

Effective 7/1/2023

**Chapter 8a
State Historic Preservation Office**

**Part 1
General Provisions**

9-8a-101 Definitions.

As used in this chapter:

- (1) "Board" means the Board of State History created in Section 9-8-204.
- (2) "Committee" means the National Register Review Committee created in Section 9-8a-204.
- (3) "Office" means the State Historic Preservation Office created in Section 9-8a-201.
- (4) "Officer" means the state historic preservation officer, appointed in accordance with Section 9-8a-202.

Renumbered and Amended by Chapter 160, 2023 General Session

**Part 2
State Historic Preservation Office**

9-8a-201 State Historic Preservation Office -- Creation -- Purpose.

- (1) There is created within the department the State Historic Preservation Office under the administration and supervision of the executive director or the designee of the executive director.
- (2) The office shall be under the policy direction of the board.
- (3) The office shall be the authority in the state for state history preservation and shall perform those duties set forth in statute.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-202 Appointment of state historic preservation officer.

- (1) In accordance with 36 C.F.R. Sec. 61.4, the governor shall appoint the state historic preservation officer.
- (2) The officer shall administer:
 - (a) the office; and
 - (b) the state historic preservation program.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-203 Office duties.

The office shall:

- (1) secure, for the present and future benefit of the state, the protection of archaeological resources and sites which are on state lands;
- (2) foster increased cooperation and exchange of information between state authorities, the professional archaeological community, and private individuals;

- (3) in cooperation with federal and state agencies, local governments, private organizations, and private individuals, direct and conduct a comprehensive statewide survey of historic properties;
- (4) maintain an inventory of the properties described in Subsection (3);
- (5) identify and nominate eligible property to the National Register of Historic Places;
- (6) administer applications for listing historic property on the National Register of Historic Places;
- (7) prepare and implement a comprehensive statewide historic preservation plan;
- (8) administer the state program of federal assistance for historic preservation within the state;
- (9) advise and assist, as appropriate, state agencies, federal agencies, and local governments in carrying out their historic preservation responsibilities;
- (10) cooperate with federal agencies, state agencies, local agencies, private organizations, and individuals to ensure that historic property is taken into consideration at all levels of planning and development;
- (11) provide, with respect to historic preservation:
 - (a) public information;
 - (b) education;
 - (c) training; and
 - (d) technical assistance;
- (12) cooperate with local governments in the development of local historic preservation programs;
- (13) consult with appropriate federal agencies with respect to:
 - (a) federal undertakings that may affect historic properties; and
 - (b) advising and assisting in the evaluation of proposals for rehabilitation projects that may qualify for federal assistance;
- (14) perform other duties as designated under 54 U.S.C. Sec. 302303; and
- (15) perform other duties as designated by the department and by statute.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-204 National Register Review Committee.

- (1) There is created the National Register Review Committee.
- (2) The committee shall be composed of nine members, at least five of whom have professional experience in:
 - (a) history;
 - (b) prehistoric and historic archaeology;
 - (c) architectural history;
 - (d) architecture;
 - (e) folklore;
 - (f) cultural anthropology;
 - (g) museology, curation, or conservation;
 - (h) landscape architecture; or
 - (i) planning.
- (3) To qualify as a member with professional experience in a discipline described in Subsection (2), a member shall meet the professional qualifications standards described in 36 C.F.R. Sec. 61.4.
- (4) The committee shall serve as Utah's State Historic Preservation Review Board described in 36 C.F.R. Sec. 61.4.
- (5) The officer and the director shall make the initial appointments to the committee.
- (6)
 - (a) Except as described in Subsections (6)(b) and (c), a member shall serve a term of four years.

