Cultural Properties Protection Rule

Agricultural Lessees - Agricultural Leasing Bureau Training

Cultural Resources Office

CROINFO@slo.state.nm.us
nmstatelands.org/divisions/cultural-resources-office
What are Cultural Properties?

A structure, place, site, object, or resource having historic, archaeological, scientific, architectural, or other cultural significance. They include properties listed or eligible for inclusion on either the New Mexico Register of Cultural Properties or the National Register of Historic Places.

Traces of our past are all around us, laying on the ground or buried just beneath the surface.

Paleoindian Period
12,000 Years Ago

Archaic Period
7,500

Formative Period
1,500

Historic Period
500

Present
50 Years Ago
“The previous approach to cultural properties on trust lands was, ‘if you break it, you buy it,’ and that simply isn’t good enough. This rule gives my staff the tools and authority to ensure parcels are thoroughly surveyed for cultural properties before irreparable harm is done. Cultural properties found on state trust lands are very much a part of New Mexico’s story, and it is my duty to protect these resources as much as the land itself.”
Rule Development and History

2019
- Creation of the Greater Chaco Region Cultural Buffer

2021
- Establishment of the NMSLO Cultural Resources Office
- Proposal of the Cultural Properties Protection Rule
- Public Comment Period and Tribal Consultation

2022
- Incorporation of Public Comments to the CPP Rule
- Publication of the CPP Rule

December 1, 2022 – CPP Rule Takes Effect
Public Comments

Input from Stakeholders
Beginning in August 2021, we accepted input during an extensive public comment period. In all, around 35 individual written comments were submitted, overwhelmingly in favor of the proposed rule.

Addressing Concerns
The Cultural Resources will facilitate surveys in-house or in partnership with contractors the Cultural Survey Support Program, which will help lessees that may be unable to afford the cost of a survey for a smaller project.
High-Level Process Overview

NMSLO Project Process
- NMSLO receives project application
- Leasing Division reviews application
- Application is accepted and entered into the Land Information Management System

Cultural Consultant Process
- Conduct Fieldwork
- Upload, NIAF, Site/HCPI Forms, and GIS files to NMCRIS

Cultural Compliance Review Process
- Cultural Resource Compliance Review is initiated
- Cultural Resources Office staff reviews submitted files
- Cultural Compliance Review Process
- Approve or Reject in the Land Information Management System
- Lease progresses to issue or rejection

Cultural Resource Compliance Review is initiated
- Submit concurrence to SHPO
- OR
- Request changes from cultural Consultant
- Submit concurrence to SHPO

Work with NMSLO CRO to implement requests if needed
What is Required?

Avoidance of Damage

Persons shall not disturb, dislodge, damage, destroy or remove cultural properties.

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 Subsections B, C, D, and E of 19.2.24.8 NMAC.
What is Required?

Signed Acknowledgment

Parties must understand, agree, and comply with the Cultural Properties Protection Rule.

Only One Signed Acknowledgment per Lease

Parties 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.
The Instructions for Compliance
3 pages of “how-to” information
6. For the AEMS Review (result A above), the archaeological consultant will complete and submit the AEMS Inspection Desktop Review form on the Cultural Compliancy Web Portal (Web Portal), available at http://cultural.compliancy.mmtatland.org/. NMSLO’s Cultural Resources Office will have immediate access to the submitted web form and accompanying documents.

7. If the AEMS inspection result indicates a previous survey showing the presence of cultural properties within the AEP (result B above), the Party must propose avoidance and protection measures for the project as designed in collaboration with their archaeological consultant.

8. If the AEMS inspection shows that the entire AEP has not been subject to archaeological survey or to a current standards survey (result C above), a complete archaeological survey must be conducted. The new survey need not include areas already subject to acceptable surveys. See continued instructions below, Part III.

9. Because specific locational information of cultural properties that may be contained in an AEMS inspection or archaeological survey is confidential under New Mexico law (see Cultural Properties Act, Section 18-6-11.1, NMSA 1978, and Section 19-1-2, NMSA 1978), Parties should expect to receive a copy only of the Cover Sheet from their archaeological consultant, and should forward the Cover Sheet to the appropriate NMSLO leasing division with their application.


1. If the AEMS inspection, in compliance with 19-2-248.8 NMAC, indicates that the entire AEP has not been subject to archaeological survey (see Part I, Para. 4, result C), a complete archaeological survey must be conducted to current standards in compliance with 4.18-15 NMAC. The new survey need not include areas already subject to acceptable surveys.

2. In compliance with 19-2-248.8 (F) NMAC, at least 15 calendar days prior to any survey activities, the archaeological consultant should file and submit a Notification of Intent to Conduct an Archaeological Survey through the Web Portal at http://cultural.compliancy.mmtatland.org/ and will submit, along with the Cover Sheet, any necessary documentation for cultural compliance review pursuant 19-2-248.8 (E)(3) NMAC. Only on-lease oil and gas projects with activities that are not included in any other lease application at NMSLO (e.g., Business or Right of Way) should utilize the Web Portal.

