

LCB File No. T020-00

**PROPOSED TEMPORARY REGULATION OF THE
DIVISION OF FORESTRY OF THE
STATE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of Regulations
of the **Nevada Division of Forestry**

The Nevada Division of Forestry will hold a **Public Hearing at 1:30 p.m. on November 20, 2000, at the U.S. Geological Survey, Water Resources Division, Conference Room 223 A, 333 West Nye Lane, Carson City, Nevada.** The purpose of the hearing is to receive comments from all interested person regarding the adoption of regulations that pertain to chapter 527 of the Nevada Administrative Code.

In addition, **Public Workshops** to solicit input and comments from all interested persons are set for **7:00 p.m. on November 6, 2000, at Nevada Division of Forestry, 4747 West Vegas Dr., Las Vegas, NV;** and at **7:00 p.m. November 8, 2000 at Nevada Division of Forestry, 911 Falcon Lane, Elko, NV.**

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The Nevada Legislature has declared that the people of the State have an obligation to conserve and protect the various species of native flora which are threatened with extinction. The purpose of this regulation is to provide a program for the conservation, protection, restoration and propagation of endangered native plants and for the perpetuation of their habitats in accordance with NRS 527.260.

2. The text of the proposed regulation is attached hereto.

3. The estimated economic effect of the proposed regulation on the general public is minimal, though individuals intending to develop their property in a manner that would remove or destroy an endangered plant would be required to pay a fee for review of their application for a permit and may incur other costs related to any necessary mitigation of such impacts. The estimated economic effect of the proposed regulation on the construction and development business has potential to be more significant, depending the extent of the endangered plant population, if any, on the property to be developed, the scale of the intended development activities, and the mitigation activities, if any, that would be necessary. Such costs would involve paying a per acre fee for review of an application for a permit and the costs related to any necessary mitigation of the impacts to the endangered plants that would occur as a result of the development activities.

4. There will be costs to the agency to implement and enforce the proposed regulations, though the costs are difficult to estimate precisely, including review of permits for removal or destruction of endangered plants, assessment and inventory of plant populations on proposed

project sites, assistance to property owners in creating, implementing and overseeing of mitigation plans, development and implementation of management areas, and scientific research.

5. With respect to native Nevada flora that has been listed as an endangered or threatened species by the United States Fish and Wildlife Service pursuant to the Endangered Species Act there will be overlap with the federal law contained at 16 U.S.C. §§ 1531-1544 and the federal regulations promulgated thereto.

6. The proposed regulation establishes a new fee for review of applications for destruction or removal of endangered native flora.

Persons wishing to comment upon the proposed action of the Nevada Division of Forestry may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Nevada Division of Forestry, to the attention of Pete Anderson, 1201 Johnson St., Suite D, Carson City, Nevada 89706-3048. Written submissions must be received by the Nevada Division of Forestry on or before November 16, 2000. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Division of Forestry may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart St., Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Nevada Division of Forestry offices at 1201 Johnson St., Suite D, Carson City, Nevada; at 911 Falcon Lane, Elko, Nevada; at 4747 West Vegas Dr., Las Vegas, Nevada; and at the main public library for each Nevada county, for inspection and copying by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us/register/index.html>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Nevada Division of Forestry
4747 West Vegas Dr.
Las Vegas, NV 89108

Tonopah Public Library
171 Central Street
Tonopah, NV 89049

Nevada Division of Forestry
911 Falcon Lane
Elko, NV 89802

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419

Nevada Division of Forestry
1201 Johnson St. Ste. D
Carson City, NV 89706

Storey County Library
95 South R Street
Virginia City, NV 89440

Department of Conservation & Natural Resources
123 W. Nye Lane
Carson City, NV 89701

Churchill County Library
5553 S. Maine Street
Fallon, NV 89406

Clark County Library
833 Las Vegas Blvd., North
Las Vegas, NV 89101

Elko County Library
720 Court Street
Elko, NV 89801

Goldfield Public Library
Fourth & Crook Street
Goldfield, NV

Eureka Branch Library
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Lincoln County Library
93 Main Street
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
Hawthorne, NV 89415

Washoe County Library
301 South Center
Reno, NV 89505

White Pine County Library
950 Campton Street
Ely, NV 89301

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Carson City Library
900 N. Roop Street
Carson City, NV 89701

Douglas County Library
P.O. Box 337
Minden, NV 89423

STATE OF NEVADA
PROPOSED REGULATION OF THE DIVISION OF FORESTRY

NOTE: Matter in *italics* is new; matter within brackets [] is to be omitted.

A Table of Contents Referencing the Sections Follows the Proposed Regulation

Authority: NRS 527.050, 527.260 through 527.300, and 472.

Purpose and Explanation:

With an unequivocally committed statement of purpose, the Legislature charged the State Forester of the Nevada Division of Forestry with developing and administering a program for the conservation, protection, restoration and propagation of native flora threatened with extinction and for the perpetuation of the habitats of such species. The governing statutes make it a crime to remove or destroy such threatened plants at any time or by any means except under a special permit issued by the State Forester. The statute also provides that the State Forester may establish, administer and manage areas for the conservation, protection, restoration and propagation of such threatened species and enter into cooperative agreements with any legal entity to accomplish such a purpose.

