only means that the request will be considered. Upon receipt of a request for an exception, the documentation submitted will be reviewed by Society personnel who are qualified in the discipline for which the request is made, and the documentation will then be forwarded to the Director, along with the recommendation of reviewing staff. Exceptions can only be granted by the Director.

Criteria

Affiliation:

1. The individual for whom an exception is requested must be employed by, or affiliated with, an organization, institution, or company which has at least one other professional on staff who is qualified under the standards set at NDAC 40-02-02-05. This ensures that individuals who are granted exceptions operate in an environment which provides for peer review and professional consultation on a regular basis. Employment and/or affiliation must be clearly documented through a company prospectus, letter from management, etc.

Experiences:

2. The individual must be able to document at least five years (60 months) of practical experience in the discipline for which an exception is requested, including at least two years (24 months) in a supervisory position. While this time need not be continuous, i.e., 24 or 60 month blocks, past work records must clearly document serious involvement in the discipline at a professional level. For instance, summer field work by a college student may be accumulated during the student's tenure in an undergraduate or graduate program in Anthropology but summer field work by an individual employed or attending classes in some other discipline for the remainder of the year may not be accumulated into the total.

Reporting:

3. The individual must be the primary author of at least one report on cultural resources work in the discipline for which an exception is requested. This report, or set of reports, must be acceptable by all standards other than those of the author's professional qualifications and must demonstrate an ability to plan, execute, and report all levels of work normally required to satisfy relevant state and federal regulations and processes. This means, for instance, that a survey (identification) report will not be sufficient per se, while a report, or set of reports which include(s) survey, evaluation (testing, analysis of historical records, etc.), and mitigation (data recovery, preservation planning, etc.) will usually suffice. Documentation submitted will be reviewed by qualified professionals as they would review comparable material for compliance with state and federal regulations. Favorable review of, or acceptance by, another agency will not necessarily mean the documentation is acceptable by current North Dakota standards.

If the applicant meets all other criteria but has not produced a report documenting all levels of work, the Director may grant a provisional exception that allows the applicant to direct specific types of projects. For example and applicant who has not written a mitigation report could be granted a permit to direct survey and/or testing projects but not mitigation projects.

References:

4. Three letters of reference testifying to the individual's ability to conduct independent research must be provided from professionals qualified without an exception in the discipline for which the request is made. If letters of reference are provided by individuals whose credentials are not on file with the Society/SHPO, resumes of these individual's qualifications may also be required.

EFFECTIVE DATE:

CHAPTER 55-03
PROTECTION OF PREHISTORIC SITES AND DEPOSITS

55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee

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Any person engaged in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, or subdivision u of subsection 1 of section 38-14.1-14, shall obtain an annual permit from the director of the state historical society. The permit application must be in the form prescribed by the director. Each application must be accompanied by a filing fee of one hundred dollars. The director may waive the fee requirement if the applicant is an instrumentality of the state. Following issuance of the annual permit, the permittee shall submit to the state historical society payment in the amount of fifty dollars with every cultural resources identification, evaluation, and mitigation report submitted to the director in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under chapter 10-33 does not have to pay the fee for filing the report.

CHAPTER 55-03
PROTECTION OF PREHISTORIC SITES AND DEPOSITS

55-03-00.1. Definitions.

1. "Cultural resources" includes prehistoric or historic archeological sites, burial mounds, and unregistered graves.
2. "Mitigate adverse effect" includes:
 - a. The process of making and preserving a record of the existence and scientific, historical, architectural, engineering, educational, or aesthetic value of a cultural resource, historic building, structure, or object.
 - b. The process of restoring, rehabilitating, reconstructing, stabilizing, or preserving, through some other means, a cultural resource, historic building, structure, or object.

55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee. Any person engaged in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, or subdivision u of subsection 1 of section 38-14.1-14, shall obtain an annual permit from the director of the state historical society. The permit application must be in the form prescribed by the director. Each application must be accompanied by a filing fee of one hundred dollars. The director may waive the fee requirement if the applicant is an instrumentality of the state. Following issuance of the annual permit, the permittee shall submit to the state historical society payment in the amount of fifty dollars with every cultural resources identification, evaluation, and mitigation report submitted to the director in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under chapter 10-33 does not have to pay the fee for filing the report.

