

TITLE 4: CULTURAL RESOURCES

CHAPTER 1: CULTURAL RESOURCES GENERAL PROVISIONS [RESERVED]

CHAPTER 2: [RESERVED]

CHAPTER 3: STATE FAIR

PART 1: GENERAL PROVISIONS

4.3.1.1 ISSUING AGENCY:

New Mexico State Fair Commission.

[4.3.1.1 NMAC - Rp, 4 NMAC 3.1.1.1 NMAC, 11/30/2004]

4.3.1.2 SCOPE:

A. Exhibitors and general public.

B. Members of the commission.

[4.3.1.2 NMAC - Rp, 4 NMAC 3.1.1.2 NMAC, 11/30/2004]

4.3.1.3 STATUTORY AUTHORITY:

A. Subsection B of 16.6.4 NMSA 1978.

B. 10.15.1 NMSA 1978.

[4.3.1.3 NMAC - Rp, 4 NMAC 3.1.1.3 NMAC, 11/30/2004]

4.3.1.4 DURATION:

Permanent.

[4.3.1.4 NMAC - Rp, 4 NMAC 3.1.1.4 NMAC, 11/30/2004]

4.3.1.5 EFFECTIVE DATE:

November 30, 2004 unless a later date is cited at the end of a section.

[4.3.1.5 NMAC - Rp, 4 NMAC 3.1.1.5 NMAC, 11/30/2004]

4.3.1.6 OBJECTIVE:

A. The objective of 4.3.1 NMAC is to inform the exhibitors, concessionaires and general public of rules, guidelines and disciplinary actions, if applicable, of the New Mexico state fair.

B. The objective of 4.3.1.16 NMAC is to provide a means by which the members of the New Mexico state fair commission can participate in commission meetings by telephone conference.

[4.3.1.6 NMAC - Rp, 4 NMAC 3.1.1.6 NMAC, 11/30/2004]

4.3.1.7 DEFINITIONS:

A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the state fair.

B. "Concessionaire" means a person who sells products or services on location, accepts orders, or sets up future business opportunities for potential monetary gain.

C. "Contemplated action" means the events that may occur for violation of the general rules and information contained in the *New Mexico state fair premium book*.

D. "Exhibitor" means one who displays something or who competes at the New Mexico state fair.

E. "General manager" means the general manager of the New Mexico state fair, or his/ her designee.

F. "General public" means the people that attend the New Mexico state fair other than exhibitors or concessionaires.

G. "General fees" means charges for services that apply to everyone.

H. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

I. "Professional services" means vocations and occupations that require advanced training in a liberal art or science. If such advanced learning or training is a requisite of a service, the service is technical or professional, and therefore exempt from provisions of the Public Purchases Act. Services performed under the direction of a licensed professional are technical or professional services.

J. "Respondent" means the person against whom the commission contemplates taking action for violations of the New Mexico state fair's rules and regulations.

K. "Technical services" means those having to do with the practical, industrial, or mechanical arts of the applied sciences. They must involve a specialized skill.

[4.3.1.7 NMAC - Rp, 4 NMAC 3.1.1.7 NMAC, 11/30/2004]

4.3.1.8 NOTICE OF CONTEMPLATED ACTION:

When the commission contemplates taking action against an exhibitor at the fair, including but not limited to: revoking a prize, honor, or cash award; barring participation in an event; or preventing an exhibitor from participating in future events, for alleged violation(s) of the general rules and policies of the *New Mexico state fair premium book* or the policies of the commission, the commission shall serve upon the respondent a written notice that contains:

A. a statement that the commission has sufficient evidence that, if not rebutted or explained, shall justify the commission in taking the contemplated action;

B. an indication of the general nature of the evidence;

C. notice that the commission shall take the contemplated action unless the respondent, within fifteen days after service of the notice, requests a hearing by depositing in the mail a certified return receipt requested letter addressed to the New Mexico State Fair at P.O. Box 8546, Albuquerque, NM 87198, and,

D. notice of the respondent's rights as follows:

- (1) the right to be represented by counsel at the respondent's expense;
- (2) the right to examine all evidence to be presented against the respondent;
- (3) the right to present a defense;
- (4) the right to call witnesses;
- (5) the right to cross-examine witnesses.

[4.3.1.8 NMAC - Rp, 4 NMAC 3.1.1.8 NMAC, 11/30/2004]

4.3.1.9 METHOD OF SERVICE:

Any notice or decision may be served either personally or by certified mail, return receipt requested, directed to the respondent's last known address. If the notice or decision is served personally, service shall be made in the same manner as is provided

for service by the rules of civil procedure for the district courts. If the notice or decision is served by certified mail, service is effectuated on the date borne by the return receipt showing delivery or the last attempted delivery to respondent, or refusal of the respondent to accept delivery.

[4.3.1.9 NMAC - Rp, 4 NMAC 3.1.1.9 NMAC, 11/30/2004]

4.3.1.10 HEARING REQUEST REQUIRED:

If the respondent mails a request for hearing as required by this section, the commission shall set a hearing date no later than thirty days after receipt of the timely request for hearing. Notice of the hearing shall be served on the respondent not less than seven working days prior to the hearing date. Notice shall include the date, time and location of the hearing, as well as the identities of the hearing officers.

[4.3.1.10 NMAC - Rp, 4 NMAC 3.1.1.10 NMAC, 11/30/2004]

4.3.1.11 VENUE OF HEARING:

Hearings held under these provisions shall be conducted at the New Mexico state fair offices in Albuquerque, New Mexico, or at the election of the hearing officers, in any county in which the act(s) complained of occurred. The respondent and the hearing officers may agree to hold the hearing in some other county.

[4.3.1.11 NMAC - Rp, 4 NMAC 3.1.1.11 NMAC, 11/30/2004]

4.3.1.12 HEARING OFFICERS:

All hearings shall be conducted by three New Mexico state fair commissioners designated by the board of commissioners as follows:

- A. the chairman of the executive committee or his or her designee;
- B. the chairman of the agricultural committee or his or her designee;
- C. one member selected by the agreement of the representatives of the executive and agricultural committees, or if no agreement can be reached, a member selected by a majority vote of the commission.

[4.3.1.12 NMAC - Rp, 4 NMAC 3.1.1.12 NMAC, 11/30/2004]

4.3.1.13 PRE-HEARING DISCOVERY:

- A. The respondent shall have access to the New Mexico state fair's file concerning the alleged violations for inspection and copying, except those portions made confidential or privileged as a matter of law. Access may be had during normal business

hours at the New Mexico state fair offices located in Albuquerque, New Mexico. A reasonable copying fee may be charged.

B. The respondent shall present to the New Mexico state fair and the hearing officers a statement of issues indicating why the notice of contemplated action is disputed.

C. The parties shall disclose to each other and to the hearing officers, orally or in writing, the names of witnesses to be called and the general area of their testimonies. If statements shall be presented to the hearing officers, the names of the persons making the statements and the general nature of the statements shall be disclosed.

D. Upon a written request by a party which sets out reasons that additional discovery is needed, further discovery in the form of production and review of documents and other tangible things, interviews or written interrogatories may be ordered at the hearing officers' discretion.

E. Cost of document copying, mail or delivery service, interviews or written interrogatories, including mileage and per diem, paid in accordance with the New Mexico Per Diem and Mileage Act, shall be borne by the requesting party.

F. Interviews may be conducted over the telephone or in person.

G. Ex parte communications are prohibited. After the issuance of a notice of contemplated action, no party or representative of a party shall discuss the merits of the case with any board member or hearing officer, or vice versa.

[4.3.1.13 NMAC - Rp, 4 NMAC 3.1.1.13 NMAC, 11/30/2004]

4.3.1.14 POSTPONEMENT OR CONTINUANCE:

The hearing officers may, in their discretion, postpone or continue a hearing for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the original hearing date.

[4.3.1.14 NMAC - Rp, 4 NMAC 3.1.1.14 NMAC, 11/30/2004]

4.3.1.15 CONDUCT OF THE HEARING:

A. All hearings shall be open to the public, unless a closed hearing is requested and the hearing officers find good cause for a closed hearing.

B. The hearing officers shall have all powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of an

accurate and complete record. These powers include, but are not limited to, the following:

- (1) administer oaths or affirmations upon request of any party;
- (2) schedule continuances;
- (3) examine witnesses and direct witnesses to testify;
- (4) limit repetitious and cumulative testimony;
- (5) set reasonable time limits on individual testimony;
- (6) rule upon the admissibility of evidence either when an objection is made or in a later ruling;
- (7) receive offers of proof for the record;
- (8) dispose of procedural requests or similar matters; and
- (9) render and enter findings of fact, conclusions of law, opinions, decisions and recommendations.

C. A complete record shall be made of each hearing that includes all evidence (both physical and testimonial) presented. The record may be transcribed by a court reporter or, at the discretion of the commissioners, by tape recording in a manner authorized by the rules of civil procedure for the district court.

[4.3.1.15 NMAC - Rp, 4 NMAC 3.1.1.15 NMAC, 11/30/2004]

4.3.1.16 DECISIONS AND APPEALS:

A. All decisions shall be rendered by a quorum of the commission no more than sixty days after completion of preparation of the record, or upon receiving the hearing officers' report, whichever is later.

B. After a decision has been rendered, the respondent may choose to request the commission to reopen the case to receive additional evidence or for other cause. If no request is made, the decision of the commission is final.

[4.3.1.16 NMAC - N, 11/30/2004]

4.3.1.17 MEETINGS BY TELEPHONE:

A. A member of the commission may participate in a meeting of the commission by means of a conference telephone or other similar communications with the provisions enumerated herein. 10-15-1 NMSA 1978.

B. This rule shall only apply when it is otherwise extremely difficult or impossible for the member to attend the meeting in person.

C. Each member participating by conference telephone shall be identified when speaking.

D. All participants shall be able to hear each other at the same time.

E. Members of the public attending the meeting shall be able to hear any member of the commission who speaks during the meeting.

[4.3.1.17 NMAC - Rp, 4 NMAC 3.1.2, 11/30/2004]

4.3.1.18 ALCOHOLIC BEVERAGES:

A. No person shall enter the New Mexico state fairgrounds bearing or otherwise possessing any alcoholic beverage. Alcohol shall be permitted for consumption only in authorized locations.

B. This regulation shall not apply to those suppliers of the New Mexico state fair concessionaires nor shall it apply to the concessionaire or his employees in carrying out their necessary operation of stocking, selling or moving alcoholic beverages between locations of sale.

C. For the purposes of this regulation, "alcoholic beverages" shall be those beverages as described and regulated by the liquor laws of the state of New Mexico.

D. Any alcoholic beverages shall be consumed solely within authorized locations.

E. Any person bearing such alcoholic beverages outside of the approved areas shall be asked to dispose of alcohol immediately or property shall be confiscated by New Mexico state police or New Mexico state fair police and the appropriate legal action be taken.

[4.3.1.18 NMAC - Rp, Rule 82-2, 11/30/2004]

4.3.1.19 DEADLY WEAPONS PROHIBITED:

A. No person shall enter the New Mexico state fairgrounds bearing or otherwise possessing any deadly weapon, whether concealed or not. Any person found to be in violation of this regulation shall be immediately removed from the premises by a duly licensed law enforcement officer.

B. This regulation shall not apply to peace officers in the performance of their official duties.

C. The commission or general manager may provide exceptions to this regulation, such as in the case of exhibitions of weapons for demonstration or sale or for ancillary use in livestock. For the purposes of this regulation, "deadly weapon" is defined as "any firearm, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including swordcanes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons; or any other weapons with which dangerous wounds can be inflicted".

[4.3.1.19 NMAC - Rp, Rule 82-1, 11/30/2004]

4.3.1.20 NEW MEXICO STATE FAIR PREMIUM BOOK:

The commission delegates to the general manager authority to annually publish a *New Mexico state fair premium book*, which contains rules that govern certain events and exhibits at the New Mexico state fair. The publication may be either printed or posted electronically on the internet.

[4.3.1.20 NMAC - Rp, SF 79-1, 11/30/2004]

4.3.1.21 LIMITATION OF LIABILITY:

The New Mexico state fair, the commission, the general manager, the New Mexico state fair employees and the state of New Mexico assume no liability for personal injury or loss or damage to any property of concessionaires, exhibitors or the general public due to fire, theft, tornado, weather conditions, *force majeure*, negligent or intentional acts of a third party or other incident.

[4.3.1.21 NMAC - Rp, 4 NMAC 3.10.25 NMAC, 11/30/2004]

PART 2: [RESERVED]

PART 3: PARTICIPANT REQUIREMENTS - JUNIOR DIVISION

4.3.3.1 ISSUING AGENCY:

New Mexico State Fair Commission.

4.3.3.2 SCOPE:

Junior exhibitors at the New Mexico state fair.

[4.3.3.2 NMAC - Rp, 4 NMAC 3.3.2, 11/30/2004]

4.3.3.3 STATUTORY AUTHORITY:

Subsection B of 16.6.4 NMSA 1978.

[4.3.3.3 NMAC - Rp, 4 NMAC 3.3.3, 11/30/2004]

4.3.3.4 DURATION:

Permanent.

[4.3.3.4 NMAC - Rp, 4 NMAC 3.3.4, 11/30/2004]

4.3.3.5 EFFECTIVE DATE:

November 30, 2004, unless a later date is cited at the end of a section.

[4.3.3.5 NMAC - Rp, 4 NMAC 3.3.5, 11/30/2004]

4.3.3.6 OBJECTIVE:

The objective is to provide junior exhibitors with guidelines for entering in and exhibiting at the New Mexico state fair.

[4.3.3.6 NMAC - Rp, 4 NMAC 3.3.6, 11/30/2004]

4.3.3.7 DEFINITIONS:

A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the state fair.

B. "General manager" means the general manager of the New Mexico state fair, or his/her designee.

C. "Junior exhibitor" means a person, ages 19 and under, who displays something in the junior_division, other than horses.

D. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

[4.3.3.7 NMAC - Rp, 4 NMAC 3.3.7, 11/30/2004]

4.3.3.8 JUNIOR DIVISION GENERAL PROVISIONS:

A. All entries shall comply with the requirements as set forth in the *New Mexico state fair premium book* including, but not limited to, specified nomination and entry procedures.

B. All exhibitors and their livestock shall comply with local and federal statutes including, but not limited to, the New Mexico livestock rules and regulations as set forth by the New Mexico livestock board.

C. All exhibitors shall operate in conformity with the New Mexico state fair's policy on humane treatment of exhibited animals as set forth in the *New Mexico state fair premium book*.

D. All exhibitors shall be either bona fide 4-H Club members enrolled in the projects that they exhibit, or future farmers of America (FFA) members in New Mexico, certified by the county agent or agricultural education advisor. All exhibitors shall be in good standing unless otherwise stated in the *New Mexico state fair premium book*.

E. All exhibitors shall not utilize unethical practices or give unapproved medication to their animals.

F. All junior exhibitors shall abide by the United States department of agriculture Wholesome Meat Act and sign a certification form attesting to compliance with this act.

G. Non-compliance with the rules contained herein or in the *New Mexico state fair premium book* may result in disciplinary action against the exhibitor, including, but not limited to, expulsion from the competition.

[4.3.3.8 NMAC - Rp, 4 NMAC 3.3.8, 11/30/2004]

[**Annotation:** 4.3.1 NMAC contains rules regarding the due process procedure followed for an exhibitor's alleged violation(s) of New Mexico state fair rules and policies.]

PART 4: PARTICIPANT REQUIREMENTS - FINE ARTS, HISPANIC ARTS, PHOTOGRAPHY, NATIVE AMERICAN ARTS

4.3.4.1 ISSUING AGENCY:

New Mexico State Fair Commission.

[4.3.4.1 NMAC - Rp, 4 NMAC 3.4.1, 3/31/2005]

4.3.4.2 SCOPE:

All artists submitting artwork and photographs to the New Mexico state fair.

[4.3.4.2 NMAC - Rp, 4 NMAC 3.4.2, 3/31/2005]

4.3.4.3 STATUTORY AUTHORITY:

Subsection B of 16.6.4, NMSA 1978.

[4.3.4.3 NMAC - Rp, 4 NMAC 3.4.3, 3/31/2005]

4.3.4.4 DURATION:

Permanent.

[4.3.4.4 NMAC - Rp, 4 NMAC 3.4.4, 3/31/2005]

4.3.4.5 EFFECTIVE DATE:

March 31, 2005, unless a later date is cited at the end of a section.

[4.3.4.5 NMAC - Rp, 4 NMAC 3.4.5, 3/31/2005]

4.3.4.6 OBJECTIVE:

The objective is to establish and provide guidelines for artists, including professionals, non-professionals, youths, Hispanic, Native American, and photographers, when entering work in the New Mexico state fair.

[4.3.4.6 NMAC - Rp, 4 NMAC 3.4.6, 3/31/2005]

4.3.4.7 DEFINITIONS:

A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the state fair.

B. "Hispanic artist" means an artist who is at least one quarter Hispanic descent.

C. "Native American artist" means an artist who is an American Indian of a federally-recognized tribe or pueblo.

D. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

E. "Non-professional (amateur) artist" means an artist with limited or no gallery experience who seeks public exposure and professional proficiency.

F. "Photographer" means one who takes pictures.

G. "Professional artist" means one who shows or who has sold artwork.

H. "Youth artist" means one who is under 19 years of age.

[4.3.4.7 NMAC - Rp, 4 NMAC 3.4.7, 3/31/2005]

4.3.4.8 GENERAL:

A. All entries shall comply with the requirements as set forth in the *New Mexico state fair premium book*. These requirements include, but are not limited to, size, presentation and submission requirements.

B. Entry cards, in triplicate, shall be filled out with identical information and shall be turned in at the time of entry, along with a non-refundable entry fee.

C. If artwork is for sale, the purchase price shall be provided on the entry cards.

D. The commission shall charge 25 percent commission on any artwork sold at the New Mexico state fair.

E. If qualified, artists may enter work in *either* fine arts gallery, Native American arts gallery or Hispanic arts gallery.

F. Once an exhibitor has entered the professional section, he or she may not enter into the amateur section, and any such entries shall be disallowed in the non-professional show.

G. Exhibitors are responsible for picking up their own artwork or providing written authorization for pick-up by another individual. Any artwork that has not been picked up by the designated pick-up date shall be considered abandoned and shall become property of the New Mexico state fair.

[4.3.4.8 NMAC - Rp, 4 NMAC 3.4.8, 3/31/2005]

4.3.4.9 FINE ARTS:

A. Professional Exhibits:

(1) Each artist may submit up to three original works of art.

(2) Once an artist has submitted artwork into a professional category (fine arts, Hispanic arts, Native American arts), he or she may not submit artwork in the non-professional category.

(3) All paintings, prints, and drawings shall be framed and wired for hanging.

(4) All artwork shall be for sale.

B. Non-Professional Exhibits:

(1) Each non-professional may submit only one entry in the non-professional category. This also applies to youth artists, whose entries are limited to one per artist.

(2) Once an artist has submitted artwork into a professional category (fine arts, Hispanic arts or Native American arts), he/she may not submit artwork in the non-professional category.

(3) All entries, excluding sculptures, shall be framed and wired across the back for hanging.

(4) Artwork may be for sale.

[4.3.4.9 NMAC - Rp, 4 NMAC 3.4.9, 3/31/2005]

4.3.4.10 HISPANIC ARTS:

A. All exhibits shall be the work of a Hispanic artist.

B. Each artist may submit up to four original works of art.

C. All paintings, prints, and drawings shall be framed and wired for hanging.

D. Tinwork, weavings, and retablos shall be ready for hanging.

E. Photography entries shall be original and entirely the work of the exhibitor, except that commercial processing may be allowed. Pictures shall be under glass and ready to hang.

F. All artwork shall be for sale.

[4.3.4.10 NMAC - Rp, 4 NMAC 3.4.10, 3/31/2005]

4.3.4.11 NATIVE AMERICAN ARTS:

A. All exhibits shall be the work of a Native American exhibitor of a federally-recognized tribe or pueblo.

B. Any authentic Native American item may be entered by an exhibitor. No item shall be accepted from a deceased artist or a live artist who is unable to reproduce the work. The owner or exhibitor shall have the rightful name and address of the maker for entry into the competition.

C. Articles entered in the Native American arts competition may be for sale.

D. Pottery must be traditionally Native American-made and fired, unless otherwise stated in class description. Paint-decorated pottery shall be painted before firing.

E. Silver jewelry shall be composed solely of sterling silver. All silver jewelry shall be handmade by a Native American silversmith. No items made from German silver (nickel) shall be accepted. Turquoise items shall be labeled as to natural, stabilized, or treated.

F. Gold jewelry shall be 10k or finer (no gold-plating or gold-filled accepted, except in chains when used as an accessory; this must be stated on ticket). All articles shall be hand-made by a Native American artist.

G. Artwork shall be framed and wired for hanging. Only originals shall be accepted.

H. Articles made from illegal materials such as eagle feathers or claws shall not be accepted.

I. All Native American garments, hand-woven wool, cotton or rayon shall have been made within the past year.

[4.3.4.11 NMAC - Rp, 4 NMAC 3.4.11, 3/31/2005]

4.3.4.12 PHOTOGRAPHY:

A. Each entry shall have the following information on the back, upper left hand corner: name and address of photographer, title of photograph, category, print number and if the photograph is for sale.

B. All photographs shall be titled. "Untitled" is not an acceptable title. No identification marks of any kind are permitted on the front of the photograph.

C. Once an exhibitor has entered the professional section, he or she may not enter into the amateur section, and any such entries shall be disallowed in the non-professional show.

D. Photographs shall be dry-mounted. No photograph mounted on foam board shall be accepted. This applies to both youth and adult amateur entries.

E. Photographs may be for sale. If a photograph is not for sale, "N.F.S." shall be marked on the back of the print.

F. If an adult non-professional sells a photograph displayed at the New Mexico state fair, the exhibitor will be classified as a professional for subsequent state fairs.

[4.3.4.12 NMAC - Rp, 4 NMAC 3.4.12, 3/31/2005]

PART 5: PARTICIPANT REQUIREMENTS - STATE FAIR PARADE AND GRAND ENTRY

4.3.5.1 ISSUING AGENCY:

New Mexico State Fair Commission.

[4.3.5.1 NMAC - Rp, 4 NMAC 3.5.1, 11/30/2004]

4.3.5.2 SCOPE:

Parade exhibitors and participants in the grand entry at the rodeo.

[4.3.5.2 NMAC - Rp, 4 NMAC 3.5.2, 11/30/2004]

4.3.5.3 STATUTORY AUTHORITY:

Subsection B of 16.6.4, NMSA 1978.

[4.3.5.3 NMAC - Rp, 4 NMAC 3.5.3, 11/30/2004]

4.3.5.4 DURATION:

Permanent.

[4.3.5.4 NMAC - Rp, 4 NMAC 3.5.4, 11/30/2004]

4.3.5.5 EFFECTIVE DATE:

November 30, 2004, unless a later date is cited at the end of a section.

[4.3.5.5 NMAC - Rp, 4 NMAC 3.5.5, 11/30/2004]

4.3.5.6 OBJECTIVE:

The objective is to establish and provide guidelines for parade exhibitors when entering the New Mexico state fair parade, as well as provide guidelines for participants in the grand entry at the_ rodeo.

[4.3.5.6 NMAC - Rp, 4 NMAC 3.5.6, 11/30/2004]

4.3.5.7 DEFINITIONS:

A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish and enforce all necessary rules for the management of the state fair

B. "General manager" means the general manager of the New Mexico state fair, or his/ her designee.

C. "Grand entry" means the event that commences each rodeo at Tingley during the state fair.

D. "Parade committee" means the representatives of the New Mexico state fair and the Bernalillo county sheriff's posse who organize and direct the New Mexico state fair parade.

E. "Parade exhibitor" means one who participates in or displays something in the state fair parade.

[4.3.5.7 NMAC - Rp, 4 NMAC 3.5.7, 11/30/2004]

4.3.5.8 PARADE REQUIREMENTS:

A. The general manager reserves the right to promulgate any additional regulations needed to promote the smooth and effective operation of the parade.

B. Entries will be judged by the parade committee. If there is any question as to an entry's parade value, parade exhibitors may be required to submit pictures or undergo an in-person interview with the parade committee.

C. Numbers, kind and description of entry shall be submitted in advance to the parade committee. Any entry misrepresented shall not be allowed on the parade route and may be disqualified from any future entry.

D. No children under eight years old shall be allowed to walk the parade route.

E. Handouts (i.e. balloons, candy, gum, literature) by parade exhibitors shall be permitted only by those exhibitors walking the parade route. No handouts shall be permitted at any time from a moving float. Parade exhibitors who do not comply with this rule may forfeit the opportunity to participate in the state fair parade.

[4.3.5.8 NMAC - Rp, 4 NMAC 3.5.8, 11/30/2004]

PART 6: PARTICIPANT REQUIREMENTS - HORSE DIVISION

4.3.6.1 ISSUING AGENCY:

New Mexico State Fair Commission.

[4.3.6.1 NMAC - Rp, 4 NMAC 3.6.1, 11/30/2004]

4.3.6.2 SCOPE:

Horse exhibitors at the New Mexico state fair.

[4.3.6.2 NMAC - Rp, 4 NMAC 3.6.2, 11/30/2004]

4.3.6.3 STATUTORY AUTHORITY:

Subsection B of 16.6.4 NMSA 1978.

[4.3.6.3 NMAC - Rp, 4 NMAC 3.6.3, 11/30/2004]

4.3.6.4 DURATION:

Permanent.

[4.3.6.4 NMAC - Rp, 4 NMAC 3.6.4, 11/30/2004]

4.3.6.5 EFFECTIVE DATE:

November 30, 2004, unless a later date is cited at the end of a section.

[4.3.6.5 NMAC - Rp, 4 NMAC 3.6.5, 11/30/2004]

4.3.6.6 OBJECTIVE:

The objective is to establish and provide guidelines for horse exhibitors when entering and showing their animals at the New Mexico state fair, provided specific breed rules do not apply.

[4.3.6.6 NMAC - Rp, 4 NMAC 3.6.6, 11/30/2004]

4.3.6.7 DEFINITIONS:

- A. "Breed rules" means guidelines that govern a specific breed or type of horse.
- B. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish and enforce all necessary rules for the management of the state fair.
- C. "General manager" means the general manager of the New Mexico state fair, or his/her designee.
- D. "Horse exhibitor" means one who owns or shows horses.

E. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

[4.3.6.7 NMAC - Rp, 4 NMAC 3.6.7, 11/30/2004]

4.3.6.8 HORSE DIVISION GENERAL PROVISIONS:

A. Failure to follow the applicable breed rules, if any, in New Mexico state fair equestrian events shall result in expulsion from participation the New Mexico state fair.

B. All entries shall comply with the requirements as set forth in the *New Mexico state fair premium book*.

C. All exhibitors and their horses shall comply with local and federal statutes including, but not limited to, the New Mexico livestock rules and regulations as set forth by the New Mexico livestock board.

D. All exhibitors shall operate in conformity with the New Mexico state fair's policy on humane treatment of animals as set forth in the *New Mexico state fair premium book*.

E. All exhibitors shall not utilize unethical practices or give unapproved medication to their animals.

F. Non-compliance with the rules contained herein or in the *New Mexico state fair premium book* may result in disciplinary action against the exhibitor, including, but not limited to, expulsion from the competition.

[4.3.6.5 NMAC - Rp, 4 NMAC 3.6.8-15, 11/30/2004]

[**Annotation:** 4.3.1 NMAC contains rules regarding the due process procedure followed for an exhibitor's alleged violation(s) of New Mexico state fair rules and policies.]

PART 7: PARTICIPANT REQUIREMENTS - LIVESTOCK DIVISION

4.3.7.1 ISSUING AGENCY:

New Mexico State Fair Commission.

4.3.7.2 SCOPE:

All livestock exhibitors at the New Mexico state fair.

[4.3.7.2 NMAC - Rp, 4 NMAC 3.7.2, 11/30/2004]

4.3.7.3 STATUTORY AUTHORITY:

Subsection B of 16.6.4 NMSA 1978.

[4.3.7.3 NMAC - Rp, 4 NMAC 3.7.3, 11/30/2004]

4.3.7.4 DURATION:

Permanent.

[4.3.7.4 NMAC - Rp, 4 NMAC 3.7.4, 11/30/2004]

4.3.7.5 EFFECTIVE DATE:

November 30, 2004, unless a later date is cited at the end of a section.

[4.3.7.5 NMAC - Rp, 4 NMAC 3.7.5, 11/30/2004]

4.3.7.6 OBJECTIVE:

The objective is to establish and provide guidelines for livestock exhibitors when entering their animals at the New Mexico state fair.

[4.3.7.6 NMAC - Rp, 4 NMAC 3.7.6, 11/30/2004]

4.3.7.7 DEFINITIONS:

A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish and enforce all necessary rules for the management of the state fair.

B. "General manager" means the general manager of the New Mexico state fair, or his/her designee.

C. "Livestock exhibitor" means one who shows or displays cattle, sheep, llamas, swine, alpacas, cattle, goats, poultry or rabbits.

D. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

[4.3.7.7 NMAC - Rp, 4 NMAC 3.7.7, 11/30/2004]

4.3.7.8 LIVESTOCK DIVISION GENERAL PROVISIONS:

A. All entries shall comply with the requirements as set forth in the *New Mexico state fair premium book*.

B. All exhibitors and their livestock shall comply with local and federal statutes including, but not limited to, the New Mexico livestock rules and regulations as set forth by the New Mexico livestock board.

C. All exhibitors shall operate in conformity with the New Mexico state fair's policy on humane treatment of animals as outlined in the *New Mexico state fair premium book*.

D. All exhibitors shall not utilize unethical practices or give unapproved medication to their animals.

E. All market animal exhibitors shall abide by the United States department of agriculture Wholesome Meat Act and shall sign a certification form attesting to compliance with this act.

F. Non-compliance with the rules contained herein or in the *New Mexico state fair premium book* may result in disciplinary action against the exhibitor, including, but not limited to, expulsion from the competition.

[4.3.7.8 NMAC - Rp, 4 NMAC 3.7.8-15, 11/30/2004]

[**Annotation:** 4.3.1 NMAC contains rules regarding the due process procedure followed for an exhibitor's alleged violation(s) of New Mexico state fair rules and policies.]

PART 8: PARTICIPANT REQUIREMENTS - AGRICULTURE AND FLORICULTURE DIVISION

4.3.8.1 ISSUING AGENCY:

New Mexico State Fair Commission.

4.3.8.2 SCOPE:

Agriculture and floriculture exhibitors.

[4.3.8.2 NMAC - Rp, 4 NMAC 3.8.2, 11/30/2004]

4.3.8.3 STATUTORY AUTHORITY:

Subsection B of 16.6.4 NMSA 1978.

[4.3.8.3 NMAC - Rp, 4 NMAC 3.8.3, 11/30/2004]

4.3.8.4 DURATION:

Permanent.

[4.3.8.4 NMAC - Rp, 4 NMAC 3.8.4, 11/30/2004]

4.3.8.5 EFFECTIVE DATE:

August 31, 1996, unless a later date is cited at the end of a section.

[4.3.8.5 NMAC - Rp, 4 NMAC 3.8.5, 11/30/2004]

4.3.8.6 OBJECTIVE:

The objective is to establish and provide guidelines for entering and exhibiting agricultural products and floriculture projects at the New Mexico state fair.

[4.3.8.6 NMAC - Rp, 4 NMAC 3.8.6, 11/30/2004]

4.3.8.7 DEFINITIONS:

- A. "Agricultural products" means food products raised in a farming environment.
- B. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish and enforce all necessary rules for the management of the state fair.
- C. "Floriculture" means the raising and cultivation of flowers.
- D. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

[4.3.8.7 NMAC - Rp, 4 NMAC 3.8.7, 11/30/2004]

4.3.8.8 AGRICULTURE:

- A. All entries shall comply with the specific category requirements as set forth in the *New Mexico state fair premium book*.
- B. All entries must have been grown or raised by the exhibitor in New Mexico within the last year. Exhibitors may be required to sign an affidavit stating compliance with this rule.
- C. No more than one sample of any variety of farm products grown on the same farm shall be entered for premium. Junior exhibitors are exempt from this provision, provided their exhibits are entered in the junior_division.

D. The outer surface of the skin of agriculture or garden products shall be natural. No coatings or artificial repairs shall be permitted.

E. Advertising or selling is prohibited.

F. Exhibitors are responsible for picking up their own entries or providing written authorization for pick-up by another individual. Any exhibit that has not been picked up by the designated pick-up time shall be considered abandoned and shall become property of the New Mexico state fair.

[4.3.8.8 NMAC - Rp, 4 NMAC 3.8.8, 11/30/2004]

4.3.8.9 FLORICULTURE:

A. All entries shall comply with the specific category requirements as set forth in the *New Mexico state fair premium book*.

B. Any resident New Mexico gardener or designer, adult or junior, other than commercial growers or designers may enter in any or all shows in divisions I, II, or IV. Entrants for the junior show, division III, will be limited to youths up through age 17.

C. Exhibitors shall state the number of their entries upon registration. Exhibitors shall complete an entry tag for each exhibit which states exhibitor's name, section and class or subclass, number of the entry.

D. Only one member of a household may enter any specific class, but two members may enter as a team.

E. If any entry is eligible for competition in a specialty section (i.e. roses, dahlias, etc.), it shall be entered in the section.

F. An exhibit may be entered for competition in only one flower show at the fair.

G. Artificial plant material shall not be accepted for competition in any division.

H. All horticulture exhibits shall have been grown by the exhibitor. Container-grown plants shall have been within the exhibitor's possession at least ninety days prior to registration, except for multiple or combination plantings. Multiple or combination plantings shall have been in the exhibitor's possession for at least six weeks prior to registration.

I. All exhibits shall be fresh and free of insects, diseases or spray residues. Length of stem shall be in proportion to size of bloom as species permits. All exhibits shall comply with the size requirements as specified in the *New Mexico state fair premium book*. No wiring, oiling, spray or artificial coloring is permitted.

J. A stem shall have at least one bloom except in Subsections F and G of 4.3.8.9 NMAC where blooms may not be required or desired. Only foliage that is naturally attached to the stem shall be accepted.

K. Only container-grown entries may be reclaimed by the owner. Exhibits may not be removed from the show until after the show closes on its final day.

L. Exhibitors are responsible for picking up their own exhibits or providing written authorization for pick-up by another individual. Any exhibit that has not been picked up by the designated pick-up date shall be considered abandoned and shall become the property of the New Mexico state fair.

[4.3.8.9 NMAC - Rp, 4 NMAC 3.8.9, 11/30/2004]

PART 9: PARTICIPANT REQUIREMENTS - HOME ARTS AND CREATIVE ARTS DIVISION

4.3.9.1 ISSUING AGENCY:

New Mexico State Fair Commission.

4.3.9.2 SCOPE:

Home and creative arts exhibitors.

[4.3.9.2 NMAC- Rp, 4 NMAC 3.9.2, 11/30/2004]

4.3.9.3 STATUTORY AUTHORITY:

Subsection B of 16.6.4, NMSA 1978.

[4.3.9.3 NMAC- Rp, 4 NMAC 3.9.3, 11/30/2004]

4.3.9.4 DURATION:

Permanent.

[4.3.9.4 NMAC- Rp, 4 NMAC 3.9.4, 11/30/2004]

4.3.9.5 EFFECTIVE DATE:

November 30, 2004, unless a later date is cited at the end of a section.

[4.3.9.5 NMAC- Rp, 4 NMAC 3.9.5, 11/30/2004]

4.3.9.6 OBJECTIVE:

The objective is to establish and provide guidelines for home art and creative art exhibitors, both nonprofessional and professional, when entering their work at the state fair.

[4.3.9.6 NMAC- Rp, 4 NMAC 3.9.6, 11/30/2004]

4.3.9.7 DEFINITIONS:

A. "Amateur creative art exhibitor" means one who collects or crafts as a hobby and pleasure.

B. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish and enforce all necessary rules for the management of the state fair.

C. "Home art exhibitor" means one who creates and displays something relating to home skills such as sewing, quilting, cooking, baking or canning.

D. "*New Mexico state fair premium book*" means the annual printed or internet-posted publication of the New Mexico state fair which contains rules that govern certain events and exhibits at the state fair.

E. "Professional creative art exhibitor" means one who collects or crafts, in whole or in part, for a living and who may enter for display only and shall not compete for prize money.

F. "Professional home art exhibitor" means one who has either taught a class for compensation or who has been employed in that field.

[4.3.9.7 NMAC- Rp, 4 NMAC 3.9.7, 11/30/2004]

4.3.9.8 HOME ARTS:

A. Entries are limited to residents of New Mexico.

B. Articles shall be the work of the exhibitor.

C. Entries shall not be accepted for articles not listed in the *New Mexico state fair premium book*.

D. No person shall make multiple entries under one class number.

E. Professionals may only enter in professional sections. Any professional entries in any other class will be disallowed.

F. All entries shall comply with the size requirements as set forth in the *New Mexico state fair premium book*.

G. Exhibitors are responsible for picking up their own exhibits or providing written authorization for pick-up by another individual. Any exhibit that has not been picked up by the designated pick-up time shall be considered abandoned and shall become property of the New Mexico state fair.

[4.3.9.8 NMAC- Rp, 4 NMAC 3.9.8, 11/30/2004]

4.3.9.9 CREATIVE ARTS:

A. Entries are limited to residents of New Mexico.

B. Only amateurs who make or craft as a hobby are eligible to compete for prizes. Commercial or professional parties may exhibit for display only if space permits and shall not compete for prize money.

C. All exhibits shall be created solely by the exhibitor and be bona fide property of the exhibitor.

D. No person shall make multiple entries under one class number. Exhibits and parts shall be entered in only one group or section each.

E. Exhibits wrongly classified shall be placed in the proper class.

F. All entries shall comply with the requirements as set forth in the *New Mexico state fair premium book*.

G. Exhibitors are responsible for picking up their own exhibits or providing written authorization for pick-up by another individual. Any exhibit that has not been picked up by the designated pick-up date shall be considered abandoned and shall become property of the New Mexico state fair.

[4.3.9.9 NMAC- Rp, 4 NMAC 3.9.9, 11/30/2004]

PART 10: PARTICIPANT REQUIREMENTS - CONCESSIONS AND COMMERCIAL EXHIBITS

4.3.10.1 ISSUING AGENCY:

New Mexico State Fair Commission.

4.3.10.2 SCOPE:

Concessionaires and commercial exhibitors at the New Mexico state fair.

[4.3.10.2 NMAC - Rp, 4 NMAC 3.10.2, 11/30/2004]

4.3.10.3 STATUTORY AUTHORITY:

Subsection B of 16.6.4. NMSA 1978.

[4.3.10.3 NMAC - Rp, 4 NMAC 3.10.3, 11/30/2004]

4.3.10.4 DURATION:

Permanent.

[4.3.10.4 NMAC - Rp, 4 NMAC 3.10.4, 11/30/2004]

4.3.10.5 EFFECTIVE DATE:

November 30, 2004, unless a later date is cited at the end of a section.

[4.3.10.5 NMAC - Rp, 4 NMAC 3.10.5, 11/30/2004]

4.3.10.6 OBJECTIVE:

The objective is to establish and provide guidelines for concessionaires and commercial exhibitors at the New Mexico state fair.

[4.3.10.6 NMAC - Rp, 4 NMAC 3.10.6, 11/30/2004]

4.3.10.7 DEFINITIONS:

A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the New Mexico state fair.

B. "Concessionaire" means a person who sells products or services on location, accepts orders, or sets up future business opportunities for potential monetary gain.

C. "*Concessions and exhibits guidelines and procedures manual*" means the annual publication of the New Mexico state fair which contains policies that govern concessions and certain exhibits at the New Mexico state fair. This publication is subject to change annually and the effective manual is the most recently published one.

D. "Exhibitor" means one who displays for informational purposes and who has no intent to sell products or services.

E. "General manager" means the general manager of the New Mexico state fair, or his/ her designee.

[4.3.10.7 NMAC - Rp, 4 NMAC 3.10.7, 11/30/2004]

4.3.10.8 GENERAL INFORMATION:

A. The commission delegates to the general manager of the New Mexico state fair, particularly the concessions department, the authority to publish an annual *concessions and exhibits guidelines and procedures manual*.

B. All concessions and exhibits must comply with terms as set forth in the *concessions and exhibits guidelines and procedures manual*. The general manager shall have the authority to make exceptions to the manual and other standards concerning concessions at the New Mexico state fair.

C. Security: Patrol services are provided throughout the fairgrounds. Exhibitors and concessionaires are responsible for the protection of their property. Those requiring security escort service must request services by applying to the concessions department. Security service fees shall be paid upon receipt of an invoice or billing from the New Mexico state fair.

[4.3.10.8 NMAC - Rp, 4 NMAC 3.10.8, 11/30/2004]

4.3.10.9 HOURS OF OPERATION:

The commission delegates to the general manager the authority to set the dates and hours of operation of the New Mexico state fair including, but not limited to, canceling and rescheduling. The general manager and the commission shall not be liable for any losses due to change in hours or dates.

[4.3.10.9 NMAC - Rp, 4 NMAC 3.10.9, 11/30/2004]

4.3.10.10 BUILDING AND BOOTH STANDARDS:

The commission delegates to the general manager and concessions department the authority to set standards for buildings and booths at the New Mexico state fair. Application of these standards include, but are not limited to, the following: alterations, additions and improvements, portable structures, tents, trailers and storage.

[4.3.10.10 NMAC - Rp, 4 NMAC 3.10.10, 11/30/2004]

4.3.10.11 FIRE AND SAFETY STANDARDS:

The commission delegates to the general manager the authority to set fire and safety standards in addition to those standards required by New Mexico state law. Application of these standards include, but are not limited to, the following: restrictions on the use of open-flame devices, use of fuel tanks, use of liquefied petroleum gas, filling of

containers, use of fire-restrictive material, use of fire extinguishers and use of electrical accessories.

[4.3.10.11 NMAC - Rp, 4 NMAC 3.10.11, 11/30/2004]

4.3.10.12 INSPECTIONS AND PERMITS:

The commission delegates to the general manager and the concessions department the authority to set regulations concerning the inspection of concessions and exhibit booths, as well as regulations pertaining to permits that are required by New Mexico state law. Inspections by state inspectors, law enforcement officials, fair management and concessions department employees may be conducted during reasonable hours during *any* phase of the fair, including set-up. All permits or licenses required under the Uniform Building, Electrical or Mechanical codes shall be obtained by the exhibitor at his or her sole expense. Any booth operation or business that fails to comply with safety or fire code requirements shall be subject to immediate closure without refund.

[4.3.10.12 NMAC - Rp, 4 NMAC 3.10.12, 11/30/2004]

4.3.10.13 CREDENTIALS:

The commission delegates to the general manager the authority to set regulations concerning the use, requirements and sale of credentials.

[4.3.10.13 NMAC - Rp, 4 NMAC 3.10.15, 11/30/2004]

4.3.10.14 ADVERTISING:

The commission delegates to the general manager the authority to set regulations concerning advertising by exhibitors and concessionaires.

[4.3.10.14 NMAC - Rp, 4 NMAC 3.10.17, 11/30/2004]

4.3.10.15 DRAWINGS AND PRIZES:

The commission delegates to the general manager the authority to set regulations concerning drawings and prizes held or given away by an exhibitor or concessionaire. These regulations include, but are not limited to, the following: give-away offers, free registrations and prohibition of raffles.

[4.3.10.15 NMAC - Rp, 4 NMAC 3.10.21, 11/30/2004]

4.3.10.16 INSURANCE COVERAGE:

The New Mexico state fair and the state of New Mexico assume no liability for personal injury or loss or damage to any property of the concessionaire or exhibitor or their

patrons due to fire, theft, tornado, weather conditions, *force majeure*, negligent or intentional acts of a third party or other incident. It is *required* that each concessionaire and exhibitor retain comprehensive general liability insurance in up to the amount of one million dollars, in addition to naming the New Mexico state fair as additionally insured.

[4.3.10.16 NMAC - Rp, 4 NMAC 3.10.25, 11/30/2004]

4.3.10.17 REPORTING PROCEDURES:

The commission delegates to the general manager the authority to set regulations concerning the financial reporting by food vendors and exhibitors to the New Mexico state fair.

[4.3.10.17 NMAC - Rp, 4 NMAC 3.10.29, 11/30/2004]

4.3.10.18 VIOLATIONS:

The commission delegates to the general manager the authority to issue notice of violation for infractions of policies set forth in the *concessions and exhibits guidelines and procedures manual*, as well as rules set forth in 4.3.10 NMAC. The concessionaire or exhibitor shall correct any problems found and shall ensure future compliance. Non-compliance may result in the following: a fine; non-participation in the event; or future non-participation at the New Mexico state fair.

[4.3.10.18 NMAC - Rp, 4 NMAC 3.10.33, 11/30/2004]

4.3.10.19 DAMAGES:

If a concessionaire or exhibitor is asked to prematurely leave the New Mexico state fair premises, he/she will be entitled to a pro rata refund for the balance of the contract.

[4.3.10.19 NMAC - Rp, 4 NMAC 3.10.22, 11/30/2004]

4.3.10.20 REGULATORY AGENCIES:

Representatives of appropriate New Mexico state agencies shall be allowed access to all areas on the fairgrounds for monitoring and regulations compliance purposes. These agencies include, but are not limited to, the following:

- A. New Mexico environment department;
- B. New Mexico state fire marshal;
- C. New Mexico construction industries division;
- D. New Mexico safety counseling;

E. law enforcement agencies;

F. New Mexico state fair management and concession department employees.

[4.3.10.20 NMAC - Rp, 4 NMAC 3.10.34, 11/30/2004]

PART 11: STATE FAIR OPEN AIR MARKET

4.3.11.1 ISSUING AGENCY:

New Mexico State Fair Commission.

[3/13/1992; 4.3.11.1 NMAC - Rn & A, SF-92-1, 9/30/2004]

4.3.11.2 SCOPE:

Vendors and members of the general public who attend the New Mexico state fair open air market.

[4.3.11.2 NMAC - N, 9/30/2004]

4.3.11.3 STATUTORY AUTHORITY:

Subsection B of 16.6.4, NMSA 1978.

[4.3.11.3 NMAC - N, 9/30/2004]

4.3.11.4 DURATION:

Permanent.

[4.3.11.4 NMAC - N, 9/30/2004]

4.3.11.5 EFFECTIVE DATE:

March 13, 1992, unless a later date is cited at the end of a section.

[4.3.11.5 NMAC - N, 9/30/2004]

4.3.11.6 OBJECTIVE:

To provide rules and guidelines for vendors and members of the general public who participate in and attend the New Mexico state fair open air market.

[4.3.11.6 NMAC - N, 9/30/2004]

4.3.11.7 DEFINITIONS:

A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the state fair.

B. "General Manager" means the general manager of the New Mexico state fair, or his/her designee.

[4.3.11.7 NMAC - N, 9/30/2004]

4.3.11.8 THE STATE FAIR OPEN AIR MARKET:

A. The commission delegates to the general manager the authority to establish regulations, rates and conditions concerning the operation of the state fair open air market, herein described as "market" as necessary for the smooth, efficient operation of the market.

B. The general manager reserves the right to charge for exhibition space, parking and admission. The general manager reserves the right to set the dates and hours of the market, including but not limited to, canceling and rescheduling. No refunds will be issued for acts of God, weather or emergencies. The commission and the general manager shall not be liable for any losses due to a change in hours or dates.

C. A rental fee as determined by the general manager shall be paid in advance at either the fair administrative office or at the gate on the day of the market.

D. The general manager shall designate the selling areas and assign an individual space to each vendor.

E. Anyone using a space that has not been paid for may be removed from the grounds.

F. The general manager reserves the right to relocate any vendor without notice if deemed necessary to maintain cohesiveness in the market. Failure to comply with this rule may be cause for expulsion from the market.

G. All vendors shall sell behind the lines defining each space. No selling shall occur in the pedestrian walkways and aisles, nor shall any electrical cords extend into them.

H. All vendors shall leave the grounds by a time designated by the general manager. Each vendor shall clean the area around his or her space. Failure to clean the area around his or her space may be cause for expulsion from the market. Anything left on the grounds shall be deemed abandoned and shall be thrown away.

I. The general manager reserves the right to determine whether an item is considered offensive or in_poor taste, and restrict its sale or display. The general manager may prohibit the sale or display of any illegal_merchandise. Failure to comply with management decisions may be cause for expulsion from the market.

J. Every vendor shall abide by all state laws, ordinances, rules and regulations, including those pertaining to unfair trade practices and to health and safety.

K. All vendors and patrons shall conduct themselves at all times in a manner which does not interfere with or impede with the proper operation of the market.

L. Vendors shall do everything within their means to maintain good customer relations with market patrons. Numerous customer complaints to management may result in expulsion from the market.

M. The commission and the general manager do not warrant or guarantee the value or quality of any items sold by market vendors.

N. No person shall be allowed to stay on the market grounds overnight without written permission of the manager. Overnight stays may be charged an additional fee.

O. Radios, televisions, record players, tape decks and other sound-producing equipment shall be kept to a volume level that does not interfere with the operation of the market.

P. No person-to-person solicitation of funds of or by vendors or patrons shall be allowed on the market grounds, except those conducted in a space that has been rented by the solicitor.

Q. All persons shall comply with the New Mexico state fair policy on deadly weapons as set forth in Deadly Weapons Prohibited, 4.3.1.19 NMAC.

R. All bicycles, skateboards and motor powered vehicles, except those used to assist mobility-impaired persons, shall be parked or walked through the market.

S. No animals, except qualified service animals, shall be allowed on the market grounds.

T. All food vendors shall comply with the concessions regulations as set forth in general information, 4.3.10 NMAC.

U. No alcoholic beverages shall be possessed, consumed on the market grounds.

V. No games of chance or skill, raffles or other gambling activities shall be allowed on the market grounds.

W. The commission and the general manager shall not be responsible for stolen or lost merchandise or valuables or any damage to vehicles or personal property.

X. The general manager reserves the right to remove from or deny access to the market of individuals who do not comply with these rules and regulations. This includes, but is not limited to, individuals who appear to be intoxicated, use vulgar or abusive language, those who engage in disorderly conduct or who otherwise disturb the peace.

[3/13/1992; 4.3.11.8 NMAC - Rn & A, SF 92-1 (1-21), 9/30/2004]

CHAPTER 4: STATE MONUMENTS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: VISITOR MANAGEMENT - NEW MEXICO STATE MONUMENTS

4.4.2.1 ISSUING AGENCY:

Museum of New Mexico.

[Recompiled 10/31/01]

4.4.2.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.4.2.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.4.2.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.4.2.5 EFFECTIVE DATE:

[Filed December 20, 1985]

[Recompiled 10/31/01]

4.4.2.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/31/01]

4.4.2.7 DEFINITIONS:

"Director" means associate director of New Mexico state monuments.

[Recompiled 10/31/01]

4.4.2.8 NATURAL RESOURCES:

It is not permitted to cut, break, injure, destroy, take or remove any tree, shrub, timber, plant or natural object at any New Mexico state monument.

[Recompiled 10/31/01]

4.4.2.9 HUNTING AND FISHING:

It is not permitted to kill, cause to be killed, or pursue with the intent to kill or harm or otherwise disturb any bird or animal, reptile or fish, or their eggs or spawn in any New Mexico state monument.

[Recompiled 10/31/01]

4.4.2.10 VANDALISM:

It is not permitted to disturb, deface, injure, destroy any building, sign, marker, facility, artifact or cultural resources at any New Mexico state monument.

[Recompiled 10/31/01]

4.4.2.11 FIRES:

It is not permitted for a person to build, ignite or maintain any outdoor fire of any kind or character, or for any purpose whatsoever, except by the authority of the director, unless said fire be in areas as designated by the New Mexico state monuments.

[Recompiled 10/31/01]

4.4.2.12 RESTRICTED AREAS:

It is not permitted to enter, use or occupy any restricted zone which has been posted or otherwise closed to entry by the director.

[Recompiled 10/31/01]

4.4.2.13 HOURS:

The opening and closing time of any New Mexico state monument or any portion thereof may be established by the New Mexico state monuments and posted at established entrances thereto.

[Recompiled 10/31/01]

4.4.2.14 USE OF STRUCTURES:

No person shall leave any monument structure, facility or cultural resource in any unclean or unsanitary manner.

[Recompiled 10/31/01]

4.4.2.15 VEHICLES, SPEED LIMITS AND PARKING:

A. Motorized vehicles, including motorcycles and "off-road" vehicles, shall be operated only on maintained roadways, never within any ruins area or on any interpretive trail or foot trail; and in all cases, the operator shall comply with the New Mexico State Motor Vehicle Code.

B. Parking in any non-designated area, or on the roadways, is not permitted unless posted for the parking. Vehicles parked in any unauthorized parking zone, or vehicles parked in such a manner as to pose a danger to others may be removed at the owner's expense.

[Recompiled 10/31/01]

4.4.2.16 LITTER AND RUBBISH:

A. It is not permitted to dispose of refuse in any area at any New Mexico state monument except in receptacles provided for that purpose.

B. It is not permitted to drain or sump wastes from any trailer, camper or other vehicle except in places or receptacles provided for such purpose.

C. It is not permitted to use New Mexico state monuments refuse containers for domestic, household or commercial garbage brought from such property.

[Recompiled 10/31/01]

4.4.2.17 FIREARMS, AIR AND GAS WEAPONS, BOWS AND ARROWS:

It is not permitted to possess a firearm with a cartridge in any portion of the mechanism, or discharging a firearm, bow or air or gas weapon, or any device capable of injuring the life of any person or persons or animal or animals or damaging or destroying any public or private property in any portion of or across any boundary of any New Mexico state monument.

[Recompiled 10/31/01]

4.4.2.18 CONDUCT:

Persons visiting New Mexico state monuments shall conduct themselves in an orderly manner, and shall not use threatening, abusive, boisterous, insulting or indecent language, make indecent gestures, beg or solicit for any purpose, gamble or operate any gambling device or any nature, abandon any property within the New Mexico state monument system, or discriminate in any manner against any person or persons because of race, sex creed or national origin. No person shall sell or offer for sale and food, goods, wares, merchandise or liquids except for permission of the director.

[Recompiled 10/31/01]

4.4.2.19 PETS:

A. Dogs, cats and other pets must be kept under physical restraint, or on a leash not more than six feet in length while in the confines of any New Mexico state monument. In the interest of public health and safety, the director may designate certain areas closed to all pets.

B. At no time will dogs or other pets, other than seeing-eye dogs, be allowed within the confines of New Mexico state monument buildings or museums.

[Recompiled 10/31/01]

4.4.2.20 CAMPING:

Overnight camping is not allowed at any New Mexico state monument.

[Recompiled 10/31/01]

4.4.2.21 ADVERTISING OR COMMERCIAL USE:

No person shall post, place or erect any signs or distribute or place any advertising material at any New Mexico state monument for any purpose without permission in writing from the director. This regulation does not bar from entry into any New Mexico state monument a commercially marker vehicle operated by a New Mexico state monument visitor, a person passing through any New Mexico state monument in the normal course of their work.

[Recompiled 10/31/01]

4.4.2.22 NOISE AND NUISANCE:

It is not permitted to cause or permit any loud noise or sound which creates a nuisance or use or cause to be used a loudspeaker system at any New Mexico state monument without written permission from the director. The use of any type firework at any New Mexico state monument is not permitted except with written permission from the director.

[Recompiled 10/31/01]

4.4.2.23 GRAZING:

Grazing of livestock is not permitted on any lands administered by the New Mexico state monuments without the specific written approval of the director.

[Recompiled 10/31/01]

CHAPTER 5: STATE LIBRARY

PART 1: GENERAL PROVISIONS

4.5.1.1 ISSUING AGENCY:

Office of Cultural Affairs, Library Division.

[Recompiled 10/31/01]

4.5.1.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.5.1.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.5.1.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.5.1.5 EFFECTIVE DATE:

[Filed February 28, 1985]

[Recompiled 10/31/01]

4.5.1.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/31/01]

4.5.1.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/01]

4.5.1.8 NEW MEXICO STATE LIBRARY WAIVER AND APPEAL PROCEDURE:

A. WAIVER OF REQUIREMENT:

(1) All requests for waiver of state library requirements regarding state library rules and regulations, as filed with New Mexico records center, must be presented in writing to the state librarian. Requests should state reasons for request and/or conditions which make the request necessary.

(2) A waiver of requirement may be granted by the state librarian for a minimum of six (6) months but for no more than two (2) years.

B. APPEAL PROCEDURE:

(1) Appeals shall be made in writing to the state librarian within ten (10) days of the action being appealed. The appeal should state all facts and conditions relating to the appeal. The state librarian will review the decision with the cultural affairs officer.

(2) An appeal concerning federal regulations and/or grant monies shall be made in writing to the state librarian with a copy to the chairman of the New Mexico advisory council on libraries. The appeal shall be made within ten (10) days of the action being appealed and should state all facts and conditions relating to the appeal. The state librarian will review the decision with the chairman of the New Mexico advisory council on libraries.

(3) All persons who submit an appeal in writing to be considered in connection with state library rules and regulations shall be notified in writing of the decision within ten (10) days.

[Recompiled 10/31/01]

PART 2: STATE GRANTS-IN-AID TO PUBLIC LIBRARIES

4.5.2.1 ISSUING AGENCY:

Department of Cultural Affairs, New Mexico State Library Division.

[4.5.2.1 NMAC - Rp, 4.5.2.1 NMAC, 6/1/2016]

4.5.2.2 SCOPE:

Public libraries and developing public libraries.

[4.5.2.2 NMAC - Rp, 4.5.2.2 NMAC, 6/1/2016]

4.5.2.3 STATUTORY AUTHORITY:

Subsection I of Section 18-2-4 NMSA 1978 directs the state librarian to make rules and regulations necessary to administer the division and as provided by law. Subsection B of Section 18-2-4 NMSA 1978 directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system.

[4.5.2.3 NMAC - Rp, 4.5.2.3 NMAC, 6/1/2016]

4.5.2.4 DURATION:

Permanent.

[4.5.2.4 NMAC - Rp, 4.5.2.4 NMAC, 6/1/2016]

4.5.2.5 EFFECTIVE DATE:

June 1, 2016 unless a later date is cited at the end of a section.

[4.5.2.5 NMAC - Rp, 4.5.2.5 NMAC, 6/1/2016]

4.5.2.6 OBJECTIVE:

The objective of this rule is to describe the state grants in aid to public libraries program (hereinafter "the state aid program") and to establish criteria for reviewing and awarding the grants. The purpose of the state aid program is to provide financial assistance that encourages and supports public library service by public libraries and developing public libraries. The state aid program is intended to supplement and encourage local effort in providing local library service. The state aid program consists of developing library

grants and public library grants that may be used for: library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of library services.

[4.5.2.6 NMAC - Rp, 4.5.2.6 NMAC, 6/1/2016]

4.5.2.7 DEFINITIONS:

A. "Annual report" means a report sent once a year from a public library or developing library to the state library. An annual report shall at least accomplish the following tasks:

- (1) provide information in the time, manner, and form prescribed by the state library;
- (2) describe prior fiscal year's activities, including income, expenditures, statistics on collections and services, and compliance with state aid program criteria;
- (3) be certified by the library as to the accuracy, completeness, and truthfulness of the information provided; and
- (4) be approved by and on file at the state library.

B. "Basic library services" means free services provided in a library's legal service area, including library collections with circulating materials; reference services; a catalog of library holdings accessible by the public; educational programs; interlibrary loan services; public access computers connected to the internet; and internet connectivity for patrons and staff. Basic library service may include any technology or service that relates to the access to information for patron use.

C. "Bookmobile" means a mobile branch that offers basic library services with the exception of computers and internet connectivity.

D. "Branch" means an auxiliary service administered by a public or developing library that provides the following public services:

- (1) separate quarters from the main library;
- (2) a permanent library collection and reference services;
- (3) offers basic library services;
- (4) staff present during open hours; and
- (5) at least 20 hours of public access to physical quarters per week on an annual basis.

E. "Circulating materials" means items from library collections that are checked out by patrons for use outside of the library.

F. "Collection development policy" means guidelines used by library staff for making decisions about the budget for and selection, management, and preservation of library collections.

G. "Community analysis and needs assessment" means an evaluation of a library's legal service area, its current and future needs, and the library's role in meeting those needs.

H. "Developing library" means a New Mexico organization that has initiated and is progressively implementing basic library services within its legal service area.

(1) A developing library is established through one of the following mechanisms:

(a) through an ordinance or legal resolution of a subdivision of state government;

(b) by a contract between a private entity and a subdivision of state government;

(c) by an Indian nation; or

(d) as a non-profit corporation.

(2) A developing library provides the following public services:

(a) staff present during open hours;

(b) at least 15 hours of public access to physical quarters per week on an annual basis; ;

(c) at least two days of public access to physical quarters per week on an annual basis; and

(d) hours of operation posted on or near the library.

I. "Fiscal year" means July 1 through June 30.

J. "Legal service area" means the geographic area for which a library has been established to offer services and from which, or on behalf of which, the library derives income. The legal service area may be defined by a written agreement with a political subdivision of the state for which the library is the primary service provider. The most recent United States or tribal census determines the population of the legal service area

if the population figures are given separately for that area. If the census does not report a discreet population figure for the legal service area, then the state library in its sole discretion shall determine the population for the library's legal service area.

K. "Library board" means an administrative or advisory group comprised of representative members of the library's community.

L. "Library collections" means library items for public use. Library collections may include such items as books, videos, sound recordings, licensed databases, and equipment. A portion of the collections must be circulating materials.

M. "Library equipment" means equipment associated with the delivery of library services.

N. "Library staff" means salaried employees or volunteers whose time is regularly dedicated to delivery of library services.

O. "Matching funds" means the amount expended in a fiscal year for library collections from any source other than the state. Sources for matching funds may include municipal funds, county funds, tribal funds, or money acquired through donations, fund-raising, or grants. In-kind contributions are not matching funds. Matching funds do not include funds used for operating costs, administrative costs, or regular staff salaries.

P. "Public library" means a New Mexico organization that offers basic library services within its legal service area.

- (1) A public library is established through one of the following mechanisms:
 - (a) through an ordinance or legal resolution adopted by a subdivision of state government;
 - (b) by a contract between a private entity and a subdivision of state government;
 - (c) by an Indian nation; or
 - (d) as a non-profit corporation.
- (2) A public library provides the following public services:
 - (a) staff dedicated to the library
 - (b) year-round public access to the physical location at least 25 hours per week;

(c) at least two days of public access to physical quarters per week on an annual basis; and

(d) hours of operation posted on or near the library.

Q. "Reference services" means the provision of library staff to answer reference questions during all the hours the library is open.

R. "Strategic plan" means a detailed program to ensure that library services meet the current and future needs of the library's legal service area. The strategic plan shall include a vision and mission statement as well as goals and objectives, and it shall cover a period of at least the next three years and not exceed five years.

[4.5.2.7 NMAC - Rp, 4.5.2.7 NMAC, 6/1/2016]

4.5.2.8 DEVELOPING LIBRARY GRANT:

A. Purpose: To supplement an eligible developing library's budget for up to five years until it meets the minimum requirements for a public library grant.

B. Description: The developing library grant funds shall be used for library collections, library staff salaries, library staff training, library equipment, or other operational expenditures associated with delivery of basic library services.

C. Criteria for reviewing and awarding developing library grants: The state library shall award developing library grants to developing libraries that meet or exceed the following criteria.

- (1) timely submission of an annual report with the state library;
- (2) receipt of no more than five, consecutive, awards of developing library grants;
- (3) continuous operation for at least nine months;
- (4) demonstration of receipt of financial support from sources other than the state. In particular, matching funds in relation to the population of the library's legal service shall be at least \$0.25 per person in its first year and any non-consecutive years of developing library grant application participation; \$0.50 per person in its second consecutive year; \$0.75 per person in its third consecutive year; \$1.00 per person in its fourth consecutive year; and \$1.25 per person in its fifth consecutive year;
- (5) maintenance of adequate financial and other records to support the library's eligibility for receiving library grants; the state library may audit such records annually, or as needed, as determined in the state library's sole discretion;

- (6) compliance with all state statutes and rules;
- (7) compliance with requirements for developing library grants;
- (8) employment of a designated director;
- (9) creation of a library board that meets at least two times a year and adheres to the state's open meetings law; and
- (10) successful expenditure of all developing library grant funds during the prior fiscal year, if applicable.

[4.5.2.8 NMAC - Rp, 4.5.2.8 NMAC, 6/1/2016]

4.5.2.9 PUBLIC LIBRARY GRANT:

A. Purpose: To supplement eligible public libraries' budgets.

B. Description: The public library grant funds shall be used for library collections, library staff salaries, library staff training, library equipment, or other operational expenditures associated with delivery of basic library services.

C. Criteria for reviewing and awarding public library grants: The state library shall review and award public library grants to public libraries that have met the following criteria:

- (1) timely submission of an annual report with the state library for the current year and a minimum of two years prior;
- (2) continuous operation for at least one year;
- (3) receipt of a minimum of three consecutive developing library grants;
- (4) demonstration of receipt of financial support from sources other than the state; in particular, matching funds in relation to the population of the library's legal service area shall be at least \$1.50 per person;
- (5) maintenance of adequate financial and other records to support the public library's eligibility for receiving library grants; the state library may audit such records annually, or as needed, as determined in the state library's sole discretion;
- (6) compliance with all state statutes and rules;
- (7) compliance with all requirements for public library grants;

(8) Formation of a strategic plan that the public library reviews, updates, and files with the state library every three years, and a community analysis and needs assessment, and a collection development policy that the public library reviews, updates, and files with the state library every five years;

(9) maintain a library board that meets at least two times a year and adheres to the state open meetings law;

(10) employment of a designated director; and

(11) successful expenditure of all public library grant funds during the prior fiscal year.

[4.5.2.9 NMAC - Rp, 4.5.2.9 NMAC, 6/1/2016]

4.5.2.10 DISTRIBUTION OF FUNDS:

The library division shall distribute state grants in aid in the following manner:

A. Application: The annual report submitted for the immediate prior year shall serve as the developing or public library's application for state grants-in-aid.

B. Allocation: For state grants-in-aid, the state library shall award at least a quarter of a share (0.25) of the annual allocation to developing libraries, one (1) share of the allocation to each public library, and one half (.50) of a share of the allocation to each branch and bookmobile.

C. Notification: Following the end of the application period, the state library shall calculate the grant award for each library. The state library shall notify all eligible public libraries informing them of the amount of their grant.

D. Request for payment: Each library shall return the signed grant agreement to the state library within 60 days of receipt of the agreement measured from the postmark or electronic postmark. Upon timely receipt of the grant agreement, the state library shall process a payment request form. If a library does not submit the grant agreement within the required time period, it forfeits the grant award.

E. Maintenance of effort: A library's local budget shall not be reduced by its governing body as a result of eligibility for the state aid program. Upon demonstrated evidence that such a reduction has occurred, the library shall be ineligible to receive funds from the library grants award for one year after the reduction has occurred.

[4.5.2.10 NMAC - Rp, 4.5.2.11 NMAC, 6/1/2016]

4.5.2.11 LIMITATION ON FUNDS:

A. The grant amounts may vary by year, depending on the amount of the appropriation to the state library by the state legislature and the state library's other budgeted expenses.

B. Libraries shall not use grant funds for administrative or indirect expenses such as budgeting, accounting, financial management, information systems, data processing, and legal services

C. Public and developing libraries shall expend all grant funds during the fiscal year in which they are awarded.

D. Should a library cease providing basic library services prior to or within thirty days of funding; grant funds shall revert to the state library.

[4.5.2.11 NMAC - Rp, 4.5.2.12 NMAC, 6/1/2016]

4.5.2.12 APPEAL OR VARIANCE:

A. In the event that any library is denied a grant by the state library or does not meet a requirement of this rule, that library may appeal the decision of the state library or request a variance from the requirement.

B. Such appeal or variance shall be made in writing to the state librarian within 10 days of notification of denial of funds or within 10 days of discovery of non-compliance with a requirement. The appeal or variance shall state all relevant facts and conditions.

C. The state librarian shall consider each appeal or request for variance and respond in writing to the appealing or requesting party with a decision within 30 days. The state librarian's decision is the department of cultural affairs' final action on the matter.

[4.5.2.12 NMAC - Rp, 4.5.2.14 NMAC, 6/1/2016]

PART 3: GRANTS PROGRAM: LIBRARY SERVICE TO RESIDENTS OF INSTITUTIONS

4.5.3.1 ISSUING AGENCY:

Office of Cultural Affairs, Library Division.

[Recompiled 10/31/01]

4.5.3.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.5.3.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.5.3.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.5.3.5 EFFECTIVE DATE:

[Filed February 28, 1985]

[Recompiled 10/31/01]

4.5.3.6 OBJECTIVE:

This grants program is funded through Title I of the Library Services and Construction Act. Its purpose is to provide incentive for the development of the public library aspect of programs and collections for residents in state-supported institutions. Grant funds are awarded to institutions to encourage and supplement programs that:

A. support library service to the unserved or inadequately served, i.e. to those who are confined to institutions;

B. support each institution's rehabilitative, educational and correctional programs through the development of library services to the residents;

C. meet the needs of residents for recreational, informational, personal, and educational development in a manner comparable to public library services that exist outside the institution.

[Recompiled 10/31/01]

4.5.3.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/01]

4.5.3.8 ELIGIBILITY:

Institutions will be judged eligible for funding on the basis of the following criteria:

A. The institution must be state-supported. At least 51 percent of the institution's operating budget must be supported by state funds.

B. The library must have written long-range plans, based on agency goals and objectives, which reflect nationally-accepted professional library standards for the various institutions. A copy of these plans must be filed with the library development bureau of the state library.

C. A staff member of the institution must be assigned to direct and supervise library service to residents.

D. Each institution shall have a written collection development policy which shall be on file with the library development bureau of the state library.

E. There shall be an area dedicated to library use which includes the following:

(1) central location within the institution, i.e. easily accessible to the greatest number of residents;

(2) space enough to accommodate collections, programs and users comfortably;

(3) good lighting, climate control and comfortable furnishings.

F. Each institution library shall have a budget, drawn from institution funds, which supports its library programs and operations. The budget shall include salary for library personnel and for collection development.

G. The institution must agree to meet all Federal LSCA, Title I requirements and have fulfilled all accountability requirements pertaining to previous LSCA I grants received.

H. The institution must file an annual report and application with the library development bureau of the state library.

[Recompiled 10/31/01]

4.5.3.9 DISTRIBUTION OF FUNDS:

Grants will be awarded on the basis of information provided by the institutional librarian in an application and the annual report for the previous year. Grant amounts will be determined according to the following formula:

A. Basic award - \$1,000.00;

B. Per capita award for each resident of the institution (average daily population) - \$1.00;

C. Any increase in local materials expenditures above that of the previous year will be matched up to a limit to be determined each year by the state library - amount varies;

D. Specific need award to those institutions having qualified staff who are able to fulfill that need - amount varies.

[Recompiled 10/31/01]

4.5.3.10 ALLOWABLE EXPENDITURES:

LSCA I funds may be used for books and periodicals; audio-visual materials; non-print library materials; and library equipment.

[Recompiled 10/31/01]

PART 4: INTERLIBRARY COOPERATIVE GRANTS

4.5.4.1 ISSUING AGENCY:

Office of Cultural Affairs, State Library.

[Recompiled 10/31/01]

4.5.4.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.5.4.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.5.4.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.5.4.5 EFFECTIVE DATE:

[Filed August 2, 1988]

[Recompiled 10/31/01]

4.5.4.6 OBJECTIVE:

The interlibrary cooperative program is intended to provide assistance to libraries for the development of formalized cooperation and resource sharing consistent with the state's *Five Year Program for Library Development*. Grants programs/projects may be proposed by the state library or by an individual library, providing eligibility requirements are met.

[Recompiled 10/31/01]

4.5.4.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/01]

4.5.4.8 GRANT AVAILABILITY:

The grant program will be offered only when sufficient federal and/or state funds are available. When available, the state librarian will issue guidelines for the specific grants project or program.

[Recompiled 10/31/01]

4.5.4.9 ELIGIBILITY:

Libraries that are eligible for basic materials grants or community library development grants of the state grants-in-aid to public libraries may apply for the interlibrary cooperative grants. Libraries not eligible for the above-mentioned grants may participate in a specific grants project as allowed by guidelines issued for the project.

[Recompiled 10/31/01]

4.5.4.11 APPLICATION PROCEDURES:

The state librarian will issue a grant announcement whenever funding is available. The announcement will include specific application procedures for each grant cycle.

[Recompiled 10/31/01]

4.5.4.12 DISTRIBUTION:

Grants will be awarded on the following criteria:

- A. relevance of proposed activity to priorities identified in the grant announcement;
- B. ability of the applicant library to carry out proposed activities;
- C. potential contribution of the proposed activity to area residents or to statewide library development.

[Recompiled 10/31/01]

4.5.4.13 ACCOUNTABILITY:

Appropriate fiscal and program records must be maintained. If federal funds are a source of grant funds, record retention must meet federal requirements.

- A. Grant funds must be accounted for separately from other sources of funds.
- B. The monitoring and evaluation of projects will be done by New Mexico state library staff.
- C. Report requirements may vary and can be specified in any agreement or contract.
- D. Legal agreements will be required and must be signed by representatives of all participating libraries and the state librarian.

[Recompiled 10/31/01]

4.5.4.14 APPROVED:

Virginia Hendley, state librarian.

[Recompiled 10/31/01]

PART 5: SPECIAL PROJECT GRANTS FOR PUBLIC LIBRARIES

4.5.5.1 ISSUING AGENCY:

[Office of Cultural Affairs,] State Library.

[Recompiled 10/31/01]

4.5.5.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.5.5.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.5.5.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.5.5.5 EFFECTIVE DATE:

[Filed July 27, 1979]

[Recompiled 10/31/01]

4.5.5.6 OBJECTIVE:

This grants program is funded through Title I of the Library Services and Construction Act. Its purpose is to assist public libraries in developing and implementing library outreach programs for special groups presently unserved in the community.

[Recompiled 10/31/01]

4.5.5.7 DEFINITIONS:

[RESERVED.]

[Recompiled 10/31/01]

4.5.5.8 ELIGIBILITY:

Any public or community library in New Mexico (as defined in the rules and regulations of the state grants-in-aid to public libraries program) is eligible to apply for a special project grant.

[Recompiled 10/31/01]

4.5.5.9 DISTRIBUTION OF FUNDS:

Funds are computed and awarded on the basis of the following criteria:

- A. submission of project proposals by eligible libraries;
- B. approval of proposals by the state librarian, based on the following priorities:
 - (1) literacy programs for adults;
 - (2) library programs designed to serve the needs of one or more of the following special client groups in the community:
 - (a) people of low income;
 - (b) people with limited English-speaking ability;
 - (c) people with physical handicaps;
 - (d) residents of local institutions, such as jails, nursing homes, halfway houses and residential treatment programs;
 - (e) the aged.
- C. availability of funds.

[Recompiled 10/31/01]

4.5.5.10 ALLOWABLE EXPENDITURE OF GRANT FUNDS:

LSCA funds may be used for salaries and other personnel costs; books and periodicals; audio-visual materials; non-print library materials; library equipment; transportation; and other materials and operating expenses necessary to implement the project. Funds may also be used for any advertising or publication expenses necessary to inform the target audience and the general public of the project and its results.

[Recompiled 10/31/01]

4.5.5.11 APPROVED:

July 1, 1979, Clifford E. Lange, state librarian.

[Recompiled 10/31/01]

PART 6: LIBRARY SERVICES CONSTRUCTION ACT TITLE II

4.5.6.1 ISSUING AGENCY:

Office of Cultural Affairs, Library Division (New Mexico State Library).

[Recompiled 10/31/01]

4.5.6.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.5.6.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.5.6.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.5.6.5 EFFECTIVE DATE:

[Filed February 28, 1985]

[Recompiled 10/31/01]

4.5.6.6 OBJECTIVE:

The program for library construction for New Mexico is an integral part of the New Mexico state library five year program. The purpose of the Library Services and Construction Act (LSCA) Title II is to encourage and supplement local government efforts in establishing library facilities for providing high quality library service to its community.

[Recompiled 10/31/01]

4.5.6.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/01]

4.5.6.8 ELIGIBILITY:

To be eligible to receive LSCA Title II funds, a library must meet the following requirements:

A. The library must be eligible to receive state grants in aid (NMSL Rule 81-2) [now 4.5.2 NMAC].

B. Local matching funds in the amount of fifty percent of the total cost of construction must be currently available.

C. The library must be able to demonstrate inadequacy of current facilities.

D. At the time of application, the library must be able to demonstrate significant preliminary planning.

[Recompiled 10/31/01]

4.5.6.9 PRIORITIES:

The following priorities will be considered in ranking applications:

A. remodeling existing library facilities in order to make them accessible to the handicapped;

B. renovation or remodeling to accomodate new technologies;

C. incorporation of energy conservation measures into building design;

D. engaging a qualified architect to work with the public library staff in designing new or remodeled library facilities;

E. construction which will result in significant improvement in library services.

[Recompiled 10/31/01]

4.5.6.10 DISTRIBUTION OF FUNDS:

A. These grants are competitive.

B. Projects will be selected for funding according to the above priorities.

C. Grants will be awarded based on information supplied at the time of application.

D. The library must agree to enter into a formal contract with the state library.

E. The library must agree to comply with all federal regulations for LSCA assisted projects.

[Recompiled 10/31/01]

4.5.6.11 APPEAL PROCESS:

Libraries wishing to appeal a decision have an opportunity for a hearing before the state library, under provisions of NMSL Rule 85-1 [now 4.5.1 NMAC].

[Recompiled 10/31/01]

PART 7: REQUIREMENTS GOVERNING CONDUCT OF AND USE BY PATRONS AT THE NEW MEXICO STATE LIBRARY

4.5.7.1 ISSUING AGENCY:

Department of Cultural Affairs - New Mexico State Library Division.

[4.5.7.1 NMAC - Rp, 4.5.7.1 NMAC, 1/1/2017]

4.5.7.2 SCOPE:

Individuals using the resources and facilities of the New Mexico state library.

[4.5.7.2 NMAC - Rp, 4.5.7.2 NMAC, 1/1/2017]

4.5.7.3 STATUTORY AUTHORITY:

Section 18-2-4 NMSA 1978.

[4.5.7.3 NMAC - Rp, 4.5.7.3 NMAC, 1/1/2017]

4.5.7.4 DURATION:

Permanent.

[4.5.7.4 NMAC - Rp, 4.5.7.4 NMAC, 1/1/2017]

4.5.7.5 EFFECTIVE DATE:

January 1, 2017, unless a later date is cited at the end of a section.

[4.5.7.5 NMAC - Rp, 4.5.7.5 NMAC, 1/1/2017]

4.5.7.6 OBJECTIVE:

The objective of this rule is to establish requirements to maintain an environment that aids in the acquisition of knowledge through reading, writing, and quiet contemplation by the individuals using the resources and facilities of the New Mexico state library.

[4.5.7.6 NMAC - Rp, 4.5.7.6 NMAC, 1/1/2017]

4.5.7.7 DEFINITIONS:

- A.** "Department" means the department of cultural affairs.
- B.** "Responsible caregiver" means a person over the age of 13 whom a parent or guardian designates as a caregiver for their child in the state library.
- C.** "State library" means the areas of the Gary Carruthers building located at 1209 Camino Carlos Rey, Santa Fe, NM 87507-5166, to which library patrons have access and for which the state library division of the department of cultural affairs has an agreement with the property control division of the general services department, which includes the administration area, the main library, the southwest room, and the library for the blind and physically handicapped, but does not include the building lobby and other areas outside the library facility.

[4.5.7.7 NMAC - Rp, 4.5.7.7 NMAC, 1/1/2017]

4.5.7.8 PROHIBITED CONDUCT:

This rule adopts by reference Conduct On and Use of State Property, 1.5.24 NMAC, for members of the public who are not department employees. In the event of a conflict, the provisions of this rule shall control. The following conduct is prohibited in the state library:

- A.** Harassing or threatening other persons, including but not limited to physical, sexual or verbal behavior that interferes with the others' quiet enjoyment of the state library's resources, and including attempting physical contact, staring, or stalking.
- B.** Bringing animals other than service animals.
- C.** Willfully defacing, damaging, stealing, or destroying library property or the property of others.
- D.** Bringing food or drink, other than water in enclosed receptacles.
- E.** Leaving children under the age of 10 years unattended and unsupervised. A parent, guardian, or responsible caregiver shall remain continually with a child under the age of 10 years. A parent or responsible caregiver shall at all times accompany a minor of any age with mental, physical, or emotional problems or behavioral or other issues who requires supervision in order to be safe or not disruptive.
- F.** Using sports equipment i.e., bikes, roller skates, roller blades or skateboards. These items must be placed outside or stored in lockers. If oversized items cannot be locked in a locker, they must be carried at all times.

