



NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS  
New Mexico Historic Preservation Division

## CULTURAL PROPERTIES RESTORATION FUND GRANT PROGRAM MANUAL



*Photographs, Top Row, L to R, Goddard Hall at New Mexico State University; Anton Chico Land Grant  
Bottom Row, Acequia within the San Antonio de las Huertas Land Grant, Silver City Waterworks*

**OCTOBER 2023**

# **CULTURAL PROPERTIES RESTORATION FUND GRANT PROGRAM MANUAL**

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- Review of State Undertakings – NMAC4-10-7
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**A. PROGRAM DESCRIPTION**

**A1. Letter from State Historic Preservation Officer**

Dear Members of the Preservation Community:

The Land of Enhancement Legacy Fund was established by Governor Michelle Lujan Grisham in 2023 to support conservation and preservation efforts in the State of New Mexico. The Department of Cultural Affairs (DCA) was fortunate to be one of eight participating departments to receive funding which will be administered by the New Mexico Historic Preservation Division (HPD) through the Cultural Properties Restoration Fund.

This grant program offers agencies and political subdivisions including cities, villages, towns, counties, acequia commissions, land grants, and universities an opportunity to receive up to \$250,000 to fund historic preservation projects.

Unlike other HPD programs, properties do not need to be listed on a historic register to be funded. Eligible properties include buildings, structures, places, sites, or objects that have historic, archaeological, scientific, architectural, or other cultural significance. Eligible work includes interpretive planning, archaeological and architectural survey, national register nominations, restoration, preservation, stabilization, and protection.

Though encouraged, matching funds are not required. Grant funding will be provided upfront subject to a Joint Powers Agreement and a Preservation Agreement. Please read the Grants Manual for detailed information about the application process.

“One of New Mexico’s greatest treasures is its unique cultural heritage, and our many historic properties help us preserve and showcase that heritage for future generations to enjoy,” said New Mexico Department of Cultural Affairs (DCA) Cabinet Secretary Debra Garcia y Griego. “Our department is honored to help administer a grant program that will contribute to these preservation efforts across our state.”

On behalf of DCA, the Historic Preservation Division is excited to administer such an important grant program that will help protect New Mexico’s rich and diverse history.

Sincerely,



Jeff Pappas  
State Historic Preservation Officer

**B. GRANT OVERVIEW / QUICKVIEW**

**B1. Quick view**

Below is an overview of the Cultural Properties Restoration Fund Grant Program:

<b>CULTURAL PROPERTIES RESTORATION FUND GRANT PROGRAM – QUICK VIEW</b>	
<b>PROGRAM PURPOSE:</b>	The purpose of this grant program is to assist in funding historic preservation related projects.
<b>ELIGIBLE APPLICANTS:</b>	Agencies/Departments of the State of New Mexico; Political subdivisions of the State of New Mexico – this includes but it is not limited to cities, villages, towns, counties, acequia commissions, universities, and land grants.
<b>ELIGIBLE PROPERTIES:</b>	Cultural properties owned by a political subdivision of the state. Cultural properties are defined as a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance. Note that the property does not need to be listed on a historic register, but listed properties are given additional points in the scoring criteria.
<b>ELIGIBLE PROJECTS:</b>	Eligible projects include interpretative planning, archaeological and architectural survey, National Register nominations, restoration, preservation, stabilization, and protection of cultural property.
<b>ELIGIBLE COSTS:</b>	Eligible costs are those associated with the following project types: interpretation, restoration, preservation, stabilization, and protection of cultural property.
<b>TOTAL FUNDING:</b>	The estimated total funding for this year’s Cultural Properties Restoration Fund is \$1,000,000.
<b>GRANT AWARDS:</b>	Grants will be issued in awards of \$5,000 to \$250,000.
<b>MATCH:</b>	No match is required. Projects that show match will be given additional points in the scoring criteria.
<b>AWARD OF FUNDING:</b>	Applicants will receive funding up front.
<b>AGREEMENT DOCUMENT:</b>	Awardees will complete a Joint Powers Agreement describing how the work will be completed and a Preservation Agreement.
<b>NOT ELIGIBLE:</b>	Construction of new buildings; acquisition of buildings; catering; long-term maintenance work; cash reserves, endowments, revolving funds, or fundraising costs; work performed prior to award/ costs for work already completed; lobbying or advocacy; miscellaneous expenses, contingencies, reserves, overhead; relocation of cultural properties; reconstruction of cultural properties (recreating all or part of a structure that no longer exists).
<b>IMPORTANT DATES:</b>	Application due date: February 2, 2024, at 5:00 p.m. Grant Award notification: April 22, 2024 Anticipated start date: September 1, 2024 Anticipated completion date: two years from start date

## AWARD INFORMATION

### C1. Total Funding

Funding is from the State of New Mexico \$1,000,000

### C2. Expected Award Amount

Maximum Award: \$250,000

Minimum Award: \$5,000

### C3. Anticipated Award Funding and Dates

Anticipated Award Date: September 1, 2024

Approved projects will start once funding has been secured, a State of New Mexico purchase order has been established, a policy exemption is granted from the Department of Finance Administration to make advanced payments, a Joint Powers Agreement and a Preservation Agreement have been executed.

### C4. Duration of grant

The grant period is for two years.

### C5. Type of funding

Funding will be awarded up front. Applicants receive funding at the beginning of the grant period subject to an approved scope of work as outlined in the executed Joint Powers Agreement.

### C6. Type of Award

Funding Instrument Type: Grant

A legal instrument will be established between the State of New Mexico Department of Cultural Affairs and the awardee. The legal instrument shall consist of a Joint Powers Agreement resulting in the issuance of a State of New Mexico Purchase Order and a Payment Exemption from the Department of Finance Administration.

A Joint Powers Agreement and Payment Exemption is entered into to transfer funds from the awarding agency to the awardee. See applicable statutes and regulations in Appendix A as well as examples of a Joint Powers Agreement and Preservation Agreement in Appendices B and C.

## **C. ELIGIBILITY INFORMATION**

### **D1. Eligible Applicants**

Agencies, Departments, and Political Subdivisions of the State of New Mexico.

### **D2. Additional Information on Eligibility**

A state agency is a department, agency, institution, or political subdivision of the state. A political subdivision of the state is a city, town, village, municipality, county, acequia commission, land grant commission, or university.

### **D3. Definition of “Cultural Property”**

A cultural property is defined as “structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.”

For the purposes of this grant, a cultural property does not require listing in the State Register of Cultural Properties, National Register of Historic Places, or local register. However, such listings will be given additional points in the scoring matrix.

### **D4. Cost Sharing or Matching**

Cost sharing or matching is not required. However, if a match is available—either cash or in-kind or a combination of both—the application will be given additional points in the scoring criteria.

### **D5. Other**

1. If the project is to prepare a National Register nomination for an individual property and the owner is different than the applicant, the applicant must include written permission from the owner to proceed with the project, including agreeing to the required preservation agreement. If the project is to prepare a National Register nomination for a historic district and the owners are different than the applicant, the applicant must include support information from a majority of property owners. The Letter of Owner Consent/support documentation must be submitted with the application and signed no earlier than 60 days before the application is due.
2. Administrative costs may not exceed 25% of the total cost (including match).
3. Projects must comply with state and local preservation statutes, regulations, standards, and guidelines.

## D. APPLICATION AND SUBMISSION INFORMATION

[Grant application forms may be found on the HPD WEBSITE.](#)

Application materials, including photographs become the property of the State of New Mexico, Department of Cultural Affairs, Historic Preservation Division (HPD) and may be reproduced by HPD without permission—though appropriate credit will be given for such use. Additional materials not specifically requested by HPD, and materials sent separately by the Applicant will be discarded.

The Application Package contains several mandatory forms which must be submitted with your proposal to the Historic Preservation Division.

