I. PURPOSE

Certain properties and sites of cultural and archaeological significance are registered and listed in the National Register of Historic Places and State Register of Cultural Properties. Such sites have specific regulations that govern site and aesthetic disturbance activities at or near their specific locations. Other potentially significant sites, i.e., known eligible properties that are not yet registered, may also exist on state trust lands, and therefore would be protected under state laws. The following policy guidance outlines the appropriate measures to be taken when evaluating potential rights-of-way, leases, improvements, renewals or other projects where cultural properties and archaeological sites are suspected or known to be present on state trust lands.

II. AUTHORITY

The New Mexico Department of Cultural Affairs, Historic Preservation Division is statutorily tasked with protection of cultural properties through enforcement of the Cultural Properties Protection Act [§§18-6A-1 to 18-6A-6 NMSA 1978], the Prehistoric and Historic Sites Preservation Act [§§18-8-1 to 18-8-8 NMSA 1978], the Cultural Properties Act [§§18-6-1 to 18-6-27 NMSA 1978], the National Historic Preservation Act of 1966 [Title 16 USC 470 et seq.], and associated rules as found in Title 4 Chapter 10 NMAC.
III. POLICY

All proposed project sites on state trust lands shall begin with a search of the New Mexico Cultural Resources Information System (NMCRIS) (or equivalent) and the other cultural resource records maintained by the Archaeological Records Management Section (ARMS) of the New Mexico Historic Preservation Division (an “ARMS Inspection”). The following sections describe the necessary steps to be taken after an ARMS Inspection is conducted and the results show that (A) a survey has been conducted and no cultural property is located, (B) a survey has been conducted and cultural properties are identified near or on a proposed project site, or (C) no survey has been conducted in the area.

A. Applications involving an ARMS Inspection resulting in a surveyed area where no cultural properties were located

If the survey was conducted to current standards defined by NMAC 4.10.15 and no cultural properties were found, then the application may proceed without any further archaeological review. However, the following instruction and notification must be acknowledged as received by the applicant prior to approval of the application:

- NMSA 1978, § 18-6-9(A) states “Any person who knowingly excavates, injures or destroys cultural property located on state land without a permit is guilty of criminal damage to property.” Further, NMSA 1978, § 18-6-9(B) states “Any person who solicits, employs or counsels another person to excavate injure or destroy cultural property located on state land without a permit is guilty of criminal damage to property.” Applicants and lessees should always exercise due caution to ensure that cultural properties are not inadvertently excavated, injured or destroyed by any person. Should any activity reveal suspected cultural property, the activity should cease until a site evaluation is made.

B. Applications involving an ARMS Inspection resulting in a surveyed area where cultural properties were located

When a proposed project area includes or is near a known cultural property, the following steps must be taken. "Near" means the cultural property is within “the area of potential effect” of the project, as defined by NMAC 4.10.15.7(D). In addition, NMSA 1978, § 18-6A-5 requires that "State agencies shall cooperate with the officer [SHPO] and exercise due caution to ensure that cultural properties are not inadvertently damaged or destroyed.” In all such instances, due caution requires the following:

- If any archaeological or cultural properties are identified near or on a proposed project site via an ARMS Inspection, applicants shall notify the State Land Office and the State Land
Office will notify the State Historic Preservation Officer (SHPO) regarding the occurrence of such on state trust lands on or near the proposed project.

- The compliance and coordination with SHPO and SLO regarding subsequent project siting and any potential mitigation will be coordinated through the SLO Archaeologist.
- Prior to final approval of the project, the respective Division Assistant Commissioner shall discuss the associated cultural or archaeological issues with the Commissioner.

C. Applications involving an ARMS Inspection where no survey has been conducted

If an ARMS Inspection reveals that the proposed project area has not been surveyed, then the application may proceed without any further archaeological review. However, the following instruction and notification must be acknowledged as received by the applicant prior to approval of the application:

- NMSA 1978, § 18-6-9(A) states “Any person who knowingly excavates, injures or destroys cultural property located on state land without a permit is guilty of criminal damage to property.” Further, NMSA 1978, § 18-6-9(B) states “Any person who solicits, employs or counsels another person to excavate injure or destroy cultural property located on state land without a permit is guilty of criminal damage to property.” Applicants and lessees should always exercise due caution to ensure that cultural properties are not inadvertently excavated, injured or destroyed by any person. The State Land Office recommends that a survey be conducted to current standards defined by NMAC 4.10.15 prior to any activity in the proposed project area. As a condition of this permit and pursuant to NMAC 19.2.10.20, any project or lease activities that reveal or result in discovery of a previously undocumented significant cultural property or archaeological site on state trust land shall result in immediate cessation of activities and immediate notification of the State Land Office and SHPO. Activities shall remain suspended until SHPO and the State Land Office approve resumption of activities. Furthermore, if activity is conducted without the benefit of a survey and any cultural property is damaged in the process, you will be subject to a fine of no less than $100,000.00, at the discretion of the Commissioner of Public Lands. You will also be held liable for the cost of an archeological damage assessment, plus the remediation value of said property as determined by that damage assessment.

APPROVED:

[Signature]

AUBREY L. DUNN
COMMISSIONER OF PUBLIC LANDS

DATE

9/1/2015

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