

PUBLIC RULE HEARING PROCEDURES

Pointers for the Hearing Officer:

It is the hearing officer's responsibility to:

- ü Protect the record, making sure that only one person speaks at a time. (*The record is all that matters to the judge on appeal. If something is not on record, then it does not exist to the judge.*)
- ü Make sure that gestures are entered into the record (*e.g. " Let the record reflect that "A" nodded "Yes"*)
- ü Make sure that each person addressing the Board identifies him./herself, for the record each time he/she addresses the Board.
- ü Do not permit the hearing to become argumentative.

It is important to note that neither the hearing officer nor the Board members present at the hearing are required to testify, comment, or otherwise provide support or criticism of the proposed rule during the rule hearing. If a Board member provides personal comments of a proposed rule during the rule hearing they are subject to cross-examination by *anyone* present at the hearing. This does not preclude the Board member from asking questions of others or providing clarification.

The Board will have an opportunity to discuss the entire record, including exhibits and testimony during its meeting after the rule hearing is adjourned, at which time there will be no right for members of the public to cross-examine or question members of the Board.

Statements of support, rationale, and even response to negative feedback can be provided by the Board while considering adoption of the proposed rules during its subsequent Board meeting.

OPENING THE HEARING

Hearing Officer's (HO)/Chair Opening Statement:

HO/Chair: This hearing will please come to order. My name is **Rick Hendricks**, Chair of the Cultural Properties Review Committee. I will be service as the Hearing Officer and be advised by the CPRC's counsel from the Office of the Attorney General.

The purpose of this hearing is for the CPRC to receive public comment on proposed amendments to the CPRC's current rules, which are in 4.10.8 NMAC and 4.10.14 NMAC. The CPRC welcomes everyone here today and those who provided written comment.

This hearing is being conducted in accordance with the provisions of the Cultural Properties Act and the State Rules Act. The hearing is being recorded by the Historic Preservation Division. Parties interested in a copy of the minutes, please contact Annette Apodaca directly at the conclusion of the hearing.

Public notice of this hearing was advertised in the New Mexico Register, the Albuquerque Journal, and on the Historic Preservation Division's website. Copies of the proposed changes have been available on the website and available upon request from the Historic Preservation Division. Printed copies are available at today's hearing on the table located near the door.

Those here today, please sign the attendance sheet at the front of the room, which will later be entered into the record as an exhibit.

Introductions:

HO/Chair: May we have a roll call of the Board?

Administrator/Secretary: [Takes a roll call vote]

(Note: If a Board Member arrives late (or leaves), be sure to announce the entrance/exit.

E.g., "Let the record show that Member [Name] has arrived/left at [time] .)

Hearing Procedures:

HO/Chair: This rule hearing will be conducted in the following manner:

Historic Preservation Division staff will present pre-filed exhibits. Exhibits admitted into evidence are available for review by the public, but exhibits may not be removed from this room.

After all exhibits are entered, we will proceed in numerical sequence through each proposed rule change. We will only address one rule at a time. After introducing each section of proposed changes I will open the floor to any comments from the audience.

The Cultural Properties Review Committee is not required to follow judicial rules of evidence. However, in the interest of efficiency, I reserve the right to limit any testimony deemed irrelevant, redundant, or unduly repetitious.

For the record, would the members of the audience who intend on testifying during the rule hearing please introduce yourselves and state your affiliation.

(Note: If there are a large number of persons indicate intent to testify, you may place a time limit for testimony to, say, 5 minutes per person – this must be consistent and the Board cannot pick and choose to only limit certain people.)

In order to ensure that the hearing is accurately recorded, only one person at a time shall be allowed to speak. Any person recognized to speak is asked to:

- Ø Identify yourself by name for the reporter EACH time you address the CPRC; and
- Ø Speak loud and clearly so the reporter can accurately record your comments.

After each person has offered comment, they will stand for questions from the Board. The audience may also ask questions of anyone offering comments after being recognized by me.

The CPRC will discuss the proposed rules during the CPRC meeting immediately following this hearing. Final CPRC action, including adoption of the rules, will not take place as part of the rule hearing.

Preliminary Matters:

HO/Chair: This hearing is open. Does HPD staff have any exhibits to introduce as evidence?

Staff: Mr. Chair, my name is Michelle Ensey and I am the Deputy State Historic Preservation Officer and State Archaeologist. I have the following exhibits to enter into evidence:

- 1) Exhibit #1: The legal notice published in the New Mexico Register on **October 30th, 2018,** the required minimum of 30 days advance notice for a public rule hearing.
- 2) Exhibit #2: The legal notice published in one newspaper of general circulation on **November 4th, 2018.**
- 3) Exhibit #3: Proposed new rule 4.10.8 NMAC, *Permits to Conduct Archaeological Investigations on State Land.*
- 4) Exhibit #4: Proposed new rule 4.10.14 NMAC, *Cultural Properties on Private Land and Mechanical Excavation Permits.*

Staff: Mr. Chair, the following exhibits are public comments received by the Historic Preservation Division.

- 5) Exhibit #5: Written comment received from **Dedie Snow,** dated **October 31, 2018.**

Staff: Mr. Chair, that is all of the exhibits that the CPRC has received.

HO/Chair: Are there any questions from the CPRC members?

Exhibits 1 through 5 are hereby admitted into the record. If there are no other preliminary matters we will proceed with introduction of the proposed rules.

Proposed Rules/Comment Period:

HO/Chair: Any person wishing to testify or submit evidence with their comments shall do so only after they are recognized.

Any document offered to the CPRC shall be introduced as an exhibit. CPRC members will be permitted to ask questions before I rule on the admissibility of the evidence. Upon admissibility, each exhibit will be marked, numbered and entered into the record.

At this time each proposed rule will be introduced. I will open the floor to members of the audience for testimony and comments on each rule. Members of the CPRC and members of the audience may ask questions of each individual offering comments during the hearing.

(Note: Since the proposed rules will be a part of the record; have been distributed and made available prior to the hearing, it is probably not necessary to each rule in their entirety. A summary of the proposed changes is usually sufficient. The hearing officer can decide whether each rule should be read in whole or in part or how detailed of a summary to provide.)

NMAC Rule #1 – 4.10.8 NMAC

HO/Chair: We'll begin with 4.10.8 NMAC, *Permits to Conduct Archaeological Investigations on State Land*. The current rule is being repealed and replaced with the new proposed rule. The CPRC is considering the proposed new rule in order to clarify and update the rule, to change the term of the General Archaeological Investigation Permit from one to three years, adopt the 1997 Secretary of the Interior's historic preservation professional qualification standards, clarify the application process for listing on the SHPO Directory, clarify the standards for continuing education credits, eliminate redundancies and correct inconsistencies throughout the rule.

Would anyone like to comment on the changes to 4.10.8 NMAC?

[For each person commenting: Please stand and identify yourself for the record. Board members, are there any questions? Would anyone in the audience like to ask any questions of this witness?]

NMAC Rule #2 –4.10.14 NMAC.

HO/Chair: We will now move on to 4.10.14 NMAC, *Cultural Properties on Private Land and Mechanical Excavation Permits*. The current rule is being repealed and replaced with the new proposed rule. The CPRC is considering the proposed new rule in order to clarify language, correct inconsistencies in the rule and update the standards for mechanical excavation.

Would anyone like to comment on 4.10.14 NMAC?

[For each person commenting: Please stand and identify yourself for the record. Board members, are there any questions? Would anyone in the audience like to ask any questions of this witness?]

CLOSING THE HEARING

HO/Chair: Has everyone present signed the attendance sheet? (*Note: allow for everyone to sign*).

At this time, the attendance sheet shall be marked as an exhibit.

HO/Chair: If there are no questions from the Board, I admit this as Exhibit 6.

HO/Chair: The comments submitted and testimony heard during this rule hearing will be reviewed by the CPRC and discussed during a separate meeting immediately. The CPRC will vote on the proposed rules during that meeting.

I would like to thank the Board members and everyone present for their participation today.

Let the record show that this hearing is adjourned at _____ p.m.

Exhibit #1: Legal Notice Published in the NM Register

CULTURAL PROPERTIES REVIEW COMMITTEE PUBLIC RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that the Cultural Properties Review Committee (CPRC) will convene a public hearing on Friday, December 7, 2018 at 1:00 pm in the Old Senate Chambers, Room 238 in the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501. Following the hearing, the CPRC will convene a board meeting to adopt the rules and take care of regular board business.

The purpose of the hearing is to consider repealing and replacing rules 4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land and rule 4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation Permits. The CPRC proposes to repeal and replace both rules in order to clarify, supplement, and update both rules in order to facilitate the effective administration of permits for archaeological investigations on state and private land.

The statutory authority for the proposed changes to 4.10.8 NMAC is found in Section 18-6-5(O) NMSA 1978 of the Cultural Properties Act. The statutory authority for the proposed changes to 4.10.14 NMAC is found in Sections 18-6-10 and 18-6-11 NMSA 1978 of the Cultural Properties Act. The CPRC is considering the adoption of a new rule 4.10.8 NMAC in order to change the term of the General Archaeological Investigation permit from one to three years, adopt the 1997 Secretary of the Interior's historic preservation professional qualification standards, clarify the application process for listing on the SHPO Directory and the standards for continuing education credits, eliminate redundancies, and correct inconsistencies throughout the current rule. The CPRC is considering the adoption of a new rule 4.10.14 NMAC in order to clarify language, correct inconsistencies and update the standards for mechanical excavation.

The proposed rules are available at the Historic Preservation Division (HPD) website, www.nmhistoricpreservation.org, and at the HPD office located in the Bataan Memorial Building, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501. To request that a copy of the proposed rule be mailed to you, submit your request in writing to Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, by email to nm.shpo@state.nm.us, or via fax to (505) 827-6338.

The CPRC is currently accepting public comments on the proposed rules. Additionally, any person may appear at the hearing to submit their comments on the proposed rules. Written comments may be submitted by mail to: Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, by email to nm.shpo@state.nm.us, or via fax to (505) 827-6338. Written comments should be submitted for the CPRC's consideration no later than 1:00 pm on December 7, 2018. Written comments will be posted on HPD's website.

Individuals in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing should contact Annette Apodaca at 505-827-6314 or annette.apodaca2@state.nm.us at least five business days prior to the hearing.

Exhibit #2: Legal Notice Published in the Albuquerque Journal

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The proposed rules are available at the Historic Preservation Division (HPD) website, www.nmhistoricpreservation.org, and at the HPD office located in the Bataan Memorial Building, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501. To request that a copy of the proposed rule be mailed to you, submit your request in writing to Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, by email to nm.shpo@state.nm.us, or via fax to (505) 827-6338.

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Exhibit #3

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, 4.10.8.1 NMAC, 01/01/2019]

4.10.8.2 SCOPE: This rule applies to all public and private entities conducting or proposing to conduct archaeological investigations on any lands owned, controlled or operated by the state of New Mexico.
[4.10.8.2 NMAC - Rp, 4.10.8.2 NMAC, 01/01/2019]

4.10.8.3 STATUTORY AUTHORITY: Subsection O of Section 18-6-5 (NMSA 1978) of the Cultural Properties Act.
[4.10.8.3 NMAC - Rp, 4.10.8.3 NMAC, 01/01/2019]

4.10.8.4 DURATION: Permanent.
[4.10.8.4 NMAC - Rp, 4.10.8.4 NMAC, 01/01/2019]

4.10.8.5 EFFECTIVE DATE: January 1, 2019 unless a later date is cited at the end of a section.
[4.10.8.5 NMAC - Rp, 4.10.8.5 NMAC, 01/01/2019]

4.10.8.6 OBJECTIVE: This rule describes the procedures used to review and issue a permit for archaeological investigations on state land. Additionally, this rule establishes professional and quality standards for a permittee's performance and sets forth causes for non-renewal of permits.
[4.10.8.6 NMAC - Rp, 4.10.8.6 NMAC, 01/01/2019]

4.10.8.7 DEFINITIONS:

A. "Archaeological investigation" means the study of archaeological sites, isolates and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

B. "ARMS" means the archaeological records management section within the historic preservation division that maintains NMCRIS, associated cultural resource records and the records repository pursuant to 4.10.19 NMAC.

C. "Archaeological site" or "site" means a location where there exists material evidence of the past life and culture of human beings in the state and is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure. An archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, habitation sites, ruins of buildings or structures, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials.

D. "Area of potential effect" or "APE" means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of a cultural property, if any such properties exist. The APE is influenced by the scale and nature of an undertaking, variation in topography and vegetation, and may be different for different kinds of effects caused by the undertaking and may include a buffer area to adequately account for direct and indirect effects.

E. "Area of historic and scientific interest" means an area lacking surface evidence of cultural resources but where there is a high probability of finding subsurface material remains and cultural deposits.

F. "Collection" means the removal of material remains from state land, whether or not the remains are located within an archaeological site or isolate as defined herein.

G. "Commissioner of public lands" or "commissioner" means the executive officer of the state land office, who shall have jurisdiction over all state trust lands and shall have the management, care, custody, control and disposition thereof in accordance with the provisions of state statutes and the law or laws under which such lands have been or may be acquired.

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

I. "Cultural landscape" means a geographic area including both cultural and natural resources associated with a historic event, activity or person or exhibiting other cultural or aesthetic values. Landscapes include formally designed landscapes, vernacular landscapes, sites and ethnographic landscapes.

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

K. "Cultural resource" means any archaeological, historic, or architectural sites, districts, landscapes, buildings, structures, objects, and places of traditional cultural or religious importance to specified social or cultural groups. Cultural resources may be significant and eligible for listing in the national register of historic places or state register of cultural properties; they may be insignificant and ineligible for either register; or cultural resources may not have been evaluated to determine their significance and eligibility.

L. "District" means a significant concentration, linkage, or continuity of sites, buildings, structures, landscape elements, or objects united historically or aesthetically by plan or physical development.

M. "Effect" means any alteration of the cultural property's physical characteristics, including relevant features of its immediate environment, which may diminish the integrity of the property's location, design, setting, material, workmanship or association. "Effects" include, but are not limited to, physical destruction, damage or alteration of all or part of the property; alteration of the character of the property's surrounding environment where the character contributes to the property's eligibility; introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting, and neglect of a property resulting in its deterioration or destruction. Effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable.

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

O. "Excavation" means to systematically dig up artifacts, deposits or material remains within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

P. "General Permit" means a permit for survey and inventory and test excavation or monitoring on state land issued by the CPRC with the concurrence of the state archaeologist and the SHPO to a qualified institution. Permits must list staff that includes individuals listed in the SHPO directory. Permits are not issued to single individuals unless they have demonstrated they are a sole-proprietor.

Q. "Historic preservation division" or "HPD" means the division within the department of cultural affairs created pursuant to Subsection A of Section 18-6-8 NMSA 1978 of the Cultural Properties Act.

R. "Historic structures and buildings" means buildings or structures that are 50 or more years old or properties less than 50 years old that either meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years) or properties that are likely to meet the integrity and significance criteria in 30 CFR 60.4 within five years of the date of recording.

(1) A historic structure is a functional construction made usually for purposes other than creating human shelter. Structures include bridges, dams, canals, wells and other engineering works such as engineered roads and highways, tunnels, turbines, pipelines, refineries, stamp mills, smelters, power plants, silos, grain elevators and locomotives.

(2) A historic building is created principally to shelter any form of human activity. Buildings include but are not limited to houses, barns, stables, sheds, garages, warehouses, courthouses, city halls, social halls, commercial buildings, libraries, factories, mills, train depots, motels, theaters, schools, stores and churches. The term building may also be used to refer to a historically and functionally related unit such as a courthouse and jail or a house and barn.

S. "Human burial" or "unmarked human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

T. "Individual unmarked human burial excavation permit" is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of unmarked human burials on state or private land. Individual unmarked human burial permits are submitted with an application for a project-specific permit for excavation and when unmarked human burials are known to exist within the project area.

U. "Isolate" means a single object or artifact, or a few artifacts greater than 50 or more years old that lack clear association. Examples of isolates include a single flake, projectile point, potsherd, sherds from a single broken pottery vessel, pieces of glass from a single bottle or a single feature that lacks integrity.

V. "Limited tests" means the placement of probes, cores, shovel tests or similar tests using hand tools to augment survey-level information without substantially damaging or diminishing the integrity of an

archaeological site or area of historic and scientific interest. Limited tests are located systematically, randomly, or judgmentally in areas with the highest potential for buried cultural deposits and may also provide information on soils, stratigraphy or depositional context and integrity.

W. “Material remains” means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

X. “Mechanical earth-moving equipment” means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other deposits or materials including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

Y. “Mechanical Excavation Permit” is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of archaeological sites on private land using mechanical earth-moving equipment by someone other than the landowner or his agent.

Z. “Monitoring” means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection and avoidance of sites and may include documentation and excavation of cultural deposits.

AA. “Museum of Indian arts and culture-laboratory of anthropology” or **“MIAC”** means the division within the department of cultural affairs, which serves as the collections repository for archaeological materials and associated records and documents taken or collected from state land.

BB. “New Mexico cultural resource information system” or **“NMCRIS”** means the statewide online computer information system that integrates geographic, research, and management data on cultural properties and cultural resource investigations maintained by ARMS.

CC. “Permit” means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time.

DD. “Principal investigator” means the individual with overall administrative responsibility for the investigation authorized by the permit and who, without limitation, assures compliance with the terms of the permit and conformance with all laws, rules and professional standards.

EE. “Project area” means the geographic area or areas of study for an archaeological investigation conducted for research purposes.

FF. “Project director” means the individual who works under the direction of the principal investigator and is responsible for ensuring that the field work, analysis and reporting are consistent with professional standards.

GG. “Project-specific permit” means permit issued by the CPRC, with the concurrence of the state archaeologist and the SHPO, to a qualified institution for survey, test excavation or monitoring when the applicant does not hold a general permit or when the applicant proposes excavation project as part of a data recovery program.

HH. “Qualified institution” means public and private entities including without limitation individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums, any agency of the federal government, or department, agency, institution, or political subdivisions of the state with staff that include individuals listed in the SHPO directory and who demonstrate capability to accomplish the type and scope of archaeological investigation proposed in the permit application.

II. “Reconnaissance survey” means a survey used to characterize the resources of an area. A reconnaissance survey can include a “windshield survey”, a “pedestrian survey,” a study of aerial photographs,

historical and recent maps and city plans to gain a general understanding of the community's layout or a detailed inspection of sample blocks or areas as a basis for extrapolation about the resources of the community as a whole.

JJ. "Registered cultural property" means a cultural property that the CPRC placed in the state register of cultural properties individually or as a contributing property within a district on either a permanent or temporary basis or that the keeper of the national register has placed on the national register of historic places.

KK. "Right of way" means a right or privilege to pass over, upon, through or across a defined area of state trust lands granted by the commissioner of public lands or by the head of another state agency for lands under its jurisdiction for a prescribed purpose and duration.

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

MM. "SHPO directory" means the directory of historic preservation professionals maintained by the SHPO and approved by the CPRC. The SHPO directory includes but is not limited to archaeologists who act in the capacity of principal investigator, project director, supervisory archaeologist; cultural anthropologists; historic archaeologists; architectural historians; historic architects; historic landscape architects; historians; and other historic preservation professionals.

NN. "SOI standards" means the *secretary of interior's historic preservation professional qualifications standards* as expanded and revised in 1997 (62 FR 33708). The standards specify the academic degrees or comparable training, professional experience and the products and activities that demonstrate that the professional is able to perform competent and professionally credible work in archaeology, architectural history, historic architecture, historic landscape architecture, history, cultural anthropology or one of the other historic preservation disciplines.

