

# New Mexico Cultural Properties Act

N.M. Stat. §§ 18-6-1 through 18-6-17, as amended through 2005

*This law establishes the Historic Preservation Division (State Historic Preservation Office (SHPO)) and the Cultural Properties Review Committee (CPRC). It provides for the protection of archaeological sites through the creation of a permitting process for the survey and excavation of archeological sites and unmarked human burials by qualified institutions and establishes civil and criminal penalties for looting of archaeological sites and disturbance of unmarked burials. The act further requires that state agencies provide the SHPO with an opportunity to participate in planning for activities that will affect properties that are listed on the State Register of Cultural Properties or the National Register of Historic Places.*

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## **18-6-1. Short title.**

Sections 18-6-1 through 18-6-17 NMSA 1978 may be cited as the "Cultural Properties Act".

## **18-6-2. Purpose of act.**

The legislature hereby declares that the historical and cultural heritage of the state is one of the state's most valued and important assets; that the public has an interest in the preservation of all antiquities, historic and prehistoric ruins, sites, structures, objects and similar places and things for their scientific and historical information and value; that the neglect, desecration and destruction of historical and cultural sites, structures, places and objects results in an irreplaceable loss to the public; and that therefore it is the purpose of the Cultural Properties Act [18-6-1 NMSA 1978] to provide for the preservation, protection and enhancement of structures, sites and objects of historical significance within the state, in a manner conforming with, but not limited by, the provisions of the National Historic Preservation Act of 1966 (P.L. 89-665).

## **18-6-3 Definitions.**

As used in the Cultural Properties Act [18-6-1 NMSA 1978]:

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- A. "committee" means the cultural properties review committee;
- B. "cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance;
- C. "registered cultural property" means a cultural property that has been placed on the official register on either a permanent or temporary basis by the committee;
- D. "official register" means the New Mexico register of cultural properties maintained by the committee for the purpose of recording cultural properties deemed worthy of preservation; and
- E. "state land" means property owned, controlled or operated by a department, agency, institution or political subdivision of the state.

### **18-6-4 Committee created; membership; compensation; voting; term; chairman; meetings.**

- A. The "cultural properties review committee" is created, which consists of nine members as follows:
  - (1) the state historian at the state archives and record center;
  - (2) one person professionally recognized in the discipline of architectural history;
  - (3) one person professionally recognized in the discipline of history;
  - (4) one person professionally recognized in the discipline of architecture;
  - (5) one person professionally recognized in the discipline of prehistoric archaeology;
  - (6) one person professionally recognized in the discipline of historic archaeology;
  - (7) one additional person who is professionally recognized in:
    - (a) history;
    - (b) architectural history or architecture; or
    - (c) archaeology;
  - (8) one person who is a member of a New Mexico Indian nation, tribe or pueblo; and
  - (9) one person who is a resident of New Mexico and represents the general public.

Other than the state historian, all members shall be appointed by the governor. Each appointed professional member shall have achieved recognition for accomplishment in that member's field in the American southwest, and each shall have specialized knowledge of New Mexico.

- B. Any member of the committee shall be reimbursed for necessary expenses in the discharge of the member's official duties in accordance with the rates set by the Per Diem and Mileage Act [10-8-1 NMSA 1978]. Any committee member who receives a salary from state funds shall not be entitled to per diem and mileage for service on the committee unless the service is away from the town in which the member's duty station is located, and, in that case, the member shall receive per diem and mileage allowance at the rate set for salaried state employees. Committee members shall receive no other compensation, perquisite or allowance for committee service, but this does not mean that committee members who receive a salary from state funds shall not continue to draw such salary while discharging committee duties.
- C. A simple majority shall constitute a quorum. A member of the committee shall abstain from voting or the member's vote shall be disqualified on any matter in which the member has a pecuniary interest.
- D. Appointed members shall serve terms of four years. Members shall be appointed without regard to partisan political affiliation, and any member may be reappointed to the committee.
- E. A chairman, vice chairman and secretary shall be elected from the membership to serve for one year, subject to reelection.
- F. The committee shall meet at least once each quarter.

