

Oregon Department of Transportation
Utility Permit Tribal Notification and Cultural Resource Protection
Utility Permit Applicant – FAQ
May 15, 2024

The purpose of these Frequently Asked Questions is to help utility permit applicants provide advance notice to tribes of the intent to install a utility line on state highway right of way that is likely to include ground disturbance (directional boring, cable plowing, trenching, or digging of any kind). This notification allows the tribe opportunity to provide input on cultural resources in the intended utility work location that may be known to the tribe but not in the database maintained by the Oregon State Historic Preservation Office (SHPO). If your utility work is federally funded, additional requirements may apply.

Advance Notification of Intended Utility Work

Q. When does a utility permit applicant need to give a tribe advance notice of intended utility work on state highway right of way?

- A. A utility permit applicant is encouraged to engage with tribes early in the planning for their intended utility work giving the tribe at least 30 calendar day advance notice of the intended utility work that includes ground disturbance. When possible, provide additional time for the tribe to complete their review.

This notification is necessary before ODOT issues a permit for installation of a utility line that includes ground disturbance (directional boring, cable plowing, trenching, and digging of any kind) which includes a permit that would allow for a new utility line as well as moving or repositioning an existing permitted utility line or pole if the work includes ground disturbance.

Advance notification is not needed for urgent/emergency work such as when a service line is down and time is of the essence to restore service, or for routine maintenance of an existing utility line. However, the utility permit applicant remains responsible to follow federal, state, and local regulations including protecting historic, cultural, or archaeological resources in the work area.

Q. How does the utility permit applicant determine which tribe to notify in advance of their intended utility work?

- A. The interested tribe(s) are to be identified by checking the ODOT “tribe by county” list available at www.oregon.gov/odot/Pages/Tribal-Relations.aspx. Notice should be sent to the tribal archaeology contact. Don’t send notices to tribal administrators, board members, or general inquiry email addresses. Sending the notice directly to the correct tribal archaeology contact is important and helps the tribe be able to respond in a more timely manner.

Q. How should the notification be provided to the tribe?

- A. Notification should be provided to the tribe in writing. When sending the notification by email, it is suggested a subject line that is descriptive of the purpose of the email be used such as “Notification of Utility Work In State Highway Right of Way”.

Q. What information needs to be provided to the tribe in the notification?

- A. The utility permit applicant may use the *Utility Permit and Cultural Resource Review Notification* form developed by ODOT. While there is no legal requirement to use this form, it is recommended and is expected that a consistent method of notification will make the process easier for both the utility permit applicant and the tribe.

If the utility permit applicant chooses not to use the suggested form, the notice to the tribe should be in writing and include all of the following:

- the utility permit applicant's contact information, (utility company name and the contact person's name, phone number and email);
- the utility work location (highway name and route number, beginning and ending mile post, latitude and longitude, and the county where the work will occur);
- a map or aerial photo showing the general vicinity of the intended work location (nearby city, a landmark, etc.) with the intended work area clearly marked; and
- a description of the planned work (e.g., trenching to install a 10" water line) with the amount of ground disturbance involved in the planned work including the planned width and depth of the ground disturbance.

Q. Can the tribe request additional information about the location of the intended work?

A. A clear description of the intended utility work location should be provided to the tribe. If additional information is needed for the tribe to reasonably understand the location of the intended utility work, the 30-calendar day count would begin on the date the utility permit applicant provides the clarifying information.

Q. What happens if there is no response from the tribe within 30 calendar days?

A. The utility permit applicant needs to give the tribe at least 30 calendar day advance notice of the intended utility work that includes ground disturbance.

There is no legal requirement for a tribe to respond. If no response is received after at least 30 calendar days, the utility permit applicant may move forward with submitting the *Utility Permit Notification and Cultural Resource Certification* form and the utility permit application to ODOT. However, this does not relieve the utility permit applicant from responsibility to protect cultural resources. If cultural resources are discovered, the utility permit applicant must stop work and contact SHPO as described in SHPO regulations.

Q. What should a utility permit applicant do if the tribe responds after the 30 calendar days?

A. The purpose of the notification to a tribe is to inform the tribe of intended utility work in their area of interest and allows the tribe opportunity to provide input on cultural resources in the intended work location that may be known to the tribe but not in the SHPO database. If a tribe responds after the 30-day period and work has not been completed, the utility permit applicant should still take the information into consideration. If the proposed utility line installation is modified as a result of the cultural resource input provided by the tribe, an amendment to the ODOT utility permit may need to be requested.

Q. Is the utility permit applicant required to use the ODOT *Utility Permit and Cultural Resource Review Notification* form when they reach out to the tribe?

A. While there is no legal requirement to use the form provided by ODOT, it is recommended and is expected that a consistent method of notification will make the process easier for both the utility permit applicant and the tribe.

Q. Is the tribe required to respond on the ODOT *Utility Permit and Cultural Resource Review Notification* form?

A. There is no legal requirement to use the form provided by ODOT, it is recommended and is expected that a consistent method of response will make the process easier for both the utility permit applicant and the tribe. The tribe may choose to provide information on cultural resources in the intended utility work location by attaching an email or letter to the notification from the utility permit applicant.

Q. Does the utility permit applicant need to copy ODOT on the notification or other correspondence with the tribe?

- A. No, any response received as a result of the notification is to inform the utility permit applicant and to assist in completing the required *Utility Permit Notification and Cultural Resource Certification* form. Only the certification form is submitted to ODOT. It is recommended that the utility permit applicant retain the notification, and any response from the tribe, along with any other correspondence for their records.