55-03-01.1. Permit required to investigate, excavate, or otherwise record cultural resources on land owned by an instrumentality of the state and to excavate cultural resources on private land. Any person engaged in the investigation, excavation, or other recording of cultural resources on land owned by an instrumentality of the state or in the excavation of cultural resources on private land for any purposes other than those identified in section 55-03-01 first shall obtain a permit from the director. A permit may be granted only for the investigation, excavation, or other recording of cultural resources at the locations described in the application for permit. Each application must be accompanied by a fee of one hundred dollars.

55-03-02. Contents of permit. A permit issued pursuant to an application made under section 55-03-01 or 55-03-01.1 must clearly describe the purpose of the permit

and must be in the form prescribed by the director. A permit may not be granted until the director is satisfied that the applicant is professionally qualified to conduct that work for which the permit is required. When the cultural resources are on land owned by an instrumentality of the state, the permit may not be granted until the applicant has agreed to deliver to the director all of the archaeological or historical materials found and removed from the land. When the cultural resources are on private land, the permit may not be granted until the applicant has agreed to deliver to the director all of the human remains and burial goods, as defined in section 23-06-27, found and removed from the land. A permit may not be granted until the applicant has agreed to deliver to the director copies of all records and reports as determined by the director to be pertinent to the work performed.

55-03-03. Period for which permit granted - Revocation. Each permit issued under section 55-03-01 terminates on December thirty-first of the year in which it is issued. Any permit issued under section 55-03-01 or 55-03-01.1 may be revoked by the director at any time if it appears that any identification, evaluation, or mitigation of adverse effects on cultural resources, historic buildings, structures, or objects performed by the permittee are being conducted negligently or improperly, or without regard for the careful preservation and conservation of the artifacts and materials they contain.

55-03-04. Fees deposited in revolving fund - Use. All fees collected by the director under sections 55-03-01 and 55-03-01.1 must be deposited in the revolving fund of the state historical society and must be used by the director for making investigations of permit applicants and for the management and analysis of records and artifacts submitted to the director under sections 55-03-01, 55-03-01.1, and 55-03-02.

55-03-05. Landowner may explore on his own land. Repealed by S.L. 1989, ch. 307, § 7.

55-03-06. Archaeological or paleontological materials retained upon sale of land by state or municipality. When land is sold, conveyed, transferred, or leased by the state of North Dakota, or by any department or agency thereof, or by any municipal subdivision thereof, the title to any and all archaeological or paleontological materials, whether such materials are found upon the surface or below the surface of such land, must be retained by the state or by the municipal subdivision thereof, as the case may be.

55-03-07. Violation of chapter - Penalty. Any person violating any provision of this chapter is guilty of a class A misdemeanor and shall forfeit to the state all archaeological or historical articles and materials discovered by the violator. Any such violation must be held to be committed in the county where the exploration or excavation for archaeological or historical material was undertaken.

CHAPTER 40-02-02 PERMIT FOR CULTURAL RESOURCE INVESTIGATION

Section

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40-02-02-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 55-03, except:

1. "Board" means the state historical board as defined in North Dakota Century Code section 55-01-01.
2. "Contractor" means any person, real or corporate, who performs cultural resources work for profit or cost reimbursement on behalf of a project sponsor.
3. "Cultural resources work" means all of those processes, procedures, and efforts normally construed by state and federal regulations as necessary for the conduct of investigations, evaluations, or mitigation of adverse effects of proposed projects to historic buildings, structures, or objects, including preproject planning, planning, execution, and reporting of results.
4. "Direct supervision" means active supervision of field and office/laboratory activities by a qualified individual at least seventy-five percent of the time expended for those activities as documented by project records.
5. "Instrumentality of the state" means all agencies, departments, boards, and commissions, and all political subdivisions, of state government.
6. "Permit application fee" means the payment for an annual permit required to conduct cultural resources work.
7. "Project sponsor" means any person, real or corporate, including agencies, departments, companies, nonprofit corporations, corporations, instrumentalities of government, partnerships, political subdivisions, or institutions, which pays for cultural resources work projects.
8. "Report filing fee" means the payment required to accompany a cultural resources work report by a contractor which is deposited with the state

historical board of North Dakota, and which report will subsequently be considered in review of proposed projects considered under the laws and regulations described in North Dakota Century Code section 55-03-01.

9. "Superintendent" means the superintendent of the state historical board of North Dakota as set forth in North Dakota Century Code 55-02-01.

History: Effective January 1, 1985.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-03-01

40-02-02-02. Application for permit - Fee. All applications for permits issued under North Dakota Century Code section 55-03-01 must be made on forms available from:

Superintendent
State Historical Board of North Dakota
North Dakota Heritage Center
Bismarck, ND 58505

Instructions for completion of forms, a list of supporting documentation required, and copies of standards established by the board for the conduct and reporting of cultural resource work projects are also available on request.

