



STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
NEVADA DIVISION OF FORESTRY
2478 Fairview Drive
Carson City, Nevada 89701
Phone (775) 684-2500 Fax (775) 684-2570

**Notice of Workshop to Solicit Public Comments on
Proposed Permanent Regulations**

August 21, 2020 at 9:00am

The Nevada Division of Forestry will be holding public workshops to solicit comments from interested persons regarding the potential adoption of regulations that pertain to Chapter 527 of the Nevada Administrative Code, specifically the Nevada List of Fully Protected Species of Native Flora (NAC 527.010).

Pursuant to Governor Sisolak's March 22, 2020, Declaration of Emergency Directive 006, Directive 018 (5/7/2020), Directive 021 (5/28/2020), the requirement contained in NRS 241.023(1)(b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Corona Virus). Accordingly, capacity is limited at the Tonopah workshop and there is no physical location for the Carson City workshop. Details on how to participate in the meetings are detailed below.

Join the Workshop at <https://call.lifesizecloud.com/4236997> or using Skype for Business at <https://skype.lifesizecloud.com/4236997> or via telephone by calling (877) 422-8614, Workshop extension: 4236997#

Meeting materials are available on the Nevada Division of Forestry website at:
<http://forestry.nv.gov>

The purpose of the workshops is to solicit comments from interested persons on the following topic that may be addressed in the proposed regulation:

Consideration of the Small Business Impacts of adding Tiehm buckwheat (Eriogonum tiehmii) to the State List of Fully Protected Species.

Nevada Revised Statutes §527.270 authorizes the State Forester/Firewarden to make a determination that certain species of native flora are threatened with extinction, and consequently add them to the State List of Fully Protected Species.

Please send written comments via email: TiehmBuckwheatComment@forestry.nv.gov, or by mail: Attn: John Christopherson, 2478 Fairview Drive, Carson City, NV 89701. Written comments will be placed in the official record. Please visit <http://forestry.nv.gov> or call 775-684-2500 one week prior to the scheduled public workshops for the most up-to-date information.

A copy of all materials relating to the proposal may be obtained online at <http://forestry.nv.gov>, or by contacting Nevada Division of Forestry, 2478 Fairview Drive, Carson City, NV 89701. The agency's small business impact statement is attached.

Notice of this meeting is posted in the following locations:

Nevada Division of Forestry
Website <http://forestry.nv.gov>

Nevada Legislature
Website www.leg.state.nv.us/App/Notice/A/

Nevada Public Notice
Website – notice.nv.gov

Date: 7/14/2020

The draft regulation as follows will be considered by the Nevada Division of Forestry:

- Adding the Tiehm's buckwheat (*Eriogonum tiehmii*) to the State List of Fully Protected Species of Native Flora (NAC 527.010)

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>Centaureium 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 tiehmii</i>, Tiehm's buckwheat	<i>Reveal</i>
<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

Note that the List of Fully Protect Species is associated with the following requirement, as written in NRS 527.270

NRS 527.270 List of fully protected species declared to be threatened with extinction; special permit required for removal or destruction. A species or subspecies of native flora shall be regarded as threatened with extinction when the State Forester Firewarden, after consultation with competent authorities, determines that its existence is endangered and its survival requires assistance because of overexploitation, disease or other factors or because its habitat is threatened with destruction, drastic modification or severe curtailment. Any species declared to be threatened with extinction shall be placed on the list of fully protected species, and no member of its kind may be removed or destroyed at any time by any means except under special permit issued by the State Forester Firewarden.

FORM 4:
NEVADA DIVISION OF FORESTRY SMALL BUSINESS IMPACT DISCLOSURE
PROCESS PURSUANT TO 233B “Nevada Administrative Procedures Act”

The purpose of this Form is to provide a framework pursuant to NRS 233B.0608 for drafting and submitting a Small Business Impact Statement (SBIS) to the Nevada Division of Forestry in order to determine whether a SBIS is required to be noticed and available at the public workshop. A SBIS must be completed and submitted to the Legislative Counsel Bureau for ALL adopted regulations.

Note: Small Business is defined as a “business conducted for profit which employs fewer than 150 full-time employees” (NRS 233B.0382).