Section 1. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Best management practices” means measures, methods of operation, treatments, or practices which are reasonably designed to conserve, protect, restore or propagate native flora threatened with extinction and to perpetuate the habitats of such species and which are consistent with the best management practices in the particular field under applicable conditions.

Sec. 2. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Critically endangered native flora species” means the species and subspecies of native plants declared to be threatened with extinction and placed on the list of fully protected species of native flora by the State Forester pursuant to NRS 527.270, including the seeds, roots and other parts thereof.

Sec. 3. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Director” means the director of the department of conservation and natural resources.

Sec. 4. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Division” means the division of forestry in the department of conservation and natural resources.

Sec. 5. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Growth medium” means a material which is capable of supporting vegetation.

Sec. 6. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“List of fully protected species” means the list of critically endangered native flora species declared to be threatened with extinction which may not be removed or destroyed at any time by any means except under special permit issued by the State Forester.

Sec. 7. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Management area” means any area established pursuant to NRS 527.260 to 527.300, inclusive, for the conservation, protection, restoration or propagation of any plant on the list of fully protected native flora species.

Sec. 8. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

The “Nevada Natural Heritage Program” is the section of the department of conservation and natural resources that is responsible for conducting scientific research and analysis on species of native Nevada flora, maintaining records and data related thereto, and making recommendations to the State Forester regarding native plants that are threatened with extinction and the program authorized by NRS 527.260 to 527.300, inclusive.

Sec. 9. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Person” includes an individual, corporation, firm, partnership, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the federal government, of any state, municipality or political subdivision of a state.

Sec. 10. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Project” means all activities conducted in this state by a person on or beneath the surface of the land that may result in the removal or destruction of any plant on the list of fully protected species of native flora, including the seeds, roots or other parts thereof, or activities that may disturb any management area established for the conservation, protection, restoration or propagation of any plant on the list of fully protected species of native flora.

Sec. 11. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Scientific purposes” means the collection, sampling, testing or other scientifically based activity to further the knowledge and understanding of a plant on the list of fully protected species of native flora.

Sec. 12. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

The “State Forester” is the chief administrator of the division of forestry in the department of conservation and natural resources who is responsible for protection and propagation of species of native plants that are threatened with extinction.

Sec. 13. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Take or taking” means to cut, destroy, mutilate, pick, remove or harm any plant on the list of fully protected species of native flora, to engage in any conduct that would reasonably result in the cutting, destruction, mutilating, picking, removing or harming of any plant on the list of fully protected species of native flora, or to attempt to engage in any such conduct.

Sec. 14. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

“Topsoil” means the material at or near the surface of the earth that has been modified and acted upon by natural, physical, chemical or biological agents in a manner that will allow it to support revegetation.

Sec. 15. NAC 527.010 is hereby amended to read as follows:

527.010 List of fully protected species *of native flora.*

The State Forester has declared the following species and subspecies of native plants to be critically endangered and threatened with extinction pursuant to NRS 527.270. Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. The State Forester will rely to the extent practicable on the International Code of Botanical Nomenclature.

<u>Arctomecon californica</u> , <i>Las Vegas bear poppy</i>	Torrey & Fremont
<u>Astragalus beatleyae</u> , <i>Beatley's milkvetch</i>	Barneby
<u>Astragalus geyeri</u> [Gray] var. <u>triquetrus</u> , <i>threecorner milkvetch</i>	(A. Gray) M.E. Jones
<u>Astragalus lentiginosus</u> Douglas var. <u>sesquimetalis</u> , <i>Sodaville milkvetch</i>	(Rydberg) Barneby
<i>Astragalus mohavensis</i> var. <i>hemigyris</i> , <i>halfring milkvetch</i>	(Clokey) Barneby
<u>Astragalus phoenix</u> , <i>Ash Meadows milkvetch</i>	Barneby
<u>Astragalus voder-williamsii</u> , <i>Osgood Mountains milkvetch</i>	Barneby
<u>Castilleja salsuginosa</u> , <i>Monte Neva paintbrush</i>	N. Holmgren
<u>Centaureum namophilum</u> , <i>spring-loving centaury</i>	Reveal, Broome & Beatley var.
<i>namophilum</i>	
<u>Cryptantha insolita</u> , <i>unusual cats-eye</i>	(MacBride) Payson
<i>Enceliopsis nudicaulis</i> var. <i>corrugata</i> , <i>Ash Meadows sunray</i>	(A. Gray) A. Nelson
<u>Eriogonum argophyllum</u> , <i>Sulpher Springs buckwheat</i>	Reveal
<u>Eriogonum ovalifolium</u> , [Nutt.] var. <u>williamsiae</u> <i>Steamboat buckwheat</i>	Reveal
<u>Eriogonum viscidulum</u> , <i>sticky buckwheat</i>	J.T. Howell
<u>Frasera gypsicola</u> , <i>Sunnyside green gentian</i>	(Barneby) D.M. Post
<u>Grindelia fraxino-pratensis</u> , <i>Ash Meadows gumplant</i>	Reveal
<i>Ivesia kingii</i> var. <i>eremica</i> , <i>Ash Meadows ivesia</i>	(Coville) Ertter

