

NAC Chapter 381 Draft Regulations Required by SB244

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Authority for Regulations: NRS 381.196(3)

New Provision 1:

Notice to and consultation with Indian tribes as required by NRS 381.195 to 381.227, inclusive, is defined as complying with the requirements of NRS 381.0066. Consultation may vary based on the tribal entity and tribal preference and while it must be a government to government interaction, authorized tribal representatives, may act on behalf of their governments. The Museum Director may act on behalf of the Governor in order to engage in consultation pursuant to NRS 381.0066 with Indian tribes in order to carry out the requirements of NRS Chapter 381 and NAC Chapter 381 and incorporate the values, beliefs and traditions of the tribes as defined by the applicable tribe into the permitting and repatriation process.

New Provision 2:

“Authorized tribal representatives” as used in this section refers to a person or persons who are authorized by the tribal government or tribal historic preservation officer to engage in consultation with the Museum Director for purposes of NRS 381.195 through 381.227, inclusive.

New Provision 3:

Indian tribe has the meaning contained in NRS 383.011(8).

New Provision 4:

A “prehistoric native Indian burial site,” as defined in NRS 383.150, is a previously recorded Native American burial site, which is registered with the Nevada Office of Historic Preservation, Nevada Cultural Resources Inventory pursuant to NRS 383.021. If the permit application is for an unrecorded Native American burial site, the Museum Director or his or her designee will forward the burial site information to the Office of Historic Preservation for their consideration of registration as a Native American burial site in the Nevada Cultural Resources Inventory.

New Provision 5:

“Abandoned property” is defined as property that the owner voluntarily surrenders, relinquishes, or disclaims, for which the holding institution has no record of title transfer (“Deed of Gift”) from the donor or the donor is unknown, and which meets all the requirements contained in NRS 381.009(1)-(3).

New Provision 6:

Unless another meaning is required by NRS 381.009(6)(a), because the State Museum is required to follow the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), the Museum Director must use the

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definition for “cultural items” as contained in 25 U.S.C. § 3001, et seq., which is human remains and associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony.

New Provision 7:

“Federal property” is property that is found or removed from public lands. Federal property is owned by the federal government and may not be deemed abandoned property pursuant to NRS 381.009. “Public lands” is defined as lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system and all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution, pursuant to 16 U.S.C. § 470bb(3).

New Provision 8:

“State property” is property that is found or removed from state land. State property is owned by the state government and may not be deemed abandoned property pursuant to NRS 381.009. “State land” is all lands and interests in land owned or required by the State pursuant to NRS 321.001.

New Provision 9:

“Tribal property” is property that is found or removed from Indian lands. Tribal property is owned by the tribal government and may not be deemed abandoned property pursuant to NRS 381.009. “Indian lands” is defined as lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual, pursuant to 16 U.S.C. § 470bb(4). Tribal property includes lands held in trust by the Bureau of Indian Affairs.

New Provision 10:

As defined in 25 U.S.C. § 3001, et seq., “associated funerary objects” means objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

New Provision 11:

As defined in 25 U.S.C. § 3001, et seq., “unassociated funerary objects” means objects that, as a part of the death rite or ceremony of a culture, are

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reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of a federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian.

New Provision 12:

Because the State Museum is required to follow NAGPRA, the Museum Director must use the definition for “objects of cultural patrimony” as contained in 25 U.S.C. § 3001, et seq., which is an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by an individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group. Unless otherwise required by NRS 381.009(5) and (6)(a), federal terminology and definitions contained within NAGPRA will be maintained and an object of cultural significance shall have the same meaning as an object of “cultural patrimony.”

