

Certified Local Government (CLG) Program Information Packet

New Mexico Historic Preservation Division

STATE OF NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS HISTORIC PRESERVATION DIVISION

BATAAN MEMORIAL BUILDING
407 GALISTEO STREET, SUITE 236
SANTA FE, NEW MEXICO 87501
PHONE (505) 827-6320



CERTIFIED LOCAL GOVERNMENT PROGRAM

Introduction

Preserving important historic properties became a national policy through passage of the Antiquities Act of 1906, the Historic Sites Act of 1935, and the National Historic Preservation Act (NHPA) of 1966, as amended. NHPA instructed the Federal government to assist local governments in expanding their historic preservation programs and activities. NHPA however, provided no opportunity for local governments to be formally involved in the national preservation program.

The 1980 amendments to NHPA provided a specific role for local governments to be involved in the national program by establishing the CLG program.

What is the CLG Program?

The CLG program encourages the preservation of cultural resources by promoting a partnership among local governments, the State of New Mexico (Historic Preservation Division (HPD)), and the National Park Service (NPS), which is responsible for the National Historic Preservation Program.

What is a CLG?

A CLG is a local government whose preservation program has been certified pursuant to Section 101(c) of the NHPA.

What are the benefits to becoming a CLG?

- **Funding.** As a CLG local communities are eligible to apply for CLG grants. Funds for the CLG grant program come from the Historic Preservation Fund administered by the Historic Preservation Division (HPD).
- **NR nominations.** CLGs have the opportunity to participate in the nomination of properties located within its jurisdiction that are proposed for listing in the National Register of Historic Places.
- **Technical Assistance.** Technical assistance training for local preservation commission members and staff from HPD.

To be eligible for certification, a community must be a general purpose political subdivision of the state such as a city, village, county or town.

In addition, the community must:

- enforce appropriate state or local legislation for the designation and protection of historic properties (this is usually accomplished by enacting a preservation ordinance);
- establish an adequate and qualified historic preservation review commission by state or local legislation;
- maintain a system for the survey and inventory of historic properties;
- provide for adequate public participation in the local historic preservation program including the process of recommending properties to the National Register of Historic Places; and
- satisfactorily perform the responsibilities delegated to it under the act.

STATE OF NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS HISTORIC PRESERVATION DIVISION

BATAAN MEMORIAL BUILDING
407 GALISTEO STREET, SUITE 236
SANTA FE, NEW MEXICO 87501
PHONE (505) 827-6320

CLG Application

An application to become a CLG shall include:

- Letter from the chief elected official requesting certification/Request for CLG Status;
- A list of members of the preservation commission and their resumes;
- Copy of the local historic preservation legislation (ordinance, etc.);
- Copy of the local historic preservation plan or element of the general plan (if applicable);
- Resumes and professional qualifications forms for staff and/or consultant;
- List and map of all locally listed historic properties.
- Certification Agreement
- CLG Certification Application Checklist

HPD shall respond to the chief elected official within 60 calendar days of receipt of an application. HPD will then forward its decision to the National Park Service who has 15 days to respond to the application.

CERTIFIED LOCAL GOVERNMENT PROGRAM *continued*

How does a local government become a CLG?

The chief elected official of the local government must submit an application to the Historic Preservation Division requesting certification.

When are CLG certification applications accepted?

Local governments applying for CLG status can submit applications year round. To be eligible for grants via the CLG program, local governments must be certified by the annual grant announcement.

Monitoring and Decertification

The Historic Preservation Division will conduct periodic review and monitoring of CLGs to assure that each CLG is meeting applicable standards and fulfilling the duties outlined in its Certification Agreement. CLG procedures shall be in conformance with federal and state standards. CLGs are responsible for submitting an annual report of its activities to HPD. The annual report shall be accompanied by a report on any grant expenditures as well as minutes of commission meetings.

Want to learn more about the CLG Program?