Part II: Archaeological Surveys and Compliance Measures.

1. If the AEMS inspection, in compliance with 19-2-248.8 NMAC, indicates that the entire AEP has not been subject to archaeological survey (see Part I, Para. 4, result C), a complete archaeological survey must be conducted to current standards in compliance with 4.18-15 NMAC. The new survey need not include areas already subject to acceptable surveys.

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3. Only archaeological surveys from archaeological consultants will be accepted and must be conducted under current standards in compliance with 4.18-15 NMAC. Information on how to access the list of archaeological consultants is located in Part I, Para. 2 above. NMSLO encourages Parties to contact more than one archaeological consultant in your location as proximity will be a factor in estimated costs of an archaeological survey.

4. Parties will be expected to design their project to avoid any cultural properties identified within the AEP (as recorded on the Cover Sheet in Part I, Para. 4, result B) by the archaeological survey obtained in conjunction with a project or by pre-existing surveys, or provide other mitigation measures in collaboration with their archaeological consultant. Parties are encouraged to provide NMSLO consultant with appropriate current and accurate documentation of the proposed activity as early as possible (preferably at least sixty calendar days prior to any surface disturbing activity) to minimize processing delays and ensure implementation of avoidance and protection measures.
**Cultural Resource Protection**

**CULTURAL RESOURCE PROTECTION**

Parties are expected to review and abide by the laws and rules related to the protection of cultural properties, including the Cultural Properties Protection Rule (19.2.24 NMAC). Please indicate whether you have signed the enclosed Acknowledgment Form. Yes [ ] No [ ]

The NMSLO Cultural Resources Cover Sheet (Exhibit ________) provided to you by the archaeological consultant is attached to your application and indicates whether:

- [ ] an ARMS Inspection
- [ ] an Archaeological Survey

A description of the categories of activity that do not require an ARMS inspection or survey can be seen in 19.2.24.9 & 19.2.24.10 NMAC.

In addition to complying with the requirements of the Cultural Properties Protection Rule, parties also must comply with all other applicable state and federal laws and rules, including laws and rules pertaining to endangered and threatened species and habitat protection.

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**Digital Files**

Digital information of your project’s location is required. Acceptable formats: shapefiles (preferred), gps coordinates, kml/kmz files or georeferenced AutoCAD files. Yes ___ No ___

Digital Files Custodian-Name if other than the applicant:

__________________________________________

Email: ____________ Phone Number: ____________
What is Required?

ARMS Inspection and Survey

Archaeological Resource Management System inspections help to know if a survey have been, or need to be completed.

Prior to conducting surface disturbing activities, parties shall cause a permitted archaeologist to submit to the state land office an ARMS inspection of the entire area of potential effect... 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.
NMSLO Cultural Resources Cover Sheet

- Updated Format to Conform with the Rule Provisions
- You will receive it, completed and filled in, from your Archaeological Consultant
- Include it with your application packet

<table>
<thead>
<tr>
<th>Exhibit Type (select one)</th>
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<tbody>
<tr>
<td>LAIR - ARMS Inspection/Review - Summarize the results (select one):</td>
</tr>
<tr>
<td>(A) The entire area of potential effect or project area has been previously surveyed to current standards and no cultural properties were found within the survey area.</td>
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<tr>
<td>(B) The entire area of potential effect or project area has been previously surveyed to current standards and cultural properties were found within the survey area.</td>
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<tr>
<td>(C) The entire area of potential effect or project area has not been previously surveyed or has not been surveyed to current standards. A complete archaeological survey will be conducted and submitted for review.</td>
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<tr>
<th>Archaeological Survey Findings:</th>
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<tr>
<td>Positive - Have avoidance and protection measures been devised? Select one:</td>
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<tr>
<th>Project Details:</th>
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<tbody>
<tr>
<td>NMSLO Lease Number (if available):</td>
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<tr>
<td>Cultural Resources Consultant:</td>
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<tr>
<td>Project Proponent (Applicant):</td>
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<tr>
<td>Project Title/Description:</td>
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<tr>
<td>Project Location:</td>
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<tr>
<td>County(ies):</td>
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<td>PLSS/Section/Township/Range:</td>
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For NMSLO Agency Use Only:

<table>
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<tr>
<th>NMSLO Lease Number:</th>
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<tr>
<td>Acknowledgment Only:</td>
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<tr>
<td>Date Exhibit Delivered to Cultural Resources Office:</td>
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</table>
Results of the ARMS Inspection/Review

Green Light (A Memo)

