

DRAFT

# SHPO PROCEDURES FOR THE PROTECTION OF INDIAN BURIAL SITES



NEVADA  
**STATE HISTORIC  
PRESERVATION OFFICE**

Draft – 6/1/18

## TABLE OF CONTENTS

	Page
Burials or Cairns on Private Land .....	3
Burials or Cairns on Land Owned or Controlled by the State or its Political Subdivisions .....	5
Native American Individuals Submitted to the SHPO by: An Agency of Law Enforcement, a local Health Department, or other Agency of the State .....	7
Definitions .....	8
Current Statutes (Title 33, Chapter 383, selected sections).....	9
Specific Burial Protection Measures Requested by Tribal Governments .....	10

## PREHISTORIC BURIALS OR CAIRNS ON PRIVATE LAND

- A. A prehistoric burial or cairn is discovered on private property (not during lawful construction, mining, logging, or farming):

**Situation #1:** A person discovers a prehistoric burial or cairn and calls local law enforcement or the SHPO.

**SHPO response:** Once notified either by law enforcement, the person discovering the burial or cairn, or the landowner, the SHPO will:

- a) Prepare and send a formal letter to the Tribal Chair in both electronic and hard copy within one (1) working day of the notification. This letter will initiate consultation with the Tribe;
- and
- b) The certified letter will also identify a proposed date, time, and place for consultation with the landowner on the disposition of the burial or cairn.
- and
- c) recommend that unless deemed necessary by law enforcement, the burial or cairn should be left in place and protected from excavation, vandalism, or destruction until the process outlined in NRS 383.170.2 is complete.

**Situation #2:** An interested landowner calls local law enforcement, and notifies and requests the assistance of the SHPO.

**SHPO response:**

- a) The SHPO may recommend that unless deemed necessary by law enforcement, the burial should be left in place until the SHPO notifies Tribal representatives;
- and
- b) The SHPO assists the landowner to contact the Tribe that has the closest cultural affiliation to a burial site. Once contact has been made, the landowner may directly consult with the Tribe concerning the treatment and disposition of the burial site;
- and
- c) no additional SHPO action is required if the Tribe's recommendations are accepted.

**Situation #3:** Either the landowner or Tribal representatives request SHPO assistance to mediate a dispute relating to the treatment and disposition of a prehistoric burial site and any artifacts and human remains associated with the burial site.

**SHPO response:** The SHPO will contact both the landowner and the Tribal representatives to establish a date and time to meet and discuss options available to all parties.

## BURIALS OR CAIRNS ON PRIVATE LAND (contd.)

B. A prehistoric burial or cairn is discovered during lawful construction, mining, logging, or farming:

**SHPO response:** Once notified either by law enforcement, the person discovering the burial or cairn, or the landowner, the SHPO will:

a) Prepare and send a formal letter to the Tribal Chair in both electronic and hard copy within one (1) working day of the notification. This letter will initiate consultation with the Tribe;

and

b) The certified letter will also identify a proposed date, time, and place for consultation with the landowner;

and

c) recommend that unless deemed necessary by law enforcement, the burial or cairn should be left in place and protected from excavation, vandalism, or destruction until the process outlined in NRS 383.170.2 is complete.

BURIALS OR CAIRNS ON LAND OWNED OR CONTROLLED  
BY THE STATE OR ITS POLITICAL SUBDIVISIONS

A. A prehistoric burial or cairn is discovered (no project planned for the location):

**SHPO response:** Once notified either by law enforcement, the person discovering the burial or cairn, or the governmental agency responsible for managing or controlling the land, the SHPO will:

a) within five (5) working days of notification determine, in consultation with the agency responsible for the land, if the burial or cairn is in any danger of immediate destruction.

and

b) if no immediate destruction is foreseeable, the SHPO will notify the culturally affiliated Tribe of the discovery and the proposed use of the land within five (5) working days from the determination that there is no immediate danger of destruction.

or

c) if immediate destruction is possible, the SHPO will notify the Tribe with the closest cultural affiliation of the discovery within one (1) working day from the determination and the notification may include a description of any proposed efforts to protect the artifacts and human remains associated with the burial or cairn.