- Review the CLG Program Manual (formerly the New Mexico State Procedures for the CLG Program)
- Visit the National Park Service's CLG Program page <https://www.nps.gov/clg/>
- Contact HPD Staff, Karla K. McWilliams at 505-827-4451 or karla.mcwilliams@state.nm.us



Rawlins Building, Las Vegas
A 2015 CLG Grant funded a study of the building

54 U.S.C § 3025
Certification of Local Governments
Federal code for the CLG Program

54 U.S. Code CHAPTER 3025—CERTIFICATION OF LOCAL GOVERNMENTS

§ 302501. Definitions

§ 302502. Certification as part of State program

§ 302503. Requirements for certification

§ 302504. Participation of certified local governments in National Register nominations

§ 302505. Eligibility and responsibility of certified local government

§ 302501. Definitions

In this chapter:

(1) DESIGNATION.—

The term “[designation](#)” means the identification and registration of property for [protection](#) that meets criteria established by a [State](#) or locality for significant [historic property](#) within the jurisdiction of a [local government](#).

(2) PROTECTION.—

The term “[protection](#)” means [protection](#) by means of a local review process under [State](#) or local law for proposed demolition of, changes to, or other action that may affect [historic property](#) designated pursuant to this chapter.

([Pub. L. 113–287](#), § 3, Dec. 19, 2014, [128 Stat. 3197](#).)

§ 302502. Certification as part of State program

Any [State](#) program approved under this subdivision shall provide a mechanism for the certification by the [State](#) Historic Preservation Officer of [local governments](#) to carry out the purposes of this division and provide for the transfer, in accordance with [section 302902\(c\)\(4\) of this title](#), of a portion of the grants received by the [States](#) under this division, to those [local governments](#).

([Pub. L. 113–287](#), § 3, Dec. 19, 2014, [128 Stat. 3197](#).)

§ 302503. Requirements for certification

(a) APPROVED PROGRAM.—

Any [local government](#) shall be certified to participate under this section if the applicable [State](#) Historic Preservation Officer, and the [Secretary](#), certify that the [local government](#)—

- (1)** enforces appropriate [State](#) or local legislation for the [designation](#) and [protection](#) of [historic property](#);
- (2)** has established an adequate and qualified historic preservation review commission by [State](#) or local legislation;
- (3)** maintains a [system](#) for the survey and inventory of [historic property](#) that furthers the purposes of chapter 3023;
- (4)** provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the [National Register](#); and
- (5)** satisfactorily performs the responsibilities delegated to it under this division.

(b) No APPROVED PROGRAM.—

Where there is no [State](#) program approved under sections [302301](#) and [302302](#) of this title, a [local government](#) may be certified by the [Secretary](#) if the [Secretary](#) determines that the [local government](#) meets the requirements of subsection (a). The [Secretary](#) may make grants to the [local government](#) certified under this subsection for purposes of this subdivision.

([Pub. L. 113-287](#), § 3, Dec. 19, 2014, [128 Stat. 3197](#).)

§ 302504. Participation of certified local governments in National Register nominations

(a) NOTICE.—

Before a property within the jurisdiction of a [certified local government](#) may be considered by a [State](#) to be nominated to the [Secretary](#) for inclusion on the [National Register](#), the [State](#) Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission.

(b) REPORT.—

The local historic preservation commission, after reasonable opportunity for public comment, shall prepare a report as to whether the property, in the Commission's opinion, meets the criteria of the [National Register](#). Within 60 days of notice from the [State](#) Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and the recommendation of the local official to the [State](#) Historic Preservation Officer.

(c) RECOMMENDATION.—

(1) PROPERTY NOMINATED TO NATIONAL REGISTER.—

Except as provided in paragraph (2), after receipt of the report and recommendation, or if no report and recommendation are received within 60 days, the [State](#) shall make the nomination pursuant to [section 302104 of this title](#). The [State](#) may expedite the process with the concurrence of the [certified local government](#).