OO. "State agency" means a department, agency, institution or political subdivision of the state.

PP. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 NMSA 1978 of the Cultural Properties Act.

QQ. "State historian" means the historian designated pursuant to Section 18-6-14 NMSA 1978 of the Cultural Properties Act.

RR. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act who serves as the director of the HPD.

SS. "State land" means property owned, controlled, or operated by a state agency. Examples of state land include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way; state parks; state historic sites; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

TT. "State trust land" means lands, their natural products and all rights, privileges, or assets, which are derived from them, and which are under the care, custody, and control of the commissioner of public lands.

UU. "Supervisory archaeologist" means a crew chief, field supervisor or field director who works under the direction of the principal investigator or project director and is physically present for all field investigations. The supervisory archaeologist works independently in the field and may be in direct charge of archaeological field crews.

VV. "Survey" means a visual inspection of land to examine, identify, record, evaluate and interpret cultural resources and may include limited tests but shall not include excavation or test excavation. Survey intensity, design and methods are based on management and research objectives.

WW. "Test excavation" means the systematic placement of probes, cores, shovel tests or test pits using hand tools, and test trenches excavated by hand or with mechanical earth-moving equipment to expose geomorphological soils and buried cultural deposits. Test excavation is completed under a test excavation plan and is conducted to determine the eligibility of a site or define the nature and extent of cultural deposits.

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

ZZ. "Written and photographic records" means original or legible duplicate site data, such as site forms, artifact forms, notes, drawings, tables, maps, plans, charts and other written materials, and prints, slides and other photographic records.

[4.10.8.7 NMAC - Rp, 4.10.8.7 NMAC, 01/01/2019]

4.10.8.8 ARCHAEOLOGICAL INVESTIGATIONS UNDER A GENERAL PERMIT: The CPRC issues, with the concurrence of the state archaeologist and the SHPO, a general permit to qualified institutions to conduct archaeological investigations on state land. Three types of investigations may be performed under a general

permit: survey, test excavation, and monitoring. The applicant indicates on the application form the type or types of archaeological investigations requested at the time of the application. Archaeological investigations conducted under a general permit on state trust land are limited to investigations conducted under contract to an individual, organization or company undertaking exploration, construction, development or other ground-disturbing activities authorized by rights of way, easements, leases or other written permission to enter state trust land issued by the commissioner of public lands.

A. Survey. Surveys may be conducted under a general permit when applicants propose to identify, record, evaluate and interpret cultural resources and relocate, update records and evaluate previously identified cultural resources in accordance with the standards for survey in 4.10.15 NMAC.

B. Test excavation. Test excavation may be conducted under a general permit when the applicant proposes to implement the test excavations in accordance with a test excavation plan approved by HPD and the state agency archaeologist, if applicable, and prepared in conformance with 4.10.16 NMAC.

C. Monitoring. Monitoring may be conducted under a general permit when applicants propose to:

(1) supervise implementation of site avoidance or protection measures pursuant to 4.10.17 NMAC; or

(2) oversee land-disturbing projects though a site or area of historic and scientific interest following a monitoring plan approved by HPD and the state agency archaeologist, if applicable, and prepared in conformance with 4.10.17 NMAC.

[4.10.8.8 NMAC - Rp, 4.10.8.8 NMAC, 01/01/2019]

4.10.8.9 GENERAL PERMIT APPLICATION: General permits are issued for a three-year cycle. The applicant may obtain a general permit application form and instructions from HPD's website or may request them from HPD. The applicant shall complete the application consistent with this rule, provide the attachments described in this section and on the application form and maintain current agreements with ARMS and MIAC.

A. A general permit application for archaeological investigations on state land shall include the following information:

- (1) applicant name, mailing address, telephone number and email address;
- (2) the type(s) of archaeological investigations proposed to be performed under the permit (survey, test excavations, monitoring, or any combination thereof);
- (3) a staff roster indicating the following information:
 - (a) individuals currently listed in the SHPO directory that the applicant proposes to use in a supervisory capacity such as principal investigator, project director, supervisory archaeologist, and historic archaeologist during permitted archaeological investigations;
 - (b) other staff, such as crew members and laboratory personnel, cultural anthropologists, historians and other historic preservation specialists;
- (4) individuals who are not in the SHPO directory shall submit SHPO directory application forms, curriculum vitae, charts of experience and official transcripts or notarized diplomas;
- (5) continuing education credit documentation and updated curriculum vitae for individuals on the staff roster who are listed in the SHPO directory and who elect to report their continuing education credits along with their principal employer's permit (see Subsection B of 4.10.8.14 NMAC); and
- (6) applicant's signature, title and date, which may be submitted with original signature or signature transmitted by facsimile; or a scanned applications with the original signature transmitted by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

B. Attachments. The applicant shall include the following attachments with each application submittal. A hard copy of the attachments must be provided with the first three-year permit application. Thereafter, attachments can be provided electronically to HPD. Any changes from what is on file must be clearly noted in the application.

(1) **A summary of organizational experience.** This summary shall demonstrate the applicant's capability to accomplish the type and scope of archaeological investigations to be conducted under the permit and shall include but not be limited to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects.

(2) **Forms.** Copies of field recording, laboratory and in-field artifact analysis forms to be used during surveys and inventories.

(3) **Test excavation standards.** Applicants that request authorization to conduct test excavations shall include discussion of standard field and laboratory procedures consistent with the standards in 4.10.16 NMAC and submit copies of field forms to be used during the test excavations.

(4) **Current permits.** The applicant shall provide a list of permits for archaeological investigations currently held by the applicant including permit number and agency. A hard copy of the attachments must be provided with the first three -year permit application. Thereafter, attachments can be provided electronically to HPD. Any changes from what is on file must be clearly noted in the application.

C. Agreements. The following agreements shall be in place prior to issuance of a general archaeological investigation permit.

(1) **ARMS agreement.** The applicant shall have an account in good standing with ARMS for access to NMCRIS on or before submittal of the permit application. HPD shall verify the status of the account with ARMS.

(2) **Curation agreement.** The applicant shall provide a current curation agreement, if one is not already on file with MIAC. HPD shall verify the status of the account with MIAC.

D. General permit term.

(1) The term for a general permit is three calendar years, beginning on the date of approval by the CPRC to December 31 of the same year, continuing through the two next calendar years and concluding on December 31 of the third year.

(2) During the transition from annual to three-year general permits, applicants will be separated into groups to facilitate HPD's administration of the program. In the first year, all applicants will be assigned to one of three groups based on the permit number assigned during the initial application. The first group will comprise permit numbers 001-100. The second group will comprise permit numbers 101-200 and the third group will comprise the remaining permits beginning with number 201. Applicants in the first group will be eligible for three-year general permits starting 2020; applicants in the other two groups will be eligible for annual permits. First time applicants will be eligible for a three-year permit after the effective date of this rule. In 2021, the second group and first-time applicants will be eligible for three-year general permits; the third group will be eligible for annual permits. In 2022, the third group and all other applicants will be eligible for three-year general permits. Thereafter, all general permit applicants will be eligible for three-year general permits. For applicants issued an annual permit in 2020 or 2021, the CPRC waives the requirement to submit the attachments in Subsection B of this section during this transition period as long as HPD has an organizational summary on file.

E. An approved application may have special stipulations imposed by the CPRC, taking into consideration comments from committee members, the state archaeologist and the SHPO.

F. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating their concurrence with the issuance of the permit.

[4.10.8.9 NMAC - Rp, 4.10.8.12 NMAC, 01/01/2019]

4.10.8.10 ARCHAEOLOGICAL INVESTIGATIONS UNDER A PROJECT-SPECIFIC PERMIT:

The CPRC issues project-specific permits, with the concurrence of the state archaeologist and the SHPO, and the commissioner of public lands for archaeological investigations on state trust lands or the representative of the state agency with jurisdiction for other state lands. The applicant indicates on the project-specific application form the type or types of archaeological investigations proposed and submits a research design or monitoring plan approved by the state agency archaeologist or HPD, as applicable, and prepared in conformance with 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC or 4.10.21 NMAC, as appropriate.

A. Survey. Project-specific permits are required for applicants who propose to:

- (1) conduct sample, thematic or other research surveys;
- (2) substitute alternate field methods for the standards in 4.10.15 NMAC; or
- (3) perform surveys of state trust land undertaken independent of an activity authorized by

rights-of-way, easements, leases or other authority to enter state trust land.

B. Test excavation. Project-specific permits are required when applicants:

- (1) propose to substitute alternate test excavation methods for the standards in 4.10.16

NMAC including metal detection and collection of artifacts or ground penetrating radar and verification tests, or other technologies;

- (2) propose research-driven test excavation on state trust land undertaken independent of an activity authorized by rights-of-way, easements, leases or other authority to enter state trust land;
- (3) propose research-driven test excavation conducted over multiple years; or
- (4) do not have a general permit that includes authorization for test excavation.

C. Excavation. Project-specific permits and individual unmarked human burial permits are required for all excavation projects unless the site to be excavated is historic and burials are unlikely. Excavation involves disturbance of the ground within an archaeological site in excess of limited tests and test excavation or may be performed as part of a data recovery program designed to mitigate adverse effects of projects, as part of an academic program to train students in a field school, field studies for a thesis or dissertation, or other research involving the excavation of a site or area of historic and scientific interest.

D. Monitoring. Project-specific permits are required for monitoring when applicants:

- (1) do not have a general permit that includes authorization for monitoring; or
- (2) propose to substitute alternate methods for the standards in 4.10.17 NMAC.

E. Unmarked human burial excavation. The CPRC issues individual permits to applicants who propose to excavate unmarked human burials on state or private land. An individual permit must be obtained concurrently with a project specific permit for excavation unless the site to be excavated is historic and burials are unlikely. Unmarked human burial permits are issued pursuant to rule 4.10.11 NMAC.

F. Mechanical excavation of archaeological sites on private land. The CPRC issues mechanical excavation permits to applicants who propose to conduct archaeological test excavation or excavation at a site on private land using mechanical earth-moving equipment. An individual unmarked human burial excavation permit must be obtained concurrently with a mechanical excavation permit unless the site is historic and burials are unlikely. Individual unmarked human burial permits are issued under rule 4.10.11 NMAC. Mechanical excavation permits are issued under rule 4.10.14 NMAC.

[4.10.8.10 NMAC - Rp, 4.10.8.9 NMAC, 01/01/2019]

4.10.8.11 PROJECT-SPECIFIC PERMIT APPLICATION: The applicant may obtain project-specific permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD. Each archaeological investigation conducted for a different firm or for a different research project requires a separate project-specific permit.

A. The project-specific permit application shall include the following information:

- (1) applicant name, mailing address, telephone number and email address;
- (2) the type(s) of archaeological investigations requested (sample, thematic or other surveys, test excavation, excavation, monitoring, or any combination thereof);

(3) a staff roster indicating the following information:

(a) supervisory personnel who will be acting or expected to act in the capacity of principal investigator, project director, supervisory archaeologist, or biological archaeologist during permitted archaeological investigations and who are listed in the SHPO directory;

(b) other staff, such as crew members and laboratory personnel, cultural anthropologists, historians and other historic preservation specialists; and

(4) individuals who are not listed in the SHPO directory that the applicant proposes to employ in a supervisory capacity during the permitted archaeological investigations along with SHPO directory application forms, curriculum vitae, charts of experience and official transcripts or notarized diplomas; and

(5) the applicant's signature, title and date, which may be submitted with original signature, or signature transmitted by facsimile, or a scanned application with the original signature transmitted by electronic mail; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

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

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

(2) **Test excavation.** Prepare a research design that adheres to 4.10.16 NMAC. The research design may adopt the excavation standards detailed in 4.10.16 NMAC or may propose alternate standards that shall

be fully detailed, discussed and justified in the research design. Excavation of unmarked human burials is prohibited during testing.

(3) Excavation. Prepare a research design that adheres to 4.10.21 NMAC and apply for an individual unmarked human burial excavation permit for all excavation projects (4.10.11 NMAC) unless the site(s) to be excavated is historic and unmarked human burials are unlikely. The research design may adopt the excavation standards detailed in 4.10.21 NMAC or may propose alternate standards that shall be fully detailed, discussed and justified in the research design.

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

(5) A summary of organizational experience. If a current organizational summary is not already on file at HPD, the applicant shall provide a discussion that demonstrates the applicant's capability to accomplish the type and scope of archaeological investigations proposed to be completed under the permit and shall include but not be limited to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent, facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects; and a list of permits currently held by the applicant including permit number and agency.

(6) Forms. Copies of field, laboratory and analysis forms or examples of data tables expected to be used during the permitted work.

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

D. Curation agreement. The applicant shall obtain a current curation agreement from MIAC if a current agreement is not on file. HPD shall verify the status of the account with MIAC. If the applicant proposes another repository, the applicant shall append a copy of the curation agreement with that facility pursuant to 4.10.8.19 NMAC and provide a justification for using a facility other than MIAC as a repository.

E. Project-specific permit term.

(1) The term of a project-specific permit is usually for one year from the date of approval by the CPRC unless state trust lands are involved, in which case the term of the permit is from the date of approval by the commissioner of public lands. The applicant may request a longer term. The CPRC may approve a longer term based on the nature or complexity of the proposed work and sufficiency to complete the field studies, analyses and report as determined by the CPRC. The term shall not exceed three years including extensions.

(2) For project-specific permits with a term longer than one year, the permittee shall submit an annual progress report to the CPRC that summarizes the permitted work, even if no progress has been made, for each year for the term of the permit, excluding the year in which the final report is submitted. Failure by a permittee to submit an annual progress report may result in suspension of the permit and may be cause for the CPRC's denial of future permits in conformance with 4.10.8.23 NMAC.

F. An approved application may have special stipulations imposed by the CPRC, taking into consideration comments by committee members, the state archaeologist, the SHPO and the commissioner of public lands or the representative of the state agency with jurisdiction, as appropriate to the success of the project.

G. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating concurrence with the issuance of the permit and signature of the commissioner of public lands if state trust lands are involved. If the application for a project-specific permit involves state agency lands other than state trust lands, the state agency may concur by signing the permit but the state agency's signature is not required.

[4.10.8.11 NMAC - Rp, 4.10.8.13 NMAC, 01/01/2019]

4.10.8.12 PERMIT STIPULATIONS:

A. Permittees shall abide by all stipulations contained in this rule and any special stipulations imposed by the CPRC, the state archaeologist, the SHPO and the commissioner of public lands or the state agency as appropriate. These additional stipulations shall be set out in writing on the permit, or as an attachment to the permit.

B. Stipulations for all permits issued by the CPRC are described below.

(1) Permittees shall determine the land status of the archaeological investigation to ensure the work will not be in trespass and that they are in compliance with local, state or federal laws. The permittee is responsible for obtaining an easement or other written permission from the commissioner of public lands for archaeological investigations on state trust land and complying with all rules and regulations of the state land office relating to such easement or other permission.

(2) Permits are not exclusive in character. The state land office or the state agency reserves the right to use the subject tracts of land, or any part thereof, for any purpose within the administrative and legal jurisdiction of the state agency or state land office. The CPRC, in cooperation with the state agency and state land office, reserves the right to permit other archaeological investigations within the permit or easement area.

(3) All costs incurred in the execution of the activities conducted under a permit shall be borne by the permittee or the permittee's client or sponsor.

(4) The permittee shall comply with all laws, rules, ordinances and requirements in all matters and things affecting the premises and operations therein pertaining to the permit, archaeological site and the land where the site is located.

(5) All activities conducted under the permit shall be carried out so as to prevent erosion of the land, pollution of water resources and any other damage to the natural environment. Any sites or locations that are disturbed in the course of the archaeological investigations conducted under the permit shall be restored to their original condition insofar as possible. The areas of limited tests, test excavations and excavation shall be backfilled. All areas examined under the permit shall be left in a state that will not create hazard to life nor endanger livestock or other property, nor contribute to the deterioration of the site or location or adjacent lands by natural forces, unless other provisions are specifically approved in the permit.

(6) If unmarked human burials are discovered during the archaeological investigations, local law enforcement shall be notified pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

(7) Title to any mined or processed precious metals or treasure trove found on state trust land and in the area covered by the permit or easement is held by the commissioner of public lands and such materials shall not be disturbed or removed without specific written permission from the CPRC and the state land office. Such authorized removal shall be recorded and undertaken in the presence of the state archaeologist, the state historian or their designees.

C. Failure by a permittee to comply with the standard or special stipulations set forth in this rule and on the permit shall be cause for the CPRC's denial of future permits to the permittee in conformance with 4.10.8.23 NMAC.

[4.10.8.12 NMAC - Rp, 4.10.8.14 NMAC, 01/01/2019]

4.10.8.13 PROFESSIONAL QUALIFICATIONS STANDARDS: Investigations on state land shall be performed by historic preservation professionals who have the academic background and professional experience to apply the theories, methods and practices of the discipline to enable independent, professional judgments to be made about the identification, evaluation, documentation, registration and treatment of cultural properties in New Mexico. Except as provided otherwise in this section, the CPRC adopts and applies the SOI standards when determining whether an applicant is able to perform competent, professional work in one or more of the historic preservation disciplines in New Mexico. The SOI standards define the academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in the discipline. In addition, the CPRC requires that the total professional experience include a minimum of 12 months of professional experience with cultural resources in New Mexico.

A. Archaeology. Archaeology is the study of past human lifeways through the systematic observation, analysis and protection of the material remains of human activities. The CPRC combines professional experience with archeological resources of the prehistoric and historic periods when determining whether an individual meets the minimum professional experience requirements for listing in the SHPO directory as principal investigator, project director or supervisory archaeologist.

(1) **Principal investigator and project director.** Archaeologists serving as principal investigators or project directors shall meet the SOI standards for academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in prehistoric archaeology. The total professional experience shall include at least 12 months experience with archaeological resources in New Mexico at the supervisory level. The 12 months of experience shall demonstrate a relatively equal combination of archaeological fieldwork, laboratory analysis, report writing, as well as administrative or management experience. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the archaeological resources of New Mexico.

(2) **Supervisory archaeologist.** Archaeologists serving as crew chiefs, field supervisors or field directors shall have a bachelor's degree in anthropology or archaeology or a degree in a closely related field as determined by the CPRC; at least one archaeological field school or 30 days of full-time excavation experience in

lieu of the field school; and 12 months of professional experience with archaeological resources in New Mexico. The 12 months of experience shall demonstrate relatively equal combination of archaeological fieldwork, laboratory analysis and report writing. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the archaeological resources of New Mexico.

(3) Field crew. Archaeologists serving as field crew including assistant archaeologists and archaeological technicians shall work at all times under the direct, physical supervision of a principal investigator, project director or supervisory archaeologist.

(4) Historic archaeology. Historic archaeology is a specialization in archaeology that requires expertise in historic period sites and techniques of archival research. Historic archaeologists shall meet the SOI standards for academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in historic archaeology. The total professional experience shall include at least 12 months working with historic period archaeological sites and related resources in New Mexico. The experience in New Mexico shall include field and archival research, analysis and report writing. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the historic period resources in New Mexico.

(5) Biological archaeology. Biological archaeology is a specialization in archaeology that requires expertise to record and interpret observations on human skeletal and dental remains to provide information on the biology and health of the people of New Mexico. Biological archaeologists shall meet the standards in 4.10.11 NMAC for academic degrees or comparable training and professional experience. Biological archaeologists shall have advanced training in human osteology or equivalent experience and a demonstrated ability to collect and record observations systematically on human skeletal and dental remains, including fragmentary remains, analyze the remains, and prepare reports.

