



## **State Land Office Cultural Properties Protection Rule Frequently Asked Questions**

**What is the purpose of the State Land Office’s Cultural Properties Protection Rule?** The New Mexico State Land Office (NMSLO) is committed to protecting New Mexico’s unique and rich cultural heritage. NMSLO’s Cultural Properties Protection Rule (Rule) takes effect on December 1, 2022 and requires that an archaeological survey be completed, if one is not already on file, prior to any new surface disturbing activity on state trust land. In some cases the Rule also may require avoidance or mitigation measures to be submitted to NMSLO. Finally, anyone who is present on state trust lands – whether or not they are lessees – must avoid damaging cultural properties, and in the event of damage is liable to the Commissioner.

The Rule is consistent with established New Mexico law (including the Cultural Properties Act and Cultural Properties Protection Act), and existing practice on federal lands. Many parties (lessees, grantees, applicants, etc.) already follow the substantive requirements of the Rule as a matter of practice. By making survey requirements applicable across NMSLO leasing programs, the Rule will ensure that cultural resource protections are consistent, enforceable, and meaningful.

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

**Where can I find the text of the Rule?** The Rule is available on NMSLO’s website at <https://www.nmstatelands.org/divisions/cultural-resources-office/culturalproperties/> along with related materials. It is also available on the State Records Center and Archives website at <https://www.srca.nm.gov/nmac/nmregister/xxxiii/19.2.24.html>.

**Please scroll to the end of this document for useful links and contact info regarding the Rule.**

**Who does the Rule apply to?** The Rule applies to anyone present on state trust land. The affirmative requirements of the Rule apply to anyone proposing or conducting new surface disturbing activity on state trust land, including through leases, easements, permits, and other instruments. Throughout these Frequently Asked Questions, as in the Rule itself, anyone who holds or applies for any permission to conduct authorized activities on state trust land will be referred to as “parties.”

**When does the Rule take effect?** The Rule goes into effect on December 1, 2022. The Rule was officially published and incorporated into New Mexico law (the New Mexico Administrative Code), in September 27, 2022. However, in order to give parties reasonable time to understand the Rule and undertake any planning needed to comply with the Rule, NMSLO provided a transition period of several months.

**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.

**What are the basic requirements of the Cultural Properties Protection Rule?** All persons present on state trust lands must avoid damaging, destroying, or removing cultural properties. In addition, at various points in time depending on the type of lease or other instrument, parties must sign a written acknowledgment that they will abide by the Rule. For new surface disturbing activity, parties must obtain an ARMS inspection (records review) of the area where they intend to conduct the new surface disturbing activity, and may (depending on the outcome of that review) also need to obtain and submit to NMSLO an archaeological survey and compliance measures.

**What is “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.

**Do I need to conduct a survey if I am making repairs to or replacing existing improvements such as fences, roads, pipelines, or windmills?** No. Repairs to existing improvements that do not require any additional ground disturbance do not require a survey or the other affirmative steps provided by the Rule.

**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 and with potentially impacted tribes, and may include limited tests, but shall not include excavation or test excavation. An archaeological survey is conducted by a professional archaeologist, not by a lessee (or other party) themselves.

**How much does an archaeological survey cost?** Archaeological survey costs mainly depend on the acreage of the project, the terrain where 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, etc.). We strongly recommend that parties 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.

**How do I find an archaeologist?** 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.

**Can the State Land Office help with survey costs?** The NMSLO has developed the Cultural Survey Support Program that determines if the project area has already been surveyed, and will provide an archaeological survey, if necessary, for qualifying applicants. If you are a qualifying applicant and meet program criteria, NMSLO may be able to provide the required archaeological survey. For questions or to request an application for the Cultural Survey Support Program please contact the Agricultural Leading Bureau.

**How long does it take to survey a site?** The maximum area any archaeologist on state land may cover is around 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 likely require more personnel and more time to complete.

**Why are survey results confidential?** Any information regarding the specific location of cultural properties is confidential under New Mexico statute (the Cultural Properties Act) in order to protect properties of cultural significance from looting, damage, destruction, and vandalism. Such information is kept securely in the New Mexico Archaeological Management System, and is only available to professionals permitted by the New Mexico Historic Preservation Division. Locational information is also not subject to inspection under the New Mexico Inspection of Public Records Act.

**Will the Rule delay the installation of improvements or the development of projects that are time-sensitive?** The NMSLO's expectation is that the processing time related to Rule compliance will be modest in most cases. If all required documentation for a project review is available and correct, review of lease applications by the Cultural Resources Office usually takes between 12-20 days. The Rule provides a 15-day prior notification window for archaeological surveys, and when avoidance of cultural resources is not an option and compliance measures are required, NMSLO would have a 60-day period to complete its review of compliance measures. Most projects are planned in advance and these review times can be built into project timelines.

**When conducting an archaeological survey, may I also have a consultant conduct a biological survey at the same time?** Yes. Inform NMSLO's Cultural Resource Office that 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 the Surface Resources Division, attn. Biologist.