G. Sleeping that impedes others from using library spaces or resources.

H. Smoking.

I. Using cell phones and other electronic devices that are audible to others. Cell phones must be placed on silent mode. Patrons shall only make and answer calls in the building lobby areas.

J. Violating any civil or criminal laws or engaging in any illegal activity, including copying or downloading of electronic music, video, illustrations or text from library equipment in violation of the copyright act.

K. Hygiene that constitutes a nuisance to others.

L. Selling, soliciting, or panhandling (approaching other people or employees with items or services for sale or pleas for donations).

M. Unreasonably impeding the movement of others (blocking entrances, exits or aisles) or creating a safety or security hazard, such as inappropriate placement of personal belongings, leaving personal belongings unattended, or bringing items that can be used as weapons.

N. Creating a mess or unsanitary conditions that may constitute a health or safety hazard in the library.

O. Distributing or posting printed materials or literature without prior approval from library staff in accordance with state library policy.

P. Not wearing clothing, i.e., footwear, pants/shorts/skirt and shirts at all times.

Q. Entering or remaining in the state library before or after operating hours without the permission of an employee.

R. Viewing of or listening to pornography or sexually explicit images or sounds.

S. Conducting commercial business.

T. Downloading or installation of computer software or viruses on library equipment.

U. Behaving in any other manner that can reasonably be expected to disturb others (or interfere with other persons' ability to use the state library), including but not limited to talking loudly, screaming, making excessive noise, making gestures, singing, lying on the floor, or dancing.

[4.5.7.8 NMAC - Rp, 4.5.7.8 NMAC, 1/1/2017]

4.5.7.9 VIOLATIONS:

Library employees may require any patron not abiding by this rule to leave the premises. If necessary, the library employee may contact the police or other law enforcement officer to remove a person who does not adhere to a library employee's directions to leave the building. The state librarian or designated staff person may deny access to any patron who violates this rule for periods of time proportionate to the severity and frequency of the violation. Failure to comply with this rule or a notice restricting access to the library may result in more lengthy restrictions or termination of library privileges, or issuance of a restraining order or a no trespass order, as provided in Section 30-14-1 NMSA 1978. A violation of law may also result in arrest and prosecution. Any patron who is denied or restricted access to the library may request in writing, within ten days of denial or restriction of access, that the state librarian reconsider the decision. The state librarian shall respond in writing to the request within 30 days. The state librarian's decision is the department's final action on the matter.

[4.5.7.9 NMAC - Rp, 4.5.7.11 NMAC, 1/1/2017]

PART 8: DISTRIBUTION OF GENERAL OBLIGATION STATE OF NEW MEXICO BOND FUNDS TO PUBLIC LIBRARIES

4.5.8.1 ISSUING AGENCY:

Cultural Affairs Department - State Library Division.

[4.5.8.1 NMAC - N, 2/14/2008]

4.5.8.2 SCOPE:

Local public libraries.

[4.5.8.2 NMAC - N, 2/14/2008]

4.5.8.3 STATUTORY AUTHORITY:

Section 18-2-4 I NMSA 1978 directs the state librarian to make rules and regulations necessary to administer the division and as provided by law. Section 18-2-4 B NMSA 1978 directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system.

[4.5.8.3 NMAC - N, 2/14/2008]

4.5.8.4 DURATION:

Permanent.

[4.5.8.4 NMAC - N, 2/14/2008]

4.5.8.5 EFFECTIVE DATE:

February 14, 2008 unless a later date is cited at the end of a section.

[4.5.8.5 NMAC - N, 2/14/2008]

4.5.8.6 OBJECTIVE:

The objective of this rule is to describe the state of New Mexico general obligation bond funds distribution to public libraries program (hereinafter "the library bond program") and to establish criteria and procedures for distribution of the funds. The purpose of the library bond program is to provide supplemental funds for library resources when such funds are approved by the legislature and the voters in statewide elections. The library bond program funds library resources and equipment for public libraries statewide, including the rural library services of the state library.

[4.5.8.6 NMAC - N, 2/14/2008]

4.5.8.7 DEFINITIONS:

A. "Annual report" means the report required annually by the state library from a public library.

B. "Authorized expenditure period" means the period from when a purchase order is approved by the cultural affairs department until ninety (90) days prior to the ending date specified in the authorizing legislation.

C. "Basic public library services" means services provided by a local public library that include circulating library collections, basic reference service, and educational programs.

D. "Equipment" means computers, software and related peripherals; servers; thin client terminals; networks, including wireless networks; telecommunications; automation systems; and other equipment used to assist in meeting the information needs of a library's clients.

E. "Fiscal year" means July 1 through June 30.

F. "Legal service area" means the geographic area for which a public library has been established to offer services and from which the library derives income. This includes the entire service area of the local public library or library system and does not include merely the general service area of any one branch. The most recent U.S. census determines the population of the legal service area if the population figures are given separately for that area. If the census does not have a discreet population figure

for the legal service area, then the state library and the library whose population is at issue shall work together to arrive at a mutually acceptable population figure. If this is not possible, the state library in its sole discretion shall determine the population for the library's legal service area.

G. "Library resources" means library holdings intended for public use and the tools required to make the resources usable by the public. Library resources can include books, videos, DVDs, sound recordings, electronic and digital media, and information materials accessed via the internet.

H. "Library system" means the agency that is legally established to provide public library service to the legal service area population. A library system may have a single outlet or more than one outlet.

I. "Local funding authority" means local or sovereign governments recognized by the department of finance and administration.

J. "Local public library" means a New Mexico organization that offers basic public library services within its legal service area and is open to the public at least fifteen (15) hours per week and a minimum of two (2) days each week.

K. "Rural library services" means those services provided by the state library to persons in the state who do not have access to a local public library. These services include bookmobiles and the books-by-mail service.

L. "Supplemental funds" means funds that are provided from sources other than the regular library budget derived from the local funding authority. Supplemental funds are not intended to replace any part, or all, of the library's regular budget.

[4.5.8.7 NMAC - N, 2/14/2008]

4.5.8.8 DISTRIBUTION OF FUNDS:

Money from the library bond program shall be distributed in the following manner:

A. Notification: When the library bond program funds are approved by the voters, the state library shall send a letter of notification and acceptance agreement to all public libraries informing them of their eligibility to receive the funds and the amount of funds they are eligible to receive. The agreement must be signed and returned to the state library one-hundred twenty (120) days before the start of the authorized expenditure period. Libraries that do not return the signed agreement within the required time period shall not be eligible to receive funds. Upon receipt of the agreements, the state library shall calculate the final allocation and the libraries shall be notified of any changes within ninety (90) days before the authorized expenditure period.

B. Allocation: The amount allocated to eligible public libraries is dependant upon the amount of bond funds approved by the state legislature and approved by the voters in a bond election. The state library may publish and make publicly available a list showing the bond fund allocations for each eligible library.

C. Criteria for allocation of funds: The state librarian shall establish the amount of funds to be allocated to each eligible library system using the following criteria.

- (1) Library shall be a local public library.
- (2) Library shall have filed an approved annual report with the state library.
- (3) Library shall return a signed agreement accepting the funds and agreeing to abide by the terms and conditions of this rule.
- (4) Non-profit libraries shall have an agreement with a local funding authority to act as their fiscal agent for these funds.
- (5) The library's and the local funding authority's accounting records shall be sufficient to document expenditures of library bond program money. At the sole discretion of the state library, such records may be audited annually or as needed by the state library or its designated representative.
- (6) County population and the library's legal service area shall be used to determine the amount of library bond program funds that shall be allocated to each eligible library.

D. Distribution of funds: Money from the library bond program funds shall be distributed in the following order:

- (1) library system allocation: each eligible local public library system, including rural library services facilities, shall receive a fixed allocation dependent upon the total library bond funds available;
- (2) per capita allocation: remaining library bond funds shall be distributed to each county on a per capita basis using the latest U. S. census bureau estimates, as follows: (a) each library shall receive funds based upon the legal service area population and proportional credit for the unassigned population in each county; and, (b) local public libraries that are the only local public library in their county shall receive the entire per capita allocation for the county.

E. Maintenance of effort:

- (1) Library's book or materials budget shall not be reduced by the local funding authority as a result of eligibility for library bond program funds.

(2) Upon demonstrated evidence that such a reduction has occurred, the library shall be ineligible to receive funds in the next library bond program.

[4.5.8.8 NMAC - N, 2/14/2008]

4.5.8.9 SOURCE OF FUNDS:

The state legislature is the sole authority for authorizing bond funding to support acquisition of library resources and equipment, including authorizing the placement of general obligation bonds on an election ballot. These library bond program funds must be approved by the voters before they are made available to libraries.

[4.5.8.9 NMAC - N, 2/14/2008]

4.5.8.10 LIMITATION ON FUNDS:

A. Library bond program funds may be approved by the state legislature only during legislative sessions convened in even numbered years. The amount of bond funds received for distribution by the state library may vary depending on the amounts approved by the state legislature and subsequently approved by the voters.

B. Notwithstanding language elsewhere in this rule, the state library may, in its sole discretion, alter the distribution amounts to reflect the actual amount of approved bond funds.

C. Funds shall be expended in the fiscal year in which they are made available, unless otherwise stated in the authorizing legislation.

[4.5.8.10 NMAC - N, 2/14/2008]

4.5.8.11 ADMINISTRATION OF FUNDS:

A. The state library shall administer the library bond program.

B. Allocated funds shall be sent on a reimbursement basis from the state library by check or electronic fund transfers to the library or local funding authority. Libraries must submit a reimbursement request form and expenditure documentation receipts for eligible expenditures prior to being reimbursed. Upon verification of the expenditure documentation receipts, the state library shall approve reimbursement.

C. Reimbursements shall be submitted in the fiscal year in which the funds were expended.

D. All requests for reimbursement shall be submitted within the authorized expenditure period.

[4.5.8.11 NMAC - N, 2/14/2008]

4.5.8.12 APPEALS:

A. In the event that library bond program funds are denied to a local library under the provisions of Subsection E of 4.5.8.8 NMAC, an appeal may be made by the local library or the local funding authority.

B. Such appeal shall be made in writing to the state librarian within ten (10) days of notification of denial of funds. The appeal should state all facts and conditions relating to the appeal.

C. The appeal shall be considered and ruled upon by the state library commission at its next regularly scheduled meeting.

[4.5.8.12 NMAC - N, 2/14/2008]

PART 9: SPECIAL GRANTS TO PUBLIC LIBRARIES

4.5.9.1 ISSUING AGENCY:

Department of Cultural Affairs, New Mexico State Library Division.

[4.5.9.1 NMAC - N, 7/1/2015]

4.5.9.2 SCOPE:

Public libraries and developing public libraries.

[4.5.9.2 NMAC - N, 7/1/2015]

4.5.9.3 STATUTORY AUTHORITY:

Section 18-2-4(I) NMSA 1978 directs the state librarian to make rules and regulations necessary to administer the division and as provided by law. Section 18-2-4(B) NMSA 1978 directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system.

[4.5.9.3 NMAC - N, 7/1/2015]

4.5.9.4 DURATION:

Permanent.

[4.5.9.4 NMAC - N, 7/1/2015]

4.5.9.5 EFFECTIVE DATE:

July 1, 2015 unless a later date is cited at the end of a section.

[4.5.9.5 NMAC - N, 7/1/2015]

4.5.9.6 OBJECTIVE:

The objective of this rule is to describe the special grants program. The special grants program shall provide supplemental assistance to libraries for activities that are not funded by state grants in aid or are not fully funded by state grants in aid and encourage local library service and promote an effective statewide library system.

[4.5.9.6 NMAC - N, 7/1/2015]

4.5.9.7 DEFINITIONS:

A. "Developing library" has the same meaning as in 4.5.2 NMAC.

B. "Grant recipient" means a public library or developing library that the state librarian selects to receive a special grant.

C. "Public library" has the same meaning as in 4.5.2 NMAC.

D. "Special grants" means funds awarded by the state librarian for special library programs.

E. "Special library program" means an activity that is not funded by state grants-in-aid or is not fully funded by state grants-in aid and that encourages local library service and enhances the effectiveness of a statewide library system.

[4.5.9.7 NMAC - N, 7/1/2015]

4.5.9.8 SPECIAL GRANTS INITIATION:

The state library or a public library may propose a special library program.

[4.5.9.8 NMAC - N, 7/1/2015]

4.5.9.9 GRANT AVAILABILITY:

The state library shall offer special grants when the state librarian identifies the need for state-wide coordination of a special library program and determines that sufficient federal or state funds are available.

[4.5.9.9 NMAC - N, 7/1/2015]

4.5.9.10 FUNDING SOURCE:

Special grants may be funded with federal funds, state funds, and any other funds available to the state librarian and not otherwise restricted. Use of state funds for special grants shall not reduce state grants-in-aid.

[4.5.9.10 NMAC - N, 7/1/2015; A/E, 7/1/2021; A, 12/28/2021]

4.5.9.11 ELIGIBILITY:

Public libraries and developing libraries that are eligible for state grants-in-aid in a given fiscal year are also eligible for special grants, unless the grant guidelines provide otherwise.

[4.5.9.11 NMAC - N, 7/1/2015; A/E, 7/1/2021; A, 12/28/2021]

4.5.9.12 GRANT GUIDELINES:

When the state librarian identifies the need for state-wide coordination of a special library program and determines that sufficient funding is available, the state librarian shall issue a special grant announcement to all developing libraries and public libraries with grant guidelines. The grant guidelines shall include the following components:

- A. Description of the special library program;
- B. Grant application;
- C. Application timeline;
- D. Special library program's budget-planning worksheet;
- E. Applicable rules and regulations; and
- F. Selection criteria.

[4.5.9.12 NMAC - N, 7/1/2015]

4.5.9.13 SELECTION:

A committee selected by the state librarian shall review special grant applications and award special grants based on the selection criteria specified in the grant guidelines.

[4.5.9.13 NMAC - N, 7/1/2015]

4.5.9.14 TRANSFER OF FUNDS:

Special grants shall only transfer to the grant recipient after the grant recipient signs a contract, agreeing to the terms applicable to the applicable special library program.

[4.5.9.14 NMAC - N, 7/1/2015; A/E, 7/1/2021; A, 12/28/2021]

4.5.9.15 ACCOUNTABILITY:

A. Grant recipients shall account for special grants separately from other funds.

B. If a special grant includes federal funds, federal requirements for procurement and record retention shall apply.

C. The state library shall monitor special library programs.

[4.5.9.15 NMAC - N, 7/1/2015]

4.5.9.16 MAINTAINANCE OF EFFORT:

A grant recipient's governing body shall not reduce the grant recipient's budget as a result of the grant recipient's receipt of a special grant. Upon demonstrated evidence that such a reduction has occurred, the grant recipient shall be ineligible to receive special grants or state grants-in-aid for one year after the reduction occurs.

[4.5.9.16 NMAC - N, 7/1/2015]

CHAPTER 6-9: [RESERVED]

CHAPTER 10: CULTURAL PROPERTIES AND HISTORIC PRESERVATION

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: HISTORIC PRESERVATION LOAN FUND

4.10.2.1 ISSUING AGENCY:

Office of Cultural Affairs, State Historic Preservation Division.

[7/16/97; 4.10.2.1 NMAC - Rn, 4 NMAC 10.2.1, 1/1/08]

4.10.2.2 SCOPE:

The historic preservation division, the state historic preservation officer, cultural properties review committee, owners of property listed in the state register of cultural

properties or the national register of historic places who apply and/or are interested in participating in the loan fund, lending institutions and federal agencies or non-profit organizations with funds available for making loans to owners of registered historic properties. These regulations have been promulgated primarily to govern projects jointly funded by the state historic preservation division through its loan fund and lending institutions such as commercial banks, savings and loans, and credit unions. Entities other than lending institutions, e.g., non-profit organizations, may also contribute funding to the rehabilitation, restoration, or repair of registered cultural property.

[7/16/97; 4.10.2.2 NMAC - Rn, 4 NMAC 10.2.2, 1/1/08]

4.10.2.3 STATUTORY AUTHORITY:

The Historic Preservation Loan Act, Section 18-6-21, authorizes the historic preservation division to administer the historic preservation loan fund and establish a program to contract with one or more lending institutions for deposits to be used for the purpose of making or subsidizing loans, and Section 18-6-22(B) and (C) direct the division to adopt rules and regulations governing the application procedures, requirements for making or subsidizing loans, and the deposits with lending institutions for making loans or loan subsidies under the act.

[7/16/97; 4.10.2.3 NMAC - Rn, 4 NMAC 10.2.3, 1/1/08]

4.10.2.4 DURATION:

Permanent.

[7/16/97; 4.10.2.4 NMAC - Rn, 4 NMAC 10.2.4, 1/1/08]

4.10.2.5 EFFECTIVE DATE:

July 16, 1997, unless a later date is cited at the end of a section or paragraph.

[7/16/97; 4.10.2.5 NMAC - Rn, 4 NMAC 10.2.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 10 is to establish regulations and describe the procedures for loans and loan subsidies made to property owners for the repair, rehabilitation, restoration and preservation of registered cultural properties. The regulations describe the eligibility requirements for property owners and their property for loans or loan subsidies. The regulations describe the procedures that are followed and the documentation required and entered into by the state of New Mexico, historic

preservation division and lending institutions or other entities that participate in the loan, and property owners, including descriptions of the preliminary loan application, the loan participation agreement, and the development agreement and preservation covenants and deed restrictions. The regulations also describe the terms and conditions contained in the required documentation and agreements entered into between the division, lending institution or other entity, and the borrower.

[7/16/97; 4.10.2.6 NMAC - Rn, 4 NMAC 10.2.6, 1/1/08]

4.10.2.7 DEFINITIONS:

A. "Acquisition" means the acquiring of a fee simple interest or of a lesser interest by appropriate mechanism, including but not limited to easement or lease, in a prehistoric or historic site.

B. "Development agreement and preservation covenants and deed restrictions" means the agreement entered into between the division and the property owner/borrower.

C. "Committee" or "CPRC" means the cultural properties review committee created pursuant to the Cultural Properties Act, Section 18-6-4 NMSA 1978

D. "Division" means the historic preservation division of the New Mexico office of cultural affairs.

E. "Historic preservation loan fund" or "HPL fund" means the revolving loan fund established by Section 18-6-21(A) of the Historic Preservation Loan Act, consisting of funds appropriated by the legislature of the state of New Mexico, funds available from federal agencies, non-profit organizations, and private funds made available for purposes of the Historic Preservation Loan Act and receipts from the repayment of loans or loan subsidies made pursuant to the Historic Preservation Loan Act.

F. "HPL contributions" means the amount of funds from the historic preservation loan fund deposited into the loan pool.

G. "Lending institution" means a commercial bank, savings and loan, or credit union.

H. "Loan pool" means an account established and administered by a lending institution that contains contributions from the HPL fund, funds from participating lending institution(s), and may include funds from private and federal agencies.

I. "Loan participation agreement" means the agreement entered into between the division and a lending institution.

J. "Non-profit organization" means an organization who has received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

K. "State historic preservation officer" or "SHPO" means the state official designated by the Cultural Properties Act, Section 18-6-8 NMSA 1978, to serve as the director of the state historic preservation division and administer the Cultural Properties Act.

L. "Secretary's standards" means the current standards developed by the secretary of the interior, standards for rehabilitation and guidelines for rehabilitating historic buildings or standards for historic preservation projects, 36 CFR Part 68.

M. [RESERVED]

[7/16/97; 4.10.2.7 NMAC - Rn, 4 NMAC 10.2.7, 1/1/08]

4.10.2.8 HPL CONTRIBUTIONS TO THE LOAN POOL AND THE LOAN POOL:

A. HPL funds are contained in the historic preservation loan fund. Funding of restoration, rehabilitation, repair and preservation of a registered cultural property is accomplished by the division contributing an amount of HPL funds into the loan pool.

B. For each approved project, the division and the lending institution shall establish a schedule for disbursement of loan funds to the borrower. The schedule shall be included in the loan participation agreement as provided for in 4.10.2.13 NMAC of these regulations, and indicate the stages of work progress and the anticipated dates of disbursements and amount of HPL contributions to be directed toward each stage of work progress. The period during which all disbursements of the HPL contributions for a project shall not exceed a period of twelve months from the date the first disbursement of loan funds was made to the borrower or a period otherwise agreed to by the parties in the loan participation agreement. In either event, such period shall not exceed two years from the date of project loan approval by the division. The disbursement schedule for the HPL funds from the loan pool shall be based upon the planned restoration, rehabilitation, repair and authorized use of HPL funds.

C. Prior to the date of a scheduled disbursement of HPL Funds, the lending institution shall notify the division that a deposit of a specified amount of HPL funds into the loan pool is necessary. The division shall make an appropriate request to the New Mexico state treasurer's office to effect the deposit of the specified amount of HPL funds into the loan pool for disbursement to the borrower by the lending institution. An HPL contribution that is not disbursed to the borrower as provided in Subsection B of 4.10.2.8 NMAC herein shall be returned by the lending institution to the division.

D. The division shall only deposit HPL funds into the loan pool to pay the costs of completed rehabilitation, restoration, or repair work, or for reimbursement of payment of approved materials delivered to the project site, including eligible costs approved by the division.

E. In addition to HPL funds, the funds in the loan pool may include other funds from other sources that are available for loans or loan subsidies made pursuant to the Historic Preservation Loan Act.

F. HPL funds contributed into and disbursed from the loan pool shall be used in accordance with these regulations.

G. Non-HPL contributions in the loan pool may be available for costs of land acquisition, purchase, or other costs for which HPL funds cannot be used.

H. Use of non-HPL contributions in the loan pool shall be governed by any applicable restrictions, requirements, terms or conditions of the lending institution or other funding entity.

[7/16/97; 4.10.2.8 NMAC - Rn, 4 NMAC 10.2.8, 1/1/08]

4.10.2.9 ELIGIBILITY OF PROPERTY:

A. An eligible property is any property individually listed in the state register of cultural properties or the national register of historic places or officially designated as contributing to a historic district listed in the state register or the national register.

B. Eligible properties may be restored, rehabilitated, repaired, and preserved with a loan or loan subsidy using HPL contributions to the loan pool.

[7/16/97; 4.10.2.9 NMAC - Rn, 4 NMAC 10.2.9, 1/1/08]

4.10.2.10 ELIGIBILITY OF PROPERTY OWNERS:

A. An eligible property owner is a sole owner, joint owner, owner in partnership, corporate owner or owner of a leasehold interest of a term not less than nineteen years, of any eligible property as described in Subsection A of 4.10.2.9 NMAC of these regulations.

B. A loan or loan subsidy from the loan pool shall be made only to eligible property owners who agree:

(1) to repay the loan and maintain the registered cultural property as restored, rehabilitated or repaired for a period of not less than seven years; and

(2) that the property owner's failure to so maintain the property in conformity with Paragraph (1) of Subsection B of 4.10.2.10 NMAC of these regulations shall constitute a default of the loan or loan subsidy promissory note and mortgage agreement and shall be cause for acceleration of the unpaid loan or subsidy balance and exercise of foreclosure remedies against the collateral by the lending institution; and

(3) to execute a development agreement and preservation covenants and deed restrictions with the division and other loan agreements or documentation that may be required by the lending institution; and

(4) to rehabilitate, restore or repair a registered cultural property, including rehabilitation of a portion of its front facade, in compliance with the secretary's standards as determined and agreed upon by the division; and

(5) to maintain complete and proper financial records regarding the registered cultural property and to make such records available to the division upon request; and

(6) to complete the proposed rehabilitation, repair or restoration work on the registered cultural property within two years from the date the loan or loan subsidy is approved by the division and closed by the lending institution; and

(7) provide sufficient collateral security interest in the registered cultural property to the state of New Mexico in accordance with 4.10.2.16 NMAC of these regulations; and

(8) to meet the division and CPRC's criteria for priority ranking of loans or subsidies made from the HPL contributions to the loan pool.

[7/16/97; 4.10.2.10 NMAC - Rn, 4 NMAC 10.2.10, 1/1/08]

4.10.2.11 HPL CONTRIBUTIONS - ELIGIBLE COSTS:

Costs which can be paid with HPL contributions to the loan pool are architectural, engineering, planning services, project inspection, contracted restoration, rehabilitation, repair and costs necessary for code compliance. The division or the lending institution with the prior approval of the division, may use the HPL contributions to the loan pool to pay costs associated with enforcement of the obligations of the borrower under the promissory note, mortgage or loan agreement.

[7/16/97; 4.10.2.11 NMAC - Rn, 4 NMAC 10.2.11, 1/1/08]

4.10.2.12 HPL CONTRIBUTIONS - INELIGIBLE COSTS:

A. HPL contributions to the loan pool shall not be used to pay costs of land acquisition, legal costs, fiscal agents' fees, loan origination fees, points, or other charges incurred by the borrower or which may be imposed by the lending institution or other lending entity, including fees described in 4.10.2.17 NMAC of these regulations and costs that are not expressly permitted in 4.10.2.11 NMAC of these regulations.

B. The borrower shall not apply HPL funds contributions to the loan pool toward the acquisition or purchase of property.

[7/16/97; 4.10.2.12 NMAC - Rn, 4 NMAC 10.2.12, 1/1/08]

4.10.2.13 DIVISION PROCEDURES:

A. Loan participation agreement: The division shall enter into a loan participation agreement (see attachment "A" attached hereto) 4.10.2.22 NMAC with one or more lending institutions, a federal entity, or other funding entity, to make HPL funds available for deposit into the loan pool for purposes of the Historic Preservation Loan Act.

B. The loan or loan subsidy from the HPL contributions to the loan pool for a repair, restoration or rehabilitation project, shall be governed by the terms of the loan participation agreement.

C. The loan participation agreement shall contain the following:

(1) the names and addresses of all parties participating in the project by making a contribution of funds to the loan pool; and

(2) recitals of the project, definitions, and

(3) a statement specifying the parties' respective percentages of financial participation or "share" in the loan pool, such participation shall be described as a "sale of participation" in the loan or loan subsidy by each party; and

(4) a statement describing the manner in which HPL funds will be contributed to the loan pool; the lending institution shall notify the division that according to the schedule for disbursements of loan funds to the borrower, a contribution of HPL funds into the loan pool is necessary; the division shall make an appropriate request to the department of finance and administration and the state treasurer's office to effect a contribution of HPL funds into the loan pool; and

(5) a statement that upon deposit of the HPL contribution to the loan pool, the HPL contribution shall accrue interest at the rate of three percent per annum; and

(6) a statement that the lending institution shall disburse loan funds to the borrower in at least five separate installments and as provided in Subsection B of 4.10.2.8 NMAC herein; and

(7) a statement that the division shall establish an inspection schedule relating to the purposes and goals of the Historic Preservation Act, authorized uses of the HPL contributions, and compliance with the development agreement and preservation covenants and deed restrictions and the secretary's standards; and

(8) a statement that provides that the lending institution shall establish an inspection schedule relating to construction progress; and

(9) a statement that provides that HPL contributions that are not disbursed to the borrower, as provided in Subsection B of 4.10.2.8 NMAC herein, shall be returned by the lending institution to the division; and

(10) a statement describing the rates of interest charged to the borrower for the loan or loan subsidy attributable to each party who contributed to the loan pool, including the rate charged on the HPL contribution as stated in Section 18-6-23 NMSA 1978, and other rates charged on funds contributed by the lending institution; and

(11) a statement indicating the combined interest rate of the loan or loan subsidy; and

(12) a statement describing the administration of the loan pool by the lending institution, including that the lending institution shall:

(a) receive and deposit the HPD contributions into the loan pool and, within five working days after receipt of a payment from the borrower, transfer to the division its share of any collections, including interest due to the division; and

(b) service and manage the loan or loan subsidy and collateral according to customary and prudent lending practices;

(c) be responsible for all aspects of loan origination, servicing, collections, and security; and

(d) document the loan or loan subsidy in the form a promissory note, loan agreement, mortgage and other security agreements(s) that may be required by the lending institution; and

(e) require that the promissory note, mortgage and other loan documents provide that events of default include the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the secretary's standards, or comply with the development agreement and preservation covenants and deed restrictions; and

(f) ensure that the original priority of the mortgage extends to each subsequent disbursement of loan proceeds to the borrower; and

(g) provide the division with copies of all documents pertaining to the loan or loan subsidy; and

(h) monitor the borrower's maintenance of any insurance required on the collateral, payment of all taxes, fees and other charges assessed or otherwise imposed upon the collateral; and

(i) promptly notify the division of any event of default existing for more than thirty days, and of other significant information relating to the loan; and

(j) upon notification of a default, consult with the division as to the appropriate course of action and take such agreed upon action with the prior written approval of the division; and

(13) a statement that the lending institution shall execute and deliver satisfactions, endorsements, receipts, discharges or releases as may be necessary in the proper serving and collection of the loan or loan subsidy; the lending institution shall not modify or supplement any documents associated with the loan or loan subsidy, agree to any extension of time or waiver or forgiveness of debt, take or permit any action that will release the borrower or any guarantor from any obligation or liability with regard to the loan, or impair the validity or priority of the lending institution's or division's interest in the collateral unless the lending institution obtains the division's prior written consent; and

(14) a statement permitting payment of charges related to loan origination, closing, and other service charges incurred by the lending institution in its administration of the loan pool, to be paid from loan funds contributed by the lending institution; and

(15) a statement describing the division's right to have access to loan or loan subsidy records in the possession of the lending institution; and

(16) a statement describing all terms of the loan or loan subsidy issued from the loan pool, including:

(a) a detailed description of all repair, restoration or rehabilitation for the project as approved by the division and any modifications, exhibits or additional documents as approved by the division and the lending institution; and

(b) a statement that the restoration, rehabilitation, or repair must be completed within two years from the date the loan is approved by the division and closed by the lending institution; and

(c) a statement that the term of the loan or loan subsidy shall be five years and interest and principal shall be paid in equal installments no less than annually with the first installment due within one year of the date the loan is closed by the lending institution; this statement shall also provide that the loan shall be amortized over a period not to exceed twenty years, with a balloon payment due at the end of the five year term; in lieu of a balloon payment, the lending institution may purchase the remaining loan amount due to the division; and

(d) a statement that the loan or loan subsidy shall be secured by the collateral; and

(e) a statement that all restoration, rehabilitation, or repair shall be completed in conformity with the secretary's standards as determined by the division; and

(f) a statement that failure by the borrower to comply with the secretary's standards shall be an event of default under the promissory note and the mortgage; and

(g) a statement that the division shall notify the borrower of any noncompliance with the secretary's standards, that the borrower has a specific period of time to cure the noncompliance, and if the default is not cured the division shall notify the lending institution of the default and the lending institution shall pursue appropriate remedies as stated in the loan participation agreement, promissory note or mortgage; and

(h) a statement that the lending institution shall condition the closing of the loan or loan subsidy upon the borrower's execution of a development agreement and preservation covenants and deed restrictions, as described in Subsection D of 4.10.2.13 NMAC of these regulations, with the historic preservation division; and that if the loan is repaid prior to the expiration of seven years from the date the loan or loan subsidy is closed by the lending institution, the covenants and deed restrictions shall not be extinguished and shall remain in effect until the termination date of the development agreement and preservation covenant and deed restriction; and a requirement that this provision be contained in the mortgage and all other documents evidencing security for the loan or loan subsidy; and

(i) a statement that the promissory note, mortgage, and any other documents pertaining to security for the loan or loan subsidy shall include provisions stating that the borrower's default in connection with any loan, loan subsidy or other obligation secured by a lien superior to the mortgage or development agreement and covenants and deed restrictions shall constitute an event of default of the mortgage and loan agreement; the division and the lending institution shall have the right (but not the obligation) to cure any default in connection with superior liens and charge the costs of curing to the borrower; and

(j) a statement requiring that a construction sign acknowledging the assistance of the division and the lending institution, or other participating party, shall be displayed prominently at the project being restored, rehabilitated or repaired; and

(k) a statement requiring the lending institution to require the borrower to maintain financial records regarding the project throughout the term of the loan or loan subsidy and shall make such records available to the lending institution and the division upon request; and

(17) a statement regarding the lending institution's transfer of payments to the division, including any interest, in conformity with the division's share of participation in the loan pool; and

(18) a statement regarding quarterly reports to the participating parties from the lending institution concerning the project's financial and restoration, rehabilitation or repair status; and

(19) a statement identifying the name and address of individuals to whom written notice of matters concerning the project shall be addressed and directed; and

(20) a statement describing the applicable law that governs the loan participation agreement; and

(21) a statement providing for severability, non-assignability, amendment of the loan participation agreement, and

(22) a statement regarding execution of the loan participation agreement in counterparts; and duly witnessed signatory lines of the parties.

D. Development agreement and preservation covenants and deed restrictions: The division shall enter into a development agreement and preservation covenants and deed restrictions (see attachment "B" attached hereto) 4.10.2.23 NMAC with the property owner/borrower to govern the restoration, rehabilitation, or repair of a project. The development agreement and preservation covenants and deed restrictions shall contain the following:

(1) the names and addresses of the parties, including the property owner's heirs, successors and assigns and the date the agreement is executed; and

(2) recitals, including a statement that all covenants and deed restrictions shall run with the land for no less than a period of seven years, shall bind all future owners and occupants of the property during that time, and be recorded; and

(3) covenants applicable to the property owner and that pertain to the owner's obligations to do or refrain from doing specified activities that affect the condition of the restoration, rehabilitation or repaired property; and

(4) a statement that nothing in the development agreement prohibits the owner from obtaining financial assistance from sources other than the division, provided that the lien of the preservation covenants and deed restrictions shall not be made subordinate to any mortgage or other lien interest made in connection with other financial assistance without the division's approval; and

(5) a statement that the standard of review for compliance with the covenants and deed restrictions or review of construction, alteration, repair, maintenance, or casualty damage, shall be the secretary's standards and any applicable state or local standards; and

(6) a statement that the division determines the applicability of the secretary's standards and the application of alternative standards that the division determines to be reasonable; and

(7) a provision regarding casualty damage or destruction to the property; and

(8) covenants applicable to the division and that pertain to conveyance, assignment or transfer of its interest in the development agreement; and

(9) a provision regarding inspection of the property; and

(10) a provision describing the division's remedies to correct violations of the development agreement and preservation covenants and deed restrictions; and

(11) a provision regarding notice from the owner to the division in the event the owner proposes to sell the property; and

(12) a requirement that as long as the covenants and deed restrictions run with the land, the owner shall insert the covenants and deed restrictions in any subsequent deed or other legal instrument by which the owner divests itself of either the fee simple title to, or its possessory interest in the property; and

(13) a provision regarding recording of the development agreement and preservation covenants and deed restrictions; and

(14) provisions regarding subordination of subsequent mortgages and the rights of the division with respect to senior liens, which shall require that:

(a) the preservation covenants and deed restrictions shall have priority over all mortgages, other rights affecting the property including tax liens, which are granted after execution and recording of the development agreement;

(b) the preservation covenants and deed restrictions shall not be extinguished or terminate upon a mortgagee taking title to the property within seven years of the date of closing of the loan, as a result of foreclosure or otherwise;

(c) that the borrower's default in connection with any loan or other obligation secured by a lien superior to the mortgage or lien of the covenants and deed restrictions shall constitute an event of default of the covenants and deed restrictions, and that the division or lending institution shall have the right to cure any such default and charge the costs of curing to the borrower;

(d) if a mortgage grants to a mortgagee the right to receive proceeds of a condemnation proceeding arising from an exercise of eminent domain as to any part of the property or the right to receive insurance proceeds as a result of any casualty, hazard or accident occurring to or about the property, the mortgagee shall have a

superior claim to the insurance and condemnation proceeds and entitled to the same in preference to the division until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to the preservation covenants and deed restrictions; and

(e) if a mortgagee has received an assignment of the leases, rents and profits of the property as security or additional security for a loan, the mortgagee shall have a superior claim to the leases, rents and profits of the property and shall be entitled to receive same in preference to the division until said mortgagee's debt is paid off, notwithstanding that the mortgage is subordinate to the preservation covenants and deed restrictions and

(f) until a mortgagee or purchaser at foreclosure obtains ownership of the property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under the preservation covenants and deed restrictions; and

(15) a statement of the name and address of the individuals to whom written notice is to be directed; and

(16) a requirement that upon the request of the division, the owner shall provide evidence of compliance with terms of the development agreement and preservation covenants and deed restrictions; and

(17) provisions regarding evidence of compliance, and interpretation and enforcement of the development agreement and preservation covenants and deed restrictions; and

(18) an expiration date of the development agreement and preservation covenants and deed restrictions, and duly witnessed and notarized signature lines of the owner and the division.

E. Promissory note:

(1) A promissory note signed by the borrower and evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement of Paragraph (2) of Subsection E of 4.10.2.13 NMAC below, the form of the note and its terms shall be determined by the lending institution using customary and prudent lending practices by lending institutions in New Mexico.

(2) The promissory note shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the secretary's standards, or comply with the development agreement and covenants and deed restrictions.

F. Mortgage:

(1) A mortgage evidencing the security interest for the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection F of 4.10.2.13 NMAC below, the form of the mortgage and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the secretary's standards, or comply with the development agreement and covenants and deed restrictions.

G. Loan agreement:

(1) A loan agreement evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection G of 4.10.2.13 NMAC below, the form of the agreement and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the secretary's standards, or comply with the development agreement and covenants and deed restrictions.

[7/16/97; 4.10.2.13 NMAC - Rn, 4 NMAC 10.2.13, 1/1/08]

4.10.2.14 PRIORITY RANKING OF HISTORIC PRESERVATION PROJECTS AND PRELIMINARY LOAN APPLICATION FORM:

A. The division in consultation with the CPRC shall annually review the division's system for priority ranking of criteria applied to loan applications in a regular public meeting of the CPRC.

B. The division shall provide annual public notice of the availability of loans or loan subsidies from the historic preservation loan fund and the availability of a historic preservation preliminary loan application form (see attachment "C" attached hereto) 4.2.10.24 NMAC from the division.

C. A historic preservation preliminary loan application form shall consist of photographs, drawings, plans and cost estimates of the property to be rehabilitated, restored, or repaired.

[7/16/97; 4.10.2.14 NMAC - Rn, 4 NMAC 10.2.14, 1/1/08]

4.10.2.15 LENDING INSTITUTION'S PROCEDURES:

A. After approval by the division of a preliminary loan application form and identification of a lending institution, the designated officer of the lending institution will advise the property owner of any additional documentation required by the lending institution.

B. Applicants will be notified in writing by the lending institution regarding its determination to approve or disapprove a loan for a project. The designated officer of the lending institution will advise the borrower of the amount, terms and conditions of the loan.

C. Approval of a loan or loan subsidy from the loan pool will be made in accordance with the lending institution's customary and prudent lending practices.

[7/16/97; 4.10.2.15 NMAC - Rn, 4 NMAC 10.2.15, 1/1/08]

4.10.2.16 PROPERTY OWNER'S COLLATERAL SECURITY INTEREST:

A. The sufficiency of the collateral security interest in a registered cultural property whose repair, rehabilitation or restoration is to be funded with funds from the historic property loan fund and lending institution(s) shall be determined by the participating lending institution(s) in accordance with the customary and prudent lending practices.

B. The offer of collateral security in the form of an assignment to the state of New Mexico, historic preservation division, of a first mortgage, second mortgage, or assignment of lease, shall be commensurate with risk and approved by the division in consultation with the lending institution.

[7/16/97; 4.10.2.16 NMAC - Rn, 4 NMAC 10.2.16, 1/1/08]

4.10.2.17 LENDING INSTITUTION'S LOAN PROCESSING FEES AND RELATED CHARGES:

Recording, title, credit report fees and costs charged by the lending institution(s) participating in the loan for a project shall not be paid with HPL contributions to the loan pool.

[7/16/97; 4.10.2.17 NMAC - Rn, 4 NMAC 10.2.17, 1/1/08]

4.10.2.18 HPL LOAN AMOUNT AND REPAYMENT BY PROPERTY OWNER:

A. The amount of HPL funds contributed to the loan pool shall not exceed two hundred thousand dollars (\$200,000) for any one project.

B. The property owner of an approved project will repay the loan or loan subsidy in monthly installments. Payment on the interest and principal shall be in accordance with

Subparagraph (c) of Paragraph (16) of Subsection C of 4.10.2.13 NMAC of these regulations.

[7/16/97; 4.10.2.18 NMAC - Rn, 4 NMAC 10.2.18, 1/1/08]

4.10.2.19 [RESERVED]

4.10.2.20 COMPLIANCE WITH SECRETARY'S STANDARDS, INSPECTION AND REPORTING REQUIREMENTS:

A. All rehabilitation, restoration, repair and preservation of projects funded by a loan or loan subsidy from the historic preservation loan fund shall be governed by the secretary's standards as applicable.

B. The division may require professional design, architectural or engineering services for any rehabilitation, restoration, repair and preservation projects funded by a loan or loan subsidy from the historic preservation loan fund.

C. All plans and specifications shall be approved by the division and the SHPO prior to commencement of rehabilitation, restoration, repair and preservation of a project. The CPRC or its architectural subcommittee may also review project plans and specifications.

D. The division may review a project in progress at any time upon notice to the property owner and may require correction of any work not conforming to the secretary's standards or approved plans and specifications. The division will review all completed projects to ensure conformity with the secretary's standards and approved plans and specifications.

E. Quarterly written progress reports on projects undergoing rehabilitation, restoration, repair and preservation shall be submitted by the property owner to the division. Quarterly reports shall include a detailed description of progress to date, a status report for the entire project and a financial summary.

[7/16/97; 4.10.2.20 NMAC - Rn, 4 NMAC 10.2.20, 1/1/08]

4.10.2.21 AGREEMENT PROVISION VARIANCES:

The requirements described in any section of these regulations may be subject to variance in accordance with the agreement and negotiations of the parties. Changes or divergence from the provisions described therein are within the discretion of the division and the CPRC.

[7/16/97; 4.10.2.21 NMAC - Rn, 4 NMAC 10.2.21, 1/1/08]

4.10.2.22 ATTACHMENT A: HISTORIC PRESERVATION LOAN FUND: LOAN PARTICIPATION AGREEMENT:

THIS LOAN PARTICIPATION AGREEMENT, is made this _____ day of _____, between [the participating lending institution, and/or other participating parties and address(es)] and the Historic Preservation Division, Office of Cultural Affairs, State of New Mexico, a government entity with its principal office at 228 East Palace Avenue, Santa Fe, New Mexico, 87501 (the "division").

A. RECITALS:

(1) The division has been working cooperatively with lending institutions and/or [other participating parties] to support the rehabilitation, restoration and preservation of historic commercial and/or residential buildings and historic sites in New Mexico.

(2) [Borrower] has applied to the division for assistance for a project involving the rehabilitation of [property], a historic property located at [address], New Mexico.

(3) To promote the shared goals of historic preservation in New Mexico, the lending institution has agreed to join with the division in providing a loan to [borrower] for this project. The lending institution has further agreed to coordinate the administration of these funds in accordance with the terms and conditions of this loan participation agreement.

B. THE PARTIES HEREBY AGREE AS FOLLOWS: AGREEMENT: Definitions:

(1) "Account" - The account at the lending institution or at one or more other lending institutions into which the division contribution is deposited pending disbursement to borrower and into which the collections are deposited pending delivery to the division.

(2) "Application" - Borrower's application for assistance from the division, in the form of the New Mexico historic preservation preliminary loan application, dated _____ and approved on _____.

(3) "Borrower" - [name and address]

(4) "Collateral" - The property, which is subject to the mortgage and such other collateral as shall be accepted by the lending institution and HPD as security for the loan, and in which the lending institution shall hold a security interest on behalf of the lending institution and HPD in proportion to the respective amounts loaned by the lending institution and HPD.

(5) "Collections" - All moneys received by the lending institution as principal or interest on and for the account of the loan or as proceeds of the collateral.

(6) "Covenants and deed restrictions" The historic preservation covenants and deed restrictions which shall be entered into by the borrower/owner and HPD which shall remain in effect for a minimum period of seven (7) years (the "deed restriction period") and which shall be recorded.

(7) "Division contribution" - The amount of _____ dollars (\$ _____), representing the share of the loan purchased by the division.

(8) "Event of default" - The occurrence of any of the events of default defined in the loan documents, which shall include, without limitation, a violation of the development agreement preservation covenants and deed restrictions, the secretary's standards, the mortgage or the loan documents.

(9) "Loan" - The loan in the principal amount of _____ dollars (\$ _____) from the lending institution to borrower, the proceeds of which are to be used for the project.

(10) "Loan documents" - The loan agreement, promissory note, mortgage, development agreement and preservation covenants and deed restrictions, any guaranty agreements, all other security documents and any other documents executed by borrower, the division and the lending institution, evidencing, securing or relating to the loan or loan subsidy.

(11) "Mortgage" - The mortgage covering the collateral granted to the lending institution as security for the loan.

(12) "Project" - The rehabilitation of the property for use as [description].

(13) "Property" - The real property consisting of [property description].

(14) "Secretary's standards" - The secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings or the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR part 68).

C. Sale of participation:

(1) The lending institution hereby sells to the division, and the division hereby purchases, a participation of _____ dollars (\$_____) of the loan.

(2) The percentage shares of the parties in the loan will be as follows:

(a) lending institution - ___ percent

(b) division - ___ percent

(c) [other participating parties] - ___ percent

(3) The division's participating share shall include a proportional interest in the collateral.

D. Delivery and deposit of the contributions:

(1) Following the execution of this loan participation agreement by all parties, the lending institution will notify HPD at least _____ business days before each release of loan funds to borrower is scheduled to occur.

(2) HPD shall deposit with the lending institution HPD's portion of the loan amount to be released at least 24 hours prior to the release date indicated in the lending institution's notification to HPD.

(3) Such funds shall be held by the lending institution on behalf of and as trustee for the division, to be disbursed at the times and in the manner provided in this loan participation agreement.

(4) In the event HPD's portion of the loan is not disbursed to the borrower within 24 hours from the time HPD transfers its loan contribution to the lending institution, the division contribution shall accrue interest at the rate of three percent per annum. Such interest will be paid to the division in accordance with the provisions of the payments to the division section below.

E. Disbursement of loan funds to borrower:

(1) The lending institution will be responsible for disbursing the proceeds of the loan to borrower in accordance with the terms of this loan participation agreement.

(2) The loan will be disbursed in at least five (5) installments, based on work progress, during a period of [_____]. The [_____] period shall commence on the date the first disbursement of loan funds is made to the borrower.

(3) The division will be responsible for establishing and carrying out a schedule of inspections relating to the historic preservation objectives and standards applicable to the project.

(4) The lending institution will be responsible for carrying out inspections necessary to monitor construction progress.

(5) Based on the HPD's and lending institution's inspections and upon the receipt of such certifications as the division may require from the architect for the project, the division will notify the lending institution that an installment may be disbursed.

(6) The lending institution will advise the division promptly of each disbursement.

(7) Any portion of the division contribution not disbursed to borrower at the end of the [_____] period shall promptly be remitted to the division by the lending institution by wire transfer to an account to be designated by the parties.

F. Interest on loan:

(1) The interest rate to be charged on the lending institution's portion of the loan shall be [rate].

(2) The interest rate to be charged on the division's portion of the loan shall be [rate]. The interest rate charged to borrower on the division's portion of the loan shall not exceed the maximum allowable interest rate stated in Section 18-6-23 NMSA 1978.

(3) The interest rate to be charged on the [other participating party] portion of the loan shall be [rate].

(4) The combined interest rate of the loan as a whole shall be _____.

G. Administration of loan:

(1) The lending institution shall receive the division contribution, the collections and collateral and hold the division's proportional share in trust for the division.

(2) The lending institution shall service and manage the loan and the collateral in the ordinary course of its business and will exercise the same care as is customary for prudent lending practices by lending institutions in New Mexico and as it customarily exercises in the case of similar loans in which it alone is interested.

(3) The lending institution shall be responsible for all aspects of loan origination, servicing, collections, security and other administrative tasks except as otherwise provided in this agreement.

(4) The lending institution will document the loan in accordance with sound lending practices, evidencing the loan with a promissory note and loan agreement and securing the loan with the mortgage and other necessary security documents.

(a) The promissory note, mortgage and other loan documents documenting the Loan shall include provisions that events of default include, without limitation, (i) the borrower's failure to make timely payments of amounts due under the loan, (ii) the borrower's failure to comply with the secretary's standards, and (cc) violation of the covenants and deed restrictions, each of which shall constitute an independent and sufficient basis for acceleration of all amounts due under the loan and foreclosure on the collateral.

(b) The lending institution will provide the division with copies of the loan documents.

(c) The lending institution will be the lender and secured party of record, but shall hold the division's share of collections and collateral in trust for the benefit of the division. The mortgage and any other recorded documents evidencing security for the loan shall expressly disclose that the state of New Mexico, acting through the division, and the lending institution are secured parties of record. The lending institution will ensure that the original priority of the mortgage extends to each subsequent disbursement of loan proceeds.

(5) The lending institution will collect, and will receive on behalf of the division all collections, apply the same promptly to borrower's account, and remit the portion of the collections allocable to the division in accordance with the provisions of payments to division section herein.

(6) The lending institution will monitor the borrower's maintenance of any insurance required on the collateral and the payment of all taxes, fees and other charges assessed, levied or otherwise imposed upon the collateral and required to be paid by borrower pursuant to the loan documents.

(7) The lending institution will promptly advise the division of any event of default existing for more than thirty (30) days and of any other information bearing upon the loan which it considers important.

(8) Following notification of an event of default, the lending institution shall consult with the division as to the appropriate course of action, and shall take action to cure the default or commence foreclosure action or other legal proceedings after obtaining written approval of the division.

(a) After receiving the division's approval, the lending institution shall have full power and authority, subject to the provisions of Paragraph (9) of Subsection G of 4.10.2.22 NMAC below, to enforce the loan and foreclose upon the collateral on its own behalf and on behalf of the division in accordance with the provisions of administration of loan section above.

(b) Any loss ultimately incurred with respect to the loan will be allocated pro rata in accordance with the respective percentage participations of the parties, as set forth in sale of participation section above.

(9) The lending institution shall execute and deliver such satisfactions, endorsements, receipts, discharges or releases as may be necessary in the proper servicing and collection of the loan. Notwithstanding any other provision of this loan participation agreement, however, the lending institution shall not, without the prior written consent of the division (i) modify or supplement any of the loan documents; (ii) agree to any extension of time or waiver or forgiveness of debt; (iii) take any action or

permit any action to be taken which will release borrower or any guarantor from any obligation or liability with respect to the loan, or impair the validity or priority of lending institution's or division's interest in the collateral.

H. Allocation of costs: The lending institution may charge its usual and customary fees for loan origination, closing and other service charges, but only with respect to the share of the loan extended by the lending institution.

I. Access to records: The division shall have the right to examine any of the documents or records of the lending institution pertaining to the loan during normal business hours.

J. Terms of the loan: The loan shall be made subject to the following terms, each of which shall be reflected or incorporated, as appropriate, in the loan documents:

(1) The proceeds of the loan may be used only for rehabilitation costs allowable as determined by reference to the preliminary loan application. The project shall be completed in accordance with the preliminary loan application, or such modifications, exhibits, or additional documents as have been approved by the lending institution and the division. Costs which may be paid from the proceeds of the loan are the following: [list of eligible costs]

(2) The project must be completed within two (2) years of the closing of the loan.

(3) The loan shall be for a term of five (5) years. Interest and principal shall be paid in equal installments no less than annually with the first installment due within one year of the date the loan is closed by the lending institution. The loan shall be amortized over a period not to exceed twenty years, [with a balloon payment due at the end of the five year term or in lieu of a balloon payment, the lending institution may purchase the remaining loan amount due to the division.]

(4) The loan shall be secured by the collateral.

(5) The project and any other rehabilitation, restoration, or construction work undertaken with respect to the property during the time any portion of the loan is outstanding shall conform with the secretary's standards. Prior to commencement of the project, written approval of all plans and specifications for interior and exterior work shall be obtained from the division, together with the division's schedule of inspections of work in progress. Any substantial changes to the plans and specifications shall be approved in advance in writing by the division. Upon completion, the division shall inspect the property to ensure that the project was completed substantially in accordance with the approved plans and specifications.

(6) Noncompliance with the secretary's standards shall be an event of default under the promissory note and mortgage. The division shall be responsible for

determining compliance with the secretary's standards, shall notify the borrower of any noncompliance and shall include in its notification the statement that the borrower has _____ days to cure the noncompliant condition. In the event of an uncured default by the borrower, the division shall notify the lending institution of that event of default. The lending institution shall then promptly undertake the remedies provided by the loan documents for events of default.

(7) The lending institution shall include in the loan documents the provision that the borrower execute a development agreement and preservation covenants and deed restrictions with the state of New Mexico as a condition of closing the loan, in a form and substance substantially similar to the attached development agreement and preservation covenants and deed restrictions, or otherwise in a form satisfactory to the division (the "covenants and deed restrictions").

(a) The covenants and deed restrictions shall be recorded and shall run with the land for the deed restriction period, and shall not be extinguished at the time that the loan is repaid.

(b) The mortgage and all other documents evidencing security for the loan shall include provisions clarifying that satisfaction of the loan does not extinguish the lien of the covenants and deed restrictions and that the covenants and deed restrictions shall continue in full force and effect for the deed restriction period.

(8) The mortgage and all other documents evidencing security for the loan shall include provisions specifying that borrower's default in connection with any loan or other obligation secured by a lien superior to the mortgage or the lien of the covenants and deed restrictions shall constitute an event of default pursuant to the mortgage and loan agreement, and that the division and/or the lending institution shall have the right (but not the obligation) to cure any default in connection with superior liens and charge the costs of curing such defaults to borrower.

(9) A construction sign will be displayed prominently at the property acknowledging the assistance of the lending institution and the division.

(10) Borrower shall maintain complete financial records regarding the project throughout the term of the loan and shall make these available to the lending institution and the division upon request.

K. Payments to the division: The lending institution shall immediately transfer to the division its share of the collections, including any interest, within five working days or less after receipt of a payment from borrower, in conformity with the division's share designated in sale of participation section above, and the interest rate provided in the section on interest on loan, above.

L. Reports:

(1) The lending institution will submit reports to the division quarterly (together with payments required pursuant to the payments to the division section above, containing the following information:

(a) a financial summary with respect to the loan, including a copy of the promissory note and repayment schedule;

(b) calculation of the quarterly payments, including a statement of the account which sets forth that portion of the payment attributable to interest paid by borrower, that portion of the payment attributable to interest earned on the account, and that portion of the payment which is payment of principal; and

(c) report on lending institution's inspections necessary to monitor construction progress; and any other information reasonably requested by the division with respect to the loan.

(2) The first report will be due two (2) weeks after the end of the quarter in which this loan participation agreement is executed. Thereafter, reports will be due on April 15, July 15, October 15, and January 15.

M. Notices: Any notices required in connection with this loan participation agreement shall be in writing and shall be deemed to have been properly given if transmitted by certified mail, return receipt requested, or by national overnight courier service, directed to the party at its address below or at such other address of which the other parties have been notified.

(1) To the lending institution: [name and address]

(2) To the division: Historic Preservation Division, Office of Cultural Affairs, State of New Mexico 228 East Palace Avenue, Santa Fe, New Mexico 87503, Attn: State Historic Preservation Officer

N. Applicable law: This agreement shall be governed by and construed in accordance with the laws of the state of New Mexico.

O. Severability: If any provision of this loan participation agreement shall for any reason be held to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other provision of this loan participation agreement, but this agreement shall be construed as if such illegal, invalid or unenforceable provision had not been contained herein.

P. Nonassignability: No party shall sell, pledge, assign, or otherwise transfer its respective interest in this loan participation agreement, the loan, or the collateral without the prior written consent of the other parties.

Q. Amendment: This loan participation agreement may be amended only in writing signed by all of the parties.

R. Counterparts: This loan participation agreement may be executed in any number of counterparts, all of which together shall comprise one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this loan participation agreement to be executed, in each case by an officer thereunto duly authorized, as of the date first above written.

[lending institution]

By:_____ Date:_____ [name and title]

[other participating parties]

By:_____ Date:_____

STATE OF NEW MEXICO

By:_____ Date:_____

[name]

state historic preservation officer

[7/16/97; 4.10.2.22 NMAC - Rn, 4 NMAC 10.2.22, 1/1/08]

4.10.2.23 ATTACHMENT B: DEVELOPMENT AGREEMENT AND PRESERVATION COVENANTS AND DEED RESTRICTIONS:

THIS DEVELOPMENT AGREEMENT AND PRESERVATION COVENANTS AND DEED RESTRICTIONS, is entered into this _____ day of _____, _____, by and between [owner], its heirs, successors and assigns and the Historic Preservation Division, Office of Cultural Affairs, State of New Mexico ("the division"), a public agency.

A. RECITALS:

(1) The division is a public agency organized under the laws of the state of New Mexico.

(2) The division has established a program under the Section 18-6-22 NMSA 1978 to contract with lending institutions for the purpose of making loans to owners of registered cultural properties for the restoration, rehabilitation or repair of those properties in accordance with the Historic Preservation Loan Act (Sections 18-6-18 through 18-6-23 NMSA 1978).

(3) The division has established, through a loan participation agreement dated [_____, _____], with the [lending institution], a loan consisting of funds of the division and of the lending institution(s).

(4) The owner is the owner in fee simple of [description/address of property], in _____, New Mexico, (hereinafter referred to as the "property" and more fully described in [_____] , to this agreement, hereby incorporated into and made a part of this agreement) a property entered on the state register of cultural properties and/or in the national register of historic places.

(5) [Lending institution] by the authority of the loan participation agreement has approved a loan from [participating parties] in the amount of [loan amount] to owner for the purpose of restoring, rehabilitating and repairing the property.

(6) The restoration, rehabilitation and repair to be performed by means of the referenced loan are more fully described in [_____] to these covenants and deed restrictions, hereby incorporated into and made a part of these covenants and deed restrictions; and

(7) Section 18-6-23(A)(1) NMSA 1978 requires the maintenance of the property as restored, rehabilitated and repaired for not less than seven years. Consistent with Section 18-6-23 (A)(1) NMSA 1978, the terms of the loan section of the loan participation agreement (attachment A) requires that at the time of approval of a loan the owner/borrower and the division shall execute and record covenants and deed restrictions running with the land for a term of not less than seven years to ensure that the historic and architectural value of the property will be preserved.

(8) In consideration of the loan provided to owner by the division and other valuable considerations, the receipt and adequacy of which is hereby acknowledged, the owner hereby agrees that the property shall be subject to the restrictions provided in the covenants set forth below (the "covenants"), that the covenants shall run with the land for the seven-year period specified below and shall bind all future owners and occupants of the property during that period, and that this agreement shall be recorded so that the covenants shall constitute a deed restriction with respect to the property.

B. AGREEMENT: Owner's covenants: Owner hereby covenants to do and to refrain from doing, as the case may be, each of the following activities upon the property:

(1) without the prior written permission of the division, signed by a duly authorized representative thereof, owner shall not undertake any of the following actions:

(a) construction, alteration, remodeling, ground disturbance or other modification of the property affecting the condition of the property

(b) construction, alteration, remodeling ground disturbance or other modification of the property affecting the view to the property or encroaching upon the open space of the property.

(2) Owner shall at all times maintain the property in a good and sound state of repair. Subject to the casualty provisions of casualty damage or destruction section below, this obligation shall require repair, rebuilding and reconstruction whenever necessary to maintain the property in good and sound condition.

(3) No buildings or structures not presently on the property shall be erected or placed on the property during the term of these covenants and deed restrictions except for temporary structures required for the repair and maintenance of the property.

(4) Nothing in this instrument shall be deemed to prohibit owner from seeking any financial assistance available to him from any source for the maintenance and repair of the property; provided, however, that the lien of the covenants and deed restrictions set forth in this agreement shall not be made subordinate to any mortgage or other lien interest in connection with other financial assistance without the division's prior written approval.

C. Standards for review: In exercising any authority created by the covenants and deed restrictions to inspect the property, to review any construction, alteration, repair or maintenance, or to review casualty damage or to approve reconstruction of the property following casualty damage, the division shall apply the standards for rehabilitation and guidelines for rehabilitating historic buildings, issued and as may be issued from time to time by the secretary of the interior (hereinafter the "standards") and/or state or local standards considered appropriate by the division for review of work affecting historically or architecturally significant structures or for construction of new structures within historically, architecturally or culturally significant areas. Whenever the division receives notice that the standards have been amended, it shall notify the owner of the amendment. Owner agrees to abide by the standards in performing all ordinary repair and maintenance work. In the event that the standards are abandoned or materially altered or otherwise become, in the sole judgment of the division, inappropriate for the purposes set forth above, the division may apply alternative standards which, in the division's sole discretion, it determines are reasonable in light of the purposes of the Historic Preservation Loan Fund Act and other relevant circumstances, and shall notify the owner of the substituted standards.

D. Casualty damage or destruction:

(1) In the event that the property or any part thereof shall be damaged or destroyed by casualty, the owner shall notify the division in writing within one (1) day of learning of the damage or destruction, such notification including what, if any emergency work has already been completed.

(2) For purposes of this instrument: [description of insurance coverage].

(3) No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the property and to protect public safety, shall be undertaken by the owner without the division's prior written approval of the work.

(4) Within four (4) weeks after learning of the date of damage or destruction, the owner shall submit to the division a written report prepared by a qualified restoration architect or other licensed architect (acceptable to owner and the division) which shall include the following:

(a) an assessment of the nature and extent of the damage;

(b) a determination of the feasibility of the restoration of the property and/or reconstruction of damaged or destroyed portions of the property; and

(c) a report of such restoration/reconstruction work necessary to return the property to the condition existing prior to casualty. If in the opinion of the division, after reviewing such report, the purpose and intent of the covenants and deed restrictions will be served by such restoration/reconstruction, the owner shall within eighteen (18) months after the date of such report complete the restoration/reconstruction of the property in accordance with plans and specifications consented to by the division and shall be obligated to utilize all casualty insurance proceeds for that purpose, if necessary, as determined by the division, in its sole discretion.

E. The division's covenants: The division may, at its discretion and without prior notice to owner, convey, assign or transfer its beneficial interest in these covenants and deed restrictions to a unit of federal, state or local government or to a similar local, state or national organization whose purposes, inter alia, are to promote preservation or conservation of historical, cultural, or architectural resources, and which at the time of conveyance, assignment or transfer is a qualified organization under the Internal Revenue Code, provided that any such conveyance, assignment or transfer requires that the preservation and conservation purposes for which the covenants and deed restrictions were granted will continue to be carried out. The division shall exercise reasonable judgment and care in performing its obligations and exercising its rights under the terms of these covenants and deed restrictions.

F. Inspection: Representatives of the division shall be permitted at all reasonable times to inspect the exterior and interior of the property. Representatives of the division shall be permitted to enter and inspect the interior of the property to ensure maintenance of structural soundness and safety; inspection of the interior will not, in the absence of evidence of deterioration, take place more often than annually, and may involve reasonable testing of interior structural condition. Inspection of the interior will be made at a time mutually agreed upon by owner and the division, and owner covenants not to withhold unreasonably its consent in determining a date and time for such inspection.

G. The division's remedies: The division has the following legal remedies to correct violation of any covenant, stipulation or restriction herein, in addition to any remedies now or hereafter provided by law:

(1) The division, may following reasonable written notice to owner, institute suit(s) to enjoin any violation of this instrument by ex parte, temporary, preliminary and /or permanent injunction, including prohibitory and /or mandatory injunctive relief, and to require the restoration of the property to the condition and appearance required under this instrument.

(2) The division shall also have available all other legal and equitable remedies to enforce owner's obligations hereunder.

(3) In the event that owner is found to have violated any of its obligations, owner shall reimburse the division for any costs or expenses incurred in connection therewith, including all reasonable court costs and attorney's, architectural, engineering and expert witness fees.

(4) Exercise by the division of any remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at another time.

H. Notice of proposed sale: Owner shall promptly notify the division in writing of any proposed sale of the property and provide the opportunity for the division to explain the terms of the covenants and deed restrictions to potential new owners prior to sale closing.

I. Covenants and deed restrictions run with the land: The obligations imposed by these covenants and deed restrictions shall be effective for seven (7) years from the date first written above and shall be deemed to run as a binding servitude with the property. These covenants and deed restrictions shall extend to and be binding upon owner and the division, their respective successors in interest and all persons hereafter claiming under or through owner or the division, and the words "owner" and "the division" when used herein shall include all such persons. Owner agrees that these covenants and deed restrictions shall be inserted in any subsequent deed or other legal instrument by which owner divests itself of either the fee simple title to or its possessory interest in the property or any part thereof.

J. Recording: Owner shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the lands records of [county] , New Mexico. This instrument is effective only upon recording in the land records of [county], New Mexico.

K. Subordination of subsequent mortgages; division's rights in connection with senior liens: The covenants and deed restrictions shall have lien priority over all

mortgages and other rights affecting the property granted after execution and recording of the covenants and deed restrictions.

(1) Before exercising any right or remedy due to breach of these covenants and deed restrictions except the right to enjoin a violation hereof, the division shall give all mortgagees of record written notice describing the default, and the mortgagees shall have sixty (60) days thereafter to cure or cause a cure of the default.

(2) Nothing contained in the above paragraphs or in these covenants and deed restrictions shall be construed to give any mortgagee the right to extinguish these covenants and deed restrictions by taking title to the property by foreclosure or otherwise.

(3) Borrower's default in connection with any loan or other obligation secured by a lien superior to the mortgage or the lien of the covenants and deed restrictions shall constitute an event of default pursuant to these covenants and deed restrictions. The division and/or the lending institution shall have the right (but not the obligation) to cure any default in connection with superior liens and charge the costs of curing such defaults to borrower.

(4) The following provisions apply to all mortgagees now or hereafter holding a mortgage on the property.

(a) If a mortgage grants to a mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the property or the right to receive insurance proceeds as a result of any casualty, hazard or accident occurring to or about the property, the mortgagee shall have a superior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to the division until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to these preservation covenants and deed restrictions.

(b) If a mortgagee has received an assignment of the leases, rents and profits of the property as security or additional security for a loan, the mortgagee shall have a superior claim to the leases, rents and profits of the property and shall be entitled to receive same in preference to the division until said mortgagee's debt is paid off, notwithstanding that the mortgage is subordinate to these preservation covenants and deed restrictions.

(c) Until a mortgagee or purchaser at foreclosure obtains ownership of the property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under these preservation covenants and deed restrictions.

L. Written notice:

(1) Any notice which either owner or the division may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by registered or certified mail with return receipt requested, or hand delivered; if to owner, then at [address], and if to the division, then to [address].

(2) Each party may change its address set forth herein by a notice to such effect to the other party. Any notice, consent, approval, agreement, or amendment permitted or required of the division under these covenants and deed restrictions may be given by the director of the historic preservation division or by any duly authorized representative of the division.

M. Evidence of compliance: Upon request by the division, owner shall promptly furnish the division with evidence of its compliance with any obligation of owner contained herein.

N. Interpretation and enforcement: The following provisions shall govern the effectiveness, interpretation and duration of the covenants and deed restrictions.

(1) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this instrument, and this instrument shall be interpreted broadly to effect its preservation and conservation purposes and the transfer of right and the restrictions on use herein contained.

(2) This instrument shall extend to and be binding upon owner and all persons hereafter claiming under or through owner, and the word "owner" when used herein shall include all such persons, whether or not such persons have signed this instrument or then have an interest in the property. Any right, title or interest herein granted to the division also shall be deemed granted to each successor and assign thereof, and the work "the division" shall include all such successors and assigns.

(3) This instrument may be executed in counterparts, each page of which (including exhibits) shall be initialed by owner and the division for purposes of identification. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern. Except as provided above, each counterpart shall be held by each of owner and the division. One counterpart shall be recorded as provided above and may be returned to the division, and one counterpart shall be stored as a matter of public record at the [county] courthouse.

(4) Except as expressly provided herein, nothing contained in this instrument grants nor shall be interpreted to grant to the public any right to enter on the property.

(5) To the extent that the owner owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the property may be developed to use more intensive (in terms of height, bulk, or other objective criteria regulated by such

ordinances) than the property is devoted to as of the date hereof, such development rights shall not be exercisable on, above, or below the property during the term of these covenants and deed restrictions, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the preservation and conservation purposes of these covenants and deed restrictions.

(6) For purposes of furthering the preservation of the property and of furthering the other purposes of this instrument, and to meet changing conditions, owner and the division are free to amend jointly the terms of this instrument in writing without notice to any party; provided however, that no such amendment shall limit the duration or interfere with the preservation and conservation purposes of the donation. Such amendment shall become effective upon recording among the land records of [county], New Mexico.

(7) The terms and conditions of these covenants and deed restrictions shall be referenced in any transfer of the property by the owner, his heirs, successors and assigns.

(8) The invalidity of any statute of the state of New Mexico or any part thereof shall not affect the validity and enforceability of this instrument according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns for the duration of these covenants and deed restrictions to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent hereto. This instrument may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this instrument or any part thereof. The validity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any agreement relating to the subject matter thereof.

(9) Nothing contained herein shall be interpreted to authorize or permit owner to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, owner shall promptly notify the division of such conflict and shall cooperate with the division and the applicable governmental entity to accommodate the purposes both of this instrument and of such ordinance or regulation.

(10) This instrument reflects the entire agreement of owner and the division. Any prior or simultaneous correspondence, understandings, agreements and representations are null and void upon execution hereof, unless set out in this instrument.

O. Expiration: This easement shall expire and be void and of no force on the _____ day of _____, _____.

IN WITNESS WHEREOF, of the date first written above, owner has caused this development agreement and conservation easement to be executed, sealed and delivered; and the division has caused this instrument to be accepted, sealed and executed in its name by its authorized representative.

Owner:

_____ Date _____

[name]

State of New Mexico

Office of Cultural Affairs

Historic Preservation Division

By: _____ Date _____

[name]

state historic preservation officer

STATE OF NEW MEXICO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____.

NOTARY PUBLIC

(SEAL)

my commission expires:

[7/16/97; 4.10.2.23 NMAC - Rn, 4 NMAC 10.2.23, 1/1/08]

4.10.2.24 ATTACHMENT C: PRELIMINARY LOAN APPLICATION:

A. PROPERTY INFORMATION

property name:_____

property address:_____

LOCATION

county:_____

Town/City:_____

historic district:_____

rural:_____

APPLICANT

Name:_____

lessee: _____ building/site owner:_____

address:_____

phone:_____

social security #:_____

CO-APPLICANT

name:_____ lessee:_____ building/site
owner:_____

address:_____

phone:_____

OWNERSHIP

public___ private___ non-profit___

name of owner (if different from above):_____

mailing address:_____

phone: _____

taxpayer ID number: _____

owned/leased for _____ years

Does the lease state anything about improvements? (if yes, describe)

PROTECTION

Is the property under legal protection such as easements or a local historic district ordinance?

Yes _____ No _____

PHOTOGRAPHS OF EACH SIDE OF THE BUILDING

Provide photographs to show all sides of the building(s) adequately. Closeup photographs showing details of the building are also recommended. Photographs must be glossy black and white, no smaller than 5 X 7 inches.

REGISTRATION

Yes No

- 1. Is the property individually listed in the national register of historic places? _____
- 2. Is the property listed as contributing to a historic district listed in the national register of historic places? _____
- 3. Has the property been officially determined by the keeper of the register

to be eligible for listing in the
national register of historic places? _____

If you answered "No" to 1, 2, and 3 above, please answer the following questions:

Is the property individually listed in the
state register of cultural properties? _____

Is the property listed as contributing
to a historic district listed in the
state register of cultural properties? _____

If you answered "No" to 1, 2, and 3 above, complete ONLY the owner's signature section below. Do not complete the remainder of this application. The historic preservation division will inform you if your property is eligible for the loan program. Please submit the completed portion of this form to the historic preservation division.

B. DESCRIPTION OF REHABILITATION/PRESERVATION WORK: In the blocks provided, provide a detailed description of the project. The block titled "description of work and impact on feature" should be used to describe in detail the work on a specific feature. Describe each feature, including a description of its present condition followed by a description of the proposed work and its impact on the feature. Attach labeled and numbered photographs (glossy black and white, no smaller than 5" X 7") of each feature. Use as many blocks as necessary to describe the entire project. Examples of features are stairways, windows, doors, roofing, chimneys, floors, exterior and interior finishes, major spaces, etc. Attach copies of additional blocks if necessary.

architectural feature # _____; description of feature and its present condition
photo no. _____ drawing no. _____

description of work and impact on feature:
architectural feature # _____; description of feature and its present condition
photo no. _____ drawing no. _____

description of work and impact on feature:

architectural feature #_____; description of feature and its present condition

photo no. _____ drawing no. _____

description of work and impact on feature:

COST ESTIMATE OF PROPOSED WORK:

To the best of your knowledge, provide an estimate of the proposed work. Itemize separate costs as nearly as possible according to the features described in the description of rehabilitation/preservation work section above.

Itemized:

total estimated project cost:_____

ESTIMATED PROJECT STARTING DATE:_____

ESTIMATED COMPLETION DATE:_____

OWNER'S SIGNATURE

I hereby apply for participation in the state historic preservation loan program and I attest the information I have provided is, to the best of my knowledge, correct.

_____ date:_____

owner's signature

C. CERTIFICATION (for state use only)

The historic preservation division has reviewed this preliminary loan application and

_____approves the preliminary loan application as submitted.

_____approves the preliminary loan application with the

provisions stated below:

_____.

_____ rejects the preliminary loan application because the proposed work does not conform to the standards set forth in regulations pursuant to this program.

_____ tables the preliminary loan application and requests the following additional information before the application will be reviewed:

_____.

_____ date: _____

division staff reviewer

_____ date: _____

state historic preservation officer

[7/16/97; 4.10.2.24 NMAC - Rn, 4 NMAC 10.2.24, 1/1/08]

PART 3: PROCEDURES OF THE CULTURAL PROPERTIES REVIEW COMMITTEE

4.10.3.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Office of Cultural Affairs.

[11/15/97; 4.10.3.1 NMAC - Rn, 4 NMAC 10.3.1, 1/1/08]

4.10.3.2 SCOPE:

Members of the committee, state historic preservation officer, historic preservation division, members of the public having business with the committee.

[11/15/97; 4.10.3.2 NMAC - Rn, 4 NMAC 10.3.2, 1/1/08]

4.10.3.3 STATUTORY AUTHORITY:

Sections 1-17, Chapter 223 Laws of 1969, as amended (Sections 18-6-1 to 18-6-17 NMSA 1978).

[11/15/97; 4.10.3.3 NMAC - Rn, 4 NMAC 10.3.3, 1/1/08]

4.10.3.4 DURATION:

Permanent.

[11/15/97; 4.10.3.4 NMAC - Rn, 4 NMAC 10.3.4, 1/1/08]

4.10.3.5 EFFECTIVE DATE:

3/26/87, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective 11/15/97.

[11/15/97; 4.10.3.5 NMAC - Rn, 4 NMAC 10.3.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.3.6 OBJECTIVE:

This rule of procedure shall serve the public and members of the committee as a guide to the operations and policies of the cultural properties review committee. The rule should be used as a reference and guide by all those concerned with observance and enforcement of the Cultural Properties Act, Sections 1-17, Chapter 223, Laws of 1969, as amended (Sections 18-6-1 to 18-6-17 NMSA 1978).

[3/26/87; 4.10.3.6 NMAC - Rn, 4 NMAC 10.3.6, 1/1/08]

4.10.3.7 DEFINITIONS:

[RESERVED]

[11/15/97; 4.10.3.7 NMAC - Rn, 4 NMAC 10.3.7, 1/1/08]

4.10.3.8 THE COMMITTEE:

A. The name of this committee shall be the "cultural properties review committee," hereinafter referred to as the "committee."

B. The powers and duties of the committee shall be those enumerated in Section 5, et seq., of the Cultural Properties Act, Chapter 223, Laws of 1969, as amended (Section 18-6-5 et seq. NMSA 1978), hereinafter referred to as the "Act."

C. The committee shall promulgate and revise as necessary those regulations authorized by the act to effectuate the act.

D. The fiscal year of the committee shall end on June 30.

[3/26/87; 4.10.3.8 NMAC - Rn, 4 NMAC 10.3.8, 1/1/08]

4.10.3.9 THE STATE HISTORIC PRESERVATION OFFICER AND THE STATE HISTORIC PRESERVATION DIVISION:

The state historic preservation officer shall administer the Cultural Properties Act. The state historic preservation officer is director of the historic preservation division of the office of cultural affairs, hereinafter referred to as the "division."

[3/26/87; 4.10.3.9 NMAC - Rn, 4 NMAC 10.3.9, 1/1/08]

4.10.3.10 MEMBERS OF THE COMMITTEE:

A. Members of the committee are those appointed pursuant to Section 4, Chapter 223, Laws of 1969, as amended. (Section 18-6-4 NMSA 1978).

B. Members of the committee shall receive per diem and travel compensation as provided by the Per Diem and Mileage Act (Sections 10-8-1 through 10-8-8, NMSA 1978 Comp.) for official meetings or business of the committee.

[3/26/87; 4.10.3.10 NMAC - Rn, 4 NMAC 10.3.10, 1/1/08]

4.10.3.11 MEETINGS OF THE COMMITTEE:

A. The committee shall meet at least once each quarter.

B. Any meeting or hearing of the committee may be held at any place within the state of New Mexico.

C. At each regular meeting of the committee, the committee and the historic preservation division will agree on the place, date, time, and when appropriate, subject matter of the next two meetings. An agenda and any required supporting documents, consistent with this decision, shall be issued by the state historic preservation officer two weeks prior to each scheduled meeting. (See Subsection F of 4.10.3.14 NMAC).

D. Special meetings may be called at any time for a stated purpose, consistent with the current open meetings resolution of the committee, by agreement of the members of the committee.

[3/26/87; 4.10.3.11 NMAC - Rn, 4 NMAC 10.3.11, 1/1/08]

4.10.3.12 ORGANIZATION OF THE COMMITTEE:

At the first meeting after the beginning of each fiscal year, the committee shall organize by the election and installation of a chairman, a vice-chairman and a secretary from among its members.

[3/26/87; 4.10.3.12 NMAC - Rn, 4 NMAC 10.3.12, 1/1/08]

4.10.3.13 DUTIES OF THE OFFICERS AND PERMANENT MEMBERS OF THE COMMITTEE:

A. The chairman shall preside at all meetings and shall appoint all subcommittees. He shall otherwise perform all duties pertaining to the office of the chairman.

B. The vice-chairman shall, in the absence or incapacity of the chairman, exercise the duties and shall possess all the powers of the chairman. In the absence of both the chairman and the vice-chairman, the secretary shall assume said duties and powers.

C. The secretary shall keep the minutes of all meetings of the committee. The historic preservation division may, however, assume this responsibility on the committee's behalf.

[3/26/87; 4.10.3.13 NMAC - Rn, 4 NMAC 10.3.13, 1/1/08]

4.10.3.14 MEETING PROCEDURE:

A. The order of business shall be as follows:

- (1) review of minutes;
- (2) chairman's report;
- (3) state historic preservation officer's report;
- (4) site proposals;
- (5) committee matters;
- (6) subcommittee reports;
- (7) permits;
- (8) old business;
- (9) new business;

(10) date of meetings;

(11) adjournment.

B. The order of business may be revised or suspended at the discretion of the chairman in order to accommodate the schedules of interested persons who are present to discuss items on the agenda.

C. Standard parliamentary procedure shall govern the proceedings of the committee meetings except as otherwise provided for in this rule. Where a provision in this rule conflicts with standard parliamentary procedure, the provision in this rule shall be followed.

D. A simple majority shall constitute a quorum.

E. At a regular meeting, no member of the committee may participate in a final decision in any matter before the committee unless he has heard the evidence or has been present for the discussion prior to such decision. Further, such member must be present at said meeting for actual participation in the final decision or vote by proxy so long as the written proxy is specifically addressed to the subject under consideration and is presented to the secretary prior to the vote.

F. The historic preservation division shall send out, two weeks prior to a meeting, an agenda incorporating all matters identified by the division as requiring the attention of the committee. The committee may at its discretion accept any matter for consideration without notification, providing such consideration is not inconsistent with the act and with the current open meetings resolution of the committee.

G. The committee may not make or enforce any decision to make any grant or loan to any of its members, or to any relative or business partner of any of them. This provision does not prohibit participation or service in a non-profit organization, nor does it prohibit the committee from making any decision, consistent with law and regulation, relating to historic preservation tax benefits.