### E1. Application Requirements

The Application shall include the following:

1. Application Form
2. Cultural Property Justification Form
3. Narrative / Project Abstract / Scope of Work Form
4. Project Budget Form
5. Letter of Owner Consent / Community Support Form – for projects which include the completion of a National Register nomination or projects which have community support.
6. Additional Attachments Form

Application materials MUST be combined into a single PDF and submitted to [NM.SHPO@dca.nm.gov](mailto:NM.SHPO@dca.nm.gov). Note that the PDF cannot exceed 20 MB in size.

### E2. Application Forms

The following forms shall be completed as part of your application.

#### *Application Form*

The application form shall include contact information for the proposed grant and a brief description of the project. Please check the appropriate box for the project type (see list of project types under narrative form information.) [The required application forms can be found here HPD WEBSITE.](#)



### *Cultural Property Justification Form*

This form requires the following:

1. Identify Listed Property. Applicants shall check the appropriate boxes for cultural properties located within the proposed grant project. A listed property is one that is listed in the National Register of Historic Places, the State Register of Cultural Properties, and /or listed in a local historic register. Please provide the name of the listed property/properties. (Note that to be eligible for this program, a cultural property does not have to be listed in a historic register).
2. Describe the Property and How it Meets the Definition of "Cultural Property." The applicant shall describe the property's "special status" by explaining how the "structure, place, site or object has historic, archaeological, scientific, architectural or other cultural significance."
3. Describe Deterioration, Condition, and Threat. Applicants shall describe the degree of physical change or deterioration and the demonstrable threat to the cultural property, if applicable.
4. Include Current Photographs. Applicants shall include current photographs of the cultural property/properties. Current photographs should show all four sides of the building, overall site views, and photographs of the specific project area, if applicable.

### *Narrative / Project Abstract / Scope of Work Form*

Applicants shall complete the Narrative Form and provide detailed information to describe the grant project's scope of work. Be sure to address the Criteria for Review under Section F.3 of the Grants Manual. Eligible projects should fall into one of the project types below. Please check the appropriate box on the application form.

#### *Project Types*

##### INTERPRETATIVE PLANNING

Interpretative planning includes the inventory, registration (listing in the National Register), mapping and/or analysis of cultural properties and public educational programs.

##### ARCHAEOLOGICAL AND ARCHITECTURAL SURVEY

An archeological or architectural survey identifies the cultural properties and helps communities or property owners make more informed policy decisions related to the care and disposition of cultural properties.

##### RESTORATION

Restoration projects recover 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.

#### PRESERVATION

Preservation projects sustain the existing form, integrity, and material of a cultural property or the existing form and vegetative cover of a cultural property and may include protective maintenance or stabilization where necessary in the case of archaeological sites.

#### STABILIZATION

Stabilization projects reestablish structural stabilization or weather-resistant failure.

#### PROTECTION

Protection projects safeguard the physical condition or environment of cultural property from deterioration or damage caused by weather or other natural, animal, or human intrusions.

#### *Project Budget Form*

Applicants shall complete this form to illustrate how the requested funding will be spent and if a match is available.

#### *Letters of Support/Letters of Owner Consent – Form + Letters Attachments*

This form provides an opportunity for applicants to demonstrate support and property owner consent. For example, if the proposed project includes a nomination to list an historic district in the National Register of Historic Places and the owners have consented, please submit that list as part of the application. In the case of a community project and the local entity has provided written support, please list their name(s). Provide any support letters, if available.

#### *Additional Attachments Form*

This is for applicants to include any additional documentation to support the proposed project.

#### **APPLY & SUBMIT**

- Submit one PDF to [NM.SHPO@dca.nm.gov](mailto:NM.SHPO@dca.nm.gov).
- The document cannot exceed 20 MB in size.
- Applications are due by February 2, 2024, at 5:00 PM MT.



### **F3. Criteria for Reviewing and Awarding Grants**

See NMAC 4.10.13.10 for the regulatory description of the criteria.

#### *Grant Management*

This explains the applicants' expertise in grant management.

#### *Plan Development / Site Applicability*

The application should describe the proposed grant project. Applicants should include supporting planning documents where applicable.

#### *Long-Term Preservation*

The application should demonstrate how the applicant will maintain and care for the cultural property after the project is completed. Applicants will be required to sign a 10-year preservation agreement.

#### *Preservation Standards – Compliance*

The applicant should show how they will meet local and state preservation standards. See Appendix A for Statutes and Regulations.

#### *Damage, Deterioration or Threat*

The application should identify the demonstrated degree of physical damage or deterioration of the cultural property and if there are demonstrable threats to its stability. Include photographs.

#### *Special Status of Property*

Please note in the application whether the property is listed in a local, state, or national historic register (listing is not required but will receive additional points in the scoring matrix if it is.)

#### *Matching Funds*

Applicants shall indicate whether matching funds will be available for the project. Matching funds may be cash or in-kind. Applicants should document the proposed match on the Match Form. (match is not required but will receive additional points in the scoring matrix if available.)

**APPENDIX A: Applicable Statutes, Regulations, and Legislation**

This section includes the text of applicable statutes and regulations. These include:

- Senate Bill 9, Land of Enchantment Legacy Fund, 2023
- State of New Mexico, Cultural Properties Protection Act – NMSA 18-6A-1 – 18-6A-6
- State of New Mexico, Cultural Properties Restoration Fund – NMAC 4-10-13
- Review of State Undertakings – NMAC 4-10-7
- The Secretary of the Interior’s Standards for Rehabilitation

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SENATE BILL 9 – LAND OF ENCHANTMENT LEGACY FUND

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**SENATE FINANCE COMMITTEE SUBSTITUTE FOR SENATE BILL 9  
56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

AN ACT

RELATING TO CONSERVATION; CREATING THE CONSERVATION LEGACY PERMANENT FUND; CREATING THE LAND OF ENCHANTMENT LEGACY FUND; INCLUDING THE CONSERVATION LEGACY PERMANENT FUND IN THE PERMANENT FUNDS INVESTED BY THE STATE INVESTMENT COUNCIL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 6-8-1 NMSA 1978 (being Laws 1957, Chapter 179, Section 1, as amended) is amended to read:

"6-8-1. DEFINITIONS. --As used in Chapter 6, Article 8 NMSA 1978:

- A. "council" means the state investment council;
- B. "department" means the department of finance and administration;
- C. "land grant permanent funds" means the permanent school fund established by Article 12, Section 2 of the constitution of New Mexico and all other permanent funds derived from lands granted or confirmed to the state by the act of congress of June 20, 1910, entitled "An Act To enable the people of New Mexico to form a constitution and state government and be admitted into the Union on an equal footing with the original States...";
- D. "permanent funds" means the land grant permanent funds, rural libraries endowment fund, severance tax permanent fund, tobacco settlement permanent fund, conservation legacy permanent fund and water trust fund;
- E. "secretary" means the secretary of finance and administration;
- F. "severance tax permanent fund" means the fund established by Article 8, Section 10 of the constitution of New Mexico;
- G. "tobacco settlement permanent fund" means the fund established by Section 6-4-9 NMSA 1978; and
- H. "water trust fund" means the fund established by Article 16, Section 6 of the constitution of New Mexico."

**SECTION 2.** A new section of Chapter 75 NMSA 1978 is enacted to read:

"[NEW MATERIAL] CONSERVATION LEGACY PERMANENT FUND-- CREATED--INVESTMENT--DISTRIBUTION.--

- A. The "conservation legacy permanent fund" is created as a nonreverting fund in the state treasury. The fund consists of distributions, appropriations, gifts, grants, donations and income from investment of the fund. Money in the fund shall be invested by the state investment officer with the same risk and return profile as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Earnings from investment of the fund shall be credited to the fund. Money in the fund shall be expended only as provided by this section.
- B. If, on July 1 of each year, the conservation legacy permanent fund exceeds one hundred fifty million dollars (\$150,000,000) and the investment income to the fund for the previous fiscal year exceeded five million dollars (\$5,000,000), any investment income to the fund from the previous fiscal year in excess of five million dollars (\$5,000,000) shall be distributed to the land of enchantment legacy fund."

