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**TITLE 19 NATURAL RESOURCES & WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 24 CULTURAL PROPERTIES**

19.2.24.1 ISSUING AGENCY: Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.

[19.2.24.1 NMAC - N, XX/XX/XXXX]

19.2.24.2 SCOPE: This part pertains to the identification and protection of cultural properties on state trust lands.

[19.2.24.2 NMAC - N, XX/XX/XXXX]

19.2.24.3 STATUTORY AUTHORITY: Under Section 19-1-1 NMSA 1978, the commissioner is the executive officer of the state land office. The commissioner’s authority to manage, control, and care for state trust lands is found in N.M. Const., art. XIII, Section 2, and in Section 19-1-1 NMSA 1978. The New Mexico Cultural Properties Act, Sections 18-6-1 to 18-6-27, requires the state land office, as an agency with jurisdiction over state land, to exercise due caution to ensure that cultural properties on state trust lands are not damaged or destroyed, and authorizes the commissioner to initiate action against any person or entity violating the Cultural Properties Act by causing damage to, or destroying, cultural properties located on state trust lands. The authority to promulgate this part is found in Section 19-1-2 NMSA 1978.

[19.2. 24.3 NMAC - N, XX/XX/XXXX]

19.2.24.4 DURATION: Permanent.

[19.2.24.4 NMAC - N, XX/XX/XXXX]

19.2.24.5 EFFECTIVE DATE: [DATE], unless a later date is cited at the end of a section.

[19.2.24.5 NMAC - N, XX/XX/XXXX]

19.2.24.6 OBJECTIVE: The objective of this part is to establish and maintain processes to proactively identify cultural properties on state trust lands to ensure that such properties are not damaged or destroyed.

[19.2.24.6 NMAC - N, XX/XX/XXXX]

19.2.24.7 DEFINITIONS: As used in 19.2.24 NMAC, the following terms have the meaning set forth in this section unless otherwise indicated in the text of this rule:

A. “Applicant” means any person or entity applying to the state land office for a lease, sublease, easement, permit, license, grant, amendment, certificate or other entitlement.

B. “Archaeological Survey” or “Survey” means a visual inspection conducted on foot that examines, identifies, records, evaluates, and interprets all surface-visible cultural properties 50 or more years old located in an APE or project area, as provided in 4.10.15.7(N) NMAC.

C. “Area of Potential Effect” or “APE,” as provided in 4.10.15.7(D) NMAC, means the geographic area or areas within which a project may directly or indirectly cause changes in the character or use of a cultural property. The APE is influenced by the scale and nature of the project and is different for different kinds of effects caused by the undertaking. For archaeological sites the APE typically includes all areas involving surface disturbance but may also include areas adjacent to the disturbance that may be indirectly affected as a consequence of the project. For aboveground historic buildings, structures and other cultural properties, the APE often extends beyond the limits of surface disturbance and includes visual, vibratory and noise impacts to a building, structure, site, district, or cultural landscape and its setting and viewshed. Variation in topography, vegetation, and contemporary land use influences the visual impact on cultural properties.

D. “ARMS Inspection” means a search of the New Mexico Cultural Resources Information System (NMCRIS) and the other cultural resource records maintained by the Archaeological Records Management Section (ARMS) of the historic preservation division of the New Mexico department of cultural affairs, in accordance with 4.10.15.9 NMAC.

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E. “Commissioner” means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule.

F. “Cultural Property” means a structure, place, site, or object having historic, archaeological, scientific, architectural or other cultural significance and included on or eligible for inclusion on either the New Mexico register of cultural properties pursuant to the Cultural Properties Act, or listed on or eligible for listing on the national register of historic places pursuant to the National Historic Preservation Act, 16 U.S.C. Section 470.

G. “Cultural Properties Act” means the New Mexico Cultural Properties Act, NMSA 1978, Sections 18-6-1 through 18-6-17.

H. “Project” means any surface disturbing activity or proposed activity on state trust lands that requires a lease, sublease, easement, permit, license, grant, amendment, certificate or other entitlement from the state land office, as well as any surface disturbing activity that is directly undertaken by the state land office.

I. “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 historic preservation division of the New Mexico department of cultural affairs.