[3/26/87; 4.10.3.14 NMAC - Rn, 4 NMAC 10.3.14, 1/1/08]

4.10.3.15 ORGANIZATION AND DUTIES OF SUBCOMMITTEES:

A. The chairman shall appoint from the membership of the committee and the division any necessary subcommittees to serve for a period not exceeding the chairman's term of office.

B. The chairman shall specify the duties of such subcommittees as he may create.

C. All requests for grant-in-aid proposals shall be prepared by the division and shall be submitted to the committee or to the appropriate subcommittee prior to being issued.

All responses to such requests shall be submitted to the committee in a regular public meeting for review and consultation prior to negotiation or issuance of any grant by the division.

[3/26/87; 4.10.3.15 NMAC - Rn, 4 NMAC 10.3.15, 1/1/08]

4.10.3.16 AMENDMENTS:

Amendments to this rule of procedure must be presented in writing to each member of the committee at least two (2) weeks in advance of a meeting and shall be voted upon at that next meeting.

[3/26/87; 4.10.3.16 NMAC - Rn, 4 NMAC 10.3.16, 1/1/08]

PART 4: PRESERVATION AND MAINTENANCE OF REGISTERED CULTURAL PROPERTIES

4.10.4.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Office of Cultural Affairs.

[11/15/97; 4.10.4.1 NMAC - Rn, 4 NMAC 10.4.1, 1/1/08]

4.10.4.2 SCOPE:

The historic preservation division, the state historic preservation officer, the cultural properties review committee, owners of property listed in the state register of cultural properties.

[11/15/97; 4.10.4.2 NMAC - Rn, 4 NMAC 10.4.2, 1/1/08]

4.10.4.3 STATUTORY AUTHORITY:

This regulation is created pursuant to Section 5, Chapter 223, Laws of 1969, as amended, (Section 18-6-5.F NMSA 1978). That section reads as follows: ...shall issue regulations pertaining to the preservation and maintenance of registered cultural properties in order to maintain the integrity of those properties.

[3/26/87; 4.10.4.3 NMAC - Rn, 4 NMAC 10.4.3, 1/1/08]

4.10.4.4 DURATION:

Permanent.

[11/15/97; 4.10.4.4 NMAC - Rn, 4 NMAC 10.4.4, 1/1/08]

4.10.4.5 EFFECTIVE DATE:

3/26/87, unless a later date is cited at the end of a section or paragraph. Reformatted to NMAC format effective 11/15/97.

[11/15/97; 4.10.4.5 NMAC - Rn, 4 NMAC 10.4.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.4.6 OBJECTIVE:

The purpose of Part 4 of Chapter 10 is to provide guidance to the cultural properties review committee and owners of registered cultural properties on the protection, preservation and maintenance of those properties to assure proper cultural or historical integrity.

[3/26/87; 4.10.4.6 NMAC - Rn, 4 NMAC 10.4.6, 1/1/08]

4.10.4.7 DEFINITIONS:

As used in this regulation:

A. "Preservation" means the act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include protective maintenance or stabilization where necessary in the case of archaeological sites.

B. "Maintenance" means the act or process of applying measures which are necessary to maintain the historic integrity and structural soundness of a structure, including but not limited to ordinary operating maintenance.

C. "Integrity" means the quality or characteristics which made the property eligible for listing in the new mexico register of cultural properties.

D. "Registered cultural property" means a cultural property which has been placed on the state register of cultural properties either individually or as a property listed as significant or contributing within a district.

[3/26/87; 4.10.4.7 NMAC - Rn, 4 NMAC 10.4.7, 1/1/08]

4.10.4.8 CONSULTATION WITH THE COMMITTEE:

A. Before any change greater than ordinary maintenance is made to a registered cultural property, the owner who is interested in maintaining register status should submit a description of the proposed change to the cultural properties review

committee. The submittal should include adequate photographs of existing conditions and drawings of the proposed changes, along with copies of all existing documentation. It is the function and the wish of this committee not merely to approve or disapprove any changes but to offer guidance and suggest alternatives when appropriate.

B. Accomplished changes should be thoroughly documented. Before and after photographs of the work, and drawings, if any were used, should be sent to the historic preservation division for review by the cultural properties review committee.

[3/26/87; 4.10.4.8 NMAC - Rn, 4 NMAC 10.4.8, 1/1/08]

4.10.4.9 GENERAL STANDARDS FOR PRESERVATION, PROTECTION, REHABILITATION OR RESTORATION FOR STRUCTURES:

A. Weather-related deterioration shall be prevented and measures to preserve the existing material shall be applied.

B. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material shall match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features shall be based on accurate duplications of features, substantiated by historical, physical or pictorial evidence.

C. Missing elements shall be replaced in the exact form in which they appeared at the period of time represented, provided photographic or documented information is available, using like materials and methods or a substitute authorized by the state historic preservation officer.

D. Structural stability shall be maintained or re-established without essentially changing the existing form.

E. The surface cleaning of structures shall be undertaken only when necessary and then only with extreme caution. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

F. Every reasonable effort shall be made to provide a use for a property that requires minimal alteration of the building, structure or site and its environment or, if this is not feasible, to use a property for its originally intended purpose.

[3/26/87; 4.10.4.9 NMAC - Rn, 4 NMAC 10.4.9, 1/1/08]

4.10.4.10 GENERAL STANDARDS FOR PRESERVATION, PROTECTION REHABILITATION OR RESTORATION FOR ARCHAEOLOGICAL SITES:

A. Historic and prehistoric archaeological sites will be avoided by keeping land disturbance or modification outside the site boundary as established in the state register nomination.

B. Sites shall be reasonably protected from erosion and other natural phenomena.

C. Sites shall be protected from looting and vandalism by such methods as posting signs, fencing and monitoring.

[3/26/87; 4.10.4.10 NMAC - Rn, 4 NMAC 10.4.10, 1/1/08]

4.10.4.11 GENERAL STANDARDS FOR MODIFICATION, ADAPTATION OR ALTERATION FOR STRUCTURES:

A. Prior to and during the undertaking of any alteration, the areas to be affected will be recorded in all phases by photography and written description.

B. The distinguishing original qualities or character of a building, structure, or site and its environment will not be destroyed. The removal or alteration of any historic material or distinctive architectural feature will be avoided when possible. Any historic feature that is removed will be recorded and, if possible, stored for future study or reuse.

C. All buildings, structures, and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create a false sense of the historical development of a structure are discouraged.

D. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right. Such significance must be recognized and respected.

E. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site must be treated with sensitivity.

F. Contemporary alterations or additions may be permissible if they do not destroy significant historical, architectural or cultural material. They shall be compatible in size, scale, color and material; or in rare cases may sympathetically contrast with the older work. It is desirable that contemporary additions and alterations express their own time and not copy the details nor style of the historic property.

G. Whenever possible, alterations or additions will be accomplished so that if removed in the future, the integrity of the original structure is essentially unchanged.

H. Changes necessary to conform with local codes will be incorporated, if required by a building inspector. The uniform building code, adopted by the state of New Mexico, provides for variances from code standards for historic structures. Such changes shall

be made in a manner which alters the existing appearance of the structure as little as possible and otherwise conforms to standards of the cultural properties review committee.

[3/26/87; 4.10.4.11 NMAC - Rn, 4 NMAC 10.4.11, 1/1/08]

4.10.4.12 GENERAL STANDARDS FOR MODIFICATION, ADAPTATION OR ALTERATION FOR ARCHAEOLOGICAL SITES:

A. Alteration of archaeological sites will be limited to areas of existing disturbance and to areas devoid of cultural manifestations, so as to have the least possible physical and visual effect.

B. Mitigation of adverse effect on disturbed sites will require documentation, analysis and dissemination of results to standards established by the cultural properties review committee.

C. When archaeological techniques are used in the stabilization of a prehistoric or historic site or to obtain information on such sites, these techniques and the treatment of recovered materials shall be in conformance with professional archaeological practices.

[3/26/87; 4.10.4.12 NMAC - Rn, 4 NMAC 10.4.12, 1/1/08]

4.10.4.13 GENERAL STANDARDS FOR NEW CONSTRUCTION OR DEMOLITION FOR STRUCTURES:

A. Completely new construction for which neither documentation nor precedent exists must be expressive of its own time. Such building, whether it be a discreet expansion of a historic building or a separate but closely related structure, shall be harmonious with the existing building, but shall avoid literal reproduction of specific architectural details.

B. The new building must be so located that the integrity and clarity of the historic site is not compromised. The functional demands of automobile and pedestrian circulation, the visibility required for control and protection of the site, the preservation of natural terrain and vegetation, must be solved in such a way that the values of the site are not diminished.

C. Total reconstruction or relocation will not be attempted except when, in the view of the cultural properties review committee, such undesirable procedures are the only means of preserving some of the values of extremely rare sites.

[3/26/87; 4.10.4.13 NMAC - Rn, 4 NMAC 10.4.13, 1/1/08]

4.10.4.14 GENERAL STANDARDS FOR NEW CONSTRUCTION OR DEMOLITION FOR ARCHAEOLOGICAL SITES:

A. New construction affecting archaeological sites will be limited to areas of existing disturbance and to areas devoid of cultural manifestations, so as to have the least possible physical and visual effect.

B. Mitigation of adverse effect on disturbed sites will require documentation, analysis and dissemination of results to standards established by the cultural properties review committee.

C. When archaeological techniques are used in the stabilization of a prehistoric or historic site or to obtain information on such sites, recovered material will be handled in conformance with professional archaeological practices.

[3/26/87; 4.10.4.14 NMAC - Rn, 4 NMAC 10.4.14, 1/1/08]

4.10.4.15 REMOVAL OF PROPERTIES FROM THE REGISTER:

Registered cultural properties shall be removed from the state register when in the opinion of the cultural properties review committee the properties have been altered to such an extent that their integrity has been lost and the values for which they were placed on the register no longer exist.

[3/26/87; 4.10.4.15 NMAC - Rn, 4 NMAC 10.4.15, 1/1/08]

PART 5: CULTURAL PROPERTIES PUBLICATIONS REVOLVING FUND: GUIDELINES AND FISCAL CONTROLS

4.10.5.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Office of Cultural Affairs.

[11/15/97; 4.10.5.1 NMAC - Rn, 4 NMAC 10.5.1, 1/1/08]

4.10.5.2 SCOPE:

The historic preservation division of the office of cultural affairs, the state historic preservation officer, the cultural properties review committee, authors, editors, publishers, and other persons engaged in preparing, writing, editing, publishing and/or reprinting for sale written materials-such as pamphlets, articles, and books-relating to cultural properties or historic preservation in New Mexico.

[11/15/97; 4.10.5.2 NMAC - Rn, 4 NMAC 10.5.2, 1/1/08]

4.10.5.3 STATUTORY AUTHORITY:

The guidelines and fiscal controls over the use of the cultural properties publications revolving fund are created pursuant to Section 1, Chapter 5, Laws 1978, as amended, (Section 18-6-16 NMSA 1978). That section reads as follows: The historic preservation division of the office of cultural affairs shall encourage and promote publications relating to cultural properties which have been prepared pursuant to the duties of the committee under the Cultural Properties Act (Section 18-6-1 to 18-6-17 NMSA 1978). The committee may prepare or contract for the preparation of such publications on the condition that it receive from the sale of such publications the amount expended plus ten percent. All receipts from such sales shall go into a special revolving fund which is hereby established. The historic preservation division shall adopt regulations establishing guidelines and fiscal controls over the use of the revolving fund and shall annually report to the legislative finance committee on or before June 30 the fund's receipts, disbursements, and unencumbered balance, together with a detailed statement of the expenditures.

[3/26/87; 4.10.5.3 NMAC - Rn, 4 NMAC 10.5.3, 1/1/08]

4.10.5.4 DURATION:

Permanent.

[11/15/97; 4.10.5.4 NMAC - Rn, 4 NMAC 10.5.4, 1/1/08]

4.10.5.5 EFFECTIVE DATE:

3/26/87, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective 11/15/97.

[11/15/97; 4.10.5.5 NMAC - Rn, 4 NMAC 10.5.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.5.6 OBJECTIVE:

The objective of Part 4 of Chapter 10 is to provide guidelines and fiscal controls for the lawful administration of the cultural properties publications revolving fund by the historic preservation division. All pamphlets, articles, books, and other written materials prepared, published or reprinted for sale with funds from the revolving fund must comply with these regulations.

[3/26/87; 4.10.5.6 NMAC - Rn, 4 NMAC 10.5.6, 1/1/08]

4.10.5.7 DEFINITIONS:

A. "Committee" refers to the cultural properties review committee.

B. "Cultural properties publication" means any pamphlet, article, book, poster or other written material which relates to cultural properties or historic preservation in New Mexico, and which has been prepared pursuant to Section 18-6-16 NMSA 1978 and the duties of the cultural properties review committee as specified in the Cultural Properties Act.

C. "Historic preservation division" refers to the division of the office of cultural affairs which is designated by Section 18-6-7 NMSA 1978 to administer the Cultural Properties Act.

D. "Revolving fund" refers to the "cultural properties publications revolving fund" as provided by Section 18-6-16 NMSA 1978.

[3/26/87; 4.10.5.7 NMAC - Rn, 4 NMAC 10.5.7, 1/1/08]

4.10.5.8 PUBLICATION PRIORITIES:

The committee shall annually establish priorities by subject matter to aid in the determination of the types of works to be published or reprinted by the revolving fund. These priorities shall be established at the second official committee meeting of the state fiscal year. Priorities shall relate to the identification, significance, registration, documentation and preservation of cultural properties, technical preservation and other matters as authorized under Section 18-6-5 NMSA 1978.

[3/26/87; 4.10.5.8 NMAC - Rn, 4 NMAC 10.5.8, 1/1/08]

4.10.5.9 SELECTION PROCEDURE:

Material is eligible for publication through the revolving fund in the following manner:

A. Committee or historic preservation division initiated:

(1) The committee has determined, in accordance with its annual publication priorities, subject matter for publication.

(2) Existing publications are determined by the committee to be worthy of reprinting.

(3) The historic preservation division has proposed a priority for publication.

B. Author/editor initiated:

(1) The committee may consider topics and material for publication which have been submitted to the committee by the author or editor.

(2) The committee shall consider the preparation and publication of material at any regularly scheduled meeting. Whenever in the opinion of the committee material warrants publication or republication, the committee can authorize, by a majority vote, use of the revolving fund for such purpose. All topics and material considered for publication shall be reviewed based on the current publication priorities, the purpose of the Cultural Properties Act, the publication's probable marketability and its usefulness to the public and to government entities.

[3/26/87; 4.10.5.9 NMAC - Rn, 4 NMAC 10.5.9, 1/1/08]

4.10.5.10 CONTRACTS FOR THE PREPARATION OF MATERIAL FOR PUBLICATION:

A. The committee may contract for the preparation of material (research and writing of text) for publication only if it determines that the sale of such publication has a high probability of yielding the amount expended plus ten percent or if the fund contains an actual surplus sufficient to cover the cost of the publication plus ten percent.

B. The committee shall specify the scope of work and shall designate the editor(s) and/or author(s), and other personnel for the preparation of each proposed publication. All such personnel shall furnish to the committee satisfactory evidence of professional qualification based on experience, training, knowledge and past performance. The author or editor of each prospective publication will also be required to furnish to the committee a narrative progress report describing the status of work accomplished not less than once every three months during the contract period.

C. The committee shall specify the amount to be allocated from the revolving fund and the project period. The contract amount shall not exceed the amount approved by the committee. The typical contract period will not exceed one year. The grant award and the project period may be amended by approval of the committee. In no case, however, will the preparation of a manuscript be permitted to exceed two years.

D. The state historic preservation officer is hereby authorized to negotiate, write and enter into all contracts for the preparation of material for publication through the revolving fund. No contract shall be valid unless approved by the secretary of the department of finance and administration. Failure to carry out the terms of the contract shall be cause for the termination or reduction of scope and/or payments of the contract.

[3/26/87; 4.10.5.10 NMAC - Rn, 4 NMAC 10.5.10, 1/1/08]

4.10.5.11 CONTRACTS FOR PUBLICATION:

A. The committee may contract for the publication of material which it has approved for use of revolving funds.

B. The committee shall designate the publisher and other necessary professionals for each approved manuscript. The publisher may be required by contract to produce, warehouse, advertise and sell the publication, or perform other publishing-related activities as agreed upon.

C. The committee shall specify the amount, if any, to be allocated from the revolving fund and the project period. The contract amount shall not exceed the amount approved by the committee. Publication costs may include editing, design, layout, the preparation of the table of contents and index, manufacturing, storing, advertising, photography and illustrations. The amount to be paid to the publisher and the project period may be amended by approval of the committee.

D. The state historic preservation officer is hereby authorized to negotiate, write and enter into all contracts for the publishing of committee-approved publications. No contract shall be valid unless approved by the secretary of the department of finance and administration. Failure to carry out the terms of the contract shall be cause for the termination or reduction of scope and/or payments of the contract.

[3/26/87; 4.10.5.11 NMAC - Rn, 4 NMAC 10.5.11, 1/1/08]

4.10.5.12 COMMITTEE REVIEWS:

The committee shall have the authority to review and edit the content of any material to be published through the revolving fund. Such material shall be reviewed for accuracy and relevance to the purposes of Section 18-6-16 NMSA 1978. All editorial review shall be made prior to the signing of a contract for the printing of such publication.

[3/26/87; 4.10.5.12 NMAC - Rn, 4 NMAC 10.5.12, 1/1/08]

4.10.5.13 ACKNOWLEDGMENTS:

The cultural properties review committee and historic preservation division of the office of cultural affairs shall be specified as the publisher of each work published through the revolving fund.

[3/26/87; 4.10.5.13 NMAC - Rn, 4 NMAC 10.5.13, 1/1/08]

4.10.5.14 SALE AND REIMBURSEMENT:

A. The historic preservation division may authorize the publisher, or his agent, contracted for the production of an approved publication, to offer the publication for sale.

B. The publisher may be required to print, in the first printing, sufficient number of copies to recoup through the sale of those copies the amount expended from the revolving fund.

C. The publisher may also be required to make payment to the fund from the sale of such publications on a quarterly basis.

D. For publications which were prepared with revolving funds, the publisher or his agent shall, from the sale of each copy of such publication, reimburse the revolving fund in the amount spent on its production.

[3/26/87; 4.10.5.14 NMAC - Rn, 4 NMAC 10.5.14, 1/1/08]

4.10.5.15 ACCOUNTING:

A. The publisher shall report to the historic preservation division on the financial status of each publication on at least a quarterly basis.

B. The historic preservation division shall maintain current records of all disbursements from and reimbursements to the revolving fund for each authorized publication. All fiscal records shall be maintained in accordance with established accounting procedures for the state of New Mexico.

C. The historic preservation division shall report to the committee on the financial status of the revolving fund on at least a quarterly basis.

[3/26/87; 4.10.5.15 NMAC - Rn, 4 NMAC 10.5.15, 1/1/08]

4.10.5.16 ANNUAL REPORT TO THE LEGISLATURE:

The historic preservation division shall annually report to the legislative finance committee on or before June 30 of each year the receipts and disbursements from and the balance remaining in the revolving fund together with a detailed statement of expenditures.

[3/26/87; 4.10.5.16 NMAC - Rn, 4 NMAC 10.5.16, 1/1/08]

PART 6: SELECTION AND PREPARATION OF TEXT FOR OFFICIAL SCENIC HISTORIC MARKERS

4.10.6.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Office of Cultural Affairs.

[11/15/97; 4.10.6.1 NMAC - Rn, 4 NMAC 10.6.1, 1/1/08]

4.10.6.2 SCOPE:

The cultural properties review committee, in consultation with the New Mexico state highway and transportation department and input from the general public, will determine the text and location of official scenic historic markers in New Mexico, according to the procedures and criteria established in this regulation.

[11/15/97; 4.10.6.2 NMAC - Rn, 4 NMAC 10.6.2, 1/1/08]

4.10.6.3 STATUTORY AUTHORITY:

This regulation is created pursuant to the Cultural Properties Protection Act, NMSA 1978 Section 18-6-5, M(2), which requires the cultural properties review committee to review the accuracy and adequacy of proposed marking of cultural properties.

[11/15/97; 4.10.6.3 NMAC - Rn, 4 NMAC 10.6.3, 1/1/08]

4.10.6.4 DURATION:

Permanent.

[11/15/97; 4.10.6.4 NMAC - Rn, 4 NMAC 10.6.4, 1/1/08]

4.10.6.5 EFFECTIVE DATE:

3/26/87, unless a later date is cited at the end of a section or paragraph. Reformatted to NMAC format effective 11/15/97.

[11/15/97; 4.10.6.5 NMAC - Rn, 4 NMAC 10.6.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.6.6 OBJECTIVE:

The purpose of this regulation is to establish a procedure for the preparation and selection of text for the official scenic historic markers.

[11/15/97; 4.10.6.6 NMAC - Rn, 4 NMAC 10.6.6, 1/1/08]

4.10.6.7 DEFINITIONS:

[RESERVED]

[11/15/97; 4.10.6.7 NMAC - Rn, 4 NMAC 10.6.7, 1/1/08]

4.10.6.8 CRITERIA FOR THE SELECTION AND PREPARATION OF TEXT FOR OFFICIAL SCENIC HISTORIC MARKERS:

The committee shall select and prepare the text for markers based on the following criteria:

A. Markers shall be used exclusively for designating sites, districts, and other locations significant in the social, economic, political, scientific, architectural, and artistic history of New Mexico, the southwest, and the nation. The committee shall not approve markers for individual structures unless in its judgment their extraordinary significance or isolated location warrants such special consideration.

B. Features of the natural landscape have frequently influenced the history of the state, and can be designated by official scenic historic markers, provided that their significance has been sufficiently documented.

C. Markers shall not be used to mark contemporary government or private buildings or sites, except those used or constructed for cultural purposes, i.e., state or national monuments, educational institutions, etc., when the review procedures indicate that such is warranted.

D. Markers shall not be used to commemorate any individuals presently or recently in government service or politics.

E. Proposals for markers may be submitted by any person, group, government agency or corporation.

F. All proposals for markers shall be referred to the committee, which shall consider each proposal in its own merits and decide if a proposed marker is appropriate to the historical or cultural site or event it recognizes, as well as to its proposed location.

G. Texts for all markers shall be prepared by the committee. Appropriate officials or individuals may be consulted regarding texts. Texts should not exceed 50 words, the approximate number of words that will fit on one side of an official scenic historic marker.

H. The NMSHTD, in consultation with the committee, shall determine where a marker shall be installed for maximum public benefit and safety, and in compliance with existing highway laws and regulations.

I. Unless specifically approved by the committee, and included in the marker layout, no other plaques, logos, trademarks or similar additions to the markers shall be permitted.

J. Markers shall not be placed at locations which would advertise sites that are unattended and vulnerable to vandalism.

K. Periodically, the committee shall review the text, placement of, and need for each marker, so as to assure that each marker continues to reflect accurate and relevant

information concerning the historic site or event for which the marker was originally erected.

L. Whenever a marker must be renovated or replaced, the committee should be given the opportunity by the NMSHTD to make changes in texts and recommend relocation of the marker.

M. The text for markers, having been written by public officials, shall remain in the public domain and is not subject to copyright by any party other than the state.

[3/26/87; 4.10.6.8 NMAC - Rn, 4 NMAC 10.6.8, 1/1/08]

PART 7: REVIEW OF PROPOSED STATE UNDERTAKINGS THAT MAY AFFECT REGISTERED CULTURAL PROPERTIES

4.10.7.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Office of Cultural Affairs.

[11/15/97; 4.10.7.1 NMAC - Rn, 4 NMAC 10.7.1, 1/1/08]

4.10.7.2 SCOPE:

This rule applies to the head of any state agency or department having direct or indirect jurisdiction over any land or structure modification which may affect properties listed on the state register of cultural properties.

[11/15/97; 4.10.7.2 NMAC - Rn, 4 NMAC 10.7.2, 1/1/08]

4.10.7.3 STATUTORY AUTHORITY:

The following regulations are created pursuant to Section 5, Chapter 223, Laws of 1969, as amended (Section 18-6-5.F NMSA 1978), as follows: F... shall issue regulations pertaining to the preservation and maintenance of registered cultural properties in order to maintain the integrity of those properties; and pursuant to Section 5, Chapter 10, Laws of 1986 (Section 18-6-8.1 NMSA 1978), as follows: Section 18-6-8.1. Review Of Proposed State Undertakings. The historic preservation division of the office of cultural affairs shall periodically furnish copies of the official register, or relevant sections of the official register, to state agencies and departments and shall periodically advise state agencies and departments of the status of the division's program of cultural property identification and registration. The head of any state agency or department having direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property shall afford the state historic preservation officer a reasonable and timely opportunity to participate in planning such undertaking so as to

preserve and protect, and to avoid or minimize adverse effects on, registered cultural properties.

[8/21/87; 4.10.7.3 NMAC - Rn, 4 NMAC 10.7.3, 1/1/08]

4.10.7.4 DURATION:

Permanent.

[11/15/97; 4.10.7.4 NMAC - Rn, 4 NMAC 10.7.4, 1/1/08]

4.10.7.5 EFFECTIVE DATE:

8/21/87, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective 11/15/97.

[11/15/97; 4.10.7.5 NMAC - Rn, 4 NMAC 10.7.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.7.6 OBJECTIVE:

The purpose of this regulation is to establish the procedure under which heads of state agencies or departments having direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property will coordinate with the state historic preservation officer during planning of such undertaking so as to preserve and protect, and to avoid or minimize adverse effects on such registered cultural property. Section 18-6-8.1 NMSA 1978 authorizes and requires cooperation among state agencies in the identification and protection of significant cultural properties, furthering but not limited by the provisions of the National Historic Preservation Act of 1966, as amended.

[8/21/87; 4.10.7.6 NMAC - Rn, 4 NMAC 10.7.6, 1/1/08]

4.10.7.7 DEFINITIONS:

A. "Adverse effects" are any modifications to registered cultural properties that may cause changes in character or use, or in the characteristics which made the property eligible to the state register of cultural properties (4.10.7 NMAC).

B. "Direct jurisdiction" is oversight, planning or direction of an undertaking or land or structure modification on federal, state or private lands by any state agency, entity, board or commission.

C. An "effect" is any alteration of the registered cultural property's physical characteristics, including relevant features of its immediate environment, which may diminish the integrity of the property's location, design, setting, materials, workmanship or association. "Effects" include, but are not limited to 1) physical destruction, damage, or alteration of all or part of the property; 2) alteration of the character of the property's surrounding environment where the character contributes to the property's eligibility for the state register; 3) introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting, and 4) neglect of a property resulting in its deterioration or destruction. Effects include those caused by the undertaking that occur at the same time and place and those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable.

D. "Head of any state agency or department" means the agency head or a designee with authority over a specific land or structure modification, including any state or local official who has been delegated legal authority over such modification.

E. "Indirect jurisdiction" is the issuance of any authorization, permit, license, subsidy, loan, grant, support or regulation by any state agency, entity, board or commission for any land or structure modification on federal, state or private lands.

F. "Integrity" means the quality or characteristics which made the property eligible for listing in the New Mexico register of cultural properties.

G. "Land or structure modification" means any change to land or structure other than ordinary maintenance.

H. "Maintenance" means the act or process of applying measures which are necessary to maintain the historic integrity and structural soundness of a structure, including but not limited to ordinary operating maintenance.

I. "Official register" means the state register of cultural properties.

J. "Planning" is the preparation, review or approval of architects', engineers' or other plans or specifications for any state undertaking, or the imposition of any condition on any plan, design or proposal for a state undertaking presented for review or approval to a state agency, entity, board, or commission by an applicant or consultant to an applicant.

K. "Preservation" means the act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include protective maintenance or stabilization where necessary in the case of archaeological sites.

L. "Registered cultural property" means a cultural property which has been placed on the state register of cultural properties either individually or as a property listed as significant or contributing within a district.

M. "Undertaking" is defined with reference to Sections 101, 106 and 110 of the National Historic Preservation Act of 1966, as amended, and with further reference to 36 CFR 800.2(o), to mean any project, activity or program that can result in changes in the character or use of a historic property, and is further defined to mean any modification, other than ordinary maintenance, under the direct or indirect jurisdiction of a state agency, entity, board or commission of any land or structure which is entered in the state register of cultural properties or in the immediate vicinity of any such registered property. Undertakings include new and continuing projects, programs and activities under direct or indirect state jurisdiction on federal, state or private lands.

[8/21/87; 4.10.7.7 NMAC - Rn, 4 NMAC 10.7.7, 1/1/08]

4.10.7.8 DISSEMINATION OF REGISTER:

Periodically, but not less often than annually, the historic preservation division will send notice of all properties added to the state register of cultural properties to all state agencies which may have direct or indirect jurisdiction over any land or structure modification which may affect any registered cultural property.

[8/21/87; 4.10.7.8 NMAC - Rn, 4 NMAC 10.7.8, 1/1/08]

4.10.7.9 REVIEW PROCEDURES:

A. When any land or structure modification which may affect a registered cultural property is proposed and before architects' or engineers' plans are authorized, a scope of work defined or request for proposals issued; and in the case of land modifications, as soon as the agency head learns or is informed of the proposal, the agency will furnish the following information to the state historic preservation officer:

(1) A USGS 7.5 minute quad, or equivalent quality map, showing the exact location of all sites, structures or areas to be affected by this project. If the project is located within a historic district, affected sites, structures or areas affected must be indicated on a map showing the boundaries of the district.

(2) If existing structures are involved, photographs or snapshots of each structure to be affected by the project. Photographs may be either black and white or color and may be polaroid but must be of quality sufficient to make examination of the overall structure, siting and architectural details of each structure possible.

(3) If new construction is involved, a description of the current condition of the project site, that is: Is the site farm land, grazing land, a graded lot, an existing street or right-of-way, etc.? If the previous uses of the site or sites is known, this information must be provided.

(4) Preliminary statement of alternatives and planning documents.

(5) Estimate of cost of the proposed land or structure modification.

B. The state historic preservation officer will respond within 30 working days, 1) stating that no effect on a registered cultural property will occur, or 2) confirming that an effect on a registered cultural property will occur and requesting further information, or 3) requesting an opportunity to participate in planning. In the event that the state historic preservation officer fails to respond within 30 working days, the requirement of law may be deemed by the agency head to be satisfied.

C. In planning an undertaking which will affect a registered cultural property, the agency head and state historic preservation officer will apply the standards set forth in 4.10.7.11 NMAC, 4.10.7.12 NMAC or 4.10.7.13 NMAC.

[8/21/87; 4.10.7.9 NMAC - Rn, 4 NMAC 10.7.9, 1/1/08]

4.10.7.10 DETERMINATION:

The agency head and state historic preservation officer shall cooperatively make one of the following determinations in any case in which a registered cultural property will be affected by a land or structure modification. These determinations are given in descending order of preference. The agency head will bear the burden of proving that the preferable determination is neither prudent nor feasible.

A. The agency head and state historic preservation officer may determine that a property or site shall be preserved, protected, rehabilitated, restored or avoided. Such determination shall be confirmed in writing by both parties. The agency head will provide detailed specifications for such preservation, protection, rehabilitation, restoration or avoidance to the state historic preservation officer for his concurrence.

B. The agency head and state historic preservation officer may determine that feasible preservation of any structure or site will require its modification, adaptation or alteration to meet a contemporary use and to provide a reasonable return. Such determination shall be confirmed in writing by both parties. The agency head will provide detailed specifications for such modification, adaptation, or alteration to the state historic preservation officer for his concurrence at the earliest planning stage and periodically throughout the project.

C. The agency head and state historic preservation officer may determine that preservation of any structure or site will deprive the owner of a reasonable return on, or reasonable use of, the property, and on the basis of such determination may concur that the property shall be demolished or moved. Such determination will be confirmed in writing by both parties. In such case, the state historic preservation officer will request that the property or site be documented with as-built drawings, maps and photographs or other documentation consistent with contemporary professional standards, and will provide detailed specifications for such documentation.

[8/21/87; 4.10.7.10 NMAC - Rn, 4 NMAC 10.7.10, 1/1/08]

4.10.7.11 GENERAL STANDARDS FOR PRESERVATION, PROTECTION, REHABILITATION OR RESTORATION:

A. In reviewing a proposed undertaking, the agency head and state historic preservation officer will apply the following standards for structures:

(1) Weather-related deterioration shall be prevented and measures to preserve the existing material shall be applied.

(2) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material shall match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features shall be based on accurate duplications of features, substantiated by historical, physical or pictorial evidence.

(3) Missing elements shall be replaced in the exact form in which they appeared at the period of time represented, provided photographic or documented information is available, using like materials and methods or a substitute authorized by the state historic preservation officer.

(4) Structural stability shall be maintained or re-established without essentially changing the existing form.

(5) The surface cleaning of structures shall be undertaken only when necessary, and then only with extreme caution. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

(6) Every reasonable effort shall be made to provide a use for a property that requires minimal alteration of the building, structure or site and its environment or, if this is not feasible, to use a property for its originally intended purpose.

B. In reviewing a proposed undertaking, the agency head and state historic preservation officer will apply the following standards for archaeological sites:

(1) Historic and prehistoric archaeological sites will be avoided by designing projects so that they do not enter the site boundary as established in the state register nomination.

(2) Sites shall be reasonably protected from erosion and other natural phenomena.

(3) Sites shall be protected from looting and vandalism by such methods as posting signs, fencing and monitoring.

[8/21/87; 4.10.7.11 NMAC - Rn, 4 NMAC 10.7.11, 1/1/08]

4.10.7.12 GENERAL STANDARDS FOR MODIFICATION, ADAPTATION OR ALTERATION:

A. Standards for structures:

(1) Prior to and during the undertaking of any alteration, the areas to be affected will be recorded in all phases by photography and written description.

(2) The distinguishing original qualities or character of a building, structure, or site and its environment will not be destroyed. The removal or alteration of any historic material or distinctive architectural feature will be avoided when possible. Any historic feature that is removed will be recorded and, if possible, stored for future study or reuse.

(3) All buildings, structures and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create a false sense of the historical development of a structure are discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right. Such significance must be recognized and respected.

(5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site must be treated with sensitivity.

(6) Contemporary alterations or additions may be permissible if they do not destroy significant historical, architectural or cultural material. They shall be compatible in size, scale, color and material; or in rare cases may sympathetically contrast with the older work. It is desirable that contemporary additions and alterations express their own time and not copy the details nor style of the historic property.

(7) Whenever possible, alterations or additions will be accomplished so that if removed in the future, the integrity of the original structure is essentially unchanged.

(8) Changes necessary to conform with local codes will be incorporated, if required by a building inspector. The uniform building code, adopted by the state of New Mexico, provides for variances from code standards for historic structures. Such changes shall be made in a manner which alters the existing appearance of the structure as little as possible and otherwise conforms to standards of the cultural properties review committee.

B. Standards for archaeological sites:

(1) Alteration of archaeological sites will be limited to areas of existing disturbance and to areas devoid of cultural manifestations, so as to have the least possible physical and visual effect as defined in Subsection C of 4.10.7.7 NMAC.

(2) Mitigation of adverse effect on disturbed sites will require documentation, analysis and dissemination of results to standards established by the cultural properties review committee.

(3) When archaeological techniques are used in the stabilization of a prehistoric or historic site or to obtain information on such sites, these techniques and the treatment of recovered materials shall be in conformance with professional archaeological practices.

[8/21/87; 4.10.7.12 NMAC - Rn, 4 NMAC 10.7.12, 1/1/08]

4.10.7.13 GENERAL STANDARDS FOR NEW CONSTRUCTION OR DEMOLITION:

A. Standards for structures:

(1) Completely new construction for which neither documentation nor precedent exists must be expressive of its own time. Such building, whether it be a discreet expansion of a historic building or a separate but closely related structure, shall be harmonious with the existing building, but shall avoid literal reproduction of specific architectural details.

(2) The new building must be so located that the integrity and clarity of the historic site is not compromised. The functional demands of automobile and pedestrian circulation, the visibility required for control and protection of the site, the preservation of natural terrain and vegetation, must be solved in such a way that the values of the site are not diminished.

(3) Total reconstruction or relocation will not be attempted except when, in the view of the state historic preservation officer, such undesirable procedures are the only means of preserving some of the values of extremely rare sites.

B. Standards for archaeological sites:

(1) New construction affecting archaeological sites will be limited to areas of existing disturbance and to areas devoid of cultural manifestations, so as to have the least possible physical and visual effect as defined in Subsection C of 4.10.7.7 NMAC.

(2) Mitigation of adverse effect on disturbed sites will require documentation, analysis and dissemination of results to standards established by the cultural properties review committee.

(3) When archaeological techniques are used in the stabilization of a prehistoric or historic site or to obtain information on such sites, recovered material will be handled in conformance with professional archaeological practices.

[8/21/87; 4.10.7.13 NMAC - Rn, 4 NMAC 10.7.13, 1/1/08]

4.10.7.14 APPEAL:

When a state agency which has direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property does not concur with a determination proposed consistent with 4.10.7.10 NMAC above, the head of such agency may appeal to the cultural properties review committee with a statement of the case in appropriate detail. Such appeal shall be made not less than 30 days before a scheduled committee meeting. The committee shall hear the case in a regular public meeting and shall have authority (1) to request further information, (2) to accept the determination of the state agency or of the state historic preservation officer, or (3) to specify another solution consistent with its established and written standards. Appeal to the cultural properties review committee shall be the final administrative appeal in any case.

[8/21/87; 4.10.7.14 NMAC - Rn, 4 NMAC 10.7.14, 1/1/08]

PART 8: PERMITS TO CONDUCT ARCHAEOLOGICAL INVESTIGATIONS ON STATE LAND

4.10.8.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.

[4.10.8.1 NMAC - Rp, 4.10.8.1 NMAC, 01/16/2019]

4.10.8.2 SCOPE:

This rule applies to all public and private entities conducting or proposing to conduct archaeological investigations on any lands owned, controlled or operated by the state of New Mexico.

[4.10.8.2 NMAC - Rp, 4.10.8.2 NMAC, 01/16/2019]

4.10.8.3 STATUTORY AUTHORITY:

Subsection O of Section 18-6-5 (NMSA 1978) of the Cultural Properties Act.

[4.10.8.3 NMAC - Rp, 4.10.8.3 NMAC, 01/16/2019]

4.10.8.4 DURATION:

Permanent.

[4.10.8.4 NMAC - Rp, 4.10.8.4 NMAC, 01/16/2019]

4.10.8.5 EFFECTIVE DATE:

January 16, 2019 unless a later date is cited at the end of a section.

[4.10.8.5 NMAC - Rp, 4.10.8.5 NMAC, 01/16/2019]

4.10.8.6 OBJECTIVE:

This rule describes the procedures used to review and issue a permit for archaeological investigations on state land. Additionally, this rule establishes professional and quality standards for a permittee's performance and sets forth causes for non-renewal of permits.

[4.10.8.6 NMAC - Rp, 4.10.8.6 NMAC, 01/16/2019]

4.10.8.7 DEFINITIONS:

A. "Archaeological investigation" means the study of archaeological sites, isolates and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

B. "ARMS" means the archaeological records management section within the historic preservation division that maintains NMCRIS, associated cultural resource records and the records repository pursuant to 4.10.19 NMAC.

C. "Archaeological site" or "site" means a location where there exists material evidence of the past life and culture of human beings in the state and is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure. An archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, habitation sites, ruins of buildings or structures, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials.

D. "Area of potential effect" or "APE" means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of a cultural property, if any such properties exist. The APE is influenced by the scale and nature of an undertaking, variation in topography and vegetation, and may be different

for different kinds of effects caused by the undertaking and may include a buffer area to adequately account for direct and indirect effects.

E. "Area of historic and scientific interest" means an area lacking surface evidence of cultural resources but where there is a high probability of finding subsurface material remains and cultural deposits.

F. "Collection" means the removal of material remains from state land, whether or not the remains are located within an archaeological site or isolate as defined herein.

G. "Commissioner of public lands" or "commissioner" means the executive officer of the state land office, who shall have jurisdiction over all state trust lands and shall have the management, care, custody, control and disposition thereof in accordance with the provisions of state statutes and the law or laws under which such lands have been or may be acquired.

H. "Committee" or "CPRC" means the cultural properties review committee, created pursuant to Section 18-6-4 of the Cultural Properties Act.

I. "Cultural landscape" means a geographic area including both cultural and natural resources associated with a historic event, activity or person or exhibiting other cultural or aesthetic values. Landscapes include formally designed landscapes, vernacular landscapes, sites and ethnographic landscapes.

J. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

K. "Cultural resource" means any archaeological, historic, or architectural sites, districts, landscapes, buildings, structures, objects, and places of traditional cultural or religious importance to specified social or cultural groups. Cultural resources may be significant and eligible for listing in the national register of historic places or state register of cultural properties; they may be insignificant and ineligible for either register; or cultural resources may not have been evaluated to determine their significance and eligibility.

L. "District" means a significant concentration, linkage, or continuity of sites, buildings, structures, landscape elements, or objects united historically or aesthetically by plan or physical development.

M. "Effect" means any alteration of the cultural property's physical characteristics, including relevant features of its immediate environment, which may diminish the integrity of the property's location, design, setting, material, workmanship or association. "Effects" include, but are not limited to, physical destruction, damage or alteration of all or part of the property; alteration of the character of the property's surrounding environment where the character contributes to the property's eligibility; introduction of visual, audible or atmospheric elements that are out of character with the property or

alter its setting, and neglect of a property resulting in its deterioration or destruction. Effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable.

N. "Easement" means a right or privilege granted by the commissioner of public lands or by the state agency on lands under their jurisdiction to use a defined area for a prescribed purpose and time.

O. "Excavation" means to systematically dig up artifacts, deposits or material remains within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

P. "General Permit" means a permit for survey and inventory and test excavation or monitoring on state land issued by the CPRC with the concurrence of the state archaeologist and the SHPO to a qualified institution. Staff listed on the roster of the permit must be listed in the SHPO directory.

Q. "Historic preservation division" or "HPD" means the division within the department of cultural affairs created pursuant to Subsection A of Section 18-6-8 NMSA 1978 of the Cultural Properties Act.

R. "Historic structures and buildings" means buildings or structures that are 50 or more years old or properties less than 50 years old that either meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years) or properties that are likely to meet the integrity and significance criteria in 30 CFR 60.4 within five years of the date of recording.

(1) A historic structure is a functional construction made usually for purposes other than creating human shelter. Structures include bridges, dams, canals, wells and other engineering works such as engineered roads and highways, tunnels, turbines, pipelines, refineries, stamp mills, smelters, power plants, silos, grain elevators and locomotives.

(2) A historic building is created principally to shelter any form of human activity. Buildings include but are not limited to houses, barns, stables, sheds, garages, warehouses, courthouses, city halls, social halls, commercial buildings, libraries, factories, mills, train depots, motels, theaters, schools, stores and churches. The term building may also be used to refer to a historically and functionally related unit such as a courthouse and jail or a house and barn.

S. "Human burial" or "unmarked human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

T. "Individual unmarked human burial excavation permit" is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the

excavation of unmarked human burials on state or private land. Individual unmarked human burial permits are submitted with an application for a project-specific permit for excavation and when unmarked human burials are known to exist within the project area.

U. "Isolate" means a single object or artifact, or a few artifacts greater than 50 or more years old that lack clear association. Examples of isolates include a single flake, projectile point, potsherd, sherds from a single broken pottery vessel, pieces of glass from a single bottle or a single feature that lacks integrity.

V. "Limited tests" means the placement of probes, cores, shovel tests or similar tests using hand tools to augment survey-level information without substantially damaging or diminishing the integrity of an archaeological site or area of historic and scientific interest. Limited tests are located systematically, randomly, or judgmentally in areas with the highest potential for buried cultural deposits and may also provide information on soils, stratigraphy or depositional context and integrity.

W. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

X. "Mechanical earth-moving equipment" means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other

deposits or materials including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

Y. "Mechanical Excavation Permit" is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of archaeological sites on private land using mechanical earth-moving equipment by someone other than the landowner or his agent.

Z. "Monitoring" means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection and avoidance of sites and may include documentation and excavation of cultural deposits.

AA. "Museum of Indian arts and culture-laboratory of anthropology" or "MIAC" means the division within the department of cultural affairs, which serves as the collections repository for archaeological materials and associated records and documents taken or collected from state land.

BB. "New Mexico cultural resource information system" or "NMCRIS" means the statewide online computer information system that integrates geographic, research, and management data on cultural properties and cultural resource investigations maintained by ARMS.

CC. "Permit" means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time.

DD. "Principal investigator" means the individual with overall administrative responsibility for the investigation authorized by the permit and who, without limitation, assures compliance with the terms of the permit and conformance with all laws, rules and professional standards.

EE. "Project area" means the geographic area or areas of study for an archaeological investigation conducted for research purposes.

FF. "Project director" means the individual who works under the direction of the principal investigator and is responsible for ensuring that the field work, analysis and reporting are consistent with professional standards.

GG. "Project-specific permit" means permit issued by the CPRC, with the concurrence of the state archaeologist and the SHPO, to a qualified institution for survey, test excavation or monitoring when the applicant does not hold a general permit or when the applicant proposes excavation project as part of a data recovery program.

HH. "Qualified institution" means public and private entities including without limitation individuals, corporations, partnerships, trusts, associations, educational

institutions, foundations, museums, any agency of the federal government, or department, agency, institution, or political subdivisions of the state with staff that include individuals listed in the SHPO directory and who demonstrate capability to accomplish the type and scope of archaeological investigation proposed in the permit application.

II. "Reconnaissance survey" means a survey used to characterize the resources of an area. A reconnaissance survey can include a "windshield survey", a "pedestrian survey," a study of aerial photographs, historical and recent maps and city plans to gain a general understanding of the community's layout or a detailed inspection of sample blocks or areas as a basis for extrapolation about the resources of the community as a whole.

JJ. "Registered cultural property" means a cultural property that the CPRC placed in the state register of cultural properties individually or as a contributing property within a district on either a permanent or temporary basis or that the keeper of the national register has placed on the national register of historic places.

KK. "Right of way" means a right or privilege to pass over, upon, through or across a defined area of state trust lands granted by the commissioner of public lands or by the head of another state agency for lands under its jurisdiction for a prescribed purpose and duration.

LL. "Sample survey" means a survey that identifies all surface-visible cultural properties within defined sample units of a larger whole.

MM. "SHPO directory" means the directory of historic preservation professionals maintained by the SHPO and approved by the CPRC. The SHPO directory includes but is not limited to archaeologists who act in the capacity of principal investigator, project director, supervisory archaeologist; cultural anthropologists; historic archaeologists; architectural historians; historic architects; historic landscape architects; historians; and other historic preservation professionals.

NN. "SOI standards" means the *secretary of interior's historic preservation professional qualifications standards* as expanded and revised in 1997 (62 FR 33708). The standards specify the academic degrees or comparable training, professional experience and the products and activities that demonstrate that the professional is able to perform competent and professionally credible work in archaeology, architectural history, historic architecture, historic landscape architecture, history, cultural anthropology or one of the other historic preservation disciplines.

OO. "State agency" means a department, agency, institution or political subdivision of the state.

PP. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 NMSA 1978 of the Cultural Properties Act.

QQ. "State historian" means the historian designated pursuant to Section 18-6-14 NMSA 1978 of the Cultural Properties Act.

RR. "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 HPD.

SS. "State land" means property owned, controlled, or operated by a state agency. Examples of state land include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way; state parks; state historic sites; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

TT. "State trust land" means lands, their natural products and all rights, privileges, or assets, which are derived from them, and which are under the care, custody, and control of the commissioner of public lands.

UU. "Supervisory archaeologist" means a crew chief, field supervisor or field director who works under the direction of the principal investigator or project director and is physically present for all field investigations. The supervisory archaeologist works independently in the field and may be in direct charge of archaeological field crews.

VV. "Survey" means a visual inspection of land to examine, identify, record, evaluate and interpret cultural resources and may include limited tests but shall not include excavation or test excavation. Survey intensity, design and methods are based on management and research objectives.

WW. "Test excavation" means the systematic placement of probes, cores, shovel tests or test pits using hand tools, and test trenches excavated by hand or with mechanical earth-moving equipment to expose geomorphological soils and buried cultural deposits. Test excavation is completed under a test excavation plan and is conducted to determine the eligibility of a site or define the nature and extent of cultural deposits.

XX. "Thematic survey" means a survey that identifies selected types of cultural properties and may be performed with written concurrence of the state agency.

YY. "Written and photographic records" means original or legible duplicate site data, such as site forms, artifact forms, notes, drawings, tables, maps, plans, charts and other written materials, and prints, slides and other photographic records.

[4.10.8.7 NMAC - Rp, 4.10.8.7 NMAC, 01/16/2019]

4.10.8.8 ARCHAEOLOGICAL INVESTIGATIONS UNDER A GENERAL PERMIT:

The CPRC issues, with the concurrence of the state archaeologist and the SHPO, a general permit to qualified institutions to conduct archaeological investigations on state land. Three types of investigations may be performed under a general permit: survey, test excavation, and monitoring. The applicant indicates on the application form the type or types of archaeological investigations requested at the time of the application. Archaeological investigations conducted under a general permit on state trust land are limited to investigations conducted under contract to an individual, organization or company undertaking exploration, construction, development or other ground-disturbing activities authorized by rights of way, easements, leases or other written permission to enter state trust land issued by the commissioner of public lands.

A. Survey. Surveys may be conducted under a general permit when applicants propose to identify, record, evaluate and interpret cultural resources and relocate, update records and evaluate previously identified cultural resources in accordance with the standards for survey in 4.10.15 NMAC.

B. Test excavation. Test excavation may be conducted under a general permit when the applicant proposes to implement the test excavations in accordance with a test excavation plan approved by HPD and the state agency archaeologist, if applicable, and prepared in conformance with 4.10.16 NMAC.

C. Monitoring. Monitoring may be conducted under a general permit when applicants propose to:

(1) supervise implementation of site avoidance or protection measures pursuant to 4.10.17 NMAC; or

(2) oversee land-disturbing projects though a site or area of historic and scientific interest following a monitoring plan approved by HPD and the state agency archaeologist, if applicable, and prepared in conformance with 4.10.17 NMAC.

[4.10.8.8 NMAC - Rp, 4.10.8.8 NMAC, 01/16/2019]

4.10.8.9 GENERAL PERMIT APPLICATION:

General permits are issued for a three-year cycle. The applicant may obtain a general permit application form and instructions from HPD's website or may request them from HPD. The applicant shall complete the application consistent with this rule, provide the attachments described in this section and on the application form and maintain current agreements with ARMS and MIAC.

A. A general permit application for archaeological investigations on state land shall include the following information:

(1) applicant name, mailing address, telephone number and email address;

(2) the type(s) of archaeological investigations proposed to be performed under the permit (survey, test excavations, monitoring, or any combination thereof);

(3) a staff roster indicating the following information:

(a) individuals currently listed in the SHPO directory that the applicant proposes to use in a supervisory capacity such as principal investigator, project director, supervisory archaeologist, and historic archaeologist during permitted archaeological investigations;

(b) other staff, such as crew members and laboratory personnel, cultural anthropologists, historians and other historic preservation specialists;

(4) individuals who are not in the SHPO directory shall submit SHPO directory application forms, curriculum vitae, charts of experience and official transcripts or notarized diplomas;

(5) continuing education credit documentation and updated curriculum vitae for individuals on the staff roster who are listed in the SHPO directory and who elect to report their continuing education credits along with their principal employer's permit (see Subsection B of 4.10.8.15 NMAC); and

(6) applicant's signature, title and date, which may be submitted with original signature or signature transmitted by facsimile; or a scanned applications with the original signature transmitted by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

B. Attachments. The applicant shall include the following attachments with each application submittal. A hard copy of the attachments must be provided with the first three-year permit application. Thereafter, attachments can be provided electronically to HPD. Any changes from what is on file must be clearly noted in the application.

(1) **A summary of organizational experience.** This summary shall demonstrate the applicant's capability to accomplish the type and scope of archaeological investigations to be conducted under the permit and shall include but not be limited to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects.

(2) **Forms.** Copies of field recording, laboratory and in-field artifact analysis forms to be used during surveys and inventories.

(3) Test excavation standards. Applicants that request authorization to conduct test excavations shall include discussion of standard field and laboratory procedures consistent with the standards in 4.10.16 NMAC and submit copies of field forms to be used during the test excavations.

(4) Current permits. The applicant shall provide a list of permits for archaeological investigations currently held by the applicant including permit number and agency. A hard copy of the attachments must be provided with the first three -year permit application. Thereafter, attachments can be provided electronically to HPD. Any changes from what is on file must be clearly noted in the application.

C. Agreements. The following agreements shall be in place prior to issuance of a general archaeological investigation permit.

(1) ARMS agreement. The applicant shall have an account in good standing with ARMS for access to NMCRIS on or before submittal of the permit application. HPD shall verify the status of the account with ARMS.

(2) Curation agreement. The applicant shall provide a current curation agreement, if one is not already on file with MIAC. HPD shall verify the status of the account with MIAC.

D. General permit term.

(1) The term for a general permit is three calendar years, beginning on the date of approval by the CPRC to December 31 of the same year, continuing through the two next calendar years and concluding on December 31 of the third year.

(2) During the transition from annual to three-year general permits, applicants will be separated into groups to facilitate HPD's administration of the program. In the first year, all applicants will be assigned to one of three groups based on the permit number assigned during the initial application. The first group will comprise permit numbers 001-100. The second group will comprise permit numbers 101-200 and the third group will comprise the remaining permits beginning with number 201. Applicants in the first group will be eligible for three-year general permits starting 2020; applicants in the other two groups will be eligible for annual permits. First time applicants will be eligible for a three-year permit after the effective date of this rule. In 2021, the second group and first-time applicants will be eligible for three-year general permits; the third group will be eligible for annual permits. In 2022, the third group and all other applicants will be eligible for three-year general permits. Thereafter, all general permit applicants will be eligible for three-year general permits. For applicants issued an annual permit in 2020 or 2021, the CPRC waives the requirement to submit the attachments in Subsection B of this section during this transition period as long as HPD has an organizational summary on file.

E. An approved application may have special stipulations imposed by the CPRC, taking into consideration comments from committee members, the state archaeologist and the SHPO.

F. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating their concurrence with the issuance of the permit.

[4.10.8.9 NMAC - Rp, 4.10.8.12 NMAC, 01/16/2019]

4.10.8.10 ARCHAEOLOGICAL INVESTIGATIONS UNDER A PROJECT-SPECIFIC PERMIT:

The CPRC issues project-specific permits, with the concurrence of the state archaeologist and the SHPO, and the commissioner of public lands for archaeological investigations on state trust lands or the representative of the state agency with jurisdiction for other state lands. The applicant indicates on the project-specific application form the type or types of archaeological investigations proposed and submits a research design or monitoring plan approved by the state agency archaeologist or HPD, as applicable, and prepared in conformance with 4.10.15 NMAC, 4.10.16 NMAC, or 4.10.17 NMAC, as appropriate.

A. Survey. Project-specific permits are required for applicants who propose to:

- (1) conduct sample, thematic or other research surveys;
- (2) substitute alternate field methods for the standards in 4.10.15 NMAC; or
- (3) perform surveys of state trust land undertaken independent of an activity authorized by rights-of-way, easements, leases or other authority to enter state trust land.

B. Test excavation. Project-specific permits are required when applicants:

- (1) propose to substitute alternate test excavation methods for the standards in 4.10.16 NMAC including metal detection and collection of artifacts or ground penetrating radar and verification tests, or other technologies;
- (2) propose research-driven test excavation on state trust land undertaken independent of an activity authorized by rights-of-way, easements, leases or other authority to enter state trust land;
- (3) propose research-driven test excavation conducted over multiple years; or
- (4) do not have a general permit that includes authorization for test excavation.

C. Excavation. Project-specific permits and individual unmarked human burial permits are required for all excavation projects unless the site to be excavated is historic and burials are unlikely. Excavation involves disturbance of the ground within an archaeological site in excess of limited tests and test excavation or may be performed as part of a data recovery program designed to mitigate adverse effects of projects, as part of an academic program to train students in a field school, field studies for a thesis or dissertation, or other research involving the excavation of a site or area of historic and scientific interest.

D. Monitoring. Project-specific permits are required for monitoring when applicants:

- (1) do not have a general permit that includes authorization for monitoring; or
- (2) propose to substitute alternate methods for the standards in 4.10.17 NMAC.

E. Unmarked human burial excavation. The CPRC issues individual permits to applicants who propose to excavate unmarked human burials on state or private land. An individual permit must be obtained concurrently with a project specific permit for excavation unless the site to be excavated is historic and burials are unlikely. Unmarked human burial permits are issued pursuant to rule 4.10.11 NMAC.

F. Mechanical excavation of archaeological sites on private land. The CPRC issues mechanical excavation permits to applicants who propose to conduct archaeological test excavation or excavation at a site on private land using mechanical earth-moving equipment. An individual unmarked human burial excavation permit must be obtained concurrently with a mechanical excavation permit unless the site is historic and burials are unlikely. Individual unmarked human burial permits are issued under rule 4.10.11 NMAC. Mechanical excavation permits are issued under rule 4.10.14 NMAC.

[4.10.8.10 NMAC - Rp, 4.10.8.9 NMAC, 01/16/2019]

4.10.8.11 PROJECT-SPECIFIC PERMIT APPLICATION:

The applicant may obtain project-specific permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD. Each archaeological investigation conducted for a different firm or for a different research project requires a separate project-specific permit.

A. The project-specific permit application shall include the following information:

- (1) applicant name, mailing address, telephone number and email address;
- (2) the type(s) of archaeological investigations requested (sample, thematic or other surveys, test excavation, excavation, monitoring, or any combination thereof);

(3) a staff roster indicating the following information:

(a) supervisory personnel who will be acting or expected to act in the capacity of principal investigator, project director, supervisory archaeologist, or biological archaeologist during permitted archaeological investigations and who are listed in the SHPO directory;

(b) other staff, such as crew members and laboratory personnel, cultural anthropologists, historians and other historic preservation specialists; and

(4) individuals who are not listed in the SHPO directory that the applicant proposes to employ in a supervisory capacity during the permitted archaeological investigations along with SHPO directory application forms, curriculum vitae, charts of experience and official transcripts or notarized diplomas; and

(5) the applicant's signature, title and date, which may be submitted with original signature, or signature transmitted by facsimile, or a scanned application with the original signature transmitted by electronic mail; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

B. The applicant shall complete the application consistent with this rule and include the attachments required for the project-specific permit as specified below and on the application.

(1) **Surveys.** Prepare a research design that adheres to 4.10.15 NMAC. The research design may adopt the survey standards detailed in 4.10.15 NMAC or may propose alternate standards that shall be fully detailed, discussed and justified in the research design. For thematic, reconnaissance, sample, or other types of research surveys, the research design shall specify the purpose and rationale supporting the survey strategy and approach.

(2) **Test excavation.** Prepare a research design that adheres to 4.10.16 NMAC. The research design may adopt the excavation standards detailed in 4.10.16 NMAC or may propose alternate standards that shall be fully detailed, discussed and justified in the research design. Excavation of unmarked human burials is prohibited during testing.

(3) **Excavation.** Prepare a research design that adheres to 4.10.16 NMAC and apply for an individual unmarked human burial excavation permit for all excavation projects (4.10.11 NMAC) unless the site(s) to be excavated is historic and unmarked human burials are unlikely. The research design may adopt the excavation standards detailed in 4.10.16 NMAC or may propose alternate standards that shall be fully detailed, discussed and justified in the research design.

(4) **Monitoring.** Prepare a monitoring plan that adheres to 4.10.17 NMAC.

(5) A summary of organizational experience. If a current organizational summary is not already on file at HPD, the applicant shall provide a discussion that demonstrates the applicant's capability to accomplish the type and scope of archaeological investigations proposed to be completed under the permit and shall include but not be limited to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent, facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects; and a list of permits currently held by the applicant including permit number and agency.

(6) Forms. Copies of field, laboratory and analysis forms or examples of data tables expected to be used during the permitted work.

C. ARMS agreement. The applicant shall have an account with ARMS for access to NMCRIS on or before submittal of the permit application. HPD shall verify the status of the account with ARMS.

D. Curation agreement. The applicant shall obtain a current curation agreement from MIAC if a current agreement is not on file. HPD shall verify the status of the account with MIAC. If the applicant proposes another repository, the applicant shall append a copy of the curation agreement with that facility pursuant to 4.10.8.19 NMAC and provide a justification for using a facility other than MIAC as a repository.

E. Project-specific permit term.

(1) The term of a project-specific permit is usually for one year from the date of approval by the CPRC unless state trust lands are involved, in which case the term of the permit is from the date of approval by the commissioner of public lands. The applicant may request a longer term. The CPRC may approve a longer term based on the nature or complexity of the proposed work and sufficiency to complete the field studies, analyses and report as determined by the CPRC. The term shall not exceed three years including extensions.

(2) For project-specific permits with a term longer than one year, the permittee shall submit an annual progress report to the CPRC that summarizes the permitted work, even if no progress has been made, for each year for the term of the permit, excluding the year in which the final report is submitted. Failure by a permittee to submit an annual progress report may result in suspension of the permit and may be cause for the CPRC's denial of future permits in conformance with 4.10.8.23 NMAC.

F. An approved application may have special stipulations imposed by the CPRC, taking into consideration comments by committee members, the state archaeologist, the SHPO and the commissioner of public lands or the representative of the state agency with jurisdiction, as appropriate to the success of the project.

G. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating concurrence with the issuance of the permit and signature of the commissioner of public lands if state trust lands are involved. If the application for a project-specific permit involves state agency lands other than state trust lands, the state agency may concur by signing the permit but the state agency's signature is not required.

[4.10.8.11 NMAC - Rp, 4.10.8.13 NMAC, 01/16/2019]

4.10.8.12 PERMIT STIPULATIONS:

A. Permittees shall abide by all stipulations contained in this rule and any special stipulations imposed by the CPRC, the state archaeologist, the SHPO and the commissioner of public lands or the state agency as appropriate. These additional stipulations shall be set out in writing on the permit, or as an attachment to the permit.

B. Stipulations for all permits issued by the CPRC are described below.

(1) Permittees shall determine the land status of the archaeological investigation to ensure the work will not be in trespass and that they are in compliance with local, state or federal laws. The permittee is responsible for obtaining an easement or other written permission from the commissioner of public lands for archaeological investigations on state trust land and complying with all rules and regulations of the state land office relating to such easement or other permission.

(2) Permits are not exclusive in character. The state land office or the state agency reserves the right to use the subject tracts of land, or any part thereof, for any purpose within the administrative and legal jurisdiction of the state agency or state land office. The CPRC, in cooperation with the state agency and state land office, reserves the right to permit other archaeological investigations within the permit or easement area.

(3) All costs incurred in the execution of the activities conducted under a permit shall be borne by the permittee or the permittee's client or sponsor.

(4) The permittee shall comply with all laws, rules, ordinances and requirements in all matters and things affecting the premises and operations therein pertaining to the permit, archaeological site and the land where the site is located.

(5) All activities conducted under the permit shall be carried out so as to prevent erosion of the land, pollution of water resources and any other damage to the natural environment. Any sites or locations that are disturbed in the course of the archaeological investigations conducted under the permit shall be restored to their original condition insofar as possible. The areas of limited tests, test excavations and excavation shall be backfilled. All areas examined under the permit shall be left in a

state that will not create hazard to life nor endanger livestock or other property, nor contribute to the deterioration of the site or location or adjacent lands by natural forces, unless other provisions are specifically approved in the permit.

(6) If unmarked human burials are discovered during the archaeological investigations, local law enforcement shall be notified pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

(7) Title to any mined or processed precious metals or treasure trove found on state trust land and in the area covered by the permit or easement is held by the commissioner of public lands and such materials shall not be disturbed or removed without specific written permission from the CPRC and the state land office. Such authorized removal shall be recorded and undertaken in the presence of the state archaeologist, the state historian or their designees.

C. Failure by a permittee to comply with the standard or special stipulations set forth in this rule and on the permit shall be cause for the CPRC's denial of future permits to the permittee in conformance with 4.10.8.23 NMAC.

[4.10.8.12 NMAC - Rp, 4.10.8.14 NMAC, 01/16/2019]

4.10.8.13 PROFESSIONAL QUALIFICATIONS STANDARDS:

Investigations on state land shall be performed by historic preservation professionals who have the academic background and professional experience to apply the theories, methods and practices of the discipline to enable independent, professional judgments to be made about the identification, evaluation, documentation, registration and treatment of cultural properties in New Mexico. Except as provided otherwise in this section, the CPRC adopts and applies the SOI standards when determining whether an applicant is able to perform competent, professional work in one or more of the historic preservation disciplines in New Mexico. The SOI standards define the academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in the discipline. In addition, the CPRC requires that the total professional experience include a minimum of 12 months of professional experience with cultural resources in New Mexico.

A. Archaeology. Archaeology is the study of past human lifeways through the systematic observation, analysis and protection of the material remains of human activities. The CPRC combines professional experience with archeological resources of the prehistoric and historic periods when determining whether an individual meets the minimum professional experience requirements for listing in the SHPO directory as principal investigator, project director or supervisory archaeologist.

(1) Principal investigator and project director. Archaeologists serving as principal investigators or project directors shall meet the SOI standards for academic

degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in prehistoric archaeology. The total professional experience shall include at least 12 months experience with archaeological resources in New Mexico at the supervisory level. The 12 months of experience shall demonstrate a relatively equal combination of archaeological fieldwork, laboratory analysis, report writing, as well as administrative or management experience. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the archaeological resources of New Mexico.

(2) Supervisory archaeologist. Archaeologists serving as crew chiefs, field supervisors or field directors shall have a bachelor's degree in anthropology or archaeology or a degree in a closely related field as determined by the CPRC; at least one archaeological field school or 30 days of full-time excavation experience in lieu of the field school; and 12 months of professional experience with archaeological resources in New Mexico. The 12 months of experience shall demonstrate relatively equal combination of archaeological fieldwork, laboratory analysis and report writing. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the archaeological resources of New Mexico.

(3) Field crew. Archaeologists serving as field crew including assistant archaeologists and archaeological technicians shall work at all times under the direct, physical supervision of a principal investigator, project director or supervisory archaeologist.

(4) Historic archaeology. Historic archaeology is a specialization in archaeology that requires expertise in historic period sites and techniques of archival research. Historic archaeologists shall meet the SOI standards for academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in historic archaeology. The total professional experience shall include at least 12 months working with historic period archaeological sites and related resources in New Mexico. The experience in New Mexico shall include field and archival research, analysis and report writing. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the historic period resources in New Mexico.

(5) Biological archaeology. Biological archaeology is a specialization in archaeology that requires expertise to record and interpret observations on human skeletal and dental remains to provide information on the biology and health of the people of New Mexico. Biological archaeologists shall meet the standards in 4.10.11 NMAC for academic degrees or comparable training and professional experience. Biological archaeologists shall have advanced training in human osteology or equivalent experience and a demonstrated ability to collect and record observations systematically

on human skeletal and dental remains, including fragmentary remains, analyze the remains, and prepare reports.

B. Architectural history. Architectural history is the study of the development of building practices through written records and design and the examination of structures, sites and objects in order to determine their relationship to preceding, contemporary and subsequent architecture and events. Architectural historians shall meet the SOI standards and shall include at least 12 months of experience in documenting the historic resources of New Mexico. Experience shall include research, writing, or teaching in New Mexico architectural history or restoration architecture.

C. Historic architecture. Historic architecture is the practice of applying artistic and scientific principles to the research, planning, design and construction management of the built environment with specialized training in the principles, theories, concepts, methods and techniques of preserving historic buildings and structures. Professionals in historic architecture shall meet the SOI standards and shall include at least 12 months experience in New Mexico. Experience shall include detailed investigations of historic structures, preparation of historic structure research reports and preparation of plans and specifications for preservation projects.

D. Historic landscape architecture. Historic landscape architecture is the practice of applying artistic and scientific principles to the research, planning, design and construction administration of cultural landscapes and built environment landscapes with specialized training in the concepts, principles, theories, methods and techniques of preserving cultural landscapes. Professionals in historic landscape architecture shall meet the SOI standards and shall include at least 12 months in research, documenting and analysis of the historic and cultural landscapes of New Mexico and the development of landscape plans and specifications for landscape preservation projects.

E. History. History is the study of the past through written records, oral history and material culture and the examination of that evidence within a chronological or topical sequence in order to interpret its relationship to preceding, contemporary and subsequent events. Historians shall meet the SOI standards and shall include at least 12 months in documenting the historic resources of New Mexico. Experience shall be demonstrated through research, writing, teaching, and interpretation of documents.

F. Cultural anthropology. Cultural anthropology is the description and analysis of cultural systems, which include systems of behaviors (economic, religious and social), values, ideologies and social arrangements. Cultural anthropologists shall meet the SOI standards and shall include at least 12 months of experience relevant to the understanding of ethnographic resources of New Mexico. Professional experience shall include experience in the use of ethnohistoric and ethnographic techniques including participant observation fieldwork among one or more contemporary ethnic groups and field surveys to identify and assess ethnographic resources that include historic and cultural places, and environmental features and places of value to Native American or other ethnic communities.

G. Exceptions.

(1) The CPRC reserves the right to consider the education, training and professional experience of any individual in exceptional situations and on a case-by-case basis when the individual's academic degrees or comparable training, professional experience and their products and activities together demonstrate exceptional proficiency in the appropriate discipline or position.

(2) The CPRC may approve the participation of individuals to conduct field studies on state land without the direct supervision of a principal investigator, project director or supervisory archaeologist in exceptional situations and on a case-by-case basis when the studies are performed under a project-specific permit. Graduate students completing field work for a dissertation or thesis or volunteers documenting rock art under the aegis of an archaeological society may qualify for this exception. Individuals qualifying for the exception are not listed in the SHPO directory.

[4.10.8.13 NMAC - Rp, 4.10.8.10 NMAC, 01/16/2019]

4.10.8.14 SHPO DIRECTORY:

The SHPO shall maintain a directory of historic preservation professionals including but not limited to individuals who act in the capacity of principal investigator, project director, supervisory archaeologist, historic archaeologist, biological archaeologist, architectural historian, historic architect, historic landscape architect, historian, or cultural anthropologist, or who meet the SOI standards in another historic preservation discipline. The CPRC reviews the SHPO directory application form and materials specified in this section to determine whether an applicant meets the standards in 4.10.8.13 NMAC.

A. In order to be listed in the SHPO directory, individuals shall submit a SHPO directory application form, curriculum vitae, chart of experience for archaeological, cultural anthropology and historic architecture positions, transcripts or copy of diploma, and work samples as specified below to HPD. A chart is not required for all disciplines but shall be prepared to supplement an application when requested by the CPRC.

(1) **SHPO Directory Application form.** The applicant shall complete a SHPO directory application form for each discipline for which an individual requests listing. The application form can be downloaded from HPD's website or obtained from HPD upon request and shall include but not be limited to the following information:

- (a) applicant name, address and telephone number, email;
- (b) employer name, employer address, employer phone number, employer email;
- (c) highest degree obtained, field of study, institution, year of degree;

- (d) license number and date of New Mexico architectural license for historic architects;
- (e) for archaeology, the position for which the applicant is applying;
- (f) number of years full-time professional experience
- (g) number months of New Mexico experience; and
- (h) short statement of qualifications (for guidance see SOI standards);
- (i) signature.

The applicant shall certify that the information contained in the application form is true and complete through an original signature on the application submitted by mail, an application with original signature transmitted by fax or a scanned application with the original signature transmitted by email. Applications lacking a signature shall be considered incomplete.

(2) Curriculum vitae. Curriculum vitae shall demonstrate the qualifications and professional experience following the guidance provided in the SOI standards. Curriculum vitae shall contain, at a minimum, the following information:

- (a) name, address, telephone number, and email;
- (b) education (date of degree, degree held, institution issuing the degree, and major and minor fields of study);
- (c) professional experience by month and year with exact dates, if possible; list experience by employer and include position held and responsibilities, project name and location, types of resources documented and types of activities including but not limited to types of archaeological investigations (survey, testing, excavation, monitoring, excavation of burials), historic building survey, preparation of plans and reports, historic structure reports, and register nominations;
- (d) publications and unpublished reports;
- (e) papers presented;
- (f) training; and
- (g) references.

(3) Chart of experience for archaeology and cultural anthropology. Charts shall summarize experience and shall be on file at HPD. It shall be the responsibility of the individual to provide an updated chart with each new application.

Experience shall be demonstrated in number of days, with one day equaling a minimum of 6 hours within a 24-hour work period or months; with one month equaling 20 days. Separate charts shall be prepared for experience in New Mexico, experience relevant to the cultural resources of New Mexico, and other experience. Charts can be downloaded from HPD's website or obtained upon request. Charts for archaeology and cultural anthropology shall contain the following columns of information:

- (a) project name;
- (b) location by county and state;
- (c) position held (principal investigator, supervisory archaeologist, crew member, analyst, etc.);
- (d) specific type of experience (survey, field research, archival research, excavation of archaeological sites or burials, oral history, laboratory work, and report writing);
- (e) total number of months experience listed by project; and
- (f) total number of months at the bottom of the chart for each type of experience.

(4) Chart of experience for historic architecture. Charts shall summarize experience and shall be on file at HPD. It shall be the responsibility of the individual to provide an updated chart with each new application. Experience shall be demonstrated in number of days, with one day equaling a minimum of 6 hours within a 24-hour work period or months; with one month equaling 20 days. Separate charts shall be prepared for experience in New Mexico, experience relevant to the cultural resources of New Mexico, and other experience. Charts can be downloaded from HPD's website or obtained upon request. Charts for historic architecture shall contain the following columns of information:

- (a) project name and owner;
- (b) location by county and state;
- (c) employer and position held on the architectural and engineering (AE) team;
- (d) specific type of experience (project or report description, design and construction);
- (e) total number of months experience listed by project; and

(f) total number of months experience at the bottom of the chart for each activity and project.

(5) Transcripts and diplomas. An official university or college transcript or a notarized copy of the diploma for the highest degree in the appropriate discipline shall be submitted with the SHPO directory application. Transcripts shall be submitted only once and at the time of the initial application under this rule, unless an individual is updating their educational experience and degrees obtained. It shall be the responsibility of the individual to provide an official transcript or notarized copy of the diploma if a higher degree is obtained after the initial application. HPD shall retain all submittals in the SHPO directory files.

(6) Work Samples for history and architectural history. Provide the following work samples of your experience documenting cultural resources in New Mexico for history and architectural history.

(a) at least three HCPI forms;

(b) detailed architectural description; submit no more than 10 pages as a sample of work; and

(c) contextual history based on primary sources for an architectural or historic resource taken from a cultural resources report, state or national register nomination, professional paper or other related document where you were the principal author; submit no more than 10 pages as a sample of work.

(7) Work Samples for Historic Architecture.

(a) site plans, plans, and elevations prepared for a historic restoration or rehabilitation project; submit three sheets for review; and

(b) historic structure report or similar document assessing the historical significance of a structure and providing recommendations for treatment; submit no more than 10 pages of each document, to demonstrate a representative sample of work; include a table of contents if applicable.

B. Submit all documentation electronically to nm.shpo@state.nm.us. HPD shall review the SHPO directory application and documentation for sufficiency, accuracy and consistency with the minimum standards in this section and in 4.10.8.13 NMAC. A submission that does not contain the required documentation or lacks signatures will be considered incomplete. HPD shall inform the applicant of omissions or clarifications necessary to complete the application.

C. If the documentation is sufficient, accurate and consistent with the minimum standards, HPD shall forward the request to the CPRC at the next meeting for approval

or denial. If approved, the individual's name will be listed in the SHPO directory for the discipline and position or positions approved for which the individual applied.

D. Listing in the SHPO directory demonstrates that the individual meets the standards for the discipline set forth in 4.10.8.13 NMAC. Listing does not authorize an archaeologist to work on state land unless the individual is listed on a staff roster of a current general or project-specific permit.

E. Once an individual has been approved for listing in the SHPO directory, they may be listed on the staff roster for a new general or project-specific permit or may be added to an existing permit without additional CPRC review by requesting a permit modification. To be added to an existing permit, an authorized representative of the permittee such as the permit coordinator, principal investigator or signatory on the general permit or project-specific permit, shall request the addition from HPD. HPD will confirm that the individual is listed in the SHPO directory and add the individual's name to the staff roster. An updated permit will be sent to the permittee via email to show the personnel addition.

[4.10.8.14 NMAC - Rp, 4.10.8.11 NMAC, 01/16/2019]

4.10.8.15 CONTINUING EDUCATION CREDITS; UPDATED CURRICULUM VITAE:

A. Individuals listed in the SHPO directory must continue to develop their professional knowledge and technical skills to maintain their listing in the SHPO directory. Individuals shall complete a minimum of 24 hours of professional development or training every three years for each discipline group: archaeology, cultural anthropology, and historic preservation (history, architectural history, historic architecture, historic landscape architecture and other historic preservation disciplines). The reporting period for continuing education credits starts in the calendar year the CPRC approves the SHPO directory listing and concludes on December 31 of the third year, continuing every three-year period thereafter.

B. Archaeologists with a principal employer and listed on the employer's general permit staff roster may elect to submit their continuing education credit documentation along with their employer's general permit application. If necessary, the individual's continuing education credit hours will be increased or decreased to fit the employer's three-year permit cycle administratively by HPD.

C. Individuals listed in more than one discipline group may elect to submit their continuing education credit documentation separately by discipline in different three-year cycles or together in one three-year cycle. If necessary, the individual's continuing education credit hours for one or more disciplines will be increased or decreased as needed administratively by HPD.

D. Individuals may obtain professional training and development through courses and workshops offered by the CPRC, HPD, professional archaeological and historical societies or associations, museums and other entities including classes at universities and colleges or through presentations or attendance at national, regional or local conferences. The CPRC's continuing education credit guidelines are available on HPD's website at <http://nmhistoricpreservation.org> or its successor site.

E. Individuals listed in the SHPO directory shall submit a continuing education cover sheet, updated curriculum vitae, and documentation of professional development to HPD every three-year cycle consistent with the requirements of this section.

(1) Evidence of training or professional development shall be summarized on the continuing education cover sheet for each discipline group. The cover sheet includes the individual's name, address, phone number, email, brief description of the activity, vendor, date, location, number of hours and a justification if the activity is not specifically listed in the CPRC's guidelines. Individuals shall document the professional development by including proof of registration, attendance or participation for each activity listed to the extent possible. The individual shall certify the information is true and complete by signing and dating the cover sheet.

(2) The updated curriculum vitae shall present a listing of professional experience, professional training and development, publications, unpublished reports and papers presented since the last submittal. A new, comprehensive curriculum vitae to replace the curriculum vitae on file with HPD may be submitted in lieu of an updated curriculum vitae.

F. Individuals shall continue to be listed in the SHPO directory as long as the individual documents the minimum 24 hours of professional development for every three-year cycle for each discipline group, provides the updated or new curriculum vitae every three years, and has not been removed from the SHPO directory. Individuals may request that their name be removed from the SHPO directory at any time.

G. Individuals who do not complete the minimum 24 hours of continuing education credits or provide an updated curriculum vitae for each listed discipline group every three years shall be removed from the SHPO directory at a CPRC meeting. The individual may reapply for listing on the SHPO directory by submitting a new SHPO directory application and materials consistent with 4.10.8.14 NMAC and providing documentation of 24 hours of continuing education credits. Prior approval for listing on the SHPO directory does not guarantee CPRC approval of a new application.

H. HPD shall review all continuing education credit documentation and updated or new curriculum vitae for conformance with the CPRC's guidelines. Any questions or concerns regarding an individual's continuing education credits or curriculum vitae shall be presented to the CPRC at the next regularly scheduled meeting.

4.10.8.16 REVIEW AND APPROVAL OF PERMIT AND SHPO DIRECTORY APPLICATIONS:

A. HPD shall receive permit and SHPO directory applications including attachments and maintain current files for each permittee and individual listed in the SHPO directory.

B. HPD shall review all information submitted in support of the permit or SHPO directory application for completeness, accuracy and conformance with all requirements. HPD shall attempt to contact the applicant to remedy any inaccuracies or inadequacies before further review or processing of the application. HPD shall submit all complete applications for consideration by the CPRC at the next scheduled CPRC meeting. HPD may recommend to the CPRC that an application be tabled or rejected if the application fails to meet minimum qualifying criteria either upon initial receipt or through failure to respond adequately to a request for information or correction of inaccuracies. When applicable and for project-specific permit applications only, HPD shall advise the CPRC on whether agency consultation with SHPO under federal or state law is complete or nearly complete.