and

d) the SHPO may request that the governmental agency responsible for the land hire a professional archeologist to excavate the burial and remove all funerary objects and human remains associated with the grave under the supervision of the Tribe, at the Tribe's discretion, for subsequent reinterment.

and

e) the SHPO will ensure that the human remains and any funerary objects discovered during excavation are not subjected to scientific study unless no reasonable alternatives exist to determine which Tribe has the closest cultural affiliation to the remains and/or funerary objects;

and

f) the SHPO will ensure that nondestructive analysis on any other artifacts removed from the area immediately surrounding a prehistoric grave is only conducted with the explicit written consent of the Tribe, if identified;

and

g) if repatriation elsewhere on the public property will ensure preservation of the human remains, the SHPO may assist the public land manager and the Tribe to conclude the consultation, prepare the proposed location for repatriation, and ensure that any human remains and funerary objects are not separated when reinterred;

- A. A prehistoric burial or cairn is discovered during a project on land managed or controlled by an agency of the State or its political subdivisions:

**SHPO response:** Once notified either by law enforcement, the person discovering the burial or cairn, or the governmental agency responsible for managing or controlling the land, that a burial or cairn has been discovered during a project and/or is potentially endangered, the SHPO will:

a) Prepare and send a formal letter to the Tribal Chair in both electronic and hard copy within one (1) working day of the notification. This letter will initiate consultation with the Tribe;

and

b) The certified letter will also identify a proposed date, time, and place for consultation with the SHPO on the disposition of the burial or cairn. The date of the proposed meeting should be no more than ten (10) days and no fewer than three (3) working days after the date the letter was mailed to ensure arrival of the hard copy letter via regular mail;

and

c) The SHPO will ensure that the agreed resolution is incorporated into the project plans and any mitigation developed for the project.

NATIVE AMERICAN INDIVIDUALS SUBMITTED TO THE SHPO BY:  
AN AGENCY OF LAW ENFORCEMENT, A LOCAL HEALTH DEPARTMENT, OR OTHER  
AGENCY OF THE STATE

**Situation #1:** An agency or department notifies the SHPO that it has identified human remains in their custody to be that of a Native American individual or an individual suspected to be a prehistoric Native American from Nevada.

**SHPO response:** Once notified, the SHPO will:

- a) arrange for the remains to be transferred to SHPO custody within five (5) working days of the notification.  
and
- b) Prepare and send a formal letter to the Tribal Chair in both electronic and hard copy. This letter will initiate consultation with the Tribe;  
and
- c) The certified letter will also identify a proposed date, time, and place for consultation with the SHPO on possible repatriation of the individual;  
and
- d) While in SHPO's temporary custody, the individual's remains will be treated respectfully;  
and
- e) If the Tribal Chair or their designated representative, does not respond to the formal letter submitted under section 1.b above within sixty (60) calendar days of their receipt, the SHPO will both prepare a second notification letter and will call the Tribal Chair to determine if a consultation meeting is desired;  
and
- f) If there is no response from either the Tribal Chair, or their designated representative, to the second reminder letter within sixty (60) calendar days of their receipt, the SHPO will arrange for a respectful burial at the Lone Mountain Cemetery in a location designated for that purpose.