<u>Mentzelia leucophylla</u> [Bdg-] , <i>Ash Meadows blazingstar</i>	<i>Brandege</i>
<u>Nitrophila mohavensis</u> , <i>Amargosa niterwort</i>	Munz & Roos
<i>Opuntia whipplei var. multigeniculata</i> , <i>Blue Diamond cholla</i>	<i>(Clokey) Benson</i>
<u>Phacelia inconspicua</u> , <i>obscure scorpion plant</i>	<i>E.L. Greene</i>
<i>Polyctenium williamsiae</i> , <i>Williams combleaf</i>	<i>Rollins</i>
<u>Primula capillaris</u> , <i>Ruby Mountain primrose</i>	N. Holmgren & A. Holmgren
<u>Rorippa subumbellata</u> , <i>Tahoe yellowcress</i>	Rollins
<i>Spiranthes diluvialis</i> , <i>Ute lady's tresses</i>	<i>Sheviak</i>

Sec. 16. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Nevada Natural Heritage Program; consultation and recommendation; list of fully protected species of native flora

1. The Nevada Natural Heritage Program will establish and maintain a committee of qualified professionals to conduct scientific research and analysis of species of native Nevada flora and maintain records and data related thereto.

2. The Nevada Natural Heritage Program will lend its expertise to assist the State Forester in the development and administration of a program for the conservation, protection, restoration and propagation of a species or subspecies of native flora, subject to the approval of the director.

3. Whenever it determines that the existence of a species or subspecies of native flora is endangered and its survival requires assistance because of overexploitation, disease or other factors, or because its habitat is threatened with destruction, drastic modification or curtailment, the Nevada Natural Heritage Program will consult with the State Forester and

recommend that the species or subspecies be placed on the list of fully protected species of native flora.

4. The Nevada Natural Heritage Program will meet annually, or more frequently as necessary, to review its research and data and to consider:

(a) Whether any species or subspecies of native flora should be added to or removed from the list of fully protected native flora.

(b) Whether any component of the program administered by the State Forester for the conservation, protection, restoration and propagation of a species or subspecies of native flora could be added to, amended or improved, taking into consideration all relevant circumstances.

(c) Whether a management area for the conservation, protection, restoration and propagation of a species or subspecies of native flora should be established, or the boundaries of an existing management area should be altered, taking into consideration all relevant circumstances.

(d) Whether a permit should be issued or denied, or amended, or revoked in order to carry out the purposes of NRS 527.260 through 527.300, inclusive, when the division requests consultation as provided in sections 26, 31, 34 and 36 of this regulation.

4. Whenever it reaches a conclusion of the nature listed in subsection 3(a) through (c), inclusive, of this section, the Nevada Natural Heritage Program will consult with the State Forester and recommend the appropriate action. Whenever it consults with the division pursuant to subsection 3(d) of this section, it will provide its comments to the division in writing.

5. The Nevada Natural Heritage Program acts in an advisory capacity to the division and the State Forester and they are not bound by its recommendations.

Permits and Fees

Sec. 17. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Permit required before engaging in activity that may result in removal or destruction of any plant on list of fully protected native species; criminal offense for violation.

1. It is unlawful for any person, firm, company or corporation, or any of their agents, to cut, destroy, mutilate, pick or remove any plant on the list of fully protected species of native flora from any lands owned by or under the control of the state of Nevada or the United States without a special permit from the State Forester, except as otherwise provided in this section.

2. Every person, firm, company or corporation, or any of their agents, violating the provisions of this section is guilty of a public offense proportionate to the value of the plants, flowers, trees, seeds, roots or bulbs cut, destroyed, mutilated, picked or removed, and in no event less than a misdemeanor.

3. The State Forester and his representatives, public officials administering reserved and unreserved lands belonging to the United States and peace officers may enforce the provisions of this section.

4. The prohibitions of this section do not apply to state lands under the jurisdiction of the division of state parks of the department of conservation and natural resources. It is unlawful to cut, destroy, mutilate, pick or remove any flora on such state park lands except in accordance with regulations of the division of state parks.

Sec. 18. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Purposes for which a special permit may be issued.

The State Forester may issue a permit, under such conditions as he deems necessary or practicable, to a person, firm or other organization authorizing it to conduct a project that may involve the taking of any plant on the list of fully protected native species only when:

1. The proposed project is for scientific purposes and to enhance the propagation or survival of a plant on the list of fully protected species; or

2. The proposed project is an otherwise lawful activity and the proposed taking is incidental to, and not the purpose of, the project.

Sec. 19. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Conditions for issuance of a special permit; complete application and assumption of responsibility; fees; waiver of fees.

The State Forester may issue a permit to a person, firm or other organization, under such conditions as he deems necessary or practicable, including an agreement for establishing a management area, authorizing it to conduct a project that may involve the taking of any plant on the list of fully protected native species only when:

1. The applicant for a permit submits a complete application in the form designated by the State Forester that contains a detailed plan of the proposed project that meets the requirements set forth in sections 21 and 22 of this regulation, or if the project is to be conducted in whole or in part on public land, that meets the requirements of section 23 or 24 of this regulation, and specifies, without limitation:

(a) The impact which will likely result from such taking;

(b) That such taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(c) The best management practices that will be used to implement the proposed project so as to minimize and mitigate such impacts;

(d) The mitigation activities that will be performed and the best management practices that will be used to implement such mitigation activities; and

(e) That the applicant has adequate funding for the proposed project plan and mitigation activities.

2. An application must also include the applicant's certification:

(a) That the applicant assumes complete responsibility for the proposed plan and any impacts on plants on the list of fully protected species or their habitat;

(b) That the information submitted on the application is complete and accurate to the best of the applicant's knowledge and belief, and that the applicant understands that any false statement therein may result in suspension or revocation of a permit.