**SECTION 3.** A new section of Chapter 75 NMSA 1978 is enacted to read:

"[NEW MATERIAL] LAND OF ENCHANTMENT LEGACY FUND--CREATED-- DISTRIBUTION.--

- A. The "land of enchantment legacy fund" is created as a nonreverting fund in the state treasury. The fund consists of distributions, appropriations, gifts, grants, donations and bequests made to the fund. The department of finance and administration shall administer the fund. Any interest earned by the land of enchantment legacy fund shall be credited to the fund. Money in the fund shall be distributed and expended only as provided in this section.
- B. On July 1, 2024 and on July 1 of each year thereafter, the department of finance and administration shall make an annual distribution from the land of enchantment legacy fund in an amount that is the greater of twelve million five hundred thousand dollars (\$12,500,000) or twenty-five percent of the total balance of the land of enchantment legacy fund; provided that, if the total balance in the fund is less than twelve million five hundred thousand dollars (\$12,500,000), the annual distribution shall be the total fund balance. The annual distribution shall be distributed as follows:
  - 1. twenty-two and one-half percent shall be distributed to the energy, minerals and natural resources department, of which:
    - a. fifty percent shall be allocated to the forestry division of the energy, minerals and natural resources department to carry out: 1) projects and programs pursuant to the Forest Conservation Act; 2) forest and watershed management projects; 3) approved projects pursuant to the Forest and Watershed Restoration Act; and 4) projects and programs pursuant to the Prescribed Burning Act; and
    - b. fifty percent shall be allocated for projects pursuant to the Natural Heritage Conservation Act;
  - 2. twenty-two and one-half percent shall be distributed to the board of regents of New Mexico state university for the New Mexico department of agriculture to carry out programs and projects pursuant to the Noxious Weed Management Act, the Healthy Soil Act and the Soil and Water Conservation District Act;
  - 3. ten percent shall be distributed to the department of environment to plan, design and construct projects to improve surface water quality and river habitat statewide;
  - 4. fifteen percent shall be distributed to the economic development department, of which:
    - a. twenty-five percent shall be allocated to the New Mexico outdoor recreation division of the economic development department to carry out projects under the outdoor equity grant program; and
    - b. seventy-five percent shall be allocated to the New Mexico outdoor recreation division for special projects and outdoor recreation infrastructure;

5. eight percent shall be distributed to the cultural affairs department to carry out projects and programs pursuant to the Cultural Properties Protection Act; and
  6. twenty-two percent shall be distributed to the department of game and fish to carry out projects and programs for the protection and propagation of game and fish.
- C. Any unencumbered balances from distributions made pursuant to Subsection B of this section shall revert to the land of enchantment legacy fund at the end of the fiscal year following the fiscal year in which the funds were distributed.
- D. Distributions made pursuant to this section shall not be used for the purposes of eminent domain."

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CULTURAL PROPERTIES PROTECTION ACT – NMSA 18-6A-1 – 18-6A-6

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**New Mexico Cultural Properties Protection Act**

N.M. Stat. §§ 18-6A-1 through 6

18-6A-1. Short title.

18-6A-2. Definitions.

18-6A-3. Fund; created; purpose

18-6A-4. Administration; regulatory authority 18-6A-5. Professional surveys.

18-6A-6. Joint powers agreement.

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

Chapter 18, Article 6A NMSA 1978 may be cited as the "Cultural Properties Protection Act".

**18-6A-2. Definitions.**

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

- A. "committee" means the cultural properties review committee;
- B. "cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance;
- C. "division" means the historic preservation division of the cultural affairs department;
- D. "fund" means the cultural properties restoration fund;
- E. "interpretation" means the inventory, registration, mapping and analysis of cultural properties and public educational programs designed to prevent the loss of cultural properties;
- F. "officer" means the state historic preservation officer;
- G. "preservation" means sustaining the existing form, integrity and material of a cultural property or the existing form and vegetative cover of a cultural property and may include protective maintenance or stabilization where necessary in the case of archaeological sites;
- H. "professional survey" means an archaeological or architectural survey;
- I. "protection" means safeguarding the physical condition or environment of a cultural property from deterioration or damage caused by weather or other natural, animal or human intrusions;
- J. "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;

- K. "stabilization" means reestablishing the structural stability or weather-resistant condition of a cultural property or arresting deterioration that may lead to structural failure;
- L. "state agency" means a department, agency, institution or political subdivision of the state; and
- M. "state land" means property owned, controlled or operated by a state agency.

**18-6A-3. Fund; created; purpose**

- A. The "cultural properties restoration fund" is created in the state treasury. The fund may receive money appropriated by the legislature or gifts, grants, bequests or payments for services rendered by the division from any public or private source. All money appropriated to the fund or accruing to the fund as a result of gifts, grants, bequests, payments for services rendered, investment of the fund or from any other source shall not be transferred to another fund but shall remain in the fund to be encumbered and disbursed according to the provisions of the Cultural Properties Protection Act [18-6A-1 NMSA 1978]. Money in the fund shall not revert to the general fund or to any other fund from which money was appropriated.
- B. Money in the fund shall be used solely for the purpose of providing grants for interpretation, restoration, preservation, stabilization and protection of cultural property that is state property.
- C. Disbursements from the fund shall be made only upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the officer.

**18-6A-4. Administration; regulatory authority**

- A. The officer shall administer the provisions of the Cultural Properties Protection Act [18-6A-1 NMSA 1978] and shall adopt rules, regulations and criteria for reviewing and awarding grants as necessary to carry out the provisions of that act.
- B. Rules and regulations shall include:
  - 1. the method to be used to determine the eligibility of a state agency to receive grants from the fund;
  - 2. a procedure for application, approval and rejection of grant proposals;
  - 3. a requirement that an interpretation, restoration, preservation, stabilization or protection project be undertaken in accordance with specifications approved by the officer; and
  - 4. a requirement that a cultural property assisted by a grant be preserved and protected for a specified period of time, but in no case less than ten years.
- C. Criteria for reviewing and awarding grants shall include the:
  - 1. degree of physical damage or deterioration of the cultural property;
  - 2. special status of the cultural property, including whether the property is listed on a national, state, or local register of historic places; and
  - 3. suitability of the cultural property for interpretation.
- D. At least annually, the officer, in consultation with the committee and with the approval of the officials having jurisdiction over cultural properties being considered, shall select:
  - 1. cultural properties to be restored, preserved, stabilized, and protected; and
  - 2. programs for interpretation.
- E. The officer may contract with state agencies, architectural and engineering firms, private nonprofit organizations or individuals for interpretation, restoration, preservation, stabilization, and protection.

**18-6A-5. Professional surveys.**

The officer shall, in cooperation with the heads of state agencies, establish a system of professional surveys of cultural properties on state lands. State agencies shall cooperate with the officer and exercise due caution to



ensure that cultural properties are not inadvertently damaged or destroyed.

**18-6A-6. Joint powers agreement.**

As authorized by the Joint Powers Agreements Act [11-1-1 NMSA 1978], any state agency may enter into a joint powers agreement with the division to effect the purposes of the Cultural Properties Protection Act [18-6A-1 NMSA 1978].

