

TITLE 4 CULTURAL RESOURCES
CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION
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 NMAC 10.8.1, 10/01/05]

4.10.8.2 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.
[4.10.8.2 NMAC - Rp, 4 NMAC 10.8.2, 10/01/05]

4.10.8.3 STATUTORY AUTHORITY: Section 18-6-5 (NMSA 1978) of the Cultural Properties Act.
[4.10.8.3 NMAC - Rp, 4 NMAC 10.8.3, 10/01/05]

4.10.8.4 DURATION: Permanent.
[4.10.8.4 NMAC - Rp, 4 NMAC 10.8.4, 10/01/05]

4.10.8.5 EFFECTIVE DATE: October 1, 2005 unless a later date is cited at the end of a section.
[4.10.8.5 NMAC - Rp, 4 NMAC 10.8.5, 10/01/05]

4.10.8.6 OBJECTIVE: This rule describes the procedures used to review and issue a permit for archaeological investigations on lands owned, controlled or operated by a department, agency, institution or political subdivision of the state. 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 NMAC 10.8.6, 10/01/05]

4.10.8.7 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. "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 18-6-9 of the Cultural Properties Act.

I. "Cultural property" or "cultural resource" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

J. "Easement" means a right or privilege granted by the commissioner of public lands for state trust lands or by the state agency on lands under their jurisdiction to use a defined area for a prescribed purpose and time.

K. "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.

L. "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.

M. "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 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 and 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 and churches.

N. "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.

O. "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 or located in an APE or project area.

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. "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.

R. "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.

S. "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.

T. "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.

U. "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.

V. "New Mexico cultural resource information system" or "NMCRIS" means the statewide database maintained by ARMS.

W. "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.

X. "Project area" means the geographic area or areas of study for an archaeological investigation conducted for research purposes.

Y. "Qualified institution" means public and private entities including without limitation individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums and any agency of the federal government 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.

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

AA. "Right of way" means a right or privilege granted by the commissioner of public lands for a prescribed purpose and time 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 time.

BB. "Sample survey" means a pedestrian survey that identifies all surface-visible cultural properties within defined sample units of a larger whole.

CC. "Secretary" means the individual appointed as secretary pursuant to Section 9-4A-5 of the Department of Cultural Affairs Act.

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. The SHPO administers the Cultural Properties Act.

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. "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. State lands also include state trust lands.

KK. "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.

LL. "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.

MM. "Thematic survey" means a pedestrian survey that identifies selected types of cultural properties and may be performed with written concurrence of the state agency.

NN. "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 NMAC 10.8.7, 10/01/05]

4.10.8.8 ARCHAEOLOGICAL INVESTIGATIONS UNDER A GENERAL PERMIT: The CPRC with the concurrence of the state archaeologist and the SHPO issues a general permit to qualified institutions to conduct selected types of archaeological investigations on state land. The applicant indicates on the application form the 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 and inventory. Surveys may be conducted under a general permit when applicants propose to identify, record, evaluate and interpret cultural properties and relocate, update records and evaluate previously identified cultural properties in accordance with the standards for intensive 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 an approved test excavation plan 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 when a monitoring plan is prepared in conformance with 4.10.17 NMAC.

D. Unmarked human burial excavation. Applicants may excavate unmarked human burials on state or private land only in conformance with a permit issued under 4.10.11 NMAC.

[4.10.8.8 NMAC - Rp, 4 NMAC 10.8.8 & 4 NMAC 10.8.10, 10/01/05]

4.10.8.9 ARCHAEOLOGICAL INVESTIGATIONS UNDER A PROJECT-SPECIFIC PERMIT: The CPRC, with the concurrence of the state archaeologist and the SHPO, the commissioner of public lands for archaeological investigations on state trust lands and the representative of the state agency with jurisdiction for other state lands, issues project-specific permits for different types of archaeological investigations.

A. Survey and inventory. The CPRC issues project-specific permits for applicants who propose to:

- (1) conduct sample survey, thematic survey 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 other than surveys performed pursuant to a general permit.

B. Test excavation. The CPRC issues project-specific permits for test excavation in accordance with an approved research design prepared pursuant to 4.10.16 NMAC when applicants:

- (1) propose to substitute alternate test excavation methods for the standards in 4.10.16 NMAC; or
- (2) do not have a general permit that includes authorization for test excavation.

C. Excavation. The CPRC issues project-specific permits for applicants who propose to conduct scientific investigation of an archaeological site or other areas of historic and scientific interest utilizing ground-disturbing techniques in accordance with an approved research design prepared pursuant to 4.10.16 NMAC. Excavation involves disturbance of the ground within an archaeological site in excess of limited tests and test excavation as defined herein. Excavation may be performed as part of a data recovery program designed to mitigate adverse effects of projects.

D. Monitoring. The CPRC issues project-specific permits for monitoring to applicants who:

- (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 project-specific permits for applicants who propose to excavate unmarked human burials on state or private land. Permits for these investigations are issued under rule 4.10.11 NMAC.

F. Mechanical excavation of archaeological sites. The CPRC issues project-specific permits for applicants who propose to excavate an archaeological site using mechanical earth-moving equipment on private land. Mechanical excavation permits are issued under rule 4.10.14 NMAC. [4.10.8.9 NMAC - Rp, 4 NMAC 10.8.8 & 4 NMAC 10.8.9, 10/01/05]

4.10.8.10 QUALIFIED PERSONNEL: Applicants for any permit issued by the CPRC shall employ qualified supervisory personnel who have the academic background and professional experience to apply the theories, methods and practices of the appropriate discipline to enable professional judgments to be made about the identification, evaluation, documentation, registration and treatment of cultural properties in New Mexico.