- The entire Area of Potential Effect (APE) has been surveyed
- No Cultural Properties were identified

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 party shall cause a permitted archaeologist to submit the ARMS inspection to the state land office, in which case the required archaeological review is complete.
• The entire APE has been surveyed
• Cultural Properties were identified
• Avoidance or Mitigation will be required

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 party shall cause a permitted archaeologist to submit the most recent applicable survey(s) to the state land office. If a prior survey is submitted that is more than ten years old, the state land office will determine if the survey conforms to the requirements of 4.10.15 NMAC and if it does not, may require an updated survey.
Red Light (C Memo)

- The entire APE has not been surveyed
- Survey will be required

If the ARMS inspection demonstrates that the entire area of potential effect has not been surveyed, a complete archaeological survey must be conducted by a permitted archaeologist in accordance with the requirements of 4.10.15 NMAC and submitted to the state land office. The new survey need not include areas already subjected to acceptable surveys. The party shall be subject to the requirements of Subsection D of this section, if cultural properties are identified in the survey.
Are there any changes to the survey permits for archaeological work on State Land?

19.2.24.8 (F) NMAC

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
What are the new compliance measures?

D. Compliance measures. For any application or project where any survey has identified cultural properties within the area of potential effect, the party shall cause a permitted archaeologist to 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 is submitted to the state land office on behalf of any party, or may be 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 impacted tribe. 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 calendar 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 for up to an additional 60 calendar days as may be 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.
What are Acknowledgment-Only Requirements?

19.2.24.9 **ACKNOWLEDGMENT-ONLY REQUIREMENTS**: The acknowledgement specified in Subsection B of 19.2.24.8 NMAC shall be included with applications for the following, with no ARMS inspection or survey as specified in Subsection C of 19.2.24.8 NMAC or compliance measures as specified in Subsection D of 19.2.24.8 NMAC, unless those additional measures are specifically required by the commissioner for a particular application:

A. renewals or reissues, assignments, conversions, and subleases of existing grants, leases or permits, and agricultural improvement replacements, where no new surface disturbance will occur, or when the area of potential effect of a new project activity is entirely within a previously disturbed area of the same nature and extent of disturbance;

B. applications for new agricultural leases in open acreage or through competitive bid; and

C. 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.
What are the exemptions to the Cultural Properties Protection Rule?

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 for 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;

4. Easements, leases, or other instruments granted by the commissioner to any person that do not directly expand current surface uses or create new surface disturbance;

5. 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;

6. 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 party shall submit a copy to the state land office of the survey or portions thereof pertaining to impacted state trust lands;

7. Acquisition or disposition of lands through exchange or sale; and

8. Plugging, restoration, remediation, 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. Parties or other persons engaged in the activities exempted in Subsection A of 19.2.24.10 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, 12/01/2022]
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B. Parties or other persons engaged in the activities exempted in Subsection A of 19.2.24.10 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, 12/01/2022]
Main Facts

- Only for Lessees with annual, pre-tax income of less than $250,000
- Improvements that cost less than $30,000 and are less than 60 acres
- Qualifying landscape projects
Cultural Survey Support Program

Application

- Acknowledge that you will comply with the Cultural Properties Protection Rule
- If you qualify, SLO will review your application and decide on a path of action
Application-Cont’d

- Fill in all fields
- Digital Files Required

For Any Questions, please contact:

Luai Jaber 505-476-0218
Information on the NMSLO website:

- Links to the Cultural Resources Office Web Page
- Links to the Cultural Properties Protection Rule web page
- Links to Training material

Documents that will be Available

- NMSLO Cultural Resources Cover Sheet
- Training material
- Upon Request any other forms the Cultural Resources Office is using
Cultural Resources Office

The Cultural Resources Office (CRO) was created by Commissioner Garcia Richard in 2021 to improve the stewardship of cultural resources on the 9 million surface acres of trust land. The office reviews lease and improvement applications, conducts cultural resource surveys, assists leasing divisions with cultural compliance for land maintenance projects, and consults with governmental agencies and descendant communities. To date, over 600,000 (6.7%) acres of trust land have been surveyed for cultural resources and over 11,000 cultural properties have been identified and documented. Indigenous hunting sites that are more than 13,000 years old. Surveys continue almost every day, and are constantly adding to these totals.
The Cultural Resources Forms

nmstatelands.org/resources/forms-and-applications

State Land Office Forms

NOTE: Please clear your internet browsing history first to make these forms fillable online.

- Agricultural Leasing Forms
- Business Leasing Forms
- Cultural Resources Forms
  - Documents updated for the new Cultural Properties Protection Rule will be added in November 2022.
Thank you for helping to protect Cultural Properties on New Mexico Trust Land!

Cultural Resources Office

CROINFO@slo.state.nm.us
nmstatelands.org/divisions/cultural-resources-office