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CULTURAL PROPERTIES RESTORATION FUND – NMAC 4.10.13

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**STATE OF NEW MEXICO OFFICE OF CULTURAL AFFAIRS  
HISTORIC PRESERVATION DIVISION**

**TITLE4 CULTURAL RESOURCES  
CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION  
PART 13 AWARDING OF GRANTS FROM THE CULTURAL PROPERTIES RESTORATION FUND**

1. **ISSUING AGENCY:** Office of Cultural Affairs, State Historic Preservation Division [11-15-97]
2. **SCOPE:** State agencies that own or administer cultural properties may receive grants from the Cultural Properties Restoration Fund according to the procedures and criteria established in this regulation [11-15-97]
3. **STATUTORY AUTHORITY:** This regulation is created pursuant to the Cultural Properties Protection Act, NMSA 1978 Sections 18-6A-1 through 18-6A-6, which requires the State Historic Preservation Officer to issue regulations and criteria for reviewing and awarding grants as necessary for carrying out the provisions of the Act. [11-23-94]
- 3A. **PRE-NMAC REGULATORY FILING HISTORY:** The material in this part was derived from that previously filed with the State Records Center & Archives under HPD Rule 94-1 Regulations for the Awarding of Grants from the Cultural Properties Restoration Fund, filed 11-23-94. [11-15-97]
4. **DURATION:** Permanent [11-15-97]
5. **EFFECTIVE DATE:** 11-23-94, unless a later date is cited at the end of a Section or Paragraph. Reformatted in NMAC format effective 11-15-97. [11-15-97]
6. **OBJECTIVE:** The purpose of this regulation is to establish a procedure to provide grants from the Cultural Properties Restoration Fund, when funds are available, for restoration, preservation, stabilization, and protection of cultural properties that are state properties. [11-23-94]
7. **DEFINITIONS:**
  - 7.1 "committee" means the cultural properties review committee as created in 18-6-5 NMSA 1978 [11-23-94]
  - 7.2 "'cultural property" means a structure, place; site or object having historic, archaeological, scientific, architectural or other cultural significance [11-23-94]
  - 7.3 "division" means the historic preservation division of the office of cultural affairs [11-23-94]
  - 7.4 "fund" means the cultural properties restoration fund [11-23-94]
  - 7.5 "interpretation" means the inventory, registration, mapping and/or analysis of cultural properties and public educational programs designed to prevent the loss of cultural properties [11-23-94]
  - 7.6 "officer" means the state historic preservation office [11-23-94]
  - 7.7 "preservation" means sustaining the existing form, integrity, and material of a cultural

- property or the existing form and vegetative cover of a cultural property, and may include protective maintenance or stabilization where necessary in the case of archaeological sites [11-23-94]
- 7.8 "professional survey" means an archaeological or architectural survey [11-23-94]
- 7.9 "protection" means safeguarding the physical condition of environment of cultural property from deterioration or damage caused by weather or other natural, animal, or human intrusions [11-23-94]
- 7.10 "reconstruction" means depicting by means of new construction the form, features, and details of a non-surviving site, landscape, building, structure, or object for the purposes of replicating its historic appearance [11-23-94]
- 7.11 "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 [11-23-94]
- 7.12 "stabilization" means reestablishing the structural stability or weather-resistant failure [11-23-94]
- 7.13 "state agency" means a department, agency, institution, or political subdivision of the state [11-23-94]
- 7.14 "state land" means property owned, controlled, or operated by a state agency [11-23-94]
8. **METHOD TO DETERMINE ELIGIBILITY TO RECEIVE GRANT FUNDS:** In order to receive a grant from the fund, an applicant must be a state agency; own or administer a cultural property that is state property; and have a demonstrated ability to administer grants. [11-23-94]
9. **PROCEDURE FOR APPLICATION, APPROVAL, AND REJECTION OF GRANT PROPOSALS:** At least once during each state fiscal year, if funds are available, the officer shall notify state agencies of the opportunity to submit proposals for grants from the fund. This notification shall contain information about the date that proposals must be submitted, the format, and the required content. The officer may also solicit proposals on an emergency basis for threatened cultural properties. Proposals will be evaluated by the staff of the division and the committee following the criteria for reviewing and awarding grants as described below. [11-23-94]
10. **CRITERIA FOR REVIEWING AND AWARDING GRANTS:** The staff of the division and the committee shall review and award grants based on the following criteria: [11-23-94]
- 10.1 the demonstrated degree of physical damage or deterioration of the cultural property and demonstrable threats to the stability of the property [11-23-94]
- 10.2 special status of the cultural property, including whether the property is listed on the national, state, or a local register of historic places and the rarity or uniqueness for the property [11-23-94]
- 10.3 suitability of the property for interpretation [11-23-94]
- 10.4 compliance of the proposed grant project with applicable professional standards for interpretation, preservation, or stabilization [11-23-94]
- 10.5 comprehensiveness of the interpretation, restoration, preservation, stabilization, or protection plan [11-23-94]
- 10.6 availability of matching funds [11-23-94]
- 10.7 availability of appropriate professional expertise for overseeing a restoration, interpretation, preservation, stabilization, or protection program for a cultural property [11-23-94]
- 10.8 viable provisions for long-term preservation, protection, and management of the grant-assisted cultural property, including provisions that the property shall be preserved and protected for no less than 10 years [11-23-94]
11. **ADMINISTRATION OF GRANTS:** When the division and the committee award a grant for restoration, interpretation, preservation, stabilization, or protection of a cultural property, the grant shall be administered under the terms of a Joint Powers Agreement (JPA) between the division and the state agency having jurisdiction over the cultural property. The JPA will specify the nature of the work to be done, payment schedule, reporting requirements, long-term preservation and protection measures, and other requirements

of the grant. [11- 23-94]

12. **PROHIBITIONS:** The division and the committee shall not award grants from the fund for the purpose of reconstruction of cultural properties [11-23-94]

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**STATE OR LOCAL PRESERVATION STANDARDS**

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Be sure to review your community's preservation standards to determine if they are applicable to your project. If there are no local standards, then state standards apply, see below in 4.10.7 and 4.10.12 and 4.10.13.

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**REVIEW OF PROPOSED STATE UNDERTAKINGS THAT MAY AFFECT REGISTERED CULTURAL PROPERTIES**

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**TITLE 4**                    **CULTURAL RESOURCES**  
**CHAPTER 10**           **CULTURAL PROPERTIES AND HISTORIC PRESERVATION**  
**PART 7**                    **REVIEW OF PROPOSED STATE UNDERTAKINGS THAT MAY AFFECT REGISTERED CULTURAL PROPERTIES**

**4.10.7.1**                **ISSUING AGENCY:** Cultural Properties Review Committee. Contact State Historic Preservation Division, Office of Cultural Affairs. [11/15/97; 4.10.7.1 NMAC - Rn, 4 NMAC 10.7.1, 1/1/08]

**4.10.7.2**                **SCOPE:** This rule applies to the head of any state agency or department having direct or indirect jurisdiction over any land or structure modification which may affect properties listed on the state register of cultural properties. [11/15/97; 4.10.7.2 NMAC - Rn, 4 NMAC 10.7.2, 1/1/08]

**4.10.7.3**                **STATUTORY AUTHORITY:** The following regulations are created pursuant to Section 5, Chapter 223, Laws of 1969, as amended (Section 18-6-5.F NMSA 1978), as follows: F... shall issue regulations pertaining to the preservation and maintenance of registered cultural properties in order to maintain the integrity of those properties; and pursuant to Section 5, Chapter 10, Laws of 1986 (Section 18-6-8.1 NMSA 1978), as follows: Section 18-6-8.1. Review Of Proposed State Undertakings. The historic preservation division of the office of cultural affairs shall periodically furnish copies of the official register, or relevant sections of the official register, to state agencies and departments and shall periodically advise state agencies and departments of the status of the division's program of cultural property identification and registration. The head of any state agency or department having direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property shall afford the state historic preservation officer a reasonable and timely opportunity to participate in planning such undertaking so as to preserve and protect, and to avoid or minimize adverse effects on, registered cultural properties. [8/21/87; 4.10.7.3 NMAC - Rn, 4 NMAC 10.7.3, 1/1/08]