A. Archaeology.

(1) Archaeologists serving as principal investigators or project directors shall meet the following minimum qualifications:

(a) a graduate degree in archaeology or anthropology with a specialization in archaeology, or a graduate degree in a closely related field; and

(b) a minimum of 30 months of full-time professional experience in applying the theories, methods and practices of archaeology that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of archaeological sites as demonstrated by timely completion of acceptable technical reports, research reports, theses, dissertations, publications or professional meeting papers; the 30-month minimum experience shall be demonstrated by a showing of 12 months of experience in the study of cultural resources of New Mexico or experience relevant to understanding the cultural resources of New Mexico at the supervisory archaeologist or crew chief level and 18 months of experience under the supervision of a professional archaeologist in the performance of field and analytical activities; supervised field or analytical experience as a graduate student may be counted as part of the 30 months of professional experience; and

(c) for individuals without a graduate degree in anthropology or archaeology or a closely related field, who submit their qualifications as a principal investigator or project director prior to the year 2010, the CPRC shall consider equivalent training and experience in lieu of the academic requirement.

(2) Archaeologists serving as supervisory archaeologists or crew chiefs shall work under the direction of a principal investigator; supervisory archaeologists or crew chiefs shall be in direct charge of archaeological field crews and shall have:

(a) a bachelors degree in anthropology or archaeology or a degree in a closely related field as determined by the CPRC;

(b) at least one archaeological field school or equivalent experience acceptable to the CPRC; and

(c) 12 months of professional experience in archaeological field research, laboratory research, administration or management of cultural resources in New Mexico or experience relevant to understanding the cultural resources of New Mexico; and

(d) for individuals without a bachelors degree in anthropology or archaeology or a closely related field, who apply as a supervisory archaeologist or crew chief prior to the year 2010, the CPRC shall consider equivalent training and experience in lieu of the academic requirement.

B. Architectural History. The minimum professional qualifications in architectural history are:

(1) a graduate degree in architectural history, historic preservation, public history or a closely related field including a minimum of 12 hours of course work in architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture and a minimum of 2 years of full-time professional experience applying the theories, methods and practices of architectural history that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic resources in New Mexico; the 2 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico; or

(2) a bachelors degree in architectural history, historic preservation or a closely related field including a minimum of 12 hours of course work in architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture and a minimum of 4 years of full-time professional experience

applying the theories, methods and practices of architectural history that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic resources in New Mexico; the 4 years of minimum experience shall include 12 months of experience documenting historic resources of New Mexico; or

C. Historic Architecture. The minimum professional qualifications in recording, researching, and working with the preservation of historic architecture are:

(1) a current New Mexico architectural license and a minimum of 2 years of full-time professional experience applying the theories, methods and practices of architecture that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic properties in New Mexico with a minimum of 12 hours of course work in architectural preservation, architectural history, historic preservation and historic preservation planning; the 2 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico;

(2) a masters of architecture with a minimum of 12 hours of course work in architectural preservation, architectural history, historic preservation and historic preservation planning and a minimum of 2 years of full-time professional experience applying the theories, methods and practices of historic architecture that enable professional judgments to be made about the evaluation, documentation or treatment of historic structures in New Mexico; the 2 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico; or

(3) a bachelors of architecture degree with a minimum of 12 hours of course work in architectural preservation, architectural history, historic preservation and historic preservation planning and a minimum of 3 years of full-time professional experience applying the theories, methods and practices of historic architecture that enable professional judgments to be made about the evaluation, documentation or treatment of historic structures in New Mexico; the 3 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico

D. History. The minimum professional qualifications in history are:

(1) a graduate degree in history, public history or a closely related field including a minimum of 12 hours of course work in architectural history, architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture and a minimum of 2 years of full-time professional experience applying the theories, methods and practices of history that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic resources in New Mexico; the 2 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico;

(2) a bachelors degree in history, public history or a closely related field including a minimum of 12 hours of course work in architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture and a minimum of 4 years of full-time professional experience applying the theories, methods and practices of history that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic resources in New Mexico; the 4 years of minimum experience shall include 12 months of experience in documenting historic resources of New Mexico; or

(3) for archaeologists listed in the SHPO directory of qualified supervisory personnel (4.10.8.11 NMAC) who submit their qualifications as a historian prior to the year 2010, the CPRC shall consider equivalent training and experience that demonstrate knowledge of the architectural styles of the southwest and southwestern history, familiarity with the historic cultural properties inventory manual and forms, national and state register eligibility criteria for historic structures and national park services guidance on documentation of historic structures; equivalent training and experience shall be demonstrated by:

(a) a minimum of 12 hours of course work in architectural history, historic preservation, cultural landscapes, southwestern history or southwestern architecture;

(b) a minimum of 12 months of full-time professional experience researching and documenting historic buildings and structures in the American southwest; and

(c) a sample of work which may include historic structures reports, built-environment national and state register nominations, historic cultural property inventory forms and cultural resources reports documenting historic buildings and structures.