(2) PROPERTY NOT NOMINATED TO NATIONAL REGISTER.—

If both the commission and the chief local elected official recommend that a property not be nominated to the [National Register](#), the [State](#) Historic Preservation Officer shall take no further action, unless, within 30 days of the receipt of the recommendation by the [State](#) Historic Preservation Officer, an appeal is filed with the [State](#). If an appeal is filed, the [State](#) shall follow the procedures for making a nomination pursuant to [section 302104 of this title](#). Any report and recommendations made under this section shall be included with any nomination submitted by the [State](#) to the [Secretary](#).

([Pub. L. 113-287](#), § 3, Dec. 19, 2014, [128 Stat. 3198](#).)

§ 302505. Eligibility and responsibility of certified local government

Any [local government](#)—

- (1)** that is certified under this chapter shall be eligible for funds under [section 302902\(c\)\(4\) of this title](#); and
- (2)** that is certified, or making efforts to become certified, under this chapter shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the [Secretary](#) considers necessary or advisable.

([Pub. L. 113-287](#), § 3, Dec. 19, 2014, [128 Stat. 3198](#).)

36 CFR § 61.6 Certified Local Government Programs

Federal Procedures for Local Government Historic Preservation Programs

36 CFR § 61.6 Certified local government programs.

- (a) Each approved State program must provide a mechanism for certification (by the State Historic Preservation Officer and the Secretary) of local governments to carry out the purposes of the Act.
- (b) Each State Historic Preservation Officer (SHPO) must follow procedures that the Secretary approves for the certification of local governments. Each SHPO also must follow procedures for removal of certified local government (CLG) status for cause. A SHPO must submit any proposed amendment to its procedures to the Secretary for approval. The Secretary will act on each proposal in a timely fashion generally within 45 days of receipt.
- (c) When a SHPO approves a local government certification request in accordance with the State program's National Park Service (NPS)-approved certification process, the SHPO must prepare a written certification agreement between the SHPO and the local government. The certification agreement must list the specific responsibilities of the local government when certified. The SHPO must submit to the Secretary the written certification agreement and any additional information as is necessary for the Secretary to certify the local government pursuant to the Act and this part. If the Secretary does not disapprove the proposed certification within 15 working days of receipt, the Secretary has certified the local government.
- (d) Beyond the minimum responsibilities set out in the Act for all CLGs, the SHPO may make additional delegations of responsibility to individual CLGs. However, these delegations may not include the SHPO's overall responsibility derived from the Act or where law or regulation specifies.
- (e) The SHPO must ensure that each local government satisfies the following minimum requirements as conditions for certification. Each CLG must:
 - (1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State procedures must define what constitutes appropriate legislation, as long as:
 - (i) Designation provisions in such legislation include the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of the local government;
 - (ii) Protection provisions in such legislation include a local review process under State or local law for proposed demolitions of, changes to, or other action that may affect historic properties as paragraph (e)(1)(i) of this section describes; and
 - (iii) The legislation otherwise is consistent with the Act.
 - (2) Establish by State or local law and maintain an adequate and qualified historic preservation review commission (Commission). All Commission members must have a demonstrated interest, competence, or knowledge in historic preservation. Unless State or local legislation provides for a different method of appointment, the chief elected local official must appoint all Commission members.
 - (i) The State procedures must encourage certified local governments to include individuals who meet "the Secretary's (Historic Preservation) Professional Qualifications Standards" among the membership of the Commission, to the extent that such individuals are available in the community.
 - (ii) The State procedures may specify the minimum number of Commission members who must meet "the Secretary's (Historic Preservation) Professional Qualifications Standards." The State procedures may also specify which, if any, disciplines the Commission's membership must include from among those disciplines that the Standards describe. Membership requirements set by the State procedures for Commissions must be cognizant of the needs and functions of Commissions in the State and subject to the availability of such professionals in the community concerned.
 - (iii) Provided that the Commission is otherwise adequate and qualified to carry out the responsibilities delegated to it, the SHPO may certify a local government without the

minimum number or types of disciplines established in State procedures, if the local government can demonstrate that it has made a reasonable effort to fill those positions, or that an alternative composition of the Commission best meets the needs of the Commission and of the local government.