**4.10.7.4**                **DURATION:** Permanent. [11/15/97; 4.10.7.4 NMAC - Rn, 4 NMAC 10.7.4, 1/1/08]

**4.10.7.5**                **EFFECTIVE DATE:** 8/21/87, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective 11/15/97. [11/15/97; 4.10.7.5 NMAC - Rn, 4 NMAC 10.7.5, 1/1/08]

[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**4.10.7.6**                **OBJECTIVE:** The purpose of this regulation is to establish the procedure under which heads of state agencies or departments having direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property will coordinate with the state historic preservation officer during planning of such undertaking so as to preserve and protect, and to avoid or minimize adverse effects on such registered cultural property. Section 18-6-8.1 NMSA 1978 authorizes and requires cooperation among state agencies in the identification and protection of significant cultural properties, furthering but not limited by the provisions of the

**4.10.7.7 DEFINITIONS:**

- A. "Adverse effects" are any modifications to registered cultural properties that may cause changes in character or use, or in the characteristics which made the property eligible to the state register of cultural properties (4.10.7 NMAC).
- B. "Direct jurisdiction" is oversight, planning or direction of an undertaking or land or structure modification on federal, state, or private lands by any state agency, entity, board or commission.
- C. An "effect" is any alteration of the registered cultural property's physical characteristics, including relevant features of its immediate environment, which may diminish the integrity of the property's location, design, setting, materials, workmanship, or association. "Effects" include, but are not limited to 1) physical destruction, damage, or alteration of all or part of the property; 2) alteration of the character of the property's surrounding environment where the character contributes to the property's eligibility for the state register; 3) introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting, and 4) neglect of a property resulting in its deterioration or destruction. Effects include those caused by the undertaking that occur at the same time and place and those caused by the undertaking that are later in time or farther removed in distance but are still reasonably foreseeable.
- D. "Head of any state agency or department" means the agency head or a designee with authority over a specific land or structure modification, including any state or local official who has been delegated legal authority over such modification.
- E. "Indirect jurisdiction" is the issuance of any authorization, permit, license, subsidy, loan, grant, support or regulation by any state agency, entity, board or commission for any land or structure modification on federal, state, or private lands.
- F. "Integrity" means the quality or characteristics which made the property eligible for listing in the New Mexico register of cultural properties.
- G. "Land or structure modification" means any change to land or structure other than ordinary maintenance.
- H. "Maintenance" means the act or process of applying measures which are necessary to maintain the historic integrity and structural soundness of a structure, including but not limited to ordinary operating maintenance.
- I. "Official register" means the state register of cultural properties.
- J. "Planning" is the preparation, review or approval of architects', engineers' or other plans or specifications for any state undertaking, or the imposition of any condition on any plan, design or proposal for a state undertaking presented for review or approval to a state agency, entity, board, or commission by an applicant or consultant to an applicant.
- K. "Preservation" means the act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include protective maintenance or stabilization where necessary in the case of archaeological sites.
- L. "Registered cultural property" means a cultural property which has been placed on the state register of cultural properties either individually or as a property listed as significant or contributing within a district.
- M. "Undertaking" is defined with reference to Sections 101, 106 and 110 of the National Historic Preservation Act of 1966, as amended, and with further reference to 36 CFR 800.2(o), to mean any project, activity or

program that can result in changes in the character or use of a historic property, and is further defined to mean any modification, other than ordinary maintenance, under the direct or indirect jurisdiction of a state agency, entity, board or commission of any land or structure which is entered in the state register of cultural properties or in the immediate vicinity of any such registered property. Undertakings include new and continuing projects, programs, and activities under direct or indirect state jurisdiction on federal, state or private lands. [8/21/87; 4.10.7.7 NMAC - Rn, 4 NMAC 10.7.7, 1/1/08]

**4.10.7.8 DISSEMINATION OF REGISTER:** Periodically, but not less often than annually, the historic preservation division will send notice of all properties added to the state register of cultural properties to all state agencies which may have direct or indirect jurisdiction over any land or structure modification which may affect any registered cultural property. [8/21/87; 4.10.7.8 NMAC - Rn, 4 NMAC 10.7.8, 1/1/08]

**4.10.7.9 REVIEW PROCEDURES:**

- A. When any land or structure modification which may affect a registered cultural property is proposed and before architects' or engineers' plans are authorized, a scope of work defined or request for proposals issued; and in the case of land modifications, as soon as the agency head learns or is informed of the proposal, the agency will furnish the following information to the state historic preservation officer:
1. A USGS 7.5 minute quad, or equivalent quality map, showing the exact location of all sites, structures, or areas to be affected by this project. If the project is located within a historic district, affected sites, structures or areas affected must be indicated on a map showing the boundaries of the district.
  2. If existing structures are involved, photographs or snapshots of each structure to be affected by the project. Photographs may be either black and white or color and may be polaroid but must be of quality sufficient to make examination of the overall structure, siting, and architectural details of each structure possible.
  3. If new construction is involved, a description of the current condition of the project site, that is: Is the site farm land, grazing land, a graded lot, an existing street, or right-of-way, etc.? If the previous uses of the site or sites is known, this information must be provided.
  4. Preliminary statement of alternatives and planning documents.
  5. Estimate of cost of the proposed land or structure modification.
- B. The state historic preservation officer will respond within 30 working days, 1) stating that no effect on a registered cultural property will occur, or 2) confirming that an effect on a registered cultural property will occur and requesting further information, or 3) requesting an opportunity to participate in planning. In the event that the state historic preservation officer fails to respond within 30 working days, the requirement of law may be deemed by the agency head to be satisfied.
- C. In planning an undertaking which will affect a registered cultural property, the agency head and state historic preservation officer will apply the standards set forth in 4.10.7.11 NMAC, 4.10.7.12 NMAC or 4.10.7.13 NMAC. [8/21/87; 4.10.7.9 NMAC - Rn, 4 NMAC 10.7.9, 1/1/08]

**4.10.7.10 DETERMINATION:** The agency head and state historic preservation officer shall cooperatively make one of the following determinations in any case in which a registered cultural property will be affected by a land or structure modification. These determinations are given in descending order of preference. The agency head will bear the burden of proving that the preferable determination is neither prudent nor feasible.

- A. The agency head and state historic preservation officer may determine that a property or site shall be preserved, protected, rehabilitated, restored, or avoided. Such determination shall be confirmed in writing by both parties. The agency head will provide detailed specifications for such preservation, protection, rehabilitation, restoration, or avoidance to the state historic preservation officer for his concurrence.
- B. The agency head and state historic preservation officer may determine that feasible preservation of any structure or site will require its modification, adaptation, or alteration to meet a contemporary use and to provide a reasonable return. Such determination shall be confirmed in writing by both parties. The agency

head will provide detailed specifications for such modification, adaptation, or alteration to the state historic preservation officer for his concurrence at the earliest planning stage and periodically throughout the project.

- C. The agency head and state historic preservation officer may determine that preservation of any structure or site will deprive the owner of a reasonable return on, or reasonable use of, the property, and on the basis of such determination may concur that the property shall be demolished or moved. Such determination will be confirmed in writing by both parties. In such case, the state historic preservation officer will request that the property or site be documented with as-built drawings, maps and photographs or other documentation consistent with contemporary professional standards, and will provide detailed specifications for such documentation. [8/21/87; 4.10.7.10 NMAC - Rn, 4 NMAC 10.7.10, 1/1/08]

**4.10.7.11 GENERAL STANDARDS FOR PRESERVATION, PROTECTION, REHABILITATION OR RESTORATION:**

- A. In reviewing a proposed undertaking, the agency head and state historic preservation officer will apply the following standards for structures:

1. Weather-related deterioration shall be prevented and measures to preserve the existing material shall be applied.
2. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material shall match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features shall be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence.
3. Missing elements shall be replaced in the exact form in which they appeared at the period of time represented, provided photographic or documented information is available, using like materials and methods or a substitute authorized by the state historic preservation officer.
4. Structural stability shall be maintained or re-established without essentially changing the existing form.
5. The surface cleaning of structures shall be undertaken only when necessary, and then only with extreme caution. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
6. Every reasonable effort shall be made to provide a use for a property that requires minimal alteration of the building, structure or site and its environment or, if this is not feasible, to use a property for its originally intended purpose.