(c) That the applicant has read and is familiar with the regulations contained in sections 1 through 36, inclusive, of this regulation and the provisions of NRS 527, and that violation or non-compliance may subject the applicant to criminal penalties and revocation of any permit issued.

3. An application must also include a fee for processing the application of one hundred and fifty dollars (\$150.00) for each acre of the proposed project that contains any plant, seed, root or other part thereof, on the list of fully protected species or which constitutes the habitat of such a species.

(a) The minimum fee for processing an application is one hundred and fifty dollars (\$150.00).

Sec. 20. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Duration of permits; scope of permit authorization; limitation on issuance.

1. Unless a permit is revoked, or the permittee receives notice to cease activity pursuant to section 34 of this regulation , a permit is valid for the life of the project or until the termination date provided on the face of the permit, if any, whichever occurs first.

2. Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

3. In the case of permits issued to a governmental entity, a person is under the direct control of the permittee where the person is under the jurisdiction of the permittee and the permit provides that such person(s) may carry out the authorized activity.

4. The State Forester will not issue a permit to any person under the following circumstances:

(a) If the applicant or its agent has been found in violation of any law or regulation governing the practice of a licensed profession, been assessed a civil penalty, or been convicted of any criminal provision of any statute or regulation, relating to an activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility.

(b) If the applicant has failed to disclose material information required, or has made false statements of any material fact, in connection with his application.

(c) If the applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility.

(d) If the applicant or its agent has had a permit issued under the provisions of NAC 527 revoked within the preceding 3 years.

(e) If the division finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

Sec. 21. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

General information requirements on application for permit

1. An application must be submitted to the division in the form designated by the State Forester.

2. All applications must contain the following information:

(a) Applicant's full name, mailing address, telephone number(s), and,

1. If the applicant is an individual, the date of birth, drivers license number, and any business or institutional affiliation of the applicant related to the project for which the permit is requested; or

2. If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the president or principal officer and the registered agent for service of process; and

3. If the applicant is not the owner of the land on which the proposed project is to be executed, the landowner's full name, mailing address, telephone number(s), and,

1. If the landowner is an individual, the date of birth, drivers license number, and any business or institutional affiliation of the landowner related to the project for which the permit is requested; or

II. If the landowner is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the president or principal officer and the registered agent for service of process..

(b) A complete plan for the proposed project in accordance with the requirements of section 22 of this regulation, or if the project is to be conducted in whole or in part on public land, that meets the requirements of section 23 or 24 of this regulation,.

(c) A complete plan for the proposed mitigation activities in accordance with the requirements of section 22 of this regulation, or if the project is to be conducted in whole or in part on public land, that meets the requirements of section 23 or 24 of this regulation, including any mitigation activities proposed to be undertaken off the site of the project.

(d) An estimate of the cost of executing the project plan and mitigation activities.

Sec. 22. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Plan for the proposed project; plan for mitigation activities; contents required.

The project plan required to be submitted with an application for a permit must contain, without limitation:

1. A topographic map of the area of the project, including any areas for off-site areas for mitigation activities, depicting, without limitation:

(a) The boundaries of the area of the proposed project.

(b) The ownership of the surface rights of the land within the project area.

(c) All plants on the list of fully protected species of native flora, by species.

(d) The existing habitat of all plants on the list of fully protected species of native flora, designated by species .

(e) All other vegetation by species.

(f) Existing soils.

(g) The areas to be affected by the project in specific detail so that they can be located from the ground.

(h) The existing man-made features and disturbances, such as without limitation, surface facilities, wells, roads, drainage ways, fill material and fencing.

2. An estimate of the number of acres or square feet of plants on the list of fully protected species and its habitat affected by each type of man-made feature and disturbance.

3. The pre-disturbance and post-disturbance use of the land.

4. The best management practices and measures that will be used to minimize soil erosion and negative impacts to the surface and air during implementation of the proposed project plan and mitigation activities.

5. A plan for mitigation that contains, without limitation:

(a) Consideration of the pre-disturbance and post-disturbance use of the land.

(b) Assessment of the technical and economic practicability of the proposed techniques for mitigation.

(c) Assessment of the effectiveness of the proposed mitigation activities.

(d) Assessment of the annual precipitation, soils, topography, potential for erosion and other natural factors affecting proposed mitigation activities.

(e) Assessment of the potential for degradation, fragmentation and extirpation of any plant on the list of fully protected species of native flora resulting from implementation of the project.

(f) The specific activities proposed to mitigate and minimize the taking of a plant on the list of fully protected species, including without limitation:

I. A plan for the management of topsoil and growth medium.

II. A plan for transplantation or regeneration, including methodologies, locations, schedule, monitoring and reporting.

III. A plan for site protection, such as signing and fencing.

IV. A plan for education of employees, contractors and subcontractors.

V. The research and monitoring activities that will be conducted.

VI. Other strategies to be employed, such as without limitation, conservation easements, land exchanges or an agreement with the State Forester for a management area.

Sec. 23. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Proposed projects on public land administered by federal agency; substitution of plans for project and mitigation.

1. In lieu of the complete application for a permit required by section X of this regulation, the division will accept a plan approved by the Bureau of Land Management of the U.S. Dept. of Interior, the Forest Service of the U.S. Dept. of Agriculture, or another federal land management agency, only if:

(a) The project and mitigation activities will be implemented solely on land administered by the federal land management agency.