B. Architectural history. Architectural history is the study of the development of building practices through written records and design and the examination of structures, sites and objects in order to determine their relationship to preceding, contemporary and subsequent architecture and events. Architectural historians shall meet the SOI standards and shall include at least 12 months of experience in documenting the historic resources of New Mexico. Experience shall include research, writing, or teaching in New Mexico architectural history or restoration architecture.

C. Historic architecture. Historic architecture is the practice of applying artistic and scientific principles to the research, planning, design and construction management of the built environment with specialized training in the principles, theories, concepts, methods and techniques of preserving historic buildings and structures. Professionals in historic architecture shall meet the SOI standards and shall include at least 12 months experience in New Mexico. Experience shall include detailed investigations of historic structures, preparation of historic structure research reports and preparation of plans and specifications for preservation projects.

D. Historic landscape architecture. Historic landscape architecture is the practice of applying artistic and scientific principles to the research, planning, design and construction administration of cultural landscapes and built environment landscapes with specialized training in the concepts, principles, theories, methods and techniques of preserving cultural landscapes. Professionals in historic landscape architecture shall meet the SOI standards and shall include at least 12 months in research, documenting and analysis of the historic and cultural landscapes of New Mexico and the development of landscape plans and specifications for landscape preservation projects.

E. History. History is the study of the past through written records, oral history and material culture and the examination of that evidence within a chronological or topical sequence in order to interpret its relationship to preceding, contemporary and subsequent events. Historians shall meet the SOI standards and shall include at least 12 months in documenting the historic resources of New Mexico. Experience shall be demonstrated through research, writing, teaching, and interpretation of documents.

F. Cultural anthropology. Cultural anthropology is the description and analysis of cultural systems, which include systems of behaviors (economic, religious and social), values, ideologies and social arrangements. Cultural anthropologists shall meet the SOI standards and shall include at least 12 months of experience relevant to the understanding of ethnographic resources of New Mexico. Professional experience shall include experience in the use of ethnohistoric and ethnographic techniques including participant observation fieldwork among one or more contemporary ethnic groups and field surveys to identify and assess ethnographic resources that include historic and cultural places, and environmental features and places of value to Native American or other ethnic communities.

G. Exceptions.

(1) The CPRC reserves the right to consider the education, training and professional experience of any individual in exceptional situations and on a case-by-case basis when the individual's academic degrees or comparable training, professional experience and their products and activities together demonstrate exceptional proficiency in the appropriate discipline or position.

(2) The CPRC may approve the participation of individuals to conduct field studies on state land without the direct supervision of a principal investigator, project director or supervisory archaeologist in exceptional situations and on a case-by-case basis when the studies are performed under a project-specific permit. Graduate students completing field work for a dissertation or thesis or volunteers documenting rock art under the aegis of an archaeological society may qualify for this exception. Individuals qualifying for the exception are not listed in the SHPO directory.

[4.10.8.13 NMAC - Rp, 4.10.8.10 NMAC, 01/01/2019]

4.10.8.14 SHPO DIRECTORY: The SHPO shall maintain a directory of historic preservation professionals including but not limited to individuals who act in the capacity of principal investigator, project director, supervisory archaeologist, historic archaeologist, biological archaeologist, architectural historian, historic architect, historic landscape architect, historian, or cultural anthropologist, or who meet the SOI standards in another historic preservation discipline. The CPRC reviews the SHPO directory application form and materials specified in this section to determine whether an applicant meets the standards in 4.10.8.10 NMAC.

A. In order to be listed in the SHPO directory, individuals shall submit a SHPO directory application form, curriculum vitae, chart of experience for archaeological, cultural anthropology and historic architecture positions, transcripts or copy of diploma, and work samples as specified below to HPD. A chart is not required for all disciplines but shall be prepared to supplement an application when requested by the CPRC.

(1) **SHPO Directory Application form.** The applicant shall complete a SHPO directory application form for each discipline for which an individual requests listing. The application form can be downloaded from HPD's website or obtained from HPD upon request and shall include but not be limited to the following information:

- (a) applicant name, address and telephone number, email;
- (b) employer name, employer address, employer phone number, employer email;
- (c) highest degree obtained, field of study, institution, year of degree;
- (d) license number and date of New Mexico architectural license for historic architects;
- (e) for archaeology, the position for which the applicant is applying;
- (f) number of years full-time professional experience
- (g)
- (h) number months of New Mexico experience; and
- (i) short statement of qualifications [for guidance see SOI standards];
- (j) signature.

The applicant shall certify that the information contained in the application form is true and complete through an original signature on the application submitted by mail, an application with original signature transmitted by fax or a scanned application with the original signature transmitted by email. Applications lacking a signature shall be considered incomplete.

(2) **Curriculum vitae.** Curriculum vitae shall demonstrate the qualifications and professional experience following the guidance provided in the SOI standards. Curriculum vitae shall contain, at a minimum, the following information:

- (a) name, address, telephone number, and email;
- (b) education (date of degree, degree held, institution issuing the degree, and major and minor fields of study);
- (c) professional experience by month and year with exact dates, if possible; list experience by employer and include position held and responsibilities, project name and location, types of resources documented and types of activities including but not limited to types of archaeological investigations (survey, testing, excavation, monitoring, excavation of burials), historic building survey, preparation of plans and reports, historic structure reports, and register nominations;
- (d) publications and unpublished reports;
- (e) papers presented;
- (f) training; and
- (g) references.

(3) Chart of experience for archaeology and cultural anthropology. Charts shall summarize experience and shall be on file at HPD. It shall be the responsibility of the individual to provide an updated chart with each new application. Experience shall be demonstrated in number of days, with one day equaling a minimum of 6 hours within a 24-hour work period or months; with one month equaling 20 days. Separate charts shall be prepared for experience in New Mexico, experience relevant to the cultural resources of New Mexico, and other experience. Charts can be downloaded from HPD's website or obtained upon request. Charts for archaeology and cultural anthropology shall contain the following columns of information:

- (a) project name;
- (b) location by county and state;
- (c) position held (principal investigator, supervisory archaeologist, crew member, analyst, etc.);
- (d) specific type of experience (survey, field research, archival research, excavation of archaeological sites or burials, oral history, laboratory work, and report writing);
- (e) total number of months experience listed by project; and
- (f) total number of months at the bottom of the chart for each type of experience.

(4) Chart of experience for historic architecture. Charts shall summarize experience and shall be on file at HPD. It shall be the responsibility of the individual to provide an updated chart with each new application. Experience shall be demonstrated in number of days, with one day equaling a minimum of 6 hours within a 24-hour work period or months; with one month equaling 20 days. Separate charts shall be prepared for experience in New Mexico, experience relevant to the cultural resources of New Mexico, and other experience. Charts can be downloaded from HPD's website or obtained upon request. Charts for historic architecture shall contain the following columns of information:

- (a) project name and owner;
- (b) location by county and state;
- (c) employer and position held on the architectural and engineering (AE) team;
- (d) specific type of experience (project or report description, design and construction);
- (e) total number of months experience listed by project; and
- (g) total number of months experience at the bottom of the chart for each activity and project.

(5) Transcripts and diplomas. An official university or college transcript or a notarized copy of the diploma for the highest degree in the appropriate discipline shall be submitted with the SHPO directory application. Transcripts shall be submitted only once and at the time of the initial application under this rule, unless an individual is updating their educational experience and degrees obtained. It shall be the responsibility of the individual to provide an official transcript or notarized copy of the diploma if a higher degree is obtained after the initial application. HPD shall retain all submittals in the SHPO directory files.

(6) Work Samples for history and architectural history. Provide the following work samples of your experience documenting cultural resources in New Mexico for history and architectural history.

- (a) at least three HCPI forms;
- (b) detailed architectural description; submit no more than 10 pages as a sample of work; and
- (c) contextual history based on primary sources for an architectural or historic resource taken from a cultural resources report, state or national register nomination, professional paper or other related document where you were the principal author; submit no more than 10 pages as a sample of work.

(7) Work Samples for Historic Architecture.

- (a) site plans, plans, and elevations prepared for a historic restoration or rehabilitation project; submit 3 sheets for review; and
- (b) historic structure report or similar document assessing the historical significance of a structure and providing recommendations for treatment; submit no more than 10 pages of each document, to demonstrate a representative sample of work; include a table of contents if applicable.

B. Submit all documentation electronically to nm.shpo@state.nm.us. HPD shall review the SHPO directory application and documentation for sufficiency, accuracy and consistency with the minimum standards in this section and in 4.10.8.10 NMAC. A submission that does not contain the required documentation or lacks signatures will be considered incomplete. HPD shall inform the applicant of omissions or clarifications necessary to complete the application.

C. If the documentation is sufficient, accurate and consistent with the minimum standards, HPD shall forward the request to the CPRC at the next meeting for approval or denial. If approved, the individual's name will be listed in the SHPO directory for the discipline and position or positions approved for which the individual applied.

D. Listing in the SHPO directory demonstrates that the individual meets the standards for the discipline set forth in 4.10.8.10 NMAC. Listing does not authorize an archaeologist to work on state land unless the individual is listed on a staff roster of a current general or project-specific permit.

E. Once an individual has been approved for listing in the SHPO directory, they may be listed on the staff roster for a new general or project-specific permit or may be added to an existing permit without additional CPRC review by requesting a permit modification. To be added to an existing permit, an authorized representative of the permittee such as the permit coordinator, principal investigator or signatory on the general permit or project-specific permit, shall request the addition from HPD. HPD will confirm that the individual is listed in the SHPO directory and add the individual's name to the staff roster. An updated permit will be sent to the permittee via email to show the personnel addition.

[4.10.8.14 NMAC - Rp, 4.10.8.11 NMAC, 01/01/2019]

4.10.8.15 CONTINUING EDUCATION CREDITS; UPDATED CURRICULUM VITAE:

A. Individuals listed in the SHPO directory must continue to develop their professional knowledge and technical skills to maintain their listing in the SHPO directory. Individuals shall complete a minimum of 24 hours of professional development or training every three years for each discipline group: archaeology, cultural anthropology, and historic preservation (history, architectural history, historic architecture, historic landscape architecture and other historic preservation disciplines). The reporting period for continuing education credits starts in the calendar year the CPRC approves the SHPO directory listing and concludes on December 31 of the third year, continuing every three-year period thereafter.

B. Archaeologists with a principal employer and listed on the employer's general permit staff roster may elect to submit their continuing education credit documentation along with their employer's general permit application. If necessary, the individual's continuing education credit hours will be increased or decreased to fit the employer's three-year permit cycle administratively by HPD.

C. Individuals listed in more than one discipline group may elect to submit their continuing education credit documentation separately by discipline in different three-year cycles or together in one three-year cycle. If necessary, the individual's continuing education credit hours for one or more disciplines will be increased or decreased as needed administratively by HPD.

D. Individuals may obtain professional training and development through courses and workshops offered by the CPRC, HPD, professional archaeological and historical societies or associations, museums and other entities including classes at universities and colleges or through presentations or attendance at national, regional or local conferences. The CPRC's continuing education credit guidelines are available on HPD's website at <http://nmhistoricpreservation.org> or its successor site.

E. Individuals listed in the SHPO directory shall submit a continuing education cover sheet, updated curriculum vitae, and documentation of professional development to HPD every three-year cycle consistent with the requirements of this section.

(1) Evidence of training or professional development shall be summarized on the continuing education cover sheet for each discipline group. The cover sheet includes the individual's name, address, phone number, email, brief description of the activity, vendor, date, location, number of hours and a justification if the activity is not specifically listed in the CPRC's guidelines. Individuals shall document the professional development by including proof of registration, attendance or participation for each activity listed to the extent possible. The individual shall certify the information is true and complete by signing and dating the cover sheet.

(2) The updated curriculum vitae shall present a listing of professional experience, professional training and development, publications, unpublished reports and papers presented since the last submittal. A new, comprehensive curriculum vitae to replace the curriculum vitae on file with HPD may be submitted in lieu of an updated curriculum vitae.

F. Individuals shall continue to be listed in the SHPO directory as long as the individual documents the minimum 24 hours of professional development for every three-year cycle for each discipline group, provides the updated or new curriculum vitae every three years, and has not been removed from the SHPO directory. Individuals may request that their name be removed from the SHPO directory at any time.

G. Individuals who do not complete the minimum 24 hours of continuing education credits or provide an updated curriculum vitae for each listed discipline group every three years shall be removed from the SHPO

directory at a CPRC meeting. The individual may reapply for listing on the SHPO directory by submitting a new SHPO directory application and materials consistent with 4.10.8.11 NMAC and providing documentation of 24 hours of continuing education credits. Prior approval for listing on the SHPO directory does not guarantee CPRC approval of a new application.

H. HPD shall review all continuing education credit documentation and updated or new curriculum vitae for conformance with the CPRC's guidelines. Any questions or concerns regarding an individual's continuing education credits or curriculum vitae shall be presented to the CPRC at the next regularly scheduled meeting.
[4.10.8.15 NMAC - N, 01/01/2019]

4.10.8.16 REVIEW AND APPROVAL OF PERMIT AND SHPO DIRECTORY APPLICATIONS:

A. HPD shall receive permit and SHPO directory applications including attachments and maintain current files for each permittee and individual listed in the SHPO directory.

B. HPD shall review all information submitted in support of the permit or SHPO directory application for completeness, accuracy and conformance with all requirements. HPD shall attempt to contact the applicant to remedy any inaccuracies or inadequacies before further review or processing of the application. HPD shall submit all complete applications for consideration by the CPRC at the next scheduled CPRC meeting. HPD may recommend to the CPRC that an application be tabled or rejected if the application fails to meet minimum qualifying criteria either upon initial receipt or through failure to respond adequately to a request for information or correction of inaccuracies. When applicable and for project-specific permit applications only, HPD shall advise the CPRC on whether agency consultation with SHPO under federal or state law is complete or nearly complete.

C. The CPRC shall review and consider all applications for approval, approval with special stipulations or denial, with the concurrence of the state archaeologist and the SHPO. The CPRC may table applications to be discussed at a future meeting pending receipt of additional information necessary to make a decision on the application or, for project-specific permit applications, when consultation with SHPO under federal or state law is not substantially complete.

D. Any special stipulations attached to a permit by the CPRC, the state archaeologist or the SHPO shall be specified in writing on or in an attachment to the permit. The CPRC may include special stipulations at the written request of a state agency or commissioner of public lands if received prior to the CPRC's decision to approve the permit.

E. Signature of the chair of the CPRC indicates approval of the permit by the CPRC. Signatures of the state archaeologist and the SHPO indicate concurrence with the approval of the permit.

F. If the application for a project-specific permit involves state trust lands and the permit application has been signed by the CPRC, the state archaeologist and the SHPO, HPD shall forward the permit application to the commissioner of public lands for approval or denial. The applicant shall be required to obtain an easement or other written permission from the state land office as a condition of the commissioner of public lands approving the permit. The state land office shall forward to HPD the permit with any additional stipulations, once the application has been approved by the commissioner of public lands. Signature of the commissioner of public lands indicates approval of the permit. The permit is not valid without the signature of the commissioner of public lands. If either the permit or an application for an easement or other written permission to enter state trust lands has been denied by the commissioner of public lands, the state land office shall inform HPD of this fact in writing, and HPD shall notify the CPRC of the commissioner's decision.

G. The CPRC may deny a permit or SHPO directory application for any reason, including but not limited to, incomplete applications, insufficient experience, the lack of at least one principal investigator on the staff roster of the permit, or failure to demonstrate that a permit applicant is a qualified institution.

H. HPD shall notify the applicant in writing of the approval, approval with conditions or stipulations, or denial by the CPRC.

I. Any applicant who has been denied approval shall have the right to appeal the decision pursuant to 4.10.8.25 NMAC.

[4.10.8.16 NMAC - Rp, 4.10.8.15, 01/01/2019]

4.10.8.17 MODIFICATION OF PERMITS:

A. A permittee may request a modification to a permit at any time. The permittee shall submit a written request of the proposed permit modification to HPD and concurrently to the state agency archaeologist, if the state agency has one and the modification affects permit activities on state land under their jurisdiction. The request shall be approved or denied by the CPRC or HPD as specified in this section, taking into consideration comments provided by the state trust archaeologist or state agency archaeologist.

B. The CPRC shall review requests for a permit modification that propose a significant or substantive change in the scope of work, a change in the curatorial facility to a facility other than MIAC, and all other modifications that are not subject to administrative action by HPD as specified below in Subsection C of 4.10.15.17 NMAC.

C. HPD shall review and may approve requests for a permit modification for the following situations.

(1) If the modification to the permit involves adding individuals who are listed in the SHPO directory in the same position or deleting individuals from the permit staff roster, HPD shall review and approve the request within five working days of receipt of the request.

(2) If the archaeological investigation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period specified on the permit, the permittee shall write HPD and request an extension of the term of the permit. This request shall be received by HPD at least 10 working days prior to the expiration date of the permit to be considered. The request for the extension shall be accompanied by an interim report summarizing the excavations completed at that date and a proposed date when the excavations will be completed and when the final report will be submitted. HPD may approve one extension of the permit term not to exceed one year from the expiration date of the original permit. Additional requests for an extension will be reviewed by the CPRC.

(3) When a permittee notifies HPD of a change in a permittee's business address or facilities, HPD shall acknowledge receipt of the change within five working days and update the permittee's records.

(4) HPD may approve minor adjustments to the investigation that do not result in a reduction of the scope of work. HPD shall notify the permittee of its decision within 10 working days of receipt.

(5) If the archaeological investigation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify HPD in writing to request a cancellation of the permit. Disposition of material remains collected under the permit and copies of all written and photographic records resulting from a discontinued investigation shall be in accordance with 4.10.8.19 NMAC and the provisions of this section. The permittee shall obtain a receipt showing that the collections and records have been submitted to the repository and shall upload a copy of the receipt in NMCRIS. HPD shall document the cancellation in the permit files.

D. If fieldwork has not been initiated within the permit period or an extension has not been requested before the expiration of the permit, the permit shall become void at the end of the permit period. [4.10.8.17 NMAC - Rp, 4.10.8.16 NMAC, 01/01/2019]

4.10.8.18 REVIEW OF REPORTS. All permittees are required to submit a final written report. In all cases the reports shall be submitted to the state agency or agencies and HPD for review and comment as specified in this section. For archaeological investigations conducted on state trust lands, the commissioner of public lands may condition release of the permittee's bond upon the commissioner's approval of the final report.

A. Reports on the archaeological investigations shall be prepared and submitted consistent with the standards set forth as appropriate in 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC, and 4.10.21 NMAC. The state agency may establish additional reporting requirements and may request additional copies of the reports, forms, appendices and attachments. Reports shall be submitted simultaneously to HPD and the state agency when the agency does not have a staff archaeologist or a historic preservation professional.

(1) **Preliminary reports.** If required by the state agency, the permittee may prepare a preliminary report and submit one copy to the state agency archaeologist or historic preservation professional within 60 days of completing the field studies. The state agency archaeologist or historic preservation professional shall forward a copy of the preliminary report to HPD. If the state agency does not have an archaeologist or historic preservation professional on staff, the permittee shall submit one copy of the preliminary report to the HPD for review and comment. The permittee shall make a good faith effort to address any comments from the state agency and HPD and shall revise and resubmit the report to the state agency or HPD, as appropriate.

(2) **Final reports.** The permittee shall prepare and submit at least one copy of the draft and final report including site forms, appendices and attachments to the state agency archaeologist or historic preservation professional for review and acceptance with recommendations of eligibility and effect if applicable. If the state agency does not have an archaeologist or historic preservation professional on staff, the permittee shall submit the draft final report, appendices and attachments simultaneously to HPD and the state agency for review and acceptance with recommendations of eligibility and effect if applicable. The permittee shall make a good faith effort to address agency and HPD comments and shall revise and resubmit the report to the state agency or HPD, as appropriate.