To determine whether a SBIS must be noticed and available at the public workshop, answer the following questions:

1. Does this proposed regulation impose a direct and significant economic burden upon a small business? *(state yes or no. If no, please explain and submit the applicable documentation, which can also be addressed in #8 on the SBIS and simply referred to; and if yes, reference the attached SBIS)*

Cannot be determined until regulation is adopted and resultant permitting process begins.

2. Does this proposed regulation restrict the formation, operation or expansion of a small business? *(state yes or no. If no, please explain and submit the applicable documentation, which can also be addressed in #8 on the SBIS and simply referred to; and if yes, reference the attached SBIS)*

Yes

If **Yes** to either of question 1 & 2, a SBIS must be noticed and available at the public workshop.

FORM 4: SMALL BUSINESS IMPACT STATEMENT (NRS 233B.0609)

1. Describe the manner in which comment was solicited from affected small businesses, a summary of the response from small businesses and an explanation of the manner in which other interested persons may obtain a copy of the summary. (Attach copies of the comments received and copies of any workshop attendance sheets, noting which are identified as a small business.)

The Nevada Division of Forestry (NDF) sent a questionnaire out to all known businesses potentially affected by a decision to add the Tiehm buckwheat to the State's List of Fully Protected Species. The list included Loneer, a mining company interested in developing a mine in the plant's habitat, as well as businesses in Tonopah and Fish Lake Valley that may be indirectly impacted should a listing of the plant delay or otherwise alter Loneer's plans. It was determined that there is one (1) small business in Nevada that would be directly impacted by the regulations. The known impact would be the requirement to apply for a permit to disturb or damage the plant added to the State's List of Fully Protected Species. All other entities responding to the survey noted indirect impacts due to diminished commerce associated with the mine development. All other entities not captured by this mailing will have the opportunity to voice their concerns during the upcoming virtual workshops on July 20 and August 21, 2020.

Of the 30 questionnaires sent out, 9 were undeliverable, and 5 were returned with answers. Additionally, 26 questionnaires were received from other businesses that were not queried, but found out about the survey through word of mouth. Thirty-one surveys were received; the majority noted impacts associated with a delay or halt to the Loneer mine. All but three of surveys noted indirect impacts. The three responses claiming direct impacts were from Loneer and two consulting geologists. One claimed a potential impact of \$50,000/year, while the other did not estimate an actual monetary loss.

Minutes of the public workshop and subsequent hearing will capture the discussions held regarding the regulation. These may be obtained online at forestry.nv.gov, no later than 30 days after the meeting.

2. The manner in which the analysis was conducted (if an impact was determined).

It is difficult to know what economic impact upon small businesses would result from adding Tiehm buckwheat to the State's List of Fully Protected Species because listing the plant does not preclude disturbing the plant. Rather, it requires a project proponent to apply for a permit authorizing disturbance of the habitat or physical damage to plants. The Division has a history of issuing these permits. The likelihood of issuance is based on whether a satisfactory form of mitigation for the damage to the plant or its habitat can be agreed upon.

3. The estimated economic effect of the proposed regulation on small businesses:

The proposed regulation, if adopted, will add Tiehm's buckwheat to the State's List of Fully Protected Species. Once the plant is added to the list, all activity that disturbs the plant, or its habitat will require a permit from NDF. The permit requirement could delay the mine development, leading to a delay in associated indirect economic gains likely to result for business benefitting from the increased commerce associated with the mining activity (merchants, lodging, etc.). If it is not possible to develop a mitigation strategy that both the State and the permittee can agree upon, no permit would be issued and no mining would be permitted. Should this occur, an analysis conducted by a contractor for Loneer indicates the direct economic impact would be in the range of:

- 1) Forgone costs totaling approximately \$45 Million over the previous 4 years.
- 2) Given the Project's expected 26-year life, abandonment would result in the estimated loss of:
 - o Total Direct Economic Output of **\$9.6 Billion**
 - o Direct Labor Income of **\$1.0 Billion**
 - o State and Local Tax Revenue/Fees of over **\$575 Million**

a. Both adverse and beneficial effects:

Adverse economic effects from this regulation could occur if the project were delayed while the proponent applies for a take permit from NDF. Further, if the permit requirements make the project economically unviable, the direct and indirect adverse economic effects would be as stated section 3 above. Any beneficial economic effects of the species listing are unknown.

b. Both direct and indirect effects:

Same as above.

4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of the methods. (Include a discussion of any considerations of the methods listed below.)