C. The CPRC shall review and consider all applications for approval, approval with special stipulations or denial, with the concurrence of the state archaeologist and the SHPO. The CPRC may table applications to be discussed at a future meeting pending receipt of additional information necessary to make a decision on the application or, for project-specific permit applications, when consultation with SHPO under federal or state law is not substantially complete.

D. Any special stipulations attached to a permit by the CPRC, the state archaeologist or the SHPO shall be specified in writing on or in an attachment to the permit. The CPRC may include special stipulations at the written request of a state agency or commissioner of public lands if received prior to the CPRC's decision to approve the permit.

E. Signature of the chair of the CPRC indicates approval of the permit by the CPRC. Signatures of the state archaeologist and the SHPO indicate concurrence with the approval of the permit.

F. If the application for a project-specific permit involves state trust lands and the permit application has been signed by the CPRC, the state archaeologist and the SHPO, HPD shall forward the permit application to the commissioner of public lands for approval or denial. The applicant shall be required to obtain an easement or other written permission from the state land office as a condition of the commissioner of public lands approving the permit. The state land office shall forward to HPD the permit with any additional stipulations, once the application has been approved by the commissioner of public lands. Signature of the commissioner of public lands indicates approval of the permit. The permit is not valid without the signature of the commissioner of public lands. If either the permit or an application for an easement or other written permission to enter state trust lands has been denied by the commissioner of public

lands, the state land office shall inform HPD of this fact in writing, and HPD shall notify the CPRC of the commissioner's decision.

G. The CPRC may deny a permit or SHPO directory application for any reason, including but not limited to, incomplete applications, insufficient experience, the lack of at least one principal investigator on the staff roster of the permit, or failure to demonstrate that a permit applicant is a qualified institution.

H. HPD shall notify the applicant in writing of the approval, approval with conditions or stipulations, or denial by the CPRC.

I. Any applicant who has been denied approval shall have the right to appeal the decision pursuant to 4.10.8.24 NMAC.

[4.10.8.16 NMAC - Rp, 4.10.8.15, 01/16/2019]

4.10.8.17 MODIFICATION OF PERMITS:

A. A permittee may request a modification to a permit at any time. The permittee shall submit a written request of the proposed permit modification to HPD and concurrently to the state agency archaeologist, if the state agency has one and the modification affects permit activities on state land under their jurisdiction. The request shall be approved or denied by the CPRC or HPD as specified in this section, taking into consideration comments provided by the state trust archaeologist or state agency archaeologist.

B. The CPRC shall review requests for a permit modification that propose a significant or substantive change in the scope of work, a change in the curatorial facility to a facility other than MIAC, and all other modifications that are not subject to administrative action by HPD as specified below in Subsection C of 4.10.8.17 NMAC.

C. HPD shall review and may approve requests for a permit modification for the following situations.

(1) If the modification to the permit involves adding individuals who are listed in the SHPO directory in the same position or deleting individuals from the permit staff roster, HPD shall review and approve the request within five working days of receipt of the request.

(2) If the archaeological investigation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period specified on the permit, the permittee shall write HPD and request an extension of the term of the permit. This request shall be received by HPD at least 10 working days prior to the expiration date of the permit to be considered. The request for the extension shall be accompanied by an interim report summarizing the excavations completed at that date and a proposed date when the excavations will be completed and when the final report will be

submitted. HPD may approve one extension of the permit term not to exceed one year from the expiration date of the original permit. Additional requests for an extension will be reviewed by the CPRC.

(3) When a permittee notifies HPD of a change in a permittee's business address or facilities, HPD shall acknowledge receipt of the change within five working days and update the permittee's records.

(4) HPD may approve minor adjustments to the investigation that do not result in a reduction of the scope of work. HPD shall notify the permittee of its decision within 10 working days of receipt.

(5) If the archaeological investigation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify HPD in writing to request a cancellation of the permit. Disposition of material remains collected under the permit and copies of all written and photographic records resulting from a discontinued investigation shall be in accordance with 4.10.8.19 NMAC and the provisions of this section. The permittee shall obtain a receipt showing that the collections and records have been submitted to the repository and shall upload a copy of the receipt in NMCRIIS. HPD shall document the cancellation in the permit files.

D. If fieldwork has not been initiated within the permit period or an extension has not been requested before the expiration of the permit, the permit shall become void at the end of the permit period.

[4.10.8.17 NMAC - Rp, 4.10.8.16 NMAC, 01/16/2019]

4.10.8.18 REVIEW OF REPORTS:

All permittees are required to submit a final written report. In all cases the reports shall be submitted to the state agency or agencies and HPD for review and comment as specified in this section. For archaeological investigations conducted on state trust lands, the commissioner of public lands may condition release of the permittee's bond upon the commissioner's approval of the final report.

A. Reports on the archaeological investigations shall be prepared and submitted consistent with the standards set forth as appropriate in 4.10.15 NMAC, 4.10.16 NMAC, and 4.10.17 NMAC. The state agency may establish additional reporting requirements and may request additional copies of the reports, forms, appendices and attachments. Reports shall be submitted simultaneously to HPD and the state agency when the agency does not have a staff archaeologist or a historic preservation professional.

(1) Preliminary reports. If required by the state agency, the permittee may prepare a preliminary report and submit one copy to the state agency archaeologist or historic preservation professional within 60 days of completing the field studies. The state agency archaeologist or historic preservation professional shall forward a copy of

the preliminary report to HPD. If the state agency does not have an archaeologist or historic preservation professional on staff, the permittee shall submit one copy of the preliminary report to the HPD for review and comment. The permittee shall make a good faith effort to address any comments from the state agency and HPD and shall revise and resubmit the report to the state agency or HPD, as appropriate.

(2) Final reports. The permittee shall prepare and submit at least one copy of the draft and final report including site forms, appendices and attachments to the state agency archaeologist or historic preservation professional for review and acceptance with recommendations of eligibility and effect if applicable. If the state agency does not have an archaeologist or historic preservation professional on staff, the permittee shall submit the draft final report, appendices and attachments simultaneously to HPD and the state agency for review and acceptance with recommendations of eligibility and effect if applicable. The permittee shall make a good faith effort to address agency and HPD comments and shall revise and resubmit the report to the state agency or HPD, as appropriate.

(3) If HPD has not received a copy of the final report within 12 months of the permittee obtaining the NMCRIS investigation number, HPD may contact the permittee to determine the status of the report and project. HPD may request the permittee to submit one copy of the final report to HPD, or if the final report cannot be submitted within this time period, the permittee shall propose a new completion date for the final report. HPD, in consultation with the state agency, shall establish a new deadline for submittal. If agreement cannot be reached, the CPRC will consider the matter.

B. All reports, forms, appendices and attachments shall be reviewed by HPD for technical accuracy and completeness and concurrence with eligibility and effect if applicable. Upon concurrence or acceptance, HPD will direct the permittee to submit the collections, original records associated with the collections, and a copy of the approved final report to the repository within a specified time frame, if applicable. The repository will provide the permittee with a receipt showing that the collections have been submitted. The permittee shall then scan and upload a copy of the receipt and the final report in NMCRIS.

(1) If HPD review identifies that the proposed investigations were not completed according to the standards contained in 4.10.15 NMAC, 4.10.16 NMAC, or 4.10.17 NMAC, as appropriate, or not completed consistent with the stipulations contained on the approved permit, HPD will notify the state agency and permittee of the deficiencies and request that the permittee amend the report to correct the deficiencies and resubmit the report to the state agency and HPD.

(3) Failure by the permittee to conduct the permitted investigation according to standards or stipulations shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

C. Repeated failure by a permittee to submit required reports in a timely manner or in conformance with 4.10.15 NMAC, 4.10.16 NMAC, or 4.10.17 NMAC shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

[4.10.8.18 NMAC - Rp, 4.10.8.18 NMAC, 01/16/2019]

4.10.8.19 CURATION OF COLLECTIONS AND RECORDS:

All material remains collected during archaeological investigations conducted under a permit and written and photographic records resulting from an archaeological investigation, regardless of whether or not all of the work specified in the permit was completed, shall be curated consistent with this section.

A. Collections. Title to all material remains recovered from state land is held by the state of New Mexico unless the material remains are recovered from state trust land. The commissioner of public lands holds title in trust to all material remains located on state trust lands for the designated beneficiaries of the land.

(1) The museum of New Mexico is the custodian of material remains and associated records and documents recovered as a result of archaeological investigations on state land unless the CPRC designates another institution as the alternate, approved collection repository in consultation with the museum.

(2) The MIAC serves as the repository for the museum of New Mexico. If the applicant proposes another repository, the applicant shall append a copy of the curation agreement with that facility to the application along with an explanation of the purpose of using a facility other than MIAC as a repository. This request shall be reviewed by the CPRC and if approved by the CPRC and the commissioner of public lands if state trust lands are involved, shall be specified in writing on the permit as a stipulation.

(3) The commissioner has designated the museum of New Mexico as the custodian of all material remains found on lands under the jurisdiction of the state land office unless the CPRC and the commissioner of public lands approves another institution as the collections repository.

(4) In order to qualify as a custodian of material remains and associated records and documents, the repository shall meet the U.S. secretary of interior standards in 36 CFR 79.

(5) If an alternate approved collection repository with material remains and associated records from state land ceases to exist, the material remains and associated records shall be delivered to the MIAC for curation.

(6) All material remains and records pertaining to the collections to be received by the MIAC or an alternate approved repository shall be submitted in accordance with the conditions stipulated by the permittee's current curation agreement

with that facility. If the collections are not submitted in accordance with the curation agreement or an account is in arrears with the repository, the repository may notify the CPRC. This failure shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

B. Written and photographic records. ARMS manages NMCRIS and the records repository on behalf of HPD including all NMCRIS investigation records, LA archaeological site records, including site updates resulting from survey, excavation, test excavation or monitoring and associated reporting, HCPI forms, and photographic materials. These records shall be prepared consistent with the standards in the NMCRIS user's guide and submitted in accordance with 4.10.19.9 NMAC.

[4.10.8.19 NMAC - Rp 4.10.8.19 NMAC, 01/16/2019]

4.10.8.20 UNANTICIPATED DISCOVERIES:

If cultural resources are discovered after the permitted field investigations have concluded or unanticipated effects on cultural properties occur during construction or other ground-disturbing activities, all construction or other ground-disturbing activities in the vicinity of the discovery shall immediately cease and a buffer of at least 50 feet shall be established around the discovery. The state agency shall notify HPD within 24 hours of the discovery.

A. The agency, in consultation with HPD, shall evaluate the property's significance and determine appropriate actions to avoid the cultural property or recover significant information.

(1) If the discovery is in an area covered under a current permit that authorizes excavation of similar types of cultural properties, the discovery may be treated in accordance with the standards and methods outlined in the research design for the permit and the results shall either be included in the report for the permitted activity as an addendum to the report or as a separate report.

(2) For all other discoveries the state agency may request that a permittee with a valid general permit that authorizes test excavation develop a plan to protect or minimize damage to the discoveries or to excavate the features or cultural deposits that will be affected by the construction. Plans proposing excavation shall be consistent with the excavation standards in 4.10.16 NMAC and appropriate to the scale and complexity of the discoveries. Alternatively, the state agency may request that a qualified institution submit a project-specific excavation permit application and research design to HPD pursuant to Section 4.10.8.11 NMAC.

B. The state agency will review the plan and when approved shall forward it to HPD. HPD shall review the plan within 48 hours of receipt, excluding weekends and holidays. If there are any questions or concerns, HPD will work closely with the state agency and

permittee to develop a plan acceptable to the state agency and HPD. HPD shall notify the state agency and the permittee in writing when it has accepted the plan.

C. If human burials are discovered, the permittee shall notify local law enforcement pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

[4.10.8.20 NMAC - Rp, 4.10.8.20 NMAC, 01/16/2019]

4.10.8.21 PERMITTEE PERFORMANCE:

A. The CPRC, the state archaeologist, the SHPO and the state agency may assess the quality of archaeological or research work conducted or completed by a permittee at any time by conducting field visits or by reviewing reports, site forms and related materials for compliance with survey, test excavation, excavation and monitoring standards or for compliance with terms and conditions of the permit.

B. Unacceptable or substandard performance may be considered as either a minor or major deficiency and shall be documented in writing consistent with this section.

(1) Minor deficiencies. Minor deficiencies in the report or site documentation are errors that do not cause the basic findings of the report or site documentation to be questioned but indicate that the permittee was careless in assembling the report and site documentation. Minor deficiencies include, but are not limited to, minor or typographical mistakes in legal descriptions, inconsequential mistakes regarding land ownership status, improperly labeled maps, poor quality control in report preparation or preparation of NMCRIS forms, failure to submit required reports in a timely manner or in conformance with this rule, 4.10.14 NMAC, 4.10.15 NMAC, 4.10.16, NMAC, or 4.10.17 NMAC, and mistakes in the pre-field check resulting in sites or registered cultural properties not being reported within 500 m of the APE.

(2) Major deficiencies. Major deficiencies in reporting or fieldwork include but are not limited to:

(a) failure to identify registered cultural properties and previously recorded archaeological sites, historic structures and buildings and other cultural properties in the APE or project area during the pre-field records check;

(b) a pattern of failure to identify or recognize site(s) and registered cultural properties during survey;

(c) a pattern of recording a site as an isolate or a collection of isolates;

(d) a pattern of incompletely recording a site or drawing inaccurate site boundaries;

- (e) actual on-the-ground survey coverage varying from what is reported;
- (f) use of unauthorized personnel to perform fieldwork or prepare NMCRIS documentation;
- (g) providing false information;
- (h) conducting fieldwork without obtaining the appropriate permit;
- (i) a pattern of failures to submit required reports in a timely manner or in conformance with 4.10.8 NMAC;
- (j) failure to make scheduled payments to ARMS for access to NMCRIS and survey registration fees; the registrar at ARMS shall notify HPD of accounts in arrears;
- (k) failure to make payments to the curatorial facility for collections that were accepted by the repository, a pattern of submitting collections that are not accepted owing to insufficient preparation, or causing undue problems for the repository in processing the collections for curation;
- (l) failure to notify the state agency of the archaeological investigation, or not obtaining an easement or other written permission to enter state land trust lands; and
- (m) substantial or material mistakes in legal descriptions or regarding land ownership status.
- (n) failure to register the project in NMCRIS or submit digital and paper records in conformance with 4.10.19.9 NMAC.

C. HPD shall document unacceptable permittee performance by maintaining files containing, but not limited to, the following kinds of documentation:

- (1) written correspondence between HPD and the permittee documenting deficiencies in fieldwork based on field visits; deficiencies in reports, NMCRIS forms and related materials that do not adhere to the applicable standards in 4.10.8 NMAC, 4.10.14 NMAC, 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC, and 4.10.19 NMAC; or deficiencies in complying with permit terms and conditions;
- (2) written correspondence between the permittee and the state or federal agency documenting deficiencies based on field visits and reviews of reports and associated records;

(3) written documentation of deficiencies in complying with permit terms and conditions;

(4) copies of reports, site records and other site documentation, such as maps and photographs, that contain significant errors; and

(5) written documentation by a federal agency revoking an archaeological permit.

D. HPD or the state agency may request revisions to the report and site documentation to address minor or major deficiencies and shall document such requests in writing. The permittee shall submit the revised report or site documentation to HPD or the state agency. If the permittee does not provide the requested revisions, the failure shall be documented in the permittee file.

(1) If the permittee's reports and other documentation continue to contain inaccuracies, HPD and the state agency shall provide technical assistance to help the permittee correct the deficiencies by telephone call, letter, email, meetings, NMCRIS training or site visits. HPD shall attend such meetings or participate in conference calls and shall prepare a follow-up letter, addressed to the permittee and the state agency, documenting what was discussed and the actions the parties agreed are appropriate to correct the deficiencies.

(2) If the permittee continues to make the same errors after assistance provided by HPD and the state agency, the failure to improve shall be documented in the permittee's file and HPD may notify the CPRC and the permittee.

(3) The CPRC may place the permittee on probation in accordance with 4.10.8.22 NMAC.

(4) Upon successful completion of probation, the permittee shall be added to the list of permittees maintained by HPD.

E. The permittee may write to the CPRC or request a meeting with the CPRC to discuss concerns relating to HPD's documentation of the permittee's performance at any time.

[4.10.8.21 NMAC - Rp, 4.10.8.21 NMAC and 4.10.8.22 NMAC, 01/16/2019]

4.10.8.22 PROBATION:

Permits may be issued for less than three years on a probationary basis when the CPRC determines that a permittee's performance requires evaluation based on documented performance problems.

A. The permittee shall take immediate steps to correct the deficiencies. The permittee may continue to work on state land but the permittee's name shall be removed from the list of permittees maintained by HPD while on probation.

B. The CPRC, state archaeologist and the SHPO shall evaluate the performance of the permittee closely during the time the permit is in effect and document performance accurately through site recording, mapping, photography and written reports of observations. Documentation of performance monitoring shall be entered into the permittee's permanent file and may be taken into account by the CPRC when considering whether to issue permits to that permittee in the future.

C. The state agency archaeologist may assist in evaluating the performance of the permittee and provide documentation to the CPRC for consideration.

D. Following expiration of the probationary period and based upon performance during that period, a new permit or a new probationary period may be issued.

[4.10.8.22 NMAC - Rp, 4.10.23 NMAC, 01/16/2019]

4.10.8.23 DENIAL OF A PERMIT BASED ON PERFORMANCE:

The CPRC may deny an application for a permit based on unacceptable performance.

A. The decision to deny a permit application may be based upon factors such as:

- (1)** a pattern of unacceptable performance by the applicant;
- (2)** failure of the applicant to improve performance while on probation;
- (3)** failure of the applicant to obtain the necessary permits or approvals for archaeological investigations on state land;
- (4)** documentation of the applicant's work on state land while on probation;
- (5)** failure of the applicant to comply with applicable rules or additional stipulations set forth on the permit, or
- (6)** falsification by the applicant of information pertaining to qualifications or performance.

B. The CPRC shall inform the applicant, in writing, that a permit application has been denied and shall specify the reason for the denial and shall invite the applicant to attend the next scheduled CPRC meeting to discuss the reasons for denial. If the CPRC denies a project-specific permit, the CPRC shall notify the state agency of its decision.

C. Any applicant who has been denied a permit by the CPRC shall have the right to appeal the decision pursuant to 4.10.8.24 NMAC.

[4.10.8.23 NMAC - Rp, 4.10.8.24 NMAC, 01/16/2019]

4.10.8.24 PROCEDURES FOR APPEALING A DECISION:

Any applicant who has been denied a permit by the CPRC, the state archaeologist, or the SHPO or who has been denied for listing on the SHPO directory shall have the right to appeal the decision.

A. All requests for an appeal shall include a statement of the applicant's reason for requesting an appeal and contain any additional information that the applicant believes will support the appeal.

B. Upon receipt of a written request for a hearing, the chairman of the CPRC shall convene the CPRC as the hearing panel.

C. Within two weeks of receipt of a written request for a hearing, HPD shall inform the applicant in writing of the date, time and place of the hearing at which the appeal will be heard. The notice of public hearing shall be published pursuant to Section 9-4A-6 NMSA 1978 of the Cultural Affairs Department Act.

(1) The chairman of the CPRC or his designee shall serve as the chair of the hearing panel. Hearings will be conducted in accordance with the committee's rules of procedure.

(2) The state archaeologist and the SHPO may provide testimony at the hearing. A written record shall be kept of the proceedings.

D. Decisions of the hearing panel shall be based on a simple majority vote of the members of the panel.

E. The chair of the hearing panel shall inform the applicant in writing of the decision of the hearing panel. Decisions of the hearing panel shall be final.

[4.10.8.24 NMAC - Rp, 4.10.8.25 NMAC, 01/16/2019]

4.10.8.25 DEVIATIONS:

The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.8.25 NMAC – Rp, 4.10.8.26 NMAC, 01/16/2019]

PART 9: CREDIT TO STATE INCOME TAX FOR APPROVED RESTORATION, REHABILITATION OR PRESERVATION OF REGISTERED CULTURAL PROPERTIES

4.10.9.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Office of Cultural Affairs.

[11/15/97; 4.10.9.1 NMAC - Rn, 4 NMAC 10.9.1, 1/1/08]

4.10.9.2 SCOPE:

Individuals or corporations that own registered cultural properties may receive a credit against personal or corporate state of New Mexico income tax liabilities according to the procedures and criteria established in this regulation. See also regulations adopted under the taxation and revenue department's authority under Section 9-11-6 NMSA 1978 (1994 Repl. Pamp.) (Subsections A through D of 3.3.13.10 NMAC).

[11/15/97; 4.10.9.2 NMAC - Rn, 4 NMAC 10.9.2, 1/1/08]

4.10.9.3 STATUTORY AUTHORITY:

This regulation is created pursuant to the Income Tax Act, NMSA 1978 Section 7-2-18.2.A through 7-2-18.2.H, and Corporate Income Tax Act, NMSA 1978 Section 7-2A-8.6.A through 7-2A-8.6.G, which requires the state historic preservation division to promulgate regulations for implementation of the act.

[1/21/94; 4.10.9.3 NMAC - Rn, 4 NMAC 10.9.3, 1/1/08]

4.10.9.4 DURATION:

Permanent.

[11/15/97; 4.10.9.4 NMAC - Rn, 4 NMAC 10.9.4, 1/1/08]

4.10.9.5 EFFECTIVE DATE:

1-24-94, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective November 15, 1997.

[11/15/97; 4.10.9.5 NMAC - Rn, 4 NMAC 10.9.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.9.6 OBJECTIVE:

The purpose of this regulation is to provide objective guidance to the committee and the division for the lawful administration of state income tax credits available for restoration, rehabilitation or preservation expenses on properties listed on the register.

[1/21/94; 4.10.9.6 NMAC - Rn, 4 NMAC 10.9.6, 1/1/08]

4.10.9.7 DEFINITIONS:

A. "Restoration" means the action or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or the replacement of missing earlier work.

B. "Rehabilitation" means the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.

C. "Preservation" means the act or process of applying measures to sustain the existing form, integrity, and material of a building, structure, object, or landscape; or the act or process of providing protective maintenance or stabilization of archaeological sites.

D. "Owner" means the sole owner of a registered cultural property. In the case of a joint or part ownership, or partnership, owners shall claim credit only in proportion to their interest in the ownership or partnership. The term "owner" shall include the owner of a leasehold interest in a registered cultural property if the term of the lease (determined without regard to renewal periods) is at least five years.

E. "Project" means a planned restoration, rehabilitation, or preservation of a registered cultural property that entails a clearly defined scope of work. A project may be as simple as the restoration of a single space, such as one room, or element, such as a roof, or it may be as complex as the rehabilitation of a multi-story structure or group of structures.

F. "Committee" means the cultural properties review committee.

G. "Division" means the historic preservation division of the office of cultural affairs.

H. "Register" means the New Mexico register of cultural properties.

[1/21/94; 4.10.9.7 NMAC - Rn, 4 NMAC 10.9.7, 1/1/08]

4.10.9.8 ELIGIBILITY:

A. All cultural properties, after having been listed on the register, are eligible properties for the purpose of the state income tax credit program. cultural properties listed on the register include:

(1) all properties listed individually on the register; and,

(2) all properties located within the boundaries of districts listed on the register and determined to be contributing to that district; structures located in uninventoried districts shall be certified as contributing or non-contributing by the committee according to information supplied in "Application: State Income Tax Credit for Registered Cultural Properties, Part 1," and the recommendations of the division.

B. Any restoration, preservation or rehabilitation executed prior to the listing of the property on the register or that does not comply with 4.10.9 NMAC is not eligible for the income tax credit program.

[1/21/94; 4.10.9.8 NMAC - Rn, 4 NMAC 10.9.8, 1/1/08]

4.10.9.9 PROGRAM REQUIREMENTS:

Program requirements include the following criteria and procedures:

A. All plans, specifications, descriptions or research designs for a project for which a state income tax credit is to be claimed, shall be presented to the committee for review in a regularly scheduled meeting in Part 1 of the application prior to the commencement of work. All work that will affect the property during the project time frame shall be described, whether or not it is eligible for credit within the program. The application shall be received in the office of the division at least 14 days prior to the committee meeting in which it shall be reviewed. The division shall determine whether the information being presented is complete and adequate for committee review.

B. The owner of the cultural property must have consented in writing to listing on the register by the time of application.

C. The committee will review the application for conformance with the applicable standards and will take action on the application. Such action will take the form of an approval, approval with conditions, tabling, or denial. The applicant will be notified of the committee's decision within 14 days of the committee's meeting.

D. Projects must be completed within 24 months of the approval date. Alterations to approved projects must be submitted to the committee for action at a regularly scheduled meeting.

E. After the project is completed, the owner of a registered cultural property will submit an application to the committee for the certification of approved restoration, preservation or rehabilitation and shall provide to the committee a complete description

with photographs of all work performed. Part 2 of the application (requests for certification of completed work) shall be received by the division at least 14 days prior to the committee's meeting in which it will be reviewed and within 60 days after the completion of the work, but in no event later than January 25 of the year following the taxable year in which the credit is claimed. The division shall determine whether the information being presented is complete and adequate for committee review. The property owner shall submit together with part 2, accurate and complete documentation, including a summary sheet of expenditures along with invoices, canceled checks, receipts or any documents requested by the committee of all expenses for which the property owner proposes to claim credit. Work items that are not eligible for credit shall not be included in the cost document within Part 2.

F. The committee shall review the completed work for conformity with the work schedule and the program standards.

[1/21/94; 4.10.9.9 NMAC - Rn, 4 NMAC 10.9.9, 1/1/08]

4.10.9.10 NOTIFICATION OF CREDIT:

Upon review and certification of a completed Part 2, the division shall notify the owner and the taxation and revenue department of the total creditable cost of the approved project. Notification to the owner shall be within 14 days after the committee meeting in which the project is reviewed.

[1/21/94; 4.10.9.10 NMAC - Rn, 4 NMAC 10.9.10, 1/1/08]

4.10.9.11 STANDARDS:

A. The committee will review architectural applications for conformance with the secretary of interior's Standards for Rehabilitation (published at 36 CFR Part 67, reproduced below).

(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

(3) Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

(4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive [sic] feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.

(7) Chemical or physical treatments, such as sand-blasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

(9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment.

(10) New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

B. The committee will review archaeological applications for conformance with the following standards for archaeological site preservation, Paragraphs (1) through (7) of Subsection B of 4.10.9.11 NMAC, derived from standards set forth in the secretary of the interior's standards for rehabilitation and the ruins preservation guidelines, Pecos national monument, NM.

(1) The prehistoric or historic integrity of a property shall be preserved. The destruction of contributing features shall be avoided.

(2) If standing features on a site are deteriorating, repair and stabilization measures shall be undertaken with sensitivity to the character of the feature. If replacement of materials is necessary, the new shall match the old and appropriate documentation shall indicate restored areas.

(3) Erosion control measures shall be undertaken if features or artifacts of significant sites are disturbed by natural agents. These measures shall not detract from the character of the site and shall not harm significant features.

(4) Site fencing shall be undertaken if a significant site is suffering from human or animal caused disturbance. The location of fencing shall avoid significant features.

(5) Sign installation shall be undertaken if an owner wishes to protect a significant site from unauthorized excavation. Sign wording must be approved by the cultural properties review committee. Signs shall not be posted in areas which would disturb archaeological features.

(6) Camouflaging a site with vegetation or soil shall be undertaken if an owner is concerned about vandalism. Appropriate documentation shall precede this activity.

(7) Professional archaeologists shall be consulted when performing site preservation activities.

[1/21/94; 4.10.9.11 NMAC - Rn, 4 NMAC 10.9.11, 1/1/08]

4.10.9.12 NON-CREDITABLE WORK ITEMS:

A. The committee may approve a project, as described in part 1, which contains work items that are not creditable. These items include, but are not necessarily limited to:

(1) new construction (except as may be required by current building and life safety codes);

(2) landscaping (except if such landscaping is significant for its historic qualities and is noted in the original nomination);

(3) routine maintenance (including, but not limited to, cleaning, painting, minor repairs and periodic upkeep except where these items are part of an initial overall restoration program);

(4) repairs to additions added to a structure after placement on the register, unless the addition has achieved historical significance;

(5) interior furnishings, unless of historical significance and noted in the nomination;

(6) archaeological site excavation.

B. The expenses incurred for these items shall not be reflected in the committee approved total project cost. The committee shall not approve a project or any part of a project which contains any work-item which does not conform to 4.10.9.11 NMAC.

[1/21/94; 4.10.9.12 NMAC - Rn, 4 NMAC 10.9.12, 1/1/08]

4.10.9.13 CESSATION OF TAX CREDIT:

In case of the removal of the property from the register by the committee because of unauthorized or improper alteration or preservation technique which destroys the significant qualities of the structure, or by reason of destruction or loss of the property, or for any other reason which makes a property ineligible for continued listing on the register, the division will inform the taxation and revenue department that no further credit may be claimed by that owner for that project.

[1/21/94; 4.10.9.13 NMAC - Rn, 4 NMAC 10.9.13, 1/1/08]

4.10.9.14 APPEALS:

In the event a property owner's application for tax credit is denied, or withdrawn for cause, the property owner may appeal that action pursuant to the Tax Administration Act. (Section 7-1-1-et.seq NMSA 1978).

[1/21/94; 4.10.9.14 NMAC - Rn, 4 NMAC 10.9.14, 1/1/08]

PART 10: CERTIFIED LOCAL GOVERNMENT PROGRAM

4.10.10.1 ISSUING AGENCY:

Department of Cultural Affairs, State Historic Preservation Division.

[4.10.10.1 NMAC - Rp, 4 NMAC 10.10.1, 1/1/08]

4.10.10.2 SCOPE:

Applies to the historic preservation division, the cultural properties review committee, the United States secretary of the interior and local governments such as a city, county, village, town, municipality or any political subdivision of the state.

[4.10.10.2 NMAC - Rp, 4 NMAC 10.10.2, 1/1/08]

4.10.10.3 STATUTORY AUTHORITY:

This regulation is created pursuant to the Cultural Properties Act, Section 18-6-8 NMSA 1978, which authorizes the state historic preservation officer to administer the Cultural Properties Act, including to serve as the administrative head of all the Cultural Properties Act's functions assigned to the historic preservation division by law and to coordinate all duties performed by and cooperate with entities, public or private, involved with cultural properties. Pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(b)-(d), the state historic preservation officer is the designated state official who shall be responsible for the administration of the state historic preservation program which includes providing a mechanism for the certification by the state historic

preservation officer of local governments to carry out the purposes of the National Historic Preservation Act.

[4.10.10.3 NMAC - Rp, 4 NMAC 10.10.3, 1/1/08]

4.10.10.4 DURATION:

Permanent

[4.10.10.4 NMAC - Rp, 4 NMAC 10.10.4, 1/1/08]

4.10.10.5 EFFECTIVE DATE:

January 1, 2008, unless a later date is cited at the end of a section.

[4.10.10.5 NMAC - Rp, 4 NMAC 10.10.5, 1/1/08]

4.10.10.6 OBJECTIVE:

Since its initial enactment in 1966 and through several amendments, the National Historic Preservation Act has provided the statutory framework for the national historic preservation partnership. Federal, state, tribal and local governments have well-defined and significant roles in the identification, evaluation, designation and protection of historic and prehistoric properties. The certified local government program is the primary way through which qualified and interested local governments participate in the national historic preservation partnership. The objective of this rule is to establish the requirements and procedures for the certified local government program and to describe how the program works in New Mexico.

[4.10.10.6 NMAC - Rp, 4 NMAC 10.10.6, 1/1/08]

4.10.10.7 DEFINITIONS:

A. "**Certified local government**" or "**CLG**" means a local government whose local historic preservation program has been certified pursuant to the National Historic Preservation Act , 16 U.S.C. 470a(c).

B. "**Cultural properties review committee**" or "**CPRC**" means the committee appointed by the governor of the state as provided for in Section 18-6-4 NMSA 1978.

C. "**Cultural property**" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance as defined in Section 18-6-3 NMSA 1978 and includes "historic property" or "properties" as defined in the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*

D. "**Historic preservation division**" or "**HPD**" means the division within the department of cultural affairs created pursuant to Section 18-6-8 of the Cultural Properties Act and Section 9-4A-4 of the Cultural Affairs Department Act.

E. "**Historic preservation grants manual**" or "**grants manual**" means the secretary of interior standards for national park service historic preservation fund grants, June 2007 release, which includes standards for grants issued to certified local governments.

F. "**Historic preservation review commission**" or "**commission**" means a board, council, commission, committee or other similar collegial body established through state or local legislation and selected by the chief elected local official, pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(c)(1)(B) and 16 U.S.C. 470w(13).

G. "**Historic property**" means any prehistoric or historic district, site, building, structure or object included in or eligible for inclusion in the national register, including artifacts, records and material remains related to such a property as defined in the National Historic Preservation Act at 16 U.S.C. 470w(5).

H. "**Local government**" means a city, county, village, town, municipality or any political subdivision of the state.

I. "**National Historic Preservation Act**" means the act codified at 16 U.S.C. 470 et seq.

J. "**National register**" means the national register of historic places established by the National Historic Preservation Act, 16 U.S.C. 470a(a).

K. "**Preservation**" or "**historic preservation**" means identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding cultural properties as defined in the National Historic Preservation Act at 16 U.S.C. 470w(5).

L. "**Registered cultural property**" means a cultural property that has been placed on the New Mexico register of cultural properties as defined in Section 18-6-3 NMSA 1978.

M. "**Secretary**" means the United States secretary of the interior.

N. "**State historic preservation officer**" or "**SHPO**" means the director of the historic preservation division of the department of cultural affairs, as provided for in Section 18-6-8 NMSA 1978.

[4.10.10.7 NMAC - Rp, 4 NMAC 10.10.7, 1/1/08]

4.10.10.8 DESCRIPTION AND STATEMENT OF PURPOSE:

Pursuant to 36 CFR 61, the certified local government program is designed to promote the identification, evaluation, nomination and protection of cultural properties by establishing a partnership between the local government and the HPD which seeks to encourage and expand local involvement in preservation issues. Such partnerships will help to assure that:

A. historic preservation issues are understood and addressed at the local level and are integrated into the local planning and decision-making process at the earliest possible opportunity;

B. local interests and concerns are integrated into the historic preservation process of the HPD;

C. information concerning local historic preservation issues is provided to the HPD and to the public;

D. local historic district and landmark legislation and historic preservation review commissions are established in local governments where they do not yet exist and are updated, if necessary, where they already exist;

E. existing archaeological records and historic cultural properties inventory information maintained by the HPD is made available to the local community to use in identifying and defining community and neighborhood development and historic district areas; and

F. by participating in the preservation of cultural properties within their communities, CLGs:

(1) assume a leadership role in the preservation of the community's prehistoric and historic resources;

(2) have a formal role in the national register nomination review process;

(3) participate in the establishment of regional and state historic preservation objectives;

(4) are eligible to apply for subgrants from a designated certified local government fund established annually by the HPD whenever such funds are available; and

(5) receive technical and advisory services from the HPD.

[4.10.10.8 NMAC - Rp, 4 NMAC 10.10.8, 1/1/08]

4.10.10.9 ELIGIBILITY:

A. Any general purpose political subdivision of the state such as a city, village, county or town which meets the criteria set forth in this rule is eligible to apply for certification.

B. The National Historic Preservation Act and the historic preservation fund grants manual contain five broad standards which must be met by a local government seeking certification. The local government must:

(1) enforce appropriate state or local legislation for the designation and protection of historic properties;

(2) establish an adequate and qualified historic preservation review commission by state or local legislation;

(3) maintain a system for the survey and inventory of historic properties;

(4) provide for adequate public participation in the local historic preservation program including the process of recommending properties to the national register; and

(5) satisfactorily perform the responsibilities delegated to it under the act.

C. Each state is required to see that CLGs satisfy these minimum requirements and may specify additional requirements. The minimum requirements for certification of local governments in New Mexico are further defined below.

[4.10.10.9 NMAC - Rp, 4 NMAC 10.10.9, 1/1/08]

4.10.10.10 MINIMUM REQUIREMENTS FOR LOCAL LEGISLATION:

Each CLG shall enact a local preservation ordinance which shall contain, at a minimum, the following provisions for the designation and protection of cultural properties by CLGs in New Mexico:

A. an authorizing statement citing Sections 3-22-1 through 3-22-5 NMSA 1978 of the Historic District and Landmark Act;

B. statement of purpose;

C. definitions;

D. membership and duties of a historic preservation review commission;

E. designation and protection procedures for local landmarks and districts pursuant to Section 3-22-3 NMSA 1978 and the National Historic Preservation Act;

F. criteria for designation of local landmarks and districts pursuant to Section 3-22-3 NMSA 1978 and the National Historic Preservation Act;

G. provisions for holding a public hearing on proposed designations of local landmarks and districts and adequate public notification of such hearing;

H. mandatory review of alterations, demolitions or new construction to listed landmarks and cultural properties within listed historic districts;

I. specific guidelines to be used by the historic preservation review commission including as appropriate the secretary's standards for rehabilitation in 36 CFR 67 and the secretary's *standards and guidelines for archaeology and historic preservation*, available on the the national park service website at http://www.nps.gov/history/local-law/arch_stnds_0.htm;

J. specific timeframes for reviews and for consideration of alternatives;

K. penalties for noncompliance; and

L. criteria to enforce appropriate state or local legislation related to the preservation of cultural properties of historic and prehistoric significance.

[4.10.10.10 NMAC - Rp, 4 NMAC 10.10.10, 1/1/08]

[Additional information on standards for the treatment of historic properties with guidelines for preserving, rehabilitating, restoring and reconstructing buildings is available from the national park service web page at [http://www.nps.gov/history/hps/tps/standguide/.](http://www.nps.gov/history/hps/tps/standguide/)]

4.10.10.11 MINIMUM REQUIREMENTS AND DUTIES OF HISTORIC PRESERVATION REVIEW COMMISSIONS:

A. The minimum membership and procedural requirements for historic preservation review commissions for CLGs in New Mexico are detailed below.

(1) The commission shall have at least five members, all of whom have a demonstrated positive interest, competence or knowledge in the professions of architecture, historic architecture, architectural history, archaeology, anthropology, history, historic preservation, planning, real estate, design, building trades, landscape architecture, conservation, law, finance or related disciplines to the extent that these professionals are available in the community. The chief elected local official shall appoint all commission members.

(2) The commission is encouraged to appoint two historic preservation review commission members who meet the professional qualifications standards in appendix A of 36 CFR 61.

(3) Terms of office for commission members shall be no less than two years and shall be staggered;

(4) Rules of procedure shall be established and made public;

(5) The commission shall meet as often as necessary to complete commission responsibilities in a timely fashion, holding no less than four meetings per year, and the meetings shall be held at regular intervals, in a public place, advertised in advance and open to the public; notices of each public meeting shall be mailed to the HPD in advance.

(6) Commission decisions shall be made in a public forum and applicants shall be notified of meetings and advised of decisions.

(7) Written minutes, detailing, at a minimum, the actions and decisions of the commission, and reasons for such actions or decisions, shall be made available for public inspection except when confidentiality of site location is required pursuant to Section 18-6-11 NMSA 1978 and the Archaeological Resources Protection Act, 16 U.S.C. 470hh.

(8) An annual report of its activities shall be provided to the SHPO as detailed at Section 4.10.10.16 NMAC below.

(9) Vacancies on the commission shall be filled within 90 calendar days, unless an extension is requested.

B. Duties of the historic preservation review commissions shall include, at a minimum, the following:

(1) conducting or causing to be conducted a continuing survey of cultural properties in the community according to guidelines established by the HPD;

(2) making recommendations for designation of local landmarks and historic districts to the appropriate local governing body;

(3) establishing and using written guidelines for the conservation of designated local landmarks and historic districts and cultural properties of historic and prehistoric significance in decisions on requests for permits for alterations, demolition or additions to listed landmarks and buildings within historic districts;

(4) acting in an advisory role to other officials and departments of local government regarding the protection of local cultural properties;

(5) acting as a liaison on behalf of the local government to individuals and organizations concerned with historic preservation; and

(6) working toward the continuing education of citizens within the CLG's jurisdiction regarding historic preservation issues and concerns.

C. Each commission is required to set aside at least one regular meeting for informational or educational purposes per year, to be attended by HPD staff, pertaining to the work and functions of the commission or to historic preservation.

D. The CLG historic preservation review commission, in addition to the above stated duties, reviews all proposed national register nominations for properties within the boundaries of the CLG's jurisdiction. When a commission reviews a nomination or other action that will impact properties within the boundaries and such reviews are normally evaluated by a professional in a specific discipline which is not represented on the commission, the commission shall seek expertise in this area before rendering its decision.

E. Pursuant to chapter 3 of the grants manual, historic preservation review commission members shall not engage in activities that would appear to conflict with the fair, impartial and objective performance of commission responsibilities.

[4.10.10.11 NMAC - Rp, 4 NMAC 10.10.11, 1/1/08]

4.10.10.12 PROFESSIONAL CONSULTANT TO CERTIFIED LOCAL GOVERNMENT:

A. In order to carry out the duties delegated to it, the CLG shall employ or have regular access by contract or letter of agreement to the equivalent of one professional who meets the professional qualification standards of the secretary of the interior's standards and guidelines for archaeology and historic preservation. The HPD will consider written proposals for alternative arrangements for CLGs who submit evidence that they have not been able to obtain such expertise due to a lack of financial resources or available professionals. Such alternatives must ensure that adequate expertise exists to allow the CLG to undertake its responsibilities.

B. Consultants shall be approved by the HPD to ensure that personnel have the necessary skills to carry out the specific responsibilities of that CLG. Staff requirements will vary according to the types of programs which the CLG undertakes and the duties delegated to it. Annual funds transferred to CLGs, as discussed in 4.10.10.19 NMAC below, may be used toward retaining a preservation consultant.

[4.10.10.12 NMAC - Rp, 4 NMAC 10.10.12, 1/1/08]

4.10.10.13 SURVEY STANDARDS:

CLGs shall establish a process for surveying the cultural properties within their jurisdiction. Where inventories of cultural properties have already been undertaken or

are underway, a process for the continuation, maintenance and organization of these data shall be defined.

A. All inventory activities shall be coordinated with and complementary to the New Mexico cultural resource information system (NMCRIS) which is HPD's archaeological records management and historic cultural properties inventory system.

B. Local inventories shall be in a format which is compatible with and can be easily integrated into the statewide comprehensive historic preservation planning system and other appropriate planning processes used by the HPD.

C. There shall be a cultural properties inventory for each designated historic district.

D. All inventory material shall be updated periodically to reflect changes, alterations, and demolitions. At a minimum, this shall include the updating of forms for all major work to significant and contributing cultural properties in an historic district and to landmarks.

E. All inventory material shall be maintained securely and shall be accessible to the public except when confidentiality of site location is required pursuant to Section 18-6-11 NMSA 1978 and the Archaeological Resources Protection Act, 16 U.S.C. 470hh.

[4.10.10.13 NMAC - Rp, 4 NMAC 10.10.13, 1/1/08]

4.10.10.14 PUBLIC PARTICIPATION:

A. All meetings of the historic preservation review commission shall be publicly announced, open and accessible to the public, and have a previously available agenda. Public notice shall be provided prior to any special meetings. Minutes of all decisions and actions of the commission, including the reasons for making these decisions, shall be kept on file and available for public inspection.

B. The SHPO and the CLG will work together to provide ample opportunity for public participation in the nomination of properties to the national register. All reports submitted by the CLG to the HPD regarding the eligibility of properties shall include assurances of public input. The CLG shall retain a list of all persons contacted during the evaluation period and note comments which it received. If a public meeting was held, a list of those attending shall be included in the report.

[410.10.14 NMAC - Rp, 4 NMAC 10.10.14, 1/1/08]

4.10.10.15 CLG PARTICIPATION IN THE NATIONAL REGISTER PROCESS:

A. The CLG shall submit a report to the HPD regarding the eligibility of each cultural property or district proposed for nomination to the national register within its jurisdiction.

This report shall include the recommendation of the historic preservation review commission and the chief elected local official.

B. The report may be as simple as an affirmation that the cultural property is eligible or as lengthy as a researched report stating why the property should or should not be nominated. The report should concentrate on the property's eligibility under the national register criteria. If it is felt that the property is not eligible, adequate reasons must be given based on national register criteria.

C. Failure to submit reports on the eligibility of cultural properties nominated within the jurisdiction of the CLG after the HPD has informed the CLG of a pending nomination will be considered during the annual performance evaluation.

D. The CLG will be involved in the national register process.

(1) In accordance with 36 CFR 61, the HPD will forward a copy of completed national register nominations to the CLG for all properties located in that CLG's jurisdiction within 30 calendar days of receipt unless the CLG itself has initiated the nomination. If the CLG initiates its own nomination(s), it shall provide the completed nomination to the HPD within 30 calendar days of receipt.

(2) After reasonable opportunity for public comment and within 60 calendar days of receipt of the nomination, the CLG shall inform the HPD and the property owner(s) as to its opinion regarding the eligibility of the property. If the historic preservation review commission and the chief elected local official do not agree, both opinions shall be forwarded to the CPRC. If the SHPO does not receive a recommendation within 60 calendar days, the HPD shall continue the nomination process.

(3) If both the commission and the chief elected local official, or their designated representative, recommend that a property not be nominated, the HPD will so inform the property owner(s) and the CPRC and the property will not be nominated unless an appeal is filed with the SHPO under the regulations established for the appeals process, as outlined in the National Historic Preservation Act.

(4) If either or both the commission and the chief elected local official, or their designated representative, agree that the property should be nominated, the nomination will be scheduled for review by the CPRC. The opinion or opinions of the commission and the chief elected local official, or their designated representative, will be presented to the CPRC for their consideration.

(5) The CPRC, after considering all opinions, shall make its recommendation to the SHPO. If the property is determined to be eligible, the SHPO shall forward the nomination to the keeper of the national register; if the property is determined to not be eligible, the SHPO shall return the nomination to the CLG and the owner(s). Either the

commission or the chief elected local official, or their designated representative, may appeal the final SHPO decision under the aforementioned appeals procedure.

(6) CLGs shall participate in review and approval of national register nominations whether or not they elect to apply for grants from the historic preservation fund.

[4.10.10.15 NMAC - Rp, 4 NMAC 10.10.15, 1/1/08]

4.10.10.16 PERFORMANCE ASSESSMENT:

A. In order to determine that the CLG is satisfactorily performing the responsibilities delegated to it by the HPD, the CLG shall submit an annual report of the activities of the commission. These reports shall include, but are not limited to, such items as number of cases reviewed, new designations made, revised resumes of commission members, appointments to the commission, attendance records, all minutes related to the national register nominations and goals and objectives of the commission for the coming year. The report shall also document the educational meetings which commission members attended.

B. Notification of commission meetings shall be provided throughout the year to the HPD in a timely manner so that the HPD may attend such meetings or provide pertinent information.

C. The annual report shall be accompanied by a report on the expenditures of any grants received from the HPD during that year and shall follow fiscal accountability guidelines pursuant to the grants manual.

D. The report shall be due within 60 calendar days of the end of each federal fiscal year or at the end of the portion of the fiscal year in the first year of the establishment of the commission. Continued certification shall be based upon performance and review of the annual report of the activities of the commission. The HPD will review the CLG's final report within 45 calendar days of its receipt.

[4.10.10.16 NMAC - Rp, 4 NMAC 10.10.16, 1/1/08]

4.10.10.17 PROCESS FOR CERTIFICATION OF LOCAL GOVERNMENTS:

A. The chief elected local official of the appropriate local governing body shall request certification from the HPD. The request shall include:

(1) a written assurance that the local government has fulfilled all of the requirements outlined above;

(2) a copy of the local historic preservation ordinance;

(3) a list and accompanying maps of the areas designated as historic districts or individual landmarks within the local government's jurisdiction;

(4) resumes for each of the members of the historic preservation review commission; and

(5) a written provision that the local government will provide for a consultant who meets the secretary of interior's professional qualification standards to assist the commission, if needed.

B. The SHPO shall respond to the chief elected local official within 60 calendar days of receipt of an adequately documented written request. If the SHPO determines that the local government fulfills the requirements for certification, the SHPO will forward the decision to the United States secretary of the interior, or designee. The secretary of the interior has 15 working days from receipt to take exception to the certification. The SHPO shall respond to the local government within 15 working days of the secretary's response.

C. When a local government's certification request has been approved in accordance with this rule, the HPD shall prepare a written certification agreement that lists the specific responsibilities of the local government. The responsibilities shall include the four minimum requirements and duties as outlined in Section 4.10.10.10 NMAC above and shall also include any additional responsibilities required by legislation or any additional duties delegated to all CLGs in New Mexico.

D. The HPD will forward to the secretary a copy of the approved request and the certification agreement. If the secretary does not take exception to the request or the agreement within 15 working days of receipt, the local government shall be regarded as certified.

[4.10.10.17 NMAC - Rp, 4 NMAC 10.10.17, 1/1/08]

4.10.10.18 MONITORING AND DECERTIFICATION:

A. The HPD will conduct periodic review and monitoring of CLGs to assure that each CLG is meeting applicable standards and fulfilling its duties, including the responsibilities delegated to the CLG under the National Historic Preservation Act. The CLG procedures shall also be in conformance with federal and state standards, including standards for statewide comprehensive historic preservation planning and other appropriate planning processes. These standards will be provided by the HPD. The HPD shall also review the annual reports, records of the administration of funds allocated from the HPD to the CLG, and other documents as necessary.

B. If the HPD evaluation indicates that the performance of a CLG is inadequate, the HPD shall document that assessment and delineate for the CLG ways to improve its performance. The CLG shall have a period of not less than 30 calendar nor more than

180 calendar days, depending on the corrective measures required, to implement improvements. If the HPD determines that sufficient improvement has not occurred, the HPD will recommend decertification of the local government to the secretary of the interior, citing specific reasons for the recommendations. When the local government is decertified, the HPD will terminate any financial assistance and will conduct a close-out review of any grants the CLG received from the HPD.

[4.10.10.18 NMAC - Rp, 4 NMAC 10.10.18, 1/1/08]

4.10.10.19 TRANSFER OF HISTORIC PRESERVATION FUNDS TO CLGs:

A. Pursuant to the National Historic Preservation Act, 16 U.S.C. 470c, a minimum of 10 percent of the state's annual appropriation from the historic preservation fund of the department of the interior will be designated for funding projects by CLGs as provided by congress. In any year in which the annual historic preservation fund state grant appropriation exceeds \$65,000,000, one-half of the amount above \$65,000,000 shall also be transferred to CLGs according to procedures to be provided by the secretary of the interior. All grants may be awarded on a matching basis for funding of specific projects or activities which meet the state's historic preservation plan and chapter 9 of the grants manual.

B. All funds will be awarded on a competitive basis. CLGs receiving grants through the HPD from the CLG share of the historic preservation fund of the department of the interior shall be considered subgrantees of the state. All local governments which have been certified are eligible to apply for funds but will not automatically receive funds.

C. CLGs receiving funds must maintain an adequate financial management system by adhering to all requirements of the grants manual.

D. Specifically, grants made from the historic preservation fund cannot be used as a matching share for other federal grants. Local financial management systems shall be auditable in accordance with the grants manual. Unless the CLG has a current indirect cost rate approved by the cognizant federal agency, only direct costs may be charged against grant funds.

E. Each CLG shall complete a grant application by the annual deadline. Application forms, annual HPD priorities for funding, and criteria for awarding grants will be made available to allow sufficient time for the CLG to complete projects within a two-year federal grant cycle.

F. Applications will be ranked by the HPD. In general, eligible activities will include any project which furthers the goals of historic preservation of the community's cultural properties. This may include survey, nomination of properties to the national register, public education programs, planning studies, research, adoption and publication of local historic district and landmarks legislation, establishment of commissions and the development of a comprehensive historic preservation plan.

G. Grant funds may be used for the purpose of retaining a preservation consultant to the historic preservation review commission as outlined in Section 4.10.10.12 NMAC above. Priority will be given to projects which assist the CLG in establishing a process for incorporating historic preservation goals and objectives into the community's planning process and which increase the community's awareness and understanding of historic preservation, or which increase the capability and effectiveness of the CLG in addressing local historic preservation issues and needs.

H. The HPD will provide on an annual basis the selection criteria and funding requirements for grant proposals.

I. Once a local government is certified, it remains certified, without further action, unless officially decertified.

J. Grants for CLGs are awarded on a yearly competitive basis, according to availability of funds. Because a CLG is given a grant one year does not mean a grant will be available the following year. The HPD shall make available to the public, upon request, the rationale for the applicants selected and the amounts awarded. The HPD shall make reasonable efforts to distribute funds among the maximum number of eligible local governments to the extent that such distribution is consistent with the selection criteria in Subsection H of 4.10.10.19 NMAC, above. The HPD shall also seek to ensure a reasonable distribution between urban and rural areas in the state, and that no CLG receives a disproportionate share of the allocation. CLG requirements will be included in the state's required written grant agreements with local governments.

K. Use of federal funds will be limited by all existing restrictions imposed by the grants manual. Any state-directed specific uses of funds are to be for activities that are eligible for historic preservation fund assistance. Use of such funds is to be consistent with the state comprehensive historic preservation planning process outlined in the National Historic Preservation Act. The intent of historic preservation fund assistance is to augment, not replace, existing local commitment to historic preservation activities.

L. The HPD is ultimately responsible, through financial audit, for the proper accounting of the CLG share of the historic preservation fund in accordance with the grants manual.

[4.10.10.19 NMAC - Rp, 4 NMAC 10.10.19, 1/1/08]

PART 11: ISSUANCE OF PERMITS TO EXCAVATE UNMARKED HUMAN BURIALS IN THE STATE OF NEW MEXICO

4.10.11.1 ISSUING AGENCY:

Office of Cultural Affairs, State Historic Preservation Division.

[11-15-97; 4.10.11.1 NMAC - Rn, 4 NMAC 10.11.1, 1/1/08]

4.10.11.2 SCOPE:

The historic preservation division, the office of the medical investigator, the cultural properties review committee, persons who discover unmarked human burials, applicants for permits to excavate unmarked human burials and individuals holding such permits. Section 18-6-11.2 NMSA 1978 applies to all lands of the state of New Mexico and all private lands in the state of New Mexico. It does not apply to federal lands or to lands held in trust for an Indian tribe by the federal government.

[11-15-97; 4.10.11.2 NMAC - Rn, 4 NMAC 10.11.2, 1/1/08]

4.10.11.3 STATUTORY AUTHORITY:

Section 18-6-11.2 of the Cultural Properties Act NMSA 1978.

[9/15/89; 4.10.11.3 NMAC - Rn, 4 NMAC 10.11.3, 1/1/08]

4.10.11.4 DURATION:

Permanent.

[11-15-97; 4.10.11.4 NMAC - Rn, 4 NMAC 10.11.4, 1/1/08]

4.10.11.5 EFFECTIVE DATE:

9/15/89, unless a later date is cited at the end of a section or paragraph. Reformatted to NMAC format effective 11/15/97.

[11-15-97; 4.10.11.5 NMAC - Rn, 4 NMAC 10.11.5, 1/1/08]

[Note: The words or paragraph, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.11.6 OBJECTIVE:

The objective of Part 11 of Chapter 10 is to establish the procedures under which permits for the removal of unmarked human burials shall or may be issued and the requirements and stipulations for analysis, treatment and disposition of unmarked human burials.

[9-15-89; 4.10.11.6 NMAC - Rn, 4 NMAC 10.11.6, 1/1/08]

4.10.11.7 DEFINITIONS:

A. "Committee" means the cultural properties review committee, as authorized and defined in Section 18-6-4, NMSA 1978, which consists of seven members as follows:

- (1) the state historian at the state records center and archives;
- (2) one person professionally recognized in the discipline of architectural history;
- (3) one person professionally recognized in the discipline of history;
- (4) one person professionally recognized in the discipline of architecture;
- (5) one person professionally recognized in the discipline of archaeology;
- (6) one person professionally, recognized in the discipline of historic archaeology;
- (7) one additional person who is professionally recognized in history, architectural history or architecture, or archaeology.

B. **"State archaeologist"** means the state official described in Section 18-6-15, NMSA 1978.

C. **"State historian"** means the state official described in Section 18-6-14, NMSA 1978.

D. **"State historic preservation officer"** (SHPO) means the state official described in Section 18-6-8, NMSA 1978.

E. **"Permitting authority"** means the SHPO, the cultural properties review committee and the state archaeologist.

F. **"Permit"** means a written authorization issued by the permitting authority to conduct archaeological excavations of human burials.

G. **"Unmarked burial ground"** means a location where there exists a burial or burials of any human beings that are not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials and includes any funerary object, material object or artifact associated with the burial or burials.

H. **"Human burial"** means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

I. **"Appropriate efforts to determine age"** means estimation of the date of burial based on historic records (e.g., county or municipal vital statistics, church records, or other archival materials) or on associated funerary objects, material objects or artifacts or on interviews with area residents or any other efforts determined appropriate by the permitting authority.

J. **"Living persons who may be related to the human burial"** means the designated spokesperson of any tribal group or clan or any person or persons with demonstrable consanguinity, affinity or direct historical association with the burial in question.

K. **"Lawful disposition of the human burial"** means disposition of the human remains and associated funerary objects in a manner approved by the permitting authority, including, but not limited to, reburial or curation by a museum or similar facility.

L. **"Appropriate location"** means the location of reburial of human remains and associated funerary objects, material objects or artifacts, as required by the permitting authority and as determined in consultation with the landowner and with any person who may be related to the human burial.

M. **"Medical investigator"** (MI) means the licensed physician described in Section 24-11-3 NMSA 1978.

N. **"Skeletal remains"** means any part of the body of a deceased human being in any stage of decomposition.

N. **"Landowner"** means the public or private owner of any land or estate in which a burial is interred.

O. **"Office of Indian affairs"** (OIA) means the commission created by Section 28-12-4 NMSA 1978.

[9-15-89; 4.10.11.7 NMAC - Rn, 4 NMAC 10.11.7, 1/1/08]

4.10.11.8 COORDINATION WITH THE STATE MEDICAL INVESTIGATOR:

A. Excavation, removal, disturbance or destruction of an unmarked human burial or unmarked burial ground may be carried out only by authority of the state medical investigator or of the permitting authority.

B. Any case of sudden, violent or untimely death, any death whose cause is unknown, and any death by criminal act or omission is presumed to have medicolegal significance. It is the responsibility of the MI, in cooperation with the law enforcement agency of jurisdiction, to determine whether an unmarked human burial or unmarked burial ground has such medicolegal significance.

C. Consistent with this responsibility, all unmarked human burials and unmarked burial grounds in the state of New Mexico shall be presumed to fall under the authority of the MI pursuant to Section 18-6-11.2(D) NMSA 1978.

D. Any person who discovers an unmarked human burial or unmarked burial ground shall cease any activity that may disturb that burial or burial ground or any object or artifact associated with that burial or burial ground and shall notify the local law enforcement agency having jurisdiction in the area. The local law enforcement agency shall notify the MI and the SHPO. The local law enforcement agency may choose not to notify the SHPO in cases in which it is manifestly evident that the burial is recent and death was caused by a criminal act.

E. When notified by law enforcement the SHPO will designate a staff archaeologist or another professional archaeologist, holding a permit as described below (Subsection B of 4.10.11.9 NMAC), to respond to the discovery of an unmarked human burial or unmarked burial ground. Such permitted professional must be prepared to show adequate and appropriate identification or authorization to law enforcement or to MI personnel. When the MI and such professional archaeologist concur in a determination that the unmarked burial or burial ground is without medicolegal significance, the case shall be terminated by the MI to the SHPO in writing.

F. Following termination of jurisdiction by the MI, discoveries of additional human burials within the same unmarked burial ground may be deemed by the MI to fall within the same case and may be terminated in the same case file as the original find.

G. If no representative of the permitting authority is present to inspect the site of the discovery of an unmarked human burial, the burial shall be presumed to fall under the authority of the MI. The MI may terminate jurisdiction to the SHPO in such case.

H. Either the MI or the SHPO may request that an authorized representative of the other office take sole responsibility for making a field examination of an unmarked human burial and for determining whether the burial has cultural significance.

I. Unmarked human burials or burial grounds shall not be excavated by the MI except as the MI or the representative of the MI and law enforcement deem necessary to determine medicolegal significance. When a staff archaeologist of the SHPO or other professional archaeologist permitted by the permitting authority responds to the discovery of an unmarked human burial or burial ground, excavation of that burial or burial ground to determine medicolegal significance will be carried out, to the greatest extent deemed feasible by the MI or representative of the MI, under the direction of the professional archaeologist.

J. When the MI determines that an unmarked human burial or burial ground has medicolegal significance, the MI shall retain jurisdiction of that burial or burial ground and shall proceed consistent with Section 24-11-5 [ff.] NMSA 1978 and established investigative protocols of the MI and of the law enforcement agency of jurisdiction.

K. Any unmarked human burial which is determined by the MI not to have medicolegal significance shall be presumed to have cultural significance and shall be deemed to fall under the provisions of Section 18-6-11.2(E-I) NMSA 1978.

L. On the request of the SHPO to the MI in any case in which the MI retains jurisdiction of an unmarked human burial or burial ground, that burial or burial ground will be excavated, removed and analyzed, to the greatest extent deemed feasible by the MI, under the direction of a staff archaeologist or professional archaeologist permitted by the permitting authority.

[9-15-89; 4.10.11.8 NMAC - Rn, 4 NMAC 10.11.8, 1/1/08]

4.10.11.9 PERMITTING PROCEDURES AND REQUIREMENTS PERTAINING TO THE REMOVAL OF HUMAN BURIALS:

A. Permitting procedures - individual permits.

(1) All applicants for a permit to exhume human burials shall meet the following requirements:

(a) hold a graduate degree in archaeology, anthropology, or equivalent training acceptable to the permitting authority; or

(b) be a member in good standing of an amateur archaeological society certified by the archaeological society of New Mexico; and

(c) have at least 6 months of archaeological field experience within the region where the project will be undertaken, under the guidance of or in cooperation with a recognized professional archaeologist, or demonstrated competence based on analogous experience acceptable to the permitting authority; and

(d) demonstrate an ability to carry out archaeological excavation, documentation and report preparation; amateur societies may be required to coordinate with a professional archaeologist to provide the necessary technical assistance;

(e) applicants shall provide the SHPO with vitas of all members of the applicants' organization expected to supervise the excavation of a burial; vitas need not be submitted with subsequent permit applications, provided that the applicant ensures that the information contained in this file is current at the time of a subsequent permit application; the use of volunteers or other individuals who may not meet the specified qualifications is acceptable only if they will be directly supervised by the permittee or qualified personnel.

(2) Individual case permits will be issued to excavate all burials in specific unmarked burial grounds. The permitting authority will take action on the permit within 60 days of receipt of application.

(3) Applications for individual permits will include the following:

(a) a legal description of the location of the burial (i. e., township, range, section, to the 1/4 1/4 section), land ownership, and a copy of the appropriate USGS 7.5' quad with the location identified;

(b) current vitas of personnel who may supervise the excavation; such persons must be present while burials are being excavated and must directly supervise any volunteers or assistants who participate in the excavation of the burial;

(c) a preliminary set of recommendations outlining the methods and techniques to be employed during the permitted activity, including methods for estimating the date of interment and general procedures that may be used to identify and notify living persons who may be related to the human burial; all excavation and analysis will be conducted in accordance with the guidelines listed in 4.10.11.10 NMAC;

(d) written authorization from the landowner to remove the burial(s);

(e) the information requested in 4.10.11.11 NMAC and any preliminary proposals for reinterment or other appropriate disposal of the human burial consistent with the guidelines listed in 4.10.11.12 NMAC.

(4) The application information and all attachments shall be reviewed by the permitting authority.

(5) The SHPO will notify the applicant in writing of the approval or disapproval of the permit by the permitting authority.

(6) The term of an individual permit will be set by the permitting authority, not to exceed 1 year.

(7) The permitting authority may expedite the review process in emergency discovery situations.

B. Permitting procedures - annual permits.

(1) Permits to excavate burials may be issued on an annual basis. The annual permits are intended to provide for expeditious removal of burials in discovery situations by eliminating the 60 day review period required for an individual permit. Excavations of human remains under an annual permit may take place after notification of the SHPO.

(2) All applicants for annual permits to exhume human burials shall meet the following requirements:

(a) hold a graduate degree in archaeology, anthropology, or closely related field or equivalent training acceptable to the permitting authority; and

(b) have at least 6 months of archaeological field experience within the region where the project will be undertaken, under the guidance of or in cooperation with a recognized professional archaeologist, or demonstrated competence based on analogous experience acceptable to the permitting authority; and

(c) demonstrate an ability to carry out archaeological excavation, documentation and report preparation.

(3) Applications for annual permits will include the following:

(a) current vitas of personnel who may supervise excavation of a human burial or unmarked burial ground; vitas need not be submitted with subsequent permit applications, provided that the applicant ensures that the information contained in this file is current at the time of a subsequent permit application; the use of volunteers or other individuals who may not meet the specified qualifications is acceptable only if they will be directly supervised by the permittee or qualified personnel;

(b) a brief discussion of the methods and techniques to be employed during the permitted activity, including methods for estimating the date of burial, general procedures that may be employed to identify and notify living persons who may be related to the human burial, and general procedures for determining the disposition of human burials, including curation agreements; all excavation and analysis will be conducted in accordance with the guidelines listed in 4.10.11.10 NMAC.

(4) The application information and all attachments shall be reviewed by the permitting authority.

(5) Upon completion of the review process, the SHPO will notify the applicant in writing of the approval or disapproval of the permit.

(6) The term of an annual permit shall be the end of calendar year in which it was approved.

(7) Written notice of a permittee's intent to use an annual permit shall be submitted in writing to the SHPO before excavation begins and will include:

(a) a legal description of the location of the burial (i.e., township, range, section, to the 1/4 1/4 section), land ownership, and a copy of the appropriate USGS 7.5' with the location identified;

(b) written authorization from the landowner to remove the burial(s);

(c) the information requested in 4.10.11.11 NMAC;

(d) a list of the personnel supervising and conducting excavations of the human burial.

(8) The holder of a blanket permit may act as a representative of the SHPO in consultation with the MI under 4.10.11.8 NMAC above. If it is determined that the human burial or unmarked burial ground falls under Section 18-6-11.2(F) NMSA 1978, the permit holder may proceed to remove the burial, consistent with the terms of the permit, immediately following notification of the SHPO.

C. Procedures for appeal of permit denial.

(1) Any applicant denied a permit by the permitting authority or aggrieved by the terms of a permit shall have the right to appeal the decision.

(2) The SHPO shall inform the applicant, in writing, that a permit has been denied and shall specify the reason for denial.

(3) Any applicant wishing to appeal the denial of a permit or the terms of a permit shall write to the SHPO requesting a hearing. The hearing board may designate an alternative to serve in his place if, for any reason, he believes it would be inappropriate to serve on the hearing board. Within 2 weeks of receipt of a request for a hearing, the SHPO will inform the applicant in writing of the date, time, and place of the hearing at which the appeal will be heard.

(4) The chairman of the committee will serve as the chairman of the hearing board. The hearing will be conducted in accordance with the committee's rules of procedure. Decisions in any case brought before the board will be decided by a majority vote of the members of the board. The SHPO will inform the applicant in writing of the decision of the hearing board. The decision of the hearing board will be a final administrative decision.

(5) All appeals shall include a statement of the applicant's reason for requesting an appeal and shall contain any additional information that the applicant believes will support the appeal.

D. Permit stipulations.

(1) Recipients of burial excavation permits issued by the permitting authority agree to abide by all stipulations contained in this regulation and any special stipulation that may be imposed by the permitting authority.

(2) Costs incurred in the execution of the activities conducted under the permit shall be borne by the permittee or the permittee's client or sponsor.

(3) The state of New Mexico, including its bureaus and employees and landholding agencies, shall be held blameless for any and all events, deeds or mishaps resulting from the activities of the permittee, regardless of whether or not they arise from operations authorized under the permit.

(4) The permitting authority shall determine, in consultation with any living relative, conditions for the appropriate disposition of the human remains and any or all of the associated funerary objects, material objects or artifacts. All conditions for final disposition will become stipulations of the permit.

(5) Documentation of all funerary objects, material objects, or artifacts associated with a human burial will be provided to the SHPO, consistent with provisions in Subsection D of 4.10.11.10 NMAC. The permittee will ensure that all documented items are disposed of in accordance with the disposition plan. The permit will also stipulate measures to ensure that the burials and associated funerary objects, material objects, or artifacts remain undisturbed after disposition.

(6) If the excavation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period, the permittee shall contact the SHPO in writing to request an extension of the term of the permit. This request must be received by the SHPO prior to the expiration date of the permit in order to be considered.

(7) If the excavation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify the SHPO in writing to request a cancellation of the permit. Disposition of any human remains and associated funerary objects, material objects or artifacts collected during the excavation conducted under the permit and of copies of all written and photographic records resulting from a discontinued excavation will be determined by the permitting authority.

(8) Failure by a permittee to comply with these and any additional special stipulations set forth in this regulation or on the permit itself shall be considered adequate reason for revocation of a permit and denial of future permits.

(9) If fieldwork is not begun within the permit period, and an extension has not been requested as described above, the permit shall become void at the end of the permit period.

[9-15-89; 4.10.11.9 NMAC - Rn, 4 NMAC 10.11.9, 1/1/08; A, 05/30/2008]

4.10.11.10 GUIDELINES FOR EXCAVATION OF HUMAN BURIALS:

A. Methodology:

(1) Excavation of human burials will be consistent with current professional archaeological standards.

(2) Specific excavation methods may be stipulated by the permitting authority.

B. Records: The following documents will be prepared whenever a burial is excavated.

(1) archaeological records management system (ARMS) forms for each burial ground, if not previously recorded;

(2) plan maps of each burial and associated funerary objects, material objects or artifacts;

(3) photographs of each burial in situ with associated funerary objects, material objects or artifacts;

(4) description of field methodology, including observations about soils and the context of each burial within the burial ground.

C. Analysis of human remains will include but is not limited to:

(1) sex, age, basic measurements;

(2) pathologies;

(3) photodocumentation.

D. Analysis of associated funerary objects, material objects, or artifacts will include, but is not limited to:

(1) a written inventory list of all items associated with the burial and removed from the burial ground, to be submitted to the SHPO before final disposition of the remains. The list must be specific in terms of material, typology, quantity and condition of the items recovered (e.g., 2 sherds of a Rio Grande Glaze A bowl, 4 complete projectile points and 1 bone awl).

(2) scaled photographs of all recovered items, to be submitted with written inventory. The photographs should be labeled with the name of the permittee, provenience of the burial (e.g., burial number, site number, county), date of excavation and disposition of items (e.g., reburied on site, curatorial repository).

[9-15-89; 4.10.11.10 NMAC - Rn, 4 NMAC 10.11.10, 1/1/08]

4.10.11.11 GUIDELINES FOR IDENTIFICATION AND NOTIFICATION OF LIVING PERSONS WHO MAY BE RELATED TO A BURIAL:

A. Unmarked burials - Native American:

(1) With an application for a one-time permit or a notification of activation of an annual permit, the applicant or permittee shall provide the following information to SHPO:

(a) a description of the context of the burial (e.g., historic or prehistoric archaeological site) with information about the site type, probable cultural affiliation, and apparent date of interment; and

(b) tentative date of completion of excavations.

(2) Upon receipt of the permit application or notification of an excavation under an annual permit, the SHPO will notify the state office of Indian affairs in writing of the location and will transmit to the OIA any available information about the human burial or unmarked burial ground.

(3) The OIA will attempt to identify living persons who may be related to the human burial. The office of Indian affairs or a designated spokesperson for a tribe or clan claiming a relationship to a human burial may make recommendations for disposition of human remains as it considers appropriate. Recommendations for disposition must be received within 30 days of notification to OIA by the SHPO.

B. Unmarked burials - Non-native American:

(1) With an application for a one-time permit or a notification of activation of an annual permit, the applicant or permittee shall provide the following information to the SHPO:

(a) a description of the context of the burial (e.g., historic or prehistoric archaeological site) with information about the site type, probable cultural affiliation, and apparent date of interment; and

(b) tentative date of completion of excavations; and

(c) actions to be taken to identify persons who may be related to the human burial.

(2) The permittee will attempt to locate and notify any persons who may be related to the human burial in writing or through legal notices.

C. If contacted, persons who may be related to a human burial shall be requested by the permittee to make recommendations within 30 days on the disposition of the human remains and associated funerary objects, material objects or artifacts.

[9-15-89; 4.10.11.11 NMAC - Rn, 4 NMAC 10.11.11, 1/1/08]

4.10.11.12 GUIDELINES FOR DISPOSITION OF HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS, MATERIAL OBJECTS OR ARTIFACTS:

A. SHPO notification:

(1) The permittee will notify the SHPO within 45 days of completion of permitted excavations and will submit a recommended plan for the disposition of human remains to the SHPO for approval.

(2) These recommendations will take into consideration any permit stipulations imposed by the permitting authority, comments from any living person who may be related to the burial, and the wishes of the landowner. The plan will provide a legal location of the reburial site or the location of an approved curatorial facility. An inventory list of all funerary objects, material objects or artifacts found in association with the burial, or collected in the course of excavation, will be submitted with the plan for disposition.

(3) The SHPO will review the permittee's recommendations for approval or denial, ensuring that any living person who may be related to the burial will have been notified and given an opportunity to provide comments on final disposition of the human remains and associated funerary objects, material objects and artifacts.

(4) Upon completion of the review process, the SHPO will notify the permittee in writing of approval or disapproval of the recommended plan. If the recommendations in the plan are disapproved the SHPO will provide direction for proper disposition.

B. Implementation of the disposition plan:

(1) Once accepted, the disposition plan will be implemented within 30 days, or within a specified period to be agreed upon by the SHPO. The permittee will provide written notice to the SHPO of completion of the disposition plan.

(2) If reinterment or disposition is delayed as a result of unforeseen circumstances and cannot be completed within the time period specified in the permit, the permittee shall contact the SHPO in writing to request an extension. This request must be received prior to expiration of the specified time period in order to be considered.

(3) The cost of reinterment will be born by the permittee except when, having specified reinterment in a manner requested by a tribe, clan or person who has claimed and demonstrated a relationship to the human burial, the SHPO requires that tribe, clan or person to assume such cost.

(4) Funerary objects, material objects or artifacts associated with a human burial will be released to the landowner by written instrument, after all other terms of the permit are met, unless a specific request for reinterment is made by a tribe, clan or person claiming and demonstrating a relationship to the human burial and approved by the SHPO.

C. Review of conditions of disposition plan:

(1) At the timely request of any affected landowner or any person claiming a relationship to a human burial, the permitting authority may review the conditions of a disposition plan prior to its being made final. A request for such review must be made in writing to the SHPO. Within 2 weeks of receipt of request for such review, the SHPO will inform the requesting party of the date, time and place of such review.

(2) The chairman of the committee will serve as the chairman of the review panel. The hearing will be conducted consistent with the committee's rules of procedure. Any decisions as to the terms of the disposition plan will be incorporated into the plan, which will be made final by vote of the permitting authority. The SHPO will transmit the final disposition plan to the requesting party and to the permittee.

(3) All requests for review shall include a statement of the requesting party's reason for requesting such review and will contain any additional information that the requesting party believes will support the appeal.

[9-15-89; 4.10.11.12 NMAC - Rn, 4 NMAC 10.11.12, 1/1/08]

4.10.11.13 REPORTING GUIDELINES:

A. Reporting requirements:

(1) Within 12 months of the completion of fieldwork, all permittees are required to submit 2 copies of a final report on the excavations of a human burial or burial ground conducted under the permit to the SHPO. If, as a result of unforeseen circumstances, the final report cannot be submitted within this period, the permittee shall submit 2 copies of an interim report to the SHPO, giving an estimated completion date for the final report.

(2) Upon acceptance of the final report by the permitting authority, the SHPO shall send written notification to the permittee of the completion of the permit responsibilities. All reports submitted in fulfillment of the permit requirements shall conform to report guidelines set forth in this section. The permittee shall submit 2 copies of the final report on the excavations of human burials or unmarked burial grounds.

(3) If, due to unforeseen circumstances, a permitted excavation is not undertaken, the permittee shall notify the SHPO in writing and request a cancellation of the permit or permit activation notification. This request, which shall contain a statement that no fieldwork was conducted and state the reason for the request, shall be accepted in lieu of the above required report, and the SHPO shall notify the permittee in writing of the cancellation.

(4) Failure by a permittee to submit the required reports in a timely manner or in conformance with current reporting guidelines shall be considered adequate reason for denial of future permits.

B. Minimal standards for human burial excavation reports:

(1) Abstract or summary shall provide brief information with regard to who, what, where.

(2) Provenience information:

(a) General project area: Provide a brief verbal description of the location of the burial with reference to township, range, and section (to the 1/4 1/4 section). Ownership of the land should be clearly stated. Surface lessee should be indicated if known.

(b) Map: Include a map of the general area showing major terrain reference points and project location. UTM coordinates may be given for the location of burial excavations. Maps should include a copy of a USGS topographic quadrangle. All maps should include project identification, name of person preparing map, scale and north arrow.

(3) Excavation methodology shall include a description of excavation and recordation techniques. The field personnel should also be identified.

(4) Description of burials:

(a) Physical description: Discuss the nature of the burial, associated remains, relation of the burial to other cultural features in the immediate area. Note any particular characteristics of the human remains and associated funerary objects (e.g., flexed burial oriented to the cast, covered in a woven blanket of hair, with a mano positioned near the feet).

(b) Cultural/temporal affiliations: State and discuss the criteria used to make this determination.

(c) Plan: Depict the positioning of the human remains and associated funerary objects in relation to the burial. This may be accomplished by a sketch map, but should include a north arrow, scale, and key to map symbols.

(d) Inventory: A list of all funerary objects, material objects and artifacts associated with the burial. The inventory list should be accompanied by scaled, labeled photographs of each item.

(e) Photodocumentation: All burials should be photographed and the photos cataloged. The report should explicitly describe where the photographs will be stored. Glossy black and white photographs are preferred.

(f) Analysis summary section: Analysis of human remains and associated funerary objects, material objects and artifacts will be discussed. The results of the analysis will also be presented.

(g) Final disposition: Disposition of the human remains and associated funerary objects, material objects and artifacts will be described. If the human remains are reinterred, the exact location of the reinterment site should appear in the disposition plan but not in the final report. If curated, the location of human remains or funerary objects, material objects or artifacts associated with the burial should be identified in the report (e.g., museum of New Mexico, or artifacts in the possession of a landowner, including address).

[9-15-89; 4.10.11.13 NMAC - Rn, 4 NMAC 10.11.13, 1/1/08]

PART 12: IMPLEMENTATION OF THE PREHISTORIC AND HISTORIC SITES PRESERVATION ACT

4.10.12.1 ISSUING AGENCY:

Office of Cultural Affairs, State Historic Preservation Division.

[11/15/97; 4.10.12.1 NMAC - Rn, 4 NMAC 10.12.1, 1/1/08]

4.10.12.2 SCOPE:

Applies to the state historic preservation division, the cultural properties review committee, state agencies and subdivisions of the state, and nonprofit corporations formally recognized as tax exempt under Section 501(c)3 of the Internal Revenue Code of 1986, whose declared purposes include the investigation, preservation or conservation of significant prehistoric or historic sites.

[11/15/97; 4.10.12.2 NMAC - Rn, 4 NMAC 10.12.2, 1/1/08]

4.10.12.3 STATUTORY AUTHORITY:

This regulation is created pursuant to Section 18-8-8 NMSA 1978, which requires the state historic preservation officer to issue regulations for the implementation of the New Mexico Prehistoric and Historic Sites Preservation Act.

[9/15/89; 4.10.12.3 NMAC - Rn, 4 NMAC 10.12.3, 1/1/08]

4.10.12.4 DURATION:

Permanent.

[11/15/97; 4.10.12.4 NMAC - Rn, 4 NMAC 10.12.4, 1/1/08]

4.10.12.5 EFFECTIVE DATE:

9/15/89, unless a later date is cited at the end of a section or paragraph. Reformatted to NMAC format effective 11/15/97.

[11/15/97; 4.10.12.5 NMAC - Rn, 4 NMAC 10.12.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.12.6 OBJECTIVE:

The purpose of this regulation is to establish procedures for the acquisition, stabilization, restoration or protection of significant prehistoric and historic sites by the state of New Mexico and corporations, to establish procedures and guidelines for determinations of the prudence and feasibility of alternatives to programs and projects requiring the use of land from significant prehistoric and historic sites, and to establish procedures and guidelines to determine whether all possible planning to preserve and protect and to minimize harm to significant prehistoric and historic sites affected by use of lands from such sites has been carried out. The purpose of the statute is to facilitate the preservation and protection of significant prehistoric and historic sites by authorizing partnerships between entities of government and corporations to that end, and by requiring substantial consideration of governmental actions that will have the effect of destroying or adversely affecting significant prehistoric and historic sites. The statute furthers the purposes of Sections 18-6-1 through 23 NMSA 1978 and of the National Historic Preservation Act of 1966 as amended and is consistent with the legislative finding (Section 18-6-2 NMSA 1978) that "the historical and cultural heritage of the state is one of the state's most valued and important assets; [and] that the public has an interest in the preservation of all antiquities, historic and prehistoric ruins, sites, structures, objects and similar places and things..."