- (b) When making initial appointments to the committee, the director and the officer shall stagger the terms so that approximately half of the committee members serve an initial term of two years.
 - (c) When the term of a current member expires, a member shall be reappointed or a new member shall be appointed in accordance with Subsection (8).
- (7)
- (a) When a vacancy occurs in the membership for any reason, a replacement shall be appointed in accordance with Subsection (8) for the unexpired term.
 - (b) A member whose term has expired may continue to serve until a replacement is appointed.
- (8) The committee shall nominate a member to fill a vacancy described in Subsection (6)(c) or (7) (a), subject to the approval of the director and the officer.
- (9) A member may serve more than one term, but may not serve more than three terms.
- (10) A majority of the members of the committee is a quorum.
- (11) A member may not receive compensation or benefits for the member's service.
- (12) The committee shall meet at least one time per year.
- (13) The committee shall elect a chair from the committee's members.
- (14) The committee shall:
- (a) review, evaluate, and comment on the eligibility of properties nominated to the National Register of Historic Places;
 - (b) review the documentation of nominated parties and recommended changes to the National Register of Historic Places nomination;
 - (c) bring to the attention of the office and the officer properties which may meet the National Register of Historic Places criteria for evaluation;
 - (d) recommend the removal of properties from the National Register of Historic Places;
 - (e) assist the officer and the office in statewide efforts to encourage public and private persons to identify, nominate, protect, enhance, and maintain the state's historic resources; and
 - (f) review the State Historic Preservation Plan prior to submission to the United States Department of the Interior.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-205 Cultural Site Stewardship Program -- Definitions -- Creation -- Objectives -- Administration -- Activities.

- (1) As used in this section:
- (a)
 - (i) "Cultural site" means a significant archaeological or paleontological site in the state as determined by the office.
 - (ii) "Cultural site" may include a:
 - (A) site as defined in Section 9-8a-302; and
 - (B) site as defined in Section 79-3-102.
 - (b) "Stewardship program" means the Cultural Site Stewardship Program created in this section.
 - (c) "Vandalism" means to damage, destroy, or commit any other act that defaces or harms a cultural site without the consent of the owner or appropriate governmental agency, including inscribing, marking, etching, scratching, drawing, painting on, or affixing to the cultural resource a mark, figure, or design.
- (2) There is created within the office the Cultural Site Stewardship Program.
- (3) The office shall seek to accomplish the following objectives through administration of the stewardship program:

- (a) protect cultural sites located in the state;
 - (b) increase public awareness of the significance and value of cultural sites and the damage done to cultural sites by vandalism;
 - (c) discourage vandalism and the unlawful sale and trade of archaeological artifacts and paleontological artifacts;
 - (d) support and encourage improved standards for investigating and researching cultural sites in the state;
 - (e) promote cooperation among governmental agencies, private landowners, Native American tribes, industry groups, and interested persons to protect cultural sites; and
 - (f) increase the inventory of cultural sites maintained in accordance with Subsections 9-8a-304(2)(b) and 79-3-202(1)(m).
- (4) The office shall:
- (a) maintain a position to oversee the operation of the stewardship program; and
 - (b) provide administrative services to the stewardship program.
- (5) The office shall select, train, and certify volunteers to participate in the stewardship program, based on rules made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (6) To accomplish the stewardship program's objectives, the office shall:
- (a) enter into agreements with the entities described in Subsection (3)(e) to promote the protection of cultural sites;
 - (b) establish a list of cultural sites suitable for monitoring, in cooperation with the entities described in Subsection (3)(e);
 - (c) schedule periodic monitoring activities by volunteers of each cultural site included on the list described in Subsection (6)(b), after obtaining approval of the landowner or manager;
 - (d) establish rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for reporting vandalism of a cultural site to the appropriate authority; and
 - (e) establish programs for educating members of the public about the significance and value of cultural sites and the loss to members of the public resulting from vandalism of cultural sites.
- (7) The office shall coordinate the activities of governmental agencies, private landowners, and Native American tribes, as necessary, to carry out the stewardship program.
- (8) A volunteer participating in the stewardship program may not receive compensation, benefits, per diem allowance, or travel expenses for the volunteer's service.
- (9) The office may accept gifts, grants, donations, or contributions from any source to assist the division in the administration of the stewardship program.
- (10) Nothing in this section may be construed to alter or affect the office's duties under Section 9-8a-404.

Renumbered and Amended by Chapter 160, 2023 General Session

Part 3

Antiquities

9-8a-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 office 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.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-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 office created in Section 9-8a-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 the specimen's 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) "Excavate" means the recovery of archaeological resources.
- (9) "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.
- (10) "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.
- (11) "Museum" means the Utah Museum of Natural History.
- (12)
 - (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.
- (13) "Principal investigator" means the individual with overall administrative responsibility for the survey or excavation project authorized by the permit.
- (14) "Repository" means the same as that term is defined in Section 53B-17-603.
- (15) "School and institutional trust lands" are those properties defined in Section 53C-1-103.
- (16) "Site" means any petroglyphs, pictographs, structural remains, or geographic location that is the source of archaeological resources or specimens.
- (17) "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.
- (18)
 - (a) "State land" means land owned (a) 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.
- (19) "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.