E. Cultural Anthropology. The minimum professional qualifications in cultural anthropologists are:

(1) a graduate degree in anthropology with a specialization in cultural anthropology or a closely related field and a minimum of 2 years of full-time professional experience (including at least 6 months of field work supervised by a professional cultural anthropologist) applying the theories, methods and practices of cultural anthropology that enable professional judgments to be made about the identification, evaluation, documentation,

registration, or treatment of historic and ethnographic resources in New Mexico; the 2 years of minimum experience shall include 12 months of experience relevant to the study of cultural resources of New Mexico; or

(2) a bachelors degree in anthropology with a specialization in cultural anthropology or a closely related field and a minimum of 4 years of full-time professional experience (including at least 12 months of field work supervised by a professional cultural anthropologist) applying the theories, methods and practices of cultural anthropology that enable professional judgments to be made about the identification, evaluation, documentation, registration, or treatment of historic and ethnographic resources in New Mexico or relevant to the cultural resources of New Mexico; the 4 years of minimum experience shall include 12 months of experience relevant to the study of cultural resources of New Mexico.

F. The CPRC, SHPO and state archaeologist reserve the right to consider the education, experience and training of any individual applying for permits that deviate from any of the standards in this section in exceptional situations and on a case-by-case basis.

[4.10.8.10 NMAC - N, 10/01/05]

4.10.8.11 SHPO DIRECTORY OF QUALIFIED SUPERVISORY PERSONNEL: The SHPO shall maintain a directory of qualified supervisory personnel including but not limited to individuals who act in the capacity of principal investigator, project director, supervisory archaeologist, crew chief, architectural historian, historic architect, historian or cultural anthropologist.

A. In order to be listed in the SHPO directory, individuals shall submit a curriculum vitae, chart and transcript as specified below to the SHPO.

(1) **Curriculum vitae.** Curriculum vitae shall demonstrate the qualifications and professional experience for all supervisory personnel. Curriculum vitae shall contain, at a minimum, the following information:

- (a) name, address and telephone number;
- (b) education background (date of degree, degree held, institution issuing the degree, and major and minor field 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 type of activity including but not limited to survey, testing, excavation, monitoring, excavation of burials, historic structure reports and register nominations;
- (d) publications and unpublished reports;
- (e) papers presented;
- (f) training; and
- (g) references.

(2) **Chart of experience.** Prepare charts of experience for principal investigators, project directors, supervisory archaeologists and crew chiefs. Charts demonstrating experience shall summarize experience and shall be on file with HPD. Charts shall only be submitted once, at the time of the initial application under this rule, unless the individual is changing supervisory position. It shall be the responsibility of the individual to provide an updated chart if applying for advancement in supervisory position after the initial application is made under this rule. Experience shall be demonstrated in number of days, with one day equaling a minimum of 6 hours within a 24-hour work period until a minimum of 3 years full-time professional experience has been demonstrated. Individuals with more than 3 years of full-time professional experience may report additional experience in number of months where each month consists of 20 or more days with one day equaling a minimum of 6 hours within a 24-hour time period. Charts shall contain the following columns of information:

- (a) project name;
- (b) location by county and state;
- (c) position held (crew member, crew chief, project director, etc.);
- (d) survey experience for each project listed;
- (e) site excavation experience for each project listed;
- (f) human burial excavation experience for each project listed;
- (g) laboratory analysis for each project listed;
- (h) report preparation for each project listed;
- (i) total survey, excavation, analysis and report preparation experience shall be listed in units (days, months, years, as applicable) at the bottom of the chart.

(3) **Transcripts.** An official university or college transcript or a notarized copy of all diplomas shall be on file with HPD. 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 a transcript or notarized copy of the diploma if a higher degree is obtained after the initial application under this rule.

B. HPD shall review the documentation for sufficiency, accuracy and consistency with the minimum standards in this section and in 4.10.8.10 NMAC. A submission that does not contain the required documentation will be considered incomplete. HPD shall inform the applicant of omissions or clarifications necessary to complete the request.

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 with the concurrence of the SHPO and state archaeologist. If approved the individual's name will be listed in the SHPO directory for the position or positions approved.

D. It shall be the responsibility of the individual listed as qualified supervisory personnel to update their curriculum vitae at least every 3 years on or before October 15. 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 or a new, comprehensive curriculum vitae to replace the curriculum vitae on file with HPD.

E. Individuals listed in the SHPO directory shall continue to develop their educational, professional and technical skills. The individuals who are listed in the directory shall complete a minimum of 24 hours of professional development or training every 3 years in order to maintain their listing in the SHPO directory. Individuals may acquire professional training and development through courses and workshops offered by the CPRC, the SHPO, professional archaeological and historical societies or associations, museums and other entities including classes at universities and colleges. Professional development includes presentations at professional conferences. One presentation will fulfill the 24-hour requirement. Evidence of training or professional development shall be included in the documentation provided to HPD with the updated curriculum vitae.

F. Individuals shall continue to be listed in the SHPO directory for the position or positions approved as long as the individual provides an updated curriculum vitae every 3 years, meets the minimum 24-hours of professional training every 3 years, and has not been removed from the SHPO directory pursuant to 4.10.8.24 NMAC. Individuals may request that their name be removed from the SHPO directory.
[4.10.8.11 NMAC - N, 10/01/05]

4.10.8.12 GENERAL PERMIT APPLICATION: The applicant may obtain general permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD.