[9/15/89; 4.10.12.6 NMAC - Rn, 4 NMAC 10.12.6, 1/1/08]

4.10.12.7 DEFINITIONS:

A. "Acquisition" is the acquisition of a fee simple interest or of a lesser interest by appropriate mechanism, including but not limited to easement or lease, in a significant prehistoric or historic site.

B. "Stabilization" is the act or process of securing a historic property against natural change, loss or deterioration of the existing fabric.

C. "Restoration" is the act or process of accurately recovering the form and details of a historic property and its setting.

D. "Protection" is the act or process of securing a historic property against change, loss, deterioration, theft, vandalism or other adverse effect caused by a human agent.

E. "Significant prehistoric or historic site" is a historic or prehistoric property, district, site, structure or object listed in the state register of cultural properties or national register of historic places, or property contributing to a historic district, and includes those lands within the boundaries of the property, site or district.

F. "State of New Mexico" is any state agency or political subdivision of the state, including but not limited to cities and counties.

G. "Entity" is any political subdivision of the state.

H. "Corporation" is a nonprofit corporation formally recognized as tax exempt under Section 501(c)3 of the Internal Revenue Code of 1986, whose declared purposes include the investigation, preservation or conservation of significant prehistoric or historic sites.

I. "Division" is the historic preservation division, office of cultural affairs.

J. "Committee" is the cultural properties review committee created by Section 18-6-4 NMSA 1978.

K. "State historic preservation officer" (SHPO) is the state official named in Section 18-6-8 NMSA 1978.

L. "Appropriation" is the authorization and apportionment of funds by federal, state or local statute.

M. "Public funds" are any moneys, financial consideration or direct or indirect financial support from any political subdivision of the state or from any entity acting on behalf of or with the authority of any political subdivision of the state.

N. "Long-term management plan" is a document prepared by a corporation and approved by the division, describing a historic or prehistoric site and creating guidelines, standards and procedures for its restoration, protection, interpretation, operation, maintenance and disposition as more fully set forth in 4.10.12.10 NMAC below.

O. "Use" is an adverse effect on a significant historic or prehistoric site or lands of that site, including but not limited to partial or complete physical alteration or destruction; isolation of the site from its historic setting; the introduction of physical, audible, visual or atmospheric elements that substantially impair the historic character or significance of the site or substantially diminish the aesthetic value of the site; or the acquisition or taking of a historic or prehistoric site resulting in or designed to result in such alteration, destruction, isolation or introduction of elements that may alter the site. Ordinary maintenance or repair, including code work, which makes no visible alteration

to the site and results in no substantial loss of the historic fabric; installation or upgrade of services, such as electricity and water, which makes no visible alteration to the site and results in no substantial loss of the historic fabric; or emergency repair or stabilization of a significant site, shall not be considered a use within the scope of this definition.

P. "Program" is a course of action or series of actions supported by public funds.

Q. "Project" is an individual action or segment of a program.

R. "Area of impact" is the entire geographic area or areas within which a program or project may affect a significant historic or prehistoric site or sites.

S. A "prudent alternative" is any alternative not rendered impossible by truly unusual factors present in a particular case, or by costs or community disruption likely to reach extraordinary magnitudes, or attended by unique problems.

T. A "feasible alternative" is an alternative that may be built as a matter of sound engineering.

[9/15/89; 4.10.12.7 NMAC - Rn, 4 NMAC 10.12.7, 1/1/08]

4.10.12.8 ESTABLISHMENT OF CRITERIA:

A. The division and the committee shall cooperatively develop criteria for the acquisition, stabilization, restoration or protection of significant historic or prehistoric sites. Not less often than annually these criteria shall be reviewed and may be revised by the division and the committee in a regular, public and advertised meeting of the committee.

B. The criteria will include:

(1) the significance of the property in the prehistory and history of New Mexico, including consideration of national landmark status;

(2) the degree to which the property is threatened by deterioration or destruction;

(3) the rarity or uniqueness of the property or property type in New Mexico;

(4) the research potential of the property; and

(5) the value of the property for public interpretation and visitation. The established criteria will be available to interested persons at the offices of the division.

[9/15/89; 4.10.12.8 NMAC - Rn, 4 NMAC 10.12.8, 1/1/08]

4.10.12.9 SOLICITATION OF PROPOSALS:

Not less often than annually the division shall make an announcement, by legal advertising in newspapers of general circulation and by other appropriate means, to all state agencies holding property, to all municipalities and counties in New Mexico and to 501(c)3 organizations whose stated purposes include the investigation, preservation or conservation of significant prehistoric and historic sites. This announcement will 1) note the availability of any funds for acquisition, stabilization, restoration or protection of significant prehistoric or historic sites, and 2) request proposals for the acquisition, stabilization, restoration or protection of significant prehistoric and historic sites. This announcement will note the general requirements of a management plan as described herein.

[9/15/89; 4.10.12.9 NMAC - Rn, 4 NMAC 10.12.9, 1/1/08]

4.10.12.10 LONG-TERM MANAGEMENT PLAN:

A. A long-term management plan shall include but not be limited to:

- (1) a site description and statement of significance. The national register nomination may be used;
- (2) a site map;
- (3) documentation of site ownership, including a copy of the deed and a statement regarding outstanding mortgages, liens or other encumbrances on the property; this documentation must demonstrate that the applying agency or organization has legal control of the property;
- (4) a schedule of any stabilization, restoration, monitoring or protection measures proposed;
- (5) a program budget including a funding formula for the project indicating the proposed allocation of funds by the state and the agency or corporation, and the availability of funding by third parties;
- (6) a contract, agreement or proposed agreement for the disposition of the property in the event that the corporation goes out of existence;
- (7) a maintenance schedule, including approximate costs;
- (8) a plan for public interpretation when appropriate;
- (9) documentation of the 501(c)3 status of the corporation;

(10) a statement designed to demonstrate the viability of the corporation; this statement will include vitas or resumes of appropriate personnel, operating budget, income projections and a recent audited financial statement;

(11) a statement indicating the appropriateness of the site for acquisition, restoration or stabilization with reference to the criteria established as provided for in 4.10.12.8 NMAC above.

B. The long-term management plan must be approved by the division prior to commencement of the project.

C. The division and committee will cooperatively select proposals for funding in regular public and advertised meetings of the committee. Selection of proposals for funding will be based on the criteria set forth in 4.10.12.8 NMAC above and on evaluation of the long-term management plan.

D. After the long-term management plan is approved by the division, the division and the corporation shall enter into a contract consistent with that plan and providing for the management, interpretation and preservation of any property acquired, stabilized, restored or protected under the provisions of the New Mexico Prehistoric and Historic Sites Preservation Act.

[9/15/89; 4.10.12.10 NMAC - Rn, 4 NMAC 10.12.10, 1/1/08]

4.10.12.11 PRUDENT AND FEASIBLE ALTERNATIVES:

Whenever an entity proposes to spend public funds on any program or project that may require the use of or any portion of or any land from a significant prehistoric or historic site, that entity shall, at the earliest practicable stage in planning the program or project, make a determination that there is no prudent and feasible alternative to such use. The affirmative responsibility of showing that there is no such alternative rests on the entity. This showing shall be arrived at in the following manner:

A. At an early stage in the development of a proposal to carry out a program or project that may use land from a significant prehistoric or historic site, the entity shall submit an appropriately substantial written and graphic description of the proposed program or project and a map showing the area of impact of the proposed program or project to the division, and shall request the determination of the division as to whether the program or project will use a significant prehistoric or historic site. Within thirty days of receipt of such request the division will respond with a determination and a list of any prehistoric or historic sites which will be used, including sites entered in the state register of cultural properties or national register of historic places. The division will also inform the entity about any sites determined by the division to be eligible to either register, sites in process of nomination to either register, and the status of prehistoric an historic inventory of the area.

B. If the SHPO determines that the proposed program or project will use a significant prehistoric or historic site, the entity shall, at an early stage in the planning for that program or project, hold at least one public hearing, advertised not less than thirty days in advance of such hearing in one newspaper of statewide circulation and one newspaper in the locality or region of the action, to solicit proposed alternatives that will avoid such use. The entity shall give direct and timely written notice of such hearing to the SHPO. At such public hearing, the entity shall take oral and written testimony of interested persons. The entity shall hold the hearing record open for an additional fifteen days to take additional written comments. The SHPO may propose an alternative or alternatives at the hearing or for the hearing record. The entity may employ any timely design, public information or other hearing, e.g., a hearing provided for in its standard procedures, as the forum for soliciting alternatives.

C. Only those prehistoric or historic sites entered in the state register of cultural properties or national register of historic places as of the closing date of the hearing record shall be deemed to fall within the scope of this regulation. However, any proposed change in the scope of a program or project which brings a significant prehistoric or historic site within the area of impact of that program or project will require full consideration under this section and the following section of this regulation. It shall be the responsibility of the division to give timely written notice of any proposal to enter a property in the state register of cultural properties to the property owner, the affected municipality if any, and the affected county not less than thirty days before a meeting of the committee to consider such proposal.

D. The entity, on the basis of testimony received in the hearing and upon its own initiative and responsibility shall document alternatives to the proposed use. It shall then be the affirmative responsibility of the entity to prepare a written, reviewable and appropriately substantial record of its examination of alternatives, including a discussion of social and environmental concerns, of any identified hazard or emergency, and of the cost and community disruption resulting from each alternative. Commonly available alternatives may include use of federal or state funds for preservation and maintenance of the significant prehistoric or historic site or sites and the no-build alternative. The entity must make a written conclusion of the imprudence or infeasibility of alternatives, including the no-build alternative, identified by itself or by the state historic preservation officer. Arguments based on cost and technical feasibility must be supported by affidavit of a qualified architect or engineer. It shall not be deemed sufficient for the purposes of this analysis to reject an alternative as imprudent or infeasible because it would affect other significant prehistoric or historic sites, or would affect the same sites in a different manner.

E. It shall be the affirmative responsibility of the entity either to determine that there is no prudent and feasible alternative to a proposed program or project or to select the alternative to a proposed program or project which causes the least harm to any significant prehistoric or historic site or sites. The entity shall issue this determination in the form of a written record of decision to all interested parties, including direct notice to the division.

F. It shall be the affirmative responsibility of the SHPO to respond to the record of decision and to concur with or to dissent from its conclusions within forty-five days of receipt of the record. The SHPO shall state in writing his finding that there is or is not a prudent and feasible alternative to the proposed program or project, or that the alternative causing the least harm to any significant prehistoric or historic site or sites has or has not been selected, and that all possible planning to minimize harm to a significant prehistoric or historic site or sites has or has not been carried out as further set forth in 4.10.12.12 NMAC below.

G. Compliance with federal rule or regulation which:

(1) requires a determination that there is no prudent or feasible alternative to a program or project affecting a significant prehistoric or historic site or sites;

(2) requires all possible planning to minimize harm to any affected significant prehistoric or historic site or sites; and

(3) requires consultation with the SHPO, may substitute for compliance with this regulation.

[9/15/89; 4.10.12.11 NMAC - Rn, 4 NMAC 10.12.11, 1/1/08]

4.10.12.12 PLANNING TO MINIMIZE HARM:

A. This section applies either when no prudent or feasible alternative is found which will avoid use of a significant prehistoric or historic site or sites, or when more than one alternative which will affect a significant prehistoric or historic site or sites is found. In either case, a plan to minimize harm to the affected significant prehistoric or historic site or sites shall be incorporated as a separate section of the record of decision described in 4.10.12.11 NMAC above. The plan must contain the following:

(1) a map of the area of impact, including the significant historic or prehistoric sites to be used;

(2) documentation of ownership of the area of impact;

(3) a description of the significant historic or prehistoric site or sites to be used and a statement of the historic, architectural or archaeological significance of the site or sites. The state or national register nomination form may be the source of this statement;

(4) documentation of alternatives, if more than one alternative has been found, totaling the harm caused by each alternative, and making a conclusion, based on comparisons stated in appropriately substantial detail, that given alternative in association with any specific measures for stabilization, restoration, protection or data recovery causes the least harm to a significant historic or prehistoric site or sites;

(5) estimated costs relating to (4) above;

(6) any contract, agreement or proposed agreement relating to the disposition or maintenance of the significant prehistoric or historic site or sites;

(7) any schedule of maintenance of the significant prehistoric or historic site or sites, including approximate costs.

B. The entity may upon request hold an additional public hearing, advertised no less than thirty days in advance in one newspaper of statewide circulation and one newspaper in the locality or region of the proposed program or project, to receive written and oral testimony on the plan from interested persons. The entity shall give direct and timely written notice of any such hearing to the SHPO. In the event of such hearing, the entity shall hold the hearing record open for an additional fifteen days to take additional written comments.

C. The only relevant factor in making a determination as to whether an alternative minimizes harm to a significant prehistoric or historic site is a quantum of harm to the site caused by that alternative.

[9/15/89; 4.10.12.12 NMAC - Rn, 4 NMAC 10.12.12, 1/1/08]

4.10.12.13 ENFORCEMENT:

Either the SHPO or any other interested person may seek enforcement of the provisions of the New Mexico Prehistoric and Historic Sites Preservation Act by an action for injunction or other appropriate relief in a court of competent jurisdiction.

[9/15/89; 4.10.12.13 NMAC - Rn, 4 NMAC 10.12.13, 1/1/08]

PART 13: AWARDING OF GRANTS FROM THE CULTURAL PROPERTIES RESTORATION FUND

4.10.13.1 ISSUING AGENCY:

Office of Cultural Affairs, State Historic Preservation Division.

[11/15/97; 4.10.13.1 NMAC - Rn, 4 NMAC 10.13.1, 1/1/08]

4.10.13.2 SCOPE:

State agencies that own or administer cultural properties may receive grants from the cultural properties restoration fund according to the procedures and criteria established in this regulation.

[11/15/97; 4.10.13.2 NMAC - Rn, 4 NMAC 10.13.2, 1/1/08]

4.10.13.3 STATUTORY AUTHORITY:

This regulation is created pursuant to the Cultural Properties Protection Act, NMSA 1978 Sections 18-6A-1 through 18-6A-6, which requires the state historic preservation officer to issue regulations and criteria for reviewing and awarding grants as necessary for carrying out the provisions of the act.

[11/23/94; 4.10.13.3 NMAC - Rn, 4 NMAC 10.13.3, 1/1/08]

4.10.13.4 DURATION:

Permanent.

[11/15/97; 4.10.13.4 NMAC - Rn, 4 NMAC 10.13.4, 1/1/08]

4.10.13.5 EFFECTIVE DATE:

11/23/94, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective 11/15/97.

[11/15/97; 4.10.13.5 NMAC - Rn, 4 NMAC 10.13.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.13.6 OBJECTIVE:

The purpose of this regulation is to establish a procedure to provide grants from the cultural properties restoration fund, when funds are available, for interpretation, restoration, preservation, stabilization, and protection of cultural properties that are state properties.

[11/23/94; 4.10.13.6 NMAC - Rn, 4 NMAC 10.13.6, 1/1/08]

4.10.13.7 DEFINITIONS:

A. "Committee" means the cultural properties review committee as created in Section 18-6-5 NMSA 1978.

B. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

C. "Division" means the historic preservation division of the office of cultural affairs.

D. "Fund" means the cultural properties restoration fund.

E. "Interpretation" means the inventory, registration, mapping and/or analysis of cultural properties and public educational programs designed to prevent the loss of cultural properties.

F. "Officer" means the state historic preservation officer.

G. "Preservation" means sustaining the existing form, integrity, and material of a cultural property or the existing form and vegetative cover of a cultural property, and may include protective maintenance or stabilization where necessary in the case of archaeological sites.

H. "Professional survey" means an archaeological or architectural survey.

I. "Protection" means safeguarding the physical condition or environment of cultural property from deterioration or damage caused by weather or other natural, animal or human intrusions.

J. "Reconstruction" means depicting by means of new construction the form, features, and details of a non-surviving site, landscape, building, structure or object for the purposes of replicating its historic appearance.

K. "Restoration" means recovering the general historic appearance of a cultural property or the form and details of an object or structure by removing incompatible natural or human-caused accretions and replacing missing elements as appropriate.

L. "Stabilization" means reestablishing the structural stability or weather-resistant failure.

M. "State agency" means a department, agency, institution or political subdivision of the state.

N. "State land" means property owned, controlled or operated by a state agency.

[11/23/94; 4.10.13.7 NMAC - Rn, 4 NMAC 10.13.7, 1/1/08]

4.10.13.8 METHOD TO DETERMINE ELIGIBILITY TO RECEIVE GRANT FUNDS:

In order to receive a grant from the fund, an applicant must be a state agency, own or administer a cultural property that is state property, and have a demonstrated ability to administer grants.

[11/23/94; 4.10.13.8 NMAC - Rn, 4 NMAC 10.13.8, 1/1/08]

4.10.13.9 PROCEDURE FOR APPLICATION, APPROVAL, AND REJECTION OF GRANT PROPOSALS:

At least once during each state fiscal year, if funds are available, the officer shall notify state agencies of the opportunity to submit proposals for grants from the fund. This notification shall contain information about the date that proposals must be submitted, the format, and the required content. The officer may also solicit proposals on an emergency basis for threatened cultural properties. Proposals will be evaluated by the staff of the division and the committee following the criteria for reviewing and awarding grants as described below.

[11/23/94; 4.10.13.9 NMAC - Rn, 4 NMAC 10.13.9, 1/1/08]

4.10.13.10 CRITERIA FOR REVIEWING AND AWARDING GRANTS:

The staff of the division and the committee shall review and award grants based on the following criteria:

- A. the demonstrated degree of physical damage or deterioration of the cultural property and demonstrable threats to the stability of the property;
- B. special status of the cultural property, including whether the property is listed on the national, state, or a local register of historic places and the rarity or uniqueness for the property ;
- C. suitability of the property for interpretation;
- D. compliance of the proposed grant project with applicable professional standards for interpretation, preservation, or stabilization;
- E. comprehensiveness of the interpretation, restoration, preservation, stabilization or protection plan;
- F. availability of matching funds;
- G. availability of appropriate professional expertise for overseeing a restoration, interpretation, preservation, stabilization, or protection program for a cultural property;
- H. viable provisions for long-term preservation, protection and management of the grant-assisted cultural property, including provisions that the property shall be preserved and protected for no less than 10 years

[11/23/94; 4.10.13.10 NMAC - Rn, 4 NMAC 10.13.10, 1/1/08]

4.10.13.11 ADMINISTRATION OF GRANTS:

When the division and the committee award a grant for restoration, interpretation, preservation, stabilization or protection of a cultural property, the grant shall be administered under the terms of a joint powers agreement (JPA) between the division

and the state agency having jurisdiction over the cultural property. The JPA will specify the nature of the work to be done, payment schedule, reporting requirements, long-term preservation and protection measures, and other requirements of the grant.

[11/23/94; 4.10.13.11 NMAC - Rn, 4 NMAC 10.13.11, 1/1/08]

4.10.13.12 PROHIBITIONS:

The division and the committee shall not award grants from the fund for the purpose of reconstruction of cultural properties.

[11/23/94; 4.10.13.12 NMAC - Rn, 4 NMAC 10.13.12, 1/1/08]

PART 14: CULTURAL PROPERTIES ON PRIVATE LAND AND MECHANICAL EXCAVATION PERMITS

4.10.14.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.

[4.10.14.1 NMAC - Rp, 4.10.14.1 NMAC, 01/16/2019]

4.10.14.2 SCOPE:

This rule applies to all public and private entities proposing to excavate, with the aid of mechanical earth-moving equipment, an archaeological site on private land. This rule does not apply to state or federal lands or to lands held in trust for an Indian tribe by the federal government.

[4.10.14.2 NMAC – Rp, 4.10.14.2 NMAC, 01/16/2019]

4.10.14.3 STATUTORY AUTHORITY:

Section 18-6-10 NMSA 1978 and Section 18-6-11 NMSA 1978 of the Cultural Properties Act.

[4.10.14.3 NMAC – Rp, 4.10.14.3 NMAC, 01/16/2019]

4.10.14.4 DURATION:

Permanent.

[4.10.14.4 NMAC – Rp, 4.10.14.4 NMAC, 01/16/2019]

4.10.14.5 EFFECTIVE DATE:

January 16, 2019, unless a later date is cited at the end of a section.

[4.10.14.5 NMAC – Rp, 4.10.14.4 NMAC, 01/16/2019]

4.10.14.6 OBJECTIVE:

This rule describes procedures used to assist owners to preserve cultural properties situated on privately owned land and the procedures and standards to excavate an archaeological site on private land using mechanical earth-moving equipment.

[4.10.14.6 NMAC – Rp, 4.10.14.4 NMAC, 01/16/2019]

4.10.14.7 DEFINITIONS:

A. "Agent" means an individual who is authorized by a written agreement with a private landowner to act on behalf of the landowner and who works under the landowner's personal and direct supervision.

B. "Archaeological investigation" means the study of archaeological sites, isolates and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

C. "Archaeological site" or "site" means a location where there exists material evidence of the past life and culture of human beings in the state and is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure. An archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, habitation sites, ruins of buildings and structures, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials.

D. "Committee" or "CPRC" means the cultural properties review committee, created pursuant to Section 18-6-4 NMSA 1978 of the Cultural Properties Act.

E. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

F. "Excavation" means to systematically dig up artifacts, deposits or material remains within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

G. "Historic preservation division" or "HPD" means the division within the department of cultural affairs created pursuant to Subsection A of Section 18-6-8 NMSA 1978 of the Cultural Properties Act.

H. "Human burial" or "unmarked human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

I. "Individual unmarked human burial excavation permit" is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of unmarked human burials on state or private land. Individual unmarked human burial permits are submitted with an application for a project-specific permit for excavation and when unmarked human burials are known to exist within the project area.

J. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

K. "Mechanical earth-moving equipment" means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other deposits or materials from including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

L. "Mechanical Excavation Permit" is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of

archaeological sites on private land using mechanical earth-moving equipment by someone other than the landowner or his agent.

M. "Permit" means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time.

N. "Preservation" means sustaining the existing form, integrity, material or vegetative cover of a cultural property and includes protective maintenance or stabilization.

O. "Protection" means safeguarding the physical condition or environment of an archaeological site or historic structure or building from deterioration or damage caused by weather or other natural, animal or human intrusions.

P. "Restoration" means recovering the general historic appearance of a cultural property or the form and details of an object or structure by removing incompatible natural or human-caused accretions and replacing missing elements as appropriate.

Q. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 NMSA 1978 of the Cultural Properties Act.

R. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 NMSA 1978 of the Cultural Properties Act who serves as the director of the HPD.

S. "State register" means the New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties deemed worthy of preservation.

T. "Unmarked burial ground" means a location where there exists a burial or burials of any human beings that are not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials and includes any funerary object, material object or artifact associated with the burial or burials.

[4.10.14.7 NMAC – Rp, 4.10.14.7 NMAC, 01/16/2019]

4.10.14.8 PRESERVATION OF CULTURAL PROPERTIES ON PRIVATE LAND:

A. The CPRC and the SHPO offer technical assistance to owners of cultural properties on private land with the purpose to:

(1) identify and register cultural properties worthy of preservation on the state register;

(2) provide advice to owners interested in the protection, rehabilitation, restoration or maintenance of cultural properties on private land, including but not limited to, state and federal income tax credit programs, the state historic preservation loan fund and conservation easement programs; and

(3) ensure that archaeological investigations on private land meet the highest professional standards; when requested by an owner, the CPRC or the SHPO will review a proposal to conduct archaeological investigations on private land and offer written comments.

B. If evidence of a human burial or unmarked burial ground is discovered on private land, local law enforcement shall be notified pursuant to 4.10.11 NMAC. The state archaeologist provides technical assistance to landowners on notification and protection.

[4.10.14.8 NMAC – Rp, 4.10.14.8 NMAC, 01/16/2019]

4.10.14.9 PROCEDURES FOR A MECHANICAL EXCAVATION PERMIT:

The CPRC issues, with the concurrence of the state archaeologist and the SHPO, permits to use mechanical earth-moving equipment in the excavation of an archaeological site on private land when a public or private entity other than the landowner or the agent of the landowner proposes to conduct excavation. An individual unmarked human burial excavation permit shall be obtained concurrently with a mechanical excavation permit unless the site is historic and burials are unlikely. Individual unmarked human burial permits are issued under 4.10.11 NMAC.

A. For purposes of this rule, the CPRC or the SHPO may require an individual who purports to be a landowner's agent to provide a copy of the written agreement with the landowner indicating that the individual is authorized to act on the behalf of the landowner, and that the individual works or will work under the landowner's personal and direct supervision. The CPRC or the SHPO may request additional information from the landowner or the individual regarding the individual's authority and the landowner's right to control the individual's activities. The CPRC and the SHPO will use all this information to determine whether the relationship between the landowner and the individual who is using or will be using mechanical earth-moving equipment to excavate on private land, is one of principal and agent.

B. Any public or private entity may obtain mechanical excavation permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD. The application shall contain the following information:

(1) applicant name, mailing address, telephone number and email address;
and

(2) signature of the applicant, title of the applicant and date, which may be submitted with original signature, signature transmitted by facsimile, or a scanned application with the original signature transmitted by email; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit. Applications lacking a signature shall be considered incomplete.

C. The applicant shall complete the application and attachments and provide the following items consistent with the instructions provided by HPD:

(1) written authorization for the proposed excavation from the owner of the land on which the archaeological site is located;

(2) a research design consistent with the standards in 4.10.21 NMAC and the methods to be used during the mechanical excavation consistent with 4.10.14.12 NMAC.;

(3) a staff roster that lists the names of the principal investigator, project director, field supervisor and crew chief who are listed in the SHPO directory and will be working in the field during the permitted excavation;

(4) a written acknowledgment by the applicant that a final report on the results of the excavation shall be submitted to HPD; and

(5) an estimated date of completion for a final report on the results of the excavation.

D. An approved application shall list special stipulations imposed by the CPRC, if any, and shall list the term of the permit and the permit number; the term of the permit shall be one year from the date of approval by the CPRC unless the applicant proposes a later date that is approved by the CPRC.

E. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating their concurrence with the issuance of the permit.

[4.10.14.9 NMAC – Rp,4.10.14.9 NMAC, 01/16/2019]

4.10.14.10 REVIEW AND APPROVAL OF APPLICATIONS:

A. HPD shall receive permit applications including attachments and maintain current files for each individual or firm who has a mechanical excavation permit.

B. HPD shall review all information submitted in support of the application for completeness, accuracy, and conformance with all qualifying requirements. When requested, the applicant shall remedy any inaccuracies or inadequacies specified by

HPD before further review or processing of the permit application proceeds. HPD shall submit all completed applications for consideration at the next scheduled CPRC meeting. HPD may recommend to the CPRC that an application be tabled or rejected if the applicant fails to meet minimum qualifying criteria either upon initial receipt or through failure to respond adequately to a request for information.

C. The CPRC shall review and consider all completed applications for approval, approval with special stipulations, or denial, with the concurrence of the state archaeologist and the SHPO. The CPRC may table applications to be discussed at a future meeting pending receipt of additional information necessary to make a decision on the permit.

D. Any special stipulations attached to a permit by the CPRC, the state archaeologist, or the SHPO shall be specified in writing on the permit.

E. HPD shall notify the applicant in writing of the approval, approval with stipulations or denial of the permit by CPRC, with the concurrence of the state archaeologist and the SHPO.

F. Any applicant who has been denied a permit by the CPRC, the state archaeologist, or the SHPO shall have the right to appeal the decision pursuant to 4.10.8.24 NMAC.

[4.10.14.10 NMAC – Rp, 4.10.14.10. NMAC, 01/16/2019]

4.10.14.11 MECHANICAL EXCAVATION PERMIT STIPULATIONS:

A. Permittees shall abide by all stipulations contained in this rule and any special stipulations imposed by the CPRC, the state archaeologist, the SHPO or the owner of the land on which the site is located. These additional stipulations shall be set out in writing on the permit.

B. Permittees shall determine the land status and ownership of the land on which the archaeological investigation will occur to insure the work will not be in trespass and that they are in compliance with local, state or federal laws.

C. All costs incurred in the execution of the activities conducted under a permit shall be borne by the permittee or its client.

D. The permittee shall comply with all laws, rules, ordinances and requirements in all matters and things affecting the premises and operations therein pertaining to the permit, archaeological site and the land where the site is located.

E. All activities conducted under the permit shall be carried out so as to prevent erosion of the land, pollution of water resources and any other damage to the natural environment. Any sites or locations, disturbed in the course of the archaeological

investigations conducted under the permit shall be restored to their original condition insofar as possible. The areas of limited tests, test excavations and excavation shall be backfilled. All areas examined under the permit shall be left in a state that will not create hazard to life nor endanger livestock or other property, nor contribute to the deterioration of the site or location or adjacent lands by natural forces, unless other provisions are specifically arranged in the permit application.

F. If human burials are discovered during the excavation, local law enforcement shall be notified pursuant to 4.10.11 NMAC. If the human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

G. All material remains collected or removed from the site as a result of the excavation conducted under the permit shall be the property of the owner of the land on which the site is located, with the exception of unmarked human burials and any funerary object, material object or artifact buried, entombed or sepulchered with the human burial or burials, which shall be the subject of consultation in accordance with 4.10.11 NMAC. The permittee may encourage the landowner to donate the material remains to a public institution that curates such material.

H. If the excavation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period, the permittee shall notify HPD in writing to request an extension to the term of the permit. This request shall be received by HPD within 10 working days prior to the expiration date of the permit in order to be considered. The request for the extension shall be accompanied by an interim report summarizing the status of the excavations, a proposed date for when the excavations will be completed and proposed date for when the final report will be submitted. HPD may approve one extension of the permit term not to exceed one year from the expiration date of the original permit. Additional requests for an extension will be reviewed by the CPRC.

I. If the archaeological investigation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify HPD in writing to request a cancellation of the permit. Disposition of material remains collected under the permit and copies of all written and photographic records resulting from a discontinued investigation will be in accordance with the provisions of this section.

J. If fieldwork has not been initiated within the permit period or an extension has not been requested, the permit shall become void at the end of the permit period.

K. Failure by a permittee to comply with the standard or special stipulations set forth in this rule and on the permit may be cause for the CPRC's denial of future permits to the permittee in conformance with 4.10.8.23 NMAC.

[4.10.14.11 NMAC – Rp, 4.10.14.11 NMAC, 01/16/2019]

4.10.14.12 STANDARDS FOR THE USE OF MECHANICAL EQUIPMENT:

All permitted excavations using mechanical equipment shall conform to the following standards.

A. Mechanical excavation may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden.

B. Controlled surface collection of artifacts shall be accomplished using a grid system or by point provenience prior to excavation of trenches or stripping or scraping areas with mechanical earth-moving equipment.

C. For each trench:

(1) document the location, depth, soil profile, artifact yield and other pertinent information;

(2) clean at least one complete profile with a shovel or trowel and inspect the profile for material remains;

(3) document the cleaned profile in narrative, profile drawing and photographs;

(4) examine the excavated area after the removal of each extracted bucket load;

(5) examine back dirt for the presence of artifacts; and

(6) conform depths and configurations of mechanical excavation trenches to OSHA standards for excavation safety (29 CFR 1926, Subpart P).

D. Stratigraphic profiles shall be recorded by scale diagram, photographs and narrative descriptions. Deposit descriptions include but are not limited to sediment color, texture, moisture, content, nature of inclusions, organic content and an inventory of cultural material. The color shall be described using Munsell terminology.

E. Mechanical stripping or scraping may be employed following hand excavations or mechanical trenching unless depth of cultural deposits has been determined from surface observations. The stripping serves the purpose of revealing features that were not previously identified and provides a check on the reliability of the excavation sampling design. Features exposed during the mechanical stripping shall be mapped in relation to the site datum. All features shall be fully excavated unless a sampling strategy is included in the approved research design and excavation plan.

[4.10.14.12 NMAC – Rp, 4.10.14.12 NMAC, 01/16/2019]

4.10.14.13 REPORTING STANDARDS:

A. The permittee may submit to HPD one copy of a preliminary report on the results of the excavation including relevant maps, drawings, photographs and other documents for review and acceptance by HPD prior to construction and when a final report cannot be completed before construction.

B. A final report and associated records, including but not limited to archaeological site records, list of collections, and photographs, on the excavations shall be submitted to HPD within one year of the completion of the excavations or the date approved by the CPRC. If HPD has not received a copy of the report within the permit period, HPD shall contact the permittee. If the excavations are part of a larger project that includes sites on state land, the final report shall be prepared consistent with 4.10.16.14 NMAC for test excavation projects or 4.10.21.12 NMAC for excavation projects.

C. All reports shall be reviewed by HPD for technical accuracy and completeness.

(1) If HPD review reveals that the proposed investigations were not completed consistent with the application and stipulations contained on the approved permit, HPD will notify the permittee of the deficiencies and request that the permittee amend the report to correct the deficiencies and resubmit the report.

(2) Failure by the permittee to conduct the permitted investigation according to standards or stipulations or to submit required reports in a timely manner or to amend report deficiencies as identified by HPD shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

[4.10.14.13 NMAC – Rp, 4.10.14.13 NMAC, 01/16/2019]

4.10.14.14 DEVIATIONS:

The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.14.14 NMAC – Rp, 4.10.14.14 NMAC, 01/16/2019]

PART 15: STANDARDS FOR SURVEY AND INVENTORY

4.10.15.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.

[4.10.15.1 NMAC - N, 1/01/06]

4.10.15.2 SCOPE:

This rule applies to all public and private entities, including but not limited to, individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums and any agency of the federal government conducting or proposing to conduct archaeological investigations on any lands owned, controlled or operated by the state of New Mexico.

[4.10.15.2 NMAC - N, 1/01/06]

4.10.15.3 STATUTORY AUTHORITY:

Section 18-6-5 (NMSA 1978) of the Cultural Properties Act.

[4.10.15.3 NMAC - N, 1/01/06]

4.10.15.4 DURATION:

Permanent.

[4.10.15.4 NMAC - N, 1/01/06]

4.10.15.5 EFFECTIVE DATE:

January 1, 2006, unless a later date is cited at the end of a section.

[4.10.15.5 NMAC - N, 1/01/06]

4.10.15.6 OBJECTIVE:

This rule describes procedures and standards to conduct surveys to identify, record and evaluate archaeological sites, isolates, other cultural properties and areas of historic and scientific interest on lands owned, controlled or operated by a department, agency, institution or political subdivision of the state.

[4.10.15.6 NMAC - N, 1/01/06]

4.10.15.7 DEFINITIONS:

A. "Archaeological investigation" means the study of archaeological sites, isolates and other cultural properties and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

B. "Archaeological records management section" or "ARMS" means the entity within the historic preservation division that maintains, in cooperation with the museum of Indian arts and culture-laboratory of anthropology (MIAC), the statewide

archaeological and cultural properties databases and associated records and documents pursuant to Section 18-6-7A of the Cultural Properties Act.

C. "Archaeological site" or "site" means a location where there exists material evidence of the past life and culture of human beings in the state. A significant archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, pueblos, homesteads, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials, and locales that have the potential for subsurface features or cultural deposits.

D. "Area of potential effect" or "APE" means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of a cultural property. The APE is influenced by the scale and nature of an undertaking and is different for different kinds of effects caused by the undertaking. For archaeological sites the APE typically includes all areas involving ground disturbance but may also include areas adjacent to the disturbance that may be indirectly affected as a consequence of the undertaking. For aboveground historic buildings, structures and other cultural properties, the APE often extends beyond the limits of ground disturbance and includes visual, vibratory and noise impacts to a building, structure, site, district, or cultural landscape and its setting and viewshed. Variation in topography, vegetation, and contemporary land use influences the visual impact on cultural properties.

E. "Areas of historic and scientific interest" means areas lacking surface evidence of cultural properties but where there is a high probability of finding subsurface material remains and cultural deposits or areas suitable for geomorphological or paleoenvironmental study.

F. "Buffer area" means an area extending 500 meters or 1000 meters in every direction of the edge of the APE or project area.

G. "Collection" means the removal of material remains from state land, whether or not the remains are located within an archaeological site or isolate as defined herein.

H. "Cultural landscape" means a geographic area including both cultural and natural resources associated with a historic event, activity or person or exhibiting other cultural or aesthetic values. Landscapes include formally designed landscapes, vernacular landscapes, sites and ethnographic landscapes.

I. "Cultural property" or "cultural resource" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

J. "Excavation" means displacing, disturbing or moving earth, soil, dirt, other deposits or material remains from their current contexts or significant orientation in, or

on, the ground within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

K. "Historic preservation division" or "HPD" means the division within the department of cultural affairs created pursuant to Section 18-6-8A of the Cultural Properties Act.

L. "Historic structures and buildings" means structures or buildings that are 50 or more years old or properties less than 50 years old that either meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years) or properties that are likely to meet the integrity and significance criteria in 30 CFR 60.4 within 5 years of the date of recording.

(1) A historic structure is an engineered construction created principally for the conveyance of water, natural resources, railroad stock or automobiles and trucks; or an engineered construction created principally for the extraction, refinement and distribution of natural resources; or an engineered construction created principally to support a function other than human shelter. Structures include but are not limited to vehicular bridges, railroad bridges, engineered roads and highway, tunnels, dams, canals, turbines, pipelines, refineries, stamp mills, smelters, dams, power plants, silos, grain elevators or locomotives.

(2) A historic building is a construction created principally to shelter any form of sustained or temporary human activity; or a functional construction created principally to provide shelter for goods, animals, machinery or instrumentation. Buildings include but are not limited to houses, barns, stables, sheds, garages, warehouses, courthouses, city halls, social halls, commercial buildings, libraries, factories, mills, train depots, motels, theaters, schools, stores or churches.

M. "Human burial" or "unmarked human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

N. "Intensive survey" means a visual inspection conducted on foot that examines, identifies, records, evaluates and interprets all surface-visible cultural properties 50 or more years old located in an APE or project area.

O. "Interpretation" means the inventory, registration, mapping and analysis of cultural properties and public educational programs designed to prevent the loss of cultural properties.

P. "Isolate" means a single object or artifact or a few artifacts greater than 50 or more years old that lack clear association. Examples of isolates include a single flake, projectile point, potsherd, sherds from a single broken pottery vessel, pieces of glass from a single bottle or a single feature that lacks integrity.

Q. "Items of cultural and religious significance " means ceremonial or cultural items, such as funerary objects, sacred objects, and objects of cultural patrimony.

R. "Limited tests" means the systematic placement of probes, cores, shovel tests or similar tests using hand tools. Limited tests are conducted during survey to augment survey-level information on an archaeological site or isolate without substantially damaging or diminishing the integrity of the archaeological site. The total surface disturbance resulting from the limited tests shall not exceed five one-hundredths percent (.05%) of the area of the site surface.

S. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

T. "Mechanical earth-moving equipment" means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other deposits or materials from their current contexts or significant orientation in, or on, the ground, including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

U. "Monitoring" means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions

to ensure site protection, avoidance of site deposits or recovery of information from newly discovered cultural properties.

V. "Museum of Indian arts and culture-laboratory of anthropology" or "MIAC" means the museum division within the department of cultural affairs, museum of New Mexico, that serves as the repository for archaeological materials and associated records and documents taken or collected from state land.

W. "National register of historic places" or "national register" means the official federal register of historic properties maintained by the U.S. department of the interior, national park service.

X. "New Mexico cultural resource information system" or "NMCRIS" means the statewide archaeological and cultural properties database maintained by ARMS.

Y. "Permit" means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time, all of which are specified in the written authorization.

Z. "Preservation" means sustaining the existing form, integrity, material or vegetative cover of a cultural property and includes protective maintenance or stabilization.

AA. "Project area" means the geographic area or areas of study for an archaeological investigation conducted for research purposes.

BB. "Registered cultural property" means a cultural property that the CPRC placed in the state register individually or as a contributing property within a district either on a permanent or temporary basis.

CC. "Sample survey" means a pedestrian survey that identifies all surface-visible cultural properties within defined sample units of a larger whole.

DD. "State agency" means a department, agency, institution or political subdivision of the state.

EE. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 of the Cultural Properties Act.

FF. "State historian" means the historian designated pursuant to Section 18-6-14 of the Cultural Properties Act.

GG. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act and serves as the director of the historic preservation division.

HH. "State land" means property owned, controlled, or operated by a department, agency, institution or political subdivision of the state. Examples of state land, include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way and easements; state parks; state monuments; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

II. "State register" or "official register" means the New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties deemed worthy of preservation.

JJ. "Survey" means a visual inspection of land to examine, identify, record, evaluate and interpret cultural properties and may include limited tests but shall not include excavation or test excavation.

KK. "Test excavation" means the systematic placement of probes, cores, shovel tests or test pits using hand tools, and test trenches excavated by hand or with mechanical earth-moving equipment to expose geomorphological soils and buried cultural deposits to determine the research potential and nature and extent of cultural deposits at an archaeological site without substantially damaging or diminishing the integrity of the archaeological site. The total surface disturbance resulting from test excavation shall not exceed 5 percent of the surface area of the site area or 5 percent of the portion of the site that may be affected by an undertaking or project, whichever is less.

LL. "Thematic survey" means a pedestrian survey that identifies selected types of cultural properties and may be performed with written concurrence of the state agency.

MM. "Traditional cultural places" means a geographic place or area of cultural or religious importance to an Indian tribe or pueblo or other ethnic group. Traditions include beliefs, customs and practices of a living community of people that have been passed down through the generations.

NN. "Tribal consultation" means formal discussion between a state agency and Indian tribes and pueblos that may have knowledge of and interest in the general area of an archaeological investigation to assist in identification and protection of traditional cultural places and items of cultural and religious significance.

OO. "Unmarked burial ground" means a location where there exists a burial or burials of any human beings that are not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials and includes any funerary object, material object or artifact associated with the burial or burials.

[4.10.15.7 NMAC - N, 1/01/06]

4.10.15.8 TYPES OF SURVEYS AND PERMITS:

Surveys are conducted to identify, record, evaluate and interpret cultural properties and to relocate, update records and evaluate previously identified cultural properties including but not limited to archaeological sites, historic structures and buildings, isolates and other properties of cultural, historic and scientific interest. Management and research objectives determine the survey intensity, design and methods. Surveys may employ predictive models to assist in developing survey strategies. Geomorphological studies are helpful and suggested when there is a likelihood of deeply buried archaeological sites.

A. General permits. All surveys on state land performed under a general permit obtained pursuant to 4.10.8 NMAC shall be intensive surveys and shall be performed in conformance with 4.10.15.11 NMAC.

B. Project-specific permits. Sample, thematic and other types of surveys on state land are performed under a project-specific permit obtained pursuant to 4.10.8 NMAC and implemented in accordance with the approved research design prepared in conformance with 4.10.15.9 NMAC.

[4.10.15.8 NMAC - N, 1/01/06]

4.10.15.9 PRE-FIELD REQUIREMENTS:

A. Obtain a general permit or project-specific permit authorizing survey pursuant to 4.10.8 NMAC prior to commencement of work.

B. Conduct a literature and files search to identify the type, location and distribution of previously recorded cultural properties; to gather information on past surveys and other investigations; to identify current research issues pertinent to the project; and to identify factors such as geomorphological conditions that may affect site integrity or visibility. The scale of the literature review and records check shall be appropriate to the complexity and scale of the survey project.

(1) Identify and review literature pertinent to the project including but not limited to statewide and regional cultural-historical overviews and historic contexts, research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports, field reports (both positive and negative survey reports) and historic maps and records. Most archaeological reports are available from ARMS. Other federal and state agencies maintain pertinent archives and records.

(2) Review records and files including but not limited to:

(a) query the NMCRIS database and map server to identify previously recorded sites and previous archaeological investigations located in the APE or project area and in the buffer area extending 500 meters in every direction from the edge of the APE or project area; extend the buffer to 1000 meters in every direction from the edge

of the APE or project area if the 500-meter search fails to identify the presence of previously recorded sites; query the NMCRIS database to identify additional surveys that may be in the APE or project area and buffer area that could be missing from the map server coverage (contact ARMS for assistance); append a copy of the NMCRIS map server map to the final report and mark the map search as confidential and not subject to general distribution;

(b) obtain appropriate copies of paper laboratory of anthropology (LA) archaeological site records for all sites in the APE or project area or likely to be in the APE or project area; for sites recorded after January 1994, information in the NMCRIS database supplemented by copies of the site narrative section of the LA archaeological site record and the site map may be used in lieu of obtaining a complete copy of the LA archaeological site record(s); do not obtain copies for sites in the 500-meter or 1000-meter buffer area unless there is a likelihood that the site boundaries may extend into the APE or project area;

(c) review national and state register property files maintained by HPD to determine whether properties listed in the national or state registers are present in the APE or project area; obtain copies of nominations for all state or national register properties that may be directly or indirectly affected by the project; HPD provides assistance in locating these records;

(d) examine historic cultural properties inventory (HCPI) forms, formerly known as historic building inventory (HBI) forms, to determine if any buildings, structures or other cultural properties are located within the APE or project area. HPD provides assistance in locating these records; and

(e) review additional documents and records, such as engineering records or historic documents, the historic architectural building survey/historic architect and engineering records (HABS/HAER) documents, when appropriate; contact the state agency and the archaeologist at the agency, if it has one, to see if additional records are required.

C. Review archival sources to identify historic structures, buildings and other cultural features and to determine historic land use practices and types of resources likely to be identified during the project, as appropriate to the scale and complexity of the project and the types of resources expected. Sources include but are not limited to general land office surveys or land grant survey plats; state land office lease records, county deeds and abstracts; Sanborn fire insurance maps; probate, tax and judicial records; and Spanish and Mexican archives at the state records center and archives.

D. If the file search reveals that the APE or project area or portion of the APE or project area has been previously surveyed and the survey or surveys were conducted more than 10 years ago, request a determination on whether a new survey will be required. Submit requests by letter, electronic mail or facsimile to the state agency or agencies if the state agency has an archaeologist or to HPD if the state agency does

not have an archaeologist. The state agency or HPD will base its determination on a review of the field methods used, the results of the survey, the completeness of documentation, the stability of the geomorphological surface and any other pertinent factors that inform on whether the prior survey is consistent with the identification and documentation standards in this rule. HPD will provide a written determination within 10 working days of the request.

E. The permittee shall contact the state agency to incorporate results of tribal consultation as it may affect the survey pursuant to current state policy on consultation and repatriation.

[4.10.15.9 NMAC - N, 1/01/06]

[The NMCRIS map server may not be complete and up-to-date for all surveys, archaeological sites or state and national register properties. Check all appropriate files and databases to ensure a complete pre-field records search. Contact ARMS or HPD for assistance or more information. Not all information on the LA archaeological site record is included in the database. Obtain copies of the LA archaeological site record for the most complete information for the site.]

4.10.15.10 INTENSIVE SURVEY STANDARDS:

Intensive surveys performed on state land shall be conducted in accordance with the following specifications. The state agency with jurisdiction may specify additional requirements and standards that meet or exceed the following specifications. All work shall be performed under the general supervision of individuals listed in the SHPO directory of qualified supervisory personnel (4.10.8.11 NMAC). All fieldwork shall be performed under the direct supervision of an archaeologist listed in the SHPO directory unless the properties recorded consist primarily of historic structures and buildings (see 4.10.15.12 NMAC). The supervisor in the field is responsible for assessing field conditions, altering field methods such as decreasing survey interval, making collections or conducting limited tests, and determining when slope, vegetation or other factors affect field conditions. Document these conditions and specific methods used during the survey in the survey report.

A. Survey area. Conduct a comprehensive, systematic, pedestrian survey of the APE or project area to identify, document and record all cultural properties including archaeological sites, historic structures and buildings, isolates and other properties of historic and scientific interest 50 or more years old that may be reasonably detected from the surface or which are exposed in profiles. Record historic structures and buildings less than 50 years old that may be eligible for the state or national registers within 5 years of the date of the survey. Identify and record properties that meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years).

B. Survey interval and transect width. Transect width for surveys shall not exceed 15 meters and shall be contiguous with no uninventoried areas left between transects. Intervals shall be reduced when surface visibility is poor. The terrain, vegetative cover and the nature of cultural properties influence transect width and intensity of survey coverage. For linear projects the minimum width of the APE or project area is 15 meters.

C. Survey velocity. The amount of area surveyed including recording time should not exceed a rate of 30 acres per person per eight hours of survey calculated for the survey project as a whole and not daily. Terrain and the number and complexity of cultural resources influence survey velocities. When survey velocities are greater than this standard, include an explicit explanation in the survey report. HPD and the state agency with jurisdiction will evaluate the explanation and results of the survey and may request that the survey or portion of the survey be reinventoried if the justification is inadequate.

D. Items of cultural and religious significance. If these items are encountered during a survey, they may be recorded. The permittee shall not disturb these items in any way.

E. Human burials. If a human burial or unmarked burial ground is encountered during survey, notify the local law enforcement agency pursuant to 4.10.11.8 NMAC. Do not disturb the human burial or unmarked burial ground in any way.

F. Survey visibility.

(1) Halt survey if falling precipitation (rain, snow, hail or freezing rain) exceeds trace amounts for any length of time. Do not conduct survey if fallen snow impairs ground visibility. Ground visibility is considered impaired if more than 20 percent of total ground surface is covered by snow.

(2) In areas with dense, continuous vegetative cover, shovel tests, augers, probes or small excavation tests may be necessary to identify cultural properties. The supervisory archaeologist shall document areas with reduced visibility and, if tests are conducted, document areas of the tests, on the project field map and through photographs, and discuss in the survey report.

(a) Place shovel tests, augers, probes or small excavation units in a systematic pattern at an interval not to exceed 15 meters.

(b) Shovel tests shall be approximately 30 cm in diameter.

(c) Limited test excavation units shall be 50 cm by 50 cm in size.

(d) Shovel tests and limited test excavation units typically should be excavated to a minimum depth of 30 cm or to the depth of cultural materials whichever is less.

(e) Sediments removed from all limited test units shall be passed through a screen of no greater than one-quarter inch (6.35mm).

G. Alternate inventory procedures. In some circumstances a state agency including municipalities and counties may propose an alternate method to the standards in this section to survey and inventory cultural properties in the APE or project area. The proposal shall be submitted in writing to HPD and shall provide a detailed description of the alternate methods proposed and justification. HPD shall review and provide written comments on the proposal within 10 calendar days of receipt. Alternate procedures require consensus between the state agency and HPD prior to implementation.

[4.10.15.10 NMAC - N, 1/01/06]

4.10.15.11 RECORDING ARCHAEOLOGICAL SITES DURING SURVEY:

A. Record all archaeological sites located within the project area and include the portions of sites that extend outside of the APE or project area if the entirety of the site lies on state land. If a portion of the site lies on land not owned, controlled or operated by a state agency, the portion on state land shall be recorded. If permission for access can be obtained from the owner of the remaining portion of the site, record the entire site. If permission cannot be obtained from the owner of the remaining portion of the site, document observations about features outside of, but visible from the APE or project area.

B. If large sites extend outside the APE or project area, record all features and artifacts within and immediately adjacent to the APE or project area and make observations about features outside of but visible from the project area. Incorporate observations made by previous recorders regarding the sites and how those observations relate to the part of the site recorded during the current project.

C. Document all archaeological sites on an LA archaeological site record form consistent with this section and the NMCRIS *guidelines for submitting archaeological records*, July 1993, available from the ARMS website <http://potsuii.arms.state.nm.us/>. Additional forms may be used at the discretion of the permittee. The LA archaeological site record shall be typed or word-processed. Complete the following fields except for SHPO consultation.

(1) Identification and ownership. Include LA number, site name(s), other site numbers(s), agency assigning number, current site owner(s) and site update.

(2) Recording information. Include the NMCRIS number, field site number, site marker, recorder(s), agency, recording date, site accessibility, surface visibility,

remarks, recording activities, description of analysis or excavation activities, photographic documentation, surface collections, records inventory, repository for original records and repository for collected artifacts.

(3) Condition. Include archaeological status (surface collection, test excavation, partial excavation, complete excavation), source of disturbance, vandalism, percentage of site intact and observations on site condition.

(4) Recorder recommendations. Include national register eligibility and criteria, basis for the recommendation, assessment of project impacts and treatment recommendations.

(5) SHPO consultation for use by SHPO and agency or sponsor. Leave section blank.

(6) Location. Identify source graphics; map-based or global position system-based (GPS) coordinates to 10-meter accuracy; directions to site; town, county and state; USGS 7.5-minute (1:24,000) topographic quadrangle name, date and code; public land survey system (PLSS) unplatted or township, range, section, quarter-section to nearest 40-acre unit and protraction. Indicate if PLSS is protracted.

(7) Physical description. Include site dimensions, basis for dimensions, site area, basis for area, site boundaries, depositional and erosional environment, stratigraphy and depth of archaeological deposits, estimated depth of deposits, basis for depth determinations, observations on subsurface archaeological deposits, local vegetation, vegetative community, topographic location and observations on site setting.

(8) Assemblage data. Include assemblage content for lithics, prehistoric ceramics, historic artifacts and other artifacts and materials, assemblage size by artifact class, dating potential and assemblage remarks including description of assemblage.

(9) Cultural and temporal affiliation(s). Include total number of components defined and the following information for each component: cultural affiliation, basis for temporal affiliation, period of occupation, beginning and ending dates, dating status, basis for affiliation, component type and remarks.

(10) Feature data. Include feature type, reliability of identification, number observed, associated component number, feature identification number(s), notes and remarks.

(11) References. Include written sources of information and additional sources of information.

(12) Narrative site description. Provide a complete description of the site, features and assemblages and interpretation of the site, features and intrasite

proveniences. This information provides the basis for site evaluation and future nomination of the site to the state or national registers.

(13) Site record attachments. Append a copy of 7.5-minute (1:24,000) topographic quadrangle scale with the location of the site, the site sketch map or site plan, continuation forms and any other materials.

D. Newly recorded sites.

(1) Complete all data items within every section of the LA archaeological site record.

(2) Prepare a detailed site plan map for each newly recorded site located during the survey. The map may be a scaled sketch map or an instrument-generated map. Each map shall display:

- (a)** LA number;
- (b)** north arrow (indicate if true north and/or magnetic north);
- (c)** map scale and scale bar;
- (d)** key that identifies all symbols used on the map;
- (e)** site boundary (indicate whether the boundary is complete or incomplete);
- (f)** features, feature numbers, the distribution of artifacts and artifact concentrations;
- (g)** site datum (indicate whether the datum is temporary or permanent);
- (h)** collection and limited test units, if any;
- (i)** photographic points;
- (j)** natural features such as drainages, rock outcrops, vegetation patterns and other noncultural manifestations within or adjacent to the site and topography as represented by estimated contour lines;
- (k)** boundary of the APE or project area relative to the site or distance and direction to the project if the site is away from areas of ground disturbance;
- (l)** cultural or natural landmarks within or adjacent to the site (such as roads, fences, buildings, benchmarks);
- (m)** location and extent of any vandalized or disturbed areas of the site; and

(n) the name of the map artist(s), institutional affiliation and date the map was drawn.

E. Previously recorded sites.

(1) Review and update the information obtained during the pre-field files check pursuant to 4.10.15.9 NMAC consistent with the standards set forth below. Special attention shall be paid to changes in physical description and assemblage data resulting from natural or cultural modifications to the site since the last site visit.

(a) If an archaeological site has been documented on an LA archaeological site record since January 1994 and all data items in all sections of the form are complete and accurate, check the site update box and complete the identification and ownership, recording information, condition and recommendations sections.

(b) If an archaeological site has been documented on an LA archaeological site record since January 1994 but some information is incomplete or incorrect, update the incomplete or incorrect sections and clearly differentiate observations made during the current survey from observations made by previous recorders. Check the site update box and complete the identification and ownership, recording information, condition, recommendations and narrative site description sections. Summarize changes and updates in the narrative site description section.

(c) If the site was recorded prior to January 1994 and has not been updated since that time, complete all fields of the current version of the LA archaeological site record. Note any changes in condition or content from the earlier field recording.

(d) If the previously recorded site cannot be relocated, check the site update box on the LA archaeological site record and complete the identification and ownership, recording information, condition, recommendations and narrative site description sections. Explain in the narrative site description section specific efforts that were made to find the site and possible reason(s) the site could not be relocated.

(2) Prepare a new detailed site plan map for each previously recorded site following the standards in 4.10.15.11D NMAC. Annotated copies of existing maps are not acceptable. The site plan shall be based on the previous site map and should include important features of the previous map along with new observations. Observations made during the current survey shall be clearly distinguished from the observations made on the existing map.

F. Documentation of features. Individual features shall be illustrated if the form of a feature cannot be accurately rendered on the site plan map. Measurements shall be taken in metric units unless the feature is historic and English measurements are more appropriate. Render standing structures and other standing features in both plan and elevation.

G. In-field artifact analysis. Perform in-field analysis on all or a sample of all classes of surface-visible artifacts including but not limited to lithics, ceramics and historic artifacts. The size of the sample shall be sufficient to document the full variety of types of artifacts represented at the site and to delineate intrasite activity areas. Formal, bounded sample units are recommended. Required information may be documented in a table, on a form developed by the individual or firm performing the survey or on a form required by the state agency. Required information includes class of artifact, make, type or series and other attributes that relate to interpretation of chronology, form and function. If measurements will aid in the identification or classification, measure artifacts with a ruler, tape or calipers. Measurement shall be taken in metric units unless the artifact is historic and English measurements are more appropriate. Illustrations or photographs of diagnostic artifacts are encouraged. Attach copies of the in-field analysis forms, narrative descriptions and illustrations to the LA archaeological site record.

H. Photography.

(1) Take photographs of all newly recorded and previously recorded sites. Photograph the following subjects:

(a) general setting of the site within its boundaries; incorporate features or background landmarks in site setting photographs;

(b) individual cultural features;

(c) representative diagnostic artifacts or items representative of the major classes of artifacts within the site assemblage; and

(d) scale and photographic board.

(2) Photographs shall conform to the standards detailed below.

(a) Black-and-white negatives, prints, color transparencies, color prints or digitally captured images are all acceptable media. Black-and-white images printed on silver-emulsion resin-coated paper or black-and-white prints produced from digital images that meet or exceed a 75-year-permanence standard as defined by the national park service, national register of historic places, are preferred for archival stability. Digital images shall not be submitted on compact discs. Attach a photographic log that includes, but is not limited to, the NMCRIS number, the LA number, provenience, content, orientation, photographer and date.

(b) Submit all photographic materials in archivally stable sleeves as an attachment to the report. Do not append photographs to the LA archaeological site record. Prints, negatives and slides shall be sleeved in page preservers made to fit the format size. Label the back of prints or slide sleeves with pencil or archivally approved photographic ink. Do not label with a ballpoint pen, permanent ink or adhesive labels.

(c) Do not affix photographs to paper with glue, tape or staples.

(d) Digital images shall not be submitted on compact discs. If digital images are submitted, print on acid-free paper using a toner-based printer.

I. Other agency requirements. The state agency may require other recording activities. The state agency may also require the permanent or temporary marking of the site datum and/or boundaries. Contact the archaeologist at the agency to see if additional recording or marking procedures are required.

[4.10.15.11 NMAC - N, 1/01/06]

4.10.15.12 RECORDING HISTORIC STRUCTURES, BUILDINGS AND OTHER CULTURAL PROPERTIES DURING SURVEY:

A. Record all large historic sites and districts 50 or more years old that are located within the APE or project area or that may be eligible for the state or national registers within 5 years of the date of the survey. The recording shall be performed under the review of an architectural historian, historian or historic architect listed in the SHPO directory (4.10.8.11 NMAC). Identify and record properties that meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years).

B. If portions of the historic resource extend outside of the project area and the resource is on state land, record the entire resource. If a portion of the resource lies on land not owned or controlled by a state agency, record the portion on state land. If permission for access can be obtained from the owner of the remaining portion of the resource, record the entire resource.

C. Complete an HCPI form for all historic structures, buildings and other cultural properties in conformance with the *historic cultural properties inventory manual*, July 31, 2001, available on HPD website (<http://nmhistoricpreservation.org/>) or from HPD. HCPI form 1 shall be used for recording historic structures, buildings and other cultural properties that are not potentially eligible for nomination to the state register of cultural properties and national register of historic places. HCPI form 2 shall be used for historic structures, buildings and other cultural properties that are potentially eligible or are already on the state or national registers. HCPI form 2 shall be completed by architectural historians, historical architects or historians listed in the SHPO directory (4.10.8.11 NMAC). Information includes but is not limited to:

(1) administrative and project information including name of property, location, local reference number, property type, date of survey, previous survey date(s), name of project, universal transverse mercator (UTM) coordinates, source graphics and photographic information; GPS coordinates to 10-meter accuracy or better are encouraged;

(2) a brief description of the property, present use; construction data and setting, relationship to surroundings; additional perspectives (photographs, drawings, footprint), name of recorder and performing agency or group and owner or individuals knowledgeable about the property;

(3) the significance of the property and identifying the state register and national register status and name of property if listed and whether it is part of a district;

(4) detailed information on the property including architectural and construction details, number of stories, foundation, roof construction materials, windows, doors, chimneys, porches and other significant features, modifications and date if known or estimated; primary architectural style, associated documents and location of source materials and associated properties; and

(5) a site plan with footprint, porches and balconies, major landscape features, north arrow, associated properties, walls, fences, gates, nearby roads and driveways.

D. Photography.

(1) Take photographs of all recorded buildings, structures and other cultural properties recorded on the HCPI form; include related context images or streetscapes as appropriate. Black-and-white prints are required. Black-and-white images printed on silver-emulsion resin-coated papers or black-and-white prints produced from digital images that meet or exceed a 75-year-permanence standard as defined by the national park service, national register of historic places, are acceptable. Digital images shall not be submitted on compact discs.

(2) Submit all photographic materials in archivally stable sleeves as an attachment to the HCPI form. Prints, negatives and slides shall be sleeved in page preservers made to fit the appropriate format size. Label the pack of prints or slide sleeves with pencil or archivally approved photographic ink. Do not label with a ballpoint pen, permanent ink or adhesive labels. Do not affix photographs to paper with glue, tape or staples.

[4.10.15.12 NMAC - N, 1/01/06]

4.10.15.13 RECORDING ISOLATES DURING SURVEY:

A. There is no standardized form for recording isolates on state lands. Isolates shall be listed and described in a table, on a form developed by the individual or firm performing the survey or on a form required by the state agency.

(1) Include all qualitative and quantitative observations relevant to the artifact consistent with the standards for in-field analysis in this section. Make type or series identifications when possible.

(2) If the isolate consists of more than one item, record the dimensions of the distribution (for example, three flakes scattered over 2-by-3 meter area or sherds from a single pottery vessel scattered over a 75-cm diameter area).

B. Determine the location of the isolate and plot on a copy of a USGS 7.5-minute (1:24,000) topographic quadrangle map; include name, date and code of the map. Determining location with a global positioning system (GPS) unit to 10-meter accuracy is encouraged.

C. Illustrate diagnostic artifacts and other items or take photographs if they will aid in the description or identification of the item.

[4.10.15.13 NMAC - N, 1/01/06]

4.10.15.14 COLLECTION OF ARTIFACTS DURING SURVEY:

A. Collection of artifacts. Collection of artifacts from archaeological sites and isolates is strongly discouraged. Collection of artifacts from state trust lands shall be allowed only with the written permission of the Commissioner. In all other cases, collections are permitted if the items are likely to be lost through illegal collection, are required to address specific predefined research issues that necessitate laboratory analysis or are necessary for accurate classification. Collections shall be analyzed in the laboratory, reported upon in the survey report and curated at an acceptable repository pursuant to 4.10.8 NMAC.

(1) Collection from archaeological sites. A sample of artifacts may be collected in accordance with the following specifications. Exceptions to these specifications are allowed with the written concurrence of the state agency.

(a) Sampling. Artifacts collected from archaeological sites shall only represent an extremely small and nominal percentage of the total surface-visible artifact assemblage and shall never involve collection of all surface-visible artifacts.

(b) Recording. Attach a list of all collected artifacts with provenience information to the LA archaeological site record and as an appendix to the survey report.

(c) Location of collected artifacts. Plot the location of each collected artifact on the site plan map unless defined spatial collection units are used such as 1-by-1 meter grid units or 1-meter diameter collection units. If collection units are employed, plot the location of each unit on the site plan map and indicate the dimensions of the collection units and artifacts collected. Plot artifact and collection unit locations relative to a permanent datum.

(2) Collection of isolates. Attach a list of all collected isolates and their GPS coordinates to 10-meter accuracy to the survey report.

B. Analysis of collected artifacts. Analyze collected artifacts in a laboratory and in accordance with current professional standards for the class of artifact in the region. At a minimum, required information includes class of artifact, make, type or series and other attributes that relate to interpretation of chronology, form and function. Include results of the analyses in the survey report.

[4.10.15.14 NMAC - N, 1/01/06]

4.10.15.15 LIMITED TESTS DURING SURVEY:

A. Purpose. Limited tests of archaeological sites during survey are strongly discouraged. Total surface disturbance resulting from the tests shall not exceed five one-hundredths percent (.05%) of the total site area. The supervisory archaeologist should consider the following when making a decision on whether to conduct limited tests.

- (1) Do not conduct limited tests if a site can be avoided by the undertaking.
- (2) Do not conduct limited tests to assess potential for subsurface deposits if a recommendation of eligibility can be made from visible evidence such as cultural deposits exposed in road beds or arroyo cuts.
- (3) Conduct limited tests only when the tests are likely to produce sufficient information to make a definitive recommendation on whether the site should or should not be listed on the state register or determined eligible for the national register. Often limited tests are too restricted in scale to demonstrate the absence of subsurface cultural deposits. Test excavations (see 4.10.16 NMAC) are recommended in these situations and produce more reliable information about the site.
- (4) Limited tests are prohibited if no adequate screen is available during survey.

B. Limited test equipment. Use hand tools such as trowels, shovels, hand corers and non-mechanical bucket augers. The use of mechanized equipment is prohibited.

C. Standards.

(1) Design limited tests to gather the appropriate information and to minimize damaging or diminishing the integrity of the archaeological site and features within the site. Make systematic tests to maximize interpretation of results. All shovel tests, augers, probes, small excavation units and test pits shall be given a unique field designation and shall be point-provenienced or excavated on a grid.

(a) Shovel tests shall be approximately 30 cm in diameter.

(b) Small test excavation units shall be 50-by-50 cm in size.

(c) Do not conduct trowel tests.

(2) With the exception of soil samples, sediments removed from all limited test units shall be passed through a screen of no greater than one-quarter inch (6.35mm). Consider using a smaller screen size.

(3) The bottom of the tests shall be lined with landscape cloth or marked in some other fashion to indicate depth of disturbance.

(4) Excavation of features is prohibited during limited tests.

(5) Collection of artifacts recovered from limited tests is discouraged and in-field artifact analysis is recommended.

(a) In-field analysis. Record recovered artifacts to professional standards in the region for the class of artifact. At a minimum, required information includes class of artifact, make, type or series and other attributes that relate to interpretation of chronology, form and function. Illustrations or photographs of diagnostic artifacts are encouraged. Attach copies of the in-field analysis forms, narrative descriptions and illustrations to the LA archaeological site record.

(b) Collections. If collections are made, note the provenience or collection unit and depth from which the artifact was retrieved. Analyze collected artifacts in a laboratory and in accordance with current professional standards for the class of artifacts in the region. Include results of the analyses in the survey report and indicate disposition of artifacts on the LA archaeological site record form. Collections shall be curated at an acceptable repository pursuant to 4.10.8 NMAC.

D. Documentation of limited test activities. At a minimum, the following information shall be included:

(1) explain the purpose of the limited tests on the archaeological site record and discuss in the survey report;

(2) location of test units. Plot the location of all test units on the site plan map relative to a permanent datum. List the point provenience or grid coordinate of each limited test unit relative to the site datum. Label limited test units according to their provenience on the site plan map, or attach a list of proveniences to the LA archaeological site record; and

(3) description of deposits. Describe the nature of the subsurface deposits encountered in each test unit and the depth of the unit. Use standard scientific terminology; color descriptions shall be made in Munsell terminology. Prepare profile drawings and photographs of at least one wall of each small excavation unit or test pit and features. Append the deposit descriptions to the LA archaeological site record and discuss in the survey report. Deposit descriptions include but are not limited to sediment

color, texture, moisture content, nature of inclusions, organic content and an inventory of cultural materials, if any.

[4.10.15.15 NMAC - N, 1/01/06]

4.10.15.16 EVALUATION AND STATEMENT OF SIGNIFICANCE:

Evaluate each property identified during the survey in conformance with this section and document in the technical report and on the LA archaeological site record or HCPI form. Depending on the complexity and scale of the project, present evaluations in both narrative and tabular form.

A. Apply the criteria for integrity and significance to evaluate each property over 50 years old identified during the survey pursuant to 36 CRF Part 60.4. Identify the property as a district, site, building, structure or object. Indicate whether the property should be listed on the state register or should be determined as eligible for national register listing. Properties less than 50 years old should be evaluated if it is apparent that they will be eligible for the state or national registers within 5 years of the date of survey. Properties less than 50 years old that may be eligible for inclusion in the national register based on exceptional significance should be evaluated using national register criteria consideration G. If a property has been previously nominated for either the state or national registers, discuss the register status of the property.

B. Significance statement. Prepare a clear statement of significance for each archaeological site, historic structure or building, or other cultural property identified during the project. Indicate the level of significance as local, state or national and include in the technical report.

(1) If the cultural property is recommended as not significant or not eligible for listing, provide a clear discussion and complete documentation to support the recommendation. For archaeological sites, the discussion shall demonstrate that the site has been thoroughly studied, that surface artifacts and features have been recorded and that sufficient subsurface tests have been performed to support a conclusion that the site is unlikely to contribute important information. The lack of subsurface deposits is not in itself sufficient to support a recommendation that a site is not significant or not eligible. If the cultural property is from the historic period, provide basic archival documentation to augment field information and support the significance evaluation.

(2) If the cultural property is recommended as significant or eligible for listing, provide evidence supporting its significance including reference to historic contexts and scholarly research in the region. Include a specific, evidence-based argument, linked to specific research topics and characteristics (historic values) observed. The recommendation shall be documented on the LA archaeological site record, HCPI form or other HPD-approved inventory form. For archaeological sites provide detailed descriptions of the types and numbers of surface artifacts and the types and numbers of features visible on the surface or in arroyos or road cuts. The presence of a large

artifact scatter or the potential for subsurface deposits is not sufficient information to support an eligibility recommendation without additional discussion. If the cultural property is historic, include the results of archival research to support the evaluation.

(3) Survey data alone may not be sufficient to evaluate the property. For archaeological sites, it may be necessary to conduct more extensive test excavations, beyond survey-level study and limited tests, to gather sufficient information to evaluate the specific research potential to support a recommendation for listing or not listing the property on the state or national registers. Additional archival research and detailed documentation may be necessary to evaluate the specific potential and criteria for historic structures, buildings and engineering features. Provide a clear explanation that details the need for additional information. Document the recommendation on the LA archaeological site record, the HCPI form or other HPD-approved inventory form.

[4.10.15.16 NMAC - N, 1/01/06]

4.10.15.17 RESEARCH DESIGNS UNDER PROJECT-SPECIFIC PERMITS:

Prepare a research design for sample, thematic and other surveys to be performed under a project-specific permit. Research designs are not required for surveys performed under a general permit.

A. Purpose. A research design shall detail the reason for the survey and how the survey will contribute to the public's knowledge of the cultural heritage of the state. Research designs shall take into account broad regional research needs and strive to fill in gaps in current state of knowledge and shall be realistic and attainable from the nature of the study. Research designs shall be flexible enough to accommodate unanticipated discoveries.

B. Components. A research design shall include the following components. The length of each section shall be appropriate to the complexity and scale of the study.

(1) Title page.

(2) Table of contents, lists of figures and tables (for documents with more than 10 pages of text).

(3) Purpose of the study. Provide a succinct overview of the proposed survey including:

(a) goals for the survey;

(b) the name of the project;

(c) brief description of the history of the project;

- (d) the project sponsor or client, state agency and other land jurisdictions;
 - (e) project location and size of area to be surveyed in acres and hectares;
- and
- (f) project map at a USGS 7.5-minute (1:24,000) topographic quadrangle scale depicting survey area boundaries, land ownership boundaries, north arrow, key and name of USGS quadrangle(s).

(4) Research context. The context provides a foundation for the development of specific research questions. Scale the discussion to the complexity, size and limitations of the proposed study. The length of each discussion may vary but shall include the following elements:

- (a) review of pertinent literature including but not limited to statewide and regional cultural-historical overviews and historic contexts, research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports, field reports and archival sources;

- (b) discussion of the theoretical orientation and assumptions guiding the proposed research;

- (c) identification of general research problems and topics relevant to the region; discuss the research problems in the context of the culture history and knowledge of the area and current research gaps;

- (d) specification of research questions; provide a clear link between the questions and the theoretical assumptions;

- (e) identification of the specific data needed to answer the questions; explain how the survey results are likely to contain data relevant to answer the questions;

- (f) discussion of survey procedures; adopt the standards for intensive survey whenever possible (4.10.15.11 NMAC); explain and justify deviation from these standards; discuss how the specific field methods and approach are related to the research goals; provide a specific link between the data needs and the survey approach; for sample surveys, explain why the proposed sampling strategy is appropriate to the research questions; samples may be random or stratified but also shall be appropriate to estimate the nature, distribution and density of cultural properties within the entire project area; and

- (g) discussion of analytical procedures; provide a specific link between the research questions, data needs and proposed analyses to resolve the research questions; discuss sampling strategy and sampling fraction if all artifacts recorded and specimens collected will not be analyzed; include copies of analysis forms expected to

be used for field or laboratory analysis in addition to the LA archaeological site record form.

(5) Personnel. Identify all supervisory personnel and analysts who will perform the fieldwork, laboratory analyses and prepare the report. Include subcontractors, if appropriate, and off-site laboratories for specialized analyses if proposed. If specific personnel or subcontractors have not been identified for all activities, provide a list of personnel or subcontractors who may be retained, or list the minimum qualifications of the personnel that will be retained.

(6) Schedule. Explain the expected time frame to implement the field, analysis and reporting phases of the project.

(7) References cited.

(8) Appendices as needed.

[4.10.15.17 NMAC - N, 1/01/06]

4.10.15.18 NMCRIS INVESTIGATION ABSTRACT:

A. Obtain a NMCRIS number from ARMS immediately following the completion of the survey and prior to writing and submitting a report. If any archaeological sites were encountered during survey, request an LA archaeological site number for each newly discovered site. Do not request new numbers for previously recorded sites if they already have LA numbers.

B. Complete the NMCRIS investigation abstract for the survey. The NMCRIS investigation abstract includes the following information.

(1) Administrative data. Provide the NMCRIS number; the name of the federal or state agency or sponsor for purposes of consultation, if applicable, and agency identification number; performing agency name, field personnel and report number; report title in its entirety with no abbreviations, the author(s) and report date; permit number(s); client or customer name, contact information and project number; beginning and end dates for the investigation and investigation type. Indicate status of tribal consultation.

(2) Location and land status. Indicate landownership status type (federal, state, tribal, private or any combination thereof) and name or administrative unit (such as, bureau of land management Farmington field office, state land office, New Mexico department of transportation, pueblo of Taos). Specify survey area and APE in acres for each land status; for linear surveys include length and width. Enter USGS 7.5-minute (1:24,000) topographic quadrangle name, date and code; township, range, section, quarter section to nearest 40-acre unit or unplatted. Indicate if the PLSS is protracted. Identify other source graphics if used. Specify the nearest city or town, county and state

for the survey and include other descriptions including but not limited to well pad footages, mile markers or land grant names.

(3) Project data. Enter the project name (if known), date of NMCRIS database and other agency records check and name of individual conducting the search. Provide a description of the project or undertaking, the environmental setting, condition of the project area (such as grazed, bladed or dense vegetative cover) and percent ground visibility.

(a) For surveys provide a brief description of survey methods, type of survey, configuration, scope, coverage method, survey interval, time in field for survey, time recording archaeological sites and time recording the built-environment.

(b) For monitoring projects list sites monitored by LA site number and provide a brief description of any area of historic and scientific interest monitored, if applicable. Include NMCRIS number(s) and the report title in its entirety with no abbreviations for the previous project that identified the sites to be monitored. Indicate any changes in site condition noted during the monitoring project and whether site updates were completed.

(c) For limited tests, test excavation and excavation, list sites by LA site number and indicate the type of tests performed, the number and size of each test unit and whether site updates were completed.

(4) Cultural resource findings. Summarize the cultural resources identified. Specify the number of sites, the number of historic structures, buildings or other cultural properties and the number of isolates discovered. Indicate the number of sites and other cultural properties registered; the number of sites and other cultural properties not registered, and the number of previously recorded sites revisited. List archaeological sites by LA site number. Indicate if collections were made and whether tests were conducted. For negative surveys only, discuss the possible reasons for the lack of sites, evaluate significance of the identified resources pursuant to 4.10.15.16 NMAC and make management recommendations.

[4.10.15.18 NMAC - N, 1/01/06]

4.10.15.19 NEGATIVE SURVEY REPORTS:

The NMCRIS investigation abstract constitutes the final survey report for surveys that do not identify cultural properties of any kind or only identify isolates. Letter reports are prohibited.

A. Complete all sections of the NMCRIS investigation abstract. An electronic version of the NMCRIS investigation abstract and guidelines for its use are available from ARMS and HPD. It is permissible to increase or decrease the size of the data fields on the paper copy of the form, as needed, or attach continuation sheets.

B. In the event an archaeological site reported to be located within the APE or project area is not relocated during the survey, check the site update box on the LA archaeological site record and complete the identification and ownership, recording information, condition, recommendations and narrative site description sections. Explain in the narrative site description section specific efforts that were made to find the site and the reason(s) the site could not be relocated.

C. Append the following to the NMCRIS investigation abstract:

- (1) a copy of the NMCRIS map server map check; NMCRIS table is optional;
- (2) a project map based on a USGS 7.5-minute (1:24,000) topographic quadrangle source that depicts the exact location of the APE, survey area (if different from the APE) and exact location of all isolates;
- (3) a list of all isolates and detailed information on each isolate consistent with 4.10.15.13 NMAC;
- (4) a list of all isolates collected;
- (5) photographs and photographic log, illustrations and other graphics;
- (6) a copy of all updated LA archaeological site records consistent with 4.10.15.11E NMAC; and
- (7) signature of the principal investigator certifying accuracy of the information provided.

D. Report review. The NMCRIS investigation abstract shall be reviewed in conformance with 4.10.8.18 NMAC. If collections were made during survey, the permittee shall curate the collections in accordance with the procedures outlined in 4.10.8.18 NMAC.

[4.10.15.19 NMAC - N, 1/01/06]

4.10.15.20 POSITIVE SURVEY REPORTS:

Prepare a technical report for all surveys that identify archaeological sites, historic structures and buildings, isolates and other cultural properties. Letter reports are prohibited. Include the results of any limited tests conducted. A standard survey report shall contain the following sections unless indicated as optional below. The length of each section shall be appropriate to the complexity and scale of the survey project. State agencies may have additional report requirements.

A. Title page. List the following information:

- (1) NMCRIS number in the upper left-hand corner;
- (2) report title, author(s) and the principal investigator if different from the author;
- (3) name of the organization that performed the survey;
- (4) agency(ies) requiring and receiving the report;
- (5) state permit number and other permit numbers for project; and
- (6) report date (month, day and year).

B. Abstract. Complete all sections of the NMCRIS investigation abstract, which serves as the report abstract.

C. Table of contents (required only for reports with more than 10 pages of text). Include:

- (1) list of major report sections, subheadings and appendices with page numbers;
- (2) list of figures and plates with page numbers; and
- (3) list of tables with page numbers.

