

**PROPOSED REGULATION OF THE
OFFICE OF HISTORIC PRESERVATION**

LCB File No. R027-06

May 3, 2006

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

AUTHORITY: §§1-22, NRS 383.440.

A REGULATION relating to the preservation of cultural resources; providing educational and professional requirements for persons engaging in archaeological work involving prehistoric and historic sites; establishing procedures for the identification, evaluation and protection of prehistoric and historic sites; establishing procedures for the implementation of projects involving prehistoric and historic sites; and providing other matters properly relating thereto.

Section 1. Chapter 383 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, 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 15, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Agreement” means an agreement with the Office entered into pursuant to NRS 383.430.*

Sec. 4. *“Cultural resources specialist” means a prehistoric archaeologist, historic archaeologist, architectural historian, historian or cultural anthropologist who:*

- 1. Meets the applicable requirements of section 18 of this regulation; and*
- 2. Is hired by a state agency or political subdivision to carry out activities concerning a prehistoric or historic site pursuant to this chapter.*

Sec. 5. *“Historic site” has the meaning ascribed to it in NRS 381.195.*

Sec. 6. *“Indian tribe” has the meaning ascribed to it in NRS 383.150.*

Sec. 7. *“Interested person” includes:*

1. *A natural person with an interest in a prehistoric or historic site;*
2. *An adjoining landowner to an area where a project or change in land use will occur;*

and

3. *Any city, county, district or other political subdivision of this State.*

Sec. 8. *“Office” means the Office of Historic Preservation of the Department of Cultural Affairs.*

Sec. 9. *“Political subdivision” has the meaning ascribed to it in NRS 383.410.*

Sec. 10. *“Prehistoric site” has the meaning ascribed to it in NRS 381.195.*

Sec. 11. *“Project” means a planned undertaking that:*

1. *Will be implemented on land acquired from the Federal Government; and*
2. *Arises from an agreement.*

Sec. 12. *“Proposal” means an agency description of a change in land use or project that includes:*

1. *A written description;*
2. *A map with boundaries indicating the lands affected; and*
3. *The location of proposed facilities or change in land use.*

Sec. 13. *“State agency” has the meaning ascribed to it in NRS 383.420.*

Sec. 14. *“State Register” means the State Register of Historic Places.*

Sec. 15. *“Treatment plan” means a plan to preserve and protect prehistoric and historic sites, and to mitigate the effects of a change in land use or project. The term includes, without limitation, the retrieval or implementation of:*

- 1. Data recovery;*
- 2. Historical photography;*
- 3. Oral history;*
- 4. Site rehabilitation;*
- 5. Historic markers;*
- 6. Exhibits;*
- 7. Interpretive brochures; or*
- 8. Publications.*

Sec. 16. *1. The Office hereby adopts by reference the Cultural Resource Inventory General Guidelines, January 1990 edition. A copy of the publication may be obtained free of charge from the United States Bureau of Land Management at the Internet address <http://www.nv.blm.gov/permits/GUIDE.WPF.htm> or by contacting the Bureau of Land Management, Nevada State Office, at 1340 Financial Boulevard, Reno, Nevada 89502, or by telephone at (775) 861-6400.*

2. If the publication adopted by reference in subsection 1 is revised, the Office will review the revision to determine its suitability for this State. If the Office determines that the revision is not suitable for this State, the Office will hold a public hearing to review its determination and give notice of that hearing within 90 days after the date of the publication of the revision. If, after the hearing, the Office does not revise its determination, the Office will give notice that the revision is not suitable for this State within 90 days after the hearing. If the Office

does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.