A. A general permit application 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, excavation of unmarked human burials or any combination thereof);
- (3) a staff roster indicating the following information:
 - (a) supervisory personnel who will be acting or expected to act in a supervisory capacity during permitted archaeological investigations and who are in the SHPO directory (4.10.8.11 NMAC);
 - (b) a list of supervisory personnel who are not in the SHPO directory that the applicant proposes to use in a supervisory capacity during the permitted archaeological investigations and a request that these individuals be added to the SHPO directory along with supporting documentation of their qualifications consistent with 4.10.8.10 NMAC; and
 - (c) other staff, such as crew members and laboratory personnel; and
- (4) applicant's signature, title and date, which may be submitted with original signature or signature transmitted by facsimile; if the forms are sent by electronic mail, the applicant'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.

B. The applicant shall complete the application consistent with this rule and include the following attachments with the initial application or whenever a substantial change in the applicant's organization occurs.

(1) **A summary of organizational experience.** This summary shall demonstrate the applicant's capability to accomplish the type and scope of archaeological investigations proposed 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, laboratory and analysis forms to be used during the permitted work.

(3) **Test excavation standards.** For applications that request authorization to conduct test excavations, the applicant shall include discussion of standard field and laboratory procedures consistent with the standards in 4.10.16 NMAC that the applicant proposes to use on test excavation projects under the general permit. The applicant's standard test excavation procedures will be placed on file at HPD and may be referenced in test excavation plans submitted in activation of the permit for test excavation projects.

(4) **Current permits.** The applicant shall provide a list of permits for archaeological investigations currently held by the applicant including permit number and agency.

C. ARMS agreement. The applicant shall have an account with ARMS for access to NMCRIS on or before submittal of the permit application.

D. Curation agreement. The applicant shall provide a current curation agreement, if one is not already on file with MIAC.

E. An approved application may have special stipulations imposed by the CPRC.

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.

G. The term on an approved permit shall be from the date of approval by the CPRC through December 31 of the year in which it is approved by the CPRC.

[4.10.8.12 NMAC - Rp, 4 NMAC 10.8.8 & 4 NMAC 10.8.10, 10/01/05]

4.10.8.13 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. For project-specific archaeological investigations on state trust lands, an applicant shall apply simultaneously for a project-specific permit from the CPRC and an associated easement or other written permission from the commissioner of public lands to enter state trust land.

(1) The application for an easement or other permission to enter state trust lands and instructions is available on HPD's website, on the state land office website or from the state land office in person or by mail.

(2) Information regarding requirements for receiving an easement or other permission to enter state trust lands such as application fees, bonding fees and requirements and reclamation requirements shall appear on the state land office application or in accompanying instructions.

(3) Upon completion of the project-specific permit application and the application for an easement or other written permission to enter state trust lands, the applicant shall submit both applications to HPD and state land office so that HPD and the state land office may proceed to process the applications simultaneously.

(4) Applicants shall not submit to HPD any application fee, bonding, fee or other payments associated with obtaining an easement or other written permission to enter state trust lands. Once the state land office has received its copy of the application package, it shall notify the applicant of the fees due and request payment to be submitted directly to the state land office.

B. For project-specific archaeological investigations on other state lands, an applicant shall obtain written approval of the work proposed from the state agency and include the approval with the permit application. Approval may be provided by the signature of the representative of the state agency on the permit or by a letter signed by the representative of the state agency indicating approval of the proposed work.

C. 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 permits for archaeological investigations requested (sample, thematic or other surveys, excavation including test excavation, monitoring, excavation of unmarked human burials or any combination thereof);

(3) a staff roster indicating the following information:

(a) supervisory personnel who will be acting or expected to act in a supervisory capacity during permitted archaeological investigations and who are in the (4.10.8.11 NMAC);

(b) a list of supervisory personnel who are not in the that the applicant proposes to use in a supervisory capacity during the permitted archaeological investigations and a request that these individuals be added

to the SHPO directory along with supporting documentation of their qualifications consistent with 4.10.8.10 NMAC; and

(c) other staff, such as crew members and laboratory personnel; and

(4) the applicant's signature, title and date, which may be submitted with original signature, signature transmitted by facsimile, or if the forms are sent by electronic mail, the applicant'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.

D. The applicant shall complete the application consistent with this rule and include the attachments required for the project-specific application as specified below.

(1) **Surveys and inventories.** Prepare a research design that adheres to 4.10.15 NMAC. The research design may adopt the survey standards detailed in 4.10.15 or may propose alternate standards that shall be fully detailed, discussed and justified in the research design. For thematic, reconnaissance or other types of research surveys, the research design shall specify the purpose and rationale supporting the survey strategy and approach.

(2) **Excavation projects including 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.

(3) **Monitoring** Prepare a monitoring plan that adheres to 4.10.17 NMAC.

(4) **A summary of organizational experience.** If this 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.

(5) **Forms.** Copies of field, laboratory and analysis forms expected to be used during the permitted work.

E. ARMS agreement. The applicant shall have an account with ARMS for access to NMCRIS on or before submittal of the permit application.

F. Curation agreement. The applicant shall provide a current curation agreement along with the project-specific permit application if a current agreement is not on file with MIAC.

G. An approved application may have special stipulations imposed by the CPRC, the commissioner of public lands for state trust lands or the representative of the state agency with jurisdiction.

H. 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, signature of the commissioner of public lands if state trust lands are involved, and signature of the state land-holding agency representative or written approval as provided in 4.10.8.13B NMAC, if other state lands are involved, to indicate approval of issuance of the permit.

