

**REVISED PROPOSED REGULATION OF THE
STATE FORESTER FIREWARDEN**

LCB File No. R056-01

September 25, 2001

EXPLANATION – Matter in *italics* is new; matter in brackets ~~{omitted material}~~ is material to be omitted.

AUTHORITY: §§1-31, NRS 527.050 and 527.300; §32, NRS 233B.100; §33, NRS 233B.120; §34, NRS 527.270; §35, NRS 527.050.

Section 1. Chapter 527 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Best management practices” means measures, methods of operation, treatments or practices that are:*

1. Reasonably designed to conserve, protect, restore and propagate species of native flora threatened with extinction, and to perpetuate the habitats of such species; and

2. Consistent with the best management practices in the particular field under the conditions applicable.

Sec. 4. *“Critically endangered species of native flora” 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. The term includes, without limitation, the seeds, roots or other parts of such plants.*

Sec. 5. *“Department” means the state department of conservation and natural resources.*

Sec. 6. *“Director” means the director of the department.*

Sec. 7. *“Division” means the division of forestry of the department.*

Sec. 8. *“List of fully protected species of native flora” means the list of critically endangered species of native flora that may not be removed or destroyed except pursuant to a permit issued by the state forester.*

Sec. 9. *“Management area” means any area established for the conservation, protection, restoration and propagation of any plant on the list of fully protected species of native flora.*

Sec. 10. *“Nevada natural heritage program” means the program within the department that is responsible for conducting scientific research and analysis on species of native flora, maintaining records and data related thereto, and making recommendations to the state forester regarding native plants that are threatened with extinction for purposes of the program authorized by NRS 527.260 to 527.300, inclusive.*

Sec. 11. *“Project” means all activities conducted in this state by a person on or beneath the surface of the land that could:*

1. *Result in the removal or destruction of any plant on the list of fully protected species of native flora, including, without limitation, the seeds, roots or other parts of such plants; or*

2. *Disturb any management area established for the conservation, protection, restoration and propagation of any plant on the list of fully protected species of native flora.*

Sec. 12. *“State forester” means the state forester firewarden.*

Sec. 13. *“Taking” means to:*

1. *Cut, destroy, mutilate, pick, remove or harm any plant on the list of fully protected species of native flora;*

2. 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

3. Attempt to engage in any such conduct.

Sec. 14. 1. The Nevada natural heritage program will:

(a) Establish and maintain a committee of qualified professionals to conduct scientific research and analysis of native flora;

(b) Maintain data and records related thereto; and

(c) Subject to the approval of the director, provide assistance to the state forester in the development and administration of a program for the conservation, protection, restoration and propagation of critically endangered species of native flora.

2. If the Nevada natural heritage program determines that the existence of a species or subspecies of native flora is endangered and the survival of that species or subspecies requires assistance because of overexploitation, disease or other factors, or because the habitat of the native flora is threatened with destruction, drastic modification or curtailment, the Nevada natural heritage program will notify the state forester and recommend that the species or subspecies of native flora be placed on the list of fully protected species of native flora.

3. The Nevada natural heritage program will meet at least once annually, and may meet at such further times as deemed necessary by the program, to review research and data concerning native flora, and to consider:

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

(b) Whether, under all relevant circumstances, 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 expanded, changed or otherwise improved.

(c) Whether, under all relevant circumstances, a management area should be established, or the boundaries of an existing management area should be altered.

(d) When the division requests consultation, whether a permit should be issued, denied, amended or revoked in order to carry out the provisions of NRS 527.260 to 527.300, inclusive.

4. If the Nevada natural heritage program makes comments or a recommendation pursuant to:

(a) Paragraph (a), (b) or (c) of subsection 3, the Nevada natural heritage program must notify the state forester of the comments or recommendation and any appropriate action regarding the comments or recommendation.

(b) Paragraph (d) of subsection 3, the Nevada natural heritage program must provide written comments to the division.

5. The state forester and the division are not bound by the comments or recommendations of the Nevada natural heritage program, which acts solely in an advisory capacity to the division and the state forester.