(3) If HPD has not received a copy of the final report within 12 months of the permittee obtaining the NMCRIS investigation number, HPD may contact the permittee to determine the status of the report and project. HPD may request the permittee to submit one copy of the final report to HPD, or if the final report cannot be submitted within this time period, the permittee shall propose a new completion date for the final report. HPD, in consultation with the state agency, shall establish a new deadline for submittal. If agreement cannot be reached, the CPRC will consider the matter.

B. All reports, forms, appendices and attachments shall be reviewed by HPD for technical accuracy and completeness and concurrence with eligibility and effect if applicable. Upon concurrence or acceptance, HPD will direct the permittee to submit the collections, original records associated with the collections, and a copy of the approved final report to the repository within a specified time frame, if applicable. The repository will provide the permittee with a receipt showing that the collections have been submitted. The permittee shall then scan and upload a copy of the receipt and the final report in NMCRIS.

(1) If HPD review identifies that the proposed investigations were not completed according to the standards contained in 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC or 4.10.21 NMAC, as appropriate, or not completed consistent with the stipulations contained on the approved permit, HPD will notify the state agency and permittee of the deficiencies and request that the permittee amend the report to correct the deficiencies and resubmit the report to the state agency and HPD.

(3) Failure by the permittee to conduct the permitted investigation according to standards or stipulations shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

C. Repeated failure by a permittee to submit required reports in a timely manner or in conformance with 4.10.15 NMAC, 4.10.16 NMAC, 4.10.14.17 NMAC, or 4.10.21 NMAC shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

[4.10.8.18 NMAC - Rp, 4.10.8.18 NMAC, 01/01/2019]

4.10.8.19 CURATION OF COLLECTIONS AND RECORDS: All material remains collected during archaeological investigations conducted under a permit and written and photographic records resulting from an archaeological investigation, regardless of whether or not all of the work specified in the permit was completed, shall be curated consistent with this section.

A. Collections. Title to all material remains recovered from state land is held by the state of New Mexico unless the material remains are recovered from state trust land. The commissioner of public lands holds title in trust to all material remains located on state trust lands for the designated beneficiaries of the land.

(1) The museum of New Mexico is the custodian of material remains and associated records and documents recovered as a result of archaeological investigations on state land unless the CPRC designates another institution as the alternate, approved collection repository in consultation with the museum.

(2) The MIAC serves as the repository for the museum of New Mexico. If the applicant proposes another repository, the applicant shall append a copy of the curation agreement with that facility to the application along with an explanation of the purpose of using a facility other than MIAC as a repository. This request shall be reviewed by the CPRC and if approved by the CPRC and the commissioner of public lands if state trust lands are involved, shall be specified in writing on the permit as a stipulation.

(3) The commissioner has designated the museum of New Mexico as the custodian of all material remains found on lands under the jurisdiction of the state land office unless the CPRC and the commissioner of public lands approves another institution as the collections repository.

(4) In order to qualify as a custodian of material remains and associated records and documents, the repository shall meet the U.S. secretary of interior standards in 36 CFR 79.

(5) If an alternate approved collection repository with material remains and associated records from state land ceases to exist, the material remains and associated records shall be delivered to the MIAC for curation.

(6) All material remains and records pertaining to the collections to be received by the MIAC or an alternate approved repository shall be submitted in accordance with the conditions stipulated by the permittee's current curation agreement with that facility. If the collections are not submitted in accordance with the curation agreement or an account is in arrears with the repository, the repository may notify the CPRC. This failure shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

B. Written and photographic records. ARMS manages NMCRIS and the records repository on behalf of HPD including all NMCRIS investigation records, LA archaeological site records, including site updates resulting from survey, excavation, test excavation or monitoring and associated reporting, HCPI forms, and

photographic materials. These records shall be prepared consistent with the standards in the NMCRIS user's guide and submitted in accordance with 4.10.19.9 NMAC.
[4.10.8.19 NMAC - Rp 4.10.8.19 NMAC, 01/01/2019]

4.10.8.20 UNANTICIPATED DISCOVERIES: If cultural resources are discovered after the permitted field investigations have concluded or unanticipated effects on cultural properties occur during construction or other ground-disturbing activities, all construction or other ground-disturbing activities in the vicinity of the discovery shall immediately cease and a buffer of at least 50 feet shall be established around the discovery. The state agency shall notify HPD within 24 hours of the discovery.

A. The agency, in consultation with HPD, shall evaluate the property's significance and determine appropriate actions to avoid the cultural property or recover significant information.

(1) If the discovery is in an area covered under a current permit that authorizes excavation of similar types of cultural properties, the discovery may be treated in accordance with the standards and methods outlined in the research design for the permit and the results shall either be included in the report for the permitted activity as an addendum to the report or as a separate report.

(2) For all other discoveries the state agency may request that a permittee with a valid general permit that authorizes test excavation develop a plan to protect or minimize damage to the discoveries or to excavate the features or cultural deposits that will be affected by the construction. Plans proposing excavation shall be consistent with the excavation standards in 4.10.21 NMAC and appropriate to the scale and complexity of the discoveries. Alternatively, the state agency may request that a qualified institution submit a project-specific excavation permit application and research design to HPD pursuant to Section 4.10.8.14 NMAC.

B. The state agency will review the plan and when approved shall forward it to HPD. HPD shall review the plan within 48 hours of receipt, excluding weekends and holidays. If there are any questions or concerns, HPD will work closely with the state agency and permittee to develop a plan acceptable to the state agency and HPD. HPD shall notify the state agency and the permittee in writing when it has accepted the plan.

C. If human burials are discovered, the permittee shall notify local law enforcement pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

[4.10.8.20 NMAC - Rp, 4.10.8.20 NMAC, 01/01/2019]

4.10.8.21 PERMITTEE PERFORMANCE:

A. The CPRC, the state archaeologist, the SHPO and the state agency may assess the quality of archaeological or research work conducted or completed by a permittee at any time by conducting field visits or by reviewing reports, site forms and related materials for compliance with survey, test excavation, excavation and monitoring standards or for compliance with terms and conditions of the permit.

B. Unacceptable or substandard performance may be considered as either a minor or major deficiency and shall be documented in writing consistent with this section.

(1) Minor deficiencies. Minor deficiencies in the report or site documentation are errors that do not cause the basic findings of the report or site documentation to be questioned but indicate that the permittee was careless in assembling the report and site documentation. Minor deficiencies include, but are not limited to, minor or typographical mistakes in legal descriptions, inconsequential mistakes regarding land ownership status, improperly labeled maps, poor quality control in report preparation or preparation of NMCRIS forms, failure to submit required reports in a timely manner or in conformance with this rule, 4.10.14 NMAC, 4.10.15 NMAC, 4.10.16, NMAC, 4.10.17 NMAC, and 4.10.21 NMAC, and mistakes in the pre-field check resulting in sites or registered cultural properties not being reported within 500 m of the APE.

(2) Major deficiencies. Major deficiencies in reporting or fieldwork include but are not limited to:

(a) failure to identify registered cultural properties and previously recorded archaeological sites, historic structures and buildings and other cultural properties in the APE or project area during the pre-field records check;

(b) a pattern of failure to identify or recognize site(s) and registered cultural properties during survey;

(c) a pattern of recording a site as an isolate or a collection of isolates;

(d) a pattern of incompletely recording a site or drawing inaccurate site boundaries;

(e) actual on-the-ground survey coverage varying from what is reported;

documentation;

- (f) use of unauthorized personnel to perform fieldwork or prepare NMCRIS
- (g) providing false information;
- (h) conducting fieldwork without obtaining the appropriate permit;
- (i) a pattern of failures to submit required reports in a timely manner or in conformance with 4.10.8 NMAC;
- (j) failure to make scheduled payments to ARMS for access to NMCRIS and survey registration fees; the registrar at ARMS shall notify HPD of accounts in arrears;
- (k) failure to make payments to the curatorial facility for collections that were accepted by the repository, a pattern of submitting collections that are not accepted owing to insufficient preparation, or causing undue problems for the repository in processing the collections for curation;
- (l) failure to notify the state agency of the archaeological investigation, or not obtaining an easement or other written permission to enter state land trust lands; and
- (m) substantial or material mistakes in legal descriptions or regarding land ownership status.
- (n) failure to register the project in NMCRIS or submit digital and paper records in conformance with 4.10.19.9 NMAC.

C. HPD shall document unacceptable permittee performance by maintaining files containing, but not limited to, the following kinds of documentation:

- (1) written correspondence between HPD and the permittee documenting deficiencies in fieldwork based on field visits; deficiencies in reports, NMCRIS forms and related materials that do not adhere to the applicable standards in 4.10.8 NMAC, 4.10.14 NMAC, 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC, 4.10.19 NMAC, and 4.10.21 NMAC; or deficiencies in complying with permit terms and conditions;
- (2) written correspondence between the permittee and the state or federal agency documenting deficiencies based on field visits and reviews of reports and associated records;
- (3) written documentation of deficiencies in complying with permit terms and conditions;
- (4) copies of reports, site records and other site documentation, such as maps and photographs, that contain significant errors; and
- (5) written documentation by a federal agency revoking an archaeological permit.

D. HPD or the state agency may request revisions to the report and site documentation to address minor or major deficiencies and shall document such requests in writing. The permittee shall submit the revised report or site documentation to HPD or the state agency. If the permittee does not provide the requested revisions, the failure shall be documented in the permittee file.

(1) If the permittee's reports and other documentation continue to contain inaccuracies, HPD and the state agency shall provide technical assistance to help the permittee correct the deficiencies by telephone call, letter, email, meetings, NMCRIS training or site visits. HPD shall attend such meetings or participate in conference calls and shall prepare a follow-up letter, addressed to the permittee and the state agency, documenting what was discussed and the actions the parties agreed are appropriate to correct the deficiencies.

(2) If the permittee continues to make the same errors after assistance provided by HPD and the state agency, the failure to improve shall be documented in the permittee's file and HPD may notify the CPRC and the permittee.

(3) The CPRC may place the permittee on a probation in accordance with 4.10.8.22 NMAC.

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

E. The permittee may write to the CPRC or request a meeting with the CPRC to discuss concerns relating to HPD's documentation of the permittee's performance at any time.

[4.10.8.21 NMAC - Rp, 4.10.8.21 NMAC and 4.10.8.22 NMAC, 01/01/2019]

4.10.8.22 PROBATION: Permits may be issued for less than three years on a probationary basis when the CPRC determines that a permittee's performance requires evaluation based on documented performance problems.

A. The permittee shall take immediate steps to correct the deficiencies. The permittee may continue to work on state land but the permittee's name shall be removed from the list of permittees maintained by HPD while on probation.

B. The CPRC, state archaeologist and the SHPO shall evaluate the performance of the permittee closely during the time the permit is in effect and document performance accurately through site recording, mapping, photography and written reports of observations. Documentation of performance monitoring shall be

entered into the permittee's permanent file and may be taken into account by the CPRC when considering whether to issue permits to that permittee in the future.

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

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

[4.10.8.22 NMAC - Rp, 4.10.23 NMAC,01/01/2019]

4.10.8.23 DENIAL OF A PERMIT BASED ON PERFORMANCE: The CPRC may deny an application for a permit based on unacceptable performance.

A. The decision to deny a permit application may be based upon factors such as:

- (1) a pattern of unacceptable performance by the applicant;
- (2) failure of the applicant to improve performance while on probation;
- (3) failure of the applicant to obtain the necessary permits or approvals for archaeological investigations on state land;
- (4) documentation of the applicant's work on state land while on probation;
- (5) failure of the applicant to comply with applicable rules or additional stipulations set forth on the permit, or
- (6) falsification by the applicant of information pertaining to qualifications or performance.

B. The CPRC shall inform the applicant, in writing, that a permit application has been denied and shall specify the reason for the denial and shall invite the applicant to attend the next scheduled CPRC meeting to discuss the reasons for denial. If the CPRC denies a project-specific permit, the CPRC shall notify the state agency of its decision.

C. Any applicant who has been denied a permit by the CPRC shall have the right to appeal the decision pursuant to 4.10.8.24 NMAC.

[4.10.8.23 NMAC - Rp, 4.10.8.24 NMAC, 01/01/2019]

4.10.8.24 PROCEDURES FOR APPEALING A DECISION: Any applicant who has been denied a permit by the CPRC, the state archaeologist, or the SHPO or who has been denied for listing on the SHPO directory shall have the right to appeal the decision.

A. All requests for an appeal shall include a statement of the applicant's reason for requesting an appeal and contain any additional information that the applicant believes will support the appeal.

B. Upon receipt of a written request for a hearing, the chairman of the CPRC shall convene the CPRC as the hearing panel.

C. Within two weeks of receipt of a written request for a hearing, HPD shall inform the applicant in writing of the date, time and place of the hearing at which the appeal will be heard. The notice of public hearing shall be published pursuant to Section 9-4A-6 NMSA 1978 of the Cultural Affairs Department Act.

(1) The chairman of the CPRC or his designee shall serve as the chair of the hearing panel. Hearings will be conducted in accordance with the committee's rules of procedure.

(2) The state archaeologist and the SHPO may provide testimony at the hearing. A written record shall be kept of the proceedings.

D. Decisions of the hearing panel shall be based on a simple majority vote of the members of the panel.

E. The chair of the hearing panel shall inform the applicant in writing of the decision of the hearing panel. Decisions of the hearing panel shall be final.

[4.10.8.24 NMAC - Rp, 4.10.8.25 NMAC, 01/01/2019]

4.10.8.25 DEVIATIONS: The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.8.25 NMAC - Rp, 4.10.8.26 NMAC, 01/01/2019]

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.

4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land, filed 10/01/05, repealed 01/01/2019.

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.

Exhibit #4

TITLE 4 CULTURAL RESOURCES
CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION
PART 14 CULTURAL PROPERTIES ON PRIVATE LAND AND MECHANICAL EXCAVATION PERMITS

4.10.14.1 ISSUING AGENCY: Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.
[4.10.14.1 NMAC - Rp, 4.10.14.1 NMAC, 01/01/2019]

4.10.14.2 SCOPE: This rule applies to all public and private entities proposing to excavate, with the aid of mechanical earth-moving equipment, an archaeological site on private land. This rule does not apply to state or federal lands or to lands held in trust for an Indian tribe by the federal government.
[4.10.14.2 NMAC – Rp, 4.10.14.2 NMAC, 01/01/2019]

4.10.14.3 STATUTORY AUTHORITY: Section 18-6-10 NMSA 1978 and Section 18-6-11 NMSA 1978 of the Cultural Properties Act.
[4.10.14.3 NMAC – Rp, 4.10.14.3 NMAC, 01/01/2019]

4.10.14.4 DURATION: Permanent.
[4.10.14.4 NMAC – Rp, 4.10.14.4 NMAC, 01/01/2019]

4.10.14.5 EFFECTIVE DATE: January 1, 2019, unless a later date is cited at the end of a section.
[4.10.14.5 NMAC – Rp, 4.10.14.4 NMAC, 01/01/2019]

4.10.14.6 OBJECTIVE: This rule describes procedures used to assist owners to preserve cultural properties situated on privately owned land and the procedures and standards to excavate an archaeological site on private land using mechanical earth-moving equipment.
[4.10.14.6 NMAC – Rp, 4.10.14.4 NMAC, 01/01/2019]

4.10.14.7 DEFINITIONS:

A. "Agent" means an individual who is authorized by a written agreement with a private landowner to act on behalf of the landowner and who works under the landowner's personal and direct supervision.

B. "Archaeological investigation" means the study of archaeological sites, isolates and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

C. "Archaeological site" or "site" means a location where there exists material evidence of the past life and culture of human beings in the state and is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure. An archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, habitation sites, ruins of buildings and structures, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials.

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

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

F. "Excavation" means to systematically dig up artifacts, deposits or material remains within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

G. "Historic preservation division" or "HPD" means the division within the department of cultural affairs created pursuant to Subsection A of Section 18-6-8 NMSA 1978 of the Cultural Properties Act.

H. "Human burial" or "unmarked human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

I. "Individual unmarked human burial excavation permit" is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of unmarked human burials on state or

private land. Individual unmarked human burial permits are submitted with an application for a project-specific permit for excavation and when unmarked human burials are known to exist within the project area.

J. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

K. "Mechanical earth-moving equipment" means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other deposits or materials from including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

L. "Mechanical Excavation Permit" is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of archaeological sites on private land using mechanical earth-moving equipment by someone other than the landowner or his agent.

M. "Permit" means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time.

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

O. "Protection" means safeguarding the physical condition or environment of an archaeological site or historic structure or building from deterioration or damage caused by weather or other natural, animal or human intrusions.

P. "Restoration" means recovering the general historic appearance of a cultural property or the form and details of an object or structure by removing incompatible natural or human-caused accretions and replacing missing elements as appropriate.

Q. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 NMSA 1978 of the Cultural Properties Act.

R. "State historic preservation officer" or **"SHPO"** means the individual appointed pursuant to Section 18-6-8 NMSA 1978 of the Cultural Properties Act who serves as the director of the HPD.

S. "State register" means the New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties deemed worthy of preservation.

T. "Unmarked burial ground" means a location where there exists a burial or burials of any human beings that are not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials and includes any funerary object, material object or artifact associated with the burial or burials. [4.10.14.7 NMAC – Rp, 4.10.14.7 NMAC, 01/01/2019]

4.10.14.8 PRESERVATION OF CULTURAL PROPERTIES ON PRIVATE LAND:

A. The CPRC and the SHPO offer technical assistance to owners of cultural properties on private land with the purpose to:

- (1) identify and register cultural properties worthy of preservation on the state register;
- (2) provide advice to owners interested in the protection, rehabilitation, restoration or maintenance of cultural properties on private land, including but not limited to, state and federal income tax credit programs, the state historic preservation loan fund and conservation easement programs; and

(3) ensure that archaeological investigations on private land meet the highest professional standards; when requested by an owner, the CPRC or the SHPO will review a proposal to conduct archaeological investigations on private land and offer written comments.

B. If evidence of a human burial or unmarked burial ground is discovered on private land, local law enforcement shall be notified pursuant to 4.10.11 NMAC. The state archaeologist provides technical assistance to landowners on notification and protection.

[4.10.14.8 NMAC – Rp, 4.10.14.8 NMAC, 01/01/2019]

4.10.14.9 PROCEDURES FOR A MECHANICAL EXCAVATION PERMIT: The CPRC issues, with the concurrence of the state archaeologist and the SHPO, permits to use mechanical earth-moving equipment in the excavation of an archaeological site on private land when a public or private entity other than the landowner or the agent of the landowner proposes to conduct excavation. An individual unmarked human burial excavation permit shall be obtained concurrently with a mechanical excavation permit unless the site is historic and burials are unlikely. Individual unmarked human burial permits are issued under 4.10.11 NMAC.

A. For purposes of this rule, the CPRC or the SHPO may require an individual who purports to be a landowner's agent to provide a copy of the written agreement with the landowner indicating that the individual is authorized to act on the behalf of the landowner, and that the individual works or will work under the landowner's personal and direct supervision. The CPRC or the SHPO may request additional information from the landowner or the individual regarding the individual's authority and the landowner's right to control the individual's activities. The CPRC and the SHPO will use all this information to determine whether the relationship between the landowner and the individual who is using or will be using mechanical earth-moving equipment to excavate on private land, is one of principal and agent.