Renumbered and Amended by Chapter 160, 2023 General Session

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

- (1) There is created within the office 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 9-8a-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 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.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-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; and
 - (b) grant an excavation permit to a principal investigator after approving, in consultation with the Antiquities Section, the research design for the project.
- (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 office 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.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-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 office.
- (3) Before any alteration is commenced on a designated landmark, three months' notice of intent to alter the site shall be provided to the office.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-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 office.
- (2) Any person who discovers any archaeological resources on privately owned lands shall promptly report the discovery to the office.
- (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.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-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 160, 2023 General Session

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

- (1) If a person knows or has reason to know that the person discovered ancient human remains on nonfederal land that is not state land:
 - (a) the person shall:
 - (i) cease activity in the area of the discovery until activity may be resumed in accordance with Subsection (1)(e);
 - (ii) notify a local law enforcement agency in accordance with Section 76-9-704; and
 - (iii) 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
 - (b) the person who owns or controls the nonfederal land shall:
 - (i) require that activity in the area of the discovery cease until activity may be resumed in accordance with Subsection (1)(e); and

- (ii) make a reasonable effort to protect the discovered ancient human remains before activity may be resumed in accordance with Subsection (1)(e).
- (c)
 - (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)(d), 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).
- (d)
 - (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)(d), 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)(d) 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)(d) is exempt from Title 63G, Chapter 4, Administrative Procedures Act.
- (e) 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)(c)(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 office, 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.

Renumbered and Amended by Chapter 160, 2023 General Session

Part 4 Historic Sites

9-8a-401 Purpose.

The Legislature determines and declares that the public has a vital interest in all antiquities, historic and prehistoric ruins, and historic sites, buildings, and objects which, when neglected, desecrated, destroyed or diminished in aesthetic value, result in an irreplaceable loss to the people of this state.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-402 Definitions -- Office duties.

- (1) In addition to the definitions described in Section 9-8a-302, as used in this part:
 - (a) "Effect" means an alteration to one or more characteristics of a historic property that qualify the historic property for inclusion in, or that make the historic property eligible for inclusion in, the National Register of Historic Places.
 - (b) "Historic property" means any historic or prehistoric district, site, building, structure, or object that is at least 50 years old and that is included in, or that is eligible for inclusion in, the National Register of Historic Places.
 - (c) "State register" means a register of cultural sites and localities, historic and prehistoric sites, and districts, buildings, and objects significant in Utah history.
 - (d) "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a state agency, including a project, activity, or program:
 - (i) carried out by or on behalf of a state agency;
 - (ii) carried out with financial assistance from the state; or
 - (iii) that requires a state permit, license, or approval.
- (2) The office shall:
 - (a) constitute the historic preservation agency for this state;
 - (b) establish a state register for the orderly identification and recognition of the state's cultural resources; and
 - (c) provide for participation in the National Historic Preservation Program.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-403 Placement on State or National Register.

The board shall notify owners of sites, buildings, structures, or objects before placing those sites, buildings, structures, or objects on the State Register or nominating them to the National Register.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-404 Agency responsibilities -- State historic preservation officer to comment on undertaking -- Public Lands Policy Coordinating Office may require joint analysis.

- (1)
 - (a) Before approving any undertaking, an agency shall:
 - (i) take into account the effect of the undertaking on any historic property; and
 - (ii) provide the state historic preservation officer with a written evaluation of the undertaking's effect on any historic property.
 - (b) The state historic preservation officer shall provide to the agency a written comment on the agency's determination of effect within 30 days after the day on which the state historic preservation officer receives a written evaluation described in Subsection (1)(a)(ii).
 - (c) If the written evaluation described in Subsection (1)(a)(ii) demonstrates that there is an adverse effect to a historic property, the agency shall enter into a formal written agreement with the state historic preservation officer describing how each adverse effect will be mitigated before the agency may expend state funds or provide financial assistance for the undertaking.
 - (d) The state historic preservation officer shall make available to the Public Lands Policy Coordinating Office a list of undertakings on which an agency or federal agency has requested the state historic preservation officer's or the Antiquities Section's advice or consultation.