**How does my permitted archaeologist submit their findings (ARMS inspection, survey as applicable, or compliance measures as applicable) to NMSLO?** Permitted archaeologists (that is, archaeological consultants/contractors) will submit the NMSLO Cultural Resources Cover Sheet (Cover Sheet) to NMSLO's Cultural Resources Office (CRO), either through the web portal (for ARMS inspections) or through email at [croinfo@slo.state.nm.us](mailto:croinfo@slo.state.nm.us) (for the results of archaeological surveys). The archaeological consultants will also provide you with the Cover Sheet that will describe the findings of the ARMS inspection or the archaeological survey. You will in turn include the Cover Sheet in your lease application to NMSLO or in the case of on lease activity on Oil & Gas leases, you will upload the Cover Sheet to the Portal along with other documentation required for your project.

**What type of digital files can I submit to ensure the timely review of my submissions to the Cultural Resources Office?** Digital information on your project's location is required for all leasing applications or on lease projects. Acceptable formats include shapefiles (preferred for most leasing programs, required for applications to the Office of Renewable Energy), gps coordinates, kml/kmz files or georeferenced AutoCAD files.

**If an acknowledgment form is required for my application/project/assignment etc., how do I submit one?** In most cases, the acknowledgment required by the Rule will be incorporated into existing leasing forms (e.g. lease applications, right-of-way applications, assignment applications, agricultural improvement applications, etc.). The main exceptions are

- (1) new oil and gas leases and
- (2) new surface-disturbing entirely on lease projects on existing oil and gas leases.

In the first instance, the acknowledgment form will be part of the required documents that the bid winner of a new oil and gas lease needs to sign in order for NMSLO to grant them the lease. In the second instance, if an acknowledgment is not already on file, the oil and gas lessee will submit a free-standing acknowledgment via NMSLO's Cultural Compliance Web Portal (see below, this page).

**What is the Cultural Compliance Web Portal (Portal) and what is it used for?** The Portal serves two primary purposes. First, it is the mechanism for permitted archaeologists (archaeological consultants) to digitally and efficiently submit materials to NMSLO such as notifications that they will conduct a survey on state land or the results of ARMS inspections on behalf of parties (lessees, grantees, applicants, etc.).

Second, oil and gas lessees (not other categories of lessee or grantee, such as business lessees or agricultural lessees or right-of-way grantees) will use the Portal

- (1) to execute an acknowledgment form if there is not already one on file; and
- (2) to submit a project description (and attach plats, the Cover Sheet, and digital location files) for projects on existing leases that will create new surface disturbance in previously undisturbed areas.

Projects with off and on lease activities usually require lease applications from other divisions and should not be reported on the Portal. The Portal should be used only in the case that activities occur strictly on lease and are not included in any other leasing application at NMSLO.

The Portal has automated functions for editing forms and for sending notice of approval to parties after review of the submitted documentation. As long as the submitted documentation for oil and gas lease projects is accurate and complete, the Rule review will be completed in a timely manner.

**How do I access and use the Portal?** The Portal is located on the main page of the NMSLO website:

<https://culturalcompliance.nmstatelands.org>.

Oil and gas lessees and permitted archaeologists (archaeological consultants/contractors) should create an account and password to log in to the Portal. The Portal contains two forms specifically for oil and gas lessees, and two forms specifically for permitted archaeologists. Instructions on how to access and create an account on the Portal are on our website:

Cultural Properties Protection Rule Web page:

<https://www.nmstatelands.org/divisions/cultural-resources-office/culturalproperties/>

(look under the header “Web Portal How-To Guides”)

You can also access the Portal through the Cultural Resources Office web page at:

<https://www.nmstatelands.org/divisions/cultural-resources-office/>

(look at the left navigation pane and click on the **Cultural Compliance Portal** option. It is located below the “Cultural Resources Office Staff”. The link will take you to the Login page of the Portal.)

**Where can I find instructions for each of the forms that get submitted via the Portal?**

Instructions on completing each form can be found at the following locations:

- Forms and Applications section of the NMSLO public website at:  
<https://www.nmstatelands.org/resources/forms-and-applications/>
- Cultural Properties Protection Rule web page at  
<https://www.nmstatelands.org/divisions/cultural-resources-office/culturalproperties/>.  
(under Training Resources, scroll down to the header “Web Portal How-To Guides” .  
There is also a video “Cultural Compliance Web Portal Overview” that gives an overall summary of how to use the Portal.)

- On the left hand navigation pane, below the Cultural Compliance Portal option, there is a link “CRO Forms.” Click the link and it will take you directly to the “Forms and Documents” section of the public NMSLO website.

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

If you find an artifact or cultural property on state trust land, you should stop work immediately and contact NMSLO’s Cultural Resources Office. Damaging or removing cultural sites or artifacts on state trust lands is prohibited. Under the Rule, consultation with NMSLO is required before work in the immediate area of the cultural property can resume.

