



State Land Office Cultural Properties Protection Rule

FREQUENTLY ASKED QUESTIONS

What is the purpose of the NMSLO Cultural Properties Protection Rule?

New Mexico's cultural heritage is unique and rich. Protection of that cultural heritage is one of the primary goals of the New Mexico State Land Office (NMSLO) and is required by state law. The proposed Cultural Properties Protection Rule (Rule) requires that a person shall not disturb, dislodge, damage, destroy, or remove any cultural properties on state trust land. The draft Rule also requires that an archaeological survey be completed prior to any new surface disturbing activity on state trust land (If land has been previously disturbed, such as on a well pad, and surface-disturbing activity is limited to this previously disturbed area, then no archaeological survey is necessary).

The rule applies to projects such as road building, pipeline construction, oil and gas drilling, and other infrastructure development. The draft Rule is consistent with existing practices on federal lands and New Mexico state law, and many lessees already adhere to its requirements as a matter of practice. By making survey requirements applicable across NMSLO leasing programs, it will ensure that cultural resource protections are enforceable and meaningful, and that there are appropriate avoidance and mitigation measures in place.

The draft Rule lays out specific procedures for implementing survey requirements and confirming that applicants understand their obligations to protect cultural properties before any work is done. Furthermore, because there are different administrative and statutory requirements that apply to the various types of leasing activities, the Rule is tailored to reflect those legal distinctions.

Who does the Rule apply to?

The Rule applies to all persons who enter state trust land and who directly or indirectly damage cultural properties through their activities. The Rule additionally provides specific requirements for anyone proposing or conducting new surface disturbing activity on state trust land including through grants, permits, leases, assignments, renewals, reissuances, conversions, subleases, improvement applications, competitive bids, and open acreage applications. Throughout this document anyone who holds any instrument allowing them to do authorized activities on state trust land will be referred to collectively as lessees.

How do I learn more and provide comments?

The Rule will be available on our website at <https://www.nmstatelands.org> once we enter the rulemaking process.

Formal rulemaking will include the following steps – dates are approximate:

- NMSLO provides the draft proposed Rule to State Records Center and Archives (SRCA) for publication in August 2021
- Draft proposed Rule is published by SRCA, beginning a 60-day public comment period in late August 2021
- Public hearing is scheduled within the 60-day public comment period between September and October 2021
- Final Rule, with any changes incorporated, is likely to be published and take effect in March, 2022

Will the new requirements under the Rule slow down the processing of my application, permit, or lease with the NMSLO?

No, with proper planning, many NMSLO lessees are already conducting archaeological surveys in advance of their applications. Application evaluations and approval times will not increase if a survey is performed *prior* to surface disturbing activity and submitted with the application or project plan. The survey must be consistent with the route and activity you are applying for.

The specifics are detailed in 19.2.24.8(E) of the proposed Rule.

How will the leasing process be different under the Rule?

The basic difference between the process under the proposed Rule and previous practice is that lessees will now be required to conduct an archaeological survey of a project's entire area of potential effect in advance of new surface disturbing activity, if a survey is not already on file. The draft Rule takes a proactive approach to ensure that cultural properties on state trust land are identified, recorded, and protected consistently and systematically. The draft Rule applies to all state trust lands where the State owns the surface; it does not apply where the State only owns mineral estate. NMSLO has established a standalone Cultural Resources Office which will manage the implementation of the Rule once it is adopted.

What if I can't afford to pay for an archaeological survey to comply with this Rule?

The NMSLO has created a compliance program to ensure that cultural properties on state trust land are adequately protected regardless of lessees' financial situations. More detailed information about this program is available from the Cultural Resources Office, and an application form will be forwarded if requested by a lessee. The criteria you must meet for compliance support includes the following and would need to be indicated at the time of your application:

Qualifying criteria:

- Applicant must be an NMSLO lessee.
- Project must provide natural resource benefits such as watershed, forest, range, wetland, soil or wildlife health, and may be related to brush or noxious weed control, fire or flood control, erosion control, water quality and quantity, forage abundance and diversity, or livestock/wildlife management.
- Program is designed for lessees with annual, pre-tax income of less than \$200,000. Income level will be self-certified as part of an application form.
- The project may not be financed in whole or in part by any federal grant or program. While this program aims to support archaeological surveying mainly on agricultural leased land, it may be utilized for state trust land leased by any other qualifying NMSLO lessee as deemed appropriate by the Commissioner.