As the impacts of adding the plant to State's List of Fully Protected Species cannot be determined at this point, methods to reduce the impact of such an action cannot be identified. The project proponent is currently funding research on the plant. Results from this work will add to the overall knowledge regarding the natural history and biology of the species. Such information could be beneficial in informing mitigation measures associated with a take permit, should one be issued.

A. Simplification of the proposed regulation: There are no opportunities to simplify the proposed regulation.

B. Establishment of different standards of compliance for a small business: Changing standards for small businesses would diminish the intent of the regulation, i.e. species protection.

C. Modification of fees or fines so that a small business is authorized to pay a lower fee or fine: There are no fees associated with this regulation.

5. The estimated cost to the agency for enforcement of the proposed regulation. (Include a discussion of the methods used to estimate those costs.)

The enforcement of the regulation falls within current operations of the NDF; therefore, there will be no additional cost to the agency above the current legislatively approved budget.

6. If this regulation provides for a new fee or increases an existing fee, the total annual amount the agency expects to collect and manner in which the money will be used.

The proposed regulation does not provide for new or increased fees.

7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, provide an explanation of why such duplicative or more stringent provisions are necessary.

There are currently no regulations that prevent disturbance of habitat or destruction of this plant species.

8. The reasons for the conclusions regarding the impact of a regulation on small businesses.

After an analysis of the businesses that NDF is aware of, it was determined that the regulations have the potential to cause financial impacts on smaller businesses. However, until the plant is added to the State's List of Fully Protected Species and discussion regarding mitigation measures associated with issuance of a permit to disturb or destroy the plant, the extent of any impacts cannot be determined. A workshop, and subsequent hearing will be held to acquire more comments from the public and affected businesses.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on a small business and the information contained in this statement was prepared properly and is accurate.



John Christopherson, Deputy Administrator,
Nevada Division of Forestry



Date



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AGENDA

Workshop to Solicit Comments on Proposed Regulations to NAC 527

Friday, August 21, 2020 at 9:00am

Pursuant to Governor Sisolak's March 22, 2020, Declaration of Emergency Directive 006, Directive 018 (5/7/2020), Directive 021 (5/28/2020), the requirement contained in NRS 241.023(1)(b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Corona Virus).

****Virtual meeting only****

Attend virtually: Join the meeting (video and audio): <https://call.lifesizecloud.com/4236997>

Call in by phone (audio only): +1 (877) 422-8614, Meeting extension: 4236997#

In advance of the Public Workshop the Division is asking that anyone who plans to participate in the public workshop to please fill out the digital sign-in sheet below.

****The digital sign-in sheet is accessible at:****

<https://forms.office.com/Pages/ResponsePage.aspx?id=5kCj5J64aE6OqhVE0nA5gD16ZODVbaFHguekc6p9acZUODJDNTVWS1VZT0dYRTBXU0FVRVVVWUZLUy4u>

1. OPEN WORKSHOP, INTRODUCTION

2. PUBLIC COMMENT

Persons making comment will be asked to begin by stating and spelling their name for the record. All public comments should be as brief and concise as possible so that all who wish to speak may do so (3 minutes for individuals and 5 minutes for group representatives). **Comment will not be restricted based on viewpoint.**

3. PRESENTATION FROM THE DIVISION OF FORESTRY ON THE SMALL BUSINESS IMPACT STATEMENT

John Christopherson – Deputy Administrator, Nevada Division of Forestry

4. DISCUSSION OF SMALL BUSINESS IMPACTS ASSOCIATED WITH ADDING TIEHM BUCKWHEAT TO THE STATE LIST OF FULLY PROTECTED SPECIES OF NATIVE FLORA PUSUANT TO NAC 527.010.

5. PUBLIC COMMENT

Persons making comment will be asked to begin by stating and spelling their name for the record. All public comments should be as brief and concise as possible so that all who wish to speak may do so (3 minutes for individuals and 5 minutes for group representatives). Comment will not be restricted based on viewpoint.

6. ADJOURNEMNT

We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special accommodations or assistance at the meeting are requested, please notify our office by writing to the Nevada Division of Forestry, 2478 Fairview Drive, Carson City, NV 89701; or by calling 775-684-2500 no later than two (2) working days prior to the scheduled meeting. You can also email John Christopherson at jchrist@forestry.nv.gov.

A copy of all materials relating to the proposal may be obtained online or by contacting Nevada Division of Forestry, 2478 Fairview Drive, Carson City, NV 89701.

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