I. The term on an approved application shall be one year from the date of approval by the CPRC unless state trust lands are involved, in which case the term of the permit shall be one year from the date of approval from the commissioner of public lands.

[4.10.8.13 NMAC - Rp, 4 NMAC 10.8.8 & 4 NMAC 10.8.9, 10/01/05]

4.10.8.14 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 it.

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, which 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 designates.

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 4.10.8.24 NMAC.

[4.10.8.14 NMAC - Rp, 4 NMAC 10.8.8, 4 NMAC 10.8.9 & 4 NMAC.10.8.10, 10/01/05]

4.10.8.15 REVIEW AND APPROVAL OF PERMIT APPLICATIONS:

A. HPD shall receive permit applications including attachments and maintain current files for each permittee.

B. HPD shall review all information submitted in support of the permit application for completeness, accuracy and conformance with all requirements. The applicant shall remedy any inaccuracies or inadequacies specified by HPD before further review or processing of the permit application. HPD shall submit all completed 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.

C. The CPRC shall review and consider all completed permit 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 or in an attachment to the permit. The CPRC may include additional 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. Signature of the state land holding agency representative or signature of the commissioner of public lands, if state trust lands are involved, indicates approval of the permit. The permit is not valid without all signatures.

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 and easement application package to the commissioner of public lands for approval or denial along with the applicant's application for an easement or other permission to enter state trust lands. 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 a copy of the permit with any additional stipulations, along with the easement or other written permission of the commissioner of public lands to enter the state trust lands, once

both have been approved by the commissioner of public lands. If either the permit or the application for an easement or other written permission to enter state trust lands has been denied by the commissioner of public lands, he shall inform HPD of this fact in writing.

G. For general permits HPD shall notify the applicant in writing of the approval, approval with stipulations, or denial by the CPRC with the concurrence of the state archaeologist and SHPO.

H. For project-specific permits HPD shall notify the applicant in writing of the approval, approval with stipulations, or denial of a project-specific permit by the CPRC with the concurrence of the state archaeologist, the SHPO, the commissioner of public lands or the representative of the state agency with jurisdiction for other state lands.

I. 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.

[4.10.8.15 NMAC - Rp, 4 NMAC 10.8.8, 4 NMAC 10.8.9 & 4 NMAC.10.8.10, 10/01/05]

4.10.8.16 MODIFICATION OF PERMITS:

A. A permittee may request, in writing to HPD, a modification to a permit at any time. The permittee shall request a permit modification whenever a change in any essential condition of the permit is anticipated. Changes in essential condition require a permit modification approved by the CPRC, with the concurrence of the state archaeologist and the SHPO, the commissioner of public lands for permit activities on state trust lands or the representative of the state agency with jurisdiction for a permit for other state land. The CPRC shall review all requests for modification at the next scheduled meeting. Changes in any essential condition without an approved permit modification shall constitute cause for suspension of the permit. Essential conditions include but are not limited to:

- (1) individuals named in the permit, with the exception of 4.10.8.16.B NMAC;
- (2) type, scope or location of work;
- (3) change in term of the permit;
- (4) location and facilities of the permittee;
- (5) repository; and
- (6) other terms or conditions made part of the permit.

B. If the modification to the permit involves adding individuals who are listed in the SHPO directory in the same position as proposed, HPD shall review and approve the request within 5 working days of receipt of the request.

C. If the archaeological investigation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period specified on the permit or easement, if state trust land is involved, the permittee shall contact HPD in writing to request an extension of 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 or if state trust lands are involved, ten (10) working days prior to the expiration date of the written permission to enter state trust lands issued by the commissioner of public lands, whichever is earlier.

D. 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.

E. 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.

F. The CPRC may modify a permit at any time to address performance issues. The SHPO shall provide written notice of permit modification to the permittee, in person or by mail with a copy to the state agency or the commissioner of public lands if state trust land is involved, setting out the reasons for the modification pursuant to 4.10.8.22 NMAC. When possible, oral notice and discussion will precede written notice from the SHPO.

[4.10.8.16 NMAC - N, 10/01/05]

4.10.8.17 INITIATING WORK UNDER GENERAL PERMITS:

A. Prior to initiating any activity authorized under a general permit, the permittee shall activate the permit in accordance with the requirements of this section.

B. Archaeological investigations authorized by a general permit on state trust lands shall be limited to investigations conducted under contract to an individual, organization or company undertaking exploration,

construction, development or other land-disturbing activities authorized by rights of way, easements, leases or other written authorization to enter state trust land. In order to activate a general permit, the permittee shall submit as part of its notification to the commissioner of public lands for investigations on state trust lands, a copy of its contract with the individual, organization or company undertaking exploration, construction, development or other land-disturbing activities on state trust lands and a copy of the applicable right of way, easement, lease or other written authorization to enter state trust land. It is the responsibility of the permittee to determine the ownership of any land on which archeological investigations are to take place and to ensure that any such investigations on state trust lands are undertaken in conjunction with authorized activities.

C. Survey and Inventory.

(1) The permittee shall follow all standards set forth in 4.10.15 NMAC.

(2) The permittee shall notify the state agency in writing of the proposed project. If the agency has an archaeologist on staff, the permittee shall notify the agency archaeologist. If the state agency is the project sponsor or has directed the permittee to conduct the work, no notification of the agency is required.

