

TITLE 19 NATURAL RESOURCES & WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 24 CULTURAL PROPERTIES PROTECTION

19.2.24.1 ISSUING AGENCY: Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.
[19.2.24.1 NMAC - N, XX/XX/XXXX]

19.2.24.2 SCOPE: This part pertains to the identification and protection of cultural properties on state trust lands.
[19.2.24.2 NMAC - N, XX/XX/XXXX]

19.2.24.3 STATUTORY AUTHORITY: The commissioner is the executive officer of the state land office, pursuant to Section 19-1-1 NMSA 1978. The commissioner's authority to manage, control, and care for state trust lands is found in N.M. Const., art. XIII, Section 2, and in Section 19-1-1 NMSA 1978. The New Mexico Cultural Properties Protection Act, Sections 18-6A-1 to 18-6A-6 NMSA 1978, requires the state land office, as an agency with jurisdiction over state land, to exercise due caution to ensure that cultural properties on state trust lands are not inadvertently damaged or destroyed. The New Mexico Cultural Properties Act, Sections 18-6-1 to 18-6-17 NMSA 1978, authorizes the commissioner to initiate action against any person violating the Cultural Properties Act by causing damage to, or destroying, cultural properties located on state trust lands. The authority to promulgate this part is found in Section 19-1-2 NMSA 1978.
[19.2. 24.3 NMAC - N, XX/XX/XXXX]

19.2.24.4 DURATION: Permanent.
[19.2.24.4 NMAC - N, XX/XX/XXXX]

19.2.24.5 EFFECTIVE DATE: March 1, 2022 unless a later date is cited at the end of a section. [19.2.24.5 NMAC - N, XX/XX/XXXX]

19.2.24.6 OBJECTIVE: The objective of this part is to establish and maintain processes to proactively identify cultural properties on state trust lands to ensure that such properties are not damaged or destroyed, by generally requiring informational reviews and archaeological surveys before surface disturbing activity on state trust lands takes place, requiring avoidance and mitigation of damage to cultural properties, and providing mechanisms to enforce protections for cultural properties. This part applies to all state trust lands, the surface of which is held in trust by the commissioner. [19.2.24.6 NMAC - N, XX/XX/XXXX]

19.2.24.7 DEFINITIONS: As used in 19.2.24 NMAC, the following terms have the meaning set forth in this section unless otherwise indicated in the text of this rule:

A. "Applicant" means any person applying to the commissioner for a lease, sublease, easement, permit, license, grant, amendment, certificate or other instrument issued by the commissioner of public lands.

B. "Archaeological Survey" or "Survey" means a visual inspection of land to examine, identify, record, evaluate and interpret cultural properties, may include communications with THPOs from potentially impacted tribes, and may include limited tests but shall not include excavation or test excavation, as provided in 4.10.15 NMAC. An archaeological survey is conducted by an archaeologist who meets the professional qualification standards in accordance with 4.10.8 NMAC.

C. "Area of Potential Effect" or "APE" means the geographic area or areas within which a project may directly or indirectly cause changes in the character or use of a cultural property, if any such properties exist, as provided in 4.10.15 NMAC. The APE is influenced by the scale and nature of the project, variation in topography and vegetation, and the results of consultations, and may be different for different kinds of effects caused by the undertaking and may include a buffer.

D. "ARMS Inspection" means a search of the New Mexico Cultural Resources Information System (NMCRIS) and the other cultural resource records maintained by the Archaeological Records Management Section (ARMS) of the historic preservation division of the New Mexico department of cultural affairs, in accordance with 4.10.15.9 NMAC.

E. “Commissioner” means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule.

F. “Cultural Property” means a structure, place, site, object or resource having historic, archaeological, scientific, architectural or other cultural significance. A cultural property includes a property listed on or eligible for inclusion on either the New Mexico register of cultural properties pursuant to the Cultural Properties Act, or listed on or eligible for listing on the national register of historic places pursuant to the National Historic Preservation Act, 16 U.S.C. Section 470.

G. “Cultural Properties Act” means the New Mexico Cultural Properties Act, Sections 18-6-1 through 18-6-17 NMSA 1978.

H. “Cultural Properties Protection Act” means the New Mexico Cultural Properties Protection Act, Sections 18-6A-1 through 18-6A-6 NMSA 1978.

I. “Grantee” is a person to whom the commissioner has issued a right-of-way easement, a saltwater disposal easement, right of entry permit, or any other instrument that is not a lease.

J. “Lessee” is a person to whom the commissioner has issued an agricultural lease, a business lease, an oil and gas lease, or any other type of lease.

K. “Person” is a natural person, partnership, corporate entity, association or organization, governmental entity, or any other legal entity.