Program limits:

- Applicants may apply for a NMSLO-provided survey for one qualifying project per lease per year.
- The program will support surveys for:
 - Ground disturbing improvements costing less than \$20,000 total (not including survey costs)
 - Improvements that occupy less than 60 acres, except for qualifying landscape scale projects,
- NMSLO-provided surveys will be offered on a first-come, first-served basis until all funds are expended in any given fiscal year. If program funds in any given fiscal year have been expended, applicants may choose to be put in line for the following fiscal year.

What are the basic requirements of the Cultural Properties Protection Rule?

First, all applicants are required to sign an acknowledgement form after review of the Instructions for Compliance with the Cultural Properties Protection Rule 19.2.24 NMAC.

The acknowledgement form must be signed by all lessees prior to new surface disturbance. It must also be signed by those who fall under the acknowledgement-only requirements, 19.2.24.9 NMAC, for many already existing activities where no new surface disturbance will occur including renewals or reissues, assignments, conversions, and subleases of existing grants, leases or permits and agricultural improvement replacements. The acknowledgment form also must be signed by applicants for new agricultural leases in open acreage or in competitive bid, and by applicants for non-surface disturbing rights of entry.

Second, any new surface disturbing activity requires, in advance of an application, an ARMS review or archaeological survey at the time of application, or at least 60 days prior to surface disturbance if your activity does not require a new application and you already hold a lease (e.g. oil and gas and renewable energy leases).

Specific timing of these requirements are as follows and are referenced in 19.2.24.8(E) NMAC:

(1) For applications or projects where there is no review after the application stage that is required before project activities may take place: the acknowledgment, ARMS inspection and survey, and any applicable compliance measures are required at the time of submission of the application for the lease, easement, or other instrument.

(2) 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 ARMS inspection and survey, and any applicable compliance measures 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) For oil and gas leases, the acknowledgment 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, and any applicable compliance measures must be received, reviewed, and approved by NMSLO prior to any surface disturbing activity, along with the acknowledgment if one has not already been submitted by the person undertaking the surface disturbing activity.

(4) For mining leases the acknowledgment is required at the time of submission of an application or bid to lease. The ARMS inspection and survey, and any applicable compliance measures, 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 prior to commencement of any surface disturbing activity for all other types of mineral leases.

What constitutes “surface disturbing activity”?

“Surface disturbance” or “surface disturbing” means any ground disturbing or groundbreaking activity, including but not limited to blading, scraping, contouring, excavating, trenching, drilling, digging, burying, paving, covering or compacting of 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. 19.2.24.7 (P) NMAC.

For questions, please contact:

Cultural Resources Office

Email: cprule@slo.state.nm.us

What is a cultural property?

“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.

What is an archaeological survey?

“**Archaeological Survey**” or “**Survey**” means a visual inspection of land to examine, identify, record, evaluate, and interpret cultural properties. It may include communications with the State Historic Preservation Officer (SHPO) and with Tribal Historic Preservation Officers (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.

Are survey results confidential? Why?

Any information regarding the location of cultural properties is confidential under New Mexico law (see Cultural Properties Act, Section 18-6-11.1 NMSA 1978, and Section 19-1-2.1 NMSA 1978) in order to protect properties of cultural significance from looting, damage, destruction, and vandalism. Such information is not available to the public. It is kept securely in the New Mexico Archaeological Management System and is only available to professionals permitted by the New Mexico Historic Preservation Division. It is also not subject to inspection under the New Mexico Inspection of Public Records Act.

What do I do if I find an artifact or cultural property while I’m working on state trust land?

Disturbing, dislodging, damaging, defacing, destroying, or removing historical, archaeological, paleontological, or cultural sites or artifacts are prohibited on state trust lands. If you find an artifact or cultural property on state trust land, you should stop work immediately and contact NMSLO’s Cultural Resources Office. In the event of damage to cultural properties on state land, the lessee 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.

For questions, please contact:

Cultural Resources Office

Email: cprule@slo.state.nm.us

How do I find a permitted archaeologist to perform an archaeological survey for me or my company?

The list of permitted firms is available at <http://www.nmhistoricpreservation.org/documents/consultants.html>.

Scroll down past the headings for “Archaeological Permits” and “Official Scenic Markers” to “Preservation Consultants.” Click on the pdf document titled “Cultural Resource Consultants.” The list is updated regularly and arranged by county of location. Because costs vary, the NMSLO encourages you to contact more than one firm.

