

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

LCB FILE NO. R096-22I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/13/2022**

**PROPOSED ADMINISTRATIVE REGULATION OF THE NEVADA
DIVISION OF FORESTRY
Nevada Administrative Code Chapter 527**

GENERAL PROVISIONS

Section 1. NAC 527.010 List of fully protected species of native flora. (NRS 527.050, 527.270)

1. The State Forester Firewarden has declared the following species and subspecies of native plants to be critically endangered and threatened with extinction pursuant to NRS 527.270:

<i>Arctomecon californica</i> , Las Vegas bearpoppy	Torrey & Fremont
<i>Astragalus geyeri</i> var. <i>triquetrus</i> , Threecorner milkvetch	(A. Gray) M.E. Jones
<i>Astragalus lentiginosus</i> Douglas var. <i>sesquimetralis</i> , Sodaville milkvetch	(Rydberg) Barneby
<i>Astragalus phoenix</i> , Ash Meadows milkvetch	Barneby
<i>Astragalus yoder-williamsii</i> , Osgood Mountains milkvetch	Barneby
<i>Castilleja salsuginosa</i> , Monte Neva paintbrush	N. Holmgren
<i>Centaureum namophilum</i> , Spring-loving centaury	Reveal, Broome & Beatley
<i>Cryptantha insolita</i> , Unusual catseye	(MacBride) Payson
<i>Enceliopsis nudicaulis</i> var. <i>corrugata</i> , Ash Meadows sunray	(A. Gray) A. Nelson
<i>Eriogonum argophyllum</i> , Sulphur Springs buckwheat	Reveal
<i>Eriogonum diatomaceum</i> , Churchill Narrows buckwheat	Reveal, J. Reynolds & Picciani
<i>Eriogonum ovalifolium</i> var. <i>williamsiae</i> , Steamboat buckwheat	Reveal
<i>Eriogonum viscidulum</i> , Sticky buckwheat	J.T. Howell
<i>Frasera gypsicola</i> , Sunnyside green gentian	(Barneby) D.M. Post
<i>Grindelia fraxino-pratensis</i> , Ash Meadows gumplant	Reveal
<i>Ivesia kingii</i> var. <i>eremica</i> , Ash Meadows ivesia	(Coville) Ertter
<i>Ivesia webberi</i> , Webber ivesia	A. Gray
<i>Mentzelia leucophylla</i> , Ash Meadows blazingstar	Brandege
<i>Nitrophila mohavensis</i> , Amargosa niterwort	Munz & Roos
<i>Opuntia whipplei</i> var. <i>multigeniculata</i> , Blue Diamond cholla	(Clokey) Benson
<i>Phacelia inconspicua</i> , Obscure scorpion plant	E.L. Greene
<i>Polyctenium williamsiae</i> , Williams combleaf	Rollins
<i>Rorippa subumbellata</i> , Tahoe yellowcress	Rollins
<i>Spiranthes diluvialis</i> , 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 Firewarden will rely to the extent practicable upon the *most recent edition of the International Code of [Botanica!] Nomenclature for algae, fungi, and plants*

~~[(Saint Louis Code), 2000 edition,] as amended periodically by the International Botanical Congress,~~ which is hereby adopted by reference, to ~~[describe]~~ *determine the correct scientific name(s) and synonym(s) of* the species and subspecies of native plants critically endangered and threatened with extinction. The *International Code of Nomenclature for algae, fungi, and plants* publication ~~[may be purchased from Koeltz Scientific Books, P.O. Box 1360, D-61453 Königstein, Germany, for the price of \$52. 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. 2 NAC 527.110 “Nevada *Division of Natural Heritage* ~~[Program]~~” defined. (NRS 527.050, 527.300) “Nevada *Division of Natural Heritage* ~~[Program]~~” means the ~~[program]~~ *division* within the Department that is responsible for conducting scientific research and analysis on species of native flora *and fauna*, 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.