- (iv) The SHPO must make available to each Commission orientation materials and training designed to provide a working knowledge of the roles and operations of Federal, State, and local historic preservation programs, and historic preservation in general.
 - (3) Maintain a system for the survey and inventory of historic properties. The SHPO must ensure that such systems and the data that they produce are capable of integration into and are compatible with statewide inventories and (when and as appropriate) with State and local planning processes.
 - (4) Provide for adequate public participation in the local historic preservation program as a whole. The SHPO must provide each CLG with appropriate guidance on mechanisms to ensure adequate public participation in the local historic preservation program including the process for evaluating properties for nomination to the National Register of Historic Places.
 - (5) Satisfactorily perform the responsibilities delegated to it under the Act. The SHPO must monitor and evaluate the performance of each CLG according to written standards and procedures that the SHPO establishes. If a SHPO's evaluation of a CLG's performance indicates that such performance is inadequate, the SHPO must suggest in writing ways to improve performance. If, after a period of time that the SHPO stipulates, the SHPO determines that the CLG has not improved its performance sufficiently, the SHPO may recommend that the Secretary decertify the local government. If the Secretary does not object within 30 working days of receipt, the Secretary has approved the decertification.
- (f) Effects of certification include:
- (1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with sections 101 (c)(2)(A) and (c)(2)(B) of the Act. The SHPO may delegate to a CLG any of the responsibilities of the SHPO and the Review Board in processing National Register nominations as specified in 36 CFR part 60 (see also § 61.4(b)(3)), except for the authority to nominate properties directly to the National Register. A CLG may make nominations directly to NPS only when the State does not have an approved program pursuant to § 61.4.
 - (2) Eligibility to apply for a portion of the State's annual Historic Preservation Fund (HPF) grant award. Each State must transfer at least 10 percent of its annual HPF grant award to CLGs for historic preservation projects and programs in accordance with the Act and as § 61.7 specifies.
- (g) The District of Columbia is exempt from the requirements of this section because there are no subordinated local governments in the District. If any other jurisdiction that section 301(2) of the Act defines as a State believes that its political subdivisions lack authorities similar to those of local governments in other States, and hence cannot satisfy the requirements for local government certification, it may apply to the Secretary for exemption from the requirements of this section.
- (h) *Procedures for direct certification by the Secretary where there is no approved State program pursuant to § 61.4.* To the extent feasible, the Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved State program.
- (1) Where there is no approved State program, a local government wishing to become certified must apply directly to the Secretary.
 - (2) The application must demonstrate that the local government meets the specifications for certification set forth in paragraph (e) of this section.
 - (3) The Secretary will review certification applications under this paragraph (h) and take action in a timely fashion generally within 90 days of receipt.

NMSA Chapter 3 Municipalities, Article 22, 1-6, et.Seq.

New Mexico Statutes Annotated
Historic District and Landmark Act

*State-Enabling Legislation for Communities to
Establish Historic Districts and Landmarks by Zoning*

ARTICLE 22
Historic Districts and Landmarks

3-22-1. Historic District and Landmark Act; short title.

Chapter 3, Article 22 NMSA 1978 may be cited as the "Historic District and Landmark Act."

History: 1953 Comp., § 14-21-1, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 1.

3-22-1.1. Definition.

As used in the Historic District and Landmark Act, "landmark" means a structure or site of historical interest.

History: 1978 Comp., § 3-22-1.1, enacted by Laws 1983, ch. 178, § 2.

3-22-2. Purpose.