Sec. 17. *A state agency or political subdivision that submits a proposal to the Office shall:*

- 1. Request the assistance of the Office in identifying interested Indian tribes or other interested persons;*
- 2. Notify the interested Indian tribes and other interested persons about the proposal;*
- 3. Request from the interested Indian tribes or other interested persons any information relating to concerns about the proposal;*
- 4. Request from each interested tribal official or other interested persons a list of prehistoric or historic sites located at the site of the proposal;*
- 5. Provide to the Office:*
 - (a) Documentation of all communications made pursuant to this section; and*
 - (b) Documentation of all responses received;*
- 6. Consult with the Office to define the area where any existing prehistoric or historic site eligible for inclusion in the State Register may be affected by the proposal;*
- 7. Determine what efforts, if any, are needed to identify prehistoric or historic sites not already identified in the area that may be affected by the proposal;*
- 8. Consult with the Office to determine the cultural resources specialists that are needed to identify and recommend prehistoric and historic sites for inclusion in the State Register;*
- 9. Take reasonable steps to ensure that any archaeologist involved in the proposal obtains a valid permit pursuant to NRS 381.197 and 381.199 before commencing any work on a prehistoric or historic site on state or federal lands;*

10. Take reasonable steps to ensure that cultural resources specialists comply with the surveying and reporting requirements of the Cultural Resource Inventory General Guidelines adopted by reference in section 16 of this regulation; and

11. Submit a report which indicates activities relating to the identification of prehistoric and historic sites to the Office for a 30-day review period. Reports that do not meet established guidelines must be returned to the state agency or political subdivision for amendment.

Sec. 18. *Cultural resources specialists selected by a state agency or political subdivision must meet required educational and professional qualifications in order to identify a prehistoric or historic site and to make recommendations to the Office regarding eligibility of an identified prehistoric or historic site for inclusion in the State Register. To be selected as a cultural resources specialist:*

1. A prehistoric archaeologist must have:

(a) A graduate degree in anthropology with a specialty in archaeology;

(b) At least 1 year of full-time professional experience in prehistoric archaeological research; and

(c) At least 4 months of supervised field and analytic experience in general North American archaeology.

2. A historic archaeologist must have:

(a) A graduate degree in anthropology with a specialty in archaeology;

(b) At least 1 year of full-time professional experience in historic archaeological research; and

(c) At least 4 months of supervised field and analytic experience in general American historic archaeology.

3. *An architectural historian must have:*

(a) *A graduate degree in architectural history, art history, historic preservation or a closely related field of study; or*

(b) *A baccalaureate degree in architectural history, art history, historic preservation or a closely related field of study and at least 2 years of full-time professional experience in research, writing or teaching.*

4. *A historian must have:*

(a) *A graduate degree in history or a closely related field of study; or*

(b) *A baccalaureate degree in history or a closely related field of study and at least 2 years of full-time professional experience in research, writing or teaching.*

5. *A cultural anthropologist must have:*

(a) *A graduate degree in anthropology with a specialty in applied cultural anthropology; and*

(b) *At least 2 years of full-time professional experience in the identification, evaluation, documentation and registration of sites of religious or cultural importance to an Indian tribe.*

Sec. 19. *A state agency or political subdivision shall determine the eligibility of a prehistoric or historic site identified in a proposal for inclusion in the State Register after reviewing all recommendations submitted by a cultural resources specialist based upon the eligibility requirements set forth in section 21 of this regulation, but only if the Office deems that sufficient data has been gathered to make such a determination. If the data is deemed insufficient, the Office will advise the state agency or political subdivision to gather additional data or to conduct a test excavation at the project site for further evaluation.*

Sec. 20. 1. *A state agency or political subdivision shall require its cultural resources specialists to prepare and execute a written test excavation plan before conducting a test excavation upon direction of the Office. A test excavation must be limited to disturbing not more than 25 percent of the surface area of the project site. In addition, the state agency or political subdivision shall:*

(a) Provide a copy of the test excavation plan to the Office for a 30-day review period before the test excavation commences;

(b) Incorporate comments from the Office into the final draft of the test excavation plan;

(c) Take steps to implement the test excavation plan;

(d) Make recommendations regarding the eligibility of the project site for inclusion in the State Register;

(e) Notify interested Indian tribes and other interested persons about the test excavation plan; and

(f) Request comments from interested Indian tribes and other interested persons regarding determinations made by the state agency or political subdivision relating to the project site.