B. Any public or private entity may obtain mechanical excavation permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD. The application shall contain the following information:

(1) applicant name, mailing address, telephone number and email address; and

(2) signature of the applicant, title of the applicant and date, which may be submitted with original signature, signature transmitted by facsimile, or a scanned application with the original signature transmitted by email; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit. Applications lacking a signature shall be considered incomplete.

C. The applicant shall complete the application and attachments and provide the following items consistent with the instructions provided by HPD:

(1) written authorization for the proposed excavation from the owner of the land on which the archaeological site is located;

(2) a research design consistent with the standards in 4.10.21 NMAC and the methods to be used during the mechanical excavation consistent with 4.10.14.12 NMAC.;

(3) a staff roster that lists the names of the principal investigator, project director, field supervisor and crew chief who are listed in the SHPO directory and will be working in the field during the permitted excavation;

(4) a written acknowledgment by the applicant that a final report on the results of the excavation shall be submitted to HPD; and

(5) an estimated date of completion for a final report on the results of the excavation.

D. An approved application shall list special stipulations imposed by the CPRC, if any, and shall list the term of the permit and the permit number; the term of the permit shall be one year from the date of approval by the CPRC unless the applicant proposes a later date that is approved by the CPRC.

E. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating their concurrence with the issuance of the permit.

[4.10.14.9 NMAC – Rp, 4.10.14.9 NMAC, 01/01/2019]

4.10.14.10 REVIEW AND APPROVAL OF APPLICATIONS:

A. HPD shall receive permit applications including attachments and maintain current files for each individual or firm who has a mechanical excavation permit.

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

proceeds. HPD shall submit all completed applications for consideration at the next scheduled CPRC meeting. HPD may recommend to the CPRC that an application be tabled or rejected if the applicant fails to meet minimum qualifying criteria either upon initial receipt or through failure to respond adequately to a request for information.

C. The CPRC shall review and consider all completed applications for approval, approval with special stipulations, or denial, with the concurrence of the state archaeologist and the SHPO. The CPRC may table applications to be discussed at a future meeting pending receipt of additional information necessary to make a decision on the permit.

D. Any special stipulations attached to a permit by the CPRC, the state archaeologist, or the SHPO shall be specified in writing on the permit.

E. HPD shall notify the applicant in writing of the approval, approval with stipulations or denial of the permit by CPRC, with the concurrence of the state archaeologist and the SHPO.

F. Any applicant who has been denied a permit by the CPRC, the state archaeologist, or the SHPO shall have the right to appeal the decision pursuant to 4.10.8.24 NMAC.

[4.10.14.10 NMAC – Rp, 4.10.14.10. NMAC, 01/01/2019]

4.10.14.11 MECHANICAL EXCAVATION PERMIT STIPULATIONS:

A. Permittees shall abide by all stipulations contained in this rule and any special stipulations imposed by the CPRC, the state archaeologist, the SHPO or the owner of the land on which the site is located. These additional stipulations shall be set out in writing on the permit.

B. Permittees shall determine the land status and ownership of the land on which the archaeological investigation will occur to insure the work will not be in trespass and that they are in compliance with local, state or federal laws.

C. All costs incurred in the execution of the activities conducted under a permit shall be borne by the permittee or its client.

D. The permittee shall comply with all laws, rules, ordinances and requirements in all matters and things affecting the premises and operations therein pertaining to the permit, archaeological site and the land where the site is located.

E. All activities conducted under the permit shall be carried out so as to prevent erosion of the land, pollution of water resources and any other damage to the natural environment. Any sites or locations, disturbed in the course of the archaeological investigations conducted under the permit shall be restored to their original condition insofar as possible. The areas of limited tests, test excavations and excavation shall be backfilled. All areas examined under the permit shall be left in a state that will not create hazard to life nor endanger livestock or other property, nor contribute to the deterioration of the site or location or adjacent lands by natural forces, unless other provisions are specifically arranged in the permit application.

F. If human burials are discovered during the excavation, local law enforcement shall be notified pursuant to 4.10.11 NMAC. If the human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

G. All material remains collected or removed from the site as a result of the excavation conducted under the permit shall be the property of the owner of the land on which the site is located, with the exception of unmarked human burials and any funerary object, material object or artifact buried, entombed or sepulchered with the human burial or burials, which shall be the subject of consultation in accordance with 4.10.11 NMAC. The permittee may encourage the landowner to donate the material remains to a public institution that curates such material.

H. If the excavation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period, the permittee shall notify HPD in writing to request an extension to the term of the permit. This request shall be received by HPD within 10 working days prior to the expiration date of the permit in order to be considered. The request for the extension shall be accompanied by an interim report summarizing the status of the excavations, a proposed date for when the excavations will be completed and proposed date for when the final report will be submitted. HPD may approve one extension of the permit term not to exceed one year from the expiration date of the original permit. Additional requests for an extension will be reviewed by the CPRC.

I. If the archaeological investigation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify HPD in writing to request a cancellation of the permit. Disposition of material remains collected under the permit and copies of all written and photographic records resulting from a discontinued investigation will be in accordance with the provisions of this section.

J. If fieldwork has not been initiated within the permit period or an extension has not been requested, the permit shall become void at the end of the permit period.

K. Failure by a permittee to comply with the standard or special stipulations set forth in this rule and on the permit may be cause for the CPRC's denial of future permits to the permittee in conformance with 4.10.8.23 NMAC.

[4.10.14.11 NMAC – Rp, 4.10.14.11 NMAC, 01/01/2019]

4.10.14.12 STANDARDS FOR THE USE OF MECHANICAL EQUIPMENT: All permitted excavations using mechanical equipment shall conform to the following standards.

A. Mechanical excavation may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden.

B. Controlled surface collection of artifacts shall be accomplished using a grid system or by point provenience prior to excavation of trenches or stripping or scraping areas with mechanical earth-moving equipment.

C. For each trench:

(1) document the location, depth, soil profile, artifact yield and other pertinent information;

(2) clean at least one complete profile with a shovel or trowel and inspect the profile for

material remains;

(3) document the cleaned profile in narrative, profile drawing and photographs;

(4) examine the excavated area after the removal of each extracted bucket load;

(5) examine back dirt for the presence of artifacts; and

(6) conform depths and configurations of mechanical excavation trenches to OSHA

standards for excavation safety (29 CFR 1926, Subpart P).

D. Stratigraphic profiles shall be recorded by scale diagram, photographs and narrative descriptions. Deposit descriptions include but are not limited to sediment color, texture, moisture, content, nature of inclusions, organic content and an inventory of cultural material. The color shall be described using Munsell terminology.

E. Mechanical stripping or scraping may be employed following hand excavations or mechanical trenching unless depth of cultural deposits has been determined from surface observations. The stripping serves the purpose of revealing features that were not previously identified and provides a check on the reliability of the excavation sampling design. Features exposed during the mechanical stripping shall be mapped in relation to the site datum. All features shall be fully excavated unless a sampling strategy is included in the approved research design and excavation plan.

[4.10.14.12 NMAC – Rp, 4.10.14.12 NMAC, 01/01/2019]

4.10.14.13 REPORTING STANDARDS:

A. The permittee may submit to HPD one copy of a preliminary report on the results of the excavation including relevant maps, drawings, photographs and other documents for review and acceptance by HPD prior to construction and when a final report cannot be completed before construction.

B. A final report and associated records, including but not limited to archaeological site records, list of collections, and photographs, on the excavations shall be submitted to HPD within one year of the completion of the excavations or the date approved by the CPRC. If HPD has not received a copy of the report within the permit period, HPD shall contact the permittee. If the excavations are part of a larger project that includes sites on state land, the final report shall be prepared consistent with 4.10.16.14 NMAC for test excavation projects or 4.10.21.12 NMAC for excavation projects.

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

(1) If HPD review reveals that the proposed investigations were not completed consistent with the application and stipulations contained on the approved permit, HPD will notify the permittee of the deficiencies and request that the permittee amend the report to correct the deficiencies and resubmit the report.

(2) Failure by the permittee to conduct the permitted investigation according to standards or stipulations or to submit required reports in a timely manner or to amend report deficiencies as identified by HPD shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

[4.10.14.13 NMAC – Rp, 4.10.14.13 NMAC, 01/01/2019]

4.10.14.14 DEVIATIONS: The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.14.14 NMAC – Rp, 4.10.14.14 NMAC, 01/01/2019]

HISTORY OF 4.10.14 NMAC:

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

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

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

History of Repealed Material: Rule 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97), repealed 10/01/05.

4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation Permits, filed 10/01/05, repealed 01/01/2019.

Other History:

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

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

Exhibit #5: Comments from Dedie Snow, 10/31/18

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, 4.10.8.1 NMAC, 01/01/2019]

4.10.8.2 **SCOPE:** This rule applies to all public and private entities conducting or proposing to conduct archaeological investigations on any lands owned, controlled or operated by the state of New Mexico.
[4.10.8.2 NMAC - Rp, 4.10.8.2 NMAC, 01/01/2019]

4.10.8.3 **STATUTORY AUTHORITY:** Subsection O of Section 18-6-5 (NMSA 1978) of the Cultural Properties Act.
[4.10.8.3 NMAC - Rp, 4.10.8.3 NMAC, 01/01/2019]

4.10.8.4 **DURATION:** Permanent.
[4.10.8.4 NMAC - Rp, 4.10.8.4 NMAC, 01/01/2019]

4.10.8.5 **EFFECTIVE DATE:** January 1, 2019 unless a later date is cited at the end of a section.
[4.10.8.5 NMAC - Rp, 4.10.8.5 NMAC, 01/01/2019]

4.10.8.6 **OBJECTIVE:** This rule describes the procedures used to review and issue a permit for archaeological investigations on state land. Additionally, this rule establishes professional and quality standards for a permittee's performance and sets forth causes for non-renewal of permits.
[4.10.8.6 NMAC - Rp, 4.10.8.6 NMAC, 01/01/2019]

4.10.8.7 **DEFINITIONS:**

A. **"Archaeological investigation"** means the study of archaeological sites, isolates and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

B. **"ARMS"** means the archaeological records management section within the historic preservation division that maintains NMCRIS, associated cultural resource records and the records repository pursuant to 4.10.19 NMAC.

C. **"Archaeological site"** or **"site"** means a location where there exists material evidence of the past life and culture of human beings in the state and is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure. An archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, habitation sites, ruins of buildings or structures, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials.

D. **"Area of potential effect"** or **"APE"** means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of a cultural property, if any such properties exist. The APE is influenced by the scale and nature of an undertaking, variation in topography and vegetation, and may be different for different kinds of effects caused by the undertaking and may include a buffer area to adequately account for direct and indirect effects.

E. **"Area of historic and scientific interest"** means an area lacking surface evidence of cultural resources but where there is a high probability of finding subsurface material remains and cultural deposits.

F. **"Collection"** means the removal of material remains from state land, whether or not the remains are located within an archaeological site or isolate as defined herein.

G. **"Commissioner of public lands"** or **"commissioner"** means the executive officer of the state land office, who shall have jurisdiction over all state trust lands and shall have the management, care, custody, control and disposition thereof in accordance with the provisions of state statutes and the law or laws under which such lands have been or may be acquired.

H. **"Committee"** or **"CPRC"** means the cultural properties review committee, created pursuant to Section 18-6-4 of the Cultural Properties Act.

I. "Cultural landscape" means a geographic area including both cultural and natural resources associated with a historic event, activity or person or exhibiting other cultural or aesthetic values. Landscapes include formally designed landscapes, vernacular landscapes, sites and ethnographic landscapes.

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

K. "Cultural resource" means any archaeological, historic, or architectural sites, districts, landscapes, buildings, structures, objects, and places of traditional cultural or religious importance to specified social or cultural groups. Cultural resources may be significant and eligible for listing in the national register of historic places or state register of cultural properties; they may be insignificant and ineligible for either register; or cultural resources may not have been evaluated to determine their significance and eligibility.

L. "District" means a significant concentration, linkage, or continuity of sites, buildings, structures, landscape elements, or objects united historically or aesthetically by plan or physical development.

M. "Effect" means any alteration of the cultural property's physical characteristics, including relevant features of its immediate environment, which may diminish the integrity of the property's location, design, setting, material, workmanship or association. "Effects" include, but are not limited to, physical destruction, damage or alteration of all or part of the property; alteration of the character of the property's surrounding environment where the character contributes to the property's eligibility; introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting, and neglect of a property resulting in its deterioration or destruction. Effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable.

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

O. "Excavation" means to systematically dig up artifacts, deposits or material remains within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

P. "General Permit" means a permit for survey and inventory and test excavation or monitoring on state land issued by the CPRC with the concurrence of the state archaeologist and the SHPO to a qualified institution. Permits must list staff that includes individuals listed in the SHPO directory. Permits are not issued to single individuals unless they have demonstrated they are a sole-proprietor.

Q. "Historic preservation division" or "HPD" means the division within the department of cultural affairs created pursuant to Subsection A of Section 18-6-8 NMSA 1978 of the Cultural Properties Act.

R. "Historic structures and buildings" means buildings or structures that are 50 or more years old or properties less than 50 years old that either meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years) or properties that are likely to meet the integrity and significance criteria in 30 CFR 60.4 within five years of the date of recording.

(1) A historic structure is a functional construction made usually for purposes other than creating human shelter. Structures include bridges, dams, canals, wells and other engineering works such as engineered roads and highways, tunnels, turbines, pipelines, refineries, stamp mills, smelters, power plants, silos, grain elevators and locomotives.

(2) A historic building is created principally to shelter any form of human activity. Buildings include but are not limited to houses, barns, stables, sheds, garages, warehouses, courthouses, city halls, social halls, commercial buildings, libraries, factories, mills, train depots, motels, theaters, schools, stores and churches. The term building may also be used to refer to a historically and functionally related unit such as a courthouse and jail or a house and barn.

S. "Human burial" or "unmarked human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

T. "Individual unmarked human burial excavation permit" is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of unmarked human burials on state or private land. Individual unmarked human burial permits are submitted with an application for a project-specific permit for excavation and when unmarked human burials are known to exist within the project area.

U. "Isolate" means a single object or artifact, or a few artifacts greater than 50 or more years old that lack clear association. Examples of isolates include a single flake, projectile point, potsherd, sherds from a single broken pottery vessel, pieces of glass from a single bottle or a single feature that lacks integrity.

V. "Limited tests" means the placement of probes, cores, shovel tests or similar tests using hand tools to augment survey-level information without substantially damaging or diminishing the integrity of an

Comment [SD1]: Forseeable should be spelled foreseeable. The term "reasonably foreseeable" is subjective and vague. What is reasonably foreseeable to one person may be unreasonable to someone else. Because this sentence is not clear, it may cause problems in the future.

Comment [SD2]: This doesn't make sense.

Comment [SD3]: ...achieved...??

Comment [SD4]: Missing comma, e. g. "...houses, barns..."

archaeological site or area of historic and scientific interest. Limited tests are located systematically, randomly, or judgmentally in areas with the highest potential for buried cultural deposits and may also provide information on soils, stratigraphy or depositional context and integrity.

W. “Material remains” means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

X. “Mechanical earth-moving equipment” means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other deposits or materials including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

Y. “Mechanical Excavation Permit” is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of archaeological sites on private land using mechanical earth-moving equipment by someone other than the landowner or his agent.

Z. “Monitoring” means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection and avoidance of sites and may include documentation and excavation of cultural deposits.

AA. “Museum of Indian arts and culture-laboratory of anthropology” or “MIAC” means the division within the department of cultural affairs, which serves as the collections repository for archaeological materials and associated records and documents taken or collected from state land.

BB. “New Mexico cultural resource information system” or “NMCRIS” means the statewide online computer information system that integrates geographic, research, and management data on cultural properties and cultural resource investigations maintained by ARMS.

CC. “Permit” means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time.

DD. “Principal investigator” means the individual with overall administrative responsibility for the investigation authorized by the permit and who, without limitation, assures compliance with the terms of the permit and conformance with all laws, rules and professional standards.

EE. “Project area” means the geographic area or areas of study for an archaeological investigation conducted for research purposes.

FF. “Project director” means the individual who works under the direction of the principal investigator and is responsible for ensuring that the field work, analysis and reporting are consistent with professional standards.

GG. “Project-specific permit” means permit issued by the CPRC, with the concurrence of the state archaeologist and the SHPO, to a qualified institution for survey, test excavation or monitoring when the applicant does not hold a general permit or when the applicant proposes excavation project as part of a data recovery program.

HH. “Qualified institution” means public and private entities including without limitation individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums, any agency of the federal government, or department, agency, institution, or political subdivisions of the state with staff that include individuals listed in the SHPO directory and who demonstrate capability to accomplish the type and scope of archaeological investigation proposed in the permit application.

II. “Reconnaissance survey” means a survey used to characterize the resources of an area. A reconnaissance survey can include a “windshield survey”, a “pedestrian survey,” a study of aerial photographs,

Comment [SD5]: “...by-products...”?

historical and recent maps and city plans to gain a general understanding of the community's layout or a detailed inspection of sample blocks or areas as a basis for extrapolation about the resources of the community as a whole.

JJ. "Registered cultural property" means a cultural property that the CPRC placed in the state register of cultural properties individually or as a contributing property within a district on either a permanent or temporary basis or that the keeper of the national register has placed on the national register of historic places.

KK. "Right of way" means a right or privilege to pass over, upon, through or across a defined area of state trust lands granted by the commissioner of public lands or by the head of another state agency for lands under its jurisdiction for a prescribed purpose and duration.

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

MM. "SHPO directory" means the directory of historic preservation professionals maintained by the SHPO and approved by the CPRC. The SHPO directory includes but is not limited to archaeologists who act in the capacity of principal investigator, project director, supervisory archaeologist; cultural anthropologists; historic archaeologists; architectural historians; historic architects; historic landscape architects; historians; and other historic preservation professionals.

NN. "SOI standards" means the *secretary of interior's historic preservation professional qualifications standards* as expanded and revised in 1997 (62 FR 33708). The standards specify the academic degrees or comparable training, professional experience and the products and activities that demonstrate that the professional is able to perform competent and professionally credible work in archaeology, architectural history, historic architecture, historic landscape architecture, history, cultural anthropology or one of the other historic preservation disciplines.

OO. "State agency" means a department, agency, institution or political subdivision of the state.

PP. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 NMSA 1978 of the Cultural Properties Act.

QQ. "State historian" means the historian designated pursuant to Section 18-6-14 NMSA 1978 of the Cultural Properties Act.

RR. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act who serves as the director of the HPD.

SS. "State land" means property owned, controlled, or operated by a state agency. Examples of state land include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way; state parks; state historic sites; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

TT. "State trust land" means lands, their natural products and all rights, privileges, or assets, which are derived from them, and which are under the care, custody, and control of the commissioner of public lands.

UU. "Supervisory archaeologist" means a crew chief, field supervisor or field director who works under the direction of the principal investigator or project director and is physically present for all field investigations. The supervisory archaeologist works independently in the field and may be in direct charge of archaeological field crews.

VV. "Survey" means a visual inspection of land to examine, identify, record, evaluate and interpret cultural resources and may include limited tests but shall not include excavation or test excavation. Survey intensity, design and methods are based on management and research objectives.

WW. "Test excavation" means the systematic placement of probes, cores, shovel tests or test pits using hand tools, and test trenches excavated by hand or with mechanical earth-moving equipment to expose geomorphological soils and buried cultural deposits. Test excavation is completed under a test excavation plan and is conducted to determine the eligibility of a site or define the nature and extent of cultural deposits.

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

ZZ. "Written and photographic records" means original or legible duplicate site data, such as site forms, artifact forms, notes, drawings, tables, maps, plans, charts and other written materials, and prints, slides and other photographic records.