The legislature of the state of New Mexico hereby declares that the historical heritage of this state is among its most valued and important assets and that it is the intention of the Historic District and Landmark Act to empower the counties and municipalities of this state with as full and complete powers to preserve, protect and enhance the historic areas and landmarks lying within their respective jurisdictions as it is possible for this legislature to permit under the constitution of the United States and the constitution of New Mexico and subject to the specific duties and responsibilities respecting historical matters already granted or to be granted under other statutes of this state.

History: 1953 Comp., § 14-21-2, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 3.

3-22-3. Establishment of historic districts and landmarks by zoning.

Any county or municipality otherwise empowered by law to adopt and enforce zoning ordinances, rules and regulations is hereby empowered to create, as part of the building and zoning regulations and restrictions adopted by it in the manner otherwise provided by law and in accordance with a comprehensive zoning plan, a zoning district designating certain areas as historical areas and landmarks and may, for the purpose of preserving, protecting and enhancing such historical areas and landmarks, adopt and enforce regulations and restrictions within such district relating to the erection, alteration and destruction of those exterior features of buildings and other structures subject to public view from any public street, way or other public place.

History: 1953 Comp., § 14-21-3, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 4.

3-22-4. Historic areas and landmarks; authorization to expend funds, to enter [into] agreements and, where necessary, exercise power of eminent domain.

Any county or municipality is hereby empowered to expend public funds for any purposes connected with the preservation, protection or enhancement of historical areas and landmarks, areas related to historical areas or areas otherwise of special architectural or visual interest, including but not limited to the purchase of any or all of such areas and landmarks, if necessary, through the use of eminent domain in the manner provided by law for the acquisition of property for a public purpose, which acquisition is hereby declared to be:

- A. the leasing or acquisition of any other title or interest in the same by negotiation or, if necessary, through the use of eminent domain in the manner provided by law, including the acquisition of easements in and related to such areas and landmarks which will permit the county or municipality to control development of the same in a manner consistent with the purposes of the Historic District and Landmark Act [this article];
- B. the entering into any reasonable agreement with private persons to promote the objectives of this section; or
- C. the enactment of appropriate ordinances or resolutions under which the county or municipality, as the case may be, may be given prior right to acquire any interest in property in such areas and landmarks as over any private person offering an equal price for the same interest or any other similar measures as may be consistent with the purposes of the Historic District and Landmark Act.

History: 1953 Comp., § 14-21-4, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 5.

3-22-5. Historic areas and landmarks; construction of this act.

Nothing in the Historic District and Landmark Act shall be construed to limit any existing inherent, statutory or other powers under which any county or municipality has enacted appropriate measures regarding historic areas and landmarks.

History: 1953 Comp., § 14-21-5, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 6.

3-22-6. Applicability to state capital outlay projects; limitation.