All applications for permit must be accompanied by a check made payable to:

State Historical Society of North Dakota.

An application for permit form is attached hereto, incorporated by reference, and labeled Appendix A.

History: Effective January 1, 1985.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-03-01

40-02-02-03. Waiver of permit application fee. The superintendent may waive the annual permit application fee required by North Dakota Century Code section 55-03-01 if the applicant is an instrumentality of the state and if the complete and acceptable application is accompanied by a letter from the chief administrative officer of the instrumentality requesting waiver of the permit fee.

History: Effective January 1, 1985.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-03-01

40-02-02-04. Waiver of report filing fee. Reports of cultural resources work conducted under a permit issued pursuant to North Dakota Century Code section 55-03-01 and filed by a permittee on behalf of a nonprofit corporation formed under North Dakota Century Code chapters 10-24 through 10-28 need not be accompanied by a

report filing fee payment if notification that the project sponsor is a nonprofit corporation is provided at the time of filing.

History: Effective January 1, 1985.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-03-01

40-02-02-05. Professional qualifications - Exceptions. All activities performed under a permit issued pursuant to North Dakota Century Code chapter 55-03 must be conducted by or under the direct supervision of a professionally qualified individual. Evaluations of archaeological, architectural, historical, or paleontological resources must be made by an individual professionally qualified in that particular discipline. The minimum professional qualifications are:

1. **Archaeology.** A graduate degree in archaeology, anthropology, or closely related field plus all of the following:
 - a. At least one year of full-time experience or equivalent specialized training in archaeological research, administration, or management.
 - b. At least four months of supervised field and analytic experience in general North American archaeology.
 - c. A demonstrated ability to carry research to completion, usually documented through the completion of reports of such work.

In addition to the above minimum qualifications, a professional in prehistoric archaeology must have at least one year of full-time experience at a supervisory level in the study of archaeological resources of the prehistoric period. A professional in historic archaeology must have at least one year of full-time experience at a supervisory level in the study of archaeological resources of the historic period.

2. **Architectural history.** A graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history with concentration in American architecture; or a bachelor's degree in architectural history, art history, historic preservation, or closely related field plus one of the following:
 - a. At least two years of full-time experience in historic structures survey and research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution or private company.

- b. A documentably substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.
- 3. **History.** A graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:
 - a. At least two years of full-time experience in historical or closely related field research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, other professional institution, or private company.
 - b. A documentably substantial contribution through research and publication to the body of scholarly knowledge in the field of history.
- 4. **Paleontology.** A graduate degree in paleontology or closely related field plus all of the following:
 - a. At least one year of full-time experience or equivalent specialized training in paleontological research, administration, or management.
 - b. At least four months of supervised field and analytic experience in general North American paleontology.
 - c. A demonstrated ability to carry research to completion, usually documented through the completion of reports of such work.

Exceptions to these minimum qualification standards may be granted by the superintendent after receipt, review, and acceptance of documentation of an individual's ability to plan, execute, and report such activities within a discipline. Such documentation will usually consist of reports describing such work previously completed by the applicant, and which would be acceptable by all standards other than those of professional qualifications.

History: Effective January 1, 1985.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-03-02

40-02-02-06. Revocation of permit - Grounds. A permit issued pursuant to North Dakota Century Code chapter 55-03 may be revoked when the superintendent determines that the permittee has:

- 1. Allowed activities related to the permit to be performed without supervision by qualified personnel as defined in section 40-02-02-05, or by personnel whose credentials have not been filed with and approved by the superintendent.

2. Filed inadequately documented reports or site forms.
3. Deliberately falsified data used in activities or reports related to activities conducted under the permit.
4. Failed to provide for storage and care of artifacts or excavation records from activities conducted under the permit.
5. Been convicted of participating in illegal activities related to obtaining or trafficking artifacts.
6. Misrepresented the permittee's credentials or qualifications, or that an academic degree which was used by the permittee to represent the permittee's qualifications upon application for permit has been revoked or withdrawn by the granting institution.

History: Effective January 1, 1985.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-03-03

40-02-02-07. Revocation of permit - Procedure. When the superintendent has determined that grounds exist to revoke a permit, the procedures set forth in North Dakota Century Code section 28-32-05 must be followed.

History: Effective January 1, 1985.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-03-03