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### **18-6-5 Committee; powers and duties.**

The primary function of the committee is to review proposals for the preservation of cultural properties. The committee is authorized to take such actions as are reasonable and consistent with law to identify cultural properties and to advise on the protection and preservation of those properties. Among such actions as may be necessary and proper to the fulfillment of these responsibilities, and without being limited hereby, the committee:

- A. shall determine what constitutes historical, archaeological, scientific, architectural and other cultural significance for the purpose of identifying cultural properties as used in the Cultural Properties Act [18-6-1 NMSA 1978];
- B. shall prepare and keep up to date the official register. This official register shall be composed of properties identified by the committee as having historical or other cultural significance and integrity, being suitable for preservation and having educational significance;
- C. shall prepare and maintain proper documentation of the historic or other significance of cultural properties. The committee is granted access to all state and local public documents that may be necessary for the documentation, and such state and local agencies as have custody of such documents are authorized to allow the committee to examine and reproduce those documents useful for the documentation;
- D. shall inspect all registered cultural properties periodically to assure proper cultural or historical integrity and proper maintenance. The inspection may be made by an authorized representative of the committee or historic preservation division of the office of cultural affairs. Such inspection shall be made only with the written consent of the owner or his authorized representative.
- E. shall, based upon the inspection of a registered cultural property, recommend such repairs, maintenance and other measures as should be taken to maintain registered status;
- F. shall issue regulations pertaining to the identification, preservation and maintenance of registered cultural properties in order to maintain the integrity of those properties;
- G. may delete from the official register any registered cultural property whose owner does not comply with the committee's regulations or follow its recommendations for repair and maintenance, or which upon presentation of further evidence does not merit continued official registry;
- H. may recommend to the museum division of the office of cultural affairs and other public administrators of registered cultural properties measures for the investigation, restoration and protection of such properties;
- I. may encourage and render technical advice to private owners of registered cultural properties in order that such properties may be preserved;
- J. may encourage and provide technical assistance to municipalities and counties in acquiring, preserving and developing cultural properties within their jurisdictions;
- K. shall cooperate with federal, state, local and private agencies and persons engaged in the administration, development or other work relating to cultural properties within the state;
- L. shall pursue all activities in a manner consistent with state and federal laws and regulations;
- M. may encourage and promote public appreciation of New Mexico's historical and cultural heritage by:
  - (1) reviewing for accuracy the proposed publication of information on cultural properties; and
  - (2) reviewing the accuracy and adequacy of proposed marking of cultural properties;
- N. may utilize the assistance of individuals, local organizations, state agencies and others interested in the identification and preservation of cultural properties;
- O. may issue, with the concurrence of the state archaeologist and the state historic preservation officer, permits for the examination or excavation of sites and the collection or removal of objects of antiquity or general scientific interest, where such sites or objects are located on state lands, to institutions which the committee may deem to be properly qualified to conduct such examination, excavation or collection, subject to such rules and regulations as the committee may prescribe; provided that the examinations,

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excavations and collections are undertaken by reputable museums, universities, colleges or other historical, scientific or educational institutions or societies approved by the committee, with a view toward disseminating knowledge about cultural properties; and provided that a summary report of such investigations, containing relevant maps, documents, drawings and photographs be submitted to the committee which shall in turn submit the report to the appropriate agency or make other appropriate disposition of the report; and provided further, that all specimens so collected shall be the property of New Mexico, and that prior arrangements be made for the disposition of specimens derived from such investigations in an appropriate institution of the state for for loan of such specimens to qualified institutions in or out of the state;

P. shall provide advice to the state historic preservation officer in the historic preservation division and to the director of the museum division of the office of cultural affairs on cultural properties; and

Q. shall make, in conjunction with the historic preservation division, an annual report on its activities to the governor and the legislature. The report may contain recommendations for the more effective preservation of New Mexico's historic and cultural heritage.