New Provision 13:

- 1. After satisfying the requirements of NRS 381.009(1) and (2), title, including literary rights, to the abandoned property vests in the Division pursuant to NRS 381.009(3), and the Administrator or his or her designee will follow the guidance of a qualified specialist in determining whether the abandoned property is native Indian human remains or another cultural item of an Indian tribe as required by NRS 381.009(4). As used in this section, a qualified specialist must meet the Secretary of the Interior’s Standards for Archaeology and Historic Preservation, available at https://www.nps.gov/history/local-law/arch_stnds_9.htm. Destructive analysis, including DNA testing, will only be used as a last resort in making the determination required by this section.*
- 2. If the abandoned property is native Indian human remains or another cultural item of an Indian tribe, the Administrator or his or her designee shall follow the repatriation process as defined in 25 U.S.C. § 3001, et seq., and provide the notice and consultation required by NRS 381.009(4), ensuring that the values, beliefs and traditions of the tribes are fully considered and incorporated when possible, and ensuring the return of the cultural item to the Indian tribe which has*

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the closest cultural affiliation as set forth in 43 C.F.R. § 10.14, divesting the Division of title to the abandoned property, including literary rights. For purposes of this provision, “closest” does not mean merely geography, instead it is about the relationship between the tribe and the item and geography may be a factor in determining which tribe has the closest cultural affiliation, but is not the primary or only factor considered.

- 3. If the abandoned property is not native Indian human remains or another cultural item of an Indian tribe, the Administrator or his or her designee shall accession the item or otherwise handle it in accordance with approved Division policy.*
- 4. For purposes of this section, “title” means the union of three elements: ownership, possession, and custody, and constitutes the legal right to control and dispose of property.*
- 5. “Cultural item,” “object of cultural significance,” and “sacred object” have the meanings ascribed to them in NRS 381.009(6).*

New Provision 14:

As used in New Provision 15, tribal territories or ancestral land that overlaps the Nevada border includes the neighboring states of California, Idaho, Arizona, Oregon, and Utah.

New Provision 15:

When required by NRS 381.195 to 381.227, inclusive, the Administrator or his or her designee and/or the Museum Director, as defined in NRS 381.195(3), shall consult with affiliated Native American tribes throughout the State of Nevada and in neighboring states, where tribal territories or ancestral land overlap the Nevada border and ensure that the values, beliefs and traditions of these tribes are incorporated.

New Provision 16:

The Museum Director, as defined in NRS 381.195(3), may issue permits for investigations, explorations, or excavations on private lands as required by NRS 381.196 or investigations, explorations, or excavations on federal or state lands or removals of any objects from state or federal lands as required by NRS 381.197 if the applicant for a permit meets the requirements contained in New Provision 20 and all the requirements of New Provisions 19, 20, and 21.

New Provision 17:

The Museum Director, as defined in NRS 381.195(3), must engage in notice to and consultation with the applicable Indian tribes when issuing permits pursuant to New Provision 19 and throughout the permitting process in the manner provided by NRS 381.0066, and considering the values, beliefs and

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traditions of the tribes. The Museum Director must engage in notice to and consultation with the applicable Indian tribes when repatriating cultural items pursuant to NRS 381.009(4) in the manner provided by NRS 381.0066. The Museum Director shall provide a disclosure to the applicable Indian tribes indicating that each tribe has the right to have their values, beliefs and traditions fully considered in the permitting process.

New Provision 18:

The Museum Director, as defined in NRS 381.195(3), must engage in notice to and consultation with the applicable Indian tribes in the manner provided by NRS 381.0066, ensuring that the values, beliefs and traditions of the tribes are fully considered when repatriating cultural items, associated funerary objects, unassociated funerary objects, objects of cultural patrimony, objects of cultural significance, or sacred objects pursuant to NRS 381.0066 to 381.0069, NRS 381.009, or NRS 381.195 to 381.227.

New Provision 19:

Affiliated tribes are defined as present-day tribes or groups that can be reasonably traced to a prehistoric Native American group pursuant to 25 U.S.C. § 3001, et seq., and/or 43 C.F.R. § 10.2(e)(1). Notice to and consultation with the applicable Indian tribes when required by NRS Chapter 381 and NAC Chapter 381 requires consultation with tribes, ensuring that the values, beliefs and traditions of the tribes are fully considered. Linkage between a prehistoric archaeological culture and present-day tribe is established through a preponderance of the evidence that reasonably leads to such a conclusion according to 43 C.F.R. § 10.2(e)(1).

New Provision 20:

The Museum Director recognizes that the intent of the Native American people at the time of a burial of ancestor was that this burial be the ancestor's final resting place with the intent that it not be disturbed by future generations. The intent of these regulations is to put procedures in place to set forth a permitting process as directed by the Legislature in NRS 381.196 and to balance the interest of the present-day Native American people and tribes with those of the private landowner.

