

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

LCB File No. R116-19

October 9, 2021

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

AUTHORITY: §§ 1-11, NRS 233B.040 and 381.009.

A REGULATION relating to historic preservation; providing that certain types of property cannot be deemed abandoned property; providing the manner in which the Administrator of the Division of Museums and History of the Department of Tourism and Cultural Affairs, or his or her designee, may determine if abandoned property is native Indian human remains or another cultural item of an Indian tribe for repatriation purposes; requiring the Administrator to seek to ensure that the values, beliefs and traditions of Indian tribes are fully considered and incorporated when consulting with an applicable Indian tribe and when repatriating native Indian human remains or another cultural item of an Indian tribe; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) authorizes each agency of the Executive Department of State Government to adopt reasonable regulations to aid it in carrying out the functions assigned to it by law; and (2) requires each agency to adopt such regulations as are necessary to the proper execution of those functions. (NRS 233B.040)

Existing law provides the manner in which the Division of Museums and History of the Department of Tourism and Cultural Affairs may acquire or repatriate property that is deemed abandoned property. (NRS 381.009) **Section 10** of this regulation provides that this existing law governing abandoned property does not apply to federal property, state property or tribal property.

If abandoned property is native Indian human remains or another cultural item of an Indian tribe, existing law requires the Administrator of the Division to return the human remains or other cultural item to the closest culturally affiliated Indian tribe in the manner provided by a repatriation process that is adopted in regulation, if a request for repatriation is made. Before repatriating such remains or items, the Administrator must provide certain notice and consult with each applicable Indian tribe. (NRS 381.009) **Section 11** of this regulation provides the

manner in which the Administrator, or his or her designee, will determine if abandoned property is native Indian human remains or another cultural item of an Indian tribe for repatriation purposes. Specifically, **section 11** requires the Administrator or his or her designee to employ a qualified specialist to determine if the abandoned property is native Indian human remains or another cultural item of an Indian tribe. If the abandoned property is determined to be such remains or items, **section 11** requires the Administrator to: (1) provide notice to and consult with each applicable Indian tribe; (2) follow the repatriation process set forth in federal statute; and (3) seek to ensure that the values, beliefs and traditions of the applicable Indian tribe are fully considered and incorporated in the consultation and repatriation process. If the abandoned property is determined not to be such remains or items, **section 11** authorizes the Administrator or his or her designee to allow the abandoned property to become part of the collection of a museum or otherwise handle the property in accordance with the policies approved by the Division.

Section 1. Chapter 381 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 11, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Abandoned property” means any property deemed to be abandoned pursuant to NRS 381.009.*

Sec. 4. *“Destructive analysis” means an analysis performed using scientific or technological techniques to evaluate the properties of a material, component or system that may cause damage to such material, component or system. Such analysis includes, without limitation, a test that uses deoxyribonucleic acid extracted from the cells of a person.*

Sec. 5. 1. *“Federal property” means property that is:*

(a) Found on or removed from public lands; and

(b) Owned by the Federal Government.

2. *As used in this section, “public lands” means:*

(a) Lands which are owned and administered by the United States as part of:

- (1) The National Park System;*
- (2) The National Wildlife Refuge System;*
- (3) The National Forest System; or*
- (4) The Bureau of Land Management; and*

(b) 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.

Sec. 6. *“Indian tribe” has the meaning ascribed to it in NRS 383.011.*

Sec. 7. *1. “State property” means property that is:*

- (a) Found on or removed from state land; and*
- (b) Owned by this State.*

2. As used in this section, “state land” has the meaning ascribed to it in NRS 383.425.

Sec. 8. *1. “Tribal property” means property that is:*

- (a) Found on or removed from Indian lands; and*
- (b) Owned by an Indian tribe.*

2. As used in this section, “Indian lands” means land of an Indian tribe, or a person who is Indian, which is 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 a person who is Indian.

Sec. 9. *“Values, beliefs and traditions of the applicable Indian tribe” means the values, beliefs and traditions of the applicable Indian tribe, as defined by the applicable Indian tribe.*

Sec. 10. *The provisions of NRS 381.009 do not apply to federal property, state property or tribal property.*

Sec. 11. 1. To determine if abandoned property is native Indian human remains or another cultural item of an Indian tribe for the purposes of subsection 4 of NRS 381.009, the Administrator or his or her designee will employ a qualified specialist to determine if the abandoned property is native Indian human remains or another cultural item of an Indian tribe.

2. A qualified specialist may use destructive analysis only as a last resort, as determined by the Administrator or his or her designee in consultation with the applicable Indian tribes, in making his or her determination pursuant to subsection 1.

3. For the purpose of establishing a repatriation process pursuant to paragraph (c) of subsection 4 of NRS 381.009, if the abandoned property is determined to be native Indian human remains or another cultural item of an Indian tribe pursuant to subsection 1, the Administrator or his or her designee will:

(a) Provide notice to and consult with each applicable Indian tribe as required pursuant to NRS 381.009;

(b) Follow the repatriation process set forth in 25 U.S.C. § 3001, et seq.; and

(c) Seek to ensure that the values, beliefs and traditions of the applicable Indian tribe are fully considered and incorporated in the consultation and repatriation process.

4. To fully consider and incorporate the values, beliefs and traditions of the applicable Indian tribe pursuant to paragraph (c) of subsection 3, the Administrator will incorporate any information or requests from the applicable Indian tribe unless a compelling circumstance prevents such incorporation. If a compelling circumstance prevents such incorporation, the Administrator will:

(a) Consult with the applicable Indian tribe; and

(b) After consulting with the applicable Indian tribe pursuant to paragraph (a), provide to the applicable Indian tribe a written explanation that explains why such information or requests were not incorporated.

5. The repatriation process described in subsection 3 divests the Division of title to the abandoned property, including literary rights, in the native Indian human remains or another cultural item of an Indian tribe.

6. If the abandoned property is determined not to be native Indian human remains or another cultural item of an Indian tribe pursuant to subsection 1, the Administrator or his or her designee may:

(a) Allow the abandoned property to become part of the collection of a museum; or

(b) Otherwise handle the property in accordance with the policies approved by the Division.

7. As used in this section:

(a) “Cultural item” has the meaning ascribed to it in NRS 381.009.

(b) “Qualified specialist” means a person who satisfies the applicable Professional Qualifications Standards promulgated by the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation that are available at the Internet address http://www.nps.gov/history/local-law/arch_stnds_9.htm.