### **18-6-6 Cultural affairs department; powers and duties relating to the cultural properties act.**

A. The cultural affairs department is responsible for administering, developing and maintaining all registered cultural properties in its ownership or custody.

B. Unless other locations are deemed more appropriate by the committee, in consultation with the museum of New Mexico, because of the nature of the property involved, the cultural affairs department shall be the depository for all collections made under the provisions of the Cultural Properties Act [18-6-1 NMSA 1978] and shall make available material from such collections to museums in and out of the state on the request of the governing bodies of those museums when, in the opinion of the department, such use is appropriate and when arrangements are made for the safe custodianship and public exhibition of the material in accordance with department rules. The museum of New Mexico shall maintain a record of the location of all such collections.

C. The cultural affairs department may seek and accept gifts, donations and grants, subject to the provisions of Subsection B of Section 18-6-7 NMSA 1978, to be used to acquire, preserve or restore registered cultural properties.

D. The cultural affairs department may acquire by gift, purchase or, if no other means of acquisition are available, condemnation any cultural property or interest therein sufficient to preserve such property. Cultural properties so acquired shall be administered by the department or other appropriate state agencies in accordance with Subsections A and B of this section.

E. The cultural affairs department may enter into agreements with the committee to provide assistance in carrying out the duties of the committee.

### **18-6-7 Historic preservation division; planning; fiscal administration and cooperation for purposes of the cultural properties act.**

A. The state historic preservation officer of the historic preservation division of the cultural affairs department shall, with the concurrence of the committee, prepare a long-range plan for the preservation of cultural properties, including but not limited to the identification, acquisition, restoration and protection of historic and cultural properties and the maintenance and expansion of statewide historic and prehistoric site data bases.

B. The historic preservation division shall administer funds that are received, controlled and disbursed for the purposes of the Cultural Properties Act [18-6-1 NMSA 1978], unless such funds are specifically granted or appropriated to another agency.

C. Consistent with the Cultural Properties Act, the historic preservation division shall cooperate in all matters with the committee and other divisions of the cultural affairs department.

### **18-6-8 State historic preservation officer; appointment; qualifications; duties.**

A. The "historic preservation division" is created within the cultural affairs department.

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B. The state historic preservation officer shall be the director of the division and shall be hired by the secretary of cultural affairs with the consent of the governor. The position's qualifications shall be consistent with but not limited to the following:

(1) a graduate degree in American history, anthropology, architecture or historic preservation;

(2) at least five years of professional experience in American history, anthropology, architecture or historic preservation or any combination of these; or

(3) a substantial contribution through research and publication to the body of scholarly knowledge in the field of American history, anthropology, architecture or historic preservation or any combination of these.

C. The state historic preservation officer shall administer the Cultural Properties Act [18-6-1 NMSA 1978], including but not limited to being administrative head of all Cultural Properties Act functions assigned to the historic preservation division by law or executive order. In addition, the state historic preservation officer shall coordinate all duties performed by, and cooperate with, the committee, the secretary of cultural affairs and any other entities, public or private, involved with cultural properties.

D. The state historic preservation officer, in conjunction with the secretary of cultural affairs:

(1) shall provide staff to the committee;

(2) shall maintain the state register of cultural properties;

(3) may fund historic site surveys and may fund restorations;

(4) shall administer historic preservation tax benefit programs; and

(5) shall review state undertakings to determine their effect upon significant historic properties.

### **18-6-8.1 Review of proposed state undertakings.**

The historic preservation division of the office of cultural affairs shall periodically furnish copies of the official register, or relevant sections of the official register, to state agencies and departments and shall periodically advise state agencies and departments of the status of the division's program of cultural property identification and registration. The head of any state agency or department having direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property shall afford the state historic preservation officer a reasonable and timely opportunity to participate in planning such undertaking so as to preserve and protect, and to avoid or minimize adverse effects on, registered cultural properties.