(3) The notification shall state for whom the survey is being conducted, why the survey is necessary, the legal description and a map of the APE or project area and the dates on which the survey is expected to begin and to be completed. For surveys on state trust land, the legal description shall be to the nearest 40-acre parcel.

D. Test excavation.

(1) The permittee shall prepare and submit a test excavation plan to the state agency consistent with the standards in 4.10.16 NMAC. If the state agency does not have an archaeologist on staff, the permittee shall submit the plan to HPD with a letter from the state agency approving the work.

(2) The state agency shall review the test excavation plan and when approved submit the plan to HPD.

(3) HPD will review the plan for conformance with the standards within 30 calendar days of receipt of a complete plan. If HPD's review finds that that test excavation plan conforms to the standards outlined in 4.10.16 NMAC, HPD shall notify the permittee in writing, with a copy to the state agency, that the general permit has been activated for the project and the permittee may conduct test excavations in conformance with the approved plan for the project.

(4) If HPD's review finds that the test excavation plan does not conform to the standards, if there are any questions or concerns that cannot be resolved through written or oral discussions with the permittee, or if HPD requests CPRC review, HPD shall notify the state agency and permittee in writing and forward the plan to the CPRC for review at the next scheduled meeting.

(5) If the permittee does not have a general permit for test excavation, or the test excavations are not being undertaken in conjunction with authorized activities on state trust land in conformance with 4.10.8.16B NMAC, the permittee shall apply for a project-specific permit in conformance with 4.10.8.13 NMAC.

E. Monitoring.

(1) When the purpose of the monitoring is to ensure site avoidance or protection, the permittee shall implement avoidance and protection measures at the direction of the state agency consistent with 4.10.17.9 NMAC.

(2) When the purpose of the monitoring is to observe ground-disturbing activities through an archaeological site or other cultural property or in an area of historic and scientific interest, the permittee shall develop a monitoring plan consistent with 4.10.17 NMAC and shall submit the plan to the state agency for review and approval. If the state agency does not have an archaeologist on staff, the permittee shall submit the plan to HPD with a letter from the state agency approving the work.

(a) The state agency shall review the monitoring plan and when approved notify HPD in writing.

(b) HPD will review and provide comments on the plan for conformance with 4.10.17 NMAC within 10 working days of receipt of the plan. If HPD finds that the plan conforms to 4.10.17 NMAC, HPD shall notify the permittee in writing, with a copy to the state agency, that the general permit has been activated for the project and the permittee may conduct monitoring as described in the plan.

(c) If HPD finds that the monitoring plan does not conform to the standards, or if there are any questions or concerns that cannot be resolved through written and oral discussions with the permittee, HPD shall notify the state agency and permittee in writing and forward the plan to the CPRC for review at the next regularly scheduled meeting.

(3) If the permittee does not have a general permit for monitoring, the permittee shall apply for a project-specific monitoring permit in conformance with 4.10.8.13 NMAC.

[4.10.8.17 NMAC - N, 10/01/05]

4.10.8.18 REVIEW OF REPORTS. All permittees are required to submit a final written report following the conclusion of the fieldwork. The CPRC, state archaeologist and the SHPO may review these reports. In all cases the reports shall first be submitted to the state agency or agencies for review and approval. 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 4.10.14.17 NMAC. The state agency may establish additional reporting requirements.

(1) Reports on survey.

(a) The permittee shall prepare and submit at least one copy of the final report including site forms, appendices and attachments to the state agency. If collections were made during the survey, the permittee shall curate the collections in accordance with their current curation agreement for the repository approved in their permit application pursuant to 4.10.8 NMAC. The permittee shall obtain a receipt showing that the collections have been submitted to the repository and shall provide a copy of the receipt along with the final report to the state agency.

(b) The state agency will review the report. When the report is approved, the state agency will submit one copy of the final report, including all site forms, appendices and attachments to HPD for purposes of discussion, review and comment. Action on a final report by a state agency does not signify approval or disapproval by HPD or the CPRC.

(c) If HPD has not received a copy of the final report within 6 months of the permittee obtaining the NMCRIS investigation number, HPD shall 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 submit one copy of the NMCRIS investigation abstract to HPD with a request to extend the completion date for the final report and a proposed completion date for the final report. The CPRC, in consultation with the state agency, shall establish a new deadline for submittal at the next scheduled meeting.

(d) If the report has been submitted to the state agency, HPD will make arrangements with the agency to obtain a copy of the report.

(e) Additional copies of the report and attachments may be requested by the state agency.

(2) Reports on test excavations or excavations.

(a) The permittee may prepare a preliminary report and submit one copy of the report to the state agency pursuant to 4.10.16 NMAC within 60 days of completing the field studies.

(b) The permittee shall prepare and submit one copy of a draft final report to the state agency for review. When the report is approved, the state agency will notify the permittee and direct the permittee to submit the collections to the repository within a specified timeframe. The repository will provide the permittee with a receipt showing that the collections have been submitted and the permittee shall submit a copy of the receipt along with at least one copy of a final report, including all site forms, appendices and attachments to the state agency.

(c) The state agency will review the report. When the report is approved, the state agency will submit one copy of the final report, including all site forms, appendices and attachments to HPD for purposes of discussion, review and comment. Action on a final report by a state agency does not signify approval or disapproval by HPD or the CPRC.

(d) If HPD has not received a copy of the final report within one year of the permittee obtaining the NMCRIS investigation number, HPD shall notify the permittee. 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 submit a draft NMCRIS investigation abstract to HPD with a request to extend the completion date for the final report and a proposed completion date for the final report. The CPRC, in consultation with the state agency, shall establish a new deadline for submittal at the next scheduled meeting.

