

**PROPOSED REGULATION OF THE
STATE FORESTER FIREWARDEN**

LCB File No. R096-22

August 12, 2022

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

AUTHORITY: §§ 1-8, NRS 527.050 and 527.270; § 9, NRS 233B.120 and 527.050; § 10, NRS 527.050.

A REGULATION relating to native flora; establishing certain requirements for a person to submit a petition for the nomination of a species of native flora for inclusion on the list of fully protected species; revising certain provisions adopted by reference by the State Forester Firewarden relating to native flora; revising certain provisions relating to the assistance provided to the State Forester by the Division of Natural Heritage of the State Department of Conservation and Natural Resources; revising certain exceptions to the requirement to obtain a special permit from the State Forester; revising certain references to the Nevada Natural Heritage Program; revising certain provisions relating to a petition for a declaratory order or advisory opinion; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the State Forester Firewarden to place on a list of fully protected species any species or subspecies of native flora that the State Forester, after consultation with competent authorities, determines is endangered and its survival requires assistance. (NRS 527.270)

Section 1 of this regulation provides that any interested person may submit a petition to nominate a species of native flora for inclusion on the list of fully protected species. **Section 1** also: (1) sets forth the information and data that must be included on a petition for such a nomination; and (2) requires the State Forester to, not later than 90 days after receiving such a petition, deny the petition or initiate proceedings to include the species on the list.

Section 2 of this regulation revises the publication adopted by reference that the State Forester uses to determine the correct names and synonyms of the species and subspecies of native plants that are critically endangered and threatened with extinction.

Existing regulations establish certain responsibilities of the Nevada Natural Heritage Program relating to native flora. (NAC 527.110, 527.200) Assembly Bill No. 52 of the 2019 Legislative Session: (1) eliminated the Nevada Natural Heritage Program; (2) created the Division of Natural Heritage within the State Department of Conservation and Natural Resources; and (3) transferred the duties of the Program to the Division of Natural Heritage. (Assembly Bill No. 52, chapter 107, Statutes of Nevada 2019, at page 579; NRS 232.1366,

232.1369) **Section 3** of this regulation revises provisions relating to the Program to provide that the State Forester may request: (1) the assistance of the Division of Natural Heritage to review data and research on native flora and in developing and administering a program for the conservation, protection, restoration and propagation of critically endangered species of native flora; and (2) written recommendations from the Division of Natural Heritage on certain issues relating to native flora. **Sections 5-8** of this regulation make conforming changes to reflect the transfer of responsibilities from the Program to the Division of Natural Heritage. **Section 10** of this regulation repeals the obsolete definition of the Nevada Natural Heritage Program.

Existing law prohibits the removal or destruction of any flora on the list of fully protected species from any land in the State without a special permit issued by the State Forester. (NRS 527.050, 527.270) **Section 4** of this regulation removes an exception in existing regulations to the requirement to obtain a special permit for activities on state lands under the jurisdiction of the Division of State Parks of the Department in order to be consistent with relevant provisions of the Nevada Revised Statutes.

Existing regulations authorize an interested person to submit a petition to the State Forester for a declaratory order or advisory opinion regarding the applicability of a statute, regulation or decision and, within 30 days, the State Forester will deny the petition or initiate the preparation of the declaratory order or advisory opinion. (NAC 527.560) **Section 9** of this regulation increases the time within which the State Forester will respond to such a petition from 30 days to 90 days.

Section 1. Chapter 527 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Any interested person may submit to the State Forester a petition to nominate a species of native flora for inclusion on the list of fully protected species of native flora. A petition must be submitted on a form provided by the Division and must include, with specific references or citations, as applicable:

(a) The name, mailing address and organization or affiliation, if any, 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 nomination, which must include, without limitation:

(1) The location and habitat of the proposed species of native flora;

(2) The current status of the species of native flora and its habitat;

(3) Any changes in threats to the species of native flora, extinction potential of the species of native flora, protections afforded to the species of native flora and conservation of the species of native flora, including, without limitation, the associated timelines of such threats, extinction potential, protections and conservation;

(4) Any changes in the factors that threaten the survival of the species of native flora, including, without limitation, overexploitation and disease;

(5) Any changes in the habitat of the species of native flora, including, without limitation, threatened destruction or drastic modification to the habitat or severe curtailment of the habitat; and

(6) Any other known scientific information or data on the species of native flora;

(d) An estimate of all known directly adverse and beneficial economic effects of the proposed nomination;

(e) A statement concerning the jurisdiction and laws of federal, state and local governmental agencies that overlap or duplicate the proposed nomination, including, without limitation, specific references to any such jurisdiction or laws; and

(f) Any other relevant data or information.