[4.10.8.7 NMAC - Rp, 4.10.8.7 NMAC, 01/01/2019]

4.10.8.8 ARCHAEOLOGICAL INVESTIGATIONS UNDER A GENERAL PERMIT: The CPRC issues, with the concurrence of the state archaeologist and the SHPO, a general permit to qualified institutions to conduct archaeological investigations on state land. Three types of investigations may be performed under a general

permit: survey, test excavation, and monitoring. The applicant indicates on the application form the type or types of archaeological investigations requested at the time of the application. Archaeological investigations conducted under a general permit on state trust land are limited to investigations conducted under contract to an individual, organization or company undertaking exploration, construction, development or other ground-disturbing activities authorized by rights of way, easements, leases or other written permission to enter state trust land issued by the commissioner of public lands.

A. Survey. Surveys may be conducted under a general permit when applicants propose to identify, record, evaluate and interpret cultural resources and relocate, update records and evaluate previously identified cultural resources in accordance with the standards for survey in 4.10.15 NMAC.

B. Test excavation. Test excavation may be conducted under a general permit when the applicant proposes to implement the test excavations in accordance with a test excavation plan approved by HPD and the state agency archaeologist, if applicable, and prepared in conformance with 4.10.16 NMAC.

C. Monitoring. Monitoring may be conducted under a general permit when applicants propose to:

(1) supervise implementation of site avoidance or protection measures pursuant to 4.10.17

NMAC; or

(2) oversee land-disturbing projects though a site or area of historic and scientific interest

following a monitoring plan approved by HPD and the state agency archaeologist, if applicable, and prepared in conformance with 4.10.17 NMAC.

[4.10.8.8 NMAC - Rp, 4.10.8.8 NMAC, 01/01/2019]

4.10.8.9 GENERAL PERMIT APPLICATION: General permits are issued for a three-year cycle. The applicant may obtain a general permit application form and instructions from HPD's website or may request them from HPD. The applicant shall complete the application consistent with this rule, provide the attachments described in this section and on the application form and maintain current agreements with ARMS and MIAC.

A. A general permit application for archaeological investigations on state land shall include the following information:

(1) applicant name, mailing address, telephone number and email address;

(2) the type(s) of archaeological investigations proposed to be performed under the permit (survey, test excavations, monitoring, or any combination thereof);

(3) a staff roster indicating the following information:

(a) individuals currently listed in the SHPO directory that the applicant proposes to use in a supervisory capacity such as principal investigator, project director, supervisory archaeologist, and historic archaeologist during permitted archaeological investigations;

(b) other staff, such as crew members and laboratory personnel, cultural anthropologists, historians and other historic preservation specialists;

(4) individuals who are not in the SHPO directory shall submit SHPO directory application forms, curriculum vitae, charts of experience and official transcripts or notarized diplomas;

(5) continuing education credit documentation and updated curriculum vitae for individuals on the staff roster who are listed in the SHPO directory and who elect to report their continuing education credits along with their principal employer's permit (see Subsection B of 4.10.8.14 NMAC); and

(6) applicant's signature, title and date, which may be submitted with original signature or signature transmitted by facsimile; or a scanned applications with the original signature transmitted by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

B. Attachments. The applicant shall include the following attachments with each application submittal. A hard copy of the attachments must be provided with the first three-year permit application. Thereafter, attachments can be provided electronically to HPD. Any changes from what is on file must be clearly noted in the application.

(1) **A summary of organizational experience.** This summary shall demonstrate the applicant's capability to accomplish the type and scope of archaeological investigations to be conducted under the permit and shall include but not be limited to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects.

(2) **Forms.** Copies of field recording, laboratory and in-field artifact analysis forms to be used during surveys and inventories.

(3) **Test excavation standards.** Applicants that request authorization to conduct test excavations shall include discussion of standard field and laboratory procedures consistent with the standards in 4.10.16 NMAC and submit copies of field forms to be used during the test excavations.

(4) **Current permits.** The applicant shall provide a list of permits for archaeological investigations currently held by the applicant including permit number and agency. A hard copy of the attachments must be provided with the first three-year permit application. Thereafter, attachments can be provided electronically to HPD. Any changes from what is on file must be clearly noted in the application.

C. Agreements. The following agreements shall be in place prior to issuance of a general archaeological investigation permit.

(1) **ARMS agreement.** The applicant shall have an account in good standing with ARMS for access to NMCRIS on or before submittal of the permit application. HPD shall verify the status of the account with ARMS.

(2) **Curation agreement.** The applicant shall provide a current curation agreement, if one is not already on file with MIAC. HPD shall verify the status of the account with MIAC.

D. General permit term.

(1) The term for a general permit is three calendar years, beginning on the date of approval by the CPRC to December 31 of the same year, continuing through the two next calendar years and concluding on December 31 of the third year.

(2) During the transition from annual to three-year general permits, applicants will be separated into groups to facilitate HPD's administration of the program. In the first year, all applicants will be assigned to one of three groups based on the permit number assigned during the initial application. The first group will comprise permit numbers 001-100. The second group will comprise permit numbers 101-200 and the third group will comprise the remaining permits beginning with number 201. Applicants in the first group will be eligible for three-year general permits starting 2020; applicants in the other two groups will be eligible for annual permits. First time applicants will be eligible for a three-year permit after the effective date of this rule. In 2021, the second group and first-time applicants will be eligible for three-year general permits; the third group will be eligible for annual permits. In 2022, the third group and all other applicants will be eligible for three-year general permits. Thereafter, all general permit applicants will be eligible for three-year general permits. For applicants issued an annual permit in 2020 or 2021, the CPRC waives the requirement to submit the attachments in Subsection B of this section during this transition period as long as HPD has an organizational summary on file.

E. An approved application may have special stipulations imposed by the CPRC, taking into consideration comments from committee members, the state archaeologist and the SHPO.

F. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating their concurrence with the issuance of the permit.

[4.10.8.9 NMAC - Rp, 4.10.8.12 NMAC, 01/01/2019]

4.10.8.10 ARCHAEOLOGICAL INVESTIGATIONS UNDER A PROJECT-SPECIFIC PERMIT:

The CPRC issues project-specific permits, with the concurrence of the state archaeologist and the SHPO, and the commissioner of public lands for archaeological investigations on state trust lands or the representative of the state agency with jurisdiction for other state lands. The applicant indicates on the project-specific application form the type or types of archaeological investigations proposed and submits a research design or monitoring plan approved by the state agency archaeologist or HPD, as applicable, and prepared in conformance with 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC or 4.10.21 NMAC, as appropriate.

A. Survey. Project-specific permits are required for applicants who propose to:

- (1) conduct sample, thematic or other research surveys;
- (2) substitute alternate field methods for the standards in 4.10.15 NMAC; or
- (3) perform surveys of state trust land undertaken independent of an activity authorized by

rights-of-way, easements, leases or other authority to enter state trust land.

B. Test excavation. Project-specific permits are required when applicants:

- (1) propose to substitute alternate test excavation methods for the standards in 4.10.16

NMAC including metal detection and collection of artifacts or ground penetrating radar and verification tests, or other technologies;

- (2) propose research-driven test excavation on state trust land undertaken independent of an activity authorized by rights-of-way, easements, leases or other authority to enter state trust land;
- (3) propose research-driven test excavation conducted over multiple years; or
- (4) do not have a general permit that includes authorization for test excavation.

C. Excavation. Project-specific permits and individual unmarked human burial permits are required for all excavation projects unless the site to be excavated is historic and burials are unlikely. Excavation involves disturbance of the ground within an archaeological site in excess of limited tests and test excavation or may be performed as part of a data recovery program designed to mitigate adverse effects of projects, as part of an academic program to train students in a field school, field studies for a thesis or dissertation, or other research involving the excavation of a site or area of historic and scientific interest.

D. Monitoring. Project-specific permits are required for monitoring when applicants:

- (1) do not have a general permit that includes authorization for monitoring; or
- (2) propose to substitute alternate methods for the standards in 4.10.17 NMAC.

E. Unmarked human burial excavation. The CPRC issues individual permits to applicants who propose to excavate unmarked human burials on state or private land. An individual permit must be obtained concurrently with a project specific permit for excavation unless the site to be excavated is historic and burials are unlikely. Unmarked human burial permits are issued pursuant to rule 4.10.11 NMAC.

F. Mechanical excavation of archaeological sites on private land. The CPRC issues mechanical excavation permits to applicants who propose to conduct archaeological test excavation or excavation at a site on private land using mechanical earth-moving equipment. An individual unmarked human burial excavation permit must be obtained concurrently with a mechanical excavation permit unless the site is historic and burials are unlikely. Individual unmarked human burial permits are issued under rule 4.10.11 NMAC. Mechanical excavation permits are issued under rule 4.10.14 NMAC.

[4.10.8.10 NMAC - Rp, 4.10.8.9 NMAC, 01/01/2019]

4.10.8.11 PROJECT-SPECIFIC PERMIT APPLICATION: The applicant may obtain project-specific permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD. Each archaeological investigation conducted for a different firm or for a different research project requires a separate project-specific permit.

A. The project-specific permit application shall include the following information:

- (1) applicant name, mailing address, telephone number and email address;
- (2) the type(s) of archaeological investigations requested (sample, thematic or other surveys, test excavation, excavation, monitoring, or any combination thereof);
- (3) a staff roster indicating the following information:
 - (a) supervisory personnel who will be acting or expected to act in the capacity of principal investigator, project director, supervisory archaeologist, or biological archaeologist during permitted archaeological investigations and who are listed in the SHPO directory;
 - (b) other staff, such as crew members and laboratory personnel, cultural anthropologists, historians and other historic preservation specialists; and
- (4) individuals who are not listed in the SHPO directory that the applicant proposes to employ in a supervisory capacity during the permitted archaeological investigations along with SHPO directory application forms, curriculum vitae, charts of experience and official transcripts or notarized diplomas; and
- (5) the applicant's signature, title and date, which may be submitted with original signature, or signature transmitted by facsimile, or a scanned application with the original signature transmitted by electronic mail; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

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

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

(2) **Test excavation.** Prepare a research design that adheres to 4.10.16 NMAC. The research design may adopt the excavation standards detailed in 4.10.16 NMAC or may propose alternate standards that shall

be fully detailed, discussed and justified in the research design. Excavation of unmarked human burials is prohibited during testing.

(3) **Excavation.** Prepare a research design that adheres to 4.10.21 NMAC and apply for an individual unmarked human burial excavation permit for all excavation projects (4.10.11 NMAC) unless the site(s) to be excavated is historic and unmarked human burials are unlikely. The research design may adopt the excavation standards detailed in 4.10.21 NMAC or may propose alternate standards that shall be fully detailed, discussed and justified in the research design.

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

(5) **A summary of organizational experience.** If a current organizational summary is not already on file at HPD, the applicant shall provide a discussion that demonstrates the applicant's capability to accomplish the type and scope of archaeological investigations proposed to be completed under the permit and shall include but not be limited to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent, facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects; and a list of permits currently held by the applicant including permit number and agency.

(6) **Forms.** Copies of field, laboratory and analysis forms or examples of data tables expected to be used during the permitted work.

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

D. Curation agreement. The applicant shall obtain a current curation agreement from MIAC if a current agreement is not on file. HPD shall verify the status of the account with MIAC. If the applicant proposes another repository, the applicant shall append a copy of the curation agreement with that facility pursuant to 4.10.8.19 NMAC and provide a justification for using a facility other than MIAC as a repository.

E. Project-specific permit term.

(1) The term of a project-specific permit is usually for one year from the date of approval by the CPRC unless state trust lands are involved, in which case the term of the permit is from the date of approval by the commissioner of public lands. The applicant may request a longer term. The CPRC may approve a longer term based on the nature or complexity of the proposed work and sufficiency to complete the field studies, analyses and report as determined by the CPRC. The term shall not exceed three years including extensions.

(2) For project-specific permits with a term longer than one year, the permittee shall submit an annual progress report to the CPRC that summarizes the permitted work, even if no progress has been made, for each year for the term of the permit, excluding the year in which the final report is submitted. Failure by a permittee to submit an annual progress report may result in suspension of the permit and may be cause for the CPRC's denial of future permits in conformance with 4.10.8.23 NMAC.

F. An approved application may have special stipulations imposed by the CPRC, taking into consideration comments by committee members, the state archaeologist, the SHPO and the commissioner of public lands or the representative of the state agency with jurisdiction, as appropriate to the success of the project.

G. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating concurrence with the issuance of the permit and signature of the commissioner of public lands if state trust lands are involved. If the application for a project-specific permit involves state agency lands other than state trust lands, the state agency may concur by signing the permit but the state agency's signature is not required.

[4.10.8.11 NMAC - Rp, 4.10.8.13 NMAC, 01/01/2019]

4.10.8.12 PERMIT STIPULATIONS:

A. Permittees shall abide by all stipulations contained in this rule and any special stipulations imposed by the CPRC, the state archaeologist, the SHPO and the commissioner of public lands or the state agency as appropriate. These additional stipulations shall be set out in writing on the permit, or as an attachment to the permit.

B. Stipulations for all permits issued by the CPRC are described below.

(1) Permittees shall determine the land status of the archaeological investigation to ensure the work will not be in trespass and that they are in compliance with local, state or federal laws. The permittee is responsible for obtaining an easement or other written permission from the commissioner of public lands for archaeological investigations on state trust land and complying with all rules and regulations of the state land office relating to such easement or other permission.

(2) Permits are not exclusive in character. The state land office or the state agency reserves the right to use the subject tracts of land, or any part thereof, for any purpose within the administrative and legal jurisdiction of the state agency or state land office. The CPRC, in cooperation with the state agency and state land office, reserves the right to permit other archaeological investigations within the permit or easement area.

(3) All costs incurred in the execution of the activities conducted under a permit shall be borne by the permittee or the permittee's client or sponsor.

(4) The permittee shall comply with all laws, rules, ordinances and requirements in all matters and things affecting the premises and operations therein pertaining to the permit, archaeological site and the land where the site is located.

(5) All activities conducted under the permit shall be carried out so as to prevent erosion of the land, pollution of water resources and any other damage to the natural environment. Any sites or locations that are disturbed in the course of the archaeological investigations conducted under the permit shall be restored to their original condition insofar as possible. The areas of limited tests, test excavations and excavation shall be backfilled. All areas examined under the permit shall be left in a state that will not create hazard to life nor endanger livestock or other property, nor contribute to the deterioration of the site or location or adjacent lands by natural forces, unless other provisions are specifically approved in the permit.

(6) If unmarked human burials are discovered during the archaeological investigations, local law enforcement shall be notified pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

(7) Title to any mined or processed precious metals or treasure trove found on state trust land and in the area covered by the permit or easement is held by the commissioner of public lands and such materials shall not be disturbed or removed without specific written permission from the CPRC and the state land office. Such authorized removal shall be recorded and undertaken in the presence of the state archaeologist, the state historian or their designees.

C. Failure by a permittee to comply with the standard or special stipulations set forth in this rule and on the permit shall be cause for the CPRC's denial of future permits to the permittee in conformance with 4.10.8.23 NMAC.

[4.10.8.12 NMAC - Rp, 4.10.8.14 NMAC, 01/01/2019]

4.10.8.13 PROFESSIONAL QUALIFICATIONS STANDARDS: Investigations on state land shall be performed by historic preservation professionals who have the academic background and professional experience to apply the theories, methods and practices of the discipline to enable independent, professional judgments to be made about the identification, evaluation, documentation, registration and treatment of cultural properties in New Mexico. Except as provided otherwise in this section, the CPRC adopts and applies the SOI standards when determining whether an applicant is able to perform competent, professional work in one or more of the historic preservation disciplines in New Mexico. The SOI standards define the academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in the discipline. In addition, the CPRC requires that the total professional experience include a minimum of 12 months of professional experience with cultural resources in New Mexico.

A. Archaeology. Archaeology is the study of past human lifeways through the systematic observation, analysis and protection of the material remains of human activities. The CPRC combines professional experience with archeological resources of the prehistoric and historic periods when determining whether an individual meets the minimum professional experience requirements for listing in the SHPO directory as principal investigator, project director or supervisory archaeologist.

(1) **Principal investigator and project director.** Archaeologists serving as principal investigators or project directors shall meet the SOI standards for academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in prehistoric archaeology. The total professional experience shall include at least 12 months experience with archaeological resources in New Mexico at the supervisory level. The 12 months of experience shall demonstrate a relatively equal combination of archaeological fieldwork, laboratory analysis, report writing, as well as administrative or management experience. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the archaeological resources of New Mexico.

(2) **Supervisory archaeologist.** Archaeologists serving as crew chiefs, field supervisors or field directors shall have a bachelor's degree in anthropology or archaeology or a degree in a closely related field as determined by the CPRC; at least one archaeological field school or 30 days of full-time excavation experience in

lieu of the field school; and 12 months of professional experience with archaeological resources in New Mexico. The 12 months of experience shall demonstrate relatively equal combination of archaeological fieldwork, laboratory analysis and report writing. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the archaeological resources of New Mexico.

(3) **Field crew.** Archaeologists serving as field crew including assistant archaeologists and archaeological technicians shall work at all times under the direct, physical supervision of a principal investigator, project director or supervisory archaeologist.

(4) **Historic archaeology.** Historic archaeology is a specialization in archaeology that requires expertise in historic period sites and techniques of archival research. Historic archaeologists shall meet the SOI standards for academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in historic archaeology. The total professional experience shall include at least 12 months working with historic period archaeological sites and related resources in New Mexico. The experience in New Mexico shall include field and archival research, analysis and report writing. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the historic period resources in New Mexico.

(5) **Biological archaeology.** Biological archaeology is a specialization in archaeology that requires expertise to record and interpret observations on human skeletal and dental remains to provide information on the biology and health of the people of New Mexico. Biological archaeologists shall meet the standards in 4.10.11 NMAC for academic degrees or comparable training and professional experience. Biological archaeologists shall have advanced training in human osteology or equivalent experience and a demonstrated ability to collect and record observations systematically on human skeletal and dental remains, including fragmentary remains, analyze the remains, and prepare reports.

B. Architectural history. Architectural history is the study of the development of building practices through written records and design and the examination of structures, sites and objects in order to determine their relationship to preceding, contemporary and subsequent architecture and events. Architectural historians shall meet the SOI standards and shall include at least 12 months of experience in documenting the historic resources of New Mexico. Experience shall include research, writing, or teaching in New Mexico architectural history or restoration architecture.

C. Historic architecture. Historic architecture is the practice of applying artistic and scientific principles to the research, planning, design and construction management of the built environment with specialized training in the principles, theories, concepts, methods and techniques of preserving historic buildings and structures. Professionals in historic architecture shall meet the SOI standards and shall include at least 12 months experience in New Mexico. Experience shall include detailed investigations of historic structures, preparation of historic structure research reports and preparation of plans and specifications for preservation projects.

D. Historic landscape architecture. Historic landscape architecture is the practice of applying artistic and scientific principles to the research, planning, design and construction administration of cultural landscapes and built environment landscapes with specialized training in the concepts, principles, theories, methods and techniques of preserving cultural landscapes. Professionals in historic landscape architecture shall meet the SOI standards and shall include at least 12 months in research, documenting and analysis of the historic and cultural landscapes of New Mexico and the development of landscape plans and specifications for landscape preservation projects.

E. History. History is the study of the past through written records, oral history and material culture and the examination of that evidence within a chronological or topical sequence in order to interpret its relationship to preceding, contemporary and subsequent events. Historians shall meet the SOI standards and shall include at least 12 months in documenting the historic resources of New Mexico. Experience shall be demonstrated through research, writing, teaching, and interpretation of documents.