(b) The plan addresses all plants on list of fully protected species of native flora and their habitat that will be affected by the proposed project, including mitigation activities specifically directed to the listed species, so that it reasonably can be concluded that the federal agency's

review of the applicant's plan was substantially equivalent to the review the division would give an application submitted pursuant to section X of this regulation.

Sec. 24. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Proposed projects on both private and public land administered by federal agency; substitution of plans for project and mitigation; review of agreement with federal agency by division.

1. In lieu of the complete application for a permit required by section X of this regulation, the division will accept a plan approved by the Bureau of Land Management of the U.S. Dept. of Interior, the Forest Service of the U.S. Dept. of Agriculture, or another federal land management agency, only if:

(a) The project and mitigation activities will be implemented solely on land administered by the federal land management agency.

(b) The plan addresses all plants on list of fully protected species of native flora and their habitat that will be affected by the proposed project, including mitigation activities specifically directed to the listed species, so that it reasonably can be concluded that the federal agency's review of the applicant's plan was substantially equivalent to the review the division would give an application submitted pursuant to section X of this regulation.

(c) The federal agency enters into an agreement or memorandum of understanding with the division that provides for review by the division of those portions of the proposed project and mitigation activities taking place on private land to ensure they are in compliance with all applicable provisions of this regulation.

Sec. 25. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Proposed projects on public land administered by federal agency, or on private and public land; submission to division of new or amended plan.

When a person conducting a project approved by a federal land management, as provided in sections 23 and 24 of this regulation, submits a new or amended plan to the federal agency, the person must file a copy with the division so that the division can conduct its review concurrently with the review of the federal agency.

Sec. 26. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Consultation with Nevada Natural Heritage Program; solicitation of public comments by division.

1. In its sole discretion, the division may seek comments from the public on a proposed project that may involve the taking of any plant on the list of fully protected species before it issues a permit.

2. The division may solicit written comments or verbal comments from the public, or both, to the extent and in the manner it deems practicable and expedient to assist in its determination whether a proposed project is consistent with the program authorized by NRS 527.260 through 527.300, inclusive, taking into consideration the time and resources of the division.

2. The division will seek public comments on a proposed project if:

(a) The division determines that there is significant public interest in the proposed project, a particular plant of the list of fully protected species, or the habitat of such species, that will be affected by the proposed project; or

(b) The division otherwise deems it necessary to obtain public comment.

3. The division's solicitation and acceptance of public comment does not alter the criteria or procedure by which the division determines whether to grant or deny an application for a permit under these regulations. When the division is engaged in a specific activity to solicit or accept public comments, it will not take any action concerning an application, express any opinion related the merits of an application, or reach any decision whether to grant or deny a permit. The division's solicitation and acceptance of verbal public comment expressly does not constitute a hearing under the laws of Nevada.

Sec. 27. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Review of application for permit; time for provision of additional and supplementary information.

1. If the division requires additional information from an applicant in order to adequately review an application for a permit, the division will notify the applicant within 30 days of the division's receipt of the application. The notification will specify the additional information required by the division.

2. If the division requires supplementary information in addition to that provided by the applicant pursuant to subsection 1 of this section, the division will notify the applicant within 15 days of the division's receipt of the additional information. The division will specify the supplementary information required by the division.

Sec. 28. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Grant or denial of application for permit; notification; reconsideration of decision; procedure.

1. Within 30 days of receiving an application containing all information it deems necessary to determine whether issuance of a permit will be consistent with the purposes of NRS 527.260 through 527.300, inclusive, including all additional or supplementary information requested by the division, the division will notify an applicant in writing of its decision to:

(a) Grant a permit,

(b) Grant a permit under additional conditions, including, without limitation, establishing a management area; or

(c) Deny a permit.

2. The division will include in its written notification to the applicant the reasons for its decision and, if it grants a permit under conditions as provided in subsection 1(b) of this section, the additional conditions imposed on the permit.

3. Except as otherwise provided in this section, the division's revocation or amendment of a permit is solely in its discretion.

4. An applicant may request reconsideration from the State Forester of the division's denial or grant of a permit under additional conditions under this section by filing a request within 30 calendar days of receiving notification pursuant to subsection 2 of this section. The request for reconsideration must state the reasons why the applicant objects to the division's decision and may include supporting documentation.

5. The State Forester's review will be limited to the division's decision and reasons therefor; the application for the permit and any additional or supplementary material provided by the applicant pursuant to the division's request; the applicant's request for reconsideration of the division's decision and the reasons therefor, and supporting documentation, if any; comments of the Nevada Natural Heritage Program regarding the application, if any; comments from the public regarding the application, if any; and all other information or material submitted to the division by the applicant or received by the division during its review of the application.

6. The State Forester will notify the applicant in writing of his decision to uphold, deny or revise the division's action within 30 days.

7. The applicant may seek further reconsideration from the director by filing a written request within 15 calendar days of the date of the State Forester's decision. The director's reconsideration will be limited to the material reviewed by the State Forester. The director will notify the permittee in writing of his decision to uphold, deny or revise the division's action within 30 days.

8. The decision of the director is final and not subject to judicial review.

Sec. 29. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Time when obtaining of permit and payment of fees required.