2. *A state agency or political subdivision shall notify the Office of any communications received from interested Indian tribes or other interested persons that oppose a proposal before commencement of a test excavation plan and within the 30-day review period. The state agency or political subdivision shall also provide a copy of any such written communications to the Office.*

3. *The Office will review findings made by a state agency or political subdivision regarding the eligibility of a prehistoric or historic site for inclusion in the State Register at the end of the 30-day review period. The Office may agree or disagree with the findings, and*

the determination of the Office shall be deemed the final determination of whether the site is eligible for inclusion in the State Register.

Sec. 21. *A prehistoric or historic site is eligible for inclusion in the State Register if the site is 50 or more years old, the site is sufficiently intact to convey its historic significance and the site:*

- 1. Is associated with events that have made a significant contribution to the broad patterns of past history;*
- 2. Is associated with the lives of persons from the past;*
- 3. Displays the distinctive characteristics of a type, period or method of construction;*
- 4. Represents the work of a master;*
- 5. Possesses high artistic values;*
- 6. Represents a significant and distinguishable entity whose components may lack individual distinction; or*
- 7. Yields, or is likely to yield, important prehistorical or historical information.*

Sec. 22. *1. A state agency or political subdivision shall determine the effects of a proposal on prehistoric and historic sites eligible for inclusion in the State Register and whether those effects, if anticipated, may adversely alter one or more characteristics of a prehistoric or historic site that would affect the eligibility of the site for inclusion in the State Register.*

- 2. Actions with potential effects to be determined include:*
 - (a) Physical destruction of or damage to all or part of the site;*
 - (b) Alteration of a site, including restoration, rehabilitation, repair or maintenance not approved by the Office;*

(c) Introduction of visual, atmospheric or audible elements that diminish the integrity of the significant features of the site;

(d) Neglect of an object or property that causes its deterioration, except in cases where such neglect and deterioration are considered qualities of a site; or

(e) Transfer, lease or sale of the site out of ownership by the State without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the site.

3. A state agency or political subdivision shall provide copies of documentation that indicate its determinations regarding the effects or absence of effects on prehistoric or historic sites to interested Indian tribes and other interested persons for a 30-day review period before the commencement of a proposal.

4. A state agency or political subdivision shall notify the Office of any communications received from interested Indian tribes or other interested persons that disagree with the determinations of the state agency or political subdivision before commencement of a proposal and within the 30-day review period. The state agency or political subdivision shall also provide a copy of any such written communications to the Office.

5. If the Office disagrees with any determination that implementation of a proposal will not adversely affect a prehistoric or historic site, the Office shall direct the state agency or political subdivision to consult with the Office to determine if the effects may be avoided if the state agency or political subdivision implements avoidance procedures or redesigns the project. If the project can be redesigned to avoid adverse effects on a site:

(a) The redesign or changes must be documented with the Office; and

(b) The Office will send a letter to the state agency or political subdivision to confirm that the adopted avoidance procedures or redesign of the project is adequate to avoid adverse effects.

6. If implementation of a proposal will adversely affect the prehistoric or historic site and avoidance of such effects is not possible, the state agency or political subdivision shall:

(a) Direct its cultural resources specialist to prepare a treatment plan in accordance with the Cultural Resource Inventory General Guidelines adopted by reference in section 16 of this regulation to address adverse effects to the prehistoric or historic site;

(b) Ensure implementation and completion of a treatment plan after it has been authorized by the Office; and

(c) Submit documentation to the Office to confirm the implementation and completion of the treatment plan.

7. A state agency or political subdivision shall provide copies of documentation that indicate its determinations regarding the effects or absence of effects on prehistoric or historic sites to interested Indian tribes and other interested persons for a 30-day review period before commencement of a treatment plan.

8. A state agency or political subdivision shall notify the Office of any communications received from interested Indian tribes or other interested persons that disagree with the determinations of the state agency or political subdivision before commencement of a treatment plan and within the 30-day review period. The state agency or political subdivision shall also provide a copy of any such written communications to the Office.