

## **Part 3 Antiquities**

### **9-8-301 Purpose.**

- (1) The Legislature declares that the general public and the beneficiaries of the school and institutional land grants have an interest in the preservation and protection of the state's archaeological and anthropological resources and a right to the knowledge derived and gained from scientific study of those resources.
- (2)
  - (a) The Legislature finds that policies and procedures for the survey and excavation of archaeological resources from school and institutional trust lands are consistent with the school and institutional land grants, if these policies and procedures insure that primary consideration is given, on a site or project specific basis, to the purpose of support for the beneficiaries of the school and institutional land grants.
  - (b) The Legislature finds that the preservation, placement in a repository, curation, and exhibition of specimens found on school or institutional trust lands for scientific and educational purposes is consistent with the school and institutional land grants.
  - (c) The Legislature finds that the preservation and development of sites found on school or institutional trust lands for scientific or educational purposes, or the disposition of sites found on school or institutional trust lands, after consultation between the division and the School and Institutional Trust Lands Administration to determine the appropriate level of data recovery or implementation of other appropriate preservation measures, for preservation, development, or economic purposes, is consistent with the school and institutional land grants.
  - (d) The Legislature declares that specimens found on lands owned or controlled by the state or its subdivisions may not be sold.
- (3) The Legislature declares that the historical preservation purposes of this chapter must be kept in balance with the other uses of land and natural resources which benefit the health and welfare of the state's citizens.
- (4) It is the purpose of this part and Part 4, Historic Sites, to provide that the survey, excavation, curation, study, and exhibition of the state's archaeological and anthropological resources be undertaken in a coordinated, professional, and organized manner for the general welfare of the public and beneficiaries alike.

Amended by Chapter 189, 2014 General Session

### **9-8-302 Definitions.**

As used in this part and Part 4, Historic Sites:

- (1) "Agency" means a department, division, office, bureau, board, commission, or other administrative unit of the state.
- (2) "Ancient human remains" means all or part of the following that are historic or prehistoric:
  - (a) a physical individual; and
  - (b) any object on or attached to the physical individual that is placed on or attached to the physical individual as part of the death rite or ceremony of a culture.
- (3) "Antiquities Section" means the Antiquities Section of the Division of State History created in Section 9-8-304.

- (4) "Archaeological resources" means all material remains and their associations, recoverable or discoverable through excavation or survey, that provide information pertaining to the historic or prehistoric peoples of the state.
- (5) "Collection" means a specimen and the associated records documenting the specimen and its recovery.
- (6) "Curation" means management and care of collections according to standard professional museum practice, which may include inventorying, accessioning, labeling, cataloging, identifying, evaluating, documenting, storing, maintaining, periodically inspecting, cleaning, stabilizing, conserving, exhibiting, exchanging, or otherwise disposing of original collections or reproductions, and providing access to and facilities for studying collections.
- (7) "Curation facility" means the same as that term is defined in Section 53B-17-603.
- (8) "Division" means the Division of State History created in Section 9-8-201.
- (9) "Excavate" means the recovery of archaeological resources.
- (10) "Historic property" means any prehistoric or historic district, site, building, structure, or specimen included in, or eligible for inclusion in, the National Register of Historic Places or the State Register.
- (11) "Indian tribe" means a tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (12) "Museum" means the Utah Museum of Natural History.
- (13)
  - (a) "Nonfederal land" means land in the state that is not owned, controlled, or held in trust by the federal government.
  - (b) "Nonfederal land" includes:
    - (i) land owned or controlled by:
      - (A) the state;
      - (B) a county, city, or town;
      - (C) an Indian tribe, if the land is not held in trust by the United States for the Indian tribe or the Indian tribe's members; or
      - (D) a person other than the federal government; or
    - (ii) school and institutional trust lands.
- (14) "Principal investigator" means the individual with overall administrative responsibility for the survey or excavation project authorized by the permit.
- (15) "Repository" means the same as that term is defined in Section 53B-17-603.
- (16) "School and institutional trust lands" are those properties defined in Section 53C-1-103.
- (17) "Site" means any petroglyphs, pictographs, structural remains, or geographic location that is the source of archaeological resources or specimens.
- (18) "Specimen" means all man-made artifacts and remains of an archaeological or anthropological nature found on or below the surface of the earth, excluding structural remains.
- (19) "State historic preservation officer" means that position mentioned in 54 U.S.C. Sec. 302303, as amended.
- (20)
  - (a) "State land" means land owned by the state including the state's:
    - (i) legislative and judicial branches;
    - (ii) departments, divisions, agencies, boards, commissions, councils, and committees; and
    - (iii) institutions of higher education as defined under Section 53B-3-102.
  - (b) "State land" does not include:
    - (i) land owned by a political subdivision of the state;