L. “Project” means any surface disturbing activity or proposed surface disturbing activity on state trust lands that requires a lease, sublease, easement, permit, license, grant, amendment, certificate or other entitlement from the commissioner, as well as any surface disturbing activity that is directly undertaken by the state land office.

M. “State Historic Preservation Officer” or “SHPO” means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act who serves as the director of the historic preservation division of the New Mexico department of cultural affairs.

N. “State Land Office” means the New Mexico state land office.

O. “State Trust Lands” or “Trust Lands” means those lands, their natural products and all assets derived from them, which are under the care, custody and control of the commissioner.

P. “Surface Disturbance” or “Surface Disturbing” means any ground disturbing or ground breaking activity, including but not limited to blading, scraping, contouring, excavating, trenching, drilling, digging, burying, paving, covering or compacting, soil surfaces, whether or not previously disturbed, and whether or not the person engaged in those activities is authorized to occupy or use state trust lands.

Q. “Tribal Historic Preservation Officer” or “THPO” means an individual designated or appointed by a tribe’s chief governing authority or designated by a tribal ordinance or preservation program to represent the tribe’s interests with respect to cultural properties.

R. “Trust” means the trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310) and that trust’s assets, which are administered through the state land office by the commissioner.

[19.2.24.7 NMAC - N, XX/XX/XXXX]

19.2.24.8 GENERAL REQUIREMENTS:

A. Avoidance of Damage. Any persons engaged in activities on state trust lands are subject to the requirements of the Cultural Properties Act, the Cultural Properties Protection Act, and 19.2.24.13 NMAC. Persons shall not disturb, dislodge, damage, destroy, or remove any cultural properties on state trust lands. Any project on state trust lands that has the potential to directly or indirectly damage cultural properties is additionally subject to the requirements of 19.2.24.8(B), (C), (D) and (E) NMAC.

B. Signed Acknowledgment. Lessees, grantees, and applicants shall acknowledge, on a form prescribed by the commissioner, that they understand and agree to comply with applicable laws and rules pertaining to the protection of cultural properties on state trust lands.

C. ARMS Inspection and Survey. Lessees, grantees, and applicants shall submit to the state land office an ARMS inspection of the entire area of potential effect. The time when that submission is required is provided in [subparagraph] E of this [section]. In the best interest of the trust, the commissioner, in the commissioner’s discretion, may elect to provide the ARMS inspection for any particular portion of state trust land. The following subparagraphs describe the necessary steps to be taken after an ARMS inspection is conducted.

(1) If the ARMS inspection demonstrates that the entire area of potential effect has been surveyed, and that no cultural properties are located within the area of potential effect, then the lessee,

grantee, or applicant shall submit the ARMS inspection to the state land office. The application or project may proceed without any further archaeological review.

(2) If the ARMS inspection demonstrates that the entire area of potential effect has not been surveyed, then the lessee, grantee, or applicant shall conduct an archaeological survey, and shall submit the survey to the state land office.

(3) If the ARMS inspection or survey demonstrates that the entire area of potential effect has been surveyed, and cultural properties are identified within the area of potential effect, the lessee, grantee, or applicant shall submit the survey to the state land office.

D. Compliance Measures. For any application or project where any survey has identified cultural properties within the area of potential effect, the lessee, grantee, or applicant shall develop and submit to the state land office compliance measures related to project siting, and avoidance and mitigation of damage to cultural properties; those compliance measures may be included within the survey that the lessee, grantee, or applicant submits to the state land office or submitted separately. The state land office will review any applicable compliance measures, and determine if those measures are sufficient to protect or mitigate damages to the affected cultural properties, a review that may include consultation with the SHPO and shall include consultation with any applicable THPO. In the best interests of the trust, the state land office may require additional or different compliance measures as a condition to approval of the application or project. This review process will be completed within 60 days of submission of an administratively complete submission (ARMS inspection or survey, and any applicable compliance measures), but that time period may be extended in the commissioner's discretion as necessary to ensure appropriate review. Upon commissioner approval, the relevant leasing division shall include appropriate compliance measures in the relevant lease, easement, or other instrument, if applicable, consistent with applicable statutes and rules.

E. Timing of Requirements. The undertakings required in 19.2.24.8(A), (B) and (C) NMAC are required at different points in time depending on the nature of the application or project, as follows:

(1) **Leases, Easements, or Other Instruments Not Requiring Subsequent Approval.** For applications or projects where there is no review after the application stage that is required before project activities may take place: the acknowledgment specified in 19.2.24.8(B) NMAC, ARMS inspection and survey specified in 19.2.24.8(C) NMAC, and any applicable compliance measures specified in 19.2.24.8(D) NMAC, are required at the time of submission of the application for the lease, easement, or other instrument.