F. Cultural anthropology. Cultural anthropology is the description and analysis of cultural systems, which include systems of behaviors (economic, religious and social), values, ideologies and social arrangements. Cultural anthropologists shall meet the SOI standards and shall include at least 12 months of experience relevant to the understanding of ethnographic resources of New Mexico. Professional experience shall include experience in the use of ethnohistoric and ethnographic techniques including participant observation fieldwork among one or more contemporary ethnic groups and field surveys to identify and assess ethnographic resources that include historic and cultural places, and environmental features and places of value to Native American or other ethnic communities.

G. Exceptions.

Comment [SD6]: Delete extra space between words.

(1) The CPRC reserves the right to consider the education, training and professional experience of any individual in exceptional situations and on a case-by-case basis when the individual's academic degrees or comparable training, professional experience and their products and activities together demonstrate exceptional proficiency in the appropriate discipline or position.

(2) The CPRC may approve the participation of individuals to conduct field studies on state land without the direct supervision of a principal investigator, project director or supervisory archaeologist in exceptional situations and on a case-by-case basis when the studies are performed under a project-specific permit. Graduate students completing field work for a dissertation or thesis or volunteers documenting rock art under the aegis of an archaeological society may qualify for this exception. Individuals qualifying for the exception are not listed in the SHPO directory.

[4.10.8.13 NMAC - Rp, 4.10.8.10 NMAC, 01/01/2019]

4.10.8.14 SHPO DIRECTORY: The SHPO shall maintain a directory of historic preservation professionals including but not limited to individuals who act in the capacity of principal investigator, project director, supervisory archaeologist, historic archaeologist, biological archaeologist, architectural historian, historic architect, historic landscape architect, historian, or cultural anthropologist, or who meet the SOI standards in another historic preservation discipline. The CPRC reviews the SHPO directory application form and materials specified in this section to determine whether an applicant meets the standards in 4.10.8.10 NMAC.

A. In order to be listed in the SHPO directory, individuals shall submit a SHPO directory application form, curriculum vitae, chart of experience for archaeological, cultural anthropology and historic architecture positions, transcripts or copy of diploma, and work samples as specified below to HPD. A chart is not required for all disciplines but shall be prepared to supplement an application when requested by the CPRC.

(1) **SHPO Directory Application form.** The applicant shall complete a SHPO directory application form for each discipline for which an individual requests listing. The application form can be downloaded from HPD's website or obtained from HPD upon request and shall include but not be limited to the following information:

- (a) applicant name, address and telephone number, email;
- (b) employer name, employer address, employer phone number, employer email;
- (c) highest degree obtained, field of study, institution, year of degree;
- (d) license number and date of New Mexico architectural license for historic architects;
- (e) for archaeology, the position for which the applicant is applying;
- (f) number of years full-time professional experience
- (g)
- (h) number months of New Mexico experience; and
- (i) short statement of qualifications [for guidance see SOI standards];
- (j) signature.

The applicant shall certify that the information contained in the application form is true and complete through an original signature on the application submitted by mail, an application with original signature transmitted by fax or a scanned application with the original signature transmitted by email. Applications lacking a signature shall be considered incomplete.

(2) **Curriculum vitae.** Curriculum vitae shall demonstrate the qualifications and professional experience following the guidance provided in the SOI standards. Curriculum vitae shall contain, at a minimum, the following information:

- (a) name, address, telephone number, and email;
- (b) education (date of degree, degree held, institution issuing the degree, and major and minor fields of study);
- (c) professional experience by month and year with exact dates, if possible; list experience by employer and include position held and responsibilities, project name and location, types of resources documented and types of activities including but not limited to types of archaeological investigations (survey, testing, excavation, monitoring, excavation of burials), historic building survey, preparation of plans and reports, historic structure reports, and register nominations;
- (d) publications and unpublished reports;
- (e) papers presented;
- (f) training; and
- (g) references.

(3) **Chart of experience for archaeology and cultural anthropology.** Charts shall summarize experience and shall be on file at HPD. It shall be the responsibility of the individual to provide an updated chart with each new application. Experience shall be demonstrated in number of days, with one day equaling a minimum of 6 hours within a 24-hour work period or months; with one month equaling 20 days. Separate charts shall be prepared for experience in New Mexico, experience relevant to the cultural resources of New Mexico, and other experience. Charts can be downloaded from HPD's website or obtained upon request. Charts for archaeology and cultural anthropology shall contain the following columns of information:

- (a) project name;
- (b) location by county and state;
- (c) position held (principal investigator, supervisory archaeologist, crew member, analyst, etc.);
- (d) specific type of experience (survey, field research, archival research, excavation of archaeological sites or burials, oral history, laboratory work, and report writing);
- (e) total number of months experience listed by project; and
- (f) total number of months at the bottom of the chart for each type of experience.

(4) **Chart of experience for historic architecture.** Charts shall summarize experience and shall be on file at HPD. It shall be the responsibility of the individual to provide an updated chart with each new application. Experience shall be demonstrated in number of days, with one day equaling a minimum of 6 hours within a 24-hour work period or months; with one month equaling 20 days. Separate charts shall be prepared for experience in New Mexico, experience relevant to the cultural resources of New Mexico, and other experience. Charts can be downloaded from HPD's website or obtained upon request. Charts for historic architecture shall contain the following columns of information:

- (a) project name and owner;
- (b) location by county and state;
- (c) employer and position held on the architectural and engineering (AE) team;
- (d) specific type of experience (project or report description, design and construction);
- (e) total number of months experience listed by project; and
- (g) total number of months experience at the bottom of the chart for each activity and project.

(5) **Transcripts and diplomas.** An official university or college transcript or a notarized copy of the diploma for the highest degree in the appropriate discipline shall be submitted with the SHPO directory application. Transcripts shall be submitted only once and at the time of the initial application under this rule, unless an individual is updating their educational experience and degrees obtained. It shall be the responsibility of the individual to provide an official transcript or notarized copy of the diploma if a higher degree is obtained after the initial application. HPD shall retain all submittals in the SHPO directory files.

(6) **Work Samples for history and architectural history.** Provide the following work samples of your experience documenting cultural resources in New Mexico for history and architectural history.

- (a) at least three HCPI forms;
- (b) detailed architectural description; submit no more than 10 pages as a sample of work; and
- (c) contextual history based on primary sources for an architectural or historic resource taken from a cultural resources report, state or national register nomination, professional paper or other related document where you were the principal author; submit no more than 10 pages as a sample of work.

(7) **Work Samples for Historic Architecture.**

- (a) site plans, plans, and elevations prepared for a historic restoration or rehabilitation project; submit 3 sheets for review; and
- (b) historic structure report or similar document assessing the historical significance of a structure and providing recommendations for treatment; submit no more than 10 pages of each document, to demonstrate a representative sample of work; include a table of contents if applicable.

B. Submit all documentation electronically to nm.shpo@state.nm.us. HPD shall review the SHPO directory application and documentation for sufficiency, accuracy and consistency with the minimum standards in this section and in 4.10.8.10 NMAC. A submission that does not contain the required documentation or lacks signatures will be considered incomplete. HPD shall inform the applicant of omissions or clarifications necessary to complete the application.

C. If the documentation is sufficient, accurate and consistent with the minimum standards, HPD shall forward the request to the CPRC at the next meeting for approval or denial. If approved, the individual's name will be listed in the SHPO directory for the discipline and position or positions approved for which the individual applied.

D. Listing in the SHPO directory demonstrates that the individual meets the standards for the discipline set forth in 4.10.8.10 NMAC. Listing does not authorize an archaeologist to work on state land unless the individual is listed on a staff roster of a current general or project-specific permit.

E. Once an individual has been approved for listing in the SHPO directory, they may be listed on the staff roster for a new general or project-specific permit or may be added to an existing permit without additional CPRC review by requesting a permit modification. To be added to an existing permit, an authorized representative of the permittee such as the permit coordinator, principal investigator or signatory on the general permit or project-specific permit, shall request the addition from HPD. HPD will confirm that the individual is listed in the SHPO directory and add the individual's name to the staff roster. An updated permit will be sent to the permittee via email to show the personnel addition.

[4.10.8.14 NMAC - Rp, 4.10.8.11 NMAC, 01/01/2019]

4.10.8.15 CONTINUING EDUCATION CREDITS; UPDATED CURRICULUM VITAE:

A. Individuals listed in the SHPO directory must continue to develop their professional knowledge and technical skills to maintain their listing in the SHPO directory. Individuals shall complete a minimum of 24 hours of professional development or training every three years for each discipline group: archaeology, cultural anthropology, and historic preservation (history, architectural history, historic architecture, historic landscape architecture and other historic preservation disciplines). The reporting period for continuing education credits starts in the calendar year the CPRC approves the SHPO directory listing and concludes on December 31 of the third year, continuing every three-year period thereafter.

B. Archaeologists with a principal employer and listed on the employer's general permit staff roster may elect to submit their continuing education credit documentation along with their employer's general permit application. If necessary, the individual's continuing education credit hours will be increased or decreased to fit the employer's three-year permit cycle administratively by HPD.

C. Individuals listed in more than one discipline group may elect to submit their continuing education credit documentation separately by discipline in different three-year cycles or together in one three-year cycle. If necessary, the individual's continuing education credit hours for one or more disciplines will be increased or decreased as needed administratively by HPD.

D. Individuals may obtain professional training and development through courses and workshops offered by the CPRC, HPD, professional archaeological and historical societies or associations, museums and other entities including classes at universities and colleges or through presentations or attendance at national, regional or local conferences. The CPRC's continuing education credit guidelines are available on HPD's website at <http://nmhistoricpreservation.org> or its successor site.

E. Individuals listed in the SHPO directory shall submit a continuing education cover sheet, updated curriculum vitae, and documentation of professional development to HPD every three-year cycle consistent with the requirements of this section.

(1) Evidence of training or professional development shall be summarized on the continuing education cover sheet for each discipline group. The cover sheet includes the individual's name, address, phone number, email, brief description of the activity, vendor, date, location, number of hours and a justification if the activity is not specifically listed in the CPRC's guidelines. Individuals shall document the professional development by including proof of registration, attendance or participation for each activity listed to the extent possible. The individual shall certify the information is true and complete by signing and dating the cover sheet.

(2) The updated curriculum vitae shall present a listing of professional experience, professional training and development, publications, unpublished reports and papers presented since the last submittal. **A new, comprehensive curriculum vitae to replace the curriculum vitae on file with HPD may be submitted in lieu of an updated curriculum vitae.**

F. Individuals shall continue to be listed in the SHPO directory as long as the individual documents the minimum 24 hours of professional development for every three-year cycle for each discipline group, provides the updated or new curriculum vitae every three years, and has not been removed from the SHPO directory. Individuals may request that their name be removed from the SHPO directory at any time.

G. Individuals who do not complete the minimum 24 hours of continuing education credits or provide an updated curriculum vitae for each listed discipline group every three years shall be removed from the SHPO

Comment [SD7]: Delete extra space between words.

directory at a CPRC meeting. The individual may reapply for listing on the SHPO directory by submitting a new SHPO directory application and materials consistent with 4.10.8.11 NMAC and providing documentation of 24 hours of continuing education credits. Prior approval for listing on the SHPO directory does not guarantee CPRC approval of a new application.

H. HPD shall review all continuing education credit documentation and updated or new curriculum vitae for conformance with the CPRC's guidelines. Any questions or concerns regarding an individual's continuing education credits or curriculum vitae shall be presented to the CPRC at the next regularly scheduled meeting.
[4.10.8.15 NMAC - N, 01/01/2019]

4.10.8.16 REVIEW AND APPROVAL OF PERMIT AND SHPO DIRECTORY APPLICATIONS:

A. HPD shall receive permit and SHPO directory applications including attachments and maintain current files for each permittee and individual listed in the SHPO directory.

B. HPD shall review all information submitted in support of the permit or SHPO directory application for completeness, accuracy and conformance with all requirements. HPD shall attempt to contact the applicant to remedy any inaccuracies or inadequacies before further review or processing of the application. HPD shall submit all complete applications for consideration by the CPRC at the next scheduled CPRC meeting. HPD may recommend to the CPRC that an application be tabled or rejected if the application fails to meet minimum qualifying criteria either upon initial receipt or through failure to respond adequately to a request for information or correction of inaccuracies. When applicable and for project-specific permit applications only, HPD shall advise the CPRC on whether agency consultation with SHPO under federal or state law is complete or nearly complete.

C. The CPRC shall review and consider all applications for approval, approval with special stipulations or denial, with the concurrence of the state archaeologist and the SHPO. The CPRC may table applications to be discussed at a future meeting pending receipt of additional information necessary to make a decision on the application or, for project-specific permit applications, when consultation with SHPO under federal or state law is not substantially complete.

D. Any special stipulations attached to a permit by the CPRC, the state archaeologist or the SHPO shall be specified in writing on or in an attachment to the permit. The CPRC may include special stipulations at the written request of a state agency or commissioner of public lands if received prior to the CPRC's decision to approve the permit.

E. Signature of the chair of the CPRC indicates approval of the permit by the CPRC. Signatures of the state archaeologist and the SHPO indicate concurrence with the approval of the permit.

F. If the application for a project-specific permit involves state trust lands and the permit application has been signed by the CPRC, the state archaeologist and the SHPO, HPD shall forward the permit application to the commissioner of public lands for approval or denial. The applicant shall be required to obtain an easement or other written permission from the state land office as a condition of the commissioner of public lands approving the permit. The state land office shall forward to HPD the permit with any additional stipulations, once the application has been approved by the commissioner of public lands. Signature of the commissioner of public lands indicates approval of the permit. The permit is not valid without the signature of the commissioner of public lands. If either the permit or an application for an easement or other written permission to enter state trust lands has been denied by the commissioner of public lands, the state land office shall inform HPD of this fact in writing, and HPD shall notify the CPRC of the commissioner's decision.

G. The CPRC may deny a permit or SHPO directory application for any reason, including but not limited to, incomplete applications, insufficient experience, the lack of at least one principal investigator on the staff roster of the permit, or failure to demonstrate that a permit applicant is a qualified institution.

H. HPD shall notify the applicant in writing of the approval, approval with conditions or stipulations, or denial by the CPRC.

I. Any applicant who has been denied approval shall have the right to appeal the decision pursuant to 4.10.8.25 NMAC.

[4.10.8.16 NMAC - Rp, 4.10.8.15, 01/01/2019]

4.10.8.17 MODIFICATION OF PERMITS:

A. A permittee may request a modification to a permit at any time. The permittee shall submit a written request of the proposed permit modification to HPD and concurrently to the state agency archaeologist, if the state agency has one and the modification affects permit activities on state land under their jurisdiction. The request shall be approved or denied by the CPRC or HPD as specified in this section, taking into consideration comments provided by the state trust archaeologist or state agency archaeologist.

B. The CPRC shall review requests for a permit modification that propose a significant or substantive change in the scope of work, a change in the curatorial facility to a facility other than MIAC, and all other modifications that are not subject to administrative action by HPD as specified below in Subsection C of 4.10.15.17 NMAC.

C. HPD shall review and may approve requests for a permit modification for the following situations.

(1) If the modification to the permit involves adding individuals who are listed in the SHPO directory in the same position or deleting individuals from the permit staff roster, HPD shall review and approve the request within five working days of receipt of the request.

(2) If the archaeological investigation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period specified on the permit, the permittee shall write HPD and request an extension of the term of the permit. This request shall be received by HPD at least 10 working days prior to the expiration date of the permit to be considered. The request for the extension shall be accompanied by an interim report summarizing the excavations completed at that date and a proposed date when the excavations will be completed and when the final report will be submitted. HPD may approve one extension of the permit term not to exceed one year from the expiration date of the original permit. Additional requests for an extension will be reviewed by the CPRC.

(3) When a permittee notifies HPD of a change in a permittee's business address or facilities, HPD shall acknowledge receipt of the change within five working days and update the permittee's records.

(4) HPD may approve minor adjustments to the investigation that do not result in a reduction of the scope of work. HPD shall notify the permittee of its decision within 10 working days of receipt.

(5) If the archaeological investigation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify HPD in writing to request a cancellation of the permit. Disposition of material remains collected under the permit and copies of all written and photographic records resulting from a discontinued investigation shall be in accordance with 4.10.8.19 NMAC and the provisions of this section. The permittee shall obtain a receipt showing that the collections and records have been submitted to the repository and shall upload a copy of the receipt in NMCRIS. HPD shall document the cancellation in the permit files.

D. If fieldwork has not been initiated within the permit period or an extension has not been requested before the expiration of the permit, the permit shall become void at the end of the permit period. [4.10.8.17 NMAC - Rp, 4.10.8.16 NMAC, 01/01/2019]

4.10.8.18 REVIEW OF REPORTS. All permittees are required to submit a final written report. In all cases the reports shall be submitted to the state agency or agencies and HPD for review and comment as specified in this section. For archaeological investigations conducted on state trust lands, the commissioner of public lands may condition release of the permittee's bond upon the commissioner's approval of the final report.

A. Reports on the archaeological investigations shall be prepared and submitted consistent with the standards set forth as appropriate in 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC, and 4.10.21 NMAC. The state agency may establish additional reporting requirements and may request additional copies of the reports, forms, appendices and attachments. Reports shall be submitted simultaneously to HPD and the state agency when the agency does not have a staff archaeologist or a historic preservation professional.

(1) **Preliminary reports.** If required by the state agency, the permittee may prepare a preliminary report and submit one copy to the state agency archaeologist or historic preservation professional within 60 days of completing the field studies. The state agency archaeologist or historic preservation professional shall forward a copy of the preliminary report to HPD. If the state agency does not have an archaeologist or historic preservation professional on staff, the permittee shall submit one copy of the preliminary report to the HPD for review and comment. The permittee shall make a good faith effort to address any comments from the state agency and HPD and shall revise and resubmit the report to the state agency or HPD, as appropriate.

(2) **Final reports.** The permittee shall prepare and submit at least one copy of the draft and final report including site forms, appendices and attachments to the state agency archaeologist or historic preservation professional for review and acceptance with recommendations of eligibility and effect if applicable. If the state agency does not have an archaeologist or historic preservation professional on staff, the permittee shall submit the draft final report, appendices and attachments simultaneously to HPD and the state agency for review and acceptance with recommendations of eligibility and effect if applicable. The permittee shall make a good faith effort to address agency and HPD comments and shall revise and resubmit the report to the state agency or HPD, as appropriate.

(3) If HPD has not received a copy of the final report within 12 months of the permittee obtaining the NMCRIS investigation number, HPD may contact the permittee to determine the status of the report and project. HPD may request the permittee to submit one copy of the final report to HPD, or if the final report cannot be submitted within this time period, the permittee shall propose a new completion date for the final report. HPD, in consultation with the state agency, shall establish a new deadline for submittal. If agreement cannot be reached, the CPRC will consider the matter.

B. All reports, forms, appendices and attachments shall be reviewed by HPD for technical accuracy and completeness and concurrence with eligibility and effect if applicable. Upon concurrence or acceptance, HPD will direct the permittee to submit the collections, original records associated with the collections, and a copy of the approved final report to the repository within a specified time frame, if applicable. The repository will provide the permittee with a receipt showing that the collections have been submitted. The permittee shall then scan and upload a copy of the receipt and the final report in NMCRIS.

(1) If HPD review identifies that the proposed investigations were not completed according to the standards contained in 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC or 4.10.21 NMAC, as appropriate, or not completed consistent with the stipulations contained on the approved permit, HPD will notify the state agency and permittee of the deficiencies and request that the permittee amend the report to correct the deficiencies and resubmit the report to the state agency and HPD.