- (ii) land owned by a school district;
  - (iii) private land; or
  - (iv) school and institutional trust lands.
- (21) "Survey" means a surface investigation for archaeological resources that may include:
- (a) insubstantial surface collection of archaeological resources; and
  - (b) limited subsurface testing that disturbs no more of a site than is necessary to determine the nature and extent of the archaeological resources or whether the site is a historic property.

Amended by Chapter 348, 2016 General Session

**9-8-304 Antiquities Section created -- Duties.**

- (1) There is created within the division the Antiquities Section.
- (2) The Antiquities Section shall:
  - (a) promote research, study, and activities in the field of antiquities;
  - (b) assist with the marking, protection, and preservation of sites;
  - (c) assist with the collection, preservation, and administration of specimens until the specimens are placed in a repository or curation facility;
  - (d) provide advice on the protection and orderly development of archaeological resources, and in doing so confer with the Public Lands Policy Coordinating Office if requested;
  - (e) assist with the excavation, retrieval, and proper care of ancient human remains discovered on nonfederal lands in accordance with:
    - (i) Section 9-8-309;
    - (ii) Section 9-9-403;
    - (iii) Subsection 76-9-704(3); and
    - (iv) federal law;
  - (f) collect and administer site survey and excavation records;
  - (g) edit and publish antiquities records;
  - (h) inform the state historic preservation officer in writing about any request for advice or consultation from an agency or an agency's agent; and
  - (i) employ an archaeologist meeting the requirements of 36 C.F.R. 61.4.
- (3) The Antiquities Section shall cooperate with local, state, and federal agencies and all interested persons to achieve the purposes of this part and Part 4, Historic Sites.
- (4) Before performing the duties specified in Subsections (2)(a) through (e), the Antiquities Section shall obtain permission from the landowner.

Amended by Chapter 231, 2007 General Session

**9-8-305 Permit required to survey or excavate on state lands -- Public Lands Policy Coordinating Office to issue permits and make rules -- Ownership of collections and resources -- Revocation or suspension of permits -- Criminal penalties.**

- (1)
  - (a) Except as provided by Subsections (1)(d) and (3)(c), each principal investigator who wishes to survey or excavate on any lands owned or controlled by the state, its political subdivisions, or by the School and Institutional Trust Lands Administration shall obtain a survey or excavation permit from the Public Lands Policy Coordinating Office.
  - (b) A principal investigator who holds a valid permit under this section may allow other individuals to assist the principal investigator in a survey or excavation if the principal investigator

ensures that all the individuals comply with the law, the rules, the permit, and the appropriate professional standards.

- (c) A person, other than a principal investigator, may not survey or excavate on any lands owned or controlled by the state, its political subdivisions, or by the School and Institutional Trust Lands Administration unless the person works under the direction of a principal investigator who holds a valid permit.
- (d) A permit obtained before July 1, 2006 shall continue until the permit terminates on its own terms.