2. Not later than 90 days after a petition to nominate a species of native flora is submitted to the State Forester pursuant to subsection 1, 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 process to include the species on the fully protected list of native flora.

Sec. 2. NAC 527.010 is hereby amended to read as follows:

527.010 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>sesquimetalis</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>Polypodium 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 ***and hereby adopts by reference*** the *International Code of ~~Botanical~~ Nomenclature ~~(Saint-Louis Code), 2000~~* ***for algae, fungi, and plants, 2018*** edition, ~~which is hereby adopted by reference,~~ ***and any subsequent edition issued by the International Association for Plant Taxonomy, or its successor organization, which has been approved by the State Forester Firewarden,*** to ~~describe~~ ***determine*** the ***correct names and synonyms of the*** species and subspecies of native plants critically endangered and threatened with extinction. ***Each new edition of the publication shall be deemed approved by the State Forester Firewarden, unless the edition is disapproved by the State Forester Firewarden within 60 days after the date of publication by the International Association for Plant Taxonomy, or its successor organization.*** The publication ~~may be purchased from Koeltz Scientific Books, P.O. Box 1360, D-61453 Königstein,~~

~~Germany, for the price of \$52. The publication~~ is ~~false~~ 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>~~ <https://www.iapt-taxon.org/nomen/main.php>.

4. The State Forester Firewarden will review each subsequent edition of the International Code of Nomenclature for algae, fungi, and plants to determine its suitability for this State. If the State Forester Firewarden determines that the most recent edition is not suitable, the State Forester Firewarden will hold a public hearing to review that determination. If, after the hearing, the State Forester Firewarden finally determines that the most recent edition is not suitable for this State, he or she will, within 30 days after that determination, give notice that the edition is not adopted by reference.

Sec. 3. NAC 527.200 is hereby amended to read as follows:

527.200 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~~, *or his or her designee, may:*

(a) Request the assistance of the Division of Natural Heritage of the Department:

(1) To review all relevant research and data concerning native flora; and

(2) Regarding 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; and~~

(b) Consult with the Division of Natural Heritage of the Department for written recommendations regarding whether:

(1) 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; †~~

(2) 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; †~~

(3) 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; and~~

(4) 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.} 2.~~ The State Forester and the Division are not bound by the comments or recommendations of the ~~{Nevada}~~ *Division of* Natural Heritage ~~{Program,}~~ *of the Department,* which acts solely in an advisory capacity to the Division and the State Forester.

Sec. 4. NAC 527.250 is hereby amended to read as follows:

527.250 ~~{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 527.340 is hereby amended to read as follows:

527.340 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~~ *Division of* Natural Heritage ~~Program~~ *of the Department* 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 or her 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 or her 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. 6. NAC 527.360 is hereby amended to read as follows:

527.360 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}~~ *of the Department* 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}~~ *of the Department* 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,}~~ *of the Department*, 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,}~~ *of the Department*, 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. 7. NAC 527.420 is hereby amended to read as follows:

527.420 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 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}~~ *Division of* Natural Heritage ~~{Program.}~~ *of the Department.*

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 or she has remedied the deficiency, or if the permittee agrees to a corrective plan of action that is approved by the Division.

Sec. 8. NAC 527.460 is hereby amended to read as follows:

527.460 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~~ *Division of* Natural Heritage ~~Program~~ *of the Department*.

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~~ *of the Department*, 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.

Sec. 9. NAC 527.560 is hereby amended to read as follows:

527.560 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.

Sec. 10. NAC 527.110 is hereby repealed.

TEXT OF REPEALED SECTION

527.110 “Nevada Natural Heritage Program” defined. (NRS 527.050, 527.300)

“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.