- A. Recognizing the fragility of the state's historic heritage, the purpose of this section is to establish a procedure under which the state and its municipalities and counties will commit to collaborate in good faith and work jointly to preserve and protect the historic districts of New Mexico.
- B. Ordinances enacted by a municipality or county pursuant to the Historic District and Landmark Act shall apply to a state capital outlay project only as provided in this section and only if the ordinances contain special provisions and standards applicable to state buildings, including provisions concerning the design, construction, alteration or demolition of the exterior features of state buildings. If requested by a resolution of the governing body of a municipality or county, the staff of the capitol buildings planning commission shall work jointly with the staff of the municipality or county in developing the provisions and standards required by this subsection.
- C. The applicable state agency shall carry out a capital outlay project in a manner that is harmonious and generally compatible with the municipal or county ordinances.
- D. Before commencing the design phase of a capital outlay project, the applicable state agency shall consult with the municipality or county as to the design standards in the ordinances and how those design standards would impact costs and the operation or manner in which the capital outlay project will ultimately be expected to function, provided that, if the municipality or county has an agency or other entity review projects within the area zoned as an historic district or landmark, then the consultation shall be with that review agency or other entity. The state agency shall work collaboratively with the municipality or county or its review agency or other entity to arrive at compatibility with the design standards, considering reasonable costs and preserving essential functionality. If the municipality or county has identifiable community groups involved in historic preservation, the agency shall also make every reasonable effort to obtain input from members of those identified groups before commencing the design phase.
- E. After the design phase and before soliciting a bid or a proposal for design-build or lease-purchase for a capital outlay project, the applicable state agency shall transmit its plans for review and comment to the municipality or county or its review agency or other entity and shall also conduct a public meeting to receive public input. Notice of the public meeting shall also be given to any identifiable community groups involved in historic preservation in the municipality or county.
- F. Within sixty days after the public meeting, the municipality or county or its review agency or other entity, any identifiable historic preservation community group and any other interested party shall communicate recommendations and comments in writing to the state agency. The state agency shall consult with the municipality or county or its review agency or other entity to resolve any issues raised. If, at the end of the sixty-day period, unresolved issues remain, the municipality or county may, within five days after the end of the period, notify the applicable state agency that the issues remain unresolved and should be finally determined pursuant to Subsection G of this section; provided that, if notice is not timely given, the applicable state agency may, after incorporating those provisions to which the state agency and the municipality or county have agreed, proceed with the capital outlay project.
- G. If notice is timely given by a municipality or county, pursuant to Subsection F of this section, that issues remain unresolved, those issues shall be decided pursuant to the following provisions:
 - (1) within five days after the notice, a state-local government historic review board shall be formed, consisting of eight members as follows:
 - (a) one member appointed by the capitol buildings planning commission, who shall chair the board and who shall vote only if there is a tie among the other board members present;
 - (b) one member appointed by the cultural properties review committee;
 - (c) the state historic preservation officer or a designee of the officer;
 - (d) one member appointed by the agency or other entity that reviews projects within the area zoned as an historic district or landmark, provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county;
 - (e) one member appointed by the agency or entity of the municipality or county that is concerned with historic preservation, provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county; and
 - (f) three public members who have a demonstrated interest in historic preservation appointed as follows: one member appointed by the secretary of general services, one member appointed by the governing body of the municipality or county and one public member appointed by the other two public members;
 - (2) the staff of the capitol buildings planning commission shall serve as the staff of the state-local government historic review board; and
 - (3) the state-local government historic review board shall, at a public meeting, consider each of the unresolved issues and, within twenty days of its formation shall, for each issue, make a final decision that is harmonious and generally compatible with the municipal or county ordinance.
- H. Appeals from the decisions of the state-local government historic review board shall be taken to the district court in the manner provided in Section [39-3-1.1](#) NMSA 1978.
- I. The state agency shall not take any irrevocable action on the capital project in reliance on the plans until the procedures set forth in Subsections F and G of this section have been followed.

Certified Local Government (CLG) Program

New Mexico Administrative Code

Title 4 Cultural Resources

Chapter 10 Cultural Properties and Historic Preservation

Part 10 Certified Local Government Program

**TITLE 4
CHAPTER 10
PART 10**

**CULTURAL RESOURCES
CULTURAL PROPERTIES AND HISTORIC PRESERVATION
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 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/>.]

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.

[4.10.10.14 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]

HISTORY OF 4.10.10 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center & archives under HPD Rule 86-1 Certified Local Government Program, filed 7/14/86.

History of Repealed Material:

4 NMAC 10.10, Certified Local Government Program, (filed 11/03/1997) repealed 1/1/08.

Other History:

HPD Rule 86-1 Certified Local Government Program (filed 7/14/86) renumbered, reformatted and replaced by 4 NMAC 10.10, Certified Local Government Program, effective 11/15/97.

4 NMAC 10.10, Certified Local Government Program (filed 11/03/97) renumbered, reformatted and replaced by 4.10.10 NMAC, Certified Local Government Program, effective 1/1/08.