A person must obtain a special permit from the State Forester and pay all fees required by this regulation before engaging in any activities that may result in the removal or destruction of any plant on the list of fully protected species of native flora, or that may disturb any management area established for the conservation, protection, restoration or propagation of any such plant.

Sec. 30. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Transfer of permit.

1. Except as otherwise provided in this section, permits are not transferable or assignable.

2. Permits may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the division determines that:

(a) The proposed transferee meets all the requirements of this regulation for holding a permit;

(b) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the project plan, mitigation plan, and administration of the management area, if any, and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements;

(c) The proposed transferee has provided such other information and assurances as the division determines is relevant to the processing of the submission requesting transfer or assignment of the permit; and

(d) A fee equivalent to that required for amendment of a permit is submitted with the submission requesting transfer or assignment, excepting any amount waived by the State Forester in accordance with the provisions of section X of this regulation.

Enforcement of Permits

Sec. 31. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Departure from approved project plan; request to amend permit; fees.

1. A permittee may not initiate or continue activities that depart from an approved project plan unless the division has granted an amendment to the project plan, except in the case of an emergency as defined in this section.

2. Where circumstances have changed so that a permittee desires to have any condition of his permit modified, the permittee must submit a full written justification and supporting information before the division will consider his request for amendment.

3. The division will notify the permittee of its determination to either deny or grant the requested amendment, in part or in full, and the reasons therefor, within 30 days of receiving the permittee's full justification and supporting materials. In its discretion, the division may consult with the Nevada Natural Heritage Program.

4. The fee for processing a request for amendment is equivalent to the fee for processing an application for a special permit. In its sole discretion, the division may waive a portion of the fee commensurate with the time required for the division to process such request.

5. The division reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that any such amendment of a permit is consistent with the purposes of the program authorized by NRS 527.260 to 527.300, inclusive. In its discretion, the division may consult with the Nevada Natural Heritage Program. In its discretion, the division may withdraw or alter the scope of an amendment after review of any response and supporting materials provided by the permittee within 15 calendar days of issuing a finding of necessity.

6. Except as otherwise provided in this section, the determination of the division regarding amendments to permits is solely in its discretion.

7. A permittee may seek reconsideration from the State Forester of the division's determination regarding amendment of a permit under this section by filing a written request within 15 calendar days of receiving notification pursuant to subsection 3 or 5 of this section.

8. The State Forester's reconsideration of the permittee's request for amendment will be limited to the permittee's request and written justification with supporting information provided pursuant to subsection 2 of this section, the division's determination and reasons therefor, and the comments of the Nevada Natural Heritage Program, if any. The State Forester's reconsideration of the division's amendment of a permit for just cause pursuant to subsection 5 of this section will be limited to the division's written finding of necessity, any response and supporting materials that were provided to the division by the permittee within 15 calendar days of the date the finding of necessity was issued, and the comments of the Nevada Natural Heritage Program, if any. The State Forester will notify the permittee in writing of his decision to uphold, deny or revise the division's determination within 30 days.

9. The permittee may seek further reconsideration from the director by filing a written request within 15 calendar days of the date of the State Forester's decision. The director's reconsideration will be limited to the material reviewed by the State Forester. The director will notify the permittee in writing of his decision to uphold, deny or revise the division's determination within 30 days.

10. The decision of the director is final and not subject to judicial review.

11. As used in this section, "emergency" means an unforeseen situation that arises during the actual execution of a specific project activity in which compliance with a provision of an approved project plan may result in bodily injury or in environmental damage not anticipated in the plan. "Emergency" does not include a situation where the bodily injury or

environmental damage that may result is reasonably foreseeable prior to initiation of the specific activity.

Sec. 32. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Consent to inspection by agents or employees of the division.

Any person accepting and holding a special permit under these regulations acknowledges the necessity for close regulation and monitoring of the permitted project by the division. By accepting such permit, the permittee consents to and shall allow entry by agents and employees of the division upon premises where the project or any off site mitigation activities are being conducted at any reasonable hour. Division agents or employees may enter such premises to inspect the location, and any books, records or permits required to be kept under the terms and conditions of a permit.

Sec. 33. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Inspection by division and federal agencies; submission and results to permittee.

1. The division may inspect a project to determine if it is in compliance with the terms and conditions of the permit and the status of the mitigation activities at any time during business hours. The division will give adequate notice to the permittee or its agent on the project site so that personnel of the permittee familiar with the permit and its requirements may be present at the inspection, unless the division deems it necessary to inspect the project without giving prior notice.

2. For projects conducted on public land or on both public and private land, the federal land management agency with jurisdiction and the division may inspect a project to determine

if it is in compliance with the terms and conditions of the permit and the status of the mitigation activities. The federal agency with jurisdiction will conduct inspections in accordance with its rules and procedures. The division will conduct its inspection during normal business hours and will give adequate notice to the permittee or its agent on the project site so that personnel of the permittee familiar with the permit and its requirements may be present at the inspection, unless the division deems it necessary to inspect the project without giving prior notice.

3. Interference or non-cooperation with a federal agency conducting or attempting to conduct an inspection of a project site will be deemed by the division to be a violation of these regulations.

4. The division will forward the results of any inspection to the permittee within 30 days of the inspector's completion of the report of his inspection.

Sec. 34. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Notice of non-compliance; requirement to cease activity under permit; cause for issuance; use of supplemental information; withdrawal of notice.