### **18-6-9 Cultural property; unauthorized excavation, injury or destruction; criminal damage to property.**

A. Any person who knowingly excavates, injures or destroys cultural property located on state land without a permit is guilty of criminal damage to property.

B. Any person who solicits, employs or counsels another person to excavate, injure or destroy cultural property located on state land without a permit is guilty of criminal damage to property.

C. Whoever commits criminal damage to property pursuant to the provisions of this section and the value of the property excavated, injured or destroyed is:

(1) less than one thousand dollars (\$1,000) is guilty of a petty misdemeanor and shall be sentenced according to the provisions of Section 31-19-1 NMSA 1978; or

(2) one thousand dollars (\$1,000) or more is guilty of a fourth degree felony and shall be sentenced according to the provisions of Section 31-18-15 NMSA 1978.

### **18-6-9.1 Cultural property; unauthorized appropriation; larceny.**

A. Any person who knowingly appropriates cultural property located on state land without a permit is guilty of larceny.

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B. Any person who solicits, employs or counsels another person to appropriate cultural property located on state land without a permit is guilty of larceny.

C. Any person who receives, traffics in or sells cultural property appropriated from state land without a valid permit is guilty of larceny.

D. Whoever commits larceny pursuant to the provisions of this section and the value of the property appropriated is:

(1) less than one hundred dollars (\$100) is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(2) over one hundred dollars (\$100) but less than two hundred fifty dollars (\$250) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(3) two hundred dollars (\$200) or more but less than two thousand five hundred (\$2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) two thousand five hundred dollars (\$2,500) or more but less than twenty thousand dollars (\$20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; or

(5) more than twenty thousand dollars (\$20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

### **18-6-9.2 Cultural property; unauthorized damage or appropriation; civil penalties.**

Any person violating the provisions of the Cultural Properties Act [18-6-1 NMSA 1978] shall be liable for civil damages to the state agency, department, institution or political subdivision having jurisdiction over the cultural property in an amount equal to the cost or, in the discretion of the court, in an amount equal to twice the cost of restoration, stabilization and interpretation of the cultural property.

### **18-6-9.3 Cultural property; forfeiture of instruments.**

Any instrument, vehicle, tool or equipment used or intended to be used to violate the provisions of the Cultural Properties Act [18-6-1 NMSA 1978] is subject to forfeiture, and the provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

### **18-6-10 Cultural properties on private land.**

A. It is the declared intent of the legislature that field archeology on privately owned lands should be discouraged except in accordance with the provisions and spirit of the Cultural Properties Act [18-6-1 NMSA 1978]; and persons having knowledge of the location of archeological sites are encouraged to communicate such information to the committee.

B. It shall be deemed an act of trespass and a misdemeanor for any person to remove, injure or destroy registered cultural properties situated on private lands or controlled by a private owner without the owner's prior permission. Where the owner of a registered cultural property has submitted his acceptance in writing to the committee's registration of that cultural property, the provisions of Section 8 [18-6-9 NMSA 1978] of the Cultural Properties Act shall apply to that registered cultural property.

C. Where a cultural property is on private land or is otherwise privately owned and the committee determines that such cultural property is worthy of preservation and inclusion on the official register, the committee may recommend the procedure best calculated to ensure preservation. Such procedures may include:

(1) providing technical assistance to the owner who is willing to restore, preserve and maintain the cultural property;

(2) acquiring the property or an easement or other right therein by gift or purchase;

(3) advising the county or municipality within which the cultural property is located on zoning the property as an historic area or district in accordance with the Historic District Act [3-22-1 NMSA 1978];

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(4) advising the county or municipality within which the cultural property is located on the use of agreements, purchases or the right of eminent domain to obtain control of the cultural property in accordance with the Historic District Act; and

(5) acquiring the property for the state by use of the right of eminent domain.