(e) Additional copies of the report and attachments may be requested by the state agency.

(3) Reports on monitoring activities.

(a) The permittee shall prepare and submit one copy of the monitoring report including all site forms and attachments pursuant to 4.10.17 NMAC to the state agency. The state agency will review the report and shall approve, request changes to or disapprove the report for the agency's purposes. Action on a final report by a state agency does not signify approval or disapproval by HPD or the CPRC. When the report is reviewed and approved by the state agency, the state agency will submit one copy of the final monitoring report, including all site forms, appendices and attachments to HPD for purposes of discussion, review and comment.

(b) If collections were made during monitoring, the permittee shall prepare and submit one copy of a draft final report to the state agency for review. When the report is approved, the state agency will notify the permittee and direct the permittee to submit the collections to the repository within a specified timeframe. The repository will provide the permittee with a receipt showing that the collections have been submitted and the permittee shall submit a copy of the receipt along with at least one copy of a final report, including all site forms, appendices and attachments to the state agency.

(c) If HPD has not received a copy of the report within 6 months of the permittee obtaining the NMCRIS investigation number, HPD shall contact the permittee.

(d) Additional copies of the report and attachments may be requested by the state agency.

B. All reports shall be reviewed by HPD for technical accuracy and completeness.

(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 and 4.10.17 NMAC 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.

(2) The state agency will review the resubmitted report and work with the permittee to resolve any problems. Once accepted by the state agency, the report shall be resubmitted to 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 4.10.14.17 NMAC shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

[4.10.8.18 NMAC - N, 10/01/05]

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. Collection of material remains. 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. 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.

(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 and state trust land unless the CPRC and the commissioner of public lands, for material remains removed from state trust lands, approves another institution as a repository.

(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 the museum of New Mexico 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) In order to qualify to be 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.

(4) If the institution that has been designated the appropriate repository for material remains and associated records from state land ceases to exist, the material remains and associated records shall be delivered to the MIAC for permanent curation.

(5) All material remains and records pertaining to the collections to be received by the MIAC or the approved repository shall be submitted in accordance with the conditions stipulated by the permittee's current curation agreement with that facility. The permittee shall submit collections to the repository prior to submitting a final report to the state agency pursuant to 4.10.8.18 NMAC. 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 is the custodian of all investigation records, LA archaeological site records, including site updates resulting from survey, excavation, test excavation or monitoring and associated reporting and photographic materials.

[4.10.8.19 NMAC - Rp, 4 NMAC 10.8.8, 10/01/05]

4.10.8.20 POST-REVIEW DISCOVERIES: If cultural properties 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 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 or as a separate report.

(2) If the discovery is in an area covered by a permit that has expired or in an area that was not subject to an archaeological investigation prior to the commencement of construction, 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.

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 of the plan. 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 approved 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 - N, 10/01/05]

4.10.8.21 DOCUMENTATION OF 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.

B. The CPRC, the state archaeologist, the SHPO and the archaeologist with the state agency may conduct field visits to evaluate permittee performance at any time.

C. In addition to maintaining permit files pursuant to 4.10.8 NMAC, HPD shall maintain records that document a permittee's technical performance and compliance with permit terms and conditions. HPD shall notify the permittee and document unacceptable permittee performance by maintaining case files containing, but not limited to the following kinds of documentation:

- (1)** correspondence between HPD, the permittee and the state agency documenting deficiencies;
- (2)** documentation of report reviews conducted by HPD and the state agency;
- (3)** documentation of field visits conducted by the CPRC, the state archaeologist, the SHPO or the state agency; and
- (4)** copies of reports, site records and other site documentation, such as maps and photographs, that contain significant errors.

D. Documentation of unacceptable or substandard performance shall become part of a permittee's file. Unacceptable or substandard performance shall be documented as either a minor or major deficiency.

(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, failure to submit required reports in a timely manner or in conformance with this rule and mistakes in the pre-field check resulting in sites or registered cultural properties not being reported within the one-mile buffer.

(a) HPD or state agency may request revisions to the report and other documentation. The permittee shall provide the requested revisions. If the permittee does not provide the requested revisions, the failure shall be documented in the permittee file.

(b) If the permittee's reports continue to contain inaccuracies or if the permittee fails to provide revisions, HPD shall provide assistance to the permittee to help the permittee correct the deficiencies.

(c) If the permittee continues to make the same errors even after assistance provided by HPD, the failure to improve shall be documented in the permittee's file and may result in a warning letter pursuant to 4.10.8.22 NMAC.

(2) Major deficiencies. Major deficiencies in reporting or fieldwork may result in a warning letter pursuant to 4.10.8.22 NMAC. Major deficiencies 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;

(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;

(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 or for a pattern of submitting collections that are not accepted owing to insufficient preparation or for 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.

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 - N, 10/01/05]

4.10.8.22 WARNING LETTERS: Major deficiencies in reporting or fieldwork shall be documented in a warning letter from the SHPO to the permittee with a copy to the client or project sponsor, the state agency, the CPRC and the state archeologist. Up to three warning letters for similar deficiencies may be issued to a permittee per 3-year cycle. The issuance of three warning letters for similar deficiencies per 3-year cycle shall be a factor in the CPRC's decision to issue a permit in the future.