(3) Failure by the permittee to conduct the permitted investigation according to standards or stipulations shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

C. Repeated failure by a permittee to submit required reports in a timely manner or in conformance with 4.10.15 NMAC, 4.10.16 NMAC, 4.10.14.17 NMAC, or 4.10.21 NMAC shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.
[4.10.8.18 NMAC - Rp, 4.10.8.18 NMAC, 01/01/2019]

4.10.8.19 CURATION OF COLLECTIONS AND RECORDS: All material remains collected during archaeological investigations conducted under a permit and written and photographic records resulting from an archaeological investigation, regardless of whether or not all of the work specified in the permit was completed, shall be curated consistent with this section.

A. Collections. Title to all material remains recovered from state land is held by the state of New Mexico unless the material remains are recovered from state trust land. The commissioner of public lands holds title in trust to all material remains located on state trust lands for the designated beneficiaries of the land.

(1) The museum of New Mexico is the custodian of material remains and associated records and documents recovered as a result of archaeological investigations on state land unless the CPRC designates another institution as the alternate, approved collection repository in consultation with the museum.

(2) The MIAC serves as the repository for the museum of New Mexico. If the applicant proposes another repository, the applicant shall append a copy of the curation agreement with that facility to the application along with an explanation of the purpose of using a facility other than MIAC as a repository. This request shall be reviewed by the CPRC and if approved by the CPRC and the commissioner of public lands if state trust lands are involved, shall be specified in writing on the permit as a stipulation.

(3) The commissioner has designated the museum of New Mexico as the custodian of all material remains found on lands under the jurisdiction of the state land office unless the CPRC and the commissioner of public lands approves another institution as the collections repository.

(4) In order to qualify as a custodian of material remains and associated records and documents, the repository shall meet the U.S. secretary of interior standards in 36 CFR 79.

(5) If an alternate approved collection repository with material remains and associated records from state land ceases to exist, the material remains and associated records shall be delivered to the MIAC for curation.

(6) All material remains and records pertaining to the collections to be received by the MIAC or an alternate approved repository shall be submitted in accordance with the conditions stipulated by the permittee's current curation agreement with that facility. If the collections are not submitted in accordance with the curation agreement or an account is in arrears with the repository, the repository may notify the CPRC. This failure shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

B. Written and photographic records. ARMS manages NMCRIS and the records repository on behalf of HPD including all NMCRIS investigation records, LA archaeological site records, including site updates resulting from survey, excavation, test excavation or monitoring and associated reporting, HCPI forms, and

photographic materials. These records shall be prepared consistent with the standards in the NMCRIS user's guide and submitted in accordance with 4.10.19.9 NMAC.

[4.10.8.19 NMAC - Rp 4.10.8.19 NMAC, 01/01/2019]

4.10.8.20 UNANTICIPATED DISCOVERIES: If cultural resources are discovered after the permitted field investigations have concluded or unanticipated effects on cultural properties occur during construction or other ground-disturbing activities, all construction or other ground-disturbing activities in the vicinity of the discovery shall immediately cease and a buffer of at least 50 feet shall be established around the discovery. The state agency shall notify HPD within 24 hours of the discovery.

A. The agency, in consultation with HPD, shall evaluate the property's significance and determine appropriate actions to avoid the cultural property or recover significant information.

(1) If the discovery is in an area covered under a current permit that authorizes excavation of similar types of cultural properties, the discovery may be treated in accordance with the standards and methods outlined in the research design for the permit and the results shall either be included in the report for the permitted activity as an addendum to the report or as a separate report.

(2) For all other discoveries the state agency may request that a permittee with a valid general permit that authorizes test excavation develop a plan to protect or minimize damage to the discoveries or to excavate the features or cultural deposits that will be affected by the construction. Plans proposing excavation shall be consistent with the excavation standards in 4.10.21 NMAC and appropriate to the scale and complexity of the discoveries. Alternatively, the state agency may request that a qualified institution submit a project-specific excavation permit application and research design to HPD pursuant to Section 4.10.8.14 NMAC.

B. The state agency will review the plan and when approved shall forward it to HPD. HPD shall review the plan within 48 hours of receipt, excluding weekends and holidays. If there are any questions or concerns, HPD will work closely with the state agency and permittee to develop a plan acceptable to the state agency and HPD. HPD shall notify the state agency and the permittee in writing when it has accepted the plan.

C. If human burials are discovered, the permittee shall notify local law enforcement pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

[4.10.8.20 NMAC - Rp, 4.10.8.20 NMAC, 01/01/2019]

4.10.8.21 PERMITTEE PERFORMANCE:

A. The CPRC, the state archaeologist, the SHPO and the state agency may assess the quality of archaeological or research work conducted or completed by a permittee at any time by conducting field visits or by reviewing reports, site forms and related materials for compliance with survey, test excavation, excavation and monitoring standards or for compliance with terms and conditions of the permit.

B. Unacceptable or substandard performance may be considered as either a minor or major deficiency and shall be documented in writing consistent with this section.

(1) Minor deficiencies. Minor deficiencies in the report or site documentation are errors that do not cause the basic findings of the report or site documentation to be questioned but indicate that the permittee was careless in assembling the report and site documentation. Minor deficiencies include, but are not limited to, minor or typographical mistakes in legal descriptions, inconsequential mistakes regarding land ownership status, improperly labeled maps, poor quality control in report preparation or preparation of NMCRIS forms, failure to submit required reports in a timely manner or in conformance with this rule, 4.10.14 NMAC, 4.10.15 NMAC, 4.10.16, NMAC, 4.10.17 NMAC, and 4.10.21 NMAC, and mistakes in the pre-field check resulting in sites or registered cultural properties not being reported within 500 m of the APE.

(2) Major deficiencies. Major deficiencies in reporting or fieldwork include but are not limited to:

- (a)** failure to identify registered cultural properties and previously recorded archaeological sites, historic structures and buildings and other cultural properties in the APE or project area during the pre-field records check;
- (b)** a pattern of failure to identify or recognize site(s) and registered cultural properties during survey;
- (c)** a pattern of recording a site as an isolate or a collection of isolates;
- (d)** a pattern of incompletely recording a site or drawing inaccurate site boundaries;
- (e)** actual on-the-ground survey coverage varying from what is reported;

documentation;

- (f) use of unauthorized personnel to perform fieldwork or prepare NMCRIS
- (g) providing false information;
- (h) conducting fieldwork without obtaining the appropriate permit;
- (i) a pattern of failures to submit required reports in a timely manner or in conformance with 4.10.8 NMAC;
- (j) failure to make scheduled payments to ARMS for access to NMCRIS and survey registration fees; the registrar at ARMS shall notify HPD of accounts in arrears;
- (k) failure to make payments to the curatorial facility for collections that were accepted by the repository, a pattern of submitting collections that are not accepted owing to insufficient preparation, or causing undue problems for the repository in processing the collections for curation;
- (l) failure to notify the state agency of the archaeological investigation, or not obtaining an easement or other written permission to enter state land trust lands; and
- (m) substantial or material mistakes in legal descriptions or regarding land ownership status.
- (n) failure to register the project in NMCRIS or submit digital and paper records in conformance with 4.10.19.9 NMAC.

C. HPD shall document unacceptable permittee performance by maintaining files containing, but not limited to, the following kinds of documentation:

- (1) written correspondence between HPD and the permittee documenting deficiencies in fieldwork based on field visits; deficiencies in reports, NMCRIS forms and related materials that do not adhere to the applicable standards in 4.10.8 NMAC, 4.10.14 NMAC, 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC, 4.10.19 NMAC, and 4.10.21 NMAC; or deficiencies in complying with permit terms and conditions;
- (2) written correspondence between the permittee and the state or federal agency documenting deficiencies based on field visits and reviews of reports and associated records;
- (3) written documentation of deficiencies in complying with permit terms and conditions;
- (4) copies of reports, site records and other site documentation, such as maps and photographs, that contain significant errors; and
- (5) written documentation by a federal agency revoking an archaeological permit.

D. HPD or the state agency may request revisions to the report and site documentation to address minor or major deficiencies and shall document such requests in writing. The permittee shall submit the revised report or site documentation to HPD or the state agency. If the permittee does not provide the requested revisions, the failure shall be documented in the permittee file.

(1) If the permittee's reports and other documentation continue to contain inaccuracies, HPD and the state agency shall provide technical assistance to help the permittee correct the deficiencies by telephone call, letter, email, meetings, NMCRIS training or site visits. HPD shall attend such meetings or participate in conference calls and shall prepare a follow-up letter, addressed to the permittee and the state agency, documenting what was discussed and the actions the parties agreed are appropriate to correct the deficiencies.

(2) If the permittee continues to make the same errors after assistance provided by HPD and the state agency, the failure to improve shall be documented in the permittee's file and HPD may notify the CPRC and the permittee.

(3) The CPRC may place the permittee on a probation in accordance with 4.10.8.22 NMAC.

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

E. The permittee may write to the CPRC or request a meeting with the CPRC to discuss concerns relating to HPD's documentation of the permittee's performance at any time.
[4.10.8.21 NMAC - Rp, 4.10.8.21 NMAC and 4.10.8.22 NMAC, 01/01/2019]

4.10.8.22 PROBATION: Permits may be issued for less than three years on a probationary basis when the CPRC determines that a permittee's performance requires evaluation based on documented performance problems.

A. The permittee shall take immediate steps to correct the deficiencies. The permittee may continue to work on state land but the permittee's name shall be removed from the list of permittees maintained by HPD while on probation.

B. The CPRC, state archaeologist and the SHPO shall evaluate the performance of the permittee closely during the time the permit is in effect and document performance accurately through site recording, mapping, photography and written reports of observations. Documentation of performance monitoring shall be

entered into the permittee's permanent file and may be taken into account by the CPRC when considering whether to issue permits to that permittee in the future.

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

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

[4.10.8.22 NMAC - Rp, 4.10.23 NMAC, 01/01/2019]

4.10.8.23 DENIAL OF A PERMIT BASED ON PERFORMANCE: The CPRC may deny an application for a permit based on unacceptable performance.

A. The decision to deny a permit application may be based upon factors such as:

- (1) a pattern of unacceptable performance by the applicant;
- (2) failure of the applicant to improve performance while on probation;
- (3) failure of the applicant to obtain the necessary permits or approvals for archaeological

investigations on state land;

(4) documentation of the applicant's work on state land while on probation;

(5) failure of the applicant to comply with applicable rules or additional stipulations set forth on the permit, or

(6) falsification by the applicant of information pertaining to qualifications or performance.

B. The CPRC shall inform the applicant, in writing, that a permit application has been denied and shall specify the reason for the denial and shall invite the applicant to attend the next scheduled CPRC meeting to discuss the reasons for denial. If the CPRC denies a project-specific permit, the CPRC shall notify the state agency of its decision.

C. Any applicant who has been denied a permit by the CPRC shall have the right to appeal the decision pursuant to 4.10.8.24 NMAC.

[4.10.8.23 NMAC - Rp, 4.10.8.24 NMAC, 01/01/2019]

4.10.8.24 PROCEDURES FOR APPEALING A DECISION: Any applicant who has been denied a permit by the CPRC, the state archaeologist, or the SHPO or who has been denied for listing on the SHPO directory shall have the right to appeal the decision.

A. All requests for an appeal shall include a statement of the applicant's reason for requesting an appeal and contain any additional information that the applicant believes will support the appeal.

B. Upon receipt of a written request for a hearing, the chairman of the CPRC shall convene the CPRC as the hearing panel.

C. Within two weeks of receipt of a written request for a hearing, HPD shall inform the applicant in writing of the date, time and place of the hearing at which the appeal will be heard. The notice of public hearing shall be published pursuant to Section 9-4A-6 NMSA 1978 of the Cultural Affairs Department Act.

(1) The chairman of the CPRC or his designee shall serve as the chair of the hearing panel.

Hearings will be conducted in accordance with the committee's rules of procedure.

(2) The state archaeologist and the SHPO may provide testimony at the hearing. A written record shall be kept of the proceedings.

D. Decisions of the hearing panel shall be based on a simple majority vote of the members of the panel.

E. The chair of the hearing panel shall inform the applicant in writing of the decision of the hearing panel. Decisions of the hearing panel shall be final.

[4.10.8.24 NMAC - Rp, 4.10.8.25 NMAC, 01/01/2019]

4.10.8.25 DEVIATIONS: The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.8.25 NMAC - Rp, 4.10.8.26 NMAC, 01/01/2019]

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.

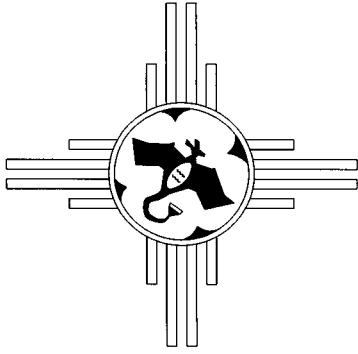
History of Repealed Material: 4 NMAC 10.8, Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97), repealed 10/01/05.

4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land, filed 10/01/05, repealed 01/01/2019.

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.



NEW MEXICO ARCHEOLOGICAL COUNCIL
P.O. Box 25691, Albuquerque, NM 87125

Dear New Mexico Historic Preservation Office:

We appreciate the opportunity to review and comment on the new proposed rule changes to 4.10.8 NMAC and 4.10.14 NMAC. In general, we agree with the new rule changes to 4.10.8 and 4.10.14. In our opinion, the new rule changes will reduce paperwork and administrative time for the SHPO and permittees (4.10.8.9), increase standards for archaeological work (4.10.8.10, 4.10.8.13, 4.10.8.14, and 4.10.8.21 and 22), reduce potentially redundant permitting (4.10.8.17), and provide much-needed clarification for maintaining individuals on the SHPO directory (4.10.8.15). In addition, we appreciate that the SHPO added a rule concerning compliance with OSHA to improve safety when conducting mechanical excavation on State land (4.10.14.12).

Specific comments:

4.10.8.17.C.2

“If the archaeological investigation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period specified on the permit, the permittee shall write HPD and request an extension of the term of the permit. This request shall be received by HPD at least 10 working days prior to the expiration date of the permit to be considered. The request for the extension shall be accompanied by an interim report summarizing the excavations completed at that date and a proposed date when the excavations will be completed and when the final report will be submitted. HPD may approve one extension of the permit term not to exceed one year from the expiration date of the original permit. Additional requests for an extension will be reviewed by the CPRC.”

NMAC Response: Often archaeological projects are subject to a number of stops and starts based on a variety of factors. We believe having the CPRC re-approve a permit on a project that has been delayed for more than a year is excessive, therefore we recommend that HPD should be able to extend permits for more than a year without waiting for the next meeting of the CPRC.

4.10.14.12.D

“Stratigraphic profiles shall be recorded by scale diagram, photographs and narrative descriptions. Deposit descriptions include but are not limited to sediment color, texture, moisture, content, nature of inclusions, organic content and an inventory of cultural material. The color shall be described using Munsell terminology”

NMAC Response: Photographs of stratigraphic profiles are sometimes not helpful (especially in 75-cm-wide backhoe trenches and poor lighting), though we recognize that photographs are often helpful to document stratigraphy. We recommend that photographs of stratigraphic profiles

should not be required for each trench or stripping area, therefore we suggest this should be clarified to define when photographs are required.


Sincerely,
NMAC Board

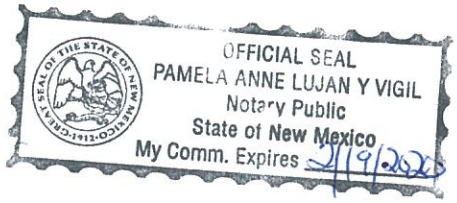
Affidavit of Publication in New Mexico Register

I, Matthew Ortiz, certify that the agency noted on Invoice # 3626 has published legal notice of rulemaking or rules in the NEW MEXICO REGISTER, VOLUME XXIX, that payment has been assessed for said legal notice of rulemaking or rules, which appears on the publication date and in the issue number noted on Invoice # 3626, and that Invoice # 3626 has been sent electronically to the person(s) listed on the *Billing Information Sheet* provided by the agency.

Affiant: 
Matthew Ortiz

Subscribed, sworn and acknowledged before me this 31st day of October, 2018.

Notary Public: 
My Commission Expires: 2/19/2020



1205 Camino Carlos Rey | Santa Fe, NM 87507 | nmcpr.state.nm.us

Robert J. Tórréz
Historian/Chair

Hon. Hector Balderas
Attorney General

Hon. Wayne Johnson
State Auditor

Hon. Maggie Toulouse Oliver
Secretary of State

Veronica Gonzales
Department of Cultural Affairs

Ned Fuller
General Services Department

Lynne S. Rhys
State Law Librarian



**CULTURAL PROPERTIES
REVIEW COMMITTEE
PUBLIC RULE HEARING
AND REGULAR BOARD
MEETING**

NOTICE IS HEREBY GIVEN that the Cultural Properties Review Committee (CPRC) will convene a public hearing on Friday, December 7, 2018 at 1:00 pm in the Old Senate Chambers, Room 238 in the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501. Following the hearing, the CPRC will convene a board meeting to adopt the rules and take care of regular board business.

The purpose of the hearing is to consider repealing and replacing rules 4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land and rule 4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation Permits. The CPRC proposes to repeal and replace both rules in order to clarify, supplement, and update both rules in order to facilitate the effective administration of permits for archaeological investigations on state and private land.

The statutory authority for the proposed changes to 4.10.8 NMAC is found in Section 18-6-5(O) NMSA 1978 of the Cultural Properties Act. The statutory authority for the proposed changes to 4.10.14 NMAC is found in Sections 18-6-10 and 18-6-11 NMSA 1978 of the Cultural Properties Act. The CPRC is considering the adoption of a new rule 4.10.8 NMAC in order to change the term of the General Archaeological Investigation permit from one to three years, adopt the 1997 Secretary of the Interior's historic preservation professional qualification standards, clarify the application process for listing on the SHPO Directory and the standards for continuing education credits, eliminate redundancies, and correct inconsistencies throughout the current rule. The CPRC is considering the adoption of a new rule 4.10.14 NMAC in order to clarify language, correct inconsistencies and update the standards for mechanical excavation.

The proposed rules are available at the Historic Preservation Division (HPD) website, www.nmhistoricpreservation.org, and at the HPD office located in the Bataan Memorial Building, 407 Galisteo Street, Suite 238, Santa Fe, New Mexico 87501. To request that a copy of the proposed rule be mailed to you, submit your request in writing to Historic Preservation Division, 407 Galisteo Street, Suite 238, Santa Fe, New Mexico 87501, by email to nm.sripo@state.nm.us, or via fax to (505) 827-6338.

The CPRC is currently accepting public comments on the proposed rules. Additionally, any person may appear at the hearing to submit their comments on the proposed rules. Written comments may be submitted by mail to: Historic Preservation Division, 407 Galisteo Street, Suite 238, Santa Fe, New Mexico 87501, by email to nm.sripo@state.nm.us, or via fax to (505) 827-6338. Written comments should be submitted for the CPRC's consideration no later than 1:00 pm on December 7, 2018. Written comments will be posted on HPD's website.

Individuals in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing should contact Arnette Apodaca at 505-827-6314 or arnette.apodaca2@state.nm.us at least five business days prior to the hearing.

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Bernadette Gonzales, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

11/02/2018



Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

2 day of November of 2018

PRICE \$133.84

Statement to come at the end of month.

ACCOUNT NUMBER 1009571



OFFICIAL SEAL
Anita L. Montoya
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 12-31-2018