Sec. 15. Except as otherwise provided for state lands under the jurisdiction of the division of state parks of the department by NRS 527.050, a person must obtain a permit from the division and pay all fees, if any, required pursuant to section 17 of this regulation before engaging in any activities that may:

1. Result in the removal or destruction of any plant on the list of fully protected species of native flora; or

2. Disturb any management area established for any such plant.

Sec. 16. 1. The state forester may issue a permit, under such conditions as he deems necessary or practicable, to a person, firm or other organization authorizing the person, firm or other organization to conduct a project that may involve the taking of a plant on the list of fully protected species of native flora only if:

(a) The proposed project is for scientific purposes and enhances the propagation and survival of a plant on the list of fully protected species of native flora; or

(b) The proposed project involves an otherwise lawful activity and the proposed taking is incidental to, and not the purpose of, the project.

2. As used in this section, “scientific purposes” means the collection, sampling, testing or other scientific activity to further the knowledge and understanding concerning a plant on the list of fully protected species of native flora.

Sec. 17. 1. The state forester may issue a permit to a person, firm or other organization which authorizes the person, firm or other organization to conduct a project that may involve the taking of a plant on the list of fully protected species of native flora under such conditions as the state forester deems necessary or practicable, including, without limitation, an agreement for establishing a management area, only if the applicant submits a completed application on a form designated by the state forester that contains a detailed plan of the proposed project which satisfies the requirements set forth in sections 19 and 20 of this regulation or, if the project is to be conducted in whole or in part on public land, which satisfies the requirements of section 21 of this regulation, and specifies:

(a) The impact that will likely result from the 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 and mitigation activities that will be used to avoid, minimize and mitigate the impacts from such a taking during the implementation of the proposed project; and

(d) That the applicant has funds sufficient to complete the proposed project plan and mitigation activities.

2. An application must also include a certification by the applicant that:

(a) The applicant assumes complete responsibility for the proposed project plan, mitigation activities and any resulting impacts on plants on the list of fully protected species of native flora or the habitat of such plants;

(b) The information submitted on the application is complete and accurate to the best of the knowledge and belief of the applicant;

(c) The applicant understands that any false statement in the application may result in the suspension or revocation of a permit; and

(d) The applicant has read and is familiar with the provisions of chapter 527 of NRS and any regulations adopted pursuant thereto, and that violation of or noncompliance with applicable laws may subject the applicant to criminal penalties and revocation of a permit.

3. Except as otherwise provided in subsection 6, the fee for processing an application is \$150 for each acre of the proposed project which contains any plant on the list of fully protected species of native flora or which constitutes the habitat of such a species.

4. Except as otherwise provided in subsection 6, the minimum fee for processing an application is \$150.

5. The fee for processing an application is due when the application is approved and a permit is issued.

6. The state forester may, in his sole discretion, waive the fee for processing an application if a proposed project will be conducted:

(a) For the purpose of research;

(b) For a scientific purpose; or

(c) In the public interest.

7. Upon request, the division shall assist the applicant in assessment of the proposed project site and identification of necessary elements to be addressed in the application.

Sec. 18. *1. Unless a permit is revoked, or the permittee receives notice to cease activity pursuant to section 29 of this regulation, a permit is valid for the life of the project or until the termination date provided in the permit, if any, whichever occurs first.*

2. Except as otherwise stated in the permit, any person who is under the direct control of the permittee as an employee or otherwise 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 when the person is within the jurisdiction of the permittee and the permit provides that such a person may carry out the authorized activity.

4. The state forester may refuse to issue a permit to any person if:

(a) The applicant or its agent has been:

(1) Found in violation of any law or regulation governing the practice of a licensed profession;

(2) Assessed a civil penalty; or

(3) Convicted of any criminal provision of any statute or regulation,

FLUSH

relating to an activity for which the application is filed, if such violation, assessment or conviction evidences a lack of responsibility or that the applicant is not qualified to hold a permit.

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

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

(d) The applicant or his agent has had a permit issued pursuant to the provisions of NAC 527.010 and 527.020 and sections 2 to 31, inclusive, of this regulation, revoked within the 3 years preceding the application for a permit.

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

Sec. 19. 1. *An application must be submitted to the division on a form prescribed by the state forester.*

2. *Except as otherwise provided in section 21 of this regulation, an application must contain:*

(a) The full name, mailing address and telephone number of the applicant.

(b) If the applicant is a natural person, the date of birth, driver's license number, and any business or institutional affiliation of the applicant related to the project for which the permit is requested.

(c) 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 resident agent for service of process.

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

(1) If the landowner is an individual, any business or institutional affiliation of the landowner related to the project for which the permit is requested; or

(2) 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 resident agent for service of process.

