



State Land Office Cultural Properties Protection Rule Agricultural Lessee 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.

For agricultural lessees the Rule applies to projects such as new roads, fence lines, pipeline construction, erosion control, and other infrastructure development. The draft Rule is consistent with existing practices on federal lands and New Mexico state law, and many applicants/lessees already adhere to its requirements as a matter of practice. By making cultural resource 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/lessees 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 generally applies to all persons who enter state trust land and 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 or applies for any permission allowing them to conduct authorized activities on state trust land will be referred to collectively as applicants/lessees.

Does “surface disturbance” include repairs to existing fences, repairs to existing tanks, repairs to existing water pipelines and windmills?

No, repairs to existing improvements that do not require any additional ground disturbance do not require a survey. You may consult with the NMSLO's Cultural Resources Office if you are uncertain for guidance. They can be reached at cro@slo.state.nm.us

What is the cost of an archaeological survey?

Archaeological survey costs mainly depend on the acreage of the project, the terrain on which it is located (for example, if it is rough and mountainous or on a flat surface), whether there is easy access to the site, or if there was a previous survey covering the area, the findings of any previous survey, and costs associated directly with the permitted contract archaeologist's own expenses (field crew, equipment, travel and lodging costs, writing time to name a few). We strongly recommend that the applicant/lessee contact more than one archaeological consultant and inquire about such costs. The NMSLO Cultural Resources Office cannot recommend one consultant over another but can help with your questions so that there is clarity about your objectives and needs.

Will the State Land Office help with survey costs?

The NMSLO is developing a Project Assistance Program that can check to see if the project area has already been surveyed and if necessary, provide an archaeological survey for qualifying applicants/lessees. If you are a qualifying applicant/lessee and meet the following criteria, our office can work with you to meet this requirement.

Qualifying criteria:

- Applicant must be an NMSLO lessee.
- Project must provide natural resource benefits such as watershed, forest, range, wetland, soil or wildlife health, 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 applicants with annual, pre-tax income of less than \$250,000. 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 surveys mainly on agricultural leased land, it may be utilized for state trust land leased by any other qualifying NMSLO applicant 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 NMSLO will procure and contract a surveyor or have its in-house archaeological staff conduct the survey. The NMSLO will not reimburse contractors hired by lessees.
- The program will support surveys for:
 - Ground disturbing improvements costing less than \$30,000 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.

- Landscape Scale Projects: Lessees may also apply for large landscape scale projects such as brush control. Landscape scale improvements that involve surface disturbing activities, are greater than 60 acres, and cost more than \$30,000 may qualify for support by this program on a case-by-case basis.

How many archaeologists are there in the state?

There are numerous archaeologists in New Mexico, but only the ones permitted by New Mexico's Historic Preservation Division (HPD) are allowed to do archaeological work on state land. The HPD keeps the most current record of a list of archaeologists that are permitted to perform archaeological work in New Mexico. The list is available at <http://www.nmhistoricpreservation.org/documents/consultants.html> Download the pdf document titled "Cultural Resource Consultants." The list is updated regularly and arranged by county. Because costs vary, the NMSLO encourages you to contact more than one consultant.

How long does it take to survey?

The maximum area any archaeologist on state land may cover is estimated at 30 acres per day. It is common to cover an average of 15-20 acres per person in a day. A small project may take less than a day (including transportation to and from the site and setting up field personnel and equipment on site for recording). Larger projects would require more personnel and more time to complete.

How long is the wait time between hiring a contract surveyor and completion of the report?

- All projects begin with research to see if the land has already been surveyed for cultural resources. This is known as an Archaeological Records Management Section (ARMS) inspection. ARMS is the state database where the details of all archaeological projects are stored.
- If the ARMS inspection reveals that the area has already been surveyed, there may be no need for an archaeological survey and the application process can proceed.
- If the ARMS inspection reveals that the area has not been completely surveyed, then an archaeological survey will need to be completed.
- The NMSLO should be notified at least 15 days before the actual survey. This will allow any questions from the permitted contracted archaeologist to NMSLO to be fielded and answered and will also allow time for the archaeologist to arrange for their field crew to go to the project area and conduct the survey.
- The time it takes a contract archaeologist to survey and write a report depends on the acreage of the project area and whether there are findings or not. Small projects with no findings take on average less than a week to complete. Larger projects take more time. The contracted archaeologist in consultation with the NMSLO archaeologists will discuss the results of the survey and any other avoidance/mitigation measures, if necessary, so that the application process can proceed in a timely manner.

How does an applicant/lessee know if the state trust land is in the NM register of cultural property list?

An ARMS inspection and/or an archaeological survey will identify any registered cultural properties in a given area. If new cultural properties are discovered, the HPD approved contractor or NMSLO in-house archaeologists will recommend the properties for inclusion in the register. If a registered cultural property (or one that is eligible to be registered) exist in the proposed project area, permitted archaeologists can recommend whether there is any possibility that the project can still occur, or recommend modifications to the project to avoid the cultural properties. In such case, there will be conditions that govern the use of the protected area.

Is information about cultural properties confidential?

When an ARMS inspection or a survey identifies a cultural property, information about the location of the cultural property remains confidential under state 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. The location and relevant resource information is only available to professionals permitted by the New Mexico Historic Preservation Division.