(2)

- (a) To obtain a survey permit, a principal investigator shall:
  - (i) submit a permit application on a form furnished by the Public Lands Policy Coordinating Office;
  - (ii) except as provided in Subsection (2)(b), possess a graduate degree in anthropology, archaeology, or history;
  - (iii) have one year of full-time professional experience or equivalent specialized training in archaeological research, administration, or management; and
  - (iv) have one year of supervised field and analytical experience in Utah prehistoric or historic archaeology.
- (b) In lieu of the graduate degree required by Subsection (2)(a)(ii), a principal investigator may submit evidence of training and experience equivalent to a graduate degree.
- (c) Unless the permit is revoked or suspended, a survey permit is valid for the time period specified in the permit by the Public Lands Policy Coordinating Office, which may not exceed three years.

(3)

- (a) Except as provided by Subsection (3)(c), to obtain an excavation permit, a principal investigator shall, in addition to complying with Subsection (2)(a), submit:
  - (i) a research design to the Public Lands Policy Coordinating Office and the Antiquities Section that:
    - (A) states the questions to be addressed;
    - (B) states the reasons for conducting the work;
    - (C) defines the methods to be used;
    - (D) describes the analysis to be performed;
    - (E) outlines the expected results and the plan for reporting;
    - (F) evaluates expected contributions of the proposed work to archaeological or anthropological science; and
    - (G) estimates the cost and the time of the work that the principal investigator believes is necessary to provide the maximum amount of historic, scientific, archaeological, anthropological, and educational information; and
  - (ii) proof of permission from the landowner to enter the property for the purposes of the permit.
- (b) An excavation permit is valid for the amount of time specified in the permit, unless the permit is revoked according to Subsection (9).
- (c) The Public Lands Policy Coordinating Office may delegate to an agency the authority to issue excavation permits if the agency:
  - (i) requests the delegation; and
  - (ii) employs or has a long-term contract with a principal investigator with a valid survey permit.
- (d) The Public Lands Policy Coordinating Office shall conduct an independent review of the delegation authorized by Subsection (3)(c) every three years and may revoke the delegation at any time without cause.

- (4) The Public Lands Policy Coordinating Office shall:
  - (a) grant a survey permit to a principal investigator who meets the requirements of this section;
  - (b) grant an excavation permit to a principal investigator after approving, in consultation with the Antiquities Section, the research design for the project; and
  - (c) assemble a committee of qualified individuals to advise the Public Lands Policy Coordinating Office in its duties under this section.
- (5) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Public Lands Policy Coordinating Office shall, after consulting with the Antiquities Section, make rules to:
  - (a) establish survey methodology;
  - (b) standardize report and data preparation and submission;
  - (c) require other permit application information that the Public Lands Policy Coordinating Office finds necessary, including proof of consultation with the appropriate Native American tribe;
  - (d) establish what training and experience is equivalent to a graduate degree;
  - (e) establish requirements for a person authorized by Subsection (1)(b) to assist the principal investigator;
  - (f) establish requirements for a principal investigator's employer, if applicable; and
  - (g) establish criteria that, if met, would allow the Public Lands Policy Coordinating Office to reinstate a suspended permit.
- (6) Each principal investigator shall submit a summary report of the work for each project to the Antiquities Section in a form prescribed by a rule established under Subsection (5)(b), which shall include copies of all:
  - (a) site forms;
  - (b) data;
  - (c) maps;
  - (d) drawings;
  - (e) photographs; and
  - (f) descriptions of specimens.
- (7)
  - (a) Except as provided in Subsection (7)(c), a person may not remove from Utah any specimen, site, or portion of any site from lands owned or controlled by the state or its political subdivisions, other than school and institutional trust lands, without permission from the Antiquities Section, and prior consultation with the landowner and any other agencies managing other interests in the land.
  - (b) Except as provided in Subsection (7)(c), a person may not remove from Utah any specimen, site, or portion of any site from school and institutional trust lands without permission from the School and Institutional Trust Lands Administration, granted after consultation with the Antiquities Section.
  - (c) If a specimen, site, or portion of a site is placed in a repository or curation facility, a person may remove it by following the procedures established by the repository or curation facility.
- (8)
  - (a) Collections recovered from school and institutional trust lands are owned by the respective trust.
  - (b) Collections recovered from lands owned or controlled by the state or its subdivisions, other than school and institutional trust lands, are owned by the state.
  - (c) Within a reasonable time after the completion of fieldwork, each permit holder shall deposit all collections at the museum, a curation facility, or a repository.