J. “State Land Office” or “NMSLO” means the New Mexico state land office.

K. “State Land Office Tribal Liaison” means the individual appointed by the commissioner to foster effective communication and collaboration, and positive government-to-government relations, with sovereign native american nations, tribes, and pueblos, and to promote state land office staff cultural competency in such dealings.

L. “State Trust Lands” or “Trust Lands” means those lands, their natural products and all assets derived from them, which are under the care, custody and control of the commissioner.

M. “Surface Disturbance” or “Surface Disturbing” means any ground disturbing or ground breaking activity, including but not limited to blading, scraping, contouring, excavating, trenching, digging, burying, paving, covering or compacting, within or upon previously undisturbed soil surfaces, whether or not those undisturbed soil surfaces occur within an authorized use area.

N. “Tribal Historic Preservation Officer” or “THPO” means the individual appointed by a tribe’s chief governing authority or designated by a tribal ordinance or preservation program, who has assumed the responsibilities of the SHPO on tribal lands.

O. “Trust” means the trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310) and that trust’s assets, which are administered through the state land office by the commissioner.

[19.2.24.7 NMAC - N, XX/XX/XXXX]

19.2.24.8 NOTIFICATION AND INSPECTION REQUIREMENTS:

A. General Application Requirements. An application for any project not subject to 19.2.24.8(B) or (C) NMAC, and not exempted under 19.2.24.9 NMAC, shall include the following:

(1) **Signed Acknowledgment.** At the time of application for any project, the applicant must acknowledge, on a form prescribed by the state land office, that the applicant understands and agrees to comply with applicable laws and rules pertaining to the protection of cultural properties on state trust lands.

(2) **ARMS Inspection and Survey Requirement.** At the time of application for any project the applicant shall submit to the state land office an ARMS inspection of the entire area of potential effect. In the best interest of the trust, the commissioner may provide the ARMS inspection for any project. The following subparagraphs describe the necessary steps to be taken after an ARMS inspection is conducted.

(a) If the ARMS inspection demonstrates that the entire area of potential effect has been surveyed in accordance with current standards, as defined by 4.10.15 NMAC, and that no cultural properties are located within the area of potential effect, then the application may proceed without any further archaeological review.

(b) If the ARMS inspection demonstrates that the entire area of potential effect has

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not been surveyed in accordance with current standards, as defined by 4.10.15 NMAC, then the applicant shall conduct an archaeological survey in accordance with current standards.

(c) If the ARMS inspection demonstrates that the entire area of potential effect has been surveyed in accordance with current standards, as defined by 4.10.15 NMAC, and cultural properties are identified within the area of potential effect; or if the applicant has obtained a contemporaneous survey as provided in 19.2.24.8(A)(2)(b) NMAC, and cultural properties are identified within the area of potential effect:

(i) Applicants shall submit the ARMS inspection, and either the survey or the survey NMCRIS number to the state land office, and the state land office will notify the SHPO and any applicable THPO regarding the existence of such properties on state trust lands within the area of potential effect.

(ii) Applicants shall develop and submit to the state land office compliance measures related to project siting, avoidance, and mitigation; those compliance measures may be included within the survey that the applicant submits to the state land office. The state land office will review the proposed compliance measures, and determine if those measures are sufficient to protect the affected cultural properties. The state land office may require additional or different compliance measures as a condition to approval of the application.

(iii) Upon commissioner approval, the relevant leasing division shall include appropriate compliance measures in the relevant lease, permit, or other instrument.

(3) An application or bid to lease state trust lands for mining, as specified in NMSA 1978, Chapter 19, Articles 8-9, and 19.2.2, 19.2.3, 19.2.4, 19.2.5, 19.2.6, and 19.2.7 NMAC, shall include the signed acknowledgment specified in 19.2.24.8(A)(1) NMAC. An ARMS inspection and survey, and compliance measures if cultural properties are identified within the area of potential effect, as specified in 19.2.24.8(A)(2) NMAC, are required upon 1) filing of an application for a mining permit with the mining and minerals division of the New Mexico energy, minerals, and natural resources department, or equivalent permitting agency for leases that are subject to 19.2.2 and 19.2.6; and 2), prior to commencement of any surface disturbing activity for all other types of mineral leases.