## DEFINITIONS

- Burial and/or Burial site:** means the area including and immediately surrounding the cairn or grave of a native Indian. (NRS 383.150(4)).
- Cairn:** means stones or other material placed in a pile as a memorial or monument to the dead. (NRS 383.150(1)).
- Cultural Affiliation:** means that there is a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present day Indian tribe and an identifiable earlier group which is associated with a particular artifact or site. (NRS 381.001(3)).
- Cultural Item:** means human remains, a funerary object, a sacred object or an object of cultural significance. (NRS 381.009(6)(a)).
- Cultural Resources:** means any objects, sites or information of historic, prehistoric, archeological, architectural or paleontological significance. (NRS 383.011(5)).
- Funerary Object:** means an object that, as a part of the death rite or ceremony of an Indian tribe is reasonably believed to have been placed with individual prehistoric native Indian human remains either at the time of death or later. (NRS 381.001(7)).
- Grave:** means an excavation for burial of a human body. (NRS 383.150(3)).
- Indian Tribe:** means any tribe, band, nation or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the United States to native Indians because of their status as native Indians. (NRS 383.011(9)).
- Nondestructive Analysis:** means analysis performed using scientific or technological techniques to evaluate the properties of a material, component, or system without causing damage. (NRS 383.150(5)).
- Prehistoric:** means before the middle of the 18th century. (NRS 381.195(4)).
- Prehistoric Site:** means any archeological or paleontological site, ruin, deposit, fossilized footprints and other impressions, petroglyphs and pictographs, habitation caves, rock shelters, natural caves, burial ground or sites of religious or cultural importance to an Indian tribe. (NRS 381.185(5)).
- Professional Archeologist:** means a person who holds a graduate degree in archeology, anthropology or a closely related field as determined by the Administrator. (NRS 383.150(6)).

**TITLE 33, CHAPTER 383**  
**CURRENT STATUTES FOR THE PROTECTION OF INDIAN BURIAL SITES**  
(selected sections)

**NRS 383.150 Definitions.** [Effective July 1, 2018.] As used in [NRS 383.150](#) to [383.190](#), inclusive, unless the context otherwise requires:

1. “Cairn” means stones or other material placed in a pile as a memorial or monument to the dead.
2. “Funerary object” has the meaning ascribed to it in [NRS 381.001](#).
3. “Grave” means an excavation for burial of a human body.
4. “Indian burial site” means the area including and immediately surrounding the cairn or grave of a native Indian.
5. “Nondestructive analysis” means analysis performed using scientific or technological techniques to evaluate the properties of a material, component or system without causing damage.
6. “Professional archeologist” means a person who holds a graduate degree in archeology, anthropology or a closely related field as determined by the Administrator.

(Added to NRS by [1989, 573](#); A [2017, 3545](#), effective July 1, 2018)

**NRS 383.160 Duties of Office of Historic Preservation.** [Effective July 1, 2018.] The Office shall:

1. Upon application by:
  - (a) An interested landowner, assist the landowner in contacting the Indian tribe which has the closest cultural affiliation to an Indian burial site and any artifacts and human remains associated with the site so that the landowner may directly consult with the Indian tribe, if any, concerning the treatment and disposition of the Indian burial site and any artifacts and human remains associated with the site; and
  - (b) Either party, mediate a dispute arising between a landowner and an Indian tribe relating to the treatment and disposition of an Indian burial site and any artifacts and human remains associated with the site.
2. In performing its duties pursuant to [NRS 383.150](#) to [383.190](#), inclusive, endeavor to:
  - (a) Protect Indian burial sites and any associated artifacts and human remains from excavation, vandalism and destruction; and
  - (b) In consultation with the closest culturally affiliated Indian tribe, provide for the sensitive treatment and disposition of Indian burial sites and any associated artifacts and human remains consistent with the planned use of land.
3. Determine which Indian tribe has the closest cultural affiliation to the Indian burial site and any artifacts and human remains associated with the site.

(Added to NRS by [1989, 575](#); A [1993, 1593](#); [2017, 3545](#), effective July 1, 2018)

**NRS 383.170 Procedure upon discovery of Indian burial site; permissible excavation; treatment of prehistoric native Indian human remains and funerary objects; exceptions.** [Effective July 1, 2018.]