- (d) The repository or curation facility for collections from lands owned or controlled by the state or its subdivisions shall be designated according to the rules made under the authority of Section 53B-17-603.
- (9)
  - (a) Upon complaint by an agency, the Public Lands Policy Coordinating Office shall investigate a principal investigator and the work conducted under a permit.
  - (b) By following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, the Public Lands Policy Coordinating Office may revoke or suspend a permit if the principal investigator fails to conduct a survey or excavation according to law, the rules enacted by the Public Lands Policy Coordinating Office, or permit provisions.
- (10)
  - (a) Any person violating this section is guilty of a class B misdemeanor.
  - (b) A person convicted of violating this section, or found to have violated the rules authorized by this section, shall, in addition to any other penalties imposed, forfeit all archaeological resources discovered by or through the person's efforts to the state or the respective trust.
- (11) The division may enter into memoranda of agreement to issue project numbers or to retain other data for federal lands or Native American lands within the state.

Amended by Chapter 382, 2008 General Session

**9-8-306 Archaeological or anthropological landmarks.**

- (1) Sites of significance may be recommended to and approved by the board as state archaeological or anthropological landmarks. No privately owned site or site on school or institutional trust lands may be so designated without the written consent of the owner.
- (2) A person may not excavate upon a privately owned designated landmark without a permit from the division.
- (3) Before any alteration is commenced on a designated landmark, three months' notice of intent to alter the site shall be given the division.

Amended by Chapter 170, 1995 General Session

**9-8-307 Report of discovery on state or private lands.**

- (1) Any person who discovers any archaeological resources on lands owned or controlled by the state or its subdivisions shall promptly report the discovery to the division.
- (2) Any person who discovers any archaeological resources on privately owned lands shall promptly report the discovery to the division.
- (3) Field investigations shall be discouraged except in accordance with this part and Part 4, Historic Sites.
- (4) Nothing in this section may be construed to authorize any person to survey or excavate for archaeological resources.

Amended by Chapter 189, 2014 General Session

**9-8-308 Forgery or false labeling of specimens unlawful.**

It is unlawful to reproduce, rework, or forge any specimen or make any object, whether copied or not, or falsely label, describe, identify, or offer for sale or exchange any object, with intent to represent it as an original and genuine specimen. No person may offer for sale or other exchange any object with knowledge that it was collected or excavated in violation of this part.