Utility Permit Cultural Resource Certification

Q. How does the utility permit applicant verify the presence or absence of cultural resources?

- A. Utility permit applicants would reach out to SHPO. This may be done by contacting SHPO or by checking SHPO's webpage for information in their Oregon Archaeological Records Remote Access (OARRA) database. Tribes that have an interest in the area where the utility permit applicant intends to do work may also wish to share information on cultural resources that may be known to the tribe but not in the SHPO database.

Q. How does the utility permit applicant contact SHPO?

- A. Information about how to contact SHPO is available on their webpage (www.oregon.gov/oprd/OH/Pages/default.aspx). There is also information on the SHPO webpage that may assist a utility permit applicant in their investigation and protection of cultural resources including information on their Oregon Archaeological Records Remote Access (OARRA) database.

Q. What type of utility permit work requires the *Utility Permit Notification and Cultural Resource Certification* form?

- A. The certification form is needed for utility permits issued on or after July 1, 2023, for a utility line being installed that includes ground disturbance (directional boring, cable plowing, trenching, and digging of any kind). This includes an ODOT issued permit that would allow for a new utility line as well as moving or repositioning an existing permitted utility line or pole if the work includes ground disturbance.

The certification form is not needed for urgent/emergency work such as when a service line is down and time is of the essence to restore service, or for routine maintenance of an existing utility line.

Q. Does submitting the certification form change the utility permit applicant's responsibility to verify the presence or absence of cultural resources during their work?

- A. No, the utility permit applicant remains responsible to follow federal, state, and local regulations including protecting cultural resources (historic, cultural, or archeological) during their work. If cultural resources are discovered during the course of the permitted utility work, the utility permit applicant will need to stop work and contact SHPO as required by SHPO regulations.

General Cultural Resource Information

Q. What is a "cultural resource site"?

- A. For this purpose, a "cultural resource site" is a site that may have historic, cultural, or archaeological importance and includes land that contains "archaeological objects".

Q. What is an “archaeological object”?

A. According to Oregon Revised Statute 358.905, an archaeological object is an object that is:

- (A) At least 75 years old;
- (B) Part of the physical record of an indigenous or other culture found in the state or waters of the state; and
- (C) Material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products, and dietary by-products.

For help in determining if an item is considered an archaeological object, contact SHPO or visit their webpage (www.oregon.gov/oprd/OH/Pages/default.aspx).

Q. What is an Inadvertent Discovery Plan (IDP)?

A. SHPO or a tribe might recommend that a utility permit applicant have an inadvertent discovery plan in place before onsite utility work starts. An inadvertent discovery plan outlines the planned procedures in the event cultural resources are discovered during the course of the utility work. A template is available on the SHPO webpage (www.oregon.gov/oprd/OH/Pages/default.aspx) and includes instructions on what to do if a potential cultural resource site or archaeological object is encountered. (Any inadvertent discovery plan created is for the utility permit applicant’s use and is not submitted to ODOT and is not part of the ODOT utility permit process.)

General Utility Permit Information

Q. When ODOT becomes aware of a planned utility project, will ODOT staff provide cultural resource information to the utility permit applicant?

A. ODOT staff engages in discussions on work that may occur on state highway right of way but does not represent a tribe or a resource agency such as SHPO. Utility permit applicants are encouraged to engage with tribes and resource agencies early in their planning process. A brochure was created by state resources agencies to help identify natural and cultural resource regulations and agencies. A copy is on the ODOT permit webpage (www.oregon.gov/odot/Maintenance/Pages/Permits.aspx).

Q. What does ODOT look for when reviewing a utility permit application?

A. ODOT district staff review a utility permit application based on existing highway infrastructure information, coordination with other work planned in the area on the state highway system, and compliance with ODOT’s Utility Accommodation Policy described in Oregon Administrative Rule Chapter 734, Division 55. The ODOT review does not include a review of cultural resources or another agency’s requirements that must be met to conduct the planned utility work (e.g., one-call notification, electrical code, etc.).

Q. What is ODOT’s role in utility work that occurs on state highways?

A. ODOT may impose reasonable restrictions on the use of the state highway but does not direct the work of the utility permit applicant or its contractor(s) or ensure compliance with other agency requirements. The permit language reminds utility permit applicants of their responsibility to comply with federal, state, and local laws and the responsibility to get permits and approvals necessary for their work including environmental, archeological, historic, and cultural resource protection.

Q. What happens if a utility permit applicant doesn't follow a requirement of another agency in doing their utility work?

A. It is up to the utility permit applicant to obtain approval from the appropriate resource agencies. If there is a violation of a permit or requirement from another agency, that agency pursues the appropriate action.

Q. What is needed when a utility permit applicant intends to do work within US Forest Service land, Bureau of Land Management land, or tribal reservation land where the state highway is in place by permit or easement?

A. When a state highway passes through USFS, BLM, or tribal reservation land, the state highway may be in place by permit or easement. In these cases, ODOT is not the underlying land manager and generally only has authority to use the land for highway purposes. The utility permit applicant would need permission from both the underlying land manager and ODOT before installing their utility line.

Additional Information

Q. Who does a utility permit applicant contact for more information?

A.

1. For information on how to identify, investigate and protect cultural resources and how to access the SHPO Oregon Archaeological Records Remote Access (OARRA) database, contact the Oregon State Historic Preservation Office or visit their webpage (www.oregon.gov/oprd/OH/Pages/default.aspx).
2. For questions about a response provided by a tribe on cultural resources in the intended utility work location, contact the tribal archaeologist or the tribal representative providing the response.
3. Contact the local ODOT district office listed on the permit for questions about a specific ODOT issued utility permit.
4. For questions about ODOT's utility permit process in general including the Utility Permit Cultural Resource Certification process, contact the local ODOT district office or the ODOT Maintenance and Operations Branch headquarters (Karen Morrison, Maintenance Services Coordinator at karen.j.morrison@odot.oregon.gov).