(e) A complete plan for the proposed project that satisfies the requirements of:

(1) Section 20 of this regulation; or

(2) If the project is to be conducted in whole or in part on public land, section 21 of this regulation.

(f) A complete plan for the proposed mitigation activities, including, without limitation, proposed off-site mitigation activities of the project, that satisfies the requirements of:

(1) Section 20 of this regulation; or

(2) If the project is to be conducted in whole or in part on public land, section 21 of this regulation.

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

Sec. 20. 1. The project plan submitted with an application for a permit must contain:

(a) A topographic map of the area of the project and any off-site mitigation activities that identifies:

- (1) The boundaries of the area of the proposed project;*
 - (2) The ownership of the surface rights of the land within the project area;*
 - (3) The plants on the list of fully protected species of native flora, designated by species, within the project area;*
 - (4) The existing habitat of all plants, designated by species, on the list of fully protected species of native flora within the project area;*
 - (5) All other vegetation by community;*
 - (6) Existing soils to the extent the information is available;*
 - (7) The areas to be affected by the project in sufficient detail so that the areas can be located from the ground; and*
 - (8) The existing man-made features and disturbances, including, without limitation, surface facilities, wells, roads, drainage ways, fill material and fencing.*
- (b) An estimate of the number of acres or square feet of plants on the list of fully protected species of native flora and the habitat of such plants that are affected by each type of man-made feature and disturbance.*
- (c) A statement describing the predisturbance and postdisturbance use of the land within the project area.*
- (d) A statement describing 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.*
- (e) A plan for mitigation activities that includes, without limitation:*
- (1) Consideration of the predisturbance and postdisturbance use of the land within the project area.*

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

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

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

(5) 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.

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

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

(II) A plan for transplantation or regeneration, including, without limitation, details concerning methodologies, locations, schedules, monitoring and reporting.

(III) A plan for site protection, including, without limitation, signs and fencing.

(IV) A plan for educating employees, contractors and subcontractors.

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

(VI) Other strategies to be employed, including, without limitation, a conservation easement, a land exchange or an agreement with the state forester for a management area.

2. As used in this section:

(a) "Growth medium" means a material that is capable of supporting vegetation.

(b) "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 which will allow it to support revegetation.

Sec. 21. 1. Except as otherwise provided in subsection 2, in lieu of the project plan and mitigation activities plan required pursuant to section 19 of this regulation, the division will accept a plan approved by the Bureau of Land Management, United States Forest Service or another federal land management agency only if:

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

(b) The plan addresses the plants on the list of fully protected species of native flora and the habitat of such plants that will be affected by the proposed project, including, without limitation, mitigation activities specifically directed to the listed species, so that it reasonably can be concluded that the review of the plan by the federal agency was substantially equivalent to the review the division would give a plan submitted with an application pursuant to section 19 of this regulation.

2. In addition to the requirements of subsection 1, if the project and mitigation activities will be partly implemented on private land and partly on land administered by a federal land management agency, the federal agency must enter 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 occurring on private land to ensure the activities comply with NAC 527.010 and 527.020 and sections 2 to 31, inclusive, of this regulation.

3. When a person conducting a project approved by a federal land management agency submits a new or amended plan to the federal agency for review, the person shall file a copy of the new or amended plan with the division so that the division can conduct a review concurrently with the review performed by the federal agency.

Sec. 22. 1. *Before issuing a permit, the division, in its sole discretion, may seek comments from the public on a proposed project that may involve the taking of a plant on the list of fully protected species of native flora.*

2. The division may solicit written comments or verbal comments, or both, from the public to the extent and in the manner the division deems practicable and expedient to assist in determining whether a proposed project is consistent with the program authorized by NRS 527.260 to 527.300, inclusive.

3. The solicitation and acceptance of public comment by the division does not:

(a) Alter the criteria or procedure used by the division to determine whether or not to grant or deny an application for a permit; or

(b) Constitute a hearing.

Sec. 23. 1. *If the division requires additional information from an applicant to adequately review an application for a permit, the division shall notify the applicant within 30 days after the receipt of the application by the division. The notification must specify the additional information required by the division.*

2. If the division requires supplementary information in addition to that provided by the applicant in response to a request by the division pursuant to subsection 1, the division shall notify the applicant within 15 days after the receipt of the additional information by the division. The notification must specify the supplementary information required by the division.