Renumbered and Amended by Chapter 241, 1992 General Session

**9-8-309 Ancient human remains on nonfederal lands that are not state lands.**

- (1)
- (a) After April 30, 2007, if a person knows or has reason to know that the person discovered ancient human remains on nonfederal land that is not state land:
    - (i) the person shall:
      - (A) cease activity in the area of the discovery until activity may be resumed in accordance with Subsection (1)(d);
      - (B) notify a local law enforcement agency in accordance with Section 76-9-704; and
      - (C) notify the person who owns or controls the nonfederal land, if that person is different than the person who discovers the ancient human remains; and
    - (ii) the person who owns or controls the nonfederal land shall:
      - (A) require that activity in the area of the discovery cease until activity may be resumed in accordance with Subsection (1)(d); and
      - (B) make a reasonable effort to protect the discovered ancient human remains before activity may be resumed in accordance with Subsection (1)(d).
  - (b)
    - (i) If the local law enforcement agency believes after being notified under this Subsection (1) that a person may have discovered ancient human remains, the local law enforcement agency shall contact the Antiquities Section.
    - (ii) The Antiquities Section shall:
      - (A) within two business days of the day on which the Antiquities Section is notified by local law enforcement, notify the landowner that the Antiquities Section may excavate and retrieve the human remains with the landowner's permission; and
      - (B) if the landowner gives the landowner's permission, excavate the human remains by no later than:
        - (I) five business days from the day on which the Antiquities Section obtains the permission of the landowner under this Subsection (1); or
        - (II) if extraordinary circumstances exist as provided in Subsection (1)(c), within the time period designated by the director not to exceed 30 days from the day on which the Antiquities Section obtains the permission of the landowner under this Subsection (1).
  - (c)
    - (i) The director may grant the Antiquities Section an extension of time for excavation and retrieval of ancient human remains not to exceed 30 days from the day on which the Antiquities Section obtains the permission of the landowner under this Subsection (1), if the director determines that extraordinary circumstances exist on the basis of objective criteria such as:
      - (A) the unusual scope of the ancient human remains;
      - (B) the complexity or difficulty of excavation or retrieval of the ancient human remains; or
      - (C) the landowner's concerns related to the excavation or retrieval of the ancient human remains.
    - (ii) If the landowner objects to the time period designated by the director, the landowner may appeal the decision to the executive director of the department in writing.
    - (iii) If the executive director receives an appeal from the landowner under this Subsection (1)(c), the executive director shall:
      - (A) decide on the appeal within two business days; and

- (B)
  - (I) uphold the decision of the director; or
  - (II) designate a shorter time period than the director designated for the excavation and retrieval of the ancient human remains.
- (iv) An appeal under this Subsection (1)(c) may not be the cause for the delay of the excavation and retrieval of the ancient human remains.
- (v) A decision and appeal under this Subsection (1)(c) is exempt from Title 63G, Chapter 4, Administrative Procedures Act.
- (d) A person that owns or controls nonfederal land that is not state land may engage in or permit others to engage in activities in the area of the discovery without violating this part or Section 76-9-704 if once notified of the discovery of ancient human remains on the nonfederal land, the person:
  - (i) consents to the Antiquities Section excavating and retrieving the ancient human remains; and
  - (ii) engages in or permits others to engage in activities in the area of the discovery only after:
    - (A) the day on which the Antiquities Section removes the ancient human remains from the nonfederal land; or
    - (B) the time period described in Subsection (1)(b)(ii)(B).
- (2) A person that owns or controls nonfederal land that is not state land may not be required to pay any costs incurred by the state associated with the ancient human remains, including costs associated with the costs of the:
  - (a) discovery of ancient human remains;
  - (b) excavation or retrieval of ancient human remains; or
  - (c) determination of ownership or disposition of ancient human remains.
- (3) For nonfederal land that is not state land, nothing in this section limits or prohibits the Antiquities Section and a person who owns or controls the nonfederal land from entering into an agreement addressing the ancient human remains that allows for different terms than those provided in this section.
- (4) The ownership and control of ancient human remains that are the ancient human remains of a Native American shall be determined in accordance with Chapter 9, Part 4, Native American Grave Protection and Repatriation Act:
  - (a) if the ancient human remains are in possession of the state;
  - (b) if the ancient human remains are not known to have been discovered on lands owned, controlled, or held in trust by the federal government; and
  - (c) regardless of when the ancient human remains are discovered.
- (5) This section:
  - (a) does not apply to ancient human remains that are subject to the provisions and procedures of:
    - (i) federal law; or
    - (ii) Part 4, Historic Sites; and
  - (b) does not modify any property rights of a person that owns or controls nonfederal land except as to the ownership of the ancient human remains.
- (6) The division, Antiquities Section, or Division of Indian Affairs may not make rules that impose any requirement on a person who discovers ancient human remains or who owns or controls nonfederal land that is not state land on which ancient human remains are discovered that is not expressly provided for in this section.

Amended by Chapter 382, 2008 General Session