A. Upon receipt of a warning letter, the permittee shall take immediate steps to correct the deficiencies noted in the letter.

(1) Warning letters may include, without limitation:

(a) a statement that clearly identifies how the permittee's work fails to meet current rules and standards;

(b) clear direction regarding the actions needed to rectify the situation, such as re-recording sites or other remedial actions;

(c) a statement that sets forth the action the CPRC will take to address the deficiencies; and

(d) a request that the supervisory personnel and other personnel that conducted the work for the permittee confer with HPD and the state agency, so that the nature of the deficiencies and required remedial actions are clearly understood; HPD shall attend such meetings or participate in conference calls and shall prepare a follow-up letter to the permittee that documents what was discussed and the actions the parties agreed appropriate to correct the performance problem.

(2) Technical assistance shall be available from HPD to help resolve the permittee's unacceptable performance.

B. First warning letter. The first warning letter may result in the permittee being placed on probation for 3 consecutive months. A permittee who is placed on probation may continue to work on state land.

(1) The permittee shall take immediate steps to correct the deficiencies noted in the warning letter.

(2) During this period, the permittee's performance may be evaluated by the CPRC, the state archaeologist, the SHPO or the state agency.

(3) Documentation of performance evaluation shall be entered into the permittee's case file and may be taken into account by the CPRC when considering whether to issue permits to that permittee in the future.

C. Second warning letter. The second warning letter may result in the CPRC placing the permittee on probation for 6 consecutive months, or if the permittee is already on probation, extending the probationary period an additional 6 consecutive months.

(1) 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 and provided to entities seeking qualified institutions.

(2) The permittee shall take immediate steps to correct the deficiencies noted in the warning letter.

(3) During this period, the CPRC, the state archaeologist, the SHPO or the state agency may evaluate the permittee's performance.

(4) 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.

(5) Upon successful completion of probation, the permittee shall be added to the list of permittees maintained by HPD.

D. Third warning letter. The third warning letter may result in suspension of the permittee's permit by the CPRC.

(1) The permittee shall be notified of the permit suspension and that it is not authorized to continue or to conduct archaeological investigations on state land.

(2) If the permittee is engaged in ongoing projects, HPD shall notify the client or project sponsor and the state agency of the permit suspension.

(3) A suspension shall not exceed 12 consecutive months.

(4) A new permit may be applied for after the suspension period has expired.

E. Modification of permits to correct performance problems. The CPRC may modify a permit at any time when needed to address performance issues and will notify the state agency or agencies. The SHPO shall provide written notice of permit modification to the permittee, in person or by mail, setting out in full the reasons for the modification. Whenever possible, oral notice and discussion will precede written notice.

[4.10.8.22 NMAC - N, 10/01/05]

4.10.8.23 PROBATIONARY PERMITS: Permits may be issued for one year or less on a probationary basis when the CPRC determines that a permittee's performance requires evaluation based on documented performance problems.

A. 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.

B. The state agency archaeologist may assist in evaluating the performance of the permittee and provide documentation to the CPRC for consideration.

C. Following expiration of the probationary period and based upon performance during that period, a new permit may be issued or a new probationary permit may be issued.

[4.10.8.23 NMAC - N, 10/01/05]

4.10.8.24 DENIAL OF A PERMIT: The CPRC may deny an application for a permit.

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 or suspension;

(3) failure of the applicant to obtain the necessary permits for archaeological investigations on state land;

(4) documentation of the applicant's work on state land with a suspended permit;

(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 permit denied is a project specific permit, the CPRC shall notify the state agency of its decision.

C. Supervisory personnel whose performance directly led to a firm's deficient performance and subsequent loss of a permit shall be removed from the SHPO directory of qualified supervisory personnel.

(1) An individual who has been removed from the SHPO directory may resubmit the documentation specified in 4.10.8.11 NMAC to HPD with a request to be added to the SHPO directory. The documentation shall demonstrate that the individual has remedied performance deficiencies through additional training or experience or through a minimum of three months of fieldwork under direct supervision of an individual listed in the SHPO directory.

(2) HPD will review the documentation for sufficiency and if it is complete forward the request to be considered at the next regularly scheduled CPRC meeting.

D. Any applicant who has been denied a permit by the CPRC shall have the right to appeal the decision pursuant to 4.10.8.25 NMAC.

[4.10.8.24 NMAC - N, 10/01/05]

4.10.8.25 PROCEDURES FOR APPEALING A DECISION: 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.

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 notify the secretary of the department of cultural affairs, who shall convene a hearing panel consisting of three individuals.

C. Within two weeks of receipt of a written request for a hearing, the secretary of the department of cultural affairs 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 of the Department of Cultural Affairs Act.

(1) The secretary of the department of cultural affairs or his designee shall serve as the chair of the hearing panel.

(2) The secretary shall appoint an agency archaeologist or other professional archaeologist deemed qualified by the secretary. The applicant may designate an individual to sit on the hearing panel. If the applicant chooses not to designate an individual, the secretary shall designate another agency archaeologist.

(3) The chairman of the CPRC, the state archaeologist and the SHPO shall 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.

[4.10.8.25 NMAC - N, 10/01/05]

4.10.8.26 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.

[4.10.8.26 NMAC - N, 10/01/05]

HISTORY OF 4.10.8 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: 4 NMAC 10.8, Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97), repealed 10/01/05.

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.

4 NMAC 10.8, Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97) was renumbered, reformatted and replaced by 4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land, effective 10/01/05.