Sec. 24. 1. *Within 30 days after receiving an application containing the information the division deems necessary to determine whether or not the issuance of a permit will be consistent with the purposes of NRS 527.260 to 527.300, inclusive, including, without*

limitation, all additional or supplementary information requested by the division, the division shall notify an applicant in writing that the division has:

(a) Granted the permit;

(b) Granted the permit subject to additional conditions, including, without limitation, establishing a management area; or

(c) Denied the permit.

2. The division shall include the reasons for the granting or denial of a permit in the written notification to the applicant. If the division grants a permit subject to additional conditions, the additional conditions imposed on the permit must be included in the written notification.

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

4. An applicant may request reconsideration from the state forester of the denial or granting of a permit by the division under additional conditions by filing a request within 30 days after receiving notification pursuant to subsection 1. The request for reconsideration must state the objections of the applicant to the decision of the division and the reasons for such objections, and may include supporting documentation.

5. The review of a request for reconsideration by the state forester must be limited to:

(a) The decision of the division and reasons of the division making such a decision;

(b) The application for the permit, and any additional or supplementary information provided by the applicant pursuant to the request of the division;

(c) The written request of the applicant for reconsideration of the decision of the division;

(d) Documentation provided by the applicant supporting the objections of the applicant, if any;

(e) Comments of the Nevada natural heritage program regarding the application, if any;

(f) Comments from the public regarding the application, if any; and

(g) All other information or material submitted to the division by the applicant or received by the division during the review of the application by the division.

6. The state forester will notify the applicant in writing of his decision to uphold, deny or revise the decision of the division within 30 days after the state forester receives the request for reconsideration from the applicant.

7. The applicant may seek further reconsideration of a denied application for a permit from the director by filing a written request within 15 days after the date of the decision of the state forester pursuant to subsection 6. A review of the written request for further reconsideration by the director must be limited to the material reviewed by the state forester. The director shall notify the permittee in writing of his decision to uphold, deny or revise the decision of the state forester within 30 days after the request for further reconsideration is filed with the director.

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

Sec. 25. 1. Except as otherwise provided in this section, a permit issued pursuant to NAC 527.010 and 527.020 and sections 2 to 31, inclusive, of this regulation is not transferable or assignable.

2. The division may approve the transfer or assignment, in whole or in part, of a permit upon the joint request for transfer or assignment by:

(a) The permittee and the proposed transferee; or

(b) In the case of a deceased permittee, the legal representative of the deceased permittee and the proposed transferee.

3. The division may approve a joint request for transfer or assignment of a permit if the proposed transferee:

(a) Satisfies the requirements for holding a permit;

(b) Has provided adequate written assurances that the transferee will:

(1) Provide sufficient funding for the project plan, mitigation plan and administration of the management area, if any; and

(2) Implement the relevant terms and conditions of the permit, including, without limitation, any outstanding minimization and mitigation requirements;

(c) Has provided such other information and assurances as the division determines are relevant to the processing of the joint request for transfer or assignment of the permit; and

(d) Has paid a fee equivalent to the fee required for an amendment of a permit, which fee is submitted with the joint request for transfer or assignment.

Sec. 26. 1. Except as otherwise provided in this section or in the event of an emergency, 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.

2. A permittee desiring to modify any condition of his permit must submit to the division:

(a) A request for amendment;

(b) A written statement that describes the facts supporting the requested amendment; and

(c) Any relevant information supporting the granting of the requested amendment.

3. The division shall notify the permittee concerning the granting or denial of the requested amendment, in part or in full, and the reasons therefor, within 30 days after

receiving the information required pursuant to subsection 2. The division may consult with the Nevada natural heritage program concerning any request for an amendment.

4. The fee for processing a request for amendment is equivalent to the fee for processing an application for a permit. The division, in its sole discretion, may waive a portion of the fee.

5. The division may amend a current permit for just cause at any time upon a written finding of necessity. Any such amendment of a permit must be consistent with the purposes of the program authorized by NRS 527.260 to 527.300, inclusive. The division may consult with the Nevada natural heritage program concerning the amendment of a permit.

6. The division may withdraw or alter the scope of an amendment after reviewing a response and supporting materials provided by a permittee that have been submitted to the division within 15 days after the division issues a finding of necessity.

7. Except as otherwise provided in this section, the determination of the division regarding an amendment to a permit is solely within its discretion.

8. A permittee may seek reconsideration from the state forester of the determination of the division regarding the amendment of a permit pursuant to this section by filing a written request for reconsideration within 15 days after receiving notification pursuant to this section.