CONSULTATION WITH NEVADA DIVISION OF NATURAL HERITAGE ~~[PROGRAM]~~

Sec. 3 NAC 527.200 **Duties; ~~[meetings;]~~ recommendations.** (NRS 527.050, 527.270)

1. *The Nevada Division of 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]~~ *Continually review all relevant research and data concerning native flora.*

(b) *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, *by considering:*

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

(2) *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.*

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

(4) *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.*

(c) *Provide any recommendations pursuant to this subsection in writing to the State Forester.*

2. *Pursuant to paragraph (b)(1) of subsection 1, [H] if* the Nevada *Division of 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 *Division of 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 *Division of* Natural Heritage ~~[Program]~~, which acts solely in an advisory capacity to the Division and the State Forester.

PERMITS

Sec 4. NAC 527.250 Activities requiring permit. (NRS 527.050, 527.300) ~~[Except as otherwise provided for state lands under the jurisdiction of the Division of State Parks of the Department by NRS 527.050, a]~~ A person must obtain a permit from the Division and pay all fees, if any, required pursuant to NAC 527.270 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 5. NAC 527.360 Departure from approved project plan: Request to amend permit; fee; amendment by Division on finding of necessity; request for reconsideration by permittee; notification of decision of State Forester; further reconsideration; final decision by Director. (NRS 527.050, 527.300)

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 or her 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 *Division of 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 *Division of 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 *Division of 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 *Division of Natural Heritage [Program]*, if any. The State Forester will notify the permittee in writing of his or her 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 or her 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 5. NAC 527.460 Notice; written objection by permittee; review; decision by Division; request for reconsideration; decision of State Forester; further reconsideration; final decision of Director. (NRS 527.050, 527.300)

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 to 527.500, inclusive. 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.

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 *Division of* Natural Heritage ~~[Program]~~, if any.

9. The State Forester will notify the permittee in writing of his or her 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 or her 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.

PETITIONS *FOR AMENDING THE LIST OF FULLY PROTECTED SPECIES OF NATIVE FLORA*

Sec 6. NAC 527.550 Petition to ~~adopt,~~ amend ~~or repeal regulation~~ *the list of fully protected species of native flora*: Contents; notification of decision of State Forester. (NRS 233B.100)

1. Any interested person may request that the State Forester ~~adopt,~~ amend ~~or repeal a regulation~~ *the list of fully protected species of native flora* 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, *organization or affiliation*, 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~~, *including but not limited to:*

- (1) Location of the proposed native flora species and its habitat;*
- (2) Current status of native flora species and its habitat;*
- (3) Current status and changes in threats, extinction potential, protections, and conservation of the native flora species, including associated timeframes;*
- (4) Current status and changes regarding overexploitation, disease, or other factors threatening the survival of the species;*
- (5) Current status and changes regarding threatened destruction, drastic modification, or severe curtailment of habitat; and*
- (6) Any other known scientific information and/or data on the species.*

(d) An estimate by the petitioner of *all known direct adverse and/or beneficial economic effects* of the *amended* regulation ~~to be adopted, amended or repealed~~ on the general public and the business that it regulates or will ~~regulate~~ *otherwise impact* ~~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 *amended* regulation ~~to be adopted, amended or repealed~~;

(f) A statement concerning the regulations *or jurisdiction* of other federal, state and local governmental agencies that overlap or duplicate the *amended* regulation ~~to be adopted, amended or repealed~~, including, without limitation, a specific reference to any such regulation *or jurisdiction*;

~~-(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)]~~ (g) Any other *related data or relevant information* ~~[relevant data, views and arguments]~~ in support of the petition~~[,]; and~~

(h) *All information required in the petition under subsections (c) through (g) shall include applicable reference and/or citation.*

2. Within ~~[30]~~ 90 days after a petition is submitted, the State Forester will:

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

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

Sec 7. NAC 527.560 Petition for declaratory order or advisory opinion regarding statute, regulation or decision; notification of action taken by State Forester regarding petition; declaratory relief of NRS 233B.110. (NRS 233B.120)

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 or her 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]~~ 90 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 or her 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, the person's legal rights or privileges, may not seek declaratory relief pursuant to NRS 233B.110 until after he or she has petitioned the State Forester for a declaratory order or an advisory opinion concerning the applicability of the particular statute, regulation or decision.