

TITLE 4 CULTURAL RESOURCES
CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION
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 - N, 1/01/06]

4.10.14.2 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 excavating or proposing to excavate, with the aid of mechanical earth-moving equipment, an archaeological site on private land.
[4.10.14.2 NMAC - N, 1/01/06]

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 - N, 1/01/06]

4.10.14.4 DURATION: Permanent.
[4.10.14.4 NMAC - N, 1/01/06]

4.10.14.5 EFFECTIVE DATE: January 1, 2006, unless a later date is cited at the end of a section.
[4.10.14.5 NMAC - N, 1/01/06]

4.10.14.6 OBJECTIVE: This rule describes procedures used to assist owners to preserve cultural properties and registered 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 - N, 1/01/06]

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 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.

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. "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. "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.

J. "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.

K. "Preservation" means sustaining the existing form, integrity, material or vegetative cover of a cultural property and includes protective maintenance or stabilization.

L. "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.

M. "Registered cultural property" means a cultural property that the CPRC placed on the state register individually or as a contributing property within a district either on a permanent or temporary basis

N. "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.

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 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.

R. "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 NMAC 10.8.7, 1/01/06]

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 standard; 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. An owner of a registered cultural property may write to the CPRC accepting registration of the cultural property. This acceptance of registration may also state that the owner wishes pursuant to Section 18-6-10 of the Cultural Properties Act to place the cultural property under the protection of Section 18-6-9 of the Cultural Properties Act. The SHPO shall advise the county or municipality within which the cultural property is located of the benefits of zoning the property as a historic area or district and the applicability of relevant state laws.

C. If evidence of a human burial or unmarked human 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 - N, 1/01/06]

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.

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. The applicant 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 if the forms are sent by electronic mail, the permittee's electronic mail address shall serve as the signature; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

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 4.10.16 NMAC or a discussion of the proposed excavation project including a description of the site, the objectives of the excavation and the methods to be used to achieve the objectives;

(3) a staff roster that lists the names of supervisory personnel who will be acting or expected to act in the capacities of principal investigator, project director, field supervisor and crew chief during the permitted excavation and who meet the qualifications by position in 4.10.8.10 NMAC; indicate on the staff roster those supervisory personnel who are listed in the SHPO directory of qualified supervisory personnel (4.10.8.11 NMAC); for supervisory personnel who are not in the SHPO directory, provide a curriculum vitae and chart of experience that demonstrate qualifications consistent with 4.10.8.10 NMAC;

(4) a written acknowledgment by the applicant that the permittee shall submit to a final report on the results of the excavation to the CPRC; 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 NMAC 10.8.12, 1/01/06]

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 4.10.8.25 NMAC.

[4.10.14.10 NMAC - Rp, 4 NMAC 10.8.12, 1/01/06]

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 archaeological investigation 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, which 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 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 dispose of the material remains in such a way that the general public may benefit, for example, through the donation of 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 ten (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 excavations completed at that date and a proposed date when the excavations will be completed and when the final report will be submitted.

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 4.10.8.24 NMAC.

[4.10.14.11 NMAC - Rp, 4 NMAC 10.8.12, 1/01/06]

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 units may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden. Depths for mechanical excavation trenches shall conform to OSHA standards for excavation safety (29 CFR 1926, Subpart P).

B. Collect surface artifacts prior to excavation of trenches or stripping or scraping areas with mechanical earth-moving equipment.

C. For each mechanical excavation trench:

- (1) document the location, depth, soil profile, artifact yield and other pertinent information;
- (2) clean at least one profile with a shovel or trowel and inspect the profile for material remains;
- (3) document the profile in narrative, profile drawing and photographs;
- (4) examine the excavated area after the removal of each extracted bucket load; and
- (5) examine back dirt for the presence of artifacts.

D. Mechanical stripping or scraping may be employed following hand excavations or mechanical trenching. The stripping serves the purpose of disclosing features that were 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 excavated if of a new type and do not represent redundant information and shall be fully described. Sufficient studies shall be performed to interpret function.
[4.10.14.12 NMAC - N, 1/01/06]

4.10.14.13 REPORTING STANDARDS:

A. Within 60 days of the completion of the excavations, the permittee shall submit to HPD one copy of a preliminary report on the results of the excavation including relevant maps, drawings, photographs and other documents.

B. A final report on the excavations shall be submitted to HPD within one year of the completion of the excavations or the date proposed in the application and 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 NMAC.

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 NMAC 10.12, 1/01/06]

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 - N, 1/01/06]

HISTORY OF 4.10.14 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

CPRC 82-R1, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 5-28-82.

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 3-26-87.

History of Repealed Material: Rule 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97), repealed 1/01/06.

Other History:

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 3-26-87) was renumbered and reformatted to 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, effective 11/15/97.

That applicable portion of Rule 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97) was renumbered, reformatted and replaced by 4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation, effective 1/01/06.