1. Except as otherwise provided in subsections 2 and 3:
  - (a) A person who disturbs the cairn or grave of a native Indian through inadvertence while engaged in a lawful activity such as construction, mining, logging or farming or any other person who discovers the cairn or grave of a native Indian that has not been previously reported to the Office shall immediately report the discovery and the location of the Indian burial site to the Office.
  - (b) Upon receiving a report pursuant to paragraph (a), the Office shall immediately notify, in writing, and initiate consultation with any Indian tribe:
    - (1) Who is or is likely to be culturally affiliated with the Indian burial site;
    - (2) On whose aboriginal lands the Indian burial site was discovered; or
    - (3) Who is reasonably known to have a direct cultural relationship to the Indian burial site.
  - (c) The written notice must include a proposed time and place for the consultation with the Office.
  - (d) Except as otherwise provided in paragraph (e), within 10 days after the notice is given by the Office, the landowner shall consult with the Indian tribe which has the closest cultural affiliation to the Indian burial site, as determined by the Office, concerning the treatment and disposition of the site and all artifacts and human remains associated with the site. The Indian tribe may, with the permission of the landowner, inspect the site. Within 10 days after the inspection, if any, the Indian tribe may recommend an appropriate means for the treatment and disposition of the site and all artifacts and human remains associated with the site. Those recommendations may include, without limitation, that any human remains or artifacts associated with the site are:
    - (1) Preserved in place;
    - (2) Reinterred at another location that is determined in consultation with the Indian tribe which has the closest cultural affiliation to the human remains or artifacts associated with the site; or

(3) Returned to the closest culturally affiliated Indian tribe, in accordance with the repatriation process adopted pursuant to [NRS 383.440](#), if a request for repatriation is made.

↳ Within 10 days after receiving the recommendations, if any, for the treatment and disposition of the site and all artifacts and human remains associated with the site, the landowner may appeal the recommendations to the Office.

(e) Failure of an Indian tribe to respond within 10 days after notice has been given to the Indian tribe pursuant to paragraph (b) shall be deemed a waiver of the requirement for consultation with the Indian tribe.

(f) If the Indian burial site is located on private land and:

(1) The Office fails to identify the closest culturally affiliated Indian tribe or consultation with the closest culturally affiliated Indian tribe is waived pursuant to paragraph (e); or

(2) The landowner rejects the recommendation made pursuant to paragraph (d) and mediation conducted pursuant to [NRS 383.160](#) fails to provide measures acceptable to the landowner,

↳ the landowner shall, at his or her own expense, reinter with appropriate dignity all artifacts and human remains associated with the site in a location not subject to further disturbance.

(g) If the Indian burial site is located on public land and action is necessary to protect the burial site from immediate destruction, the Office may cause a professional archeologist to excavate the site and remove all artifacts and human remains associated with the site for subsequent reinterment, under the supervision of the closest culturally affiliated Indian tribe, if any.

(h) Any other excavation of an Indian burial site may be conducted only:

(1) By a professional archeologist;

(2) After written notification to the Administrator; and

(3) With the prior written consent of the closest culturally affiliated Indian tribe, if any. Failure of an Indian tribe to respond to a request for permission within 60 days after its mailing by certified mail, return receipt requested, shall be deemed consent to the excavation.

↳ All artifacts and human remains removed during such an excavation must be reinterred under the supervision of the closest culturally affiliated Indian tribe, if any, except that the Indian tribe may, by explicit written consent, authorize the public display of a particular artifact if the public display is respectful, as determined in consultation with the Indian tribe. The archeologist, closest culturally affiliated Indian tribe, if any, and landowner shall negotiate an agreement to determine who will pay the expenses related to the interment.

(i) The Office shall determine which Indian tribe has the closest cultural affiliation to an Indian burial site and all artifacts and human remains associated with the site.

(j) Prehistoric native Indian human remains or funerary objects discovered at an Indian burial site:

(1) Must not be subjected to scientific study unless the Office reasonably determines that scientific study is necessary for the limited purpose of determining which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects; and

(2) Must not be separated when the prehistoric native Indian human remains and funerary objects are reinterred.

(k) Nondestructive analysis on any other artifacts removed from an Indian burial site may be conducted only with the explicit written consent of the closest culturally affiliated Indian tribe, if any.

2. The provisions of subsection 1 do not apply, with respect to prehistoric Indian burial sites, to a permit issued pursuant to [NRS 381.196](#).

3. The provisions of subsection 1 do not apply, with respect to prehistoric native Indian human remains or funerary objects, if the person who disturbed the cairn or grave of a native Indian through inadvertence while engaged in a lawful activity is subject to an existing agreement with:

(a) The closest culturally affiliated Indian tribe that relates to the discovery of prehistoric native Indian human remains or a funerary object; or

(b) A federal agency that was executed pursuant to federal law and that relates to the discovery of prehistoric native Indian human remains or a funerary object.