1. The division may issue a notice of non-compliance requiring the permittee to cease some or all activity under the permit if the division reasonably believes that:

(a) The permittee has failed to submit timely, accurate or valid reports as required by the division;

(b) The permittee has failed to pay any required fees, costs associated with agreement for administration of a management area, or assessed costs or penalties, whether or not reduced to judgment;

(c) The permittee has failed to comply with any term or condition of its permit or an agreement for administration of a management area, if any;

(d) The permittee is not in compliance with any applicable law or regulation or professional standard governing the conduct of the permitted activity;

(e) The permittee has conducted any activity that would disqualify it from obtaining a permit; or

(f) The permittee no longer holds the qualifications required for a permit.

2. The division, in determining whether to issue a notice of non-compliance to cease activity under a permit, may use any information that is relevant to the issue, including any prior conviction, report or finding of a professional licensing board or other government agency, or assessment of a civil penalty for any violation of any federal or state law or regulation governing the permitted activity. The division may also consider any prior permit revocation or suspension, notice of non-compliance, or any reports of federal, state or local officials. The division may consider all relevant facts or information available, and may make independent inquiry or investigation to verify information or substantiate qualifications asserted by the permittee. In its discretion, the division may consult with the Nevada Natural Heritage Program.

3. The division may, in its sole discretion, issue a notice of non-compliance without requiring the permittee to cease activity under the permit that is in full compliance with the permit. In a notice of non-compliance issued under this subsection, the division will specify the non-compliant activity that must be ceased, as well as the specific activity that may be continued. The division may impose additional terms and conditions on the activity that may be continued, if it deems necessary.

4. The division may, in its sole discretion, withdraw a notice of non-compliance if the permittee demonstrates that it has remedied the deficiency, or if the permittee agrees to a corrective plan of action that is approved by the division.

Sec. 35. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Revocation of permit; grounds.

1. A permit may be revoked for any of the following reasons:

(a) The permittee violates any provision of NRS 527 or NAC 527.

(b) The permittee fails to comply with any term or condition of its permit or an agreement for administration of a management area, if any.

(c) The permittee willfully violates any federal or state statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity.

(d) The permittee fails within 30 days to correct deficiencies that were the cause of a notice of non-compliance, unless the permittee is acting pursuant to a corrective plan of action approved by the division in accordance with subsection 4 of section 34 of this regulation.

(e) The permittee has conducted any activity that would disqualify it from obtaining a permit.

(f) The permittee no longer holds the qualifications required for a permit.

(g) A change occurs in the statutes or regulations authorizing the permit that prohibits the continuation of a permit.

(h) The population of the native plant on the list of fully protected species for which the permit is issued declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

Sec. 36. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Revocation of permit; grounds; procedure.

1. When the division believes there are valid grounds for revoking a permit, the permittee will be notified in writing of the proposed revocation by certified or registered mail. The notice will identify the reasons for the proposed revocation and the effective date of the revocation, which will be no less than 45 calendar days from the date the notice was sent to the permittee by certified or registered mail. The notice will inform the permittee of the right to object to the proposed revocation.

2. The division may also issue a notice of non-compliance and require the permittee to cease specific activity that is not in compliance with the laws or regulations relating to plants on the list of fully protected native species, the terms or conditions of the permit, an agreement for administration of a management area, or a corrective plan of action described in subsection 4 of section 34 of this regulation, pending the effective date of the revocation.

3. Upon receipt of the notice of proposed revocation, the permittee may file a written objection to the proposed revocation. Such objection must be in writing and signed by the permittee, must be filed within 15 calendar days of the date of the notice of proposed revocation, must state the reasons why the permittee objects to the proposed revocation, and may include supporting documentation.

4. The division will review the grounds set forth in the notice of proposed revocation and the permittee's written objection and supporting materials, if any, to determine whether revocation is consistent with the purpose of the program authorized by NRS 527.260 through 300, inclusive. In its review, the division may consider any information relevant to the issue, as provided in subsection 2 of section X of this regulation. In its discretion, the division may consult with the Nevada Natural Heritage Program.

5. On or before the effective date of the revocation set forth in the notice referred to in subsection 1 of this section, the division will notify the permittee by certified or registered mail that:

(a) The permit is revoked;

(b) The permit is amended; or

(c) The notice of proposed revocation is withdrawn;

and the reasons for its action.

6. Except as otherwise provided in this section, the division's revocation or amendment of a permit is solely in its discretion.

7. A permittee may request reconsideration from the State Forester of the division's revocation or amendment of a permit under this section by filing a request within 15 calendar days of receiving notification pursuant to subsection 5 of this section.

8. The State Forester's reconsideration will be limited to the permittee's written objection and supporting materials provided to the division pursuant to subsection 3 of this section, the division's action and reasons issued pursuant to subsection 5 of this section, and the comments of the Nevada Natural Heritage Program, if any. The State Forester will notify the

permittee in writing of his decision to uphold, deny or revise the division's action within 30 days.

9. The permittee may seek further reconsideration from the director by filing a written request within 15 calendar days of the date of the State Forester's decision. The director's reconsideration will be limited to the material reviewed by the State Forester. The director will notify the permittee in writing of his decision to uphold, deny or revise the division's action within 30 days.

10. The decision of the director is final and not subject to judicial review.

Petitions for change of regulations, declaratory orders and advisory opinions.