The consulting firm will ask for supporting documentation. This may include a description of the project along with location information in the form of ArcGIS shape files, kml/kmz format, GPS coordinates, CAD drawings, plats, or accurate depictions on USGS 1:24000 quadrangles.

When conducting an archaeological survey, may I also have a consultant conduct a biological survey at the same time?

If you or a consultant is conducting an archaeological survey and a biological survey is also needed, please follow these instructions. When notifying the Cultural Resource Office, please indicate you are also conducting a biological survey at the same time and in coordination with your archaeological survey. When complete, please submit your biological survey to krose@slo.state.nm.us or call 505-827-3827.

What kind of digital files do I need to submit with my application to comply with this Rule?

Please provide digital information of your project’s location. Acceptable formats include shapefiles (preferred), gps coordinates, kml/kmz files or georeferenced AutoCAD files. Also, please include the contact information for the person who is most knowledgeable about the location information you are providing and is considered your “information custodian.”

I am an agricultural lessee, how does the Rule affect me?

Most agricultural leasing activities will be unaffected, except that new leases and lease renewals will be required to review the Instructions for Compliance with the Cultural Properties Protection Rule 19.2.24 NMAC, and sign the acknowledgment. **Also, applicants for agricultural improvements will need to sign the acknowledgment, and will need to provide an ARMS review or survey (except for agricultural improvement replacements with no new surface disturbance, which require only the acknowledgment form).** Some examples of improvements include, but are not limited to, fences, pipelines, livestock wells and drinkers. For applicants who are receiving NRCS (EQIP) or other federal funding support, the new Rule will have almost no impact as the federal lead agency already provides all the cultural review necessary for these projects. For these applicants, there will be almost no change in the improvement application process.

As in the past, your application for improvements will need to be submitted to the NMSLO Agricultural Leasing Bureau detailing the improvements you would like to make to your lease. The new Rule will only require those applicants who do not use federal funding support to provide

independent ARMS reviews or surveys. The NMSLO will provide instructions for compliance and guidance for agricultural lessees. In addition, the NMSLO has created a compliance program to help ensure that state trust land is surveyed regardless of lessees' financial situation (See above, "What if I can't afford to pay for a survey?"). The NMSLO has worked very hard to make the application experience efficient, timely, and supportive.

Lessees submitting lease renewals, partial or full lease assignments, new leases out of open acreage, and competitive bid leases will be required to sign the acknowledgement form after review of the Instructions for Compliance with the Cultural Properties Protection Rule at the time of the application for the activity.

I am an oil and gas lessee, how does the Rule affect me?

The Rule sets forth requirements for surveying leases prior to surface disturbing activity. If an archaeological survey has not previously been performed for the area of potential effect of a lease where construction or other surface disturbing activity will occur, one must be conducted prior to any surface disturbing activity, and appropriate documentation provided to NMSLO as early as possible. NMSLO should be notified at least 15 days before an archaeological survey is conducted.

If land has been previously disturbed, such as on a well pad, and surface-disturbing activity is limited to this previously disturbed area, then no archaeological survey is necessary.

Once a survey has been submitted to the NMSLO and any required mitigation or compliance measures have been approved, companies may proceed to drill, complete wells, and conduct other associated on-lease oil and gas activity without delay knowing the area has already been surveyed. As many oil and gas producers already have cultural properties review and compliance processes in place, many of the new requirements will be familiar. In instances where the NMSLO lessee of record and the well operator are different entities, it is important that they work together to coordinate surveys and other Rule requirements.

If I am the oil and gas lessee but not the operator of record for wells on the lease, how does this Rule affect me?

NMSLO looks to the lessee of record to ensure compliance with all state law and rules, including protection of cultural properties, plugging wells, surface reclamation, remediating spills, and safe operations. NMSLO oil and gas lessees should maintain close communication with, and oversight of, well operators' presence and activities on their leases on an ongoing basis.

I am a mineral lessee, how does this Rule affect me?

Current mineral lessees with an existing lease will be unaffected by the new Rule requirements until renewal of the existing lease or upon mining operation plan revision. At the time of renewal, if a survey has not been completed on lease areas to be disturbed, a survey will then be required. However, all new mineral lease applications will need to submit an ARMS inspection and an archaeological survey to NMSLO, if a survey has not previously been conducted, of the

entire area of potential effect, at the time of their mineral lease application. As most mineral lessees are already submitting surveys in advance, the new requirement will have a relatively low impact on most mineral lessees.

I am a business lessee or right-of-way easement holder, how does this Rule affect me?