(2) **Leases, Easements, or Other Instruments Requiring Subsequent Approval.** For applications or projects where subsequent review by the commissioner is required after a lease, easement, or other instrument may be issued, and before project activities may take place: the acknowledgment specified in 19.2.24.8(B) NMAC is required at the time of submission of application or bid. The ARMS inspection and survey specified in 19.2.24.8(C) NMAC, and any applicable compliance measures specified in 19.2.24.8(D) NMAC, are required at the time of submission of the project plans or, if no project plans are required to be submitted, at least 60 days prior to commencement of surface disturbing activities.

(3) **Oil and Gas Leases.** This subpart applies to oil and gas leases. The acknowledgment specified in 19.2.24.8(B) NMAC is required prior to issuance of a lease or any lease assignment. For all surface disturbing activities (whether under a new or existing lease or lease assignment), the description and location of the project, the ARMS inspection and survey specified in 19.2.24.8(C) NMAC, and any applicable compliance measures specified in 19.2.24.8(D) NMAC, must be received, reviewed, and approved by the state land office prior to any surface disturbing activity, along with the acknowledgment specified in 19.2.24.8(B) NMAC if one has not already been submitted by the person undertaking the surface disturbing activity. Upon authorization from the state land office, a person may commence the surface disturbing activity.

(4) **Mining Leases.** This subpart applies to leases for mining as specified in NMSA 1978, Chapter 19, Articles 8-9, and 19.2.2, 19.2.3, 19.2.4, 19.2.5, 19.2.6, and 19.2.7 NMAC. The acknowledgment specified in 19.2.24.8(B) NMAC is required at the time of submission of an application or bid to lease. The ARMS inspection and survey specified in 19.2.24.8(C) NMAC, and any applicable compliance measures specified in 19.2.24.8(D) NMAC, are required at the time of submission of 1) an application for a mining permit with the mining and minerals division of the New Mexico energy, minerals, and natural resources department, or equivalent permitting agency for leases that are subject to 19.2.2 and 19.2.6; and 2) prior to commencement of any surface disturbing activity for all other types of mineral leases.

F. Archaeological Survey Permits and Notifications to Survey. Individuals with valid archaeological survey permits issued by the New Mexico cultural properties review committee as provided in 4.10.8 NMAC are preapproved to access state trust lands for the sole purpose of conducting archaeological surveys pursuant to this rule, without the need for a separate authorization from the commissioner. For other project purposes (that is, other than archaeological surveys) existing lessees or grantees who are already authorized to access and occupy particular state trust lands by virtue of a lease or easement are not required to obtain separate authorization from the commissioner. All other persons needing access to state trust lands for other project purposes (that is, other than archaeological surveys) shall apply for a right of entry permit on a form prescribed by the commissioner, and the state land office will process such application on a timely basis. The state land office should be notified at least 15 days before an archaeological survey is conducted, except for exigent situations, including but not limited to responses to spills or hazardous conditions, in which case the state land office should be notified as soon as possible and in any event prior to the survey.

[19.2.24.8 NMAC - N, XX/XX/XXXX]

19.2.24.9 ACKNOWLEDGMENT-ONLY REQUIREMENTS:

The acknowledgment specified in 19.2.24.8(B) NMAC shall be included with applications for the following, with no ARMS inspection or survey as specified in 19.2.24.8(C) NMAC, or compliance measures as specified in 19.2.24(D) NMAC, unless those additional measures are specifically required by the commissioner for a particular application:

- (1) renewals or reissues, assignments, conversions, and subleases of existing grants, leases or permits, and agricultural improvement replacements, where no new surface disturbance will occur;
- (2) applications for new agricultural leases in open acreage or through competitive bid; and
- (3) applications for non-surface disturbing rights of entry, with the final decision vested with the commissioner about whether or not the relevant activity is surface disturbing.

[19.2.24.9 NMAC - N, XX/XX/XXXX]

19.2.24.10 EXEMPTIONS:

A. The following activities are exempt from the acknowledgment, ARMS inspection and survey, and compliance measures requirements of this rule. These exemptions do not provide authorization to enter or occupy state trust lands, which must be granted by the commissioner under a valid lease, easement, permit, or other instrument:

- (1) law enforcement, emergency response, or natural disaster response (“emergency response”) activities, whether or not undertaken by or in coordination with the state land office, that are necessary to protect immediate threats to public health, safety, or the environment, including but not limited to firefighting, flood management, or controlling, containing, or capturing releases of hazardous or harmful materials. If the state land office is not already involved in undertaking or coordinating the emergency response, it shall be notified of the response as soon as practicable. Any known cultural property within the area of emergency response should be monitored to the extent practicable so that any adverse effects to the cultural property can be avoided, mitigated, or minimized;
- (2) administrative actions performed by the state land office, such as executive orders or rule making activities, and any internal agency processes or decisions that do not create new surface disturbance;
- (3) memoranda of understanding or agreements to cooperate executed by the commissioner, or easements granted by the commissioner to any person that do not directly expand current surface uses or create new surface disturbance;
- (4) recreational access permits and educational access permits, applications for such permits, non-surface disturbing natural resource authorizations, or activities that already require the presence of an archaeological monitor such as special use agreements;
- (5) projects analyzed under the National Environmental Policy Act of 1969, 42 U.S.C. Section 4321 et seq. and the National Historic Preservation Act of 1966, 16 U.S.C. Section 470 et seq., and their implementing regulations, so long as such analysis includes impacted state trust lands. For such projects, the applicant shall submit a copy to the state land office of the survey or portions thereof

pertaining to impacted state trust lands;

- (6) acquisition or disposition of lands through exchange or sale; and
- (7) plugging, restoration, or reclamation activities that do not involve new surface disturbing activity outside the authorized boundaries of any existing roads, rights of way, well pads, associated oil and gas facilities or other structures..

B. Persons engaged in the activities exempted in 19.2.24.10(A) NMAC remain subject to the requirements of the Cultural Properties Act, the Cultural Properties Protection Act, and 19.2.24.13 NMAC.

C. Notwithstanding any other provision of this part, the commissioner may require an ARMS inspection or survey for any project when determined to be in the best interest of the trust.
[19.2.24.10 NMAC - N, XX/XX/XXXX]

19.2.24.11 CONFIDENTIALITY: Consistent with the Cultural Properties Act, Section 18-6-11.1 NMSA 1978, and Section 19-1-2.1 NMSA 1978, any information in the custody of the state land office concerning the location of cultural properties, the preservation of which is in the interest of the state of New Mexico, shall remain confidential and not subject to inspection under the New Mexico Inspection of Public Records Act, Section 14-2-1 to Section 14-2-12 NMSA 1978 unless the commissioner determines that the dissemination of such information will further the purposes of the Cultural Properties Act and will not create a risk of loss of cultural properties.
[19.2.24.11 NMAC - N, XX/XX/XXXX]

19.2.24.12 ENFORCEMENT:

A. In the event any applicant, lessee, or grantee becomes aware of actual or threatened damage to cultural properties on state trust lands where that person is conducting project activities or has filed an application to conduct project activities, the applicant, lessee, or grantee shall immediately notify the state land office, which will then notify the SHPO, and the applicant or lessee shall immediately suspend all project activities. Project activities shall remain suspended until the state land office, in consultation with the SHPO and any applicable THPO, approves resumption of those activities, and such approval may be conditioned on the applicant or lessee's adoption of compliance measures relating to project siting, avoidance, or mitigation of impacts to the cultural properties at issue. If human remains are uncovered, project activities within 50 feet shall stop immediately and the lessee shall notify the local law enforcement agency with jurisdiction, the state land office and SHPO pursuant to the Cultural Properties Act, Section 18-6-11.2(C) NMSA 1978. Subsequent response by local law enforcement is governed by 4.10.11 NMAC.

B. In the event an applicant, lessee or grantee conducts project activities without first performing a survey, or does not comply with any applicable avoidance and mitigation measures established by the survey or contained within the relevant lease, permit, or other instrument, and cultural property is damaged in the process, the applicant, lessee, or grantee will be required to conduct an archaeological damage assessment, at that person's own expense, and will be liable for damages as determined by the archaeological damage assessment in the amount equal to the cost of restoration, stabilization, and interpretation of the damaged cultural property. If the person failed to conduct an archaeological survey as required by this rule prior to conducting surface disturbing activity, that person shall undertake such survey after the fact. In addition, the commissioner may recover an amount equal to twice the cost of restoration, stabilization, and interpretation of the damaged cultural property, in accordance with the Cultural Properties Act, NMSA 1978, Section 18-6-9.2.

C. All applicants, lessees, and grantees that are subject to any provision of 19.2.24.8 and 19.2.24.9 NMAC shall promptly provide to the state land office all records relating to compliance with this part upon request.

D. As provided by the Cultural Properties Act, NMSA 1978, Section 18-6-9.2, the commissioner may initiate a civil action against any person violating the Cultural Properties Act on or with respect to state trust lands. This remedy is not exclusive and does not limit the rights or remedies that are otherwise available to the commissioner and the state land office under applicable law, including action against a lease, easement, or other instrument issued by the commissioner.

E. The commissioner may refer a criminal violation of the Cultural Properties Act, NMSA 1978, Sections 18-6-9, 18-6-9.1, and 18-6-9.3, to the New Mexico attorney general or to the district attorney in whose district the violation took place.

F. The state land office may undertake monitoring and staff training to protect against damage to cultural properties.
[19.2.24.12 NMAC - N, XX/XX/XXXX]