### **18-6-11 Permit required for excavation of archaeological sites; penalty.**

A. It is unlawful for any person or his agent or employee to excavate with the use of mechanical earth moving equipment an archaeological site for the purpose of collecting or removing objects of antiquity when the archaeological site is located on private land in this state, unless the person has first obtained a permit issued pursuant to the provisions of this section for the excavation. As used in this section, an "archaeological site" means a location where there exists material evidence of the past life and culture of human beings in this state but excludes the sites of burial of human beings.

B. Permits for excavation pursuant to Subsection A of this section may be issued by the committee upon approval by the state archaeologist and the state historic preservation officer when the applicant:

(1) submits written authorization for the excavation from the owner of the land;

(2) furnishes satisfactory evidence of being qualified to perform the archaeological excavation by experience, training and knowledge;

(3) submits a satisfactory plan of excavation for the archaeological site and states in the plan the method by which excavation will be undertaken; and

(4) agrees in writing, upon the completion of the excavation, to submit a summary report to the committee of the excavation, which report shall contain relevant maps, documents, drawings and photographs, together with a description of the archaeological specimens removed as a result of the excavation. Failure to file the summary report shall be grounds for refusing issuance of a future permit to the person.

C. All archaeological specimens collected or removed from the archaeological site as a result of excavation pursuant to Subsections A and B of this section shall be the property of the person owning the land on which the site is located.

D. Nothing in this section shall be deemed to limit or prohibit the use of the land on which the archaeological site is located by the owner of the land or to require the owner to obtain a permit for personal excavation on his own land, provided that no transfer of ownership is made with the intent of excavating archaeological sites as prohibited in this section, and provided further that this exemption does not apply to marked or unmarked burial grounds.

E. Any person convicted of violating the provisions of this section is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000) and in addition thereto shall forfeit to the state all equipment used in committing the violation for which the person is convicted.

### **18-6-11.1 Confidentiality of site location.**

A. Any information in the custody of a public official concerning the location of archaeological resources, the preservation of which is in the interest of the state of New Mexico, shall remain confidential unless the custodian of such information determines that the dissemination of such information will further the purposes of the Cultural Properties Act [18-6-1 NMSA 1978], as set forth in Section 18-6-2 NMSA 1978 and will not create a risk of loss of archaeological resources.

B. As used in Subsection A of this section, "archaeological resources" means a location where there exists material evidence of the past life and culture of human beings in this state and includes the sites of burial and habitats of human beings.

### **18-6-11.2 Permit required for excavation of unmarked burials; penalty.**

A. Each human burial in the state interred in any unmarked burial ground is accorded the protection of law and shall receive appropriate and respectful treatment and disposition.

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B. A person who knowingly, willfully and intentionally excavates, removes, disturbs or destroys any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, or any person who knowingly, willfully and intentionally procures or employs any other person to excavate, remove, disturb or destroy any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, except by authority of a permit issued by the state medical investigator or by the committee with the concurrence of the state archaeologist and state historic preservation officer, is guilty of a fourth degree felony and shall be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months, or both. The offender shall upon conviction forfeit to the state all objects, artifacts and human burials excavated or removed from an unmarked burial ground in violation of this section, and any proceeds from the sale by the offender of any of the foregoing shall also be forfeited. As used in this section:

(1) "unmarked burial ground" means a location where there exists a burial or burials of any human being which is 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; and

(2) "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.

C. Any person who discovers a human burial in any unmarked burial ground shall cease any activity that may disturb that burial or any object or artifact associated with that burial and shall notify the local law enforcement agency having jurisdiction in the area. The local law enforcement agency shall notify the state medical investigator and the state historic preservation officer.

D. The state medical investigator may, consistent with the statutes governing medical investigations, have authority over or take possession of any human burial discovered in the state, in which case the provisions of Subsections E and F of this section shall not apply.

