

**PROPOSED REGULATION OF THE
DIVISION OF MUSEUMS AND HISTORY OF THE DEPARTMENT OF
CULTURAL AFFAIRS**

LCB FILE NO. R116-19I

**The following document is the initial draft regulation proposed
by the agency submitted on 12/13/2019**

New Provision 5:

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

New Provision 7:

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

New Provision 8:

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

New Provision 9:

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

New Provision 13:

- 1. After satisfying the requirements of NRS 381.009(1) and (2), title, including literary rights, to the abandoned property vests in the Division pursuant to NRS 381.009(3), and the Administrator or his or her designee will follow the guidance of a qualified specialist in determining whether the abandoned property is native Indian human remains or another cultural item of an Indian tribe as required by NRS 381.009(4). As used in this section, a qualified specialist must meet the Secretary of the Interior’s Standards for Archaeology and*

Historic Preservation, available at https://www.nps.gov/history/local-law/arch_stnds_9.htm. Destructive analysis, including DNA testing, will only be used as a last resort in making the determination required by this section.

- 2. If the abandoned property is native Indian human remains or another cultural item of an Indian tribe, the Administrator or his or her designee shall follow the repatriation process as defined in 25 U.S.C. § 3001, et seq., and provide the notice and consultation required by NRS 381.009(4), ensuring that the values, beliefs and traditions of the tribes are fully considered and incorporated when possible, and ensuring the return of the cultural item to the Indian tribe which has the closest cultural affiliation as set forth in 43 C.F.R. § 10.14, divesting the Division of title to the abandoned property, including literary rights. For purposes of this provision, “closest” does not mean merely geography, instead it is about the relationship between the tribe and the item and geography may be a factor in determining which tribe has the closest cultural affiliation, but is not the primary or only factor considered.*
- 3. If the abandoned property is not native Indian human remains or another cultural item of an Indian tribe, the Administrator or his or her designee shall accession the item or otherwise handle it in accordance with approved Division policy.*
- 4. For purposes of this section, “title” means the union of three elements: ownership, possession, and custody, and constitutes the legal right to control and dispose of property.*
- 5. “Cultural item,” “object of cultural significance,” and “sacred object” have the meanings ascribed to them in NRS 381.009(6).*

New Provision 18:

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