D. Introduction and Project Description. Discuss the purpose of the survey and project background. Include the following information:

- (1) purpose of the survey and project background;
- (2) project description and location;
- (3) description of the project area and survey area (if different from the project area or the APE);
- (4) size of the project area and size of area surveyed in acres and hectares;
- (5) name of each public agency and the portion of surveyed land owned by each in acres and hectares; privately owned land may be reported as a cumulative total in acres and hectares rather than by each private land owner; if multiple areas and land jurisdictions are involved, the information may be presented in a table; if a project falls under the jurisdiction of multiple state and federal agencies, discuss the relationship between the various agencies;

(6) the township, range, section and quarter section and protraction; for state trust land identify the section to nearest 40-acre parcel;

(7) map showing the general project location within the state or region (and land jurisdiction if more than one owner);

(8) project personnel: the names and position titles of the individuals who participated in the survey, including crewmembers and any analytical or support staff who did not participate in the fieldwork but assisted in preparing information for the report; the client or sponsor; and

(9) exact dates of the survey.

E. Environmental setting of the project area. The length of each of the following discussions shall be appropriate to the complexity and scale of the survey project, and should include representative photographs of environmental features as appropriate.

(1) **Natural environment.** Describe the topography, geology and soils; contemporary flora and fauna; and current climatological conditions. Discuss the effect of current environmental conditions and past environmental processes (such as erosion or deposition) on the visibility and preservation of archaeological remains.

(2) **Cultural environment.** Identify modern land use impacts such as mining, logging, agricultural activities or urban development and discuss the effect that modern land uses have on the visibility and integrity of archaeological sites and other cultural properties. Note evidence of vandalism or looting.

F. Results of records check. Summarize the results of all records checked for the project area and 500-meter or 1000-meter buffer. List all known previous surveys or investigations and summarize their results. List each archaeological site, national and state register property, historic structure and building and other cultural properties located in the project area and all archaeological sites within the 500 meter or 1000 meter buffer. Provide a brief summary of these resources. The lists may be presented in tabular form. Include the date when the records check was conducted and name of the individual performing the check.

G. Culture history, literature review and research orientation. The length and detail of this section shall be appropriate to the type and scale of the project and the findings.

(1) Discuss the past human occupation of the survey area in its regional context within established culture-historical frameworks or chronologies for all periods of occupation. Based upon current research, describe the cultural and historic developments for each major period of time, the archaeological evidence (site types, types of artifacts) characteristic of each time period and the major research questions associated with each period with a goal to aid in the understanding and evaluation of

resources identified during the project. Tailor discussion to the types of cultural resources found during survey. For example, if only sites dating to the U.S. Territorial period were located, then the culture history section should be devoted to the cultural and historic developments of late nineteenth and the early twentieth centuries. The discussion of other periods of occupations should be abbreviated.

(2) Incorporate results of the pre-field literature review. Reference statewide and regional cultural-historical overviews and research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports, field reports (both positive and negative survey reports) and historic maps and records, as appropriate, given the results of the project. Incorporate the results of the records check.

H. Research design (required for surveys under a project-specific permit; optional for surveys under a general permit). Detail the problem orientation and specific research issues and questions that guided the survey.

I. Field methods. Include the following information:

- (1) the size of the survey crew;
- (2) the transect interval(s) and transect method;
- (3) field conditions during survey, including access, lighting, ground cover and other factors affecting identification or recording of cultural properties;
- (4) methods of site location (maps, global positioning system, topography);
- (5) methods of site recording (compass and pace, compass and tape, instrument mapping);
- (6) types of photographs taken and the media used (black-and-white prints, color transparencies, color prints or digital images);
- (7) any additional documentation methods, such as video recording, illustration of artifacts and features, remote sensing, or specialized in-field artifact analysis;
- (8) strategies employed for collection or limited tests, including the strategies employed for the location of collection or limited test units, the rationale for the collection or test unit size used and the choice of testing implements; and
- (9) list the types of documents and other media used for all types of recording.

J. Description of cultural resources and analysis of survey results. The results of the survey shall be both descriptive and interpretive and contribute to the public's knowledge of the cultural heritage of the state. Describe all archaeological sites recorded during the survey, all historic structures, buildings and other cultural properties and all isolates and discuss them in relationship to the culture history of the area. Include the results of any limited tests conducted. Include illustrations and photocopied or digitally reproduced photographs to augment the text.

(1) Location of cultural properties. The public disclosure of the location of archaeological sites on state and private lands is prohibited by Section 18-6-11.1 NMSA 1978. The public disclosure of the location of archaeological sites on federal lands is prohibited by 36 CFR 296.18. Include all detailed locational information (UTM coordinates, township, range and sections) whether in narrative or maps in an appendix for easy removal so that the report may be made available to members of the public.

(2) Descriptions of archaeological sites. Provide a description of each site. The description should summarize rather than duplicate information contained in the LA archaeological site record. Discuss the environmental setting of the site; the site condition; the nature and distribution of site features; and the nature and distribution of artifacts. Discuss the nature and potential of subsurface deposits and the basis for the description. Include in the body of the report a copy of the site plan if it aids in understanding the narrative description of the site. Include illustrations and photocopied or digitally reproduced photographs of features and artifacts specific to the site. If the site was previously recorded, discuss briefly the recording history of the site and summarize any changes in the physical condition of the site since it was last recorded.

(3) Descriptions of archaeological sites not relocated. Provide a brief description of the site as it was last recorded. Discuss efforts to try to locate the sites and the possible reason why the site could not be relocated (for example, the artifacts on the surface of the site were collected or the site was destroyed by development).

(4) Descriptions of other cultural properties. Describe all other cultural properties, including but not limited to historic structures, buildings, and cultural landscapes identified during the survey area or properties that may be directly or indirectly affected by the project. Discuss the condition and integrity of the properties. Incorporate information obtained from archival sources to place the property in its historic context.

(5) Descriptions of isolates. Information on isolates may be presented in narrative or tabular format. Include all qualitative and quantitative observations relevant to the artifact class and make type or series identifications when possible. If the isolate consists of more than one item, include the distribution area. Include information on physiographic location or vegetation in the immediate area and the depositional or erosional context of the isolate.

(6) Interpretive summary. Discuss the results of the survey in the context of the regional occupation of the area and knowledge of the cultural heritage of the state.

K. Evaluation and statement of significance. Apply the criteria for integrity and significance to evaluate each property identified during the survey pursuant to 36 CRF Part 60.4 and in conformance with 4.10.15.16 NMAC. Depending on the complexity and scale of the project, present evaluations in both narrative and tabular form.

L. Effect determination. If not a research survey, identify whether the project has the potential to affect the cultural properties located during the survey and provide a statement on how the project will affect the properties. Discuss how the historic values or significant characteristics of each property will or will not be affected by the project. Discuss how properties may be avoided or protected and whether it will be necessary to develop a mitigation program if the properties cannot be avoided or protected. Depending on the complexity and scale of the project, present evaluations in both narrative and tabular form.

M. Summary and recommendations.

(1) Discuss the survey results in relation to the archaeology and history of the area as described in the culture history section. Include isolates as well as sites in the discussion. The size and scale of the discussion should be relative to the size of the survey and its findings. Place the sites and isolated artifacts within the context of the currently known pattern of archaeological remains in the general area of the survey.

(2) Explain how the survey findings contribute to the understanding of the current research problems defined for the area. If the findings were not consistent with the known culture history of the area (for example, if fewer sites were found than would be expected, or site types not previously known to occur in the area were located), possible explanations for these anomalous findings must be explored.

(3) Any concerns expressed through tribal consultation shall be discussed in general terms. Detailed information on traditional cultural places, if any, and other properties shall be included in an appendix for easy removal so that the report may be made available to members of the public.

(4) Discuss any management concerns or recommendations for future study.

N. References cited. List all references cited in the report.

O. Appendices. Mark as confidential all pages that discuss or depict exact locations of archaeological sites or traditional cultural places pursuant to Section 18-6-11.1 NMSA 1978. At a minimum include the following:

(1) a project map(s) depicting the exact location of the project area, survey area and exact location of all archaeological sites, historic structures, buildings and

other cultural properties, water delivery systems (acequias) and other cultural properties identified during the survey; isolates may be plotted on this map or a separate map at the same scale; the map shall be at the equivalent of a USGS 7.5-minute (1:24,000) topographic quadrangle scale;

(2) a list of all isolates, detailed information on each isolate if this information has not been included in the body of the report, and GPS location. Include photographs and illustrations, as appropriate; and

(3) a list of artifacts collected during the survey project. Include provenience information and associated illustrations and photographs;

P. Attachments. Mark as confidential all pages that discuss or depict exact locations of archaeological sites pursuant to Section 18-6-11.1 NMSA 1978. Append the following to the report:

(1) a copy of the NMCRIS map server map;

(2) LA archaeological site records consistent with 4.10.15.11 NMAC for all newly recorded sites, all relocated sites and all sites that could not be relocated, as appropriate; attach a site plan map and a copy of the portion of a USGS 7.5-minute (1:24,000) topographic quadrangle map showing the site location to each LA archaeological site record; include any other site-specific records generated, such as in-field artifact analysis forms or analysis forms for collections; if coded analysis forms are attached, place a copy of the code key with every site form; do not include copies of site records obtained as part of the records check;

(3) HCPI form consistent with 4.10.15.12 NMAC for all historic structures, buildings and other cultural properties recorded during the survey;

(4) all archivally packaged photographic materials and photographic logs consistent with the standards in 4.10.15.11 or 4.10.15.12 NMAC;

(5) oversize (greater than 11x17 inches) maps and plans of individual sites; do not attach these materials to the LA archaeological site record; and

(6) engineering plan maps, aerial photographs and other nonstandard source graphics.

Q. Report review. The report shall be reviewed in conformance with 4.10.8.18 NMAC. If collections were made during survey, the permittee shall curate the collections in accordance with the procedures outlined in 4.10.8.18 NMAC.

[4.10.15.20 NMAC - N, 1/01/06]

4.10.15.21 POPULAR REPORTS:

For positive surveys of 160 acres or more, surveys that identify 10 or more sites, or whenever the cultural resources of importance or of general interest are identified, prepare a short popular summary suitable for distribution in a newspaper, newsletter or magazine. The purpose of the report is to provide information to the interested general public about the state's heritage and contributions from on-going research and studies on state land. The public disclosure of the location of archaeological sites on state and private lands is prohibited by Section 18-6-11.1 NMSA 1978. The public disclosure of the location of archaeological sites on federal lands is prohibited by 36 CFR 296.18. The report may be brief, approximately 250 to 500 words in length, and may include photographs or graphs as appropriate. The popular report shall be submitted to the state agency with the final positive survey report.

[4.10.15.21 NMAC - N, 1/01/06]

4.10.15.22 DEVIATIONS:

The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.15.22 NMAC - N, 1/01/06]

PART 16: STANDARDS FOR EXCAVATION AND TEST EXCAVATION

4.10.16.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.

[4.10.16.1 NMAC - N, 1/01/06]

4.10.16.2 SCOPE:

This rule applies to all public and private entities, including but not limited to individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums and any agency of the federal government proposing to conduct archaeological investigations on any lands owned or controlled by the state of New Mexico. Political subdivisions of the state such as counties or municipalities may incorporate the following into their regulations and ordinances affecting private land.

[4.10.16.2 NMAC - N, 1/01/06]

4.10.16.3 STATUTORY AUTHORITY:

Section 18-6-5 (NMSA 1978) of the Cultural Properties Act.

[4.10.16.3 NMAC - N, 1/01/06]

4.10.16.4 DURATION:

Permanent.

[4.10.16.4 NMAC - N, 1/01/06]

4.10.16.5 EFFECTIVE DATE:

January 1, 2006, unless a later date is cited at the end of a section.

[4.10.16.5 NMAC - N, 1/01/06]

4.10.16.6 OBJECTIVE:

To establish standards and procedures to excavate archeological sites and areas of historic and scientific interest and to conduct test excavations of archaeological sites on land owned, controlled or operated by a department, agency, institution or political subdivision of the state.

[4.10.16.6 NMAC - N, 1/01/06]

4.10.16.7 DEFINITIONS:

A. "Archaeological investigation" means the study of archaeological sites, isolates and other cultural properties and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

B. "Archaeological site" or "site" means a location where there exists material evidence of the past life and culture of human beings in the state. A significant archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, pueblos, homesteads, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials, and locales that have the potential for subsurface features or cultural deposits.

C. "Areas of historic and scientific interest" means areas lacking surface evidence of cultural properties but where there is a high probability of finding subsurface material remains and cultural deposits or areas suitable for geomorphological or paleoenvironmental study.

D. "Committee" or "CPRC" means the cultural properties review committee, created pursuant to Section 18-6-9 of the Cultural Properties Act.

E. "Cultural property" or "cultural resource" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

F. "Excavation" means displacing, disturbing or moving earth, soil, dirt, other deposits or material remains from their current contexts or significant orientation in, or on, the ground within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

G. "Historic preservation division" or "HPD" means the division within the department of cultural affairs created pursuant to Section 18-6-8A of the Cultural Properties Act.

H. "Human burial" or "unmarked human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

I. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

J. "Mechanical earth-moving equipment" means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other

deposits or materials from their current contexts or significant orientation in, or on, the ground, including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

K. "Monitoring" means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection, avoidance of site deposits or recovery of information from newly discovered cultural properties.

L. "Museum of Indian arts and culture-laboratory of anthropology" or "MIAC" means the museum division within the department of cultural affairs, museum of New Mexico, that serves as the repository for archaeological materials and associated records and documents taken or collected from state land.

M. "National register of historic places" or "national register" means the official federal register of historic properties maintained by the U.S. department of the interior, national park service.

N. "New Mexico cultural resource information system" or "NMCRIS" means the statewide archaeological and cultural properties database maintained by archaeological records management section (ARMS) within the historic preservation division that maintains the database and associated records and documents pursuant to Section 18-6-7A of the Cultural Properties Act.

O. "Permit" means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time, all of which are specified in the written authorization.

P. "State agency" means a department, agency, institution or political subdivision of the state.

Q. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 of the Cultural Properties Act.

R. "State historian" means the historian designated pursuant to Section 18-6-14 of the Cultural Properties Act.

S. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act and serves as the director of the historic preservation division.

T. "State land" means property owned, controlled, or operated by a department, agency, institution or political subdivision of the state. Examples of state land, include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way and easements; state parks;

state monuments; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

U. "State register" or "official register" means the New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties deemed worthy of preservation.

V. "Written and photographic records" means original or legible duplicate site data, such as site forms, artifact forms, notes, drawings, tables, maps, plans, charts and other written materials, and prints, slides and other photographic records.

[4.10.16.7 NMAC - Rp, 4 NMAC 10.8.7, 1/01/06]

4.10.16.8 TEST EXCAVATION OF ARCHAEOLOGICAL SITES:

Test excavation is the planned examination of a portion of an archaeological site to obtain more detailed and accurate information about the characteristics and integrity of surface and subsurface cultural deposits, the distribution and density of material remains and the types of data present. Conduct test excavations to assess the research potential of the site to contribute to the knowledge of the heritage of the state, to make a determination whether the site should be listed on the state register or should be determined eligible for national register listing, or to serve as the basis for developing an excavation plan for the site without additional test excavations. Test excavation shall be designed to meet these objectives with the least possible impact to the archaeological site and without substantially damaging or diminishing the integrity of the cultural deposits and the values and attributes of the site that contribute to its significance.

A. General permits. Test excavation may be conducted under a general permit when a test excavation plan is prepared in conformance with 4.10.16.10 NMAC and authorized pursuant to 4.10.8 NMAC. The work shall be performed in accordance with the approved test excavation plan.

B. Project-specific permits. Test excavation may be conducted under a project-specific permit when a research design is prepared consistent with the standards in 4.10.16.13 NMAC and authorized pursuant to 4.10.8 NMAC. The work shall be performed in accordance with the approved research design.

[4.10.16.8 NMAC - N, 1/01/06]

4.10.16.9 TEST EXCAVATION STANDARDS UNDER A GENERAL PERMIT:

Test excavation projects performed under a general permit shall be conducted in accordance with the following specifications and performed under the direct supervision of an archaeologist listed in the SHPO directory of qualified supervisory personnel

(4.10.8.11 NMAC). Test excavations that deviate from these standards are allowed by obtaining a project-specific excavation permit pursuant to 4.10.8 NMAC.

A. Test excavation shall be conducted in a manner that the total surface disturbance resulting from the tests shall not exceed five percent (5%) of the total surface area of the site or five percent (5%) of the portion of the site that may be affected by a project, whichever is less. Test excavation that proposes to excavate more than 5% of a site constitutes excavation and shall follow the standards in 4.10.16.12 NMAC.

B. Site maps shall be produced using a high-quality optical transit, total station or alidade. Prepare a scaled map for each site and depict the grid layout, the datum, the location and shape of all features, artifact concentrations, test excavation units, auger tests, shovel tests, point-provenienced artifacts, site boundaries and the relationship of the site to nearby physiographic and man-made features. Each map shall contain the LA site number, north arrow, numbered metric scale, legend for symbols used on the map, name(s) of the recorder(s) and date of recording.

C. Controlled surface collections shall be accomplished using a grid system or by point provenience. The standard is 1-by-1 meter grid units for spatial control. Use of larger grid units is allowable only when explicitly justified and supported in the test excavation plan.

D. For systematic auger holes and similar tests, explain the placement, interval, minimum number of units and size of the area tested in square meters.

E. Test excavation of features is discouraged for features including but not limited to hearths, rock alignments, pit depressions, dispersed firecracked rock scatters, soil discolorations and other potential feature areas. Tests of features may be conducted only when essential to determine the research potential of the feature and fill shall be collected for laboratory analysis. All tests shall use hand tools and shall adopt the least destructive method to obtain the necessary information. Core the edge of a feature to determine depth, integrity and content. Complete excavation of features is prohibited.

F. Excavation shall be conducted by natural stratigraphy or arbitrary levels until natural strata are defined. Use 10-centimeter control or less for arbitrary levels. Consider maintaining 10-centimeter control within natural strata. Proposals to use levels thicker than the 10-centimeter control shall be clearly justified and supported in the test excavation plan and may be conducted only after the controlled excavation demonstrates the fill as noncultural or highly disturbed.

G. Sediments removed from all hand-excavation units shall be passed through a screen of no greater than one-quarter inch (6.35mm). Use a smaller screen size when deemed appropriate. Do not screen sediments from thermal features; collect thermal-feature fill for laboratory analysis. Additionally, sediments from a minimum of one hand-excavation unit comparably placed and of the same size as a unit that produced moderate to high artifact yields shall be passed through a screen of no greater than

one-eighth inch (3.175 mm). Proposals to exclude overburden or disturbed contexts shall only be considered after controlled tests and fill screened to the standards have demonstrated that the fill is noncultural or highly disturbed. Screening all fill through one-eighth inch mesh is encouraged as standard practice.

H. Stratigraphic profiles shall be recorded by scale diagram, photographs and narrative descriptions. All strata and soil horizons shall be described using standard scientific terms. Describe the color using Munsell terminology or equivalent.

I. Mechanical excavation units may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden. Trenches excavated with mechanical earth-moving equipment shall conform to the following standards:

(1) collect surface artifacts prior to excavation of trenches or stripping areas with mechanical earth-moving equipment;

(2) depths for mechanical excavation trenches shall conform to OSHA standards for excavation safety (29 CFR 1926, Subpart P);

(3) document the location, depth, soil profile, artifact yield and other pertinent information;

(4) clean at least one profile with a shovel or trowel and inspect the profile for cultural features and material remains;

(5) document the trench profile in narrative, profile drawing and photographs; all strata and soil horizons shall be described using standard scientific terminology; deposit descriptions include but are not limited to sediment color, texture, moisture, content, nature of inclusions, organic content and an inventory of cultural materials; describe the color using Munsell terminology;

(6) examine the excavated area after the removal of each extracted bucket load;

(7) examine backdirt for the presence of artifacts; and

(8) if cultural materials extend deeper than the bottom of the trench, systematically auger the bottom of the trench to determine approximate depth of materials.

J. The bottom of the excavation units and trenches shall be lined with landscape cloth or shall be marked in some other fashion to indicate depth of disturbance.

K. Photographs may be in black-and-white print, color print, color transparency or digitally captured images. For greatest archival stability, black-and-white prints are recommended. At a minimum, photograph features and profiles.

L. Human burials. Excavation of human burials is prohibited under test excavation. If human burials are encountered, all work shall stop immediately in the area of the discovery. Notify local law enforcement pursuant to 4.10.11 NMAC. Document the location of the remains.

M. Backfill. After completion of test excavation, backfill and restore the site as nearly as possible to the pre-excavation condition, unless other provisions have been made in the test excavation plan.

[4.10.16.9 NMAC - N, 1/01/06]

[For one study on the use of one-eighth inch screen size, see Carmichael and Franklin (1997), *Archaeological Screening Techniques and Their Effects on the Recovery of Lithic Artifacts*, In *Archaeology of the Jornada Mogollon: Proceedings from the 10th Jornada Mogollon Conference*.]

4.10.16.10 TEST EXCAVATION PLANS UNDER A GENERAL PERMIT:

A. Purpose. Test excavation plans are methodological in orientation and are designed to secure specific descriptive information concerning the nature and extent of an archaeological site or area of historic and scientific interest. Test excavation plans typically do not contain statements of theoretical perspective, research questions, hypotheses for testing or other research-related issues. Those domains are part of a research design prepared in conjunction with a project-specific permit. The research implications of the work performed under a test excavation plan shall be presented and discussed as part of the conclusions in a test excavation technical report.

(1) Test excavation plans shall be specific and shall include a clear explanation of why the particular approach proposed is the best one for the project and for the site(s).

(2) The test excavation shall fulfill one or more of the following purposes:

(a) to assess the potential for additional study of the site(s) to contribute to the cultural heritage and knowledge of the state and to evaluate the significance of the archaeological site(s) pursuant to 4.10.15.16 NMAC;

(b) to assess the nature and extent of cultural deposits; and

(c) to prepare an appropriate excavation plan for sites that have the potential to contribute important historic and scientific information.

B. Components. The level of detail shall be proportionate to the scale of the project and shall conform to the test excavation standards in 4.10.16.9 NMAC. At a minimum, a test excavation plan shall include the items listed below.

(1) **Title page.** Do not obtain a NMCRIS number for the test excavation plan.

(2) **Statement of purpose and approach.** Provide a clear statement of the goals for the test excavation project and explain why the proposed strategy is appropriate to achieve the purpose. Describe the specific procedures proposed to test the site(s). If more than one site is involved, specify the activities to be performed at each site.

(3) **Current knowledge of the site(s).** Summarize previous work at the site, the site's eligibility, immediate environmental setting, land status, site size, the number and type of known features, the types and quantity of artifacts and activity areas, the potential depth of cultural deposits in different areas of the site, site integrity and extent of disturbed versus unexcavated areas.

(4) **Field strategy.** Describe the specific procedures proposed to test the site. If more than one site is involved, specify the activities to be performed at each site. Discuss the methods to:

(a) determine site limits;

(b) identify, document and assess features;

(c) define surface artifact distributions, densities and intrasite activity areas;
and

(d) determine the depth of cultural deposits.

(5) Specify the proposed methods to conduct the following activities:

(a) map the site;

(b) surface collections and recordation including grid size or point provenience, the minimum number of grid units to be collected and recorded and sampling fraction (percent of site area collected and recorded);

(c) hand excavations, including the type(s) of hand excavation units and site-sampling fraction (the percent of site area tested for each unit type); explain the placement, interval, minimum number of units and size of the area tested in square meters for systematic auger holes and similar tests; for test pits and trenches, specify the size (dimensions), placement and minimum number of test pits and trenches to be excavated; and

(d) mechanical excavation including the type, placement and minimum number of units trenches and their length, width and depth; specify the percent of site area to be tested including horizontal scraping, with mechanical equipment.

(6) Specialized samples or specimens. Specify the proposed methods and conditions under which radiocarbon, pollen and other samples or specimens will be collected, processed and analyzed.

(7) Human burials. Discuss the procedures to be followed if human burials are encountered; excavation of human burials is prohibited.

(8) Contingencies. Discuss the proposed procedures and notification in the event of unanticipated discoveries.

(9) Backfill. Discuss the proposed procedures to backfill and stabilize the site(s).

(10) Laboratory analyses. Discuss the descriptive and comparative analytical methods proposed for each artifact class and each type of specimen expected to be recovered.

(a) Include the proposed classification system that will be used to describe the assemblage content and specific attributes to be observed.

(b) Include copies of all analysis forms in the appendix if they differ from the forms provided in the permit application submitted pursuant to 4.10.8 NMAC.

(c) Discuss sampling strategy and sampling fraction if all artifacts and specimens collected will not be analyzed.

(11) Schedule. Explain the expected time frame to implement the field, analysis and reporting phases of the project.

(12) Personnel. Identify all supervisory personnel and analysts who will perform the fieldwork, laboratory analyses and prepare the report. Include subcontractors if any are proposed and off-site laboratories for specialized analyses. If specific personnel or subcontractors have not been identified for all activities, provide a list of personnel or subcontractors who may be retained or list the minimum qualifications of the personnel that will be retained.

(13) Curation. Identify the proposed repository; if the repository will not be the MIAC, provide justification pursuant to 4.10.8 NMAC.

(14) References cited.

(15) Appendices as needed.

[4.10.16.10 NMAC - N, 1/01/06]

4.10.16.11 TEST EXCAVATION UNDER A PROJECT-SPECIFIC PERMIT:

A. Test excavation shall be conducted under a project-specific permit when the applicant:

(1) proposes to substitute alternate test excavation methods for the standards in 4.10.16.9 NMAC;

(2) proposes test excavation on state trust land undertaken independent of an activity authorized by rights of way, easements, grazing leases, business leases, oil and gas leases, mineral leases or other authority to enter state trust land; or

(3) does not have a general permit that authorizes test excavation.

B. The applicant shall prepare a research design consistent with 4.10.16.13 NMAC.

[4.10.16.11 NMAC - N, 1/01/06]

4.10.16.12 EXCAVATION STANDARDS:

A. Excavation shall be designed to recover information about those significant values for which a property is considered eligible for inclusion in the national register or listed on the state register. Excavation shall be guided by an explicit research design that identifies specific research topics, research questions and appropriate analyses. Field studies may include collection of surface and subsurface artifacts, subsurface tests to identify buried cultural lenses and features, controlled excavation of features and activity areas, and collection of specialized samples and specimens (radiocarbon, archeomagnetic, dendrochronological, flotation, pollen, paleoenvironmental, source materials). Use of mechanical earth-moving equipment may be appropriate. Laboratory analyses and analytical tasks include processing, cataloguing, analyses and curation of materials, analysis of specialized samples and preparation and production of technical and popular reports summarizing the results of the excavation program. All excavation and shall be performed under the direct supervision of an archaeologist listed in the SHPO directory of qualified supervisory personnel (4.10.8.11 NMAC).

B. The research design establishes the standards for excavation. Example standards are provided below. Exceptions to these standards may be proposed but shall be explained and justified in the research design.

(1) Site maps shall be produced with high-quality optical transit, total station or alidade. Prepare a map for each site and depict the grid layout, the location of the datum, the location and shape of all features, artifact concentrations, test excavation units, point-provenienced artifacts, site boundaries and the relationship of the site to nearby physiographic and man-made features. Each map shall contain the site number,

north arrow, numbered metric scale, legend for symbols used on the map, name(s) of the recorder(s) and date of recording.

(2) Controlled surface collections shall be accomplished using a grid system or by point provenience. The size of the grid system is determined by the needs of the research design and shall be clearly justified and supported. Use of a grid system with 1-by-1 meter spatial control is standard. Maintain tight spatial control.

(3) All features visible on the surface shall be completely excavated unless the research design proposes a sampling strategy. Any decision to sample features shall be fully explained and justified in the research design. Consider whether the sample will produce sufficient specimens and special samples for analysis and if the sampling will provide sufficient relevant data to address the research questions. Features shall be excavated in profile in order to obtain a view of the cross section and shall be recorded in three dimensions. Profiles of the cross section shall be recorded by scale diagram and color transparencies. Plan view and cross section drawings of each excavated feature shall be prepared. All structures and features shall be recorded noting size, shape, construction detail, fill, probable function and relationship to other features and artifact activity areas. Separate feature forms shall be prepared for each feature. All features shall be numbered and labeled to correspond to the feature form.

(4) Excavation shall be conducted by natural stratigraphy or arbitrary levels until natural strata are defined. Proposals to use levels greater than 10-centimeter control shall be clearly justified and supported in the research design. Consider maintaining 10-centimeter control within natural strata.

(5) Sediments removed from all hand-excavation units shall be passed through a screen of no greater than one-quarter inch (6.35mm). Consider using a smaller screen size. Do not screen sediments from thermal features; collect thermal-feature fill for laboratory analysis. Additionally, sediments from a minimum of one hand-excavation unit comparably placed and of the same size to a unit that produced moderate to high artifact yields shall be passed through a screen of no greater than one-eighth inch (3.175 mm). Proposals to exclude sediments from being screened shall be clearly justified and supported in the research design.

(6) Stratigraphic profiles shall be recorded by scale diagram, photographs and narrative descriptions. Deposit descriptions include but are not limited to sediment color, texture, moisture content, nature of inclusions, organic content, and an inventory of cultural materials, if any. Describe the color using Munsell terminology.

(7) Mechanical excavation units may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden. Trenches excavated with mechanical earth-moving equipment shall conform to the following standards:

(a) collect surface artifacts prior to excavation of trenches or scraping areas with mechanical earth-moving equipment;

(b) depths for mechanically excavated trenches shall conform to OSHA standards for excavation safety (29 CFR 1926, Subpart P);

(c) document the location, depth, soil profile, artifact yield and other pertinent information;

(d) clean at least one profile with a shovel or trowel and inspect the profile for cultural features and material remains;

(e) document the profile in narrative, profile drawing and photographs; deposit descriptions include but are not limited to sediment color, texture, moisture content, nature of inclusions, organic content, and an inventory of cultural materials, if any;

(f) examine the excavated area after the removal of each extracted bucket load; and

(g) examine backdirt for the presence of artifacts.

(8) Post-excavation mechanical excavation. Mechanical stripping or scraping may be employed following excavations. The stripping serves the purpose of disclosing features not found during the testing, trenching or excavation and provides a check on the reliability of the excavation sampling design. Features exposed during the mechanical stripping shall be mapped in relation to the site datum. All features shall be fully described and a sample of datable specimens and artifacts shall be collected. If all features are not proposed to be excavated, explain how features will be chosen for excavation and why. Sufficient analytical studies shall be performed to interpret function.

(9) The bottom of the excavation units and trenches shall be lined with landscape cloth or marked in some other fashion to indicate depth of disturbance, unless the site will be destroyed by construction.

(10) Photographs may be in black-and-white print, color print, color transparency or digitally captured images. For greatest archival stability, black-and-white prints are recommended. At a minimum, photograph features and profiles.

(11) Human burials. If human burials are encountered, all work shall stop immediately in the area of the discovery. Notify local law enforcement pursuant to 4.10.11 NMAC. Do not excavate human burials if they can be left in place. If excavation of human burials proves necessary, such excavation shall only be conducted pursuant to 4.10.11 NMAC.

(12) Backfill. After completion of excavation, the site shall be backfilled and restored as nearly as possible to the pre-excavation condition, unless other provisions have been made in the permit application pursuant to 4.10.8 NMAC.

[4.10.16.12 NMAC - N, 1/01/06]

4.10.16.13 RESEARCH DESIGNS FOR EXCAVATION PROJECTS:

A. Purpose. A research design explains the purpose of the project, the scope of work proposed and how the fieldwork and analysis of the archaeological site(s) or area(s) of historic and scientific interest contributes to a greater understanding of the cultural heritage of the state. Research designs shall take into account broad regional research needs and strive to fill in gaps in current state of knowledge. Research designs shall be realistic and attainable from the nature of the site(s) to be investigated and shall be flexible enough to accommodate unanticipated discoveries. At a minimum, a research design shall include the following components and shall be prepared consistent to the excavation standards in 4.10.16.12 NMAC.

B. Components. The length of each section shall be appropriate to the complexity and scale of the study.

- (1) Title page.** Do not obtain a NMCRIS number for research designs.
- (2) Table of contents, lists of figures and tables.** Prepare for documents with more than 10 pages of text.
- (3) Purpose of the study.** Provide a succinct overview of the proposed study including:
 - (a)** goals, name and brief description of the history of the project;
 - (b)** list of sites to be studied by LA number and land status;
 - (c)** the project sponsor (client), state agency and other land jurisdictions if any; and
 - (d)** project location and project map depicting the location and boundaries of the site(s) to be excavated by LA site number, land ownership boundaries, north arrow, key and name of appropriate 7.5-minute USGS source quadrangle(s).
- (4) Research context.** The context provides a foundation for the development of specific research questions. Scale the discussion to the complexity, size and limitations of the proposed study. The length of each discussion may vary but include the following elements:

(a) review of pertinent literature including, but not limited to, statewide and regional cultural-historical overviews and historic contexts, research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports and field reports sufficient to identify gaps in the current state of knowledge;

(b) query NMCRIS database and map server to identify sites of similar types and age in the project area to establish baseline information for comparative purposes;

(c) discussion of the theoretical orientation and assumptions guiding the proposed research;

(d) identification of general research problems and topics relevant to the region; discuss the research problems in the context of the culture history and knowledge of the area and current research gaps; draw on existing knowledge of research conducted at similar types of sites near the project area; and

(e) specification of research questions; provide a clear link between the questions and the theoretical assumptions.

(5) Current knowledge of the site(s). Summarize previous work at the site, the site's national register eligibility, immediate environmental setting, site size, the number and type of known features, the types and quantity of artifacts and activity areas, the potential depth of cultural deposits in different areas of the site, and site integrity and extent of disturbed versus unexcavated areas.

(6) Specific research questions. Provide a clear link between the research questions and the general research problems. Identify the specific kinds of data needed to address the questions and explain how the site(s) to be excavated are likely to contain data relevant to address the questions. Take into account current knowledge of the site or site type in this discussion.

(7) Specific procedures to test or excavate the site(s). If more than one site is to be excavated, specify the activities to be performed at each site. Discuss the proposed methods to:

(a) determine site limits;

(b) identify, document and assess features;

(c) define surface artifact distributions, densities and intrasite activity areas;
and

(d) determine the depth of cultural deposits.

(8) Procedures to operationalize the plan. At a minimum, discuss:

(a) procedures used to map the site;

(b) methods for surface collections and recordation; specify the method of collection, grid size or point provenience, in-field analysis if proposed, the minimum number of grid units to be collected and recorded and sampling fraction (percent of site area to be collected and recorded);

(c) the type(s) of hand excavation units and sampling fraction (the percent of site area to be excavated for each unit type); for systematic auger holes, explain the placement, interval, and minimum number of units and size of the area excavated in square meters; for excavation units and trenches, specify the size (dimensions), placement and minimum number to be excavated;

(d) the type, placement and minimum number of mechanical excavation units (trenches) and their length, width and depth; specify the percent of site area to be excavated with mechanical equipment including horizontal scraping;

(e) specialized samples (radiocarbon, pollen and other samples or specimens); specify the methods and conditions under which samples will be collected, processed and analyzed;

(f) procedures if human burials are encountered consistent with 4.10.11 NMAC;

(g) procedures for monitoring during construction will be implemented; the proposed monitoring shall be consistent with the standards in 4.10.17 NMAC; and

(h) procedures for notification in the event of contingencies for unanticipated discoveries.

(9) Backfill. Discuss procedures to backfill and stabilize the site.

(10) Analytical procedures. Provide a specific link between the research questions, data needed to address the research questions and proposed analytical procedures to generate the necessary data from observations and material remains recovered from the site. Specify the types, quantities and quality of data needed to address the research questions. Discuss the descriptive and comparative analyses for each class of artifact and type of specimen expected to be recovered from the sites. Include the proposed typology that will be used to describe the assemblage content and specific attributes to be observed. Consider the kinds of measurement that will be used, justifications for sampling and minimum thresholds for statistical validity. Include copies of all analysis forms in the appendix if they differ from the forms provided in the application submitted pursuant to 4.10.8 NMAC. Discuss sampling strategy and sampling fraction if all artifacts and specimens collected will not be analyzed. Explain the provisions that will be made for the collection and analysis of data that are not

directly related to your stated research problems. Minimally, a representative sample of all recovered materials shall be analyzed.

(11) Schedule. Explain the expected time frame to implement the field, analysis and reporting phases of the project.

(12) Personnel. Identify all supervisory personnel and analysts who will perform the fieldwork, laboratory analyses and prepare the report. Include subcontractors if any are proposed and off-site laboratories for proposed specialized analyses. If specific personnel or subcontractors have not been identified for all activities, provide a list of personnel or subcontractors who may be retained, or list the minimum qualifications of the personnel that will be retained.

(13) Curation. Identify the proposed repository; if the repository will not be the MIAC, provide justification pursuant to 4.10.8 NMAC.

(14) References cited.

(15) Appendices, as needed.

[4.10.16.13 NMAC - N, 1/01/06]

4.10.16.14 PRELIMINARY REPORTS:

A preliminary report may be prepared for excavation and test excavation projects when requested by the state agency or included in the test excavation plan or research design. Letter reports are prohibited. At a minimum, a preliminary report shall include the following information.

A. Brief description of the project. Identify project location, the NMCRIS number, LA site numbers for tested or excavated sites, state agency and project sponsor, list of project personnel, dates of fieldwork and the state permit number.

B. Project map. Show land ownership boundaries, project area boundaries, boundaries of all tested or excavated sites, north arrow, name of USGS 7.5 minute (1:24,000) quadrangle map and key to map symbols.

C. Field studies. Discuss field activities performed at each site and condition of site at conclusion of tests or excavations. Information may be summarized in a table. Include the type of excavation units, the number of units excavated, excavation depth, and the types and quantity of artifacts recovered.

D. Site map. Include a scaled site map with site boundaries, property ownership boundaries, site datum, location of all collection units, point-provenienced artifacts, hand excavation units, auger holes, shovel tests and mechanical excavation units.

E. Changes in the plan. Identify departures from the approved test excavation plan or research design. Identify and explain substantial differences between the work proposed and the work that was performed in the field. Identify and explain any proposed changes in analysis strategy.

F. Final report schedule. Indicate the proposed date when the final report will be submitted to the state agency if it differs from the schedule approved in the research design or test excavation plan.

G. Report review. The report shall be reviewed in conformance with 4.10.8.18 NMAC.

[4.10.16.15 NMAC - N, 1/01/06]

4.10.16.15 FINAL TECHNICAL REPORT STANDARDS:

These requirements constitute the minimal standards for the reports on the test excavation or excavation of sites located on state land. The length of each section and discussion shall be appropriate to the complexity and scale of the project. State agencies may have additional reporting requirements.

A. Title Page. The title page shall contain the following information:

- (1) the NMCRIS number in the upper left hand corner;
- (2) the report title, author(s) and the principal investigator, if different from the author;
- (3) the name of the organization that performed the work;
- (4) the agency or agencies requiring and receiving the report;
- (5) the state permit number and other permit numbers for the project; and
- (6) the report date (month, day, year).

B. NMCRIS investigation abstract. Complete all sections of the NMCRIS investigation abstract, which serves as the report abstract.

C. Table of contents (required only for reports with more than 10 pages of text). Include:

- (1) major report sections, subheadings and appendices with page numbers;
- (2) a list of figures and plates with page numbers; and

- (3) a list of tables with page numbers.

D. Introduction and description of project. State the purpose of the investigation and include a brief description of the following:

- (1) the name(s) of the project sponsor(s) or funding source(s);
- (2) the nature, purpose and location of the project and a list of the excavated sites;
- (3) a description of the site(s) prior to excavation and a discussion of any previous work at the site(s);
- (4) indicate if the project is being implemented in phases and identify the relationship of the current work to the overall project; and
- (5) include a table that lists all of the project sites with field numbers, LA numbers and land status; include a brief description of each site and the work undertaken in this table.

E. Environmental setting. The length of the discussion shall be appropriate to the complexity and scale of the excavation project.

- (1) Describe the natural environment. Describe the topography, geology and soils; contemporary flora and fauna; current climatological conditions; discuss the effect of current environmental conditions and past environmental processes (such as erosion or deposition) on the visibility and preservation of archaeological remains.
- (2) Describe the cultural environment. Identify modern land use impacts such as mining, logging, agricultural activities or urban development and discuss the effect that modern land uses have on the visibility and integrity of archaeological sites and other cultural properties. Note evidence of vandalism or looting.
- (3) Include photographs of the physical or cultural environment of the project area as appropriate.

F. Culture history and literature review.

- (1) Discuss the past human occupation of the general area in which the project was conducted referencing established culture-historical frameworks or chronologies for each period relevant to the sites investigated. Reference statewide and regional cultural historical overviews, regional research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports, field reports and historic maps and records and other archival sources as appropriate, given the results of the project.

(2) Present a culture history of the area with reference to the previous archaeological work in the vicinity and types of sites investigated during the project. Culture histories shall be specific to the general project area and region and sites investigated.

G. Test excavation plan or research design. Summarize major elements of the approved test excavation plan or approved research design. Explain any significant differences between the work proposed and the work performed in the field or during analysis. If applicable, explain the relationship of your project to the research design of an on-going or larger mitigation or research project. If the site(s) being excavated represent a sample of a larger population of sites within a project area, describe the methods used to derive the sample.

H. Field methods, data collection and analysis strategies. Discuss the methods used to:

- (1) map the site(s);
- (2) record the features;
- (3) excavate the units. Describe the implements, size of screens, size of excavation units employed Define arbitrary or natural excavation units and levels;
- (4) collect and analyze the artifacts from the surface and from the excavation units;
- (5) collect and analyze chronometrical, botanical, faunal and other specimens and the techniques used to preserve these materials; and
- (6) explain the extent to which each of these and any other special techniques were employed.

I. Data presentation for each site.

- (1) Describe the layout, configuration and appearance of the site(s) including a description of any pre-excavation surface remains.
- (2) Describe the specific environmental setting of the site(s) supplemented with appropriate illustrations and references to relevant publications.
- (3) Describe each excavation unit with regard to stratigraphy and contents. Multiple units with the same stratigraphic sequence may be grouped. The relationship between the excavation units shall be discussed.
- (4) Present the results of the analyses in the context of the test excavation plan or the research questions in the research design. Include a summary of the

numbers of artifacts by category and provenience. Differentiate between surface and subsurface materials. Discuss the types of analyses conducted for each artifact class and any sample and present the results by analytical units or strata. Provide narrative and tabular summaries for chronometrical, botanical and other specialized analyses. Integrate the results of these analyses in the discussion of the results of the investigation.

J. Results and recommendations. Summarize the results of the study and contributions to the knowledge of the cultural heritage of the region and the state.

(1) Evaluate project results with regard to the approved test excavation plan or research design. Discuss substantive deviations from original plan.

(2) Discuss the cultural affiliation of the site(s) and the relationship of the site(s) to the culture history of the area.

(3) Provide a synopsis of the data recovered from the excavations, the artifacts and samples.

(4) Discuss and analyze the interface between archaeological and documentary evidence for historical archaeological sites.

(5) For test excavation projects, evaluate the research potential of the site(s). This evaluation will serve as the basis for developing a research design for excavation, if necessary.

(a) Identify future research potential. Discuss research issues, problems or topics that can be realistically addressed through future study. The discussion shall be synthetic and comprehensive in scope, oriented toward realistic goals. Document how the research potential has been determined and why the current level of study is not sufficient to address or resolve these issues. Research questions shall take into account broad regional research needs and shall strive to fill gaps in current state of knowledge. Place the sites within the context of the currently known pattern of archaeological remains in the project area. Discuss recommendations with the state agency prior to including in the report.

(b) Discuss whether or not, in the opinion of the investigator, the site is or continues to be eligible for the national register and whether the site should be placed on the state register. Apply the criteria for integrity and significance to evaluate each property pursuant to 36 CRF 60.4. Identify the property as a district, site, building, structure or object. Indicate whether the property should be listed on the state register or should be determined as eligible for national register listing pursuant to 4.10.15.16 NMAC.

(6) For excavation projects performed under a research design:

(a) evaluate the success of the research design and any significant deviations during the field or analyses;

(b) discuss what was learned from the excavation and analyses in relation to the pre-existing archaeology and history of the area. Place the sites within the context of the currently known pattern of archaeological remains in the project area. If the findings were not consistent with the known culture history of the area, possible explanations for these anomalous findings must be explored; and

(c) discuss how much of the site is preserved, unexcavated and undisturbed. Suggest future research and management strategies.

K. Illustrations and photographs.

(1) Include a map showing the location of the project within the state of New Mexico.

(2) Include site maps, which shall be drawn to scale at a legible size and contain a north arrow (true or magnetic) and scale. All excavation units (rooms, trenches, test pits, collection areas) shall be labeled on the map and accurately related to the text. Previously excavated portions of the site shall be clearly identified. Remaining, unexcavated portions of the site shall also be shown; all relevant natural, archaeological and modern features shall be clearly marked as well as any areas of disturbance.

(3) Plans, drawings and photographs of stratigraphic profiles with explanations shall be included. Illustrations of representative, unusual and unique features or other manifestations shall be included as appropriate to the complete understanding of the narrative discussion.

(4) Illustrations and photographs of unusual and diagnostic artifacts are required as necessary to insure complete understanding.

L. References cited.

M. Appendices. At a minimum, provide:

(1) a project map depicting the location and boundaries of the site(s) tested or excavated by LA site number, land ownership boundaries, north arrow (true or magnetic), key to map symbols and name of appropriate USGS 7.5-minute (1:24,000) topographic quadrangle(s); mark as confidential all pages that discuss or depict exact locations of archaeological sites pursuant to Section 18-6-11.1 NMSA 1978;

(2) a list of collected artifacts and specimens; and

(3) reports from laboratories and consultants.

N. Attachments.

(1) Site records. Submit updated LA archaeological site records for each site consistent with the standards in 4.10.15 NMAC. Include a site plan map and a reproduction of a USGS 7.5-minute (1:24,000) topographic quadrangle map showing the site location(s) and attach to each LA site form. Include any other site-specific records generated, such as artifact analysis forms. If coded analysis forms are attached, place a copy of the code key with every site form.

(2) Photographic materials. Do not append photographs to site forms. All archivally packaged photographic materials and photographic logs shall be submitted to the approved curatorial facility consistent with the standards for that repository.

(3) Oversize maps and plans. Attach oversize (greater than 11x17 inches) maps and plans of individual sites to the survey report, not to the LA site record. Oversize project and survey area maps should be attached as appendices and not attached to the body of the report.

(4) Other location materials. Engineering plan maps, aerial photographs and other non-standards source graphics may be attached to the report.

O. Report review. The report shall be reviewed in conformance with 4.10.8.18 NMAC. The permittee shall curate the collections in accordance with the procedures outlined in 4.10.8.18 NMAC.

[4.10.16.15 NMAC - N, 1/01/06]

4.10.16.16 POPULAR REPORTS:

Write a short popular summary suitable for distribution in a newspaper, newsletter or magazine for each excavation project. A popular report is optional for test excavation projects, but is encouraged. The purpose of the report is to provide information to the interested general public about the state's heritage and contributions from on going research and studies on state land. The public disclosure of the location of archaeological sites on state and private lands is prohibited by Section 18-6-11.1 NMSA 1978. The public disclosure of the location of archaeological sites on federal lands is prohibited by 36 CFR 296.18. The report may be brief, approximately 250 to 500 words in length. Longer articles or other types of public education and outreach approached may be used if proposed in the excavation plan or research design. Include photographs or graphs as appropriate. The popular report shall be submitted with to the state agency with the final technical report.

[4.10.16.16 NMAC - N, 1/01/06]

4.10.16.17 CURATION OF COLLECTIONS AND RECORDS:

All material remains collected during the excavation or test excavation project and associated written and photographic records resulting from the project, regardless of whether or not all of the work specified in the test excavation plan or research design was completed, shall be curated consistent with 4.10.8.18 and 4.10.8.19 NMAC.

[4.10.16.17 NMAC - N, 1/01/06]

4.10.16.18 DEVIATIONS:

The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.16.18 NMAC - N, 1/01/06]

PART 17: STANDARDS FOR MONITORING

4.10.17.1 ISSUING AGENCY:

Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.

[4.10.17.1 NMAC - N, 1/01/06]

4.10.17.2 SCOPE:

This rule applies to all public and private entities, including but not limited to, individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums and any agency of the federal government conducting or proposing to conduct archaeological investigations on any lands owned, controlled or operated by the state of New Mexico.

[4.10.17.2 NMAC - N, 1/01/06]

4.10.17.3 STATUTORY AUTHORITY:

Section 18-6-5 (NMSA 1978) of the Cultural Properties Act.

[4.10.17.3 NMAC - N, 1/01/06]

4.10.17.4 DURATION:

Permanent.

[4.10.17.4 NMAC - N, 1/01/06]

4.10.17.5 EFFECTIVE DATE:

January 1, 2006, unless a later date is cited at the end of a section.

[4.10.17.5 NMAC - N, 1/01/06]

4.10.17.6 OBJECTIVE:

To establish standards and procedures for monitoring land-disturbing projects that affect or may affect archaeological sites, cultural properties or areas of historic and scientific interest on lands owned, controlled or operated by a department, agency, institution or political subdivision of the state.

[4.10.17.6 NMAC - N, 1/01/06]

4.10.17.7 DEFINITIONS:

A. "Archaeological site" or "site" means a location where there exists material evidence of the past life and culture of human beings in the state. A significant archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, pueblos, homesteads, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials, and locales that have the potential for subsurface features or cultural deposits.

B. "Areas of historic and scientific interest" means areas lacking surface evidence of cultural properties but where there is a high probability of finding subsurface material remains and cultural deposits or areas suitable for geomorphological or paleoenvironmental study.

C. "Committee" or "CPRC" means the cultural properties review committee, created pursuant to Section 18-6-9 of the Cultural Properties Act.

D. "Cultural property" or "cultural resource" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

E. "Excavation" means displacing, disturbing or moving earth, soil, dirt, other deposits or material remains from their current contexts or significant orientation in, or on, the ground within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

F. "Historic preservation division" or "HPD" means the division within the department of cultural affairs created pursuant to Section 18-6-8A of the Cultural Properties Act.

G. "Human burial" or "unmarked human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

H. "Isolate" means a single object or artifact or a few artifacts greater than 50 or more years old that lack clear association. Examples of isolates include a single flake, projectile point, potsherd, sherds from a single broken pottery vessel, pieces of glass from a single bottle or a single feature that lacks integrity.

I. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

J. "Monitoring" means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection, avoidance of site deposits or recovery of information from newly discovered cultural properties.

K. "Museum of Indian arts and culture-laboratory of anthropology" or "MIAC" means the museum division within the department of cultural affairs, museum of New Mexico, that serves as the repository for archaeological materials and associated records and documents taken or collected from state land.

L. "New Mexico cultural resource information system" or "NMCRIS" means the statewide archaeological and cultural properties database maintained by archaeological records management section (ARMS) within the historic preservation division that maintains the database and associated records and documents pursuant to Section 18-6-7A of the Cultural Properties Act.

M. "Permit" means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time, all of which are specified in the written authorization.

N. "State agency" means a department, agency, institution or political subdivision of the state.

O. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 of the Cultural Properties Act.

P. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act and serves as the director of the historic preservation division.

Q. "State land" means property owned, controlled, or operated by a department, agency, institution or political subdivision of the state. Examples of state land, include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way and easements; state parks; state monuments; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

[4.10.17.7 NMAC - N, 1/01/06]

4.10.17.8 MONITORING:

There are two types of monitoring activities: monitoring to implement site avoidance or site protection measures, and monitoring of construction activities through an archaeological site, other cultural property or areas of historic and scientific interest where there is high probability of finding subsurface features and cultural deposits. Both types of monitoring shall be conducted under a permit issued by the CPRC, with the concurrence of the state archaeologist and SHPO, authorizing monitoring activities.

A. General permits. Monitoring may be conducted under a general permit when applicants propose to:

(1) supervise implementation of site avoidance or protection measures pursuant to 4.10.17.10 NMAC and authorized pursuant to 4.10.8 NMAC; or

(2) oversee land-disturbing projects when a monitoring plan is prepared in conformance with 4.10.17.11 NMAC and authorized pursuant to 4.10.8 NMAC.

B. Project-specific permits. Monitoring may be conducted under a project-specific permit when a monitoring plan is prepared in conformance with 4.10.17.11 NMAC and authorized pursuant to 4.10.8 NMAC.

[4.10.17.8 NMAC - N, 1/01/06]

4.10.17.9 PERSONNEL REQUIREMENTS:

A. The SHPO shall maintain a directory of qualified supervisory personnel including but not limited to archaeologists who act in the capacity of principal investigator, project director, field supervisor and crew chief (4.10.8 NMAC).

B. All monitoring activities on state land shall be performed by an archeologist listed in the SHPO directory. This individual shall be on site and physically present on the ground immediately prior to and during all surface-disturbing actions to ensure site protection, avoidance of site deposits, identification of new cultural deposits and features or recovery of information from newly discovered cultural properties.

[4.10.17.9 NMAC - N, 1/01/06]

4.10.17.10 MONITORING FOR SITE AVOIDANCE OR PROTECTION:

A. The state agency determines when monitoring is needed to supervise implementation of site avoidance or protection measures.

(1) The state agency may reach this determination in discussion with the SHPO or as part of consultation with the SHPO pursuant to Section 18-6-8.1 of the Cultural Properties Act NMSA 1978, Section 18-4-7 of the Prehistoric and Historic Sites Preservation Act NMSA 1978, Section 18-6A-5 of the Cultural Properties Protection Act NMSA 1978, or Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470f).

(2) The permittee may provide a written request to the state agency to conduct monitoring. The request shall state for whom the monitoring is proposed, why the monitoring is necessary, where the project is located, a list of archaeological sites, other cultural properties or areas of historic and scientific interest to be protected, the method of protection and the expected date(s) for the monitoring. If the state agency is the project sponsor or has directed the permittee to conduct the work, no written request of the agency is required. If the state agency does not have an archaeologist on staff, the permittee shall submit the request to HPD with a letter from the state agency approving consideration of the request.

(3) All monitoring activities require the approval of the state agency or HPD if the state agency does not have an archaeologist on staff prior to initiating the activity.

B. Report. Document the results of the monitoring and submit the report to the state agency for review and comment pursuant to 4.10.8.18 NMAC. Letter reports are prohibited. Submit the following information as a report:

- (1) a NMCRIS investigation abstract including the block for monitoring;
- (2) append a copy of a USGS 7.5-minute (1:24,000) USGS topographic quadrangle map with the locations of all archaeological sites, other cultural properties and areas of historic and scientific interest that were monitored during the project; and
- (3) append an updated laboratory of anthropology (LA) archaeological site record or a new LA archaeological site record pursuant to 4.10.15 NMAC if new features, material remains or other cultural resources are exposed or noted during the monitoring; additional forms may be used at the discretion of the permittee.

[4.10.17.10 NMAC - N, 1/01/06]

4.10.17.11 MONITORING OF ARCHAEOLOGICAL SITES AND AREAS OF HISTORIC AND SCIENTIFIC INTEREST:

A. Purpose. When the purpose of the monitoring is to observe ground-disturbing activities through an archaeological site, cultural property or in an area of historic and scientific interest, the permittee shall develop a monitoring plan to guide the steps to be taken in the event features and cultural deposits are exposed by the construction activities. The plan shall detail the proposed field studies to document the discovery and assess its integrity and information potential. The plan shall also discuss proposed data recovery measures, including but not limited to, excavation of exposed features and associated deposits, collection of material remains, field and laboratory analyses, and preparation of a report on the findings.

B. Monitoring plan. The level of detail shall be proportionate to the scale of the project and shall be executed in conformance with the excavation standards in 4.10.16 NMAC. At a minimum, the monitoring plan shall include the following components listed below.

- (1) Include a statement of the purpose for the monitoring project.
- (2) Discuss the general project location, project sponsor or client and land owners.
- (3) Prepare a project map with the location of all archaeological sites, other cultural properties or limits of areas of historic and scientific interest; include land ownership boundaries if more than one owner, north arrow (true or magnetic north),

name of USGS 7.5-minute (1:24,000) quadrangle and key to map symbols; identify archaeological sites by LA site number.

(4) Provide a succinct discussion of each site or area to be monitored, noting the types of features, distribution of material remains, and the site's immediate environmental setting as it informs on the proposed monitoring activity.

(5) Explain the overall strategy to document discoveries and recover information. Discuss procedures to:

(a) identify and record features and cultural deposits;

(b) excavate features and associated deposits, including the size of excavations units, screen size and use of arbitrary or natural levels;

(c) collect artifacts and samples for laboratory analysis;

(d) recording system, including examples of forms if not on file with HPD;

(e) provisions to be followed if human burials are exposed pursuant to 4.10.11 NMAC;

(f) backfill and stabilize the site; and

(g) process and analyze artifacts and specimens.

(6) Schedule. Explain the expected time frame to implement the field, analysis and reporting phases of the project.

(7) Personnel. Identify all supervisory personnel and analysts who will perform the fieldwork, laboratory analyses and prepare the report. Include subcontractors if any and off-site laboratories for specialized analyses. If specific personnel or subcontractors have not been identified for all activities, provide a list of personnel or subcontractors who may be retained, or list the minimum qualifications of the personnel that will be retained.

(8) Curation. Identify the proposed repository; if the repository will not be the MIAC, provide justification pursuant to 4.10.8 NMAC.

(9) References cited.

(10) Appendices as needed.

[4.10.17.11 NMAC - N, 1/01/06]

4.10.17.12 STANDARDS FOR MONITORING REPORTS UNDER A PLAN:

Prepare a monitoring report consistent with the standards in this section for review by the state agency and HPD for all monitoring projects conducted under an approved monitoring plan.

A. Preliminary report. A preliminary report may be prepared when requested by the state agency or if specified in the monitoring plan. At a minimum, include the following information.

(1) **Brief description of the project.** Identify project location, the NMCRIS number, LA site numbers for monitored sites, state agency and project sponsor, list of project personnel, dates of fieldwork and the state permit number.

(2) **Project map.** Show land ownership boundaries, project area boundaries, boundaries of all tested or excavated sites, north arrow (true or magnetic), name of source USGS 7.5 minute (1:24,000) quadrangle map and key to map symbols.

(3) **Monitoring activities.** Discuss activities performed at each site and the condition of site at the conclusion of tests or excavations. Information may be summarized in a table.

(4) **Site map.** Include a scaled site map for each site with site boundaries, property ownership boundaries, site datum, location of all collection units, point-provenienced artifacts, hand excavation units, auger holes, shovel tests and units excavated with mechanical earth-moving equipment.

(5) **Changes in the plan.** Identify departures from the approved monitoring plan. Explain substantial differences between the work proposed and the work that was performed in the field. Identify and explain any changes in proposed analysis strategy.

(6) **Final report schedule.** Indicate the proposed date when the final report will be submitted to the state agency if it differs from the schedule approved in the monitoring plan.

B. Final Report. The length of the discussion shall be appropriate to the complexity and scale of the project. State agencies may have additional report requirements. Include the following information listed below.

(1) **Title page.**

(2) **Project description and background.** Provide a brief description of the project, identifying project location, purpose of the monitoring, LA archaeological site record numbers for the monitored sites, state agency, project sponsor, list of project personnel, dates of fieldwork, and the state permit number.

(3) **Field methods.** Discuss methods implemented during the monitoring project. Identify and explain any substantial differences between the work proposed in

the monitoring plan and the work performed in the field. Discuss the results of the monitoring.

(4) Site descriptions. Provide a brief description of each site monitored, any new sites discovered and results of monitoring.

(5) Analyses. Describe and discuss analyses performed on material remains recovered from each site and the condition of site at conclusion of monitoring. Information may be summarized in a table. Include a scaled site map with site boundaries, property ownership boundaries, site datum and location of all areas investigated.

(6) Summary and recommendations. Evaluate the effectiveness of the monitoring program and make recommendations regarding future work, protection measures or other management needs.

(7) References cited.

(8) Appendices. At a minimum, provide:

(a) a list of collected artifacts and specimens;

(b) reports from laboratories and consultants;

(c) a map of site locations. Mark as confidential all pages that discuss or depict exact locations of archaeological sites pursuant to Section 18-6-11.1 NMSA 1978.

(9) Attachments.

(a) Submit updated LA archaeological site records for each site consistent with the standards in 4.10.15 NMAC. A site plan map and a reproduction of a 7.5-minute USGS map showing the site location(s) shall be attached to each LA site form. Include any other site-specific records generated, such as artifact analysis forms. If coded analysis forms are attached, place a copy of the code key with every site form.

(b) Oversize maps and plans. Attach oversize (greater than 11x17 inches) maps and plans of individual sites to the report, not to the LA site record. Oversize project maps should be attached as appendices and not attached to the body of the report.

(c) Other location materials. Attach engineering plan maps, aerial photographs and other non-standards source graphics to the report.

(10) Photographic materials. Do not append photographs to site forms or report. All archivally packaged photographic materials and photographic logs shall be

submitted to the approved curatorial facility consistent with the standards for that repository pursuant to 4.10.8.19 NMAC.

C. Report review. The report shall be reviewed in conformance with 4.10.8.18 NMAC. If collections were made during monitoring, the permittee shall curate the collections in accordance with the procedures outlined in 4.10.8.18 NMAC.

[4.10.17.12 NMAC - N, 1/01/06]

4.10.17.13 POPULAR REPORTS:

A popular report is not required under this rule, but the permittee should consider writing a short popular summary suitable for distribution in a newspaper, newsletter or magazine. The purpose of the report is to provide information to the interested general public about the state's heritage and contributions from on-going research and studies on state land. The public disclosure of the location of archaeological sites on state and private lands is prohibited by Section 18-6-11.1 NMSA 1978. The public disclosure of the location of archaeological sites on federal lands is prohibited by 36 CFR 296.18. The report may be brief, approximately 250 to 500 words in length. Longer articles or other types of public education and outreach approaches may be used if proposed in the monitoring plan. Include photographs or graphs as appropriate. The popular report shall be submitted to the state agency with the final monitoring report.

[4.10.17.13 NMAC - N, 1/01/06]

4.10.17.14 UNANTICIPATED DISCOVERIES:

In the event the permittee encounters discoveries not anticipated by the monitoring plan, all construction in the vicinity of the discovery shall cease, the discovery protected and a buffer of at least 50 feet established around the discovery. The permittee shall notify the state agency and HPD within 24 hours of the discovery. The permittee, state agency and HPD shall discuss appropriate procedures to respond to the discovery within two working days. The permittee shall implement the agreed upon procedures.

[4.10.17.14 NMAC - N, 1/01/06]

4.10.17.15 DEVIATIONS:

The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.17.15 NMAC - N, 1/01/06]

PART 18: STATE REGISTER OF CULTURAL PROPERTIES

4.10.18.1 ISSUING AGENCY:

Cultural Properties Review Committee (CPRC). Contact the State Historic Preservation Division, Department of Cultural Affairs.

[4.10.18.1 NMAC - N, 10/1/12]

4.10.18.2 SCOPE:

This rule applies to all public and private entities including but not limited to individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums, state agencies, political subdivisions of the state and any agency of the federal government proposing to nominate properties of historical, archaeological, scientific, architectural or other cultural significance for listing in the New Mexico (state) register of cultural properties.

[4.10.18.2 NMAC - N, 10/1/12]

4.10.18.3 STATUTORY AUTHORITY:

NMSA 1978, Section 18-6-5 of the Cultural Properties Act.

[4.10.18.3 NMAC - N, 10/1/12]

4.10.18.4 DURATION:

Permanent.

[4.10.18.4 NMAC - N, 10/1/12]

4.10.18.5 EFFECTIVE DATE:

October 1, 2012, unless a later date is cited at the end of a section.

[4.10.18.5 NMAC - N, 10/1/12]

4.10.18.6 OBJECTIVE:

This rule describes procedures and requirements for listing properties of historical, archaeological, scientific, architectural or other cultural significance in the state register of cultural properties.

[4.10.18.6 NMAC - N, 10/1/12]

4.10.18.7 DEFINITIONS:

A. **"Building"** means a structure created principally to shelter any form of human activity. Buildings include, but are not limited to, houses, barns, stables, sheds, garages, warehouses, courthouses, city halls, social halls, commercial buildings, libraries, factories, mills, train depots, motels, theaters, schools, stores and churches. Buildings may refer to a historically related complex such as a court house and jail or a house and barn.

B. **"Chief elected local official"** means the mayor, county judge, county executive or otherwise titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

C. **"CPRC"** means the cultural properties review committee, created pursuant to NMSA 1978, Section 18-6-4 and serves as the New Mexico state review board pursuant to 36 CFR 60.3(o).

D. **"Cultural property"** or **"cultural resource"** means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

E. **"District"** means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

F. **"Historic preservation division"** or **"HPD"** means the division within the department of cultural affairs created pursuant to NMSA 1978, Section 18-6-8A and NMSA 1978, Section 9-4A-4 with offices located at 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501.

G. **"HPD website"** means <http://nmhistoricpreservation.org>.

H. **"Keeper of the national register of historic places"** or **"keeper"** means the individual who has been delegated the authority by the national park service to list properties and determine their eligibility for listing in the national register pursuant to 36 CFR 60.3(f).

I. **"National register"** means the national register of historic places established by the National Historic Preservation Act, 16 U.S.C. 470a(a) and the official national list of historic districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering or culture.

J. **"New Mexico register nomination form"** means the form prescribed by the CPRC with maps and photographs that is presented to the CPRC for decision on registration.

K. "**Object**" means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

L. "**Owner**" means those individuals, partnerships, corporations or public agencies holding fee simple title to property as recorded by the county clerk's office. Owner, as used in this rule, does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

M. "**Place**" means an identifiable geographic location that possesses cultural or historic significance including districts and sites, as appropriate.

N. "**Registered cultural property**" means a cultural property placed in the state register. A registered cultural property may be listed individually or as significant or contributing within a district.

O. "**Registration order**" means the form prescribed by the CPRC, and completed by the HPD at the direction of the CPRC documenting its decision on registration.

P. "**Site**" means the location of a significant event, or a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical, cultural or archaeological value regardless of the value of any existing structure.

Q. "**State agency**" means a department, agency, institution or political subdivision of the state.

R. "**State historic preservation officer**" or "**SHPO**" means the individual designated by the governor pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(b) and the director of the historic preservation division of the department of cultural affairs, as provided for in NMSA 1978, Section 18-6-8.

S. "**State register**" means the official New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties worthy of preservation pursuant to NMSA 1978, Section 18-6-3.

T. "**Survey**" means a visual inspection to examine, identify, record, evaluate and interpret cultural properties.

U. "**Structure**" means an engineered construction made up of interdependent and interrelated parts in a definite pattern of organization. In addition to buildings, structures include bridges, dams, canals, wells and other engineering works.

[4.10.18.7 NMAC - N, 10/1/12]

4.10.18.8 NOMINATION AND LISTING IN THE STATE REGISTER:

In 1969, the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to -17 created an official New Mexico register of cultural properties (official or state register). The state register is made up of structures, buildings, places, sites, districts and objects with historic, archaeological, scientific, architectural or other cultural significance that are examples of the historic and cultural heritage of New Mexico. Registered cultural properties are of national, state or local significance and have an inherent value to the people of New Mexico who have an interest in their preservation, protection and enhancement.

A. The CPRC reviews completed New Mexico register nominations and is the sole entity that determines which properties are worthy of registration and listing in the state register. The CPRC also reviews national register nominations and recommends to the SHPO whether the nomination should be forwarded to the keeper of the national register. When a cultural property is nominated for listing in the state register and also recommended for listing on the national register at the same CPRC meeting, an applicant may submit a single nomination on the national register nomination form for CPRC review.

B. The CPRC's decision to list a cultural property on the state register is made at an open meeting held pursuant to 4.10.3 NMAC and the CPRC's current open meetings resolution.

C. The New Mexico register nomination form approved by the CPRC includes the descriptive and analytical information used by the CPRC to determine whether the cultural property meets the registration criteria. Blank copies of the nomination form are available from the HPD offices and downloadable from the HPD website.

D. Any person or organization may submit a New Mexico register nomination to the SHPO for consideration by the CPRC. The applicant identified thereon shall be responsible for completing the nomination.

(1) The SHPO shall not forward any nomination for review and evaluation by the CPRC if the nomination is incomplete, does not meet technical or professional standards, or if the SHPO determines that the property does not meet the criteria specified in this rule. An incomplete nomination will be returned with an explanation of the deficiencies that need to be addressed and corrected.

(2) When a New Mexico register nomination is complete, the SHPO shall:

(a) add the nomination to the agenda for the next appropriate CPRC meeting;

(b) notify the applicant, the owner, and chief elected local official, at least 30 days prior to the CPRC meeting, of the date, time and place where the nomination is to

be considered; any person will have the opportunity to be heard, present evidence and provide written comments prior to or at the meeting as set forth in 4.10.18.9 NMAC; and

(c) post the nomination to the HPD website and make the nomination available at the HPD offices a minimum of 14 days prior to the CPRC meeting; information in the nomination concerning the location of archaeological sites and similar properties will be redacted from the nomination made available to the public pursuant to Section 18-6-11.1.

(3) The CPRC shall accept, reject or defer the nomination based on criteria defined in 4.10.18.11 NMAC. The SHPO shall notify the applicant, the owner and the chief elected local official of the CPRC's action on the nomination within 14 days of the meeting.

(a) After the CPRC issues the order, accepting or rejecting the nomination, SHPO shall post the order and the nomination to the HPD website and make them available at the HPD offices for a 30-day review period from the date of posting.

(b) The CPRC shall not take any action on the registration order during the 30-day review period, unless the CPRC votes to waive the review period if requested by the nominating property owner, as described in Subparagraph (c) of Paragraph (3) of Subsection D of 4.10.18.8 NMAC or if a petition is filed pursuant to Paragraph (4) of Subsection D of 4.10.18.8 NMAC. Signing of the New Mexico register nomination form by the chair of the CPRC or his designee constitutes formal registration and listing in the state register.

(c) Before the CPRC may vote to waive the 30-day review period, the owner must either file a waiver request and submit an application to the CPRC to participate in the state income tax credit program for the restoration, rehabilitation or preservation of registered cultural properties simultaneously with the nomination and the CPRC approves the tax credit at the same meeting, or submit an application to the SHPO to participate in the historic preservation loan fund at the same time the nomination form is submitted to the CPRC.

(d) Deferred nominations will be forwarded to the applicant with an explanation of the reasons for deferral and the actions which must be taken before the nomination can be reconsidered.

(e) Rejected nominations will be forwarded to the applicant with an explanation of the reasons for the rejection.

(4) The applicant, owner, chief elected local official or members of the public may petition the CPRC to reconsider the registration order to accept or reject a nomination for registration and listing in the state register. The petitioner shall explain the reason or reasons for the petition and the relief sought from the CPRC.

(a) The petition shall be filed with the SHPO during the registration order 30-day review period.

(b) The SHPO shall provide written acknowledgment to petitioner within five business days of receiving the petition.

(c) The SHPO shall place the petition on the agenda for the next appropriate CPRC meeting and notify the petitioner, the owner and chief elected local official, at least 30 days prior to the CPRC meeting, of the date, time and place of the CPRC meeting where the petition will be heard.

(d) The petitioner, the owner, chief elected local official or the public shall have the right to be heard and present evidence at the CPRC meeting and provide written comments prior to the meeting as set forth in 4.10.18.9 NMAC.

(e) The CPRC shall issue a final registration order to accept or reject the nomination. This registration order constitutes a final decision for purposes of initiating any judicial review. The registration order will be posted to the HPD website and mailed to parties as required. Pursuant to rule 1-075 NMRA, an aggrieved party may file a petition for writ of certiorari in the district court within 30 days following the issuance of the final registration order.

(5) A property in New Mexico listed in the national register that has not undergone CPRC review shall automatically be listed in the state register by the SHPO. No further CPRC review is required.

[4.10.18.8 NMAC - N, 10/1/12]

4.10.18.9 PUBLIC NOTICE FOR CULTURAL PROPERTIES WITH MULTIPLE OWNERS:

A. The SHPO shall provide written notice to the applicant, the chief elected local official, and the owners of the cultural property, including private property owners within the district or site, setting forth the date, time and place of the CPRC meeting at which a nomination will be considered. The written notice will be mailed at least 30 days before the CPRC meeting. The notice will be sent by first class mail to the last known address as recorded by the county clerk's office. Everyone present at the meeting will have the opportunity to be heard and present evidence. The owners will be invited to provide written comments prior to the meeting and may concur or object in writing to the nomination of the cultural property.

B. The SHPO may provide general notice for a nomination where 50 or more owners' names appear on the county clerk's records. The general notice shall be published twice in one or more newspapers of general circulation in the state and in the area of the nomination. The first publication will occur at least 30 days before the CPRC meeting. The notice will be posted on the HPD website at least 30 days before the

CPRC meeting to allow for the submission of written comments. The notice will advise the owners of the date, time and place of the CPRC meeting, the right to submit written comments and concur or object in writing to the nomination, and the right to attend the meeting and present evidence. In addition, the SHPO may hold a public information meeting in the area of the nomination prior to the CPRC meeting. The notice for the information meeting will be published twice, in one or more newspapers of general circulation in the state and in the area of the nomination. The first publication and the posting of the notice on the HPD website will occur at least 14 days before the public information meeting.

C. For multiple resource and thematic submissions, each structure, building, site, place, district or object included in the submission, is treated as a separate nomination to notify and provide owners the opportunity to concur or object in writing to the nomination in accordance with this section.

D. Upon notification, any owner of a private property who wishes to object to the registration and listing shall submit to the SHPO a notarized statement certifying that he is the sole or partial owner of the private property and shall provide the reason for the objection on or before the date specified in the published notice. In nominations with multiple owners, the property will not be listed if a majority of the owners object to the listing. The SHPO will ascertain whether a majority of the private property owners have submitted notarized objections. For purposes of this subsection, any private property owner or part owner in a district or site has one vote whether or not the property contributes to the significance of the district or site.

[4.10.18.9 NMAC - N, 10/1/12]

4.10.18.10 EFFECTS OF LISTING UNDER STATE LAW:

A. The state register is an authoritative guide to be used by state agencies, local governments, private groups and citizens to identify the cultural resources important to the state's history and culture and to indicate which cultural properties should be considered for protection from destruction or impairment. Listing of private property on the state register does not abrogate the rights of the property owner. The rights and responsibilities of owners of a registered cultural property are the same as those of owners of a nonregistered property. Listing does not prevent the use, sale or transfer of the property.

B. State agencies, with direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property, shall provide the SHPO a reasonable and timely opportunity to participate in planning to preserve and protect and to avoid or minimize adverse effects to registered cultural properties pursuant to 4.10.7 NMAC.

C. State public funds may not be expended on any program or project that requires the use of any portion of or any land from a property listed in either the national register

of historic places or state register unless there is no feasible and prudent alternative to such use and unless the program or project includes all possible planning to preserve and protect and to minimize harm to the registered cultural property resulting from such use pursuant to 4.10.12 NMAC.

D. Owners of registered cultural properties are eligible to participate in the state income tax credit program for the restoration, rehabilitation or preservation expenses spent on registered properties pursuant to 4.10.9 NMAC and in the historic preservation loan program to preserve or rehabilitate the registered cultural property pursuant to 4.10.2 NMAC.

[4.10.18.10 NMAC - N, 10/1/12]

4.10.18.11 STANDARDS, SIGNIFICANCE AND INTEGRITY CRITERIA FOR REGISTRATION:

A. Registration standards.

(1) **National register bulletins.** The CPRC uses the national register bulletin series prepared by the national park service as guidance in applying the criteria for state registration. Contact the HPD for assistance.

(2) **General standards.** Property descriptions and statements of significance on the nomination form must be accurate and prepared in accordance with standards generally accepted by academic historians, architectural historians, archaeologists, ethnologists and others, as appropriate, to the property being nominated.

(3) **Boundaries.** Boundaries for a district, site, structure, building, place or object shall encompass but shall not exceed the full extent of the significant resources or land area making up the property. The area should be large enough to include all historic features of the property and shall not include buffer zones or acreage not directly contributing to the significance of the property. Districts may include noncontributing resources, such as altered buildings or buildings constructed before or after the period of significance. In situations where historically associated resources were geographically separated from each other during the period of significance or are separated by intervening development and are now separated by large areas lacking eligible resources, a discontinuous district may be defined. The following features may be used to mark the boundaries as they reflect the resources: legally recorded boundary lines; natural topographic features such as ridges, valleys, rivers and forests; man-made features such as fences and stone walls, streets and roads; or areas of new construction or construction outside the period of significance.

B. Significance. The CPRC and SHPO shall use the following criteria when reviewing nominations and making decisions to list a property in the state register or determine the state-register eligibility of a property. To be considered for registration, at least one of the following criteria for evaluation and considerations must be met.

(1) **Criteria for evaluation.** The quality of significance in the history, architecture, archaeology, science, engineering and culture is present in structures, buildings, sites, places, districts or objects that possess integrity of location, design, setting, materials, workmanship, feeling and association; and

(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) that are associated with the lives of persons significant in our past; or

(c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) that have yielded, or may be likely to yield, information important in prehistory or history.

(2) **Criteria considerations.** Ordinarily cemeteries, birthplaces or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the state register. Such properties may qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

(a) a religious property deriving primary significance from architectural or artistic distinction or historical importance; or

(b) a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(c) the birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or

(d) a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(e) a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(f) a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

(g) a property achieving significance within the past 50 years if it is of exceptional importance.

(3) **Level of significance.** A property listed in the state register may be of national, state or local significance. The CPRC shall use the following criteria in determining the level of significance appropriate to the property:

(a) a property of national significance offers an understanding of the history of the nation by illustrating the nationwide impact of events or persons associated with the property, its type or style or its information; or

(b) a property of statewide significance offers an important aspect of the history of the state as a whole; or

(c) a property of local significance represents an important aspect of the history of a county, city, town, cultural area or region or any portions thereof.

C. Integrity. In addition to significance, a property must possess integrity. A property has integrity if it retains the identity for which it is significant. To determine whether a property retains integrity, the CPRC shall consider the seven aspects set out below and shall evaluate the property against those aspects that are most critical to a property's significance.

(1) Location is the place where the property was constructed or the place where the event or activity occurred. For the site of historic or cultural events, a property has integrity of location when the location itself, complemented by the setting, may be used to visualize or recall the event.

(2) Design is the combination of elements that create the form, plan, space, structure and style of the property. Design results from the conscious decisions in the conception and planning of a property and may apply to areas as diverse as community planning, engineering, architecture and landscape architecture. Principal aspects of design include organization of space, proportion, scale, technology and ornament.

(3) Setting is the physical environment of the property as distinct from the specific place where the property was built or the event occurred. The physical features that constitute setting may be natural or cultural and may include topographic features, vegetation and relationships of a building to other features and open space.

(4) Materials include the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form the cultural property. The integrity of materials determines whether or not an authentic property still exists.

(5) Workmanship is the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. Workmanship may be

expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It may be based on common traditions or innovative period techniques. Examples of workmanship include tooling, carving, painting, graining, turning or joinery.

(6) Feeling is the property's expression of the aesthetic or historic sense of a particular period of time. Although intangible, feeling depends upon the presence of physical characteristics to convey the historic qualities that evoke feeling. Because it is dependent upon perception of each individual, integrity of feeling alone will never be sufficient to support designation.

(7) Association is the direct link between an important historic event or person and the cultural property. If a property has integrity of association, then the property is the place where the event or activity occurred and is sufficiently intact that it can convey that relationship.

[4.10.18.11 NMAC - N, 10/1/12]

4.10.18.12 EMERGENCY CLASSIFICATION PENDING INVESTIGATION:

A cultural property the CPRC considers worthy of preservation may be included in the state register on a temporary basis not to exceed one year from the date of the emergency classification as provided in Section 18-6-12. If the cultural property is on private land, the temporary classification shall not be considered a taking of private property, but the owner may receive a fair rental value for the part of the land affected if the temporary classification unduly interferes with the owner's normal use of the land. The CPRC makes all emergency classification decisions at an open meeting following procedures in 4.10.3 NMAC. The CPRC shall issue a registration order to the SHPO and the SHPO shall notify the owner immediately of the CPRC's action. During the one year period, the CPRC shall investigate the property to determine whether the property should be listed permanently in the state register. The CPRC's investigation may be conducted with the assistance of the SHPO and others including but not limited to the owner, interested members of the public and preservation professionals. If the CPRC does not make a decision to list the property within one year from the date of the emergency classification, the property may not be reconsidered by the CPRC for five years.

[4.10.18.12 NMAC - N, 10/1/12]

4.10.18.13 REVISIONS AND AMENDMENTS TO REGISTERED CULTURAL PROPERTY NOMINATIONS:

A. Documentation in a state register form may be revised, expanded or updated at any time after registration. Amendments may be made for many reasons including but not limited to the following: update the condition of the property; clarify, increase or decrease the boundary; expand the significance by identifying new areas of

significance, additional criteria and new periods of significance; and reclassify contributing and noncontributing resources.