A "Nevada Indian Burial Site Permit" is the permit issued by the Museum Director or his or her designee pursuant to NRS 381.196. This permit authorizes the holder(s) to excavate within the boundaries of a known prehistoric native Indian burial site on private land or state land. This permit may be issued by the Museum Director or his or her designee to archaeologists or archaeological companies possessing a Nevada Antiquities Permit and an approved archaeological treatment plan for the proposed excavation. The approved archaeological treatment plan for the proposed

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excavation must include a burial plan for treatment and repatriation of human remains or funerary objects in compliance with 25 U.S.C. § 3001, et seq. and 43 C.F.R. § 10. Applicants for this permit must submit an application on the required form provided by the Museum Director and meet all of the requirements contained in NRS Chapter 381 and NAC Chapter 381 for this permit. These permits are issued for a period of one year, and may be renewed annually.

During the permitting process, specific determinations of affiliation and custody for Native American human remains and associated objects, will be made on a case-by-case basis, with the affiliated tribe. In areas of joint use, the Museum Director or his or her designee will consult with multiple tribes prior to determining the affiliated tribe.

Permits issued pursuant to this section will contain, at minimum, the following terms and conditions:

- 1. Excavation of Native American human remains and other cultural items will be conducted to ensure that human remains and other cultural items are treated with dignity and respect at all times.*
- 2. Excavators will avoid any unnecessary disturbance, physical modification, or separation of human remains and associated objects.*
- 3. The affiliated tribe may station an observer at the excavation site during excavations. The private landowner may be responsible for the costs incurred by the affiliated tribe to pay this observer.*
- 4. When human remains or other cultural items are found, the Authorized Tribal Representative will be notified and given the opportunity to inspect and review objects from the excavation in situ, when possible, for the purpose of identifying sacred objects and objects of cultural patrimony.*
- 5. When human remains or associated funerary objects are found, the Authorized Tribal Representative will be notified and may come to the excavation site to conduct a religious ceremony, after notifying the private landowner when that ceremony will occur.*
- 6. The permit holders and/or project archaeologists must ensure that the burial site is secured and not disturbed by the public during the excavation.*
- 7. Human remains and associated funerary objects will be repatriated to the affiliated tribe as soon as possible after they are respectfully removed from the ground and when the affiliated tribe is ready to accept them.*
- 8. Unless directed by the Authorized Tribal Representative, soil samples will not be collected from burial pits nor will any sediments in direct contact with the remains be collected.*
- 9. Unless directed by the Authorized Tribal Representative, the human remains or associated funerary objects shall not be consumptively tested.*

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10. *Human remains and associated funerary objects shall not be displayed to the public or the media, as required by NRS 383.180(3)(b).*
11. *Burial sites, excavations, human remains, and/or associated funerary objects should not be discussed with the public or the media, and discussions by project personnel as needed to conduct the excavation should only occur within a professional setting or at the excavation site.*
12. *Details for handling human remains, including containers, will be determined beforehand by the affiliated tribe in consultation with the permit holders and/or project archaeologists.*

Additional terms and conditions may be added by the Museum Director after consulting with the authorized tribal representatives from the affiliated tribe(s).

New Provision 21:

A “Nevada Antiquities Permit” is the permit issued by the Museum Director or his or her designee pursuant to NRS 381.197 and NRS 381.199. Applicants for this permit must submit an application on the required form provided by the Museum Director and include current curriculum vitae for the person in charge and the field director. A person in charge is the principal investigator, and the field director is responsible for the day-to-day conduct of fieldwork. More than one person may be designated in either role. A person in charge must meet the qualifications provided by the Secretary of the Interior’s Standards and Guidelines for Archaeology. A field director must demonstrate experience as a project field director overseeing day-to-day project supervision of crew chiefs and field crews. Crew chiefs are not eligible for a permit. Registration in the Register of Professional Archaeologists is recommended for field directors. Both persons in charge and field directors must have experience in Great Basin archaeology or Southwest archaeology, as applicable, included in their application and/or curriculum vitae. Experience must also reflect competence in the sub-region or counties where the individual will be working under the permit and experience working with Indian tribes. These permits are issued for a period of one year, and permit renewal requires submission of a new application and updated curriculum vitae for the person(s) in charge and the field director(s). The Museum Director or his or her designee will complete application review for permits or complete application review for permit renewals within thirty (30) days after receipt of a completed application.