- B. In reviewing a proposed undertaking, the agency head and state historic preservation officer will apply the following standards for archaeological sites:

1. Historic and prehistoric archaeological sites will be avoided by designing projects so that they do not enter the site boundary as established in the state register nomination.
2. Sites shall be reasonably protected from erosion and other natural phenomena.
3. Sites shall be protected from looting and vandalism by such methods as posting signs, fencing, and monitoring. [8/21/87; 4.10.7.11 NMAC - Rn, 4 NMAC 10.7.11, 1/1/08]

**4.10.7.12 GENERAL STANDARDS FOR MODIFICATION, ADAPTATION OR ALTERATION:**

- A. Standards for structures:

1. Prior to and during the undertaking of any alteration, the areas to be affected will be recorded in all phases by photography and written description.
2. The distinguishing original qualities or character of a building, structure, or site and its environment will not be destroyed. The removal or alteration of any historic material or distinctive architectural feature will be avoided when possible. Any historic feature that is removed will be recorded and, if possible, stored for future study or reuse.
3. All buildings, structures and sites shall be recognized as products of their own time. Alterations which

have no historical basis and which seek to create a false sense of the historical development of a structure are discouraged.

4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right. Such significance must be recognized and respected.
5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site must be treated with sensitivity.
6. Contemporary alterations or additions may be permissible if they do not destroy significant historical, architectural, or cultural material. They shall be compatible in size, scale, color, and material; or in rare cases may sympathetically contrast with the older work. It is desirable that contemporary additions and alterations express their own time and not copy the details nor style of the historic property.
7. Whenever possible, alterations or additions will be accomplished so that if removed in the future, the integrity of the original structure is essentially unchanged.
8. Changes necessary to conform with local codes will be incorporated, if required by a building inspector. The uniform building code, adopted by the state of New Mexico, provides for variances from code standards for historic structures. Such changes shall be made in a manner which alters the existing appearance of the structure as little as possible and otherwise conforms to standards of the cultural properties review committee.

B. Standards for archaeological sites:

1. Alteration of archaeological sites will be limited to areas of existing disturbance and to areas devoid of cultural manifestations, so as to have the least possible physical and visual effect as defined in Subsection C of 4.10.7.7 NMAC].
2. Mitigation of adverse effect on disturbed sites will require documentation, analysis and dissemination of results to standards established by the cultural properties review committee.
3. When archaeological techniques are used in the stabilization of a prehistoric or historic site or to obtain information on such sites, these techniques and the treatment of recovered materials shall be in conformance with professional archaeological practices. [8/21/87; 4.10.7.12 NMAC - Rn, 4 NMAC 10.7.12, 1/1/08]

**4.10.7.13 GENERAL STANDARDS FOR NEW CONSTRUCTION OR DEMOLITION:**

A. Standards for structures:

1. Completely new construction for which neither documentation nor precedent exists must be expressive of its own time. Such building, whether it be a discreet expansion of a historic building or a separate but closely related structure, shall be harmonious with the existing building, but shall avoid literal reproduction of specific architectural details.
2. The new building must be so located that the integrity and clarity of the historic site is not compromised. The functional demands of automobile and pedestrian circulation, the visibility required for control and protection of the site, the preservation of natural terrain and vegetation, must be solved in such a way that the values of the site are not diminished.
3. Total reconstruction or relocation will not be attempted except when, in the view of the state historic preservation officer, such undesirable procedures are the only means of preserving some of the values of extremely rare sites.

B. Standards for archaeological sites:

1. New construction affecting archaeological sites will be limited to areas of existing disturbance and to areas devoid of cultural manifestations, so as to have the least possible physical and visual effect as defined in Subsection C of 4.10.7.7 NMAC.
2. Mitigation of adverse effect on disturbed sites will require documentation, analysis and dissemination of results to standards established by the cultural properties review committee.
3. When archaeological techniques are used in the stabilization of a prehistoric or historic site or to obtain information on such sites, recovered material will be handled in conformance with professional archaeological practices. [8/21/87; 4.10.7.13 NMAC - Rn, 4 NMAC 10.7.13, 1/1/08]

**4.10.7.14 APPEAL:** When a state agency which has direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property does not concur with a determination proposed consistent with 4.10.7.10 NMAC above, the head of such agency may appeal to the cultural properties review committee with a statement of the case in appropriate detail. Such appeal shall be made not less than 30 days before a scheduled committee meeting. The committee shall hear the case in a regular public meeting and shall have authority (1) to request further information, (2) to accept the determination of the state agency or of the state historic preservation officer, or (3) to specify another solution consistent with its established and written standards. Appeal to the cultural properties review committee shall be the final administrative appeal in any case. [8/21/87; 4.10.7.14 NMAC - Rn, 4 NMAC 10.7.14, 1/1/08]

#### **HISTORY OF 4.10.7 NMAC:**

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

- CPRC Rule 87-7, Regulations for the Review of Proposed State Land or Structure Modifications which May Affect Registered Cultural Properties, filed 3/26/87.
- CPRC Rule 87-7, Regulations for the Review of Proposed State Land or Structure Modifications Under Direct or Indirect State Jurisdiction which May Affect Registered Cultural Properties, filed 8/21/87.

**History of Repealed Material:** [RESERVED]

**Other History:** CPRC Rule 87-7, Regulations for the Review of Proposed State Land or Structure Modifications Under Direct or Indirect State Jurisdiction which May Affect Registered Cultural Properties (filed 8/21/87) was renumbered, reformatted, and replaced by 4 NMAC 10.7, Review of Proposed State Undertakings That May Affect Registered Cultural Properties, effective 11/15/97.

- 4 NMAC 10.7, Review of Proposed State Undertakings That May Affect Registered Cultural Properties (filed 11/03/97) renumbered, reformatted, and replaced by 4.10.7 NMAC, Review of Proposed State Undertakings That May Affect Registered Cultural Properties, effective 1/1/08.

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### REVIEW OF PROPOSED STATE UNDERTAKINGS THAT MAY AFFECT REGISTERED CULTURAL PROPERTIES

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**TITLE 4                    CULTURAL RESOURCES**  
**CHAPTER 10            CULTURAL PROPERTIES AND HISTORIC PRESERVATION**  
**PART 12                 IMPLEMENTATION OF THE PREHISTORIC AND HISTORIC SITES PRESERVATION ACT**

**4.10.12.1 ISSUING AGENCY:** Office of Cultural Affairs, State Historic Preservation Division. [11/15/97; 4.10.12.1 NMAC - Rn, 4 NMAC 10.12.1, 1/1/08]

**4.10.12.2 SCOPE:** Applies to the state historic preservation division, the cultural properties review committee, state agencies and subdivisions of the state, and nonprofit corporations formally recognized as tax exempt under Section 501(c)3 of the Internal Revenue Code of 1986, whose declared purposes include the investigation, preservation, or conservation of significant prehistoric or historic sites. [11/15/97; 4.10.12.2 NMAC - Rn, 4 NMAC 10.12.2, 1/1/08]

**4.10.12.3 STATUTORY AUTHORITY:** This regulation is created pursuant to Section 18-8-8 NMSA 1978, which requires the state historic preservation officer to issue regulations for the implementation of the New Mexico Prehistoric and Historic Sites Preservation Act. [9/15/89; 4.10.12.3 NMAC - Rn, 4 NMAC 10.12.3, 1/1/08]