E. Permits for excavation of a human burial discovered in an unmarked burial ground shall be issued by the committee within sixty days of receipt of application when the applicant:

(1) submits written authorization for that excavation from the owner of the land on which the human burial is located or the applicant is the owner of the land;

(2) demonstrates appropriate efforts to determine the age of the human burial and to identify and consult with any living person who may be related to the human burial interred in the unmarked burial ground;

(3) complies with permit procedures and requirements established by regulations authorized in this section to ensure the complete removal of the human burial and the collection of all pertinent scientific information in accordance with proper archaeological methods; and

(4) provides for the lawful disposition or reinterment of the human burial either in the original or another appropriate location and of any objects or artifacts associated with that human burial consistent with regulations issued by the state historic preservation officer, except that the committee shall not require, as a condition of issuance of a permit, reinterment or disposition, any action that unduly interferes with the owner's use of the land.

F. Permits for the excavation of any human burial discovered in the course of construction or other land modification may be issued by the committee with the concurrence of the state archaeologist and the state historic preservation officer on an annual basis to professional archaeological consultants or organizations.

G. Except when the committee requires as a condition of the permit that any object or artifact associated with a human burial be reinterred or disposed of with that burial, that object or artifact shall be the property of the person owning the land on which that burial is located.

H. Any object or artifact and any human burial excavated or removed from an unmarked burial ground in violation of this section shall be forfeited to the state and shall be lawfully disposed of or reinterred in accordance with regulations issued by the state historic preservation officer; provided that no object or artifact so forfeited shall ever be sold by the state; and provided further that any object or artifact removed

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from the land without the owner's consent and in violation of this section shall be returned to the lawful owner consistent with Subsection G of this section.

I. The state historic preservation officer shall issue regulations with the concurrence of the state medical investigator for the implementation of this section.

### **18-6-12 Emergency classification pending investigation.**

A cultural property which the committee thinks may be worthy of preservation may be included on the official register on a temporary basis for not more than one year, during which time the committee shall investigate the property and make a determination as to whether it may be permanently placed on the official register. If the cultural property is on private land, the temporary classification shall not be considered a taking of private property, but the owner may receive a fair rental value for the part of the land affected if the temporary classification unduly interferes with the owner's normal use of the land. The owner shall be immediately notified of the committee's determination. If at the expiration of one year from the time the temporary classification was imposed the owner has not been notified of any committee action, the temporary classification shall lapse, and it shall not be renewed for five years.

### **18-6-13 Repealed.**

### **18-6-14 State historian.**

The state historian at the state records center is designated as "state historian" for purposes of the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978].

### **18-6-15 State archaeologist.**

The state archaeologist in the cultural affairs department is designated as "state archaeologist" for the purposes of the Cultural Properties Act [18-6-1 NMSA 1978]. The state archaeologist shall be professionally recognized in the discipline of archaeology, shall have achieved recognition for accomplishments in his field in the American southwest and shall have a specialized knowledge of New Mexico.

### **18-6-16 Preparation and sale of cultural properties publications; revolving fund; report.**

The historic preservation division shall encourage and promote publications relating to cultural properties that have been prepared pursuant to the Cultural Properties Act [18-6-1 NMSA 1978]. The historic preservation division may prepare or contract for the preparation of such publications on the condition that it receives from the sale of the publications the amount expended plus interest on that amount compounded annually at the prime lending rate quoted in the Wall Street Journal on the effective date of the contract until the expended amount is reimbursed in full to the division. All receipts from such sales shall go into a special revolving fund, which is hereby established. The historic preservation division shall adopt rules establishing guidelines and fiscal controls over the use of the revolving fund.

### **18-6-17 Designation of state monuments; reservation of lands for monument care and management.**

The governor is authorized, upon the recommendation of the committee and the board of regents of the museum of New Mexico, to declare by public proclamation that any cultural property situated on lands owned or controlled by the state shall be a state monument and may reserve as a part thereof such parcels of land as may be necessary for the proper care and management of the cultural property to be protected. In the case of proposed state monuments situated on state trust lands, the federal laws granting same shall be complied with. Any such monument shall be administered by the museum division of the office of cultural affairs in accordance with the provisions of Section 18-6-6 NMSA 1978.