B. Any person or organization may submit an amendment to a New Mexico register nomination to the SHPO. The SHPO then reviews the amendment for completeness. Once complete, the SHPO shall place the amendment on the agenda for the next appropriate CPRC meeting and notify the applicant, the property owners and chief elected local official of the county and municipality at least 30 days prior to the CPRC meeting of the date, time and place of the CPRC meeting where the amendment is to be considered. The owner and the public shall have the right to be heard and present evidence at the CPRC meeting and provide written comments prior to the meeting as set forth in 4.10.18.9 NMAC.

C. The CPRC shall accept, reject or defer the amendment at the CPRC meeting consistent with the process in 4.10.18.8 NMAC. The SHPO shall send a copy of the amendment to the owner of record of the registered cultural property.

[4.10.18.13 NMAC - N, 10/1/12]

4.10.18.14 REMOVAL OF A PROPERTY FROM THE STATE REGISTER:

The CPRC may remove a registered cultural property from the state register pursuant to Section 18-6-5 when, in the opinion of the CPRC, the property has been altered to such an extent that its integrity has been lost and the values for which it was placed on the register no longer exist.

A. The CPRC shall remove a registered cultural property from the state register if one of the following conditions is met.

(1) The qualities which caused the property to be listed originally have been lost or destroyed.

(2) Renovations, repairs or maintenance to a registered property have resulted in a loss of the historic design characteristics or integrity critical to the property's original registration or are inconsistent with recommendations made by the CPRC pursuant to 4.10.4 NMAC.

(3) Additional information shows that the property does not meet the state register criteria for registration and integrity.

(4) There is an error in professional judgment as to whether the property meets the criteria for registration and integrity.

(5) There is a prejudicial procedural error in the designation process.

B. Any person or organization may submit a request to remove a property from the state register. Documentation supporting a proposal for removal shall be provided to the SHPO. The SHPO shall review the proposal for conformance with this section and shall place the removal proposal on the agenda for the next appropriate CPRC meeting and notify the applicant, the property owners and chief elected local official of the county and municipality at least 30 days prior to the CPRC meeting of the date, time and place of the CPRC meeting where the request is to be considered. The owner and the public will have the right to be heard and present evidence at the CPRC meeting and provide written comments prior to the meeting as set forth in 4.10.18.9 NMAC.

C. The CPRC shall accept, reject or defer the proposal to remove the property from the state register at a CPRC meeting consistent with the process in 4.10.18.8 NMAC. The SHPO will notify the owner of record of the registered cultural property of the CPRC's decision.

[4.10.18.14 NMAC - N, 10/1/12]

4.10.18.15 IDENTIFICATION OF CULTURAL PROPERTIES:

The CPRC is charged with the responsibility to identify and prepare a list of cultural properties worthy of protection pursuant to Section 18-6-5.

A. **Surveys.** Surveys are the first step to be taken in the registration process to identify cultural properties and gather sufficient information about them to determine whether the property may be eligible for registration and listing. Consult the SHPO prior to conducting any field studies or survey to gather information on the property and the appropriate boundary for area making up the property. Complete historic cultural property inventory (HCPI) forms for historic structures and buildings or laboratory of anthropology (LA) site records for archaeological sites to supplement the nomination for each contributing property. The applicant is encouraged to prepare forms for noncontributing properties. Other standard forms may be substituted for the HCPI forms with prior approval by the SHPO.

B. To assist the CPRC in fulfilling its responsibilities and the SHPO's own responsibilities to survey and inventory historic properties under Section 16 U.S.C. 470a(b) of the National Historic Preservation Act, the SHPO establishes priorities for surveys to identify and document cultural properties in New Mexico, to determine which properties are eligible for listing in the state or national registers, and to prepare nominations for listing in the state or national registers. The SHPO establishes a system of professional surveys on state land in cooperation with the heads of state agencies pursuant to Section 18-6A-5 and may fund surveys under Section 18-6-8. Standards for survey are described in 4.10.15 NMAC.

C. The SHPO reviews the information gathered during these and other surveys and inventories to make a determination of state and national register eligibility and maintains a record of these determinations. A determination of eligibility is a decision by

the SHPO or CPRC that a structure, site, place, or object meets the state register significance criteria for registration although the property is not formally listed in the state register. A determination of eligibility does not make the property eligible for such benefits as grants, loans or tax incentives that have listing in the state register as a prerequisite.

D. State agencies, political subdivisions of the state or the public may ask the SHPO to apply the criteria in 4.10.18.11 NMAC and make a determination of state register eligibility.

[4.10.18.15 NMAC - N, 10/1/12]

PART 19: CULTURAL RESOURCE INFORMATION SYSTEM AND RECORDS

4.10.19.1 ISSUING AGENCY:

Department of cultural affairs, state historic preservation division.

[4.10.19.1 NMAC - Rp, 4.51.5.1 NMAC, 5/31/2016]

4.10.19.2 SCOPE:

This rule applies to the state historic preservation division and entities wishing to access, use or submit records to the records repository or NMCRIS.

[4.10.19.2 NMAC - Rp, 4.51.5.2 NMAC, 5/31/2016]

4.10.19.3 STATUTORY AUTHORITY:

Subsection D of Section 18-6-8 NMSA 1978 and Section 18-6-11.1 of the Cultural Properties Act.

[4.10.19.3 NMAC - Rp, 4.51.5.3 NMAC, 5/31/2016]

4.10.19.4 DURATION:

Permanent.

[4.10.19.4 NMAC - Rp, 4.51.5.4 NMAC, 5/31/2016]

4.10.19.5 EFFECTIVE DATE:

May 31, 2016, unless a later date is cited at the end of the section.

[4.10.19.5 NMAC - Rp, 4.51.5.5 NMAC, 5/31/2016]

4.10.19.6 OBJECTIVE:

This rule describes the procedures to access and use cultural resource records in the NMCRIS and the records repository while minimizing loss of archaeological resources in the state of New Mexico. In addition, the rule describes the procedures to register and to submit cultural resource records to NMCRIS and the repository and establishes reasonable fees for use of the records.

[4.10.19.6 NMAC - Rp, 4.51.5.6 NMAC, 5/31/2016]

4.10.19.7 DEFINITIONS:

A. "Application" means the document, provided by HPD on its website or other method that is used to request access to NMCRIS or to the records repository.

B. "ARMS" means the archaeological records management section, a bureau within the historic preservation division that manages NMCRIS and the repository.

C. "ARMS special request form" means the document, provided by HPD on its website or other method that is used to request ARMS's assistance in obtaining information from NMCRIS or the records repository including customized database queries.

D. "Assisted access user" means an individual or entity with a property interest or regulatory oversight that does not meet the standards for qualified user, but wants access to information about cultural properties or cultural resource investigations that is relevant to the property interest or regulatory oversight.

E. "Cooperative agreement" means an agreement between HPD and a public agency or tribal government to maintain and expand NMCRIS and the repository.

F. "Cultural Properties Act" means Sections 18-6-1 through 18-6-17 NMSA 1978.

G. "Cultural property" or "cultural resource" means a structure, place, site or object that has or may have historic, archaeological, scientific, architectural or other cultural significance.

H. "CPRC" means the cultural properties review committee created pursuant to Section 18-6-9 of the Cultural Properties Act.

I. "Cultural resource investigation" or "investigation" means the study of a specific cultural property or specific area to identify, record, evaluate, interpret or protect cultural properties.

J. "Cultural resource records" means the paper and digital files and related materials including, but not limited to, forms, journals, maps, databases, photographs,

nominations, manuscripts and reports associated with cultural properties or cultural resource investigations conducted in the state of New Mexico.

K. "DCA" means the department of cultural affairs created pursuant to Section 9-4A-4 NMSA 1978.

L. "HPD" means the historic preservation division within the DCA created pursuant to Subsection A of Section 18-6-8 of the Cultural Properties Act.

M. "HPD website" means <http://nmhistoricpreservation.org> or its successor site.

N. "Independent researcher" means a qualified user who is unaffiliated with a qualified institution and is performing uncompensated research for the researcher's own benefit. Paid consultants are not independent researchers.

O. "Individual account" means an account for accessing NMCRIS and the records repository for each qualified user.

P. "Institutional agreement" means a document, signed annually by qualified institutions or independent researchers. The agreement specifies the requirements for using and disseminating information from NMCRIS and the records repository.

Q. "NMCRIS" means the New Mexico cultural resource information system, an online computer information system that integrates geographic, research, and management data on cultural properties and cultural resource investigations.

R. "Performing entity" or "performing agency" means an individual, corporation, partnership, trust, association, educational institution, foundation, museum, public agency or tribal government that carries out cultural resource investigations and creates cultural resource records.

S. "Public agency" means a federal or state agency or political subdivision of the state that has administrative responsibility for consulting with the state historic preservation officer under federal or state laws including but not limited to section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and Section 18-6-8.1 of the Cultural Properties Act, Section 18-8-7 of the Prehistoric and Historic Sites Preservation Act, and Section 18-6A-5 of the Cultural Properties Protection Act.

T. "Qualified institution" means an entity, other than an independent researcher, that signs an institutional agreement and that authorizes one or more qualified users to represent it for purposes of accessing the records repository and NMCRIS.

U. "Qualified user" means an individual listed in the state historic preservation officer directory or an individual with a bachelor's degree in archaeology, anthropology, architecture, architectural history, historic architecture, history, American studies, historic preservation, or a closely related field from an accredited educational institution

or other appropriate education, professional experience, and training as determined by the registrar.

V. "Records repository" or "repository" means the archives maintained by HPD that contain cultural resource records including but not limited to cultural resource investigation reports, plans, and manuscripts; archaeological resource records; historic building, structure, and other cultural property records; state register of cultural properties and national register of historic places nominations; and related materials.

W. "Registrar" means the employee of HPD assigned to manage ARMS.

X. "Report recipient" means an organization, public agency, tribal government, or individual that commissions a performing entity to conduct a cultural resource investigation.

Y. "SHPO" means the state historic preservation officer and is the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act who serves as the director of HPD.

Z. "SHPO directory" means the list of cultural resource and historic preservation professionals established pursuant to 4.10.8 NMAC.

AA. "User's guide" means the manual issued by HPD on its website or through other distribution methods that describes the process and standards to submit cultural resource records to NMCRIS and the records repository.

[4.10.19.7 NMAC - Rp, 4.51.5.7 NMAC, 5/31/2016]

4.10.19.8 ACCESS TO RECORDS REPOSITORY AND NMCRIS:

A. Registrar: The registrar shall:

(1) only disseminate information from the records repository or NMCRIS that conforms with Section 18-6-11.1 of the Cultural Properties Act. If a release of information from the records repository or NMCRIS does not conform with Section 18-6-11.1 or other laws, the registrar shall redact and not release that information;

(2) make applications available to the public on the HPD website or through other convenient method; and

(3) grant access to the records repository and NMCRIS by applying the standards in this rule. If the registrar cannot determine whether an applicant is an independent researcher, qualified user, or qualified institution, the registrar shall refer the application to the SHPO for a final decision.

B. Qualified institutions:

(1) Qualified institutions shall submit a completed institutional agreement to HPD annually. The institutional agreement is valid only for the calendar year in which it is executed. The qualified institution shall designate the individual within the qualified institution who has signatory authority to authorize qualified users to use the qualified institution's account. The agreement shall require the institution to pay all applicable fees for the authorized qualified users' uses of NMCRIS and the records repository on the qualified institution's behalf.

(2) Qualified institutions shall submit an individual account application for each qualified user authorized by the qualified institution to represent it for purposes of accessing the records repository and NMCRIS. Signed approval by the qualified institution on the individual account application authorizes HPD to charge all applicable fees under this rule to the qualified institution.

(3) Public agencies or tribal governments may enter into a cooperative agreement with HPD in lieu of an institutional agreement. Cooperative agreements shall specify conditions for access to and use of NMCRIS and the repository that are consistent with the requirements for institutional agreements, unless this rule expressly provides otherwise. Entities may contact the registrar to negotiate a cooperative agreement.

C. Independent researchers: Independent researchers shall submit a completed institutional agreement annually. The agreement is valid only for the calendar year in which it is executed. The agreement shall indicate the independent researcher's agreement to use the NMCRIS and repository only for research that is uncompensated and that is for the independent researcher's own benefit. Individuals working as paid consultants shall submit an institutional agreement as a qualified institution and not as an independent researcher.

D. Qualified users:

(1) Qualified users wishing to access the records in the repository and NMCRIS shall be affiliated with a qualified institution with a valid institutional agreement or a public agency or tribal government with a cooperative agreement, or shall be an independent researcher with a valid institutional agreement.

(2) Qualified users shall complete, sign, and submit an individual account application to HPD. Upon receipt of a user name and password from HPD, the qualified user may access NMCRIS online and may access the records repository under the supervision of HPD staff. Qualified users shall adhere to conditions in the individual account application for use of the materials in the repository and NMCRIS.

(3) Qualified users shall not share user name or password information with anyone and shall not otherwise allow others to access NMCRIS. Qualified users shall not use, or assist others with using, information from NMCRIS or the repository to violate state or federal laws.

E. Assisted access users: Assisted access users may submit an ARMS special request form to HPD to obtain information from NMCRIS or the records repository. If the registrar approves the request, the assisted access user shall sign a nondisclosure agreement provided by HPD. Upon receipt of the signed nondisclosure agreement, HPD shall provide the relevant information or records, subject to the registrar's redaction of protected information.

F. Others: Individuals who are not assisted access users or qualified users and who wish to examine records in the repository shall contact HPD to make an appointment and shall specify the purpose of the visit and records the individual wishes to review. The individual may view the records, subject to signing a nondisclosure agreement and redaction of protected information by the registrar, if the registrar determines that granting the request conforms with Section 18-6-11.1 of the Cultural Properties Act.

G. Appeal of registrar access decisions:

(1) An entity aggrieved by a decision of the registrar regarding access to cultural resource records may appeal. Appeals shall be submitted in writing to the SHPO within ten calendar days of the decision with a statement of reasons for the appeal.

(2) The SHPO shall respond in writing within ten calendar days of receipt of an appeal.

(3) The SHPO's decision on the appeal is DCA's final action on the matter.

H. Violations of this section or the terms of an application or agreement:

(1) If the registrar discovers a violation of this section or the terms of an individual account application or institutional agreement, the registrar may restrict, temporarily suspend, or prohibit future access to NMCRIS or the repository.

(2) An entity aggrieved by the registrar's decision may appeal. Appeals shall be submitted to the SHPO in writing within ten calendar days of the decision with a statement of reasons for the appeal.

(3) The SHPO shall respond in writing within 10 calendar days of receipt of an appeal.

(4) The SHPO's decision on the appeal is DCA's final action on the matter.

I. Computation of time: In computing the period of time prescribed for appeal, the day from which the period of time begins to run shall not be included. The last calendar day shall be included in the computation unless it is a Saturday, Sunday or a day on

which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday.

[4.10.19.8 NMAC - N, 5/31/2016]

4.10.19.9 REGISTRATION AND RECORDS SUBMISSION:

A. Registration:

(1) Performing entities shall register all cultural resource investigations conducted in the state of New Mexico in NMCRIS unless the investigation, in its entirety, occurs on tribal lands as defined in 36 CFR 800.16(x) and the Indian nation, tribe(s), or pueblo(s) associated with the land has a tribal historic preservation officer who has assumed all or part of the functions of SHPO pursuant to 54 U.S.C. § 302702.

(2) Performing entities shall register each cultural resource investigation and each associated cultural resource in NMCRIS according to the most recent version of the user's guide. If a performing entity does not have a NMCRIS account at the time it conducts an investigation, the performing entity shall either contact HPD to set up an account and then register the investigation or make arrangements with ARMS to register the investigation with ARMS's assistance.

B. Submittal of records:

(1) Digital submittals: Performing entities shall submit cultural resource records according to the most recent version of the user's guide by entering data on investigations and cultural resources into NMCRIS through the online electronic forms and through the online map service. After entering the data, the performing entity shall download the electronic forms with the online data entries for the investigation and for each resource and shall complete any remaining sections not available online. Once the forms are complete, the performing entity shall scan them and the required attachments, and upload the scanned forms and the cultural resource investigation reports into NMCRIS. If performing entities are unable to upload any forms or documents into NMCRIS, they shall either make arrangements with ARMS to upload the documents or they shall submit digital copies of the forms or documents to NMCRIS separately and concurrently with the submittal of the paper records.

(2) Paper submittals: Unless submitted to HPD by the report recipient, the performing entity shall submit one printed copy of the investigation's cultural resource reports, the NMCRIS information abstract form, the associated laboratory of anthropology (LA) site records and historic cultural properties inventory (HCPI) forms, and any related materials to HPD for archiving in the records repository. Performing entities shall include the NMCRIS activity number, LA site numbers, and HCPI numbers associated with the relevant cultural resources on all documents they submit to NMCRIS and the records repository.

C. Failure to comply with this section:

(1) If the registrar discovers a violation of this section, the registrar may restrict, temporarily suspend, or prohibit future access to NMCRIS or the repository.

(2) An entity aggrieved by the registrar's decision may appeal. Appeals shall be submitted to the SHPO in writing within ten calendar days of the decision with a statement of reasons for the appeal.

(3) The SHPO shall respond in writing within ten calendar days of receipt of an appeal.

(4) The SHPO's decision on the appeal is DCA's final action on the matter.

D. Computation of time: In computing the period of time prescribed for appeal, the day from which the period of time begins to run shall not be included. The last calendar day shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday.

[4.10.19.9 NMAC - N, 5/31/2016]

4.10.19.10 FEES:

A. Use of the records repository and NMCRIS is contingent upon the HPD's receipt of reasonable fees as provided in this rule. The SHPO shall expend the fees received solely for the maintenance and administration of the records repository and NMCRIS, consistent with HPD's appropriated budget. Expenditures for the maintenance and administration of the records repository and the NMCRIS include, but are not limited to, software licensing and maintenance, software development, computer equipment lease or purchase, contractual services, staff time, facilities, and supplies.

B. Fee schedule:

(1) **Access fees:** With the exception of public agencies or tribal governments with a cooperative agreement, qualified institutions shall pay an annual access fee that entitles qualified users of the qualified institution to unlimited on-site use of the records repository and access to NMCRIS on the following basis: \$200 per year for qualified institutions with three or fewer supervisory staff; \$300 per year for qualified institutions with four to 10 supervisory staff; \$500 per year for qualified institutions with 11-20 supervisory staff; and \$800 per year for qualified institutions with 21 or more supervisory staff. As used in this paragraph, "supervisory staff" means supervisory archaeologists or crew chiefs who meet the qualifications outlined in 4.10.8.10 NMAC. Access fees are due each calendar year and shall accompany a signed institutional agreement.

(2) Registration fees: With the exception of public agencies or tribal governments with a cooperative agreement, qualified institutions shall pay registration fees for cultural resource investigations consistent with the following fee schedule.

(a) Fees for archaeological surveys are based on the total area surveyed as measured in acres, using the schedule below:

Class number	Survey size (acres +/-)	Survey Registration Fees
1	<2	\$25
2	2 to 4.99	\$50
3	5 to 9.99	\$75
4	10 to 19.99	\$100
5	20 to 39.99	\$125
6	40 to 79.99	\$200
7	80 to 119.99	\$300
8	120 to 199.99	\$400
9	200 to 399.99	\$500
10	400 to 599.99	\$800
11	600 to 999.99	\$1000
12	1,000 to 1,499.99	\$2000
13	1,500 to 1,999.99	\$2500
14	2,000 to 2,499.99	\$3000
15	2,500 to 3,000	\$3500
16	greater than 3,000 acres	\$500 more for each 500 acres or fraction thereof over 3,000 acres

(b) Fees for surveys that record all types of cultural resources are based on the total area of archaeological survey as measured in acres using the schedule above.

(c) The fee is twenty dollars (\$20) to register damage assessments, regional research designs, cultural overviews or historic contexts, and small monitoring projects with five or fewer archaeological sites. The fee is seventy-five dollars (\$75) for monitoring projects with more than five archaeological sites and for all test excavation, excavation, or mitigation projects. Add fifteen dollars (\$15) to the seventy-five dollars (\$75) fee for each archaeological site.

(3) **Staff assistance fees:** With the exception of public agencies or tribal governments with a cooperative agreement, additional fees for HPD staff assistance with cultural resources records apply as follows:

(a) Qualified institutions shall pay seventy-five dollars (\$75) per-hour for assistance with records or map checks when the assistance time exceeds one-half hour on a given business day, rounding increments to the next full hour.

(b) Qualified institutions shall pay one hundred fifty dollars (\$150) per hour for assistance with custom database queries and creation of electronic data files, with a one hour minimum and rounding increments to the next full hour.

(c) Assisted access users shall pay two hundred fifty (\$250) per hour for assistance, with a one hour minimum, and rounding increments to the next full hour.

(d) HPD may charge reasonable fees to make copies of records.

(4) **Fees for researchers:** Independent researchers and educational institutions engaged in academic research are not subject to any fees, other than copy fees, provided they have a current institutional agreement on file and they submit the results of the research to HPD in accordance with 4.10.19.9 NMAC.

C. Consolidated fee schedule: At least 60 days prior to implementation, HPD shall provide written notice to all qualified institutions of the date that the following "consolidated fee schedule" shall go into effect. HPD shall also provide this notice on its website and may provide additional notice through other convenient methods. The "consolidated fee schedule" shall supersede the fee schedule outlined in Subsection B of this section on the date provided in the notice.

(1) **Access fees:** Authorized qualified users, designated by a qualified institution, shall have unlimited on-site use of the records repository and NMCRIS without paying access fees.

(2) **Registration fees:** With the exception of public agencies or tribal governments with a cooperative agreement, qualified institutions shall pay registration fees for cultural resource investigations consistent with the following fee schedule.

(a) Fees for archaeological surveys are based on the total area surveyed as measured in acres, using the schedule below:

Class number	Survey size (acres +/-)	Survey Registration Fee
1	<2	\$35
2	2 to 4.99	\$65
3	5 to 9.99	\$100
4	10 to 19.99	\$130
5	20 to 39.99	\$170
6	40 to 79.99	\$260
7	80 to 119.99	\$390
8	120 to 199.99	\$520
9	200 to 399.99	\$650
10	400 to 599.99	\$1,040
11	600 to 999.99	\$1,300
12	1,000 to 1,499.99	\$2,600
13	1,500 to 1,999.99	\$3,250
14	2,000 to 2,499.99	\$3,900
15	2,500 to 3,000	\$4,550
16	greater than 3,000 acres	\$650 more for each additional 500 acres or fraction thereof over 3,000 acres

(b) Fees for surveys that record all types of cultural resources are based on the total area of archaeological survey as measured in acres using the schedule above.

(c) The fee is fifty dollars (\$50) to register surveys that are solely architectural in scope. Add twenty-five dollars (\$25) to the fifty dollars (\$50) fee for each associated cultural resource.

(d) The fee is fifty dollars (\$50) to register all non-survey cultural resource investigations. Add twenty-five dollars (\$25) to the fifty dollar (\$50) fee for each associated cultural resource.

(3) Staff assistance fees: With the exception of public agencies or tribal governments with a cooperative agreement, fees for HPD staff assistance with cultural resources records apply as follows:

(a) Qualified institutions shall pay seventy-five dollars (\$75) per hour for assistance with records or map checks that require more than one-half hour in a given day, in not less than one hour increments, rounding increments to the next full hour.

(b) Qualified institutions shall pay one hundred fifty dollars (\$150) per hour for assistance with custom database queries and creation of electronic data files rounding increments to the next full hour.

(c) Assisted access users shall pay two hundred fifty dollars (\$250) per hour for assistance rounding increments of an hour to the next full hour.

(d) HPD may charge reasonable fees to make copies of records.

(4) Fees for researchers: Independent researchers and educational institutions engaged in academic research are not subject to any fees, other than copy fees, provided they have a current institutional agreement on file and they submit the results of the research to HPD in accordance with 4.10.19.9 NMAC.

D. Cooperative agreement fees: Except in cases the SHPO determines the historic preservation benefits are significant, cooperative agreements shall provide annual financial assistance to HPD.

E. Delinquent accounts: Accounts with balances that remain unpaid for more than 90 days are delinquent. HPD shall terminate institutional agreements with entities that have delinquent accounts.

[4.10.19.10 NMAC - Rp, 4.51.5.11 NMAC, 5/31/2016]

CHAPTER 11: [RESERVED]

CHAPTER 12: COMMUNITY ARTS RESOURCES

PART 1: GENERAL PROVISIONS

4.12.1.1 ISSUING AGENCY:

Department of Cultural Affairs, New Mexico Arts Division.

[4.12.1.1 NMAC - Rp 4.12.1.1 NMAC, 11-13-2003]

4.12.1.2 SCOPE:

Members of the public, artists, or organizations, public or private, who are interested in receiving funding administered by the New Mexico arts division, and members of the New Mexico arts commission.

[4.12.1.2 NMAC - Rp 4.12.1.2 NMAC, 11-13-2003]

4.12.1.3 STATUTORY AUTHORITY:

Sections 18-5-7(F) NMSA 1978 authorizes the director to make rules and regulations necessary to administer the division and carry out the state statutory duties of the division.

[4.12.1.3 NMAC - Rp 4.12.1.3 NMAC, 11-13-2003]

4.12.1.4 DURATION:

Permanent.

[4.12.1.4 NMAC - Rp 4.12.1.4 NMAC, 11-13-2003]

4.12.1.5 EFFECTIVE DATE:

November 13, 2003, unless a later date is cited at the end of a section.

[4.12.1.5 NMAC - Rp 4.12.1.5 NMAC, 11-13-2003]

4.12.1.6 OBJECTIVE:

The purpose of general provisions implementation regulations is to serve the public, employees, and the commission as a guide to the operations and policies of the New Mexico arts commission and New Mexico arts division and carry out of the purpose of the Arts Division Act.

[4.12.1.6 NMAC - Rp 4.12.1.6 NMAC, 11-13-2003]

4.12.1.7 DEFINITIONS:

A. "Appeals committee" means the designate committee of the NMA commission which reviews and makes a determination regarding an appeal brought forward by a prospective applicant after the funding recommendation has been acted on by the arts commission.

B. "Appeals process" means the appeal process whereby applicants that are reviewed by a panel and have met all eligibility requirements may appeal a decision or

recommendation of an advisory panel. If an applicant believes there are grounds for an appeal following the panel review of their application, a formal letter to the executive director stating the grounds for appeal is required within thirty (30) days of receipt of funding notification if the applicant can demonstrate that the review of the application was based on criteria other than those appearing in NMA regulations or the decision was influenced by an advisory panel member or commissioner with an undisclosed conflict or interest.

C. "Application" means the written formal request for funds from NMA. An eligible application is one which is determined to be complete by staff review and is based on whether the applicant followed the published regulations, and submitted his application form and materials by the stated deadline.

D. "Arts in public places/one percent for art program" means the program which is designed to administer the "Art in Public Places Act", Section 13-4A-1 NMSA 1978, which requires that one percent of construction and renovation costs of certain public buildings be spent on the acquisition of art for those buildings; and to develop, document and promote a statewide public art collection which reflects the cultural, ethnic, and artistic diversity of New Mexico, the region and the nation. Artwork acquired through the arts in public places program are acquired for installation and display in public buildings throughout New Mexico which reflect the tastes and attitudes of the users of the buildings as well as local communities. Regulations established by NMA require that a five to eleven member committee comprised of local community members determine the type of art it wants and develop a prospectus (a call for artists). All prospectuses are published in the quarterly NMA newsletter Artspeak and are open to all artists. Works of art selected by the art selection committee must be on public display and be accessible to the general public during regular business hours.

E. "Arts commission" means same as New Mexico arts commission or commission.

F. "Conflict of interest policy" means the arts commission conflict of interest policy based on the Governmental Conduct Act, Section 10-16-1 through 10-16-16, NMSA 1978.

G. "Contract" means the contract between NMA and an artist, or other award recipient. NMA reserves the right to monitor all funding recipients to ensure that the terms and conditions of the contract are met.

H. "Governor's awards for excellence in the arts or governor's arts awards" means the awards established in 1974 which recognize the important role that artists, crafts people, and supporters of the arts play in our state. People who receive the awards are chosen for their lifetime artistic excellence and accomplishments. Corporations and major contributors are also honored for outstanding and generous support of the arts. The commission chair appoints a selection committee who make recommendations to the governor's office which are then approved by the commission.

I. "New Mexico arts commission or commission or arts commission" means the fifteen (15) member body appointed by the governor pursuant to Section 18-5-4 NMSA 1998. The mission of the commission, in conjunction with NMA, is to stimulate opportunities for artists, arts organizations, and other groups for activities or projects to provide artistic or cultural services to the state, to maintain and encourage artistic excellence, and to promote awareness of and access to the arts for all of the people of New Mexico.

J. "New Mexico arts or NMA" means the division that is within the department of cultural affairs, a state agency. The New Mexico state legislature created the NMA and the arts commission because "the general welfare of the people of this state will be promoted by giving further recognition to the arts as a vital part of our culture and heritage and as an important means of expanding the scope of our educational program".

K. "Planning and budget committee" means the committee of the commission which reviews comments, ratings and resulting rankings of the applications by advisory panels. The planning and budget committee convenes a public meeting to consider the recommendations of the advisory panels. The committee makes funding and other recommendations to the arts commission.

[4.12.1.7 NMAC - Rp 4.12.1.7 NMAC, 11-13-2003; A, 1-31-06; A, 10-16-06]

4.12.1.8 THE COMMISSION:

The name of the organization shall be the New Mexico arts commission, hereinafter referred to as "commission." The commission shall function according to Section 18-5-5 NMSA 1978 as an advisory body to New Mexico arts, herein after referred to as "NMA or New Mexico arts".

[4.12.1.8 NMAC - Rp 4.12.1.8 NMAC, 11-13-2003]

4.12.1.9 MISSION:

The mission of the commission, in conjunction with the NMA, is to stimulate opportunities for artists, arts organizations, and other groups for activities or projects to provide artistic or cultural services to the state, to maintain and encourage artistic excellence, and to promote awareness of and access to the arts for all of the people of New Mexico.

[4.12.1.9 NMAC - Rp 4.12.1.9 NMAC, 11-13-2003]

4.12.1.10 MEMBERSHIP:

The commission shall have fifteen (15) members appointed by the governor pursuant to Section 18-5-3 NMSA 1978.

A. Members shall be appointed for terms as follows: five members shall be appointed for terms of one year, five members shall be appointed for terms of two years and five members shall be appointed for terms of three years. The first members of the commission shall be appointed on or before September 1, 1965, with the date of office of all these members to commence on the same day. After the expiration of the initial terms, all members shall be appointed for terms of three years. Vacancies resulting from the death or resignation of a member shall be filled by appointment for the unexpired portion of the term of the member creating the vacancy.

B. With the approval of a two thirds majority of a quorum present at any scheduled meeting of the commission, the chair may recommend to the governor the removal of any commissioner for chronic absenteeism or improper conduct. Chronic absenteeism shall normally consist of missing a total of three regularly scheduled commission meetings in any one calendar year.

C. Commissioners shall receive reimbursement for travel and per diem expenses in accordance with the Mileage and Per Diem Act, Section 10-8-1 NMSA 1978. Commissioners may use facilities of the NMA office only for official business of the commission and shall keep such use to a minimum to avoid interference with NMA staff.

[4.12.1.10 NMAC - Rp 4.12.1.10 NMAC, 11-13-2003]

4.12.1.11 DUTIES:

The commission is advisory to the director of the NMA, to the department of cultural affairs secretary and to state government in general where not in conflict with other statutory agencies. The governor will receive general counsel on the arts from the commission and from the NMA.

A. The commission will advise the director on all NMA policies, and the director shall provide the commission with all information requisite to such advice.

B. The commission shall be consulted by the director before he approves, disapproves or modifies the distribution of federal and state program funds. The director shall provide the commission with all information requisite to such consultation.

C. The director shall keep the commission informed of the fiscal affairs of the NMA, including budget requests, appropriations and disbursements.

[4.12.1.11 NMAC - Rp 4.12.1.11 NMAC, 11-13-2003]

4.12.1.12 CONFLICT OF INTEREST:

The arts commission has established a conflict of interest policy based on the Governmental Conduct Act, 10-16-1 through 10-16-18 NMSA 1978. Commission members shall not engage in any action that could be interpreted as use of position on

the commission to further his own interest or the interest of any organization with which the commissioner has an influential role. Commissioners shall be familiar with and shall abide by the Governmental Conduct Act, Section 10-16-1 through 10-16-18, NMSA 1978. The policy is no commissioner or member of a commissioner's immediate family may:

- A.** submit an application for funds;
- B.** receive personal payment or benefit from NMA funds;
- C.** be employed by an organization requesting NMA funds;
- D.** submit a report or endorsement on behalf of an application with which the commissioner or a member of the commissioner's immediate family is affiliated;
- E.** hold a financial interest in excess of \$1,000 in a business or organization doing business with the NMA;
- F.** self declarations: other conflicts of interest may be resolved if the commissioner declares the conflict and abstains from discussion or voting on any application or any funding category in which a real or perceived conflict exists;
- G.** within one year of leaving the commission, no former commissioner may submit an application to the NMA or be employed by an applicant organization;
- H.** some conflicts involving commissioners or former commissioners are irreconcilable and shall be resolved either by withdrawing the application or affiliation causing the conflict or by resignation from the commission; failure to comply shall cause the chair to ask for a two-thirds consensus of the commission to recommend removal of the conflicted commissioner.

[4.12.1.12 NMAC - Rp 4.12.1.12 NMAC, 11-13-2003]

4.12.1.13 OFFICERS:

The officers of the commission shall be a chair, who shall serve at the pleasure of the governor, and a vice-chairman and a secretary, who shall be elected at the annual meeting in November by a majority vote of the commission members present.

A. The vice-chair and secretary shall take office at the annual meeting at which they are elected.

B. The chair shall preside at all meetings and shall appoint the chairs and members of all committees including the planning and budget committee, subject to ratification by a majority of the commissioners present at the next regular meeting of the commission

following such appointment. The chair shall also perform all procedural duties as guided by parliamentary procedure.

C. The vice-chair shall, in the event of the absence or incapacity of the chair, exercise all powers and duties of the chair during such absence or incapacity.

D. The secretary shall, with the assistance of the NMA staff, call the roll at each commission meeting and shall cause the minutes of each meeting to be kept.

E. The commission may, by a two-thirds majority of the commissioners present at a regular meeting of the commission, recommend to the governor that the commission chair be removed from office when, in the judgment of such two-thirds majority, the chair has committed nonfeasance (failure to act when there is a duty), misfeasance (negligence), or malfeasance (performance that was improper or illegal).

F. The commission may, by a two-thirds majority vote at any regular meeting, remove the vice-chair or secretary from that office where such action is, in its judgment, in the best interests of the commission.

G. The chair may fill a vacancy in the office of vice-chair or secretary by appointment until the next regular meeting of the commission.

[4.12.1.13 NMAC - Rp 4.12.1.13 NMAC, 11-13-2003]

4.12.1.14 PLANNING AND BUDGET COMMITTEE:

The commission shall have a planning and budget committee, whose members shall be assigned by the chair.

A. If any assigned member of the planning and budget committee is unable to attend a meeting of that committee, the commission chair may appoint another commissioner to serve for that meeting.

B. The commission chair shall serve as chair of the planning and budget committee.

C. Meetings of the planning and budget committee shall be called by the chair with fourteen days written notice of the meeting, to all planning and budget committee members, and to all commissioners.

D. The planning and budget committee shall regularly exercise responsibility for budget oversight, long-range planning, and initial review of all grants panel recommendations, and shall make recommendations in these areas to the commission.

E. Minutes of all meetings of the planning and budget committee shall be distributed to all commissioners prior to the next commission meeting.

[4.12.1.14 NMAC - Rp 4.12.1.14 NMAC, 11-13-2003]

4.12.1.15 OTHER COMMITTEES AND MEETINGS:

There shall be various standing operations committees, corresponding to the major operations areas of the commission's responsibilities.

A. Appeals committee, has responsibility for hearing and making recommendations on all appeals submitted by the NMA director.

B. There shall be a nominating committee also referred to as the executive committee, with responsibility to present annually or when appropriate, for consideration and nomination, candidates for vacancies in the positions of vice-chair and secretary. Nominations may also come from the floor. Terms of office shall commence immediately.

C. There shall be an arts award committee, with responsibility for making recommendations directly to the governor concerning recipients of the governor's awards for excellence in the arts.

D. The commission may establish such other committees from time to time, as it deems appropriate.

E. The annual meeting of the commission shall take place in November. The commission shall hold at least four meetings a year usually in February, June, August and November. Fourteen days written notice of the exact date, and time and location of each meeting of the commission shall be given by the NMA director or the commission chair to all commissioners and to the public. Any meeting date may be changed by approval of a majority of a quorum of the commissioners present at any regularly scheduled commission meeting, subject to the requirements of the commission's open meeting resolution.

F. Special meetings may be called either by the commission chair or by petition of a majority of the sitting commissioners. Fourteen days notice shall be given to commissioners and the public of such special meetings. Upon receipt of a petition for a special meeting, the chair shall schedule the special meeting.

G. The commission may designate any location within New Mexico as the place of its meeting.

H. A quorum at any meeting of the commission shall be constituted by a majority of the commissioners. If, due to vacancies, there are fewer than 15 commissioners, a quorum shall consist of a majority of the commissioners actually holding office.

I. Commissioners must be physically present to vote at all meetings of the commission. Voting by proxy is prohibited.

J. The proposed agenda items for each meeting of the commission meeting shall be prepared by the NMA director in consultation with the commission chair and distributed not less than fourteen days prior to each meeting of the commission. Commissioners wishing to place an item on the proposed agenda must notify the NMA director not less than three weeks prior to the meeting. In accordance with the Open Meetings Act, commissioners may add or delete items from the agenda at the commission meeting.

K. The commission shall follow all procedural duties using a manual of parliamentary procedure as guidance and in conformity with these regulations and the Arts Division Act.

L. These regulations may be amended or repealed by a majority and new regulations shall be given to all commissioners. Written notice of any proposed amendments shall be given twenty-one days in advance and shall include the full text of the provision to be changed as well as the new provision.

M. The principal office of the commission shall be the office of the NMA in Santa Fe, New Mexico.

[4.12.1.15 NMAC - Rp 4.12.1.15 NMAC, 11-13-2003]

4.12.1.16 NEW MEXICO ARTS FUNDING REGULATIONS:

The most recent publication of the "New Mexico arts funding guidelines" is hereby incorporated into this rule by reference and is subject to change on a yearly basis. For the most recent publication, call New Mexico arts or visit the website at www.nmarts.org. The New Mexico arts funding guidelines describe the policies and requirements for art and art-related educational projects advertised and administered by NMA and the commission. The guidelines are applicable to all projects advertised and contracts executed after the date this rule is promulgated by NMA and filed with the state records center.

[4.12.1.16 NMAC - Rp 4.12.1.16 NMAC, 11-13-2003; A, 12-15-2007]

PART 2: [RESERVED]

PART 3: APPLICATION PROCESS FOR COMMUNITY ARTS DEVELOPMENT [REPEALED]

[This rule was repealed effective 11-13-2003.]

PART 4: APPLICATION PROCESS FOR LOCAL ARTS COUNCILS [REPEALED]

[This rule was repealed effective 11-13-2003.]

PART 5: APPLICATION PROCESS FOR ARTS PROJECTS [REPEALED]

[This rule was repealed effective 11-13-2003.]

PART 6: APPLICATION PROCESS FOR ARTS EDUCATION PROJECTS AND ARTS AND RESIDENCIES [REPEALED]

[This rule was repealed effective 11-13-2003.]

PART 7: APPLICATION PROCESS FOR TRADITIONAL FOLK ARTS PROJECT [REPEALED]

[This rule was repealed effective 11-13-2003.]

PART 8: APPLICATION PROCESS FOR PARTNERSHIPS/ARTS ENTERPRISE PROJECTS [REPEALED]

[This rule was repealed effective 11-13-2003.]

PART 9: [RESERVED]

PART 10: APPLICATION PROCESS FOR FOLK ARTS APPRENTICESHIP

4.12.10.1 ISSUING AGENCY:

Department of Cultural Affairs, New Mexico Arts Division.

[4.12.10.1 NMAC - Rp 4.12.10.1 NMAC, 11-13-2003]

4.12.10.2 SCOPE:

Artists and master folk artists, and artists and individuals seeking an apprenticeship.

[4.12.10.2 NMAC - Rp 4.12.10.2 NMAC, 11-13-2003]

4.12.10.3 STATUTORY AUTHORITY:

Provisions pertaining to the New Mexico Arts Commission and Arts Division Act, Sections 18-5-1 to 18-5-9 NMSA 1978.

[4.12.10.3 NMAC - Rp 4.12.10.3 NMAC, 11-13-2003]

4.12.10.4 DURATION:

Permanent.

[4.12.10.4 NMAC - Rp 4.12.10.4 NMAC, 11-13-2003]

4.12.10.5 EFFECTIVE DATE:

November 13, 2003 unless a later date is cited at the end of a section.

[4.12.10.5 NMAC - Rp 4.12.10.5 NMAC, 11-13-2003]

4.12.10.6 OBJECTIVE:

To provide for the application process necessary to participate in the folk arts apprenticeship program. The purpose of the folk arts apprenticeship category is to keep alive the traditional folk arts practiced in New Mexico by contracting with master folk artists to teach their art forms to dedicated apprentices. Folk arts are the traditional functional and expressive arts of people passed down informally by word of mouth or by imitation within a cultural group. Common types of cultural groups are: family, community, occupational, ethnic, or religious. Folk arts reflect the values and worldviews of the groups that make them, and are a rich and valuable heritage for all New Mexicans.

[4.12.10.6 NMAC - Rp 4.12.10.6 NMAC, 11-13-2003]

4.12.10.7 DEFINITIONS:

Those stated in 4.12.1.7 NMAC.

[4.12.10.7 NMAC - Rp 4.12.10.7 NMAC, 11-13-2003]

4.12.10.8 ELIGIBILITY CRITERIA:

The most recent publication of the "New Mexico arts folk arts apprenticeship application guidelines" is hereby incorporated into this rule by reference and is subject to change on a yearly basis. For the most recent publication, call New Mexico arts or visit the website at www.nmarts.org. The New Mexico arts folk arts apprenticeship guidelines describe the policies and requirements for folk art projects advertised and administered by NMA and the commission. The guidelines are applicable to all projects advertised and contracts executed after the date this rule is promulgated by NMA and filed with the state records center.

[4.12.10.8 NMAC - Rp 4.12.10.8 NMAC, 11-13-2003; A, 12-15-2007]

PART 11: ART IN PUBLIC PLACES PROGRAM

4.12.11.1 ISSUING AGENCY:

Department of Cultural Affairs, New Mexico Arts (NMA) Division, Art in Public Places Program.

[4.12.11.1 NMAC - Rp, 4.12.11.1 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.2 SCOPE:

All state departments and agencies, boards, councils, institutions, commissions and quasi-corporations, including all state educational institutions enumerated in Article 12. Section 11 of the constitution of New Mexico, and all statutorily created post-secondary educational institutions.

[4.12.11.2 NMAC - Rp, 4.12.11.2 NMAC, 9-30-2009]

4.12.11.3 STATUTORY AUTHORITY:

Sections 9-4A-6, 13-4A-10, and 18-5-7 NMSA 1978.

[4.12.11.3 NMAC - Rp, 4.12.11.3 NMAC, 9-30-2009]

4.12.11.4 DURATION:

Permanent.

[4.12.11.4 NMAC - Rp, 4.12.11.4 NMAC, 9-30-2009]

4.12.11.5 EFFECTIVE DATE:

September 30, 2009 unless a later date is cited at the end of a section.

[4.12.11.5 NMAC - Rp, 4.12.11.5 NMAC, 9-30-2009]

4.12.11.6 OBJECTIVE:

The objective of this part is to interpret, implement and enforce the provisions of the Art in Public Places (AIPP) Act, Section 13-4A-1 to 13-4A-11 NMSA 1978.

[4.12.11.6 NMAC - Rp, 4.12.11.6 NMAC, 9-30-2009]

4.12.11.7 DEFINITIONS:

As used in this rule, in addition to those defined at 4.12.1.7 NMAC the following definitions apply.

A. "AIPP funds" means the funds allocated for the acquisition and installation of art from appropriations for new construction or renovations, as described in the arts in

public places act, and is comprised of site-specific funds, see Section 13-4A-4(A) NMSA 1978, and auxiliary funds, see section 13-4A-4(B) NMSA 1978.

B. "AIPP program" means the arts in public places program of NMA that administers all aspects of the arts in public places program and the public art selection process.

C. "AIPP staff" means the project coordinator or contractor with the AIPP program who is assigned to facilitate the public art selection process.

D. "Art selection committee" means the committee that selects the artwork and the artist for a commission or purchase project. See Subsections (M), (T), and (X) of 4.12.11.7 NMAC for the different types of art selection committees.

E. "Art selection process" means the open and fair process of selecting artwork for placement in public buildings/property. The art selection process requires that representatives of the local community or region participate in the selection of the artist or artwork as members of a selection committee.

F. "Artist submission" means a high-quality example of artistic work and supporting documentation that fulfills the submission requirements stated in the prospectus.

G. "Auxiliary Funds" means the AIPP funds allocated pursuant to Subsection B of Section 13-4A-4 NMSA 1978 for new construction or renovation of structures which are excluded from the provisions of the Art in Public Places Act under Subsection E of Section 13-4A-3 NMSA 1978. "Auxiliary Funds" may be expended on the acquisition and installation of art for existing public buildings as well as for administrative costs incurred by NMA for the implementation for the Art in Public Places Act.

H. "Building" means a relatively permanent structure or facility which includes fixtures and other built-ins and that is used for any of a wide variety of activities, including but not limited to plazas, parks and arenas.

I. "Commission" or "commission project" means the process of selecting a work of art to be designed and created for a specific building or site.

J. "Construct" means to make or form a building or make major renovations to a building and may include the cost of commissioning a building for energy efficient green building standards (i.e. LEED certification), as required by law; used interchangeably with "build".

K. "Deaccession" means the act of permanently removing an artwork from the state's public art collection.

L. "Finalist" means the individuals or artist teams selected from all artist submissions by the LSC to present maquettes, drawings, and other material for consideration as the selected artist for a commission project.

M. "Local selection committee or LSC" means the committee of five to eleven members excluding AIPP staff, that selects a site, develops a prospectus, and select an artist for the site.

N. "Maquette" means a finalist's scale model of the proposed artwork or other appropriate means of expressing the artist's idea.

O. "New Mexico artist" means an artist who resides in New Mexico. If an artist resides in New Mexico for only part of the year, to qualify as a New Mexican artist, the artist must reside in New Mexico for at least ninety days out of the year and have maintained this part-time residency for at least two years consecutively.

P. "Public art collection" means the collection of artwork which has been acquired by the NMA for display in public building throughout the state.

Q. "Project director" means the delegated individual who is responsible for working with the AIPP staff to oversee the art selection process for a commission project. The project director is usually a representative or designee of the owner or the group using the building under construction or renovation.

R. "Prospectus" means the document issued by the arts division for the purpose of publicly stating the criteria for the specific project. The prospectus is made available to all artists who are interested in applying and are created for each commission project.

S. "Purchase project" or "purchase" means the process of acquiring an artwork that has previously been created by an artist and is selected by the RBC for their site. NMA shall determine the maximum number of artworks a site may purchase.

T. "Regional buying committee" or "RBC" means the committee made up of two to three local representatives of a public building or site receiving AIPP funds for the purchase of artwork. The RBC is responsible for the selection of artwork for their site.

U. "Selection criteria" means a varying list of qualifications included in the prospectus, which an artist's submission must meet to be considered by an art selection committee for a public art project.

V. "Site" means the place where the public artwork shall be located.

W. "Site specific" means artwork that is created for, and tailored to a particular site and community. Pre-existing artwork does not qualify as site specific.

X. "Submission review panel" or "SRP" means the committee comprised of a minimum of five members who are artists or arts professionals that review artist submissions for purchase projects and make recommendations to NMA, following a set of criteria, for the selection of a manageable number of artworks to be viewed by RBC and purchased by public agencies.

[4.12.11.7 NMAC - Rp, 4.12.11.7 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.8 ADMINISTRATION OF AIPP PROGRAM AND FUNDS:

The AIPP program shall administer and use funds derived from the Art in Public Places Act to acquire works of art, in consultation with art selection committees through either the commission process or the purchase process, for installation and display in, upon, or around public buildings throughout New Mexico which reflect the cultural, ethnic and artistic diversity of New Mexico, the region, and the nation. Public artworks may be an integral part of the building, attached to the building, detached within or outside the structures or placed on public lands, part of a temporary exhibit or loaned or exhibited by the agency in other public facilities.

A. The AIPP program may aggregate AIPP funds, when appropriate and with concurrence of the site owner, for a more significant public art project. There is no limit to the amount of funds that may be aggregated and allocated for a specific project.

B. The AIPP Program shall determine how auxiliary funds will be utilized.

(1) Auxiliary funds may be used to acquire and install works of art for existing public buildings in accordance with the Art in Public Places Act, or works of art that are available for loan in, upon, or around public buildings.

(2) Auxiliary funds may also be used NMA for administrative costs incurred by NMA for the implementation of the Art in Public Places Act.

C. Applicability of Art in Public Places Act.

(1) A statewide repair appropriation is not subject to the one percent allocation.

(2) Determination of whether the Art in Public Places Act applies to a project is made by the AIPP Program and is based on the original appropriation.

(3) Reauthorized appropriations for which the original appropriation was subject to the Art in Public Places Act shall remain subject to the AIPP allocation. In these instances, the one percent allocation shall be placed in the auxiliary fund. If the original appropriation was not subject to the Art in Public Places Act, then no funds will be allocated to the AIPP, regardless of the purpose of the reauthorized appropriation.

D. If after four (4) years and five (5) documented attempts to contact the site owner to spend site-specific AIPP funds, the funds remain unspent, the AIPP funds may, at the discretion of the AIPP Program, be designated as auxiliary funds. Written notice of the auxiliary designation shall be sent to the site owner with a copy retained in the project file.

[4.12.11.8 NMAC - Rp, 4.12.11.8 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.9 GENERAL COMMISSION PROCEDURES:

A. Project director.

(1) Each AIPP project shall delegate a project director, who is responsible for making the selection process occur. The AIPP office works with the project director and assists them in guiding the selection process.

(2) The project director is usually a representative of the group actually using the particular building under construction, or may be a representative of the owner of the public building, or any other designee.

(3) A description of the project director's responsibilities is available from the AIPP office.

B. The local selection committee.

(1) The most integral component of the AIPP program is that local community members are responsible for the selection of the artwork for their community.

(2) Local participation in decision-making is a major concern of the AIPP office.

C. Membership appointment: The LSC members are appointed by the user or owner of the public building, or his designee, or the AIPP staff.

D. Membership composition.

(1) The LSC is composed of five to 11 members excluding the AIPP staff.

(2) A majority of the individuals on this committee shall be residents of the community in which the project shall take place.

(3) The membership of the committee shall reflect the cultural diversity of the community involved.

E. Committee members shall include the following.

- (1) A representative of the residents or *users* of the building.
- (2) The owner representative or a designee, of the public building.
- (3) An architect, preferably the architect of the construction project (or engineer or other appropriate design or construction professional, associated with the building if possible).
- (4) One arts professional or community art representative.
- (5) One artist who agrees to abstain from consideration for the project and works in similar media or style of artwork requested in the prospectus.
- (6) **All five key members listed above shall be present for a meeting to occur.**
- (7) Up to two community or student representatives or a member of the board of regents for a college or university shall serve on the LSC.

F. LSC responsibilities.

- (1) The LSC is responsible for the selection of art for the identified public building, using a public selection process and adhering to the procedures developed by NMA.
- (2) Each AIPP project has a defined amount of state money available for the commission of art.
- (3) The LSC may raise additional funds through other sources to supplement the state funding or secure the donation of in-kind services to assist the selected artist in the creation of his artwork.
- (4) The LSC shall collaborate with the AIPP staff to develop the specific criteria for the project to be included in the prospectus. The AIPP staff develops the prospectus and the LSC approves of the document prior to its circulation to the public.
- (5) The LSC shall select the artist for the project based on the prospectus and specific criteria included in a written and tangible proposal for the proposed artwork.
- (6) A majority vote is required for an artist to be selected as the final artist and the selection shall be formally approved, duly moved and seconded.

[4.12.11.9 NMAC - Rp, 4.12.11.9 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.10 GENERAL PURCHASE PROCEDURES:

A. NMA shall develop and advertise a prospectus that invites artists meeting specific criteria outlined in the prospectus, to apply with previously created artwork for review to be selected by sites.

B. The SRP shall review the artist submissions based on criteria specific to the prospectus and determine which artworks will be presented to the RBC for selection of artwork for a site.

C. The RBC representatives from a site shall review and select artwork for their specific site.

D. It is desired that a visual art professional or artist participate in the RBC art selection process to serve as a resource person.

[4.12.11.10 NMAC - N, 9-30-2009; A, 01-01-2019]

4.12.11.11 OVERVIEW OF ART SELECTION PROCESS:

A. An AIPP staff member shall guide the art selection committee through the art selection process.

B. Meetings of the LSC shall be held at the building site or any other suitable location. RBC meetings shall take place at a central public location within each region.

C. There shall be a minimum number of meetings for the RBC to purchase artwork, although the LSC may meet numerous times for a commission project.

D. After a prospectus is developed and advertised, artists may submit for the project according to the terms of the prospectus.

E. The art selection committee shall evaluate the artist submissions and select an artist or artwork for the project.

F. Each of these steps may vary in length of time and number of meetings necessary to accomplish the acquisition or commissioning of the artwork.

[4.12.11.11 NMAC - Rp, 4.12.11.11 NMAC, 9-30-2009]

4.12.11.12 DEVELOPMENT OF THE PROSPECTUS:

A. There are two types of prospectuses.

(1) Purchase prospectus - created by AIPP staff for several sites. Each site's RBC selects artwork for its facility.

(2) Commission prospectus - created by AIPP staff in collaboration with the LSC. These are site-specific works created exclusively for a certain location.

B. For a commission prospectus.

(1) The LSC shall consider various criteria in order to identify what type of art it is looking for. The criteria must be written into a prospectus.

(2) LSC members have a responsibility to determine as much about what they want as possible and to include that information in the prospectus, in order not to waste their own time reviewing needless submissions, or the time of artists in preparing inappropriate submissions.

C. Factors to be considered for the prospectus include the following.

(1) Location - interior, exterior and any other particular locations should be considered. When possible, AIPP staff encourages the art selection committee to select artwork that can be an integral part of the structure.

(2) Medium - determination of suitable materials composing the artwork, size/scale of the artwork, two or three dimensional artwork, maintenance and the budget available in relation to the scope of the project and potential sites.

(3) Style - the style an artist uses to express his ideas. For example, traditional, folk-art, abstract, non-objective, figurative, representational, etc.

(4) Eligibility - all competitions are open to New Mexico artists, and, depending on the scope of a project, the competition may be open to larger regions.

(5) Receipt deadline - the designated date when artist submissions must be received by NMA to remain eligible for the project. The art selection committee shall not review late submissions or incomplete artist submissions.

(6) Art selection process - all AIPP projects must be open and fair competitions.

(7) Submission requirements - the specific materials the artist must submit as part of the artist submission.

D. Distribution of the prospectus - the prospectus shall be advertised and distributed in such a way as to reach as many artists as possible and shall include one or more of the following methods:

(1) NMA email blast, newsletter, the NMA website--www.nmarts.org, and NMA social media outlets (e.g. Facebook, Instagram) or other comparable methods.

(2) Public service announcements - the NMA staff shall send public service announcements to appropriate media, including newspapers, arts publications, and radio stations, locally, statewide and nationally.

(3) Press advertisements - the art selection committee may designate one member who shall make sure the project is advertised in the local media.

(4) Other information outlets - traditional media outlets are often insufficient to generate the participation of certain artists. If an art selection committee is interested in a particular constituency group, the art selection committee members shall make an effort to make whatever contact possible with members of that group and enlist their help in spreading the word.

(5) Invitational competition. - in addition to having a competition open to all eligible artists, prospectuses may be distributed to targeted artists to encourage them to apply.

[4.12.11.12 NMAC - Rp, 4.12.11.12 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.13 REVIEW OF ARTIST SUBMISSIONS:

A. The art selection committee shall review the submissions of the artists who have responded to the prospectus with complete and timely submissions.

B. At a purchase review meeting, the SRP shall determine the artwork that will travel to the purchase sites for RBC review.

C. For most commission projects, a number of finalists shall be identified, who are then requested to submit additional materials, usually a site-specific tangible (both written and created) proposal for the artwork and a presentation to the LSC. No more than five finalists shall be selected for each site.

[4.12.11.13 NMAC - Rp, 4.12.11.13 NMAC, 9-30-2009]

4.12.11.14 FINAL SELECTION:

A. The final selection of an artist and artwork for a commission project shall be made by the LSC, as described at 4.12.11.9 above. The final selection of the artwork for a purchase project shall be decided by the site's RBC.

B. AIPP staff shall notify the selected artist in writing, addressing any follow-up information requested by the art selection committee.

C. In the notification letter, AIPP staff must clarify that although the artist has been selected, no binding agreement is in place unless and until a contract is signed by the artist, the owner, and NMA.

D. Notice shall also be provided by AIPP staff to those artists who submitted but were not selected for the project.

[4.12.11.14 NMAC - Rp, 4.12.11.14 NMAC, 9-30-2009]

4.12.11.15 VARIATIONS TO PROCEDURES:

A. NMA has established these procedures as guidelines to be followed in the art selection process.

B. Opportunities may be identified during the art selection process that may require modification to these procedures.

C. Variations may be incorporated into the art selection process with the approval of the AIPP program director.

[4.12.11.15 NMAC - Rp, 4.12.11.15 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.16 CONTRACT DEVELOPMENT:

A. NMA has established these procedures as guidelines to be followed in the art selection process.

B. All responsibilities involved in the execution, delivery and installation of the work of art must be delineated in the contract.

C. No art selection process shall be considered final and binding unless and until all the required signatures on the contract have been obtained. The contract shall be signed by the artist, the owner agency, NMA and any other state agency as may be required by state law.

D. After all signatures required on the contract have been obtained, the artist or holder of the artwork shall be notified and the work of art may be either delivered or created.

[4.12.11.16 NMAC - Rp, 4.12.11.16 NMAC, 9-30-2009]

PART 12: CULTURAL CORRIDORS: PUBLIC ART ON SCENIC HIGHWAYS [REPEALED]

[This rule was repealed effective 11-13-2003.]

PART 13: APPLICATION PROCESS FOR ARTS IN SOCIAL SERVICE [REPEALED]

[This rule was repealed effective 11-13-2003.]

CHAPTER 13: CRAFTS [RESERVED]

CHAPTER 14: [RESERVED]

CHAPTER 15: MOTION PICTURES [RESERVED]

CHAPTER 16: [RESERVED]

CHAPTER 17: [RESERVED]

CHAPTER 18: INDIAN CEREMONIAL [RESERVED]

CHAPTER 19: INDIAN ARTS AND CRAFTS [RESERVED]

CHAPTER 20: [RESERVED]

CHAPTER 21: CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION

PART 1: GENERAL PROVISIONS

4.21.1.1 ISSUING AGENCY:

Cumbres & Toltec Scenic Railroad Commission, P.O. Box 561, Antonito, Colorado 81120, Telephone No. (719) 376-5488.

[7-15-96; 4.21.1.1 NMAC - Rn, 4 NMAC 21.1.1, 02-29-08]

4.21.1.2 SCOPE:

Provisions for Part 1 of Chapter 21 apply to commission members, and any member of the general public.

[7-15-96; 4.21.1.2 NMAC - Rn, 4 NMAC 21.1.2, 02-29-08]

4.21.1.3 STATUTORY AUTHORITY:

Authority for Part 1 of Chapter 21 is the Cumbres & Toltec Scenic Railroad Commission Act, NMSA 1978 Sections 16-5-7 and 16-5-13.

[7-15-96; 4.21.1.3 NMAC - Rn, 4 NMAC 21.1.3, 02-29-08]

4.21.1.4 DURATION:

Permanent.

[7-15-96; 4.21.1.4 NMAC - Rn, 4 NMAC 21.1.4, 02-29-08]

4.21.1.5 EFFECTIVE DATE:

June 15, 1984 unless a later date is cited at the end of a section.

[7-15-96; 4.21.1.5 NMAC - Rn, 4 NMAC 21.1.5, 02-29-08]

4.21.1.6 OBJECTIVE:

The objective of Part 1 of Chapter 21 is to establish general provisions which apply to the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.1.6 NMAC - Rn, 4 NMAC 21.1.6, 02-29-08]

4.21.1.7 DEFINITIONS:

"Commission" means the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.1.7 NMAC - Rn, 4 NMAC 21.1.7, 02-29-08]

4.21.1.8 THE COMMISSION:

A. The commission shall be that commission referred to in senate bill 168, New Mexico state legislature, 1977 and senate bill 443, Colorado state legislature, 1977.

B. The credentials of each commissioner shall be filed with the chairman of the commission.

C. Each commissioner shall advise in writing the office of the commission as to his address to which all official notices and other communications of the commission shall be sent to him and shall further promptly advise in writing the office of the commission as to any change in such address.

[6-15-84; 4.21.1.8 NMAC - Rn, 4 NMAC 21.1.8, 02-29-08]

4.21.1.9 ACCESS TO INFORMATION:

The commission shall on request make available to the governor of each of the signatory states any information within the commission's possession at any time, and

shall always provide free access to its records by the governors of such states, or their representatives.

[6-15-84; 4.21.1.9 NMAC - Rn, 4 NMAC 21.1.9, 02-29-08]

4.21.1.10 SIGNATURES:

All contracts or other instruments in writing to be signed for and on behalf of the commission, except matters relating to the receipt or disbursement of funds, shall be signed by members of the commission, or the commission's executive director if approved in advance at a commission meeting.

[6-15-84; 7-15-96; 4.21.1.10 NMAC - Rn, 4 NMAC 21.1.10, 02-29-08]

PART 2: OFFICERS

4.21.2.1 ISSUING AGENCY:

Cumbres & Toltec Scenic Railroad Commission, P.O. Box 561, Antonito, Colorado 81120, Telephone No. (719) 376-5488.

[7-15-96; 4.21.2.1 NMAC - Rn, 4 NMAC 21.2.1, 02-29-08]

4.21.2.2 SCOPE:

Provisions for Part 2 of Chapter 21 apply to commission members, and any member of the general public.

[7-15-96; 4.21.2.2 NMAC - Rn, 4 NMAC 21.2.2, 02-29-08]

4.21.2.3 STATUTORY AUTHORITY:

Authority for Part 2 of Chapter 21 is the Cumbres & Toltec Scenic Railroad Commission Act, NMSA 1978 Sections 16-5-7 and 16-5-13.

[7-15-96; 4.21.2.3 NMAC - Rn, 4 NMAC 21.2.3, 02-29-08]

4.21.2.4 DURATION:

Permanent.

[7-15-96; 4.21.2.4 NMAC - Rn, 4 NMAC 21.2.4, 02-29-08]

4.21.2.5 EFFECTIVE DATE:

June 15, 1984 unless a later date is cited at the end of a section.

[7-15-96; 4.21.2.5 NMAC - Rn, 4 NMAC 21.2.5, 02-29-08]

4.21.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 21 is to establish provisions for officers of the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.2.6 NMAC - Rn, 4 NMAC 21.2.6, 02-29-08]

4.21.2.7 DEFINITIONS:

See Title 4, Chapter 21, Part 1, Section 7.

[7-15-96; 4.21.2.7 NMAC - Rn, 4 NMAC 21.2.7, 02-29-08]

4.21.2.8 OFFICERS:

A. The officers of the commission shall be: chairman, vice-chairman, secretary and treasurer. The officers shall be members of the commission and shall be elected by the members of the commission.

B. The chairman shall preside at meetings of the commission. His duties shall be such as are usually imposed upon such officers and such as may be assigned to him by these rules or by the commission from time to time.

C. The vice-chairman shall serve as chairman of meetings in the absence of the chairman.

D. The secretary shall serve for such term and perform such duties as the commission may direct. In the case of vacancy in the office of the secretary, the commission shall proceed as expeditiously as possible to select a new secretary.

E. The treasurer shall work with the commission's executive director in investing the commission's funds.

F. The commission shall purchase a fidelity bond to cover all officers of the commission and its executive director.

[6-15-84; 7-15-96; 4.21.2.8 NMAC - Rn, 4 NMAC 21.2.8, 02-29-08]

PART 3: PRINCIPAL OFFICE

4.21.3.1 ISSUING AGENCY:

Cumbres & Toltec Scenic Railroad Commission, P.O. Box 561, Antonito, Colorado 81120, Telephone No. (719) 376-5488.

[7-15-96; 4.21.3.1 NMAC - Rn, 4 NMAC 21.3.1, 02-29-08]

4.21.3.2 SCOPE:

Provisions for Part 3 of Chapter 21 apply to commission members, and any member of the general public.

[7-15-96; 4.21.3.2 NMAC - Rn, 4 NMAC 21.3.2, 02-29-08]

4.21.3.3 STATUTORY AUTHORITY:

Authority for Part 3 of Chapter 21 is the Cumbres & Toltec Scenic Railroad Commission Act, NMSA 1978 Sections 16-5-7 and 16-5-13.

[7-15-96; 4.21.3.3 NMAC - Rn, 4 NMAC 21.3.3, 02-29-08]

4.21.3.4 DURATION:

Permanent.

[7-15-96; 4.21.3.4 NMAC - Rn, 4 NMAC 21.3.4, 02-29-08]

4.21.3.5 EFFECTIVE DATE:

June 15, 1984 unless a later date is cited at the end of a section.

[7-15-96; 4.21.3.5 NMAC - Rn, 4 NMAC 21.3.5, 02-29-08]

4.21.3.6 OBJECTIVE:

The objective of Part 3 of Chapter 21 is to establish the principal office of the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.3.6 NMAC - Rn, 4 NMAC 21.3.6, 02-29-08]

4.21.3.7 DEFINITIONS:

See Title 4, Chapter 21, Part 1, Section 7.

[7-15-96; 4.21.3.7 NMAC - Rn, 4 NMAC 21.3.7, 02-29-08]

4.21.3.8 PRINCIPAL OFFICE:

A. The principal office of the commission shall be established at Antonito, Colorado.

B. The principal office shall be open for business at such hours and on such days as the commission may from time to time direct.

C. All books and records of the commission shall be kept in the principal office of the commission. All records of the commission shall be open to inspection by the public during the hours the principal office is open for business.

[6-15-84; 4.21.3.8 NMAC - Rn, 4 NMAC 21.3.8, 02-29-08]

PART 4: MEETINGS

4.21.4.1 ISSUING AGENCY:

Cumbres & Toltec Scenic Railroad Commission, P.O. Box 561, Antonito, Colorado 81120, Telephone No. (719) 376-5488.

[7-15-96; 4.21.4.1 NMAC - Rn, 4 NMAC 21.4.1, 02-29-08]

4.21.4.2 SCOPE:

Provisions for Part 4 of Chapter 21 apply to commission members, and any member of the general public.

[7-15-96; 4.21.4.2 NMAC - Rn, 4 NMAC 21.4.2, 02-29-08]

4.21.4.3 STATUTORY AUTHORITY:

Authority for Part 4 of Chapter 21 is the Cumbres & Toltec Scenic Railroad Commission Act, NMSA 1978 Sections 16-5-7 and 16-5-13.

[7-15-96; 4.21.4.3 NMAC - Rn, 4 NMAC 21.4.3, 02-29-08]

4.21.4.4 DURATION:

Permanent.

[7-15-96; 4.21.4.4 NMAC - Rn, 4 NMAC 21.4.4, 02-29-08]

4.21.4.5 EFFECTIVE DATE:

June 15, 1984 unless a later date is cited at the end of a section.

[7-15-96; 4.21.4.5 NMAC - Rn, 4 NMAC 21.4.5, 02-29-08]

4.21.4.6 OBJECTIVE:

The objective of Part 4 of Chapter 21 is to establish provisions for meetings of the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.4.6 NMAC - Rn, 4 NMAC 21.4.6, 02-29-08]

4.21.4.7 DEFINITIONS:

See Title 4, Chapter 21, Part 1, Section 7.

[7-15-96; 4.21.4.7 NMAC - Rn, 4 NMAC 21.4.7, 02-29-08]

4.21.4.8 MEETINGS:

- A. The commission shall hold at least four quarterly meetings per calendar year.
- B. Special meetings of the commission may be called by the chairman at any time, or upon written request of two members of the commission.
- C. Notice of all special meetings of the commission shall be sent by the executive director to all members of the commission by ordinary mail at least seven days in advance of each meeting and such notice shall state the purpose thereof. At such special meeting only the matters specified in the notice shall be considered.
- D. All meetings of the commission shall be held at such place as shall be agreed upon by the commissioners.
- E. Minutes of the commission's meetings shall be preserved in a suitable manner. Minutes, until approved, shall not be official.
- F. Three members of the commission must be present to constitute a quorum.
- G. The commissioners of each signatory state shall have the right to vote in any of the deliberations of the commission.
- H. Three of the commissioners of the signatory states must concur in any action taken by the commission.
- I. At each regular or special meeting of the commission, the order of business, unless agreed otherwise, shall be as follows:

- (1) call to order;
- (2) approval of unapproved minutes;
- (3) reports;

- (4) action items;
- (5) other business;
- (6) adjournment.

J. All meetings of the commission, except executive sessions, shall be open to the public. Executive sessions shall be open only to members of the commission and such advisers as may be designated by each member and employees as permitted by the commission; provided, however, that the commission may call witnesses before it when in such sessions.

K. Any meeting of the commission may be recessed from time to time and from the place set for the meeting to another place by the vote of a majority of the commissioners present.

L. When it is difficult or impossible for a commission member to attend a commission meeting in person, the member may participate by means of a conference telephone or similar communications equipment as authorized by the New Mexico Open Meetings Act and as provided by the commission's rules and regulations.

[6-15-84, 7-15-96; 4.21.4.8 NMAC - Rn & A, 4 NMAC 21.4.8, 02-29-08]

PART 5: COMMITTEES

4.21.5.1 ISSUING AGENCY:

Cumbres & Toltec Scenic Railroad Commission, P.O. Box 561, Antonito, Colorado 81120, Telephone No. (719) 376-5488.

[7-15-96; 4.21.5.1 NMAC - Rn, 4 NMAC 21.5.1, 02-29-08]

4.21.5.2 SCOPE:

Provisions for Part 5 of Chapter 21 apply to commission members, and any member of the general public.

[7-15-96; 4.21.5.2 NMAC - Rn, 4 NMAC 21.5.2, 02-29-08]

4.21.5.3 STATUTORY AUTHORITY:

Authority for Part 5 of Chapter 21 is the Cumbres & Toltec Scenic Railroad Commission Act NMSA 1978 Sections 16-5-7 and 16-5-13.

[7-15-96; 4.21.5.3 NMAC - Rn, 4 NMAC 21.5.3, 02-29-08]

4.21.5.4 DURATION:

Permanent.

[7-15-96; 4.21.5.4 NMAC - Rn, 4 NMAC 21.5.4, 02-29-08]

4.21.5.5 EFFECTIVE DATE:

June 15, 1984 unless a later date is cited at the end of a section.

[7-15-96; 4.21.5.5 NMAC - Rn, 4 NMAC 21.5.5, 02-29-08]

4.21.5.6 OBJECTIVE:

The objective of Part 5 of Chapter 21 is to establish provisions for committees to be established by the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.5.6 NMAC - Rn, 4 NMAC 21.5.6, 02-29-08]

4.21.5.7 DEFINITIONS:

See Title 4, Chapter 21, Part 1, Section 7.

[7-15-96; 4.21.5.7 NMAC - Rn, 4 NMAC 21.5.7, 02-29-08]

4.21.5.8 COMMITTEES:

The commission may from time to time create special or ad hoc committees, composed of such members and others and assign tasks as the commission may determine.

[6-15-84; 4.21.5.8 NMAC - Rn, 4 NMAC 21.5.8, 02-29-08]

PART 6: RULES AND REGULATIONS

4.21.6.1 ISSUING AGENCY:

Cumbres & Toltec Scenic Railroad Commission, P.O. Box 561, Antonito, Colorado 81120, Telephone No. (719) 376-5488.

[7-15-96; 4.21.6.1 NMAC - Rn, 4 NMAC 21.6.1, 02-29-08]

4.21.6.2 SCOPE:

Provisions for Part 6 of Chapter 21 apply to commission members, and any member of the general public.

[7-15-96; 4.21.6.2 NMAC - Rn, 4 NMAC 21.6.2, 02-29-08]

4.21.6.3 STATUTORY AUTHORITY:

Authority for Part 6 of Chapter 21 is the Cumbres & Toltec Scenic Railroad Commission Act, NMSA 1978 Sections 16-5-7 and 16-5-13.

[7-15-96; 4.21.6.3 NMAC - Rn, 4 NMAC 21.6.3, 02-29-08]

4.21.6.4 DURATION:

Permanent.

[7-15-96; 4.21.6.4 NMAC - Rn, 4 NMAC 21.6.4, 02-29-08]

4.21.6.5 EFFECTIVE DATE:

June 15, 1984 unless a later date is cited at the end of a section.

[7-15-96; 4.21.6.5 NMAC - Rn, 4 NMAC 21.6.5, 02-29-08]

4.21.6.6 OBJECTIVE:

The objective of Part 6 of Chapter 21 is to establish provisions for establishment of rules and regulations which apply to the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.6.6 NMAC - Rn, 4 NMAC 21.6.6, 02-29-08]

4.21.6.7 DEFINITIONS:

See Title 4, Chapter 21, Part 1, Section 7.

[7-15-96; 4.21.6.7 NMAC - Rn, 4 NMAC 21.6.7, 02-29-08]

4.21.6.8 RULES AND REGULATIONS:

So far as consistent with the Cumbres & Toltec scenic railroad interstate compact, the commission may adopt rules and regulations. Rules and regulations of the commission shall be compiled and filed in the office of the commission.

[6-15-84; 4.21.6.8 NMAC - Rn, 4 NMAC 21.6.8, 02-29-08]

4.21.6.9 AMENDMENTS:

Amendments to these rules for the internal organization of the commission may be made at any meeting of the commission.

[6-15-84; 4.21.6.9 NMAC - Rn, 4 NMAC 21.6.9, 02-29-08]

PART 7: [RESERVED]

PART 8: [RESERVED]

PART 9: FISCAL

4.21.9.1 ISSUING AGENCY:

Cumbres & Toltec Scenic Railroad Commission, P.O. Box 561, Antonito, Colorado 81120, Telephone No. (719) 376-5488.

[7-15-96; 4.21.9.1 NMAC - Rn, 4 NMAC 21.9.1, 02-29-08]

4.21.9.2 SCOPE:

Provisions for Part 9 of Chapter 21 apply to commission members, and any member of the general public.

[7-15-96; 4.21.9.2 NMAC - Rn, 4 NMAC 21.9.2, 02-29-08]

4.21.9.3 STATUTORY AUTHORITY:

Authority for Part 9 of Chapter 21 is the Cumbres & Toltec Scenic Railroad Commission Act, NMSA 1978 Sections 16-5-7 and 16-5-13.

[7-15-96; 4.21.9.3 NMAC - Rn, 4 NMAC 21.9.3, 02-29-08]

4.21.9.4 DURATION:

Permanent.

[7-15-96; 4.21.9.4 NMAC - Rn, 4 NMAC 21.9.4, 02-29-08]

4.21.9.5 EFFECTIVE DATE:

June 15, 1984 unless a later date is cited at the end of a section.

[7-15-96; 4.21.9.5 NMAC - Rn, 4 NMAC 21.9.5, 02-29-08]

4.21.9.6 OBJECTIVE:

The objective of Part 9 of Chapter 21 is to establish provisions for fiscal control of the funds and property of the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.9.6 NMAC - Rn, 4 NMAC 21.9.6, 02-29-08]

4.21.9.7 DEFINITIONS:

See Title 4, Chapter 21, Part 1, Section 7.

[7-15-96; 4.21.9.7 NMAC - Rn, 4 NMAC 21.9.7, 02-29-08]

4.21.9.8 FISCAL:

A. All funds of the commission shall be deposited in a depository or depositories designated by the commission under the name of the Cumbres & Toltec scenic railroad commission.

B. Disbursement of all funds, in the hands of the commission, shall be made by check signed by one member of the commission. The commission members designated to sign checks shall be appointed and approved by vote of the commission.

C. At the third quarterly meeting of each year, the commission shall adopt and transmit to the governors of the two states a budget covering an estimate of its expenses for the following fiscal year.

D. The payment of expenses of the commission and of its employees shall be subject to the audit and accounting procedures of the states.

E. All receipts and disbursements of the commission shall be audited yearly by a qualified independent certified accountant to be selected by the commission and the report of the audit shall be included in and become a part of the annual report of the commission.

F. An up-to-date inventory of all property of the commission shall be kept at the principal office of the commission.

G. The fiscal year of the commission shall begin July 1st each year and end June 30th of the next succeeding year.

[6-15-84; 4.21.9.8 NMAC - Rn, 4 NMAC 21.9.8, 02-29-08]

PART 10: ANNUAL REPORT

4.21.10.1 ISSUING AGENCY:

Cumbres & Toltec Scenic Railroad Commission, P.O. Box 561, Antonito, Colorado 81120, Telephone No. (719) 376-5488.

[7-15-96; 4.21.10.1 NMAC - Rn, 4 NMAC 21.10.1, 02-29-08]

4.21.10.2 SCOPE:

Provisions for Part 10 of Chapter 21 apply to commission members, and any member of the general public.

[7-15-96; 4.21.10.2 NMAC - Rn, 4 NMAC 21.10.2, 02-29-08]

4.21.10.3 STATUTORY AUTHORITY:

Authority for Part 10 of Chapter 21 is the Cumbres & Toltec Scenic Railroad Commission Act, NMSA 1978 Sections 16-5-7 and 16-5-13.

[7-15-96; 4.21.10.3 NMAC - Rn, 4 NMAC 21.10.3, 02-29-08]

4.21.10.4 DURATION:

Permanent.

[7-15-96; 4.21.10.4 NMAC - Rn, 4 NMAC 21.10.4, 02-29-08]

4.21.10.5 EFFECTIVE DATE:

June 15, 1984 unless a later date is cited at the end of a section.

[7-15-96; 4.21.10.5 NMAC - Rn, 4 NMAC 21.10.5, 02-29-08]

4.21.10.6 OBJECTIVE:

The objective of Part 10 of Chapter 21 is to establish provisions for an annual report to the governors of New Mexico and Colorado by the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.10.6 NMAC - Rn, 4 NMAC 21.10.6, 02-29-08]

4.21.10.7 DEFINITIONS:

See Title 4, Chapter 21, Part 1, Section 7.

[7-15-96; 4.21.10.7 NMAC - Rn, 4 NMAC 21.10.7, 02-29-08]

4.21.10.8 ANNUAL REPORT:

A. The commission shall make and transmit annually on or before the thirty-first day of March to the governors of the states, signatory to the Cumbres & Toltec scenic railroad interstate compact, a report covering the activities of the commission for the preceding annual period from March 1st through the last day of February.

B. The annual report shall include among other things, the following:

- (1) current fiscal year budget comparison;
- (2) report of the annual audit of the Cumbres & Toltec scenic railroad commission;
- (3) a summary of the commission's finding with respect to the operation and maintenance of the Cumbres & Toltec scenic railroad;
- (4) such other pertinent matters as the commission may require.

[6-15-84; 7-15-96; 4.21.10.8 NMAC - Rn, 4 NMAC 21.10.8, 02-29-08]

PART 11: SEAL

4.21.11.1 ISSUING AGENCY:

Cumbres & Toltec Scenic Railroad Commission, P.O. Box 561, Antonito, Colorado 81120, Telephone No. (719) 376-5488.

[7-15-96; 4.21.11.1 NMAC - Rn, 4 NMAC 21.11.1, 02-29-08]

4.21.11.2 SCOPE:

Provisions for Part 11 of Chapter 21 apply to commission members, and any member of the general public.

[7-15-96; 4.21.11.2 NMAC - Rn, 4 NMAC 21.11.2, 02-29-08]

4.21.11.3 STATUTORY AUTHORITY:

Authority for Part 11 of Chapter 21 is the Cumbres & Toltec Scenic Railroad Commission Act, NMSA 1978 Sections 16-5-7 and 16-5-13.

[7-15-96; 4.21.11.3 NMAC - Rn, 4 NMAC 21.11.3, 02-29-08]

4.21.11.4 DURATION:

Permanent.