**4.10.12.4 DURATION:** Permanent. [11/15/97; 4.10.12.4 NMAC - Rn, 4 NMAC 10.12.4, 1/1/08]

**4.10.12.5 EFFECTIVE DATE:** 9/15/89, unless a later date is cited at the end of a section or paragraph. Reformatted to NMAC format effective 11/15/97. [11/15/97; 4.10.12.5 NMAC - Rn, 4 NMAC 10.12.5, 1/1/08]



[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**4.10.12.6 OBJECTIVE:** The purpose of this regulation is to establish procedures for the acquisition, stabilization, restoration or protection of significant prehistoric and historic sites by the state of New Mexico and corporations, to establish procedures and guidelines for determinations of the prudence and feasibility of alternatives to programs and projects requiring the use of land from significant prehistoric and historic sites, and to establish procedures and guidelines to determine whether all possible planning to preserve and protect and to minimize harm to significant prehistoric and historic sites affected by use of lands from such sites has been carried out. The purpose of the statute is to facilitate the preservation and protection of significant prehistoric and historic sites by authorizing partnerships between entities of government and corporations to that end, and by requiring substantial consideration of governmental actions that will have the effect of destroying or adversely affecting significant prehistoric and historic sites. The statute furthers the purposes of Sections 18-6-1 through 23 NMSA 1978 and of the National Historic Preservation Act of 1966 as amended and is consistent with the legislative finding (Section 18-6-2 NMSA 1978) that "the historical and cultural heritage of the state is one of the state's most valued and important assets; [and] that the public has an interest in the preservation of all antiquities, historic and prehistoric ruins, sites, structures, objects and similar places and things..." [9/15/89; 4.10.12.6 NMAC - Rn, 4 NMAC 10.12.6, 1/1/08]

**4.10.12.7 DEFINITIONS:**

- A. "Acquisition" is the acquisition of a fee simple interest or of a lesser interest by appropriate mechanism, including but not limited to easement or lease, in a significant prehistoric or historic site.
- B. "Stabilization" is the act or process of securing a historic property against natural change, loss, or deterioration of the existing fabric.
- C. "Restoration" is the act or process of accurately recovering the form and details of a historic property and its setting.
- D. "Protection" is the act or process of securing a historic property against change, loss, deterioration, theft, vandalism, or other adverse effect caused by a human agent.
- E. "Significant prehistoric or historic site" is a historic or prehistoric property, district, site, structure, or object listed in the state register of cultural properties or national register of historic places, or property contributing to a historic district, and includes those lands within the boundaries of the property, site or district.
- F. "State of New Mexico" is any state agency or political subdivision of the state, including but not limited to cities and counties.
- G. "Entity" is any political subdivision of the state.
- H. "Corporation" is a nonprofit corporation formally recognized as tax exempt under Section 501(c)3 of the Internal Revenue Code of 1986, whose declared purposes include the investigation, preservation, or conservation of significant prehistoric or historic sites.
- I. "Division" is the historic preservation division, office of cultural affairs.
- J. "Committee" is the cultural properties review committee created by Section 18-6-4 NMSA 1978.
- K. "State historic preservation officer" (SHPO) is the state official named in Section 18-6-8 NMSA 1978.
- L. "Appropriation" is the authorization and apportionment of funds by federal, state, or local statute.

- M. "Public funds" are any moneys, financial consideration or direct or indirect financial support from any political subdivision of the state or from any entity acting on behalf of or with the authority of any political subdivision of the state.
- N. "Long-term management plan" is a document prepared by a corporation and approved by the division, describing a historic or prehistoric site, and creating guidelines, standards and procedures for its restoration, protection, interpretation, operation, maintenance and disposition as more fully set forth in 4.10.12.10 NMAC below.
- O. "Use" is an adverse effect on a significant historic or prehistoric site or lands of that site, including but not limited to partial or complete physical alteration or destruction; isolation of the site from its historic setting; the introduction of physical, audible, visual or atmospheric elements that substantially impair the historic character or significance of the site or substantially diminish the aesthetic value of the site; or the acquisition or taking of a historic or prehistoric site resulting in or designed to result in such alteration, destruction, isolation or introduction of elements that may alter the site. Ordinary maintenance or repair, including code work, which makes no visible alteration to the site and results in no substantial loss of the historic fabric; installation or upgrade of services, such as electricity and water, which makes no visible alteration to the site and results in no substantial loss of the historic fabric; or emergency repair or stabilization of a significant site, shall not be considered a use within the scope of this definition.
- P. "Program" is a course of action or series of actions supported by public funds.
- Q. "Project" is an individual action or segment of a program.
- R. "Area of impact" is the entire geographic area or areas within which a program or project may affect a significant historic or prehistoric site or sites.
- S. A "prudent alternative" is any alternative not rendered impossible by truly unusual factors present in a particular case, or by costs or community disruption likely to reach extraordinary magnitudes, or attended by unique problems.
- T. A "feasible alternative" is an alternative that may be built as a matter of sound engineering. [9/15/89; 4.10.12.7 NMAC - Rn, 4 NMAC 10.12.7, 1/1/08]

**4.10.12.8 ESTABLISHMENT OF CRITERIA:**

- A. The division and the committee shall cooperatively develop criteria for the acquisition, stabilization, restoration, or protection of significant historic or prehistoric sites. Not less often than annually these criteria shall be reviewed and may be revised by the division and the committee in a regular, public, and advertised meeting of the committee.
- B. The criteria will include:
  1. the significance of the property in the prehistory and history of New Mexico, including consideration of national landmark status;
  2. the degree to which the property is threatened by deterioration or destruction;
  3. the rarity or uniqueness of the property or property type in New Mexico;
  4. the research potential of the property; and
  5. the value of the property for public interpretation and visitation. The established criteria will be available to interested persons at the offices of the division. [9/15/89; 4.10.12.8 NMAC - Rn, 4 NMAC 10.12.8, 1/1/08]

**4.10.12.9 SOLICITATION OF PROPOSALS:** Not less often than annually the division shall make an announcement, by legal advertising in newspapers of general circulation and by other appropriate means, to all state agencies holding property, to all municipalities and counties in New Mexico and to 501(c)3 organizations whose stated purposes include the investigation, preservation, or conservation of significant prehistoric and

historic sites. This announcement will 1) note the availability of any funds for acquisition, stabilization, restoration, or protection of significant prehistoric or historic sites, and 2) request proposals for the acquisition, stabilization, restoration or protection of significant prehistoric and historic sites. This announcement will note the general requirements of a management plan as described herein. [9/15/89; 4.10.12.9 NMAC - Rn, 4 NMAC 10.12.9, 1/1/08]

**4.10.12.10 LONG-TERM MANAGEMENT PLAN:**

- A. A long-term management plan shall include but not be limited to:
  - 1. a site description and statement of significance. The national register nomination may be used;
  - 2. a site map;
  - 3. documentation of site ownership, including a copy of the deed and a statement regarding outstanding mortgages, liens, or other encumbrances on the property; this documentation must demonstrate that the applying agency or organization has legal control of the property;
  - 4. a schedule of any stabilization, restoration, monitoring, or protection measures proposed;
  - 5. a program budget including a funding formula for the project indicating the proposed allocation of funds by the state and the agency or corporation, and the availability of funding by third parties;
  - 6. a contract, agreement, or proposed agreement for the disposition of the property in the event that the corporation goes out of existence;
  - 7. a maintenance schedule, including approximate costs;
  - 8. a plan for public interpretation when appropriate;
  - 9. documentation of the 501(c)3 status of the corporation;
  - 10. a statement designed to demonstrate the viability of the corporation; this statement will include vitas or resumes of appropriate personnel, operating budget, income projections and a recent audited financial statement;
  - 11. a statement indicating the appropriateness of the site for acquisition, restoration, or stabilization with reference to the criteria established as provided for in 4.10.12.8 NMAC above.
- B. The long-term management plan must be approved by the division prior to commencement of the project.
- C. The division and committee will cooperatively select proposals for funding in regular public and advertised meetings of the committee. Selection of proposals for funding will be based on the criteria set forth in 4.10.12.8 NMAC above and on evaluation of the long-term management plan.
- D. After the long-term management plan is approved by the division, the division and the corporation shall enter into a contract consistent with that plan and providing for the management, interpretation and preservation of any property acquired, stabilized, restored, or protected under the provisions of the New Mexico Prehistoric and Historic Sites Preservation Act. [9/15/89; 4.10.12.10 NMAC - Rn, 4 NMAC 10.12.10, 1/1/08]