New Provision 22:

When an application for a “Nevada Indian Burial Site Permit” is received, the Museum Director or his or her designee shall provide notice to and consultation with appropriate Indian tribes pursuant to NRS 381.0066 and

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New Provision 17, ensuring that the values, beliefs and traditions of the tribes are fully considered.

New Provision 23:

In addition to the requirements for notice to and consultation with affiliated tribes contained in NRS 381.0066, the Museum Director or his or her designee shall do the following when providing notice to and consultation with affiliated tribes:

- 1. Contact two individuals in authority with the tribe, including the Tribal Chair in writing, informing the tribe that they have the right to ensure that the values, beliefs and traditions of the tribe are fully considered in the process;*
- 2. Provide the tribe with thirty (30) days to respond to the communication. This time may be extended by the Museum Director or his or her designee for good cause shown;*
- 3. Make a second attempt to contact the tribe by sending a written communication to two individuals in authority with the tribe, including the Tribal Chair, informing the tribe that they have the right to ensure that the values, beliefs and traditions of the tribe is are fully considered in the process;*
- 4. Provide the tribe with ten (10) days to respond to that communication. This time may be extended by the Museum Director or his or her designee for good cause shown;*
- 5. Ask the tribe to provide the Museum Director or his or her designee, permit holder, and land owner direction on the disposition of human remains and funerary objects, if applicable, and a list of tribe authorized representatives, as defined in New Provision 2, to assist with excavation and other information required to ensure that the values, beliefs and traditions of the tribe is are fully considered in the process;*
- 6. A tribe's lack of response to the Museum Director or his or her designee will not be construed as a default in the process and does not require the Museum Director or his or her designee to approve the permit application;*
- 7. After completing these steps, the permit may be issued by the Museum Director, and, if the permit is issued, the excavation may proceed after ten (10) business days.*

New Provision 24:

If the Museum Director or his or her designee receives evidence that a person should have obtained a permit pursuant to NRS 381.196 before excavating a known prehistoric Indian burial site, he or she shall make a report to the appropriate law enforcement agency pursuant to NRS 381.221 so that an investigation and/or enforcement action may be initiated by that agency.

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New Provision 25:

The private landowner or the affiliated tribes may appeal the issuance or denial of a Nevada Indian Burial Site Permit to the Division Administrator within ten (10) business days after issuance or denial. If an appeal is filed, the excavation is stayed until the appeal is determined.

New Provision 26:

If a permit holder does not comply with the terms of the permit and the Museum Director or his or her designee has credible evidence of this failure to comply with the terms of the permit, the Museum Director or his or her designee may schedule a permit revocation hearing before the State of Nevada, Department of Administration, Hearings Division. The Museum Director or his or her designee will send notice of this hearing pursuant to the requirements of NRS Chapter 233B, NRS Chapter 622A, and NRS Chapter 622. A hearing held under this provision will be held according to the requirements of NRS Chapter 233B, NRS Chapter 622A, and NRS Chapter 622 for a contested case. Unless otherwise directed by the Museum Director or his or her designee, all work must stop after notice of the permit revocation hearing is received by the permit holder. The losing party in the permit revocation hearing shall pay the costs incurred in this hearing as charged by the Hearings Division.

New Provision 27:

If the Museum Director or his or her designee determines that the public health safety or welfare imperatively requires emergency action and incorporates a finding to that effect in an order, he or she may issue a summary revocation of a permit pursuant to NRS 233B.127(3). In this situation, the permit will be revoked immediately upon receipt of the Museum Director or his or her designee's order and a permit revocation hearing must be instituted and the matter determined within 45 days after the date of that order unless the parties mutually agree in writing to a longer period.

New Provision 28:

"Fully considered" as used in these regulations requires that information or a request will be incorporated unless a compelling circumstance exists which prevents its incorporation. If information or a request that is required to be fully considered is not incorporated, the applicable decision-maker must provide a written explanation of the information or request and the accompanying reason why it failed to be incorporated. This written explanation must be provided to the applicable tribe(s).