[7-15-96; 4.21.11.4 NMAC - Rn, 4 NMAC 21.11.4, 02-29-08]

4.21.11.5 EFFECTIVE DATE:

June 15, 1984 unless a later date is cited at the end of a section.

[7-15-96; 4.21.11.5 NMAC - Rn, 4 NMAC 21.11.5, 02-29-08]

4.21.11.6 OBJECTIVE:

The objective of Part 11 of Chapter 21 is to establish provisions for a seal for the Cumbres & Toltec scenic railroad commission.

[7-15-96; 4.21.11.6 NMAC - Rn, 4 NMAC 21.11.6, 02-29-08]

4.21.11.7 DEFINITIONS:

See Title 4, Chapter 21, Part 1, Section 7.

[7-15-96; 4.21.11.7 NMAC - Rn, 4 NMAC 21.11.7, 02-29-08]

4.21.11.8 SEAL:

A. The commission may have a seal which shall be a circular seal with the words "Cumbres & Toltec scenic railroad commission" imprinted around the border and the word "Seal" in the center thereof.

B. The seal of the commission shall be kept at the principal office of the commission.

C. The seal shall be affixed to all contracts or other official instruments in writing.

[6-15-84; 4.21.11.8 NMAC - Rn, 4 NMAC 21.11.8, 02-29-08]

CHAPTER 22-29: [RESERVED]

CHAPTER 30: TOURISM [RESERVED]

CHAPTER 31-49: [RESERVED]

**CHAPTER 50: MUSEUMS - GENERAL PROVISIONS
[RESERVED]**

CHAPTER 51: MUSEUM OF NEW MEXICO

PART 1: GENERAL PROVISIONS

4.51.1.1 ISSUING AGENCY:

Museum of New Mexico Board of Regents.

[4.51.1.1 NMAC - Rp, 4.51.1.1 NMAC, 12/12/17]

4.51.1.2 SCOPE:

This rule applies to the board and the department.

[4.51.1.2 NMAC - Rp, 4.51.1.2 NMAC, 12/12/17]

4.51.1.3 STATUTORY AUTHORITY:

Subsection G of Section 18-3-3 NMSA 1978.

[4.51.1.3 NMAC - Rp, 4.51.1.3 NMAC, 12/12/17]

4.51.1.4 DURATION:

Permanent.

[4.51.1.4 NMAC - Rp, 4.51.1.4 NMAC, 12/12/17]

4.51.1.5 EFFECTIVE DATE:

December 12, 2017, unless a later date is cited at the end of the section.

[4.51.1.5 NMAC - Rp, 4.51.1.5 NMAC, 12/12/17]

4.51.1.6 OBJECTIVE:

This part defines the membership of the board of regents of the museum of New Mexico and the roles and duties of the board members.

[4.51.1.6 NMAC - Rp, 4.51.1.6 NMAC, 12/12/17]

4.51.1.7 DEFINITIONS:

As used in this rule:

A. "Directors" means the directors of each of the six divisions of the department of cultural affairs that are part of the museum of New Mexico.

B. "Department" means the department of the cultural affairs.

C "Board" means the board of regents of the museum of New Mexico.

D. "Museum" means the museum of New Mexico.

E. "Executive assistant" means the person appointed by the board to perform administrative tasks for the board that is either an employee of the department or a contractor.

[4.51.1.7 NMAC - Rp, 4.51.1.7 NMAC, 12/12/17]

4.51.1.8 RULES AND PROCEDURES OF THE BOARD OF REGENTS:

A. Name: The name of the board is the museum of New Mexico board of regents.

B. Officers: At its annual meeting, the board shall elect officers consisting of a president, a vice president, and a secretary, who shall serve one-year terms or until the board elects successors.

(1) The president shall preside at all meetings of the board and shall perform all duties and exercise all powers usually pertaining to the office of president, including the appointment of committees and the delegation of authority to specific offices or board members.

(2) The vice president shall, in the absence or incapacity of the president, exercise all the powers and duties of the president.

(3) The secretary shall, in the absence or incapacity of the president and vice president, exercise all the powers and duties of the president. The secretary shall also work with the executive assistant to ensure that the board's actions and documents are properly maintained, recorded, and retained. In particular, the secretary shall ensure that the executive assistant records the board's meeting minutes and obtains proper signatures on legal documents. The secretary shall write a memo when all documents are received, certifying that the meeting file is complete.

C. Meetings:

(1) All meetings of a quorum of the members of the board shall be public meetings in accordance with the provisions of the Open Meetings Act (Sections 10-15-1 to 10-15-4 NMSA 1978).

(2) Annual meeting: The midsummer meeting is the board's annual meeting.

(3) Regular meetings: Regular meetings shall be scheduled not less than once every two months.

(4) Special meetings: The president may call special meeting at any time for a stated purpose; the president shall call a special meetings if requested by any five board members.

(5) Quorum: A quorum of the board shall consist of five members.

(6) Agenda: Any member of the board may request inclusion of an item of business on the agenda in accordance with the Open Meetings Act constraints, or a member may introduce such items at the time of meeting in the appropriate order of business for discussion purposes only. Persons, not members of the board, desiring to be heard by the board may be placed on the agenda by notifying the executive assistant two weeks in advance of regular meeting; if this is not done, a majority vote of the members present will be required for the matter to be heard.

(7) Voting: All members of the board, including the presiding officer, shall have one vote. Proxy votes shall not be permitted. The majority vote of members present shall prevail.

[4.51.1.9 NMAC - Rp 4.51.1.10 NMAC & 4.51.1.11 NMAC, 12/12/17]

4.51.1.9 DUTIES AND RESPONSIBILITIES OF THE BOARD:

The board shall perform and execute the powers and duties authorized to it under Section 18-3-3 NMSA 1978, or such other statutes that may apply and any additional responsibilities it designates for itself that are permitted by law. Among its duties, the board:

A. shall elect from among its members a president and other officers deemed necessary by it;

B. shall establish museum policy and determine the mission and direct the development of the museum;

C. shall solicit funds for the purpose of developing, restoring and equipping the museum and its property and for the purchase of objects and works of art for its collections and for the development of exhibits and other public programs;

D. shall exercise trusteeship over the collections of the museum;

E. shall hold title to all property for museum use;

F. shall review and have approval authority over permanent modifications to the real property to which it holds title and the architectural elements of the property, including but not limited to permanent changes to the interior and exterior of the museum's buildings and new permanent signage and permanent modifications to existing signage;

G. shall acquire objects of historical, archaeological and ethnological interest and works of fine art, folk art and craft of interest to the public and real property for museum use or benefit by purchase, donation and bequest;

H. shall adopt rules as appropriate governing;

(1) the loan of objects and exhibits to qualified institutions and agencies for the purpose of exhibition;

(2) gifts, donations or loans of exhibit or collection materials for the museum;

(3) the licensure of the museum's intellectual property; and

(4) other matters necessary to carry out the provisions of Chapter 18, Article 3 NMSA 1978;

I. shall enter into leases with public or private agencies or organizations for the use of museum premises or facilities as appropriate for time periods that exceed 45 days;

J. shall cooperate with other agencies and political subdivisions of municipal, state, tribal and federal governments and private organizations and individuals to the extent necessary to establish and maintain the museum and its programs;

K. shall, subject to statutory provisions and excepting temporary statewide initiatives of the secretary of cultural affairs, impose admission fees to the museum facilities and programs;

L. shall review annually the performance of the directors and report its findings to the secretary of cultural affairs;

M. shall review and approve all proposed dispositions of property belonging to the museum or the state of New Mexico in the care and custody of the museum, which disposition shall thereafter take place in accordance with all appropriate law and regulations;

N. shall know the programs and needs of the museum in relation to the state; keep abreast of standards and trends;

O. are encouraged to attend regional, state and national meetings and workshops, and affiliate with the appropriate professional organizations when possible;

P. shall establish good public relations for the museum in contacts with the community at large;

Q. may request such financial information from the department as it deems necessary to serve as trustee to the museum's collections;

R. may request the directors to present at board meetings a report of the activities of their respective divisions subsequent to the previous board meeting, including

proposed and projected plans of operation and a report of any proposed property dispositions;

S. may request that the secretary of cultural affairs furnish to the board copies of the state auditor's annual audit report of the department's books and records, and such interim or other reports;

T. may give the secretary of cultural affairs ex officio status on all committees of the board and any other committees created by the board, except for any board committee formed to recommend candidates for directors to the secretary of cultural affairs; and

U. may adopt a schedule of hours of operation and holiday closings for the museum, and any changes thereto, during a public meeting and shall post such schedule on its website.

[4.51.1.9 NMAC - Rp, 4.51.1.8 NMAC & 4.51.1.11 NMAC, 12/12/17]

4.51.1.10 THE MUSEUM OF NEW MEXICO:

A. Organization of the museum. The museum is a system of museums, historic sites, the laboratory of anthropology, the office of archeological services, the museum of New Mexico press, and archeological collections. By statute, it is divided into six divisions.

B. Property. The board may acquire and control real property and collections by purchase, donation, and bequest for museum use or benefit at any time. Responsibility for the administration of its holdings, in accordance with all appropriate state laws and regulations, rests with the museum.

[4.51.1.10 NMAC - Rp, 4.51.1.13 NMAC, 12/12/17]

PART 2: [RESERVED]

PART 3: FEES [RESERVED]

PART 4: MUSEUM ADMISSIONS POLICY [REPEALED]

[This part was repealed on December 12, 2017.]

PART 5: ARCHAEOLOGICAL RECORDS REPOSITORY AND CULTURAL RESOURCE INFORMATION SYSTEM [REPEALED]

[This part was repealed on May 31, 2016.]

PART 6: DISPLAY AND SALE OF MERCHANDISE ON THE GROUNDS AND AREAS OF THE MUSEUM

4.51.6.1 ISSUING AGENCY:

Office of Cultural Affairs, Museum Division (Museum of New Mexico).

[Recompiled 10/31/01]

4.51.6.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.51.6.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.51.6.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.51.6.5 EFFECTIVE DATE:

[Filed May 27, 1987]

[Recompiled 10/31/01]

4.51.6.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/31/01]

4.51.6.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/01]

4.51.6.8 DISPLAY AND SALE OF MERCHANDISE ON THE GROUNDS AND AREAS OF THE MUSEUM:

A. The director of the museum shall have the authority to permit the following persons, programs, or organizations to engage in the display and sales of items, and to engage in fund-raising activities, on museum grounds:

(1) The museum of New Mexico foundation and the international folk art foundation;

(2) Annually scheduled markets;

(3) Programs or units of the museum of New Mexico, including the portal program of the palace of the governors;

(4) Other artistic and cultural programs or institutions consistent with the museum's policies and educational goals.

B. No other programs or activities involving the display or sale of merchandise, or involving fund-raising, shall be allowed on museum grounds.

[Recompiled 10/31/01]

PART 7: [RESERVED]

PART 8: POLICY ON APPRAISALS AND AUTHENTICATIONS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 9: POLICY ON BEQUESTS AND DEFERRED GIVING [REPEALED]

[This part was repealed on December 12, 2017.]

PART 10: POLICY ON CARE OF COLLECTIONS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 11: POLICY ON COLLECTION, DISPLAY AND REPATRIATION OF CULTURALLY SENSITIVE MATERIALS

4.51.11.1 ISSUING AGENCY:

Office of Cultural Affairs, Museum Division (Museum of New Mexico).

[Recompiled 10/31/01]

4.51.11.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.51.11.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.51.11.4 DURATION:

[RESERVED]

[Recompiled 10/31/01]

4.51.11.5 EFFECTIVE DATE:

[Filed February 5, 1991]

[Recompiled 10/31/01]

4.51.11.6 OBJECTIVE:

The policy of the museum of New Mexico is to collect, care for, and interpret materials in a manner that respects the diversity of human cultures and religions. Culturally sensitive materials include material culture as well as the broader ethical issues which surround their use, care, and interpretation by the museum. The museum's responsibility and obligation are to recognize and respond to ethical concerns.

[Recompiled 10/31/01]

4.51.11.7 DEFINITIONS:

A. "Culturally sensitive materials" are objects or materials whose treatment or use is a matter of profound concern to living peoples; they may include, but are not limited to:

(1) "human remains and their associated funerary objects" shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later;

(2) "sacred objects" shall mean specific items which are needed by traditional religious leaders for the practice of an ongoing religion by present-day adherents;

(3) photographs, art works, and other depictions of human remains or religious objects, and sacred or religious events; and

(4) museum records, including notes, books, drawings, and photographic and other images relating to such culturally sensitive materials, objects, and remains.

B. "Concerned party" is a museum-recognized representative of a tribe, community, or an organization linked to culturally sensitive materials by ties of culture, descent, and/or geography. In the case of a federally recognized Indian tribe, the representative shall be tribally-authorized.

C. "Repatriation" is the return of culturally sensitive materials to concerned parties. Repatriation is a collaborative process that empowers people and removes the stigma of cultural paternalism which hinders museums in their attempts to interpret people and cultures with respect, dignity, and accuracy. Repatriation is a partnership created through dialogue based upon cooperation and mutual trust between the museum and the concerned party.

D. The museum of New Mexico's committee on sensitive materials is the committee, appointed by the director of the museum of New Mexico, that shall serve as the museum of New Mexico's advisory body on issues relating to the care and treatment of sensitive materials.

[Recompiled 10/31/01]

4.51.11.8 IDENTIFICATION OF CONCERNED PARTIES:

A. The museum shall initiate action to identify potentially concerned parties who may have an interest in culturally sensitive material in the museum's collections.

B. The museum encourages concerned parties to identify themselves and shall seek out those individuals or groups whom the museum believes to be concerned parties.

C. The museum's sensitive materials committee shall review all disputed individual claims of concerned-party status in consultation with the tribe, community, or organization which the individual(s) claims to represent. The museum's sensitive materials committee shall assist, when necessary, in designating concerned parties who have an interest in culturally sensitive materials contained in the collections of the museum of New Mexico.

D. The museum shall provide an inventory of pertinent culturally sensitive materials to recognized concerned parties.

E. The museum shall work with concerned parties to determine the appropriate use, care and procedures for culturally sensitive materials which best balance the needs of all parties involved.

[Recompiled 10/31/01]

4.51.11.9 IDENTIFICATION AND TREATMENT OF CULTURALLY SENSITIVE MATERIALS:

A. Within five years of the date of adoption of this policy, each museum unit shall survey to the extent possible (in consultation with concerned parties, if appropriate) its collections to determine items or material which may be culturally sensitive materials. The museum unit shall submit to the director of the museum of New Mexico an inventory of all potentially culturally sensitive materials. The inventory shall include to the extent possible the object's name, date and type of accession, catalogue number, and cultural identification. Within six months of submission of its inventory to the director of the museum of New Mexico, each museum unit shall then develop and submit, a plan to establish a dialogue with concerned parties to determine appropriate treatment of culturally sensitive items or materials held by the unit.

B. As part of its treatment plans for culturally sensitive materials, the museum reserves the right to restrict access to, or use of, those materials to the general public. The museum staff shall allow identified concerned parties access to culturally sensitive materials.

C. Conservation treatment shall not be performed on identified culturally sensitive materials without consulting concerned parties.

D. The museum shall not place human remains on exhibition. The museum may continue to retain culturally sensitive materials. If culturally sensitive materials, other than human remains, are exhibited, then a good-faith effort to obtain the advice and counsel of the proper concerned party shall be made.

E. All human skeletal remains held by the museum shall be treated as human remains and are de facto sensitive materials. The museum shall discourage the further collection of human remains; however, it will accept human remains as part of its mandated responsibilities as the state archaeological repository. At its own initiation or at the request of a concerned party, the museum may accept human remains to retrieve them from the private sector and furthermore, may accept human remains with the explicit purpose of returning them to a concerned party.

[Recompiled 10/31/01]

4.51.11.10 REPATRIATION OF CULTURALLY SENSITIVE MATERIALS:

A. On a case-by-case basis, the museum shall seek guidance from recognized, concerned parties regarding the identification, proper care, and possible disposition of culturally sensitive materials.

B. Negotiations concerning culturally sensitive materials shall be conducted with professional discretion. Collaboration and openness with concerned parties are the goals of these dialogues, not publicity. If concerned parties desire publicity, then it will be carried out in collaboration with them.

C. The museum shall have the final responsibility of making a determination of culturally sensitive materials subject to the appeal process as outlined under Section VII A. [now Subsection A of 4.51.11.12 NMAC]

D. The museum of New Mexico accepts repatriation as one of several appropriate actions for culturally sensitive materials only if such a course of action results from consultation with designated concerned parties as described in Section III of this policy [now 4.51.11.8 NMAC].

E. The museum may accept or hold culturally sensitive materials for inclusion in its permanent collections.

F. The museum may temporarily accept culturally sensitive materials to assist efforts to repatriate them to the proper concerned party.

G. To initiate repatriation of culturally sensitive materials, the museum of New Mexico's current deaccession policy shall be followed. The curator working with the concerned party shall complete all preparations for deaccession through the museum collections committee and director before negotiations begin.

H. Repatriation negotiations may also result in, but are not limited to, the retention of objects with no restrictions on use, care, and/or exhibition; the retention of objects with restrictions on use, care and/or exhibition; the lending of objects either permanently or temporarily for use to a community; and the holding in trust of culturally sensitive materials for the concerned party.

I. When repatriation of culturally sensitive materials occurs, the museum reserves the right to retain associated museum records but shall consider each request for such records on an individual basis.

[Recompiled 10/31/01]

4.51.11.11 ONGOING RECOVERY OR ACCEPTANCE OF ARCHAEOLOGICAL MATERIALS:

A. In providing sponsored archaeological research or repository functions, the museum shall work with agencies that regulate the inventory, scientific study, collection,

curation, and/or disposition of archaeological materials to ensure, to the extent possible under the law, that these mandated functions are provided in a manner that respects the religious and cultural beliefs of concerned parties.

B. When entering into agreements for the acceptance of, or continued care for, archaeological repository collections, the museum may issue such stipulations as are necessary to ensure that the collection, treatment, and disposition of the collections include adequate consultation with concerned parties and are otherwise consistent with this policy.

C. In addition to the mandated treatment of research sites and remains and in those actions where treatment is not mandated, defined, or regulated by laws, regulations, or permit stipulations, the museum shall use the following independent guidelines in recovering or accepting archaeological materials.

(1) Prior to undertaking any archaeological studies at sites with an apparent relationship to concerned parties, the museum shall ensure that proper consultation with the concerned parties has taken place.

(2) When so requested by concerned parties, the museum shall include an observer, chosen by the concerned party, in the crew of an archaeological study.

(3) The museum shall not remove human remains and their associated funerary objects or materials from their original context nor conduct any destructive studies on such remains, objects, and materials, except as part of procedures determined to be appropriate through consultation with concerned parties, if any.

(4) The museum reserves the right to restrict general public viewing of in situ human remains and associated funerary objects or items of a sacred nature and further shall not allow the public to take or prepare images or records of such objects, materials, or items, except as part of procedures determined to be appropriate through consultation with concerned parties. Photographic and other images of human remains shall be created and used for scientific records only.

(5) The museum reserves the absolute right to limit or deny access to archaeological remains being excavated, analyzed, or curated if access to these remains would violate religious practices.

D. Twice each calendar year, the state archaeologist shall compile and distribute a listing of all proposed, ongoing, and complete state-permitted archaeological work in New Mexico and all museum of New Mexico archaeological projects state-permitted or not. The list shall be public information and, in consonance with this policy, shall be distributed to all tribal governments in New Mexico, as well as to other recognized organizations that may be concerned with ongoing archaeological excavations and their findings.

[Recompiled 10/31/01]

4.51.11.12 APPEAL PROCESS:

A. A museum-recognized concerned party, or a party that claims to be a concerned party but which is not recognized to have such status by the museum's committee on sensitive materials, may appeal in writing to the director of the museum of New Mexico. The director shall issue a written response to the appeal within thirty (30) calendar days of its receipt. The decision of the director may be contested by written appeal to the board of regents of the museum, which shall take such final action as it deems appropriate.

B. Museum staff may appeal a decision of the sensitive materials committee in writing to the director of the museum of New Mexico. The director shall issue a written response to the appeal within thirty (30) calendar days of its receipt. The decision of the director shall be final.

[Recompiled 10/31/01]

PART 12: [RESERVED]

PART 13: POLICY ON EXHIBITIONS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 14: POLICY ON FUND-RAISING [REPEALED]

[This part was repealed on December 12, 2017.]

PART 15: [RESERVED]

PART 16: [RESERVED]

PART 17: POLICY ON LANDSCAPING AT MUSEUM FACILITIES [REPEALED]

[This part was repealed on December 12, 2017.]

PART 18: POLICY ON LIBRARY COLLECTIONS

4.51.18.1 ISSUING AGENCY:

Office of Cultural Affairs, Museum Division (Museum of New Mexico).

4.51.18.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.51.18.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.51.18.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.51.18.5 EFFECTIVE DATE:

[Filed October 20, 1982]

[Recompiled 10/31/01]

4.51.18.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/31/01]

4.51.18.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/01]

4.51.18.8 POLICY ON LIBRARY COLLECTIONS:

A. The museum of New Mexico shall provide separate library facilities for each of the collecting bureaus.

(1) The libraries will acquire materials that:

(a) provide background information about the collections for the general public;

(b) assist the staff in documenting, interpreting and caring for the collections;

- (c) facilitate the administration and operation of the museum; and
- (d) enhance research capabilities.

(2) Museum libraries will avoid unnecessary duplication of holdings.

B. Museum staff and the public shall have access to library materials on library premises. Other access to materials may include: borrowing, although such privileges may not necessarily extend to all items or to all library users; interlibrary loans, provided library users will not thereby suffer serious inconvenience; and copying, which will be permitted in accordance with current copyright laws and as the condition of items permit.

C. Gifts will normally be accepted only on an unrestricted basis. Exceptions must be approved in advance by the responsible associate director or bureau chief. When a donation is made, the librarian should execute a timely acknowledgement and record the gift in accordance with established museum procedures.

D. Routine acquisition and discard decisions are the responsibility of the individual library staffs. Only those items that are related to the purposes and collections of the museum of New Mexico need be retained. Libraries shall discard inappropriate materials according to the highest standards of museum library ethics and the laws of New Mexico.

E. Museum libraries should strive to protect and preserve materials in their collections as well as all library and related museum records. Each library shall develop a plan for routine care and repair of materials, the establishment of proper storage and environmental conditions, security, and disaster prevention and action.

[Recompiled 10/31/01]

PART 19: POLICY ON PHOTOGRAPHING MUSEUM COLLECTIONS

4.51.19.1 ISSUING AGENCY:

Office of Cultural Affairs, Museum Division (Museum of New Mexico).

[Recompiled 10/31/01]

4.51.19.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.51.19.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.51.19.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.51.19.5 EFFECTIVE DATE:

[Filed October 20, 1982]

[Recompiled 10/31/01]

4.51.19.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/31/01]

4.51.19.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/01]

4.51.19.8 POLICY ON PHOTOGRAPHING MUSEUM COLLECTIONS:

A. Casual photography, for personal use only, is permitted in exhibition areas of the museum of New Mexico unless otherwise posted. Use of tripods and flash attachments with cameras, however, is not permitted.

B. The museum maintains a service to provide, for a reasonable fee, photographic reproductions of items in its collections. Permission to photograph objects may be granted to individual researchers upon approval by the responsible curator or associate director. Requests to photograph the collections must be made in writing to the appropriate bureau, which will issue a permit if permission is granted. Items to be photographed will be handled and accompanied at all times by a curator. Under no circumstances may an object from the collections be removed from the museum complex to be photographed without curatorial supervision.

C. The museum of New Mexico retains all rights to publication of historic photographs and photographic images in its collections. Although these rights may be

assigned, photographing collection items does not automatically imply permission to reproduce or publish such materials.

[Recompiled 10/31/01]

PART 20: POLICY ON PRESERVATION, RESTORATION AND RECONSTRUCTION [REPEALED]

[This part was repealed on December 12, 2017.]

PART 21-23: [RESERVED]

PART 24: POLICY ON ARCHAEOLOGICAL CUSTODY [REPEALED]

[This part was repealed on December 12, 2017.]

PART 25: POLICY ON COPYRIGHTS, CREDITS AND REPRODUCTIONS

This rule is filed as Rule No. 25.

4.51.25.1 ISSUING AGENCY:

Office of Cultural Affairs, Museum Division (Museum of New Mexico).

[Recompiled 10/21/01]

4.51.25.2 SCOPE:

[RESERVED]

[Recompiled 10/21/01]

4.51.25.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/21/01]

4.51.25.4 DURATION:

Permanent.

[Recompiled 10/21/01]

4.51.25.5 EFFECTIVE DATE:

[Filed October 26, 1982]

[Recompiled 10/21/01]

4.51.25.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/21/01]

4.51.25.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/21/01]

4.51.25.8 POLICY ON COPYRIGHTS, CREDITS AND REPRODUCTIONS:

A. The museum of New Mexico will comply with the Federal Copyright Law and uphold the rights of authorship as recognized therein. All copyrights derived from the collections shall be obtained in the name of The museum of New Mexico. The museum presumes it has copyright to all collection items acquired prior to 1978 unless such rights were expressly reserved by the donor or seller. Use of unrestricted items may be granted, licensed or sold to others, but credit to the Museum must accompany all such use unless otherwise stipulated by written agreement. Requests for reproduction of copyrighted material should be referred to the associate director or chief of the appropriate bureau for approval.

B. The manufacture and sale or reproduction of both copyrighted and non-copyrighted items in the collections is a way of insuring wider public awareness of those collections and should be fostered by the museum. The director shall have the authority to license the manufacture and sale of reproductions and shall also insure the accuracy and appropriateness of these items, the manner in which they are advertised and the conditions under which they are sold.

[Recompiled 10/21/01]

PART 26: POLICY ON CULTURAL PROPERTIES [REPEALED]

[This part was repealed on December 12, 2017.]

**PART 27: ACQUISITIONS: GIFTS, PURCHASES AND EXCHANGES
[REPEALED]**

[This part was repealed on December 12, 2017.]

PART 28: POLICY ON COMMERCIAL USE OF MUSEUM COLLECTIONS AND FACILITIES

4.51.28.1 ISSUING AGENCY:

Office of Cultural Affairs, Museum Division (Museum of New Mexico).

[Recompiled 10/31/01]

4.51.28.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.51.28.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.51.28.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.51.28.5 EFFECTIVE DATE:

[Filed November 3, 1982]

[Recompiled 10/31/01]

4.51.28.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/31/01]

4.51.28.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/01]

4.51.28.8 POLICY ON COMMERCIAL USE OF MUSEUM COLLECTIONS AND FACILITIES:

A. Use of museum of New Mexico collections and facilities for commercial purposes shall not be encouraged and will be allowed only when carefully, controlled and monitored by museum staff. Permission for commercial use of museum collections and facilities must be obtained from the associate director of the appropriate bureau and the director, museum of New Mexico. Use of museum objects will be permitted only upon written recommendation from the responsible curator, who will accompany the objects during their use. A prior letter of intent and proof of adequate insurance against damages are also required.

B. Utilization of museum facilities must not result in permanent alteration to grounds or structures. Facilities must be returned to their prior condition after use, and the user will be responsible for all cleaning and repairs. Every effort should be made to avoid disrupting normal visitor access.

C. Commercial media productions must not distort the purposes or historical integrity of the museum and its collections. Permission to use objects and facilities will be withdrawn by the director if the museum is compromised in any manner. No object, exhibit or structure will be used in promotion of a product or service that implies endorsement by the state or the museum of New Mexico.

[Recompiled 10/31/01]

PART 29: POLICY ON DEACCESSION OR REMOVAL OF MUSEUM OBJECTS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 30: POLICY ON INTERNSHIPS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 31: POLICY ON LOSSES AND DAMAGE TO MUSEUM COLLECTIONS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 32: POLICY ON PERSONAL COLLECTING BY MUSEUM EMPLOYEES [REPEALED]

[This part was repealed on December 12, 2017.]

PART 33-35: [RESERVED]

PART 36: POLICY ON WRITING AND LECTURING [REPEALED]

[This part was repealed on December 12, 2017.]

PART 37: [RESERVED]

PART 38: ALTERATION OF BUILDING AND GROUNDS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 39: CAPITALIZATION OF COLLECTIONS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 40: CONTRACTS FOR PROFESSIONAL SERVICES [REPEALED]

[This part was repealed on December 12, 2017.]

PART 41: [RESERVED]

PART 42: FOUNDATION GRANTS [REPEALED]

[This part was repealed on December 12, 2017.]

**PART 43: CONSULTING AND OTHER OUTSIDE EMPLOYMENT
[REPEALED]**

[This part was repealed on December 12, 2017.]

PART 44: [RESERVED]

PART 45: BILINGUAL PROGRAMS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 46: TRAINING OPPORTUNITIES [REPEALED]

[This part was repealed on December 12, 2017.]

PART 47: DATA PROCESSING PROGRAMS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 48: LOANS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 49: [RESERVED]

PART 50: PRIVATE AND NONPROFIT USE OF MUSEUM FACILITIES

4.51.50.1 ISSUING AGENCY:

Office of Cultural Affairs, Museum Division (Museum of New Mexico).

[Recompiled 10/31/01]

4.51.50.2 SCOPE:

[RESERVED]

[Recompiled 10/31/01]

4.51.50.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 10/31/01]

4.51.50.4 DURATION:

Permanent.

[Recompiled 10/31/01]

4.51.50.5 EFFECTIVE DATE:

[Filed October 29, 1984]

[Recompiled 10/31/01]

4.51.50.6 OBJECTIVE:

[RESERVED]

[Recompiled 10/31/01]

4.51.50.7 DEFINITIONS:

[RESERVED]

[Recompiled 10/31/01]

4.51.50.8 PRIVATE AND NON-PROFIT USE OF MUSEUM FACILITIES:

A. The museum of New Mexico encourages use of its auditoriums and other public facilities by non-profit organizations and private groups to conduct public programs of broad interest for the general public. Private use of the facilities shall be approved only if there is no conflict with the museum's scheduling of other public programs or events and its daily operation and personnel requirements. A fee will be charged for public and private use. A set fee schedule, including a sliding scale rate, and standardized contract will be established, used and reviewed by each museum and state monuments unit and will be approved annually by the director of the museum of New Mexico.

B. For both public and private use, it is understood that the operational requirements of the museum, the security and maintenance of its buildings, exhibitions and collections shall be given first consideration. Because space is limited, preference shall always be given to programs that are museum-related or that are of educational or cultural value.

C. All requests to use the public facilities of the museum of New Mexico must be approved in writing by the associate director responsible for the buildings in which the facilities are located. Series programs - that is, a scheduled sequence of four or more programs by the same group or organization within a period of six months - require the approval of the appropriate associate director and the director of the museum of New Mexico.

D. Application for use of the museum of New Mexico facilities or for museum sponsorship, setting forth specific details of the proposed use in writing, must be made not less than twenty-one days in advance. Applications shall be handled on a first come, first serve basis. Users must sign an agreement form with the museum. Permission, if granted, shall not create a vested lease or tenure in such use.

[Recompiled 10/31/01]

4.51.50.9 CATEGORIES OF PERMITTED USE:

A. Museum use: This category includes activities developed and presented to the public by the staff of the museum or formally affiliated groups or individuals, with or without an admission charge.

B. State agencies use: This category includes activities sponsored and presented by other state agencies as part of their professional duties, such as a meeting. Use will be granted only if the space and personnel are available. The museum may waive the rental fee, but it is understood that the user shall be responsible for payment of the guard and any other special or required fees.

C. Co-sponsored use: This category includes activities developed and presented by the museum of New Mexico staff in collaboration - that is, museum staff actively works to develop an activity - or in conjunction - that is, museum staff works to implement a developed activity - with groups outside the museum.

D. Public and private use: This category includes activities presented by groups not affiliated with the museum of New Mexico.

(1) Public and private uses permitted under this category include, but are not limited to, concerts, performances, meetings, conventions, conferences, receptions, lectures, and other educational and cultural presentations that are either directly or indirectly related to museum's interests and purposes.

(2) All requests under this category will be considered and evaluated in relation to other events and museum functions already planned, and the availability of personnel, such as guards and other supervisory staff when needed. A request may be rejected if the proposed use would overburden the staff of the museum unit that is being requested for use. Fees under this category will be charged according to an established rate schedule, and the costs of all personnel services will be borne by the sponsoring agent. The associate director of that unit may, however, elect to waive rental fees if the sponsoring agent is a non-profit organization and the planned programs significantly enhance the programs and activities of the museum. A waiver of fees will not constitute sponsorship by the museum, unless specifically stated or granted.

E. Fund raising: No fund-raising activities will be permitted on the museum of New Mexico premises, except for the benefit of the museum.

F. Exceptions: Any requests to make exceptions to the stated uses must be submitted in written form to the appropriate associate director and the director of the museum of New Mexico, and must be approved in written form, after careful review and evaluation.

[Recompiled 10/31/01]

4.51.50.10 CONDITIONS OF USE:

A. In addition to rental fees, the cost of all personnel services, including a set fee for security services, shall be borne by the user. The museum may require payment of all or any part of the rental fees, such as a deposit to secure a reservation, in advance of a scheduled event. Fees will be established on a set museum-wide schedule, and may vary according to the size of space, services available, location, etc., of each museum unit.

B. Advance ticket sales for events sponsored by non-museum groups or organizations are not permitted on museum premises. Ticket sales on museum premises will be allowed on the day of the event. Generally, tickets go on sale one-half

hour before an event begins, or with special permission, one hour or more before an event. In no instance may a member of the museum of New Mexico staff or a museum volunteer, as a part of his or her job assignment during working hours, engage in the sale of tickets or handle any funds connected with non-museum programs.

C. No interior or exterior advertising, such as posters, brochures, merchandise displays or other promotional materials in connection with scheduled activities will be permitted in museum buildings, unless a request is submitted in written form and written approval is received from the associate director.

D. No sales of any kind in connection with scheduled activities will be permitted. Any exceptions must be approved in written form by the appropriate associate director.

E. No structural or permanent physical alterations, attachment to the permanent structures or modifications of museum property will be permitted, nor will any activity that requires closure of the exhibition areas during regularly scheduled visiting hours, except by permission in writing from the associate director of that museum unit.

F. No person shall be permitted to operate any sound, lighting or other equipment without prior approval from the appropriate museum staff person. All fire regulations and laws concerning public safety shall be observed at all times. With use of the museum's auditoriums, the user must keep the aisles free of any obstructions and abide by all emergency exit regulations.

G. At the discretion of the director or associate director, users may be required to provide a certificate of insurance for property damage and public liability.

H. No refreshments, such as food or beverage of any kind or nature, shall be taken into or consumed in the public facilities of the museum, unless authorized by the appropriate associate director.

I. Alcoholic beverages of any kind whatsoever will not be permitted, consumed or served on museum premises without first obtaining the consent, in writing (a signature on the contract form may suffice) from the appropriate associate director of the facility being used. Permission will be granted only if alcoholic beverages are being served as part of a private reception or as part of a "public celebration", which includes receptions that are open to the public and being held in conjunction with a concert or other event that fits under the category of public use. If permission is granted, it is understood that the user must comply with all museum policies and all city and state laws, rules, ordinances and regulations concerning the serving and consumption of all alcoholic beverages. At no time will "Bring Your Own Bottle" be permitted; at all times, some form of food, such as catered hors d'oeuvres, must be served in conjunction with the serving of alcoholic beverages. Once permission is granted, the user is responsible for applying for a "special dispenser's permit" from the state of New Mexico's department of alcoholic beverage control, at least fifteen (15) days prior to the event, and must pay the \$10 fee. The user must then have the permit validated by the city of Santa Fe or, in the case of

state monuments, by the local municipal authority, and pay an additional \$10 fee, for a total of \$20 when both fees are paid. To complete the process, the user must then present a copy of a valid permit before approval of his or her contract will be granted. While the museum does not encourage the sale of alcohol on its premises, a user may request in writing, stating strong reasons for the request, that the sale of alcoholic beverages be permitted. Permission shall be at the discretion of the associate director of the facility being used. if granted, the user must comply with all state and city laws concerning the sale of all alcoholic beverages.

J. The user must accept the existing heating and cooling capacities of the museum's public facilities as being adequate in their present condition.

K. The user, at its own expense, shall keep the museum premises being rented or occupied in a safe, sanitary and sightly condition, in good repair, and shall restore and yield back the same to the museum, with ordinary wear and tear expected. If the premises are not be [sic] so kept by user, the museum may enter and do all things necessary to restore the premises to the condition required. In such instances, all costs will be charged to the user.

[Recompiled 10/31/01]

PART 51: PUBLICATIONS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 52: SALES SHOPS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 53: ADJUNCY APPOINTMENTS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 54: DOOR DONATIONS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 55: CODE OF ETHICS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 56: [RESERVED]

PART 57: GOVERNANCE OF THE PORTAL PROGRAM AT THE PALACE OF THE GOVERNORS

4.51.57.1 ISSUING AGENCY:

Department of Cultural Affairs and Museum of New Mexico Board of Regents.

[4.51.57.1 NMAC - Rp, 4.51.57.1 NMAC, 12/27/2018]

4.51.57.2 SCOPE:

Museum of New Mexico, palace of the governors state history museum division and program applicants and participants.

[4.51.57.2 NMAC - Rp, 4.51.57.2 NMAC, 12/27/2018]

4.51.57.3 STATUTORY AUTHORITY:

Subsection E of Section 9-4A-6 NMSA 1978 of the Cultural Affairs Department Act authorizes the secretary of the department of cultural affairs to make and adopt such reasonable procedural rules as necessary to carry out the duties of the department and its divisions. Subsections G and I of Section 18-3-3 NMSA 1978 authorize the board of regents to adopt such rules as may be appropriate to carry out the provisions of its statutory powers and duties, including the duty to cooperate with individuals to the extent necessary to establish and maintain the museum and its programs.

[4.51.57.3 NMAC - Rp, 4.51.57.3 NMAC, 12/27/2018]

4.51.57.4 DURATION:

Permanent.

[4.51.57.4 NMAC - Rp, 4.51.57.4 NMAC, 12/27/2018]

4.51.57.5 EFFECTIVE DATE:

12/27/2018, unless a later date is cited at the end of a section.

[4.51.57.5 NMAC - Rp, 4.51.57.5 NMAC, 12/27/2018]

4.51.57.6 OBJECTIVE:

The objective of this rule is to govern and regulate the operation of the program, including the quality and authenticity of items offered for sale on the portal of the museum. These rules are not in any way an assumption of responsibility by the division, the board of regents, or the secretary of the department of cultural affairs for the actions or representations made by participants.

[4.51.57.6 NMAC - Rp, 4.51.57.6 NMAC, 12/27/2018]

4.51.57.7 DEFINITIONS:

- A.** "Add-on" means a new or additional product offered in the program.
- B.** "Applicant" means an individual who submits an application to be a participant pursuant to these rules.
- C.** "Application" means the form used by the division for applicants to apply to participate in the program.
- D.** "Board of regents" means the board of regents of the museum of New Mexico.
- E.** "Child" means a son or daughter.
- F.** "Coordinator" means the division employee assigned by the director to serve as the liaison between the participants and the director.
- G.** "Demonstration" means the process by which applicants and participants demonstrate the ability to make the product(s) that applicants wish to sell in the program.
- H.** "Demonstration report" means the form described in 4.51.57.10 NMAC.
- I.** "Director" means the director of the division or the director's designee.
- J.** "Dishonest" means obtaining an unfair advantage during the election of portal committee members and officers or during the drawing, and includes, but is not limited to, taking two or more chips at the same time away from the drawing receptacle, getting in line for the morning draw after the duty officer has closed the line, drawing a numbered chip and giving the chip to another participant or member from a different household, or having more than one person from the same household in line for the morning draw or claiming more than one space per household on any given day.
- K.** "Division" means the palace of the governors state history museum division.
- L.** "Duty officer" means a portal committee member assigned by the portal committee to monitor the program area on a particular day.
- M.** "Findings" shall have the meaning given in Section 30-33-4 of the IACSA.
- N.** "Good standing" means a participant who sells in the program area at least once a year and is not on suspension or termination from the program.
- O.** "Household member" means a participant who resides in the same residence as another participant and who is related by blood, marriage, or adoption to the other

participant and includes a(n) spouse, parent, legal guardian, grandparent, son or daughter, grandchild, sibling, cousin, aunt, uncle, niece, nephew, and in-law.

P. "Identity badge" means the museum issued identification card for program participants.

Q. "Indian market" means the event held annually by the southwest association of Indian arts during the third weekend in August.

R. "Inspection" means the examination by one or more portal committee members of products displayed by a participant for sale to ensure compliance with these rules.

S. "IACSA" means the Indian Arts and Crafts Sales Act, Sections 30-33-1 through 30-33-11 NMSA 1978.

T. "Maker's Mark" means a symbol that applicants or participants use to identify their products.

U. "Minor children" means a person under the age of 18.

V. "Monitoring form" means a written report completed by a portal committee member that documents violation(s) of these rules by a participant.

W. "Museum" means the palace of the governors state history museum.

X. "Native American" means any person who is an enrolled member of a Native American tribe as evidenced by a tribal enrollment card or certified tribal records, or any person who can meet the minimum qualifications for services offered by the United States government to Native Americans because of their special status as Native Americans as evidenced by a certificate of degree of Native American blood card.

Y. "Native American handmade" means any product in which the entire shaping and forming of the product from raw materials and its finishing and decoration were accomplished by Native American hand labor and manually controlled methods that permit the maker to control and vary the construction, shape, design or finish of each part of each individual product, but does not exclude the use of findings, hand tools and equipment for buffing, polishing, grinding, drilling, sawing or sewing and other processes approved by regulations adopted under the IACSA.

Z. "Native American tribe" means any tribe, band, nation, Alaska native village or other organized group or community that is eligible for the special programs and services provided by the United States government to Native Americans because of their status as Native Americans, or any tribe that has been formally recognized as a Native American tribe by a state legislature.

AA. "Parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the participant when the participant was a son or daughter.

BB. "Participant" means an individual that has successfully completed the application process and has been accepted as an artist in the program.

CC. "Participant file" means the official program file which is a collection of papers, materials and documents relating to the individual program participant, and shall include, at a minimum, current address and contact information, proof that a participant is eligible and qualified to be a participant, e.g., application, documentation of demonstration, proof of tribal enrollment, clear description and picture of mark, a signed statement of responsibility, release, and agreement to participate in the portal program, and any disciplinary actions. A participant may review their file by making an appointment with the portal coordinator or director.

DD. "Portal committee" means the group of participants that monitors, in conjunction with the director coordinator, the daily operation of the program and the applicants' and participants' compliance with these rules.

EE. "Product" means Native American arts and crafts and traditional food stuffs offered for sale in the program that meet the requirements of these rules.

FF. "Program" means all activities that comprise the selection of participants and selling of products under these rules.

GG. "Program area" means the area described in 4.51.57.13 NMAC.

HH. "Reprimand" means the written notice or admonition to a participant of misconduct and the potential consequences of further misconduct.

II. "Son or daughter" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

JJ. "Space" means a designated area within the program area which is assigned, pursuant to this rule, to a participant to sell participant(s)'s product(s).

KK. "Spanish market" means the event held annually by the Spanish colonial art society during the third weekend of July.

LL. "Spouse" means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or

common law marriage that either was entered into in a State that recognizes such marriages or if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

MM. "Statement of responsibility, release, and agreement to participate in the portal program" is a statement signed by a participant acknowledging that in exchange for being allowed to participate in the portal program, the participant agrees to abide by applicable department policies and rules.

NN. "Suspension" means temporarily revoking of a portal participant's privilege to sell participant's products for a defined period of time, no less than one day and no more than twelve months.

OO. "Termination" means permanently revoking a participant's privilege to sell products in the program.

PP. "These rules" means 4.51.57 NMAC, Governance of the Portal Program at the Palace of the Governors State History Museum.

[4.51.57.7 NMAC - Rp, 4.51.57.7 NMAC, 12/27/2018]

4.51.57.8 RESOLUTIONS:

A. Whereas, the presence of Native American artists and artisans at the museum is an integral part of the history, tradition and function of the museum; and

B. Whereas, the museum of New Mexico has determined that reserving the museum portal for the display and sale of New Mexico Native American products not only helps preserve traditional aspects of New Mexico Native American culture but is also educational to the visiting public because it provides the public the opportunity for contact with New Mexico Native American artists and artisans in a historically relevant context;

C. Now, therefore, be it resolved by the board of regents and the secretary of the department of cultural affairs that the display and sale of handmade Native American art at the museum shall be governed as described in these rules.

[4.51.57.8 NMAC - Rp, 4.51.57.8 NMAC, 12/27/2018]

4.51.57.9 ADMINISTRATION OF THE PROGRAM:

A. The director shall designate a coordinator in consultation with the portal committee. The director or coordinator shall oversee the program in consultation with the portal committee. The portal committee, director, or coordinator may request the assistance of the Indian affairs department, the all-pueblo governor's council, the museum of Indian arts and culture, and other tribal entities of New Mexico.

(1) The coordinator shall serve as liaison between the participants, and the division and director in conjunction with the portal committee.

(2) The coordinator shall maintain the official records and files of the portal program including participant files and applications, demonstration reports, correspondence, forms, and financial records. Official records and files are the property of the division. The portal committee shall have access to files of the portal program.

(3) The portal committee with the coordinator may develop and schedule educational activities and events and perform other duties as assigned by the director.

B. The division shall provide interpretive materials on the history and culture of New Mexico, Native Americans and on the tradition of the program.

C. The division shall make a reasonable effort to consult with the portal committee before removing a participant but reserves the absolute right to immediately remove participants for conduct or behavior that poses an immediate threat to others or for other emergency situations permanent removal from the program is subject to the procedures outlined in 4.51.57.15 NMAC.

[4.51.57.9 NMAC - Rp, 4.51.57.14 NMAC, 12/27/2018]

4.51.57.10 PARTICIPANT QUALIFICATIONS AND APPLICATION PROCESS:

A. Qualification.

(1) To qualify as a participant artist in the program, an individual shall be 18 years of age or older, shall be Native American and shall be from a federally recognized tribe or pueblo of New Mexico.

(2) The director may, after consulting with the portal committee, allow in writing for a waiver of the requirement that a participant be a member of a New Mexico pueblo or tribe subject to such conditions as the director deems appropriate. The director, in consultation with the portal committee, shall issue such waivers in writing and grant them only to Native Americans when a waiver is consistent with the purpose of the program to present and preserve the historic Native American cultures of New Mexico.

B. Application process. No one shall sell in the program area until the director has approved the individual to be a participant based on an application, a demonstration, and the portal committee's recommendation.

(1) Application. Qualified individuals shall submit an application. The applicant shall submit the following in the application: name, contact information, emergency contacts, a proposed mark; proof of tribal enrollment; a signed statement of

responsibility, release, and agreement to participate in the portal program; and any other information requested by the coordinator.

(2) Demonstration. An applicant shall demonstrate, at the applicant's studio or residence and with the applicant's own tools or equipment, the making of the applicant's product(s), including any add-ons, to establish that the product(s) meet the quality and authenticity standards of 4.51.57.16 NMAC. However, if there is an excess of twenty applicants in backlog, the director, in consultation with the portal committee, has discretion to authorize demonstrations away from an applicant's studio or residence provided the applicant uses the applicant's own tools. An applicant may, however, use borrowed equipment when such equipment cannot be easily transported.

(a) The applicant shall perform the demonstration in the presence of at least two portal committee members who shall evaluate the applicant's products. The portal committee members shall not be persons related by blood, marriage, or adoption, which includes a(n) spouse, parent, legal guardian, grandparent, son or daughter, grandchild, sibling, cousin, aunt, uncle, niece, or nephew of the participant. The director or coordinator may also witness the demonstration.

(b) The portal committee members who are present shall prepare, review, and sign a demonstration report before the members depart from the applicant's residence or studio. The demonstration report shall contain the name of the artist, the address where the demonstration occurred, date of demonstration, the observed product(s), methodology and materials, a detailed narrative, and photographs of the applicant making the product, if permitted by the applicant. The portal committee members shall submit the demonstration report to the coordinator by the following portal committee meeting.

(c) Subsequent demonstration(s). The portal committee may require a subsequent demonstration before or after an applicant becomes a participant. Reasons for a subsequent demonstration(s) may include, but are not limited to, a request by the applicant for a demonstration, unclear or missing information from a demonstration report, request for add-on, absence from the program for a year or more, or questions regarding the quality or authenticity of work.

(d) The portal coordinator and the portal committee will maintain a list of those applicants waiting to demonstrate. Only completed applications will be placed on this list and demonstrations will be scheduled in a manner that is most efficient for those who will be witnessing the demonstration.

(e) If the portal committee, portal coordinator or the director is unable to contact an applicant for any reason, the applicant's name will be placed on an inactive status list that may be maintained by the portal committee and portal coordinator. If the applicant contacts the portal committee, portal coordinator or the director at a later date, the applicant's name will be placed at the end of the demonstration waiting list.

(f) Whenever possible, a portal committee member shall not witness a demonstration by a fellow tribal member without the presence of another unaffiliated tribal member, the portal coordinator or the director.

(g) If the portal committee determines that the assistance of former portal committee members is needed with witnessing demonstrations, then with the director or coordinator's approval, those former portal committee members in good standing selected to help may witness demonstrations. However, if former portal committee members are enlisted to assist with witnessing a demonstration, at least one current portal committee member must also be present to witness the demonstration.

(3) No action of any type shall be taken on new applications or applications that require a demonstration during two months prior to the annual meeting. The director may waive this two month moratorium. This moratorium does not apply to actions taken in regard to violations of portal program rules. The portal committee shall begin conducting demonstrations and considering new applications after reviewing waiting list.

(4) The portal committee shall recommend to the director an applicant's approval or disapproval as a participant upon completion of the applicant's demonstration. The director shall approve or deny and sign the application, noting the decision. If an application is denied, the director shall state the reasons on the application. The coordinator shall then notify the applicant and the portal committee of the application's status.

(5) Appeal. An applicant aggrieved by a denial of an application under these rules may appeal the decision to the director. The applicant shall submit the appeal in writing within 10 calendar days of the director's decision and shall clearly and concisely explain why the denial was inappropriate. A decision of the director upholding the denial shall be the department of cultural affairs' final action in the matter.

(6) Participant status. Acceptance into the program does not make a participant an employee or agent of the division.

C. Good standing. Participants must be in good standing to continue to be eligible to vote in elections and run for election to the portal committee.

[4.51.57.10 NMAC - Rp, 4.51.57.11 NMAC, 12/27/2018]

4.51.57.11 THE PORTAL COMMITTEE:

A. Purpose. The portal committee shall be composed of up to ten active members and four alternates, who shall be appointed and elected pursuant to this section. The purpose of the portal committee includes, but is not limited to, monitoring the daily operations of the program for compliance with these rules, evaluating applications, and presenting participants' concerns and issues to the coordinator. In order to ensure

diversity and broad representation, the portal committee shall be comprised of representatives from not less than five tribes or pueblos.

B. Selection.

(1) At the annual meeting, the director or coordinator shall oversee the election of new portal committee members and officers.

(2) Participants shall elect 14 participants who are present at the annual meeting to be portal committee members and alternates. Subject to Subsection A of 4.51.57.11 NMAC, the 10 participants who receive the highest number of votes shall be members of the portal committee. The four participants who receive the highest number of votes after the members of the portal committee have been selected shall serve as alternates.

(3) The membership shall elect three officers (chair, vice-chair, and secretary). The director or coordinator shall accept nominations from the floor for portal committee officers. The director shall close the nominations at the director's discretion. In the case of a tie, the coordinator shall break the tie.

C. Portal committee responsibilities.

(1) Portal committee members shall carry out their duties to the best of their abilities and in a professional manner.

(2) Portal committee members shall agree to abide by the code of conduct in 4.51.57.17 NMAC of these rules and shall carry out their duties and activities in conformity with these rules.

(3) The portal committee shall ensure fair and equitable treatment of all applicants and participants, without regard to tribal affiliation, political affiliation, family relations, age, gender, sexual orientation, religious affiliation, or other legally protected status. Members shall not disregard certain rules nor shall they selectively enforce these rules.

(4) Portal committee members shall serve as duty officers on a rotating basis in accordance with the monthly duty officer schedule prepared by the portal committee secretary.

(5) The portal committee may form subcommittees as necessary to address specific issues and to assist the portal committee as a whole.

(6) The chairman shall preside at all portal committee meetings and work with the coordinator to organize and plan the business of the portal committee and the program.

(7) The vice-chairman shall serve as the chair in the chair's absence.

(8) The secretary shall keep the minutes of the portal committee meetings. The secretary shall submit meeting minutes to the coordinator by the next portal committee meeting.

(9) The secretary shall produce a monthly "duty officer schedule" and distribute it to the portal committee before the first day of each month. The secretary shall assign duty days by distributing the days as evenly and equitably as possible and by listing one or more portal committee members for duty each day.

(10) Unless a portal committee member's absence is approved by the portal committee chair, each portal committee member shall attend all portal committee meetings and perform various tasks to enable the portal committee to fulfill its duties and purposes.

(11) In order to allow for new program participants, the portal committee shall conduct at least 10 demonstrations for new applicants each year between portal committee elections if at least 10 applicants submit complete applications, in addition to add-ons.

(12) The portal committee shall assist participants in presenting the traditional and educational aspects of the program to the public.

(13) The portal committee shall monitor the daily operations of the program and assist the division in enforcing these rules and other applicable policies by serving as duty officers on a rotating basis.

(14) In the event of a resignation or removal of a portal committee member, the portal committee shall appoint another participant to serve on the portal committee observing alternate protocol. The appointed participant shall resume any duties of the outgoing member, including assigned duty officer days.

D. Resignation. If a portal committee member is unable to complete the portal committee member's term, the portal committee member shall submit a letter of resignation to the portal committee and the division.

E. Removal.

(1) If a portal committee member fails to fulfill the duties of a portal committee member, the portal committee shall try to assist the member to improve the member's participation and involvement before asking the member to resign. Examples of failing to fulfill a portal committee member's duties include but are not limited to missing two or more portal committee meetings within a one-year term, missing a scheduled duty officer day, failing to enforce or to fairly enforce these rules, failing to conduct inspections while serving as duty officer, and refusing to assist a duty officer.

(2) If a portal committee member is asked but refuses to resign, the portal committee may make a recommendation in writing to the director that the portal committee member be removed from the portal committee.

(3) Participants may make a recommendation in writing to the director through a petition, signed by at least fifty percent or more of the number of participants that attended the prior annual meeting, that a portal committee member be removed from the portal committee.

(4) A portal committee member who is aggrieved by removal from the portal committee may file an appeal in accordance with Subsection C of 4.51.57.15 NMAC.

[4.51.57.11 NMAC - Rp, 4.51.57.13 NMAC, 12/27/2018]

4.51.57.12 MEETINGS:

A. Annual Meeting. The purpose of the annual meeting is to give participants an opportunity to express issues of concern and to make recommendations regarding the program to the director.

(1) The annual meeting shall be held on a day in October, at a place to be provided by the division. The annual meeting shall be open to the public, and the coordinator should announce the meeting at least 30 days in advance.

(2) The director shall chair the annual meeting and shall work directly with the portal committee in the conduct of the meeting.

(3) The program shall not be conducted during the annual meeting, but shall open when the annual meeting is officially adjourned.

(4) Only participants with an identity badge and who are in good standing and in attendance at the annual meeting may cast a vote on matters taken to vote, including the election of the portal committee pursuant to 4.51.57.11 NMAC.

(5) If revisions to these rules are proposed, the portal committee and the coordinator shall make copies of the existing and proposed rules available for explanation and discussion.

(6) Rule proposal suggestions will be brought to and discussed with the portal committee prior to any draft compilation that is presented to the membership for consideration.

B. Committee meetings. The purpose of portal committee meetings is to discuss program matters.

(1) The portal committee shall meet at least twice a month or at their discretion and shall coordinate the location and times of meetings with the coordinator.

(2) In order to make any decision other than whether a quorum has been met, the portal committee shall have a quorum present, comprised of six portal committee members. Once a quorum is present, a vote shall be based upon a simple majority of portal committee members present.

(3) The director or coordinator may attend all portal committee meetings and may address the portal committee at any time.

(4) Any portal committee member who cannot attend a meeting shall notify the chair at least 24 hours prior to the meeting unless an emergency prevents the member from notifying the chair sooner.

(5) Committee meetings shall be open to all participants except when a participant requests privacy because of an anticipated discussion of a private matter such as a discipline.

C. Special meetings. The director or coordinator may schedule special meetings of the participants for matters or topics not addressed during the annual or monthly meeting.

[4.51.57.12 NMAC - Rp, 4.51.57.12 NMAC, 12/27/2018]

4.51.57.13 DAILY OPERATION:

Within the program area defined below, the division permits a program involving the daily sales of Native American handmade products by qualified participants, subject to the following conditions. All participants are subject to all rules and conditions starting at 7:00 a.m.

A. Program area. The participants shall conduct the program upon the brick surface area under the portal that extends four feet from the southern wall of the museum and in between the plane of the eastern wall and the plane of the western wall of the same.

(1) The program shall not use the area extending west seven feet across from the museum's main entrance.

(2) During times of repair to the portal area, peak sales, or other circumstances, the director or coordinator may designate supplemental or alternate selling locations within the perimeter of the museum.

B. Spaces. The program area shall be divided into a number of spaces, each six feet deep from the wall and three feet, six inches wide along the wall. One space shall

be situated against the banco (bench) and curb on each side of the portal at the corner structures.

(1) Participants shall obtain their own spaces; that is, no one may obtain a space for another participant. This includes moving other participant's cloths, intimidating other members out of claiming a space, etc.

(2) The first space west of the building entrance is reserved for the designated duty officer.

(3) Household members shall share a space. A household shall only use one space.

(4) Two participants may voluntarily agree to share one space, provided that both are present at the start of the draw. Both participants will be set up by 10:00 a.m. The primary space holder must remain until 12:00 p.m. (excluding emergencies). Should the primary space holder return later than 11:00 a.m., the space becomes vacant.

(5) The following spaces cannot be shared: 64, 65, 70, and 71.

C. Hours and dates of operation: The program shall commence each day at 7: 00 a.m. according to the duty officer's timepiece and shall terminate upon departure of the last participant from the program area even on days without a drawing. Beginning at 7:00 a.m., participants may place their cloths along the curb opposite the space they want, and may claim that space at 8:00 a.m. if no drawing is held. Any participant arriving after 8:00 a.m. shall set up immediately.

(1) A participant shall not set up prior to 8:00 a.m., and shall be completely set up by 10:00 a.m. Adding additional items after 10:00 a.m. is prohibited.

(2) No participant shall sell in the program area during Spanish market, Indian market, and during days or time periods that the director determines that museum needs preclude sales in the program area for reasons including, but not limited to, program area renovations.

D. Duty officer. Duty officers shall monitor the program and be responsible for assigning spaces, conducting inspections, and fulfilling other duties described herein.

(1) Committee members' duty days shall be on which they are assigned according to the monthly duty officer schedule prepared by the portal committee secretary.

(2) The duty officer shall be present at the program area by no later than 7:45 a.m. and shall remain on duty until at least 3:00 p.m. If the duty officer must leave

before 3:00 p.m., the duty officer shall make arrangements with another portal committee member or alternate to serve as the duty officer.

(3) A portal committee member shall make arrangements with another portal committee member when they are unable to serve as duty officer.

(a) If a scheduled duty officer fails to make arrangements for another portal committee member or alternate to serve in the duty officer's place, any active portal committee member may serve as duty officer for that day. If more than one active portal committee member wishes to serve as duty officer, the portal committee shall hold a drawing to determine which one shall serve as duty officer for the day.

(b) If no portal committee members are present, an alternate portal committee member may volunteer as the duty officer. If more than one alternate portal committee member wishes to serve as duty officer, a drawing shall be held to determine which one shall serve as duty officer for the day. If no portal committee members or alternates are available, a former portal committee member may serve as duty officer. An extra set of draw materials will be available.

(4) The duty officer shall conduct inspections of participants' products in accordance with these rules.

(a) The duty officer shall document any violations observed during an inspection on a monitoring form. The participant and duty officer shall sign the monitoring form. The duty officer's signature shall serve as verification that the information on the monitoring form accurately represents what the duty officer observed. The participant's signature does not serve as an admission to the alleged violation, but acknowledges that the duty officer discussed the alleged violation with the participant.

(b) The duty officer shall explain the alleged violation and discuss the violation with the participant in a private manner, away from other participants. The duty officer shall include another portal committee member as a witness to the discussion.

(5) A duty officer may sell products while on duty if possible while also successfully completing all the duty officer's responsibilities and may request assistance from other portal committee members to accomplish their required duties.

(6) A duty officer's household member may occupy the duty officer's designated space while the duty officer fulfills the duty officer's duties.

(7) The duty offer shall immediately notify the coordinator or division security if a participant or member of the public behaves in a disruptive or dangerous manner

E. Drawing. The duty officer shall hold a drawing when there are more participants than available spaces. On these occasions, the duty officer shall count participants who are present at 8:00 a.m. and put a chip for each participant into a drawing receptacle.

This receptacle shall contain numbered chips that correspond with the available spaces, except for the duty officer's space, as well as blank chips. Each participant shall draw a chip, one participant at a time.

(1) If all participants have drawn chips and all the numbered chips have not been drawn, the portal committee shall assign the space to the next participant on the waiting list. This includes spaces that are immediately abandoned by choice.

(2) Participants arriving after the draw may not share spaces, but may have their names added to the waiting list in the order of their appearance to be eligible for assignment to vacated vending spaces.

(3) Attempting to create an unfair advantage during the drawing is grounds for discipline. An example may be deliberately drawing more than one chip or trading chips.

F. Waiting list. The duty officer shall keep a waiting list for vending spaces vacated during the day. Participants, including those who arrived after all of the spaces were vacated, participated in the draw or arrived at the portal after the draw for vending spaces, shall notify the duty officer if they would like their name added to the waiting list. The duty officer shall add participant names in the order of receipt.

G. Abandonment.

(1) Any participant who leaves the participant's space, including half spaces, for a period exceeding one hour has abandoned that space. The duty officer shall assign the first person on the waiting list the first vacated space. If the first person is not present when a space has been vacated, the duty officer shall assign the second participant on the waiting list the vacated space, and so on until the waiting list has been exhausted.

(2) When a participant abandons a space and leaves items behind, the duty officer may remove a participant's cloth and merchandise. The duty office shall turn over the cloth and merchandise to the coordinator. The division, the coordinator, and the portal committee do not assume any responsibility for merchandise left unattended.

H. Director oversight. Should the portal committee or duty officer fail to operate the program as described in this section, the director may take the measures necessary to ensure the program continues to operate that day.

[4.51.57.13 NMAC - N, 12/27/2018]

4.51.57.14 PARTICIPANT RULES:

Each participant shall accept and abide by these rules. Failure to abide by these rules shall result in discipline, up to and including suspension or termination from the program

or ejection from the portal committee. Each participant accepts the division's absolute right to require a participant to leave the program area if the participant is not acting in a manner consistent with these rules.

A. Participants shall only sell products that are Native American handmade except as expressly provided otherwise by these rules. In addition, participants shall comply with the quality and authenticity standards in 4.51.57.16 NMAC, the IACSA, and the federal Indian Arts and Crafts Act of 1990 (P.L. 101-644).

B. A participant shall include the same maker's mark on all products offered for sale in the program by that participant. The maker's mark shall be approved and on file with the coordinator. The director or coordinator may issue a waiver from the requirement that all products include a maker's mark, giving exceptions to this rule, notably for some types of beadwork, extremely small pieces of metal jewelry, or pottery after consulting with the portal committee.

C. Each participant shall display his or her identity badge while selling in the program area or while engaged in other program activities. The first time a participant forgets the identity badge, the duty officer shall issue a warning and place it in the participant's file. The second time a participant forgets the identity badge is grounds for disciplinary action pursuant to 4.51.57.15 NMAC. Participants shall not use identity badges in a fraudulent or unauthorized manner. If a participant needs a new identity badge, the division shall charge a \$5.00 replacement fee. Identity badges are the property of the division and shall be surrendered upon the division's request. Identity badges are not transferable.

D. No tables or elevated stands are permitted. A six inch height limit will be observed.

E. Participants shall not hang or place anything on walls or posts in the program area.

F. Participants shall keep their areas clean while vending and shall remove any trash in their area before they depart. Participants may not be absent from their space for more than one hour.

G. When vending in the program, participants may only use electronic devices, such as credit card machines, when such devices are required for a sale. Participants shall keep mobile electronic devices silent at all times and shall not talk on such devices. Participants shall leave the program area before using mobile devices.

H. Participants shall completely cover their products with a cloth when they leave their space, regardless of the participant's reason for leaving.

I. Participants shall be respectful of the public and not disrupt the program, pedestrians, participants, or division staff members.

J. Participants shall not possess, be influenced by, or use alcohol or illegal drugs in the program area.

K. Participants shall not possess weapons of any kind in the program area.

L. Participants may have an assistant who shall also be a participant and from the same household. The assistant shall sit with the participant within that participant's assigned space.

M. A participant shall not engage other participants who are not members of the participant's household to sell nor shall any participant solicit sales for another within the program area.

N. A participant shall only sell products demonstrated and approved as part of the participant's application process and products made by household members.

(1) Waivers: The director may allow a waiver of the requirement that all items sold by a participant be from the same household.

(2) Such waivers shall be written, issued for a limited, renewable time period, and granted only to those participants who for health reasons are no longer able to sell products in the program area and whose economic livelihood would otherwise be destroyed. In doing so, however, the director may stipulate such conditions or restrictions as are needed to ensure that the waiver is consistent with the intent of the program, preserving and exhibiting New Mexican Native American arts and crafts. The exceptions made in each case shall be considered unique to that case and not applicable to any other case.

O. Participants shall submit to the portal coordinator changes to their name, address, phone number or other contact information within three months of any change.

P. Due to safety concerns, minor children are not allowed to accompany participants while setting up, selling and packing in the program area vicinity, except during the children's art festival, when minor children age five to 17 may participate.

Q. Each participant is solely responsible for accepting payment.

(1) No participant shall accept any payment prior to delivery of the item. Cash-on-delivery (C.O.D.) orders are permitted.

(2) The portal committee and the division are not liable for participants' use of credit card machines or the outcome of transactions resulting from the use of credit card machines.

[4.51.57.14 NMAC - Rp, 4.51.57.15 NMAC, 12/27/2018]

4.51.57.15 RULE VIOLATIONS:

A. Disciplines. The portal committee, duty officer, and coordinator shall consider the circumstances surrounding a reported rule violation, such as the severity of the violation, the number of times the violation has occurred, and any previous violations, to determine the appropriate discipline. If the coordinator determines that a violation of these rules likely occurred, the coordinator shall issue a verbal warning, written reprimand, or notice of contemplated suspension or termination from the program portal committee.

(1) If the coordinator issues a written reprimand to a participant, the participant may respond in writing and the coordinator shall retain that response in the participant's file.

(2) If the coordinator issues a written notice of contemplated suspension or termination from the program, or removal from the portal committee, the coordinator shall mail a copy to the participant's address on file or hand deliver the notice to the participant. The notice shall document the contemplated penalty; the effective date(s); the conduct or other basis for the disciplinary action; reference to the relevant provision of these rules; any previous incidents or efforts to inform the participant of the need for change or improvement; and the process and time limitations for presenting exculpatory evidence or mitigating circumstances.

(3) A participant may present exculpatory evidence or mitigating circumstances during the portal committee's next meeting. The coordinator shall make a record of the meeting in the form of an audio recording, transcript, or neutral third-party report.

(4) After the meeting, the portal committee may determine a participant's suspension or termination from the program or a portal committee member's removal from the portal committee.

(5) If the portal committee suspends or terminates a participant from the program or removes a portal committee member from the portal committee, the coordinator shall issue written notice of the penalty by mailing a copy to the participant's address on file or hand delivering the notice to the participant, along with written findings of fact, and the process and time limitations for appealing the discipline.

(6) Written notices of verbal warnings, reprimands, or suspensions shall remain in a participant's file indefinitely, subject to records retention requirements. Termination notices shall remain in a participant's file indefinitely, subject to records retention requirements.

B. Penalty guidelines.

(1) Minor offenses. Minor offenses may be determined by the portal committee and may sometimes warrant a verbal and/or written warning that may be placed in a participant's file. Resolution will be sought to deter the participant from repeating an offense.

(2) When determining whether an offense may be classified by degree (minor, moderate, serious), the portal committee will consider such things as frequency of occurrence, authenticity matters, harassment and any relevant issues which may assist in classifying an offense.

(3) Each participant found to have committed any violation will be extended every courtesy of respect while the portal committee examines every available fact. A just and fair examination will be performed protecting each individual's right to due process.

(4) Criminal activities under the portal may be grounds for immediate termination.

C. Appeals. Any participant who is aggrieved by a suspension or termination from the program or removal from the portal committee may appeal the penalty to the director. Upon an appeal under this section, the director may enforce or alter penalties issued by the coordinator.

(1) A participant shall have 10 calendar days from the date of the issued notice of discipline to appeal that discipline in writing. All appeals shall clearly and concisely explain why the imposed discipline is inappropriate. The coordinator shall place a copy of the notice and the participant's appeal, if any, in the participant's file.

(2) Suspensions or terminations from the program shall not begin until the participant's appeal has been acted upon by the director.

(3) The director shall review the portal committee's recommendation along with the participant's appeal and file before accepting, rejecting, or altering the portal committee's recommendation.

(4) A participant may appeal the director's decision in writing to the secretary of the department of cultural affairs within 10-calendar days; the secretary has discretionary review, meaning the secretary does not have to review the matter. The secretary's review shall be limited to the findings of fact and other parts of the record developed as directed in 4.51.57.15 NMAC. The secretary's decision not to review the matter or to deny the appeal is the department of cultural affairs' final action on the matter.

(5) Nothing in these rules shall eliminate the right of the division to immediately suspend a participant in cases in which a participant poses a threat to the safety of others.

[4.51.57.15 NMAC - N, 12/27/2018]

4.51.57.16 AUTHENTICITY AND QUALITY STANDARDS:

A. General Criteria:

(1) Participants shall accurately represent the materials and origins of all products and shall accurately identify the creator of all products and the methodology used to create all products.

(2) Generally prohibited materials: No participant shall use any reconstituted materials; color-shot, pre-drilled, semi-precious stones; imported heishi; or, pre-carved pieces in any jewelry exhibited or offered for sale under the portal.

B. Metalsmithing:

(1) Materials:

(a) Silver: Silver jewelry shall be made of sterling silver or fine silver, and not silver plate or commercial liquid silver. Gold overlay on sterling silver is allowable. All silver jewelry shall have "sterling" or .925 stamped on each piece.

(b) Gold: Gold jewelry must be appropriately stamped, 10K through 24K. All gold-filled jewelry must be appropriately stamped, 10 KGF through 24 KGF.

(c) Copper

(d) Brass: Red and Yellow

(e) Prohibited materials: In addition to the above prohibited materials, no participant shall use any plated silver; commercial liquid silver; reconstituted materials; color-shot, pre-drilled, semi-precious stones; imported heishi; faceted cabochons; lab grown, synthetic, cubic zirconium; gallery wire (also known as gallery bezel); or, pre-carved pieces in any jewelry exhibited or offered for sale in the program area. Given the wide range of patterned wire faceted stones available and its ever evolving nature, it would be burdensome to list each allowed and not allowed. Before the application of such materials, participants must receive clarification from the portal committee that such use would be allowed.

(2) Maker's Mark:

(a) Each participant shall stamp metal jewelry with the participant's maker's mark.

(b) On metal jewelry with stones, participants shall place the maker's mark on the back of the piece opposite of the stone before the stone is set. If the design

permits, the maker's mark must be placed on the back of the bezel cup before the stone is set. If the design of a reversible pendant (or other piece of jewelry) makes it impossible to stamp the maker's mark behind the stone, the pendant (or other piece of jewelry) shall be stamped on the bezel. The intention of this provision is to require the participant to stamp the piece before the stones are set, and to make it impossible to stamp such pieces after they are completed. Metal plates with a maker's mark that is soldered or attached by other means to a piece of metal jewelry shall not be permitted.

(3) Findings: Accepted findings used on jewelry sold in the program shall be the following:

(a) Sterling silver findings: All chains, all jump rings, all spring rings, all tie-on hooks and eyes, all crimp type hook and eye earring part, all toggle clasps, all screw-on and clip-on earrings, all ear wire types, all ear posts and backs, omega clips, all cuff link and components, all necklace cones, all bolo tips, all bench made beads (2 mm to 9 mm seamless are acceptable), all size money clips, surgical wire for earrings, all size melon beads, and bezel cups in all sizes and shapes from 2 mm to 5 mm.

(b) Nickel or base metal findings: All size buckles backs, all bolo backs, all foxtail and tigertail, all conch backs key rings, including split rings, all barrel catches including eyeglass/chain attachments, all tie tacks, sets and clutches (backs), all scarf pins (stick pins) backs, all pin bars and pinsets (backs), all barrette backs, all tie bar slides, all alligator clips, all expansion centers, all size spring bars, keyholders (safety pins)-large and medium sizes, all size money clips, and wire used in "memory bracelets", and wire post earrings.

(c) 10K-24K gold findings: All ear posts and nuts, joint catches, jump rings, spring rings, bolo backs, bolo tips, and necklace cones. Also 2mm to 9 mm seamless beads.

(d) Gold filled findings: All posts and nut sets, all French wire styles, all hooks and eyes, all spring rings, all size jump rings, all neck chains; all beads, all tie tack backs, all bolo tips, all ear clips, stick pins and clutches, and all size cones.

(e) Red brass or brass findings: All buckle backs, all key ring backs, all concho backs, all bolo backs, all bolo tips, all hooks and eyes, all brass beads, and all size money clips.

(f) Leather findings: All size straps for concho belts and all size braided bolo cords. Vinyl bolo cords are not permitted.

(g) All copper findings. All buckle backs, all key rings backs, all concho backs, all bolo backs, all bolo tips, all hooks and eyes, all brass beads, and all size money clips.

C. Beadwork:

(1) Permitted beadwork materials: Silver, brass or any other metal which has been incorporated with beadwork into the final product shall be Native American handmade. The following materials shall be permitted: all size glass beads, brass beads, all types of legal feathers, all types of leather, porcupine quills (natural color only), genuine natural bone hair pipes, and genuine natural bone disc beads, dentalia shells, and lead crystals.

(2) Beadwork findings: Because beadwork is different from silversmithing, the following findings shall be permitted when incorporated into beadwork items: buckle backings (blanks), barrette backings, bolo backs and tips, sterling silver, aluminum and tin cones for fringe dangles only, metal spots of nickel or brass, barrel screw clasps, hooks and eyes, spring rings, crimp beads, eye pins and head pins, jump rings, split key rings, tie tack mounts, tiger tail, and all earring findings.

(3) Prohibited beadwork materials: The following materials shall not be permitted when incorporated into beadwork: plastic bone hair pipe and pre-cut or pre-shaped, abalone disk.

D. Pottery:

(1) All pottery or clay items shall be handmade of completely natural, earth clay that has been collected from traditional areas and processed by the participant and fired outdoors in the traditional method using natural materials. The director may approve in writing clay from sources other than traditional areas.

(2) Pre-processed or commercially obtained clay or ceramic is not permitted, either alone or in combination with natural clay. Pottery or clay items made of greenware are not permitted.

(3) Acceptable hand-building methods are coil, pinched and slab. Stabilizing bases are allowed for large clay items.

(4) All pottery or clay items must be signed by carving in the item before it is fired. The artisan's mark must also be added prior to firing. Post-firing signatures or artisan's marks and signatures in pencil or paint, without a pre-firing carved signature, are not permitted.

(5) All pottery or clay items that are painted or decorated may only be painted or decorated with natural vegetable or mineral paint, acrylic paint, and /or clear acrylic sealers.

(6) Products may not be fired in an electric kiln.

(7) The post-firing technique of inlaying beads or stones, engraving, or torching of pottery or clay items is permitted.

E. Traditional food stuffs:

- (1) Participants may offer traditional food stuffs for sale. Participants shall make foodstuffs in the participant's household within 24 hours of offering.
- (2) The following food may be sold: oven bread, uncut fruit and vegetables, tamales, pies, cookies without filling, fry bread, piñon nuts, parched corn, piki bread (paper bread), and ristras (chile strings).
- (3) All participants who vend food shall obtain from the city of Santa Fe a valid food handlers card or certificate, which the participant shall exhibit at all times.
- (4) All food shall be packaged and labeled with the participant's mark and ingredients.
- (5) The director or portal committee shall approve other additional kinds of foods before the participant offers it for sale to the public.
- (6) Program food sales may only be conducted from the participant's space.

F. Sandpainting:

- (1) All sandpainting shall be Native American handmade of natural materials. No commercial and dyed sand is permitted. However, use of commercial protective sealants is allowed.
- (2) Pre-made frames are not allowed.
- (3) The participant shall impress each sandpainting with the maker's mark on the face of the sandpainting while the sand is wet. This does not preclude additional marking or signatures, e.g., on the back of the painting.

G. Leatherwork:

- (1) Participants shall permanently mark all leatherwork. Marking with ink is not permitted.
- (2) Leatherwork without beadwork shall have a branded or stamped mark.
- (3) Leatherwork with beadwork shall have a branded, stamped or beaded mark. The maker's mark may also be incorporated into the beaded design.
- (4) Leatherwork shall not be marked with any type of ink.

H. Heishi: Heishi products shall be handmade from natural materials, stabilized materials, jet serpentine, pipestone, sea shells and stones. Heishi beads shall be hand

rolled, of any size, shape or strand length, with all materials cut, drilled, strung, and shaped by hand.

(1) Materials allowed:

- (a) natural and stabilized stones, shells, coral, apple coral;
- (b) glass beads and coral when incorporated into one's own work;
- (c) pearls and machine-made silver beads when incorporated with your own work.

(2) Prohibited material:

- (a) commercial, pre-made, or pre-strung beads;
- (b) imported, pre-made heishi, plastic block or chemically made stones, pre-carved, pre-drilled or artificially enhanced material.

(3) Findings allowed: Heishi offered for sale in the program may contain the same findings as beadwork jewelry.

(4) Trademark discs: Makers of heishi and nuggets that are metal discs as their trademark on their products must incorporate the disc into the body area of the item. The metal disc may not be attached to the clasp using a jump ring or any other fastener nor be in the vicinity of the ends of the piece.

I. Other goods: Native American handmade products that are not specifically named in this rule, including but not limited to Native American handmade paintings, basketry, and textiles, are permitted if their size and form permit sales from a space on the portal area without impeding on other participant's spaces and while allowing the public to view the product easily.

[4.51.57.16 NMAC - N, 12/27/2018]

4.51.57.17 PORTAL CODE OF CONDUCT:

Participants shall not:

A. require or accept any gifts, favors, or loans from anyone with whom the participant is involved in any manner in the course of the participant's duties that are conditioned upon promised performance of portal committee member or participant duties;

B. use any information obtained through or during the participant's or portal committee member's term for the participant's, member's or another's private financial gain;

C. use any equipment, property, or supplies belonging to the state of New Mexico for personal purposes;

D. alter official documents of the program with the intent to defraud portal committee members or the division;

E. tamper with program files, official documents or records, including removing or destroying files, documents or records from the program's office or computer, or from the program archives or the museum;

F. mishandle, misappropriate, or divert for personal use any funds raised by the program or portal committee or through activities sponsored or sanctioned by the museum;

G. falsify any program documents whatsoever;

H. possess, use, sell, or purchase any forbidden items while engaged in portal committee or program activities, including firearms, illegal drugs, or stolen property; or

I. engage in any other unprofessional conduct that is inconsistent with the interests of the program, the museum or the department of cultural affairs.

[4.51.57.17 NMAC - N, 12/27/2018]

PART 58: CONTRACTING WITH OUTSIDE AGENCIES, PRIVATE ENTITIES AND INDIVIDUALS [REPEALED]

[This part was repealed on December 12, 2017.]

PART 59: RESEARCH ON COLLECTIONS, OBJECTS AND CULTURAL PROPERTIES IN PRIVATE OWNERSHIP [REPEALED]

[This part was repealed on December 12, 2017.]

CHAPTER 52: SPACE CENTER [RESERVED]

CHAPTER 53: NEW MEXICO MUSEUM OF NATURAL HISTORY AND SCIENCE

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: PUBLIC ADMISSIONS FEES [REPEALED]

[This part was repealed on December 15, 2016.]

**CHAPTER 54: FARM AND RANCH HERITAGE
MUSEUM [RESERVED]**

**CHAPTER 55: NATIONAL HISPANIC CULTURAL
CENTER [RESERVED]**