9. The reconsideration by the state forester pursuant to this section must be limited to consideration of the request of the permittee, the written justification and the supporting information provided pursuant to subsection 2, the determination of the division and the reasons for such a decision, and the comments of the Nevada natural heritage program, if any. The reconsideration by the state forester of an amendment by the division of a permit for just cause pursuant to subsection 5 must be limited to the written finding of the division, any response and supporting materials that were provided to the division by the permittee within

15 days after 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 determination of the division within 30 days after the permittee submits a written request for reconsideration.

10. The permittee may seek further reconsideration from the director by filing a written request for further reconsideration within 15 days after the date of the decision of the state forester. The reconsideration by the director must be limited to the material reviewed by the state forester. The director shall notify the permittee in writing of his decision to uphold, deny or revise the determination of the state forester within 30 days after the permittee submits a written request for further reconsideration.

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

12. As used in this section, “emergency” means an unforeseen situation that arises during the actual execution of a specific activity for a project 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. The term does not include an activity involving potential bodily injury or environmental damage that is reasonably foreseeable before the initiation of the specific activity.

Sec. 27. 1. Any person accepting and holding a permit issued pursuant to NAC 527.010 and 527.020 and sections 2 to 31, inclusive, of this regulation shall be deemed to acknowledge the necessity for close regulation and monitoring of a project authorized by the division.

2. By applying for and holding such a permit, the permittee consents to and shall allow entry by agents and employees of the division upon the premises where the project or any off-site mitigation activities are being conducted at any reasonable hour. The agents or employees

of the division may enter such premises to inspect the location and any books, records or permits required to be kept pursuant to the terms and conditions of a permit issued by the division.

Sec. 28. 1. *The division may inspect a project site to determine:*

(a) If a permittee is operating in compliance with the terms and conditions of a permit issued by the division; and

(b) The status of mitigation activities.

2. For a project 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 the site is in compliance with the terms and conditions of a permit and the status of mitigation activities.

3. Unless the division deems it necessary to inspect the project without giving prior notice, the division shall give prior notice to the permittee or its agent at the project site so that personnel of the permittee familiar with the requirements of the permit can be present during the inspection. Unless the division deems it necessary to inspect a project at other hours, the division shall conduct inspections during normal business hours.

4. The failure to cooperate or interference by a permittee with a federal agency conducting or attempting to conduct an inspection of a project site shall be deemed to constitute a violation of NAC 527.010 and 527.020 and sections 2 to 31, inclusive, of this regulation.

5. The division shall forward a copy of the results of any inspection to the permittee within 30 days after the inspector completes the report of his inspection.

Sec. 29. 1. The division may issue a notice of noncompliance that requires a permittee to cease part or all of the activity authorized by a permit issued by the division if the division reasonably believes that:

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

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

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

(d) The permittee is not in compliance with any applicable law, regulation or professional standard governing the conduct or activities authorized by the permit;

(e) The permittee has engaged in any activity that would disqualify the permittee from obtaining the permit; or

(f) The permittee no longer has the qualifications required to hold the permit.

2. The division, in determining whether or not to issue a notice of noncompliance to cease activity authorized by the permit, may consider any information that is relevant to the issue, including, without limitation:

(a) Any prior conviction, report or finding of a professional licensing board or other governmental agency;

(b) The assessment of a civil penalty for any violation of any federal, state or local law or regulation governing the activity authorized by the permit; or

(c) Any prior revocation or suspension of a permit, notice of noncompliance, or any reports of federal, state or local officials.

3. The division may make an independent inquiry or investigation to verify information or substantiate qualifications provided by a permittee. The division, in its sole discretion, may consult with the Nevada natural heritage program.

4. The division may, in its sole discretion, issue a notice of noncompliance without requiring the permittee to cease all activities authorized by a permit if certain activities are in full compliance with the permit. A notice of noncompliance issued pursuant to this subsection must specify the noncompliant activity that must be ceased and the activities authorized by the permit that may be continued. The division may impose additional terms and conditions on the activities that may be continued by a permittee who receives a notice of noncompliance pursuant to this subsection.

5. The division may, in its sole discretion, withdraw a notice of noncompliance if the permittee demonstrates that he has remedied the deficiency, or if the permittee agrees to a corrective plan of action that is approved by the division.