- (e) The Public Lands Policy Coordinating Office may request the joint analysis described in Subsections (2)(c) and (d) of any proposed undertaking on which the state historic preservation officer or Antiquities Section is providing advice or consultation.
- (2)
- (a) If the state historic preservation officer does not concur with the agency's written evaluation required by Subsection (1)(a)(ii), the state historic preservation officer shall inform the Public Lands Policy Coordinating Office of any objections.
 - (b) The Public Lands Policy Coordinating Office shall review the state historic preservation officer's objections and determine whether or not to initiate the joint analysis established in Subsections (2)(c) and (d) within 30 days after the day on which the state historic preservation officer informs the Public Lands Policy Coordinating Office of the objections.
 - (c) If the Public Lands Policy Coordinating Office determines further analysis is necessary, the Public Lands Policy Coordinating Office shall, jointly with the agency and the state historic preservation officer, analyze:
 - (i) the cost of the undertaking, excluding costs attributable to the identification, potential recovery, or excavation of historic properties;
 - (ii) the ownership of the land involved;
 - (iii) the likelihood of the presence and the nature and type of historical properties that may be affected by the expenditure or undertaking; and
 - (iv) clear and distinct alternatives for the identification, recovery, or excavation of historic properties, including ways to maximize the amount of information recovered and report that information at current standards of scientific rigor.
 - (d) The Public Lands Policy Coordinating Office, the agency, and the state historic preservation officer shall also consider as part of the joint analysis:
 - (i) the estimated costs of the alternatives in Subsection (2)(c)(iv) in total and as a percentage of the total cost of the undertaking; and
 - (ii) at least one plan for the identification, recovery, or excavation of historic properties that does not substantially increase the cost of the proposed undertaking.
- (3)
- (a)
 - (i) If the state historic preservation officer concurs with the agency's evaluation or if the Public Lands Policy Coordinating Office determines that the joint analysis is unnecessary, the state historic preservation officer shall, no later than 30 calendar days after receiving the agency's evaluation, provide formal comments on the agency's evaluation.
 - (ii) If a joint analysis is conducted, the state historic preservation officer shall provide formal comments on the agency's evaluation no later than 30 calendar days after the conclusion of the joint analysis.
 - (b) The state historic preservation officer shall ensure that the comments include the results of any joint analysis conducted under Subsection (2).
 - (c) If a joint analysis is not conducted, the state historic preservation officer's comments may include advice about ways to maximize the amount of historic, scientific, archaeological, anthropological, and educational information recovered, in addition to the physical recovery of artifacts and the reporting of archaeological information at current standards of scientific rigor.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-405 Federal funds -- Agreements on standards and procedures.

By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may accept and administer federal funds provided under the provisions of the National Historic Preservation Act of 1966, the Land and Water Conservation Act as amended, and subsequent legislation directed toward the encouragement of historic preservation, and to enter into those agreements on professional standards and procedures required by participation in the National Historic Preservation Act of 1966 and the National Register Office.

Renumbered and Amended by Chapter 160, 2023 General Session

Part 5 Historical Preservation Act

9-8a-502 Legislative finding.

The Legislature finds and declares that preservation and restoration of historically significant real property and structures as identified by the State Register of Historic Sites are in the public interest of the people of the state of Utah and should be promoted by the laws of this state.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-503 Preservation easement.

Any owner of a fee simple interest in real property may convey, and any other party entitled to own real property interests may accept, a preservation easement pertaining to the real property if the real property possesses historical value that will be enhanced or preserved by the terms of the easement regarding restoration or preservation of the real property.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-504 Preservation easement -- Subject to other laws.

Except as provided in this part, preservation easements are subject to the other laws of this state governing easements, generally. Any preservation easement may, with respect to the burdened land, entitle its owner to take certain action, to require certain action to be taken by the owner of the burdened land, or require that certain action not be taken by the owner of the burdened land, and under any such circumstances may be either appurtenant or in gross.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-505 Rule Against Perpetuities and Rule Restricting Unreasonable Restraints on Alienation not applicable.

The rule of property known as the Rule Against Perpetuities and the rule of property known as the Rule Restricting Unreasonable Restraints on Alienation may not be applied to defeat any of the provisions of this part or of any deed, lease, conveyance, covenant, easement, or other interest created or document executed in accordance with the provisions of this part.

Renumbered and Amended by Chapter 160, 2023 General Session

9-8a-506 Charitable contribution for tax purposes.

Any conveyance of a preservation easement may be deemed a charitable contribution for tax purposes in accordance with the laws, rules, and regulations pertaining to charitable contributions of interests in real property.

Renumbered and Amended by Chapter 160, 2023 General Session