(Added to NRS by [1989, 574](#); A [1993, 928, 1594](#); [1995, 579](#); [2017, 3545](#), effective July 1, 2018)

#### **NRS 383.180 Prohibited acts; penalties; exceptions. [Effective July 1, 2018.]**

1. Except as otherwise provided in [NRS 383.170](#), a person who willfully removes without obtaining any required permit, mutilates, defaces, injures or destroys the cairn or grave of a native Indian is guilty of a gross misdemeanor and shall be:

(a) Punished by a fine of \$2,000 for the first offense, or by a fine of not more than \$4,500 for a second or subsequent offense, and may be further punished by imprisonment in the county jail for not more than 364 days; and

(b) Ordered to pay for the costs to reinter with appropriate dignity all artifacts and human remains associated with the cairn or grave.

2. A person who fails to notify the Office of the discovery and location of an Indian burial site in violation of [NRS 383.170](#) is guilty of a gross misdemeanor and shall be punished by a fine of \$500 for the first offense, or by a fine of not more than \$1,500 for a second or subsequent offense, and may be further punished by imprisonment in the county jail for not more than 364 days.

3. A person who:

(a) Possesses any artifact or human remains taken from the cairn or grave of a native Indian on or after October 1, 1989, in a manner other than that authorized by [NRS 383.170](#);

(b) Publicly displays or exhibits any of the human remains of a native Indian, except during a funeral ceremony; or

(c) Sells any artifact or human remains taken from the cairn or grave of a native Indian,

↪ is guilty of a category D felony and shall be punished as provided in [NRS 193.130](#).

4. This section does not apply to:

(a) The possession or sale of an artifact:

(1) Discovered in or taken from a location other than the cairn or grave of a native Indian; or

(2) Removed from the cairn or grave of a native Indian by other than human action; or

(b) Action taken by a peace officer in the performance of his or her duties.

(Added to NRS by [1989, 574](#); A [1993, 929](#); [1995, 1271](#); [2013, 983](#); [2017, 3548](#), effective July 1, 2018)

#### **NRS 383.190 Civil remedy.**

1. In addition to the imposition of any criminal penalty, an Indian tribe or an enrolled member of an Indian tribe may bring a civil action to secure an injunction, damages and other appropriate relief against a person who violates [NRS 383.170](#) or [383.180](#). The action must be brought within 2 years after the discovery of the action by the plaintiff. The action may be filed in the district court for the county in which the cairn, grave, artifacts or remains are located, or within which the defendant resides.

2. If the plaintiff prevails in the action:

(a) The court may award reasonable attorney fees to the plaintiff.

(b) The court may grant injunctive or such other equitable relief as is appropriate, including forfeiture of any artifacts or human remains acquired or equipment used in the violation. The court shall order the disposition of any forfeited equipment as it sees fit, and order the reinterment of the artifacts and human remains at the defendant's expense under the supervision of the Indian tribe.

(c) The plaintiff may recover actual damages.

3. If the defendant prevails in the action, the court may award reasonable attorney fees to the defendant.

(Added to NRS by [1989, 575](#))

## SPECIFIC BURIAL PROTECTION MEASURES REQUESTED BY INDIVIDUAL TRIBAL GOVERNMENTS

The Nevada SHPO wishes to ensure that individuals identified as a Native Indian receive the respectful repatriation that they deserve. The Nevada SHPO strives to ensure that communication, transportation, and repatriation occurs in a manner that is consistent with the wishes of the appropriate Tribal government. Consistent with this policy, the Nevada SHPO is responsive to specific requests from Tribal governments to augment and tailor the practices above (within the requirements of statutes) to ensure that the process is consistent with Tribal customs and practices.

A summary of specific practices requested by Tribal governments to be undertaken by SHPO staff during the identification of burials and cairns and repatriation of any human remains or funerary objects, if deemed appropriate for a public document, will be attached as finalized.