Sec. 30. *A permit issued pursuant to the provisions of NAC 527.010 and 527.020 and sections 2 to 31, inclusive, of this regulation may be revoked if:*

1. The permittee violates any provision of this chapter or chapter 527 of NRS.

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

3. The permittee willfully violates any federal, state, tribal or local law or regulation in the United States or in another country that constitutes a violation of the conditions of the permit or of the laws or regulations governing the permitted activity.

4. The permittee fails to correct deficiencies that were the cause of a notice of noncompliance within 30 days after receipt of the notice, unless the permittee is acting pursuant to a corrective plan of action approved by the division.

5. The permittee has conducted any activity that would disqualify the permittee from obtaining a permit.

6. The permittee no longer has the qualifications required to hold a permit.

7. A change occurs in the laws authorizing the issuance of a permit that requires the revocation or discontinuation of such a permit.

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

Sec. 31. 1. *When the division believes there are valid grounds for revoking a permit, the permittee must be notified in writing of the proposed revocation by certified or registered mail. The notice must identify the reasons for the proposed revocation and the effective date of the revocation, which must be at least 45 days after the date the notice is sent to the permittee by certified or registered mail. The notice must inform the permittee of the right to object to the proposed revocation.*

2. Pending the effective date of the revocation of a permit, the division may also issue a notice of noncompliance and require the permittee to cease a specific activity that is not in compliance with:

(a) The laws or regulations relating to plants on the list of fully protected species of native flora;

(b) The terms or conditions of the permit;

(c) An agreement for administration of a management area; or

(d) A corrective plan of action.

3. Upon receipt of the notice of proposed revocation, the permittee may file a written objection to the proposed revocation that:

(a) Must be in writing and signed by the permittee;

(b) Must be filed within 15 days after the date of the notice of proposed revocation is mailed to the permittee;

(c) Must state the objections of the permittee to the proposed revocation and the reasons for such objections; and

(d) May include documentation supporting the objections of the permittee.

4. The division shall review the grounds set forth in the notice of proposed revocation, the written objection of the permittee and the supporting documentation, if any, to determine whether revocation is consistent with the provisions of NRS 527.260 to 527.300, inclusive, and NAC 527.010 and 527.020 and sections 2 to 31, inclusive, of this regulation. The division may consider any information relevant to the issue during such a review and, in its discretion, may consult with the Nevada natural heritage program.

5. On or before the effective date of the revocation set forth in the notice provided pursuant to subsection 1, the division shall notify the permittee by certified or registered mail that:

(a) The permit has been revoked;

(b) The permit has been amended; or

(c) The notice of proposed revocation is withdrawn,

and the reasons for the revocation, amendment or withdrawal.

FLUSH

6. *Except as otherwise provided in this section, the revocation or amendment of a permit is within the sole discretion of the division.*

7. *A permittee may request reconsideration from the state forester of the revocation or amendment of a permit by the division pursuant to this section by filing a request within 15 days after receiving notice pursuant to subsection 5.*

8. *The reconsideration by the state forester must be limited to:*

(a) *The written objection of the permittee and supporting materials provided to the division pursuant to subsection 3;*

(b) *The decision of the division and the reasons for such a decision issued pursuant to subsection 5; and*

(c) *The comments of the Nevada natural heritage program, if any.*

9. *The state forester will notify the permittee in writing of his decision to uphold, deny or revise the decision of the division within 30 days after receiving a written request for reconsideration from a permittee.*

10. *The permittee may seek further reconsideration from the director by filing a written request within 15 days after the date of the decision of the state forester. The director may review only the material reviewed by the state forester during any such reconsideration. The director shall notify the permittee in writing of his decision to uphold, deny or revise the decision of the division within 30 days after receiving a request for further reconsideration.*

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

Sec. 32. 1. *Any interested person may request that the state forester adopt, amend or repeal a regulation by submitting a written petition to the division on a form provided by the division or in a format that is substantially similar to that form. The petition must include:*

- (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) An estimate by the petitioner 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, without limitation, the adverse and beneficial effects, and the immediate and long-term effects;*
- (e) An estimate by the petitioner of the cost to the division for enforcement or implementation of the regulation to be adopted, amended or repealed;*
- (f) A statement concerning the regulations of other federal, state and local governmental agencies that overlap or duplicate the regulation to be adopted, amended or repealed, including, without limitation, a specific reference to any such regulation;*
- (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; and*
- (h) Any other relevant data, views and arguments in support of the petition.*

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 and 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.*

Sec. 33. 1. 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 regarding the applicability of the particular statute, regulation or decision.