What event will constitute Tribal involvement?

When a proposed project cannot avoid cultural properties, and portions of the properties may be damaged, then consultation is required. Before the project can begin, there will need to be consultation (formal conversations) between the NMSLO, the State Historic Preservation Officer (SHPO), and any Tribal Historic Preservation Officers (THPO) that have cultural affiliations with the project area. This process limits damage to cultural resources, and will be guided by the NMSLO rather than the applicant/lessee.

Where does an applicant/lessee find an ARMS inspection?

In order to have an ARMS inspection conducted for a project, an applicant/lessee should contract a registered archaeologist through the link provided above. If the applicant/lessee is working with NRCS's EQIP program, the archaeological survey is typically included. Please remember the NMSLO may be able to provide assistance through the Project Assistance Program mentioned above.

Who is liable if a public hunter on state land disturbs, damages or destroys cultural properties?

The first clause in the Rule states clearly that no one, legally or illegally present on state land should in any way damage cultural properties. If hunters damage cultural properties, they are the parties responsible for the damage.

Is there a draft agreement of the “acknowledgement form” or will it be included in the new lease contract?

The NMSLO is developing an acknowledgement form which will be available to applicants/lessees prior to the publication of the final Rule.

What is an example of executive order from the NMSLO or rule making activities that would be exempt?

Under the draft Rule, activities that do not lead to new surface disturbance do not require ARMS inspections, surveys, or compliance measures. For example, in 2019, NMSLO revised its agricultural leasing rule to eliminate a requirement that applicants/lessees obtain a third party “appraisal” every time they renew their lease. That rule making is an administrative change that does not by itself lead to new surface disturbance – so the Cultural Properties Protection Rule would not have applied to it.

What defines a recreational access permit and education access permit?

Recreational access permits and education access permits are administered by the NMSLO and governed by NMSLO Rule 19, *see* <https://www.srca.nm.gov/parts/title19/19.002.0019.html>. Copies of the terms and conditions of these permits can be found on our website under the Forms Tab, <https://www.nmstatelands.org/resources/forms-and-applications/>. The rules and the permits themselves define which activities are permitted and which are prohibited. Recreational access permittees are explicitly forbidden from removing or damaging cultural properties.

Is having to notify the NMSLO, then the SHPO and the THPO time consuming when projects are of the utmost importance?

There is often a misunderstanding about the circumstances that the State Historic Preservation Office (SHPO) and applicable Tribal Historic Preservation Offices (THPOs) may be involved. When a project is initiated and a survey is necessary, fifteen days before a survey occurs, the applicant/lessee through their permitted archaeologist need to notify NMSLO that they will enter state land for the purpose of surveying. If no cultural properties are found, then the application process can proceed with no further involvement of any other parties. However, if cultural properties are identified in the project area, the following applies:

- Avoidance is the first step when cultural properties are identified. In projects of utmost importance, the applicant/lessee should be willing and able to apply alternative plans and avoid any cultural properties.
- When the survey identifies cultural properties and the project cannot avoid those properties, mitigation/recovery measures may be necessary. In this case, there will be discussion on what to do next with the SHPO and applicable THPOs. The process of identifying mitigation/recovery measures is essential to the protection of cultural properties when a project cannot avoid them.

In the Cultural Properties Protection Rule, the potential of a civil action or lawsuit is referenced. What is the exposure of an applicant/lessee to a civil lawsuit in this rule?

The 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 new surface disturbance takes place, to help guide development away from identifiable cultural properties. The authority to file civil actions comes from existing state law, the Cultural Properties Act. The proposed rule does not expand or modify this authority. Pursuant to Section 18-6-9.2 NMSA 1978, those who damage or destroy cultural properties are liable to the state agency with jurisdiction over the land, in this case the NMSLO. If an applicant/lessee (or any other party) 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 applicant/lessee (or other party) faces several consequences. The applicant/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. Under the Cultural Properties Act, NMSA 1978, Section 18-6-9.2, the Commissioner may file a lawsuit to recover an amount equal to twice the cost of restoration, stabilization, and interpretation of the damaged cultural property. This is a last resort and has never been necessary in the recent past, but is a tool available to NMSLO to seek relief in the event a party damages cultural properties and refuses to take responsibility for their actions.

What does “may undertake monitoring and staff training” mean?

The Rule allows for and encourages training of both NMSLO personnel and other external entities (including applicants/lessees) in the processes pertaining to the Rule so that everyone is on the same page and informed. Well-trained personnel can minimize processing times and can answer questions competently and without delay. Good advice coming from a well-informed and trained NMSLO employee can save time and costs to the applicant/lessee inquiring information.

- Monitoring is one of the activities that NMSLO can conduct in order to protect existing cultural resources. NMSLO monitors the status of existing sites in relation to potential damaging effects from natural causes such as erosion, flooding, or critters' infestations, and also from human induced actions such as vandalism and looting.
- Monitoring can be accomplished through satellite imagery and field visits. There is a program named Site Watch that the HPD manages in which trained volunteers visit certain sites and report on their condition and status.

I have questions that aren't answered here, who do I contact?

Please contact NMSLO's Cultural Resources Office at cro@slo.state.nm.us or by phone at 505.827.5737 to address any questions you may have about the Rule or surveying.