**4.10.12.11 PRUDENT AND FEASIBLE ALTERNATIVES:** Whenever an entity proposes to spend public funds on any program or project that may require the use of or any portion of or any land from a significant prehistoric or historic site, that entity shall, at the earliest practicable stage in planning the program or project, make a determination that there is no prudent and feasible alternative to such use. The affirmative responsibility of showing that there is no such alternative rests on the entity. This showing shall be arrived at in the following manner:

- A. At an early stage in the development of a proposal to carry out a program or project that may use land from a significant prehistoric or historic site, the entity shall submit an appropriately substantial written and graphic description of the proposed program or project and a map showing the area of impact of the proposed program or project to the division, and shall request the determination of the division as to whether the program or project will use a significant prehistoric or historic site. Within thirty days of receipt of such request the division will respond with a determination and a list of any prehistoric or historic sites which will be used, including sites entered in the state register of cultural properties or national register of historic places. The division will also inform the entity about any sites determined by

the division to be eligible to either register, sites in process of nomination to either register, and the status of prehistoric or historic inventory of the area.

- B. If the SHPO determines that the proposed program or project will use a significant prehistoric or historic site, the entity shall, at an early stage in the planning for that program or project, hold at least one public hearing, advertised not less than thirty days in advance of such hearing in one newspaper of statewide circulation and one newspaper in the locality or region of the action, to solicit proposed alternatives that will avoid such use. The entity shall give direct and timely written notice of such hearing to the SHPO. At such public hearing, the entity shall take oral and written testimony of interested persons. The entity shall hold the hearing record open for an additional fifteen days to take additional written comments. The SHPO may propose an alternative or alternatives at the hearing or for the hearing record. The entity may employ any timely design, public information, or other hearing, e.g., a hearing provided for in its standard procedures, as the forum for soliciting alternatives.
- C. Only those prehistoric or historic sites entered in the state register of cultural properties or national register of historic places as of the closing date of the hearing record shall be deemed to fall within the scope of this regulation. However, any proposed change in the scope of a program or project which brings a significant prehistoric or historic site within the area of impact of that program or project will require full consideration under this section and the following section of this regulation. It shall be the responsibility of the division to give timely written notice of any proposal to enter a property in the state register of cultural properties to the property owner, the affected municipality if any, and the affected county not less than thirty days before a meeting of the committee to consider such proposal.
- D. The entity, on the basis of testimony received in the hearing and upon its own initiative and responsibility shall document alternatives to the proposed use. It shall then be the affirmative responsibility of the entity to prepare a written, reviewable, and appropriately substantial record of its examination of alternatives, including a discussion of social and environmental concerns, of any identified hazard or emergency, and of the cost and community disruption resulting from each alternative. Commonly available alternatives may include use of federal or state funds for preservation and maintenance of the significant prehistoric or historic site or sites and the no-build alternative. The entity must make a written conclusion of the imprudence or infeasibility of alternatives, including the no-build alternative, identified by itself or by the state historic preservation officer. Arguments based on cost and technical feasibility must be supported by affidavit of a qualified architect or engineer. It shall not be deemed sufficient for the purposes of this analysis to reject an alternative as imprudent or infeasible because it would affect other significant prehistoric or historic sites, or would affect the same sites in a different manner.
- E. It shall be the affirmative responsibility of the entity either to determine that there is no prudent and feasible alternative to a proposed program or project or to select the alternative to a proposed program or project which causes the least harm to any significant prehistoric or historic site or sites. The entity shall issue this determination in the form of a written record of decision to all interested parties, including direct notice to the division.
- F. It shall be the affirmative responsibility of the SHPO to respond to the record of decision and to concur with or to dissent from its conclusions within forty-five days of receipt of the record. The SHPO shall state in writing his finding that there is or is not a prudent and feasible alternative to the proposed program or project, or that the alternative causing the least harm to any significant prehistoric or historic site or sites has or has not been selected, and that all possible planning to minimize harm to a significant prehistoric or historic site or sites has or has not been carried out as further set forth in 4.10.12.12 NMAC below.
- G. Compliance with federal rule or regulation which:
  - 1. requires a determination that there is no prudent or feasible alternative to a program or project affecting a significant prehistoric or historic site or sites;
  - 2. requires all possible planning to minimize harm to any affected significant prehistoric or historic site or sites; and

3. requires consultation with the SHPO, may substitute for compliance with this regulation. [9/15/89; 4.10.12.11 NMAC - Rn, 4 NMAC 10.12.11, 1/1/08]

**4.10.12.12 PLANNING TO MINIMIZE HARM:**

- A. This section applies either when no prudent or feasible alternative is found which will avoid use of a significant prehistoric or historic site or sites, or when more than one alternative which will affect a significant prehistoric or historic site or sites is found. In either case, a plan to minimize harm to the affected significant prehistoric or historic site or sites shall be incorporated as a separate section of the record of decision described in 4.10.12.11 NMAC above. The plan must contain the following:
  1. a map of the area of impact, including the significant historic or prehistoric sites to be used;
  2. documentation of ownership of the area of impact;
  3. a description of the significant historic or prehistoric site or sites to be used and a statement of the historic, architectural, or archaeological significance of the site or sites. The state or national register nomination form may be the source of this statement;
  4. documentation of alternatives, if more than one alternative has been found, totaling the harm caused by each alternative, and making a conclusion, based on comparisons stated in appropriately substantial detail, that given alternative in association with any specific measures for stabilization, restoration, protection, or data recovery causes the least harm to a significant historic or prehistoric site or sites;
  5. estimated costs relating to (4) above;
  6. any contract, agreement or proposed agreement relating to the disposition or maintenance of the significant prehistoric or historic site or sites;
  7. any schedule of maintenance of the significant prehistoric or historic site or sites, including approximate costs.
- B. The entity may upon request hold an additional public hearing, advertised no less than thirty days in advance in one newspaper of statewide circulation and one newspaper in the locality or region of the proposed program or project, to receive written and oral testimony on the plan from interested persons. The entity shall give direct and timely written notice of any such hearing to the SHPO. In the event of such hearing, the entity shall hold the hearing record open for an additional fifteen days to take additional written comments.
- C. The only relevant factor in making a determination as to whether an alternative minimizes harm to a significant prehistoric or historic site is a quantum of harm to the site caused by that alternative. [9/15/89; 4.10.12.12 NMAC - Rn, 4 NMAC 10.12.12, 1/1/08]

**4.10.12.13 ENFORCEMENT:** Either the SHPO or any other interested person may seek enforcement of the provisions of the New Mexico Prehistoric and Historic Sites Preservation Act by an action for injunction or other appropriate relief in a court of competent jurisdiction. [9/15/89; 4.10.12.13 NMAC - Rn, 4 NMAC 10.12.13, 1/1/08]

**HISTORY OF 4.10.12 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records, state records center and archives under: HPD Rule 89-2, Regulations for the Implementation of the New Mexico Prehistoric and Historic Sites Preservation Act, filed 9-15-89, amended 9/26/