The proposed rule sets forth requirements for surveying leased premises prior to ground disturbing activity. All new lease applications for business leases and rights of way must submit an ARMS inspection and an archaeological survey of the entire area of potential effect to NMSLO at the time of their business lease application, unless a survey has previously been conducted. As most business lessees are already submitting surveys in advance, the new requirement will have a relatively low impact on most business lessees. Current business lessees with an existing lease will be unaffected by the new Rule requirements until renewal of the existing lease, unless they engage in new surface disturbance. In that situation, an amendment to the right of way or an improvement application to a business lease must be submitted to the NMSLO for approval.

I am a water easement holder, how does the Rule affect me?

This Rule sets forth requirements for surveying leases and easements prior to ground disturbing activity. Applicants for new water easements will need to submit an ARMS inspection and an archaeological survey to the NMSLO if as survey is not already on file of the entire area of potential effect at the time of their new easement application. Current water easements will be unaffected by the new Rule requirements unless new surface disturbance is proposed. New surface disturbance activity will require an amendment application submitted to the NMSLO's Water Bureau for approval, including compliance with the Rule.

How can applicant and operators speed up and streamline the process?

Complete documentation submitted as early as possible to the New Mexico State Land Office will help move your project along. A description/location of your project and whether there are other agencies involved are vital in determining whether your project is subject to the CP Rule. Once it is determined that this is the case, the Cultural Resources Office (CRO) can provide feedback regarding requirements and timelines, and can direct you on what is needed.

How will the New Mexico State Land Office notify me that my project can proceed?

After all requirements and documentation for a project has been received, reviewed and approved, our office will inform the applicant/permittee/operator/lessee to proceed with their planned project through an email.

Does my company need to sign a CP rule acknowledgement form for reach new lease or easement?

Yes, our office is requiring a signed acknowledgement for each new lease or assignment. This documentation will stay with the lease or assignment in our records.

Are there exemptions to this Rule?

A number of applications, including assignments, renewals or reissues of leases with no new surface disturbance, and new applications for agricultural leases in open acreage or through competitive bidding, require only the signed acknowledgment form (not the additional steps of an ARMS inspection, survey, and if applicable, compliance measures).

Some categories of activity are exempt from the acknowledgment requirement as well as the ARMS inspection, survey, and compliance measures requirements. Those activities are detailed in 19.2.24.10 and include:

- (1) Law enforcement or emergency response activities that are necessary to protect immediate threats to public health, safety, or the environment, including but not limited to firefighting and flood management;
- (2) Administrative actions performed by the State Land Office, such as executive orders or Rule making activities, that do not create new surface disturbance;
- (3) Memoranda of understanding or agreements to cooperate executed by the Commissioner that do not 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.;
- (6) Acquisition or disposition of lands through exchange or sale; and
- (7) Restoration or reclamation activities that do not involve surface disturbing activity.

What are the consequences if I don't comply with this Rule?

NMSLO's goal in developing this Rule is to take a proactive approach to the protection of cultural properties, by requiring surveys before construction or other work takes place, to help guide development away from identifiable cultural properties. If a lessee 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 or other instrument, and cultural properties are damaged in the process, the lessee faces several consequences. The lessee will be required to conduct an archaeological damage assessment, at their own expense, and also will be liable for damages as determined by the damage assessment. In addition, the Commissioner may file an action to 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.

When will the Rule go into effect?

The new requirements under the Rule will take effect after the public engagement period and the formal rule-making process have concluded, most likely in the spring of 2022. You will not be asked to go back and do a survey for any application/grant already in process prior to the effective date of the Rule.

However, after enactment of the Rule, to be in compliance, all lessees/grantees will need to conduct an ARMS review and an archaeological survey before engaging in any surface disturbing activity on state trust land. The timing requirements are outlined in 19.2.24.8 (E), 2, 3, and 4.

Who do I call if I have questions about this Rule?

If you have questions related to cultural properties, please contact:

Cultural Resources Office

Email: cprule@slo.state.nm.us

If you have questions related to your lease application or leasing processes, please contact:

Commercial Resources Division

Business Leases: 505-827-4003; 505-827-5777

Rights of Way: 505-827-5728

Renewable Energy Leases: 505-827-5724

Mineral Resources Division

Oil and Gas Leases: 505-827-5745

Mineral Leases: 505-827-5750

Water Bureau: 505-827-5849

Surface Resources Division

Agricultural Leasing Bureau: 505-827-5723; 505-827-5856; 505-827-5876