**I am an agricultural lessee, how does the Rule affect me?** For agricultural lessees, the Rule applies to projects such as new roads, fence lines, pipeline construction, erosion control, and other infrastructure development.

The Rule does not require an archaeological survey or other affirmative measures for new lessees or assignees of existing leases. They will need, however, to sign an acknowledgment of the Rule’s requirements. Applications for agricultural improvements also require the signed acknowledgment form. Nothing more is required for routine maintenance and repair, or replacement, of existing improvements such as fences, pipelines, or other features.

For new surface disturbing projects (such as new roads or other infrastructure, an ARMS inspection (records review) by a permitted archaeologist is required. Depending on the results of that review, an archaeological survey and compliance measures may also be required.

For agricultural lessees who are receiving NRCS (EQIP) or other federal funding support, the new Rule will not impose any significant new obligations since the federal lead agency already provides all the cultural review necessary for these projects.

As in the past, your application for improvements will need to be submitted to the 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 improvement application contains updated instructions for compliance and guidance for agricultural lessees. In addition, NMSLO has created a compliance program to help ensure that state trust land is surveyed regardless of lessees’ financial situation (See above, “**Can the State Land Office help with survey costs?**”). NMSLO has worked very hard to make the application experience efficient, timely, and supportive.

**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 in the first instance to the lessee of record to ensure compliance with all state law and rules, including protection of cultural properties, lease reclamation, spill remediation, and safety. 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.

**Are there exceptions to this Rule?** Yes. Interested parties should review the “Acknowledgment Only” (19.2.24.9 NMAC) and “Exemptions” (19.2.24.10 NMAC) for the full description of activities that do not require ARMS inspections, archaeological surveys, or the other affirmative steps outlined in the Rule. For instance, new surface disturbing activity that is entirely within an area of preexisting disturbance does not require an ARMS inspection or survey. By way of example, if an oil and gas lessee drills a new well on a pre-existing well pad, and does not need to enlarge the pad, no survey is required. Other exceptions include emergency response activities, and project activities that also take place on federal lands and are being analyzed under federal laws that include cultural properties review, such as the National Environmental Policy Act/National Historic Preservation Act.

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).

**How will the State Land Office notify me that my project can proceed?** The review process of leasing applications has not changed. The leasing division will inform the party of the approval or not of their project once all leasing procedures and reviews from district resource managers and all specialists, including archaeologists, have been completed.

**What is an acknowledgment form and when does a party need to sign it?** Starting Dec. 1, 2022, leasing documents will contain a one-page acknowledgment form accompanied by Instructions for Compliance. Parties will sign the form and acknowledge that they will abide by the Rule. Only one acknowledgment per lease would be required. If your lease is not up for renewal, you just need to wait until the renewal process begins and sign the acknowledgment form then.

**Who is liable if a hunter or person other than a lessee damages or destroys cultural properties on state trust land?** The Rule prohibits damage or destruction of cultural properties on state trust lands by any party. If hunters or other third parties damage cultural properties on state land, they are responsible for the damage.

**Why does the Rule mention the possibility of a lawsuit to recover for damage to cultural properties?** The Rule primarily takes 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. However, any party who damages or destroys cultural properties 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. If necessary, 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.

**Is there a dispute resolution process that a party can use if there is a misunderstanding or disagreement about some aspect of the Rule?** NMSLO has an existing administrative review/dispute process where a lessee or other party who is aggrieved by an agency decision can obtain an administrative hearing and review by the Commissioner. NMSLO can also initiate this process. Parties are encouraged to raise any concerns with CRO prior to initiating any administrative protest. The NMSLO is interested in working cooperatively with lessees and other parties, and the vast majority of disagreements or uncertainties can be resolved through discussion.

**Are there any training materials that address the contents of the Rule and how it affects different types of leases, lessees and processes?**

You can access training materials by going to the Cultural Resources Office web page:

<http://www.nmstatelands.org/cultural-resources-office/>

Or to the specific web page for the Cultural Properties Protection Rule:

<http://www.nmstatelands.org/culturalproperties/>

Training materials and other materials pertinent to the Cultural Properties Protection Rule (including these FAQs) are also linked to the Forms and Applications section of the NMSLO website.

**Who do I contact if I have more questions?** If you have questions related to cultural properties or compliance with the Rule, please contact:

**Cultural Resources Office:** [croinfo@slo.state.nm.us](mailto:croinfo@slo.state.nm.us)

**Below is a list of useful links:**

Cultural Resources Office Website: <http://www.nmstatelands.org/cultural-resources-office/>

Cultural Properties Protection Rule, Training Materials, and FAQs:

<http://www.nmstatelands.org/culturalproperties/>

Cultural Compliance Portal: <https://culturalcompliance.nmstatelands.org>

Historic Preservation Division-List of Archaeological consultants:

<http://www.nmhistoricpreservation.org/documents/consultants.html>

If you have questions related to your lease or other NMSLO instrument, or your application, or leasing processes generally, 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