

## NAC Chapter 381 Draft Regulations Required by SB244

### 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, tribe authorized representatives on behalf of the tribe, 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:

*“Tribe authorized representatives” as used in this section refers to cultural specialists who are trained and authorized by the tribe 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” is a previously recorded prehistoric Native American archeological site where human remains, funerary objects, whether associated or unassociated, sacred objects, or objects of cultural patrimony with the Nevada Office of Historic Preservation, Nevada Cultural Resources Inventory pursuant to NRS 383.021.*

### 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, 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), “cultural item” means, as defined in 25 U.S.C. § 3001, et seq., human remains and associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony.*

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### 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).*

### 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 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 the 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*

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*of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe.*

### New Provision 12:

*As defined in 25 U.S.C. § 3001, et seq., “objects of cultural patrimony” means 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 and 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), 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 shall then determine whether the abandoned property is native Indian human remains or another cultural item of an Indian tribe as required by NRS 381.009(4).*
- 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 incorporated, and return the cultural item to the Indian tribe which has 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.*

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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 land that overlaps the Nevada border included the 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 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 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 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 considered when repatriating cultural items, associated funerary objects, unassociated funerary objects, objects of cultural patrimony, objects*

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*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 present-day tribes, ensuring that the values, beliefs and traditions of the tribes are considered. Linkage between a prehistoric archaeological culture and present-day tribe is established through a preponderance of the evidence based on geography, kinship, biology, archaeology, anthropology, linguistics, folklore, oral tradition, historical evidence, or other information or expert opinion that reasonably leads to such a conclusion according to 43 C.F.R. § 10.2(e)(1).*

### New Provision 20:

*A “Nevada Archeological 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. This permit may be issued by the Museum Director or his or her designee to archaeologists or archeological companies possessing a Nevada Antiquities Permit and an approved archaeological research design for the proposed excavation. The approved archaeological research design for the proposed 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.*

### 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 fields crews. Crew chiefs are not*

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*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 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 Archeological 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 New Provision 17, ensuring that the values, beliefs and traditions of the tribes are 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 is considered in the process;*
- 2. Provide the tribe with thirty (30) days to respond to the communication;*
- 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 considered in the process;*
- 4. Provide the tribe with ten (10) days to respond to that communication;*
- 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 considered in the process;*
- 6. After completing these steps, the permit may be issued by the Museum Director, and, if the permit is issued, the excavation may proceed.*