(4) An application or bid to lease state trust lands for wind or solar energy development or production shall include the signed acknowledgment specified in 19.2.24.8(A)(1) NMAC. An ARMS inspection and survey, and compliance measures if cultural properties are identified within the area of potential effect, as specified in 19.2.24.8(A)(2) NMAC, are required upon submission of a project plan for any such lease and prior to commencement of any surface disturbing activity, rather than at the time of issuance or assignment of such lease.

(5) Notwithstanding any other provision of 19.2.24.8 and 19.2.24.9 NMAC, the commissioner may require an ARMS inspection and survey for any project when determined to be in the best interest of the trust.

B. Oil and Gas Lessee Requirements.

(1) An application or bid to lease state trust lands for oil and gas exploration or development shall include the signed acknowledgment specified in 19.2.24.8(A)(1) NMAC. An ARMS inspection and survey, as specified in 19.2.24.8(A)(2) NMAC is not required at the time of issuance or assignment of such lease.

(2) Upon filing of an application for permit to drill with the New Mexico oil conservation division, oil and gas lessees (and their operators, agents, or contractors, as appropriate) must provide to the state land office, pursuant to NMSA 1978, §§ 19-10-4.1, 19-10-4.2, and 19-10-4.3,:

(a) A copy of the application for permit to drill filed with the New Mexico oil conservation division;

(b) The acknowledgment specified in 19.2.24.8(A)(1) NMAC, if the oil and gas lessee (or its operator, agent, or contractor, as appropriate) has not previously executed such an acknowledgment; and

(c) The ARMS inspection specified in 19.2.24.8(A)(2) NMAC, and:

(i) If the ARMS inspection demonstrates that the entire area of potential effect has been surveyed in accordance with current standards, as defined by 4.10.15 NMAC, and no cultural properties are located within the area of potential effect, a copy of such survey.

(ii) If the ARMS inspection demonstrates that the entire area of potential effect has not been surveyed in accordance with current standards, as defined by 4.10.15 NMAC, then the applicant shall conduct an archaeological survey in accordance with current standards, and submit a copy of such survey to the state land office.

(iii) If the ARMS inspection demonstrates that the entire area of potential effect has been surveyed in accordance with current standards, as defined by 4.10.15 NMAC, or if the applicant has obtained a contemporaneous survey as provided in 19.2.24.8(A)(2)(b) NMAC, and cultural properties are identified within the area of potential effect, oil and gas lessees (and their operators, agents, or contractors, as appropriate) shall submit the ARMS inspection, and either the survey or the survey NMCRIS number, to the state land office, regarding the existence of such properties on state trust lands within the area of potential effect. The state land office will notify the SHPO and any applicable THPO regarding the existence of such properties on state trust lands within the area of potential effect. Oil and gas lessees (and their operators, agents, or contractors, as appropriate) shall develop and submit to the state land office compliance measures related to project siting, avoidance, and mitigation; those compliance measures may be included within the survey that the applicant submits to the state land office.

C. Acknowledgment-Only Requirements. All applicants for the following must include an acknowledgement as set forth in 19.2.24.8(A)(1) NMAC with their applications, but are not required to produce an ARMS inspection and survey, unless an ARMS inspection and survey is specifically required by the commissioner for a particular application:

- (1) Renewals, assignments, conversions, and subleases of existing grants, leases or permits where no new surface disturbance will occur;
- (2) applications for non-surface-disturbing rights of entry, with the final decision about whether the relevant activity is surface-disturbing or non-surface-disturbing vested with the commissioner; and
- (3) applications for agricultural lease renewals, assignments, or subleases, and applications for new agricultural leases in open acreage or through competitive bid;

[19.2.24.8 NMAC - N, XX/XX/XXXX]

19.2.24.9 EXEMPTIONS:

A. The following activities are exempt from the acknowledgment, and ARMS inspection and survey, requirements of this policy:

- (1) Law enforcement or emergency response activities undertaken by or in coordination with the state land office that are necessary to protect immediate threats to public health, safety, or the environment, including but not limited to firefighting and flood management;
- (2) administrative actions performed by the state land office, such as executive orders or rule making activities, and including any internal agency processes or decisions that do not directly expand current surface uses, or create new surface disturbance;
- (3) memoranda of understanding or agreements to cooperate executed by the state land office, or easements granted by the state land office to any entity that do not directly expand current surface uses or create new surface disturbance;
- (4) recreational access permits and educational access permits, applications for such permits, non-surface disturbing natural resource authorizations, or activities that already require the presence of an archaeological monitor such as special use agreements, or other activities deemed by the commissioner not to be surface-disturbing activities;
- (5) projects analyzed through the United States National Environmental Policy Act of 1969, 42 U.S.C. 4321, and its implementing regulations so long as this analysis includes impacted state trust lands. For such projects, the applicant shall submit a copy to the state land office of the survey or portions thereof pertaining to impacted state trust lands;
- (6) acquisition or disposition of lands through exchange or sale;
- (7) restoration or reclamation activities that do not involve surface-disturbing activity, such as aerial herbicide treatment; and
- (8) activities approved by the commissioner, as determined to be in the best interest of the trust.

B. Persons or entities engaged in the activities exempted in 19.2.24.9(A) NMAC remain subject to the requirements of the Cultural Properties Act and to 19.2.24.12 NMAC.

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[19.2.24.9 NMAC - N, XX/XX/XXXX]

19.2.24.10 TRIBAL CONSULTATION:

A. The state land office shall make a reasonable effort to consult with affected sovereign native american nations, tribes, and pueblos in its efforts to identify and protect cultural properties on state trust lands.

B. At least once per year, the state land office tribal liaison shall coordinate discussions with leaders of affected sovereign native american nations, tribes, and pueblos to address issues of mutual concern with respect to cultural properties.

[19.2.24.10 NMAC - N, XX/XX/XXXX]

19.2.24.11 CONFIDENTIALITY: Consistent with the Cultural Properties Act, NMSA 1978, Section 18-6-11.1, any information in the custody of the state land office concerning the location of cultural properties, the preservation of which is in the interest of the state of New Mexico, shall remain confidential and not subject to inspection under the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1 to Section 14-2-12, unless the commissioner determines that the dissemination of such information will further the purposes of the Cultural Properties Act and will be in the best interests of the trust.

[19.2.24.11 NMAC - N, XX/XX/XXXX]

19.2.24.12 ENFORCEMENT:

A. In the event any applicant or lessee becomes aware of actual or threatened damage to cultural properties on state trust lands where the lessee is conducting project activities or has filed an application to conduct project activities, the lessee shall immediately notify the state land office and the SHPO, and shall immediately suspend all project activities. In the event the state land office independently becomes aware of actual or threatened damage to cultural properties on state trust lands where a lessee is conducting project activities or where an applicant has filed an application to conduct project activities, the lessee or applicant shall suspend project activities. In either event, project activities shall remain suspended until the state land office and the SHPO approve resumption of those activities, and such approval may be conditioned on the lessee's adoption of compliance measures relating to project siting, avoidance, or mitigation of impacts to the cultural properties at issue.

B. In the event an applicant or lessee, including an oil and gas lessee, conducts project activities without first performing a survey, or does not comply with any applicable avoidance and mitigation measures established by the survey or contained within the grant, lease or permit, and cultural property is damaged in the process, the applicant or lessee will be required to conduct an archaeological damage assessment, at the applicant's or lessee's own expense, and will be liable for damages as determined the archaeological damage assessment in the amount equal to the cost of restoration, stabilization, and interpretation of the damaged cultural property. In addition, the commissioner may recover an amount equal to twice the cost of restoration, stabilization, and interpretation of the damaged cultural property, in accordance with the Cultural Properties Act, NMSA 1978, § 18-6-9.2.

C. All applicants, and lessees, including oil and gas lessees, that are subject to any provision of 19.2.24.8 and 19.2.24.9 NMAC shall promptly provide to the state land office all records relating to compliance with those provisions upon request.

D. As provided by the Cultural Properties Act, NMSA 1978, Section 18-6-9.2, the commissioner through the state land office may initiate a civil action against any person or entity violating the Cultural Properties Act on or with respect to state trust lands. This remedy is not exclusive and does not limit the rights or remedies that are otherwise available to the commissioner and the state land office under applicable law.

E. The commissioner may refer a criminal violation of the Cultural Properties Act, NMSA 1978, Sections 18-6-9, 18-6-9.1, and 18-6-9.3, to the New Mexico attorney general or to the district attorney in whose district the violation took place.

[19.2.24.12 NMAC - N, XX/XX/XXXX]

HISTORY of 19.2.24 NMAC: [RESERVED]