Authority: NRS 233B.100, 233B.110, and 233B.120.

Sec. 37. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

Petitions for adoption, amendment or repeal of regulation; petitions for declaratory orders and advisory opinions; disposition.

1. Any interested person who wishes to request that the State Forester adopt, file, amend, or repeal a regulation must submit a written petition on a form provided by the division or in a format that is substantially similar to that form. The petitioner must accompany his petition with relevant data, views and arguments in support of his petition, including but not limited to:

(a) The name and mailing address of the petitioner;

(b) The signature of the petitioner and the date the petition was signed;

(c) A statement of the reasons for the proposed adoption, amendment or repeal of the regulation;

(d) Petitioner's estimate of the economic effect of the regulation to be adopted, amended or repealed on the general public and the business that it regulates or will regulate, including the adverse and beneficial effects, and the immediate and long-term effects;

(e) Petitioner's estimate of the cost to the division for enforcement or implementation of the regulation to be adopted, amended or repealed;

(f) Petitioner's knowledge of regulations of other local, state or federal governmental agencies that overlap or duplicate the regulation to be adopted, amended or repealed, including specific reference to any such regulation; and

(g) A statement indicating whether the regulation to be adopted, amended or repealed establishes a new fee or increases, reduces or eliminates an existing fee.

2. Within 30 days after a petition is submitted, the State Forester will:

(a) Notify the petitioner in writing of his decision to deny the petition, including the reasons for the denial; or

(b) Initiate the adoption, amendment or repeal of the regulation in accordance with the procedures set forth in chapter 233B of NRS.

3. Any interested person who alleges that a statute, regulation or decision of the division interferes with or impairs, or threatens to interfere with or impair his legal rights or privileges, may submit a written petition to the State Forester for a declaratory order or an advisory opinion as to the applicability of the particular statute, regulation or decision.

4. Within 30 days after a petition for a declaratory order or an advisory opinion is submitted, the State Forester will:

(a) Notify the petitioner in writing of his decision to deny the petition, including the reasons for the denial; or

(b) Initiate preparation of a declaratory judgment or advisory opinion passing on the validity of the statute, regulation or decision to be mailed to the petitioner within the following 30 days.

5. A person alleging that a statute, regulation or decision of the division interferes with or impairs, or threatens to interfere with or impair his legal rights or privileges, may not seek declaratory relief pursuant to NRS 233B.110 until he has first petitioned the State Forester for a declaratory order or an advisory opinion as to the applicability of the particular statute, regulation or decision.

TABLE OF CONTENTS
Definitions: Section 1 through 14

Section 1. *“Best management practices”*

Sec. 2. *“Critically endangered native flora species”*

Sec. 3. *“Director”*

Sec. 4. *“Division”*

Sec. 5. *“Growth medium”*

Sec. 6. *“List of fully protected species”*

Sec. 7. *“Management area”*

Sec. 8. *The “Nevada Natural Heritage Program”*

Sec. 9. *“Person”*

Sec. 10. *“Project”*

Sec. 11. *“Scientific purposes”*

Sec. 12. *The “State Forester”*

Sec. 13. *“Take or taking”*

Sec. 14. *“Topsoil”*

Sec. 15. NAC 527.010 List of fully protected species **of native flora.**

Sec. 16. *Nevada Natural Heritage Program; consultation and recommendation; list of fully protected species of native flora*

Permits and Fees

Sec. 17. *Permit required before engaging in activity that may result in removal or destruction of any plant on list of fully protected native species; criminal offense for violation.*

Sec. 18. *Purposes for which a special permit may be issued.*

Sec. 19. *Conditions for issuance of a special permit; complete application and assumption of responsibility; fees.*

Sec. 20. *Duration of permits; scope of permit authorization; limitation on issuance.*

Sec. 21. *General information requirements on application for permit*

Sec. 22. *Plan for the proposed project; plan for mitigation activities; contents required.*

Sec. 23. *Proposed projects on public land administered by federal agency; substitution of plans for project and mitigation.*

Sec. 24. *Proposed projects on both private and public land administered by federal agency; substitution of plans for project and mitigation; review of agreement with federal agency by division.*

Sec. 25. *Proposed projects on public land administered by federal agency, or on private and public land; submission to division of new or amended plan.*

Sec. 26. *Consultation with Nevada Natural Heritage Program; solicitation of public comments by division.*

Sec. 27. *Review of application for permit; time for provision of additional and supplementary information.*

Sec. 28. *Grant or denial of application for permit; notification; reconsideration of decision; procedure.*

Sec. 29. *Time when obtaining of permit and payment of fees required.*

Sec. 30. **Transfer of permit.**

Enforcement of Permits

Sec. 31. *Departure from approved project plan; request to amend permit; fees.*

Sec. 32. *Consent to inspection by agents or employees of the division.*

Sec. 33. *Inspection by division and federal agencies; submission and results to permittee.*

Sec. 34. *Notice of non-compliance; requirement to cease activity under permit; cause for issuance; use of supplemental information; withdrawal of notice.*

Sec. 35. *Revocation of permit; grounds.*

Sec. 36. *Revocation of permit; grounds; procedure.*

Petitions for change of regulations, declaratory orders and advisory opinions.

Sec. 37. *Petitions for adoption, amendment or repeal of regulation; petitions for declaratory orders and advisory opinions; disposition.*