2. 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 the preparation of a declaratory order or an advisory opinion concerning the validity of the statute, regulation or decision to be mailed to the petitioner within 30 days after the decision is reached.

3. 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 after he has petitioned the state forester for a declaratory order or an advisory opinion concerning the applicability of the particular statute, regulation or decision.

Sec. 34. NAC 527.010 is hereby amended to read as follows:

527.010 *1. The ~~following plants are~~ state forester has declared the following species and subspecies of native plants to be critically endangered and threatened with extinction ~~and are placed on the list of fully protected species:] pursuant to NRS 527.270:~~*

Arctomecon californica ~~[Torr. & Frem.]~~, Las Vegas bearpoppy Torrey & Fremont

~~[Astragalus beatleyae Barneby]~~

Astragalus geyeri ~~[Gray var. triquetris,] var. triquetrus,~~

Threecorner milkvetch

(A. Gray) M.E. Jones

Astragalus lentiginosus [~~Doug. var. sesquimetalis (Rydb.)~~] *Douglas var. sesquimetalis* ,
Sodaville milkvetch (Rydberg) Barneby

Astragalus mohavensis var. hemigyris, *Halfring milkvetch* (Clokey) Barneby

Astragalus phoenix , *Ash Meadows milkvetch* Barneby

Astragalus yoder-williamsii , *Osgood Mountains milkvetch* Barneby

Castilleja salsuginosa , *Monte Neva paintbrush* N. Holmgren

Centaurium namophilum , *Spring-loving centaury* Reveal, Broome &
Beatley [~~var. namophilum~~]

Cryptantha insolita [(MaeBr.)], *Unusual catseye* (MacBride) Payson

Enceliopsis nudicaulis var. corrugata, *Ash Meadows sunray* (A. Gray) A. Nelson

Eriogonum argophyllum , *Sulphur Springs buckwheat* Reveal

Eriogonum ovalifolium [Nutt.] var. *williamsiae* ,
Steamboat buckwheat Reveal

Eriogonum viscidulum , *Sticky buckwheat* J.T. Howell

Frasera gypsicola , *Sunnyside green gentian* (Barneby) D.M. Post

Grindelia fraxino-pratensis , *Ash Meadows gumplant* Reveal

Ivesia kingii var. eremica, *Ash Meadows ivesia* (Coville) Ertter

Mentzelia leucophylla [Bdg.], *Ash Meadows blazingstar* Brandegee

Nitrophila mohavensis , *Amargosa niterwort* Munz & Roos

Opuntia whipplei var. multigeniculata, *Blue Diamond cholla* (Clokey) Benson

Phacelia inconspicua , *Obscure scorpion plant* E.L. Greene

Polycatenium williamsiae, *Williams combleaf* Rollins

~~[Primula capillaris] N. Holmgren & A. Holmgren]~~

Rorippa subumbellata , Tahoe yellowcress

Rollins

Spiranthes diluvialis, Ute lady's tresses

Sheviak

2. The common names of species and subspecies of native flora listed in this section are provided for convenience and must not be relied upon for identification of any specimen due to the substantial variations in local usage of common names.

3. The state forester will rely to the extent practicable upon the International Code of Botanical Nomenclature (Saint Louis Code), 2000 edition, which is hereby adopted by reference, to describe the species and subspecies of native plants critically endangered and threatened with extinction. The publication may be purchased from Koeltz Scientific Books, P.O. Box 1360, D-61453 Königstein, Germany, for the price of \$40. The publication is also available, free of charge, from the International Association for Plant Taxonomy at the Internet address <<http://www.bgbm.fu-berlin.de/iapt/nomenclature/code/default.htm>>.

Sec. 35. NAC 527.020 is hereby amended to read as follows:

527.020 1. The state forester ~~firewarden~~ will use the following forms in administering the laws which provide for the protection of cacti and yucca:

- (a) Form A — Desert Flora Harvest Registration Form – Instructions and Definitions.
- (b) Form B — Desert Flora Shipping Permit.
- (c) Form C — Receipt for Desert Flora Tags.
- (d) Form D — Desert Flora Tag - Owner's Receipt.
- (e) Form E — Desert Flora Tags and Seals - How to Use.

2. These forms and permits may be obtained from the division . ~~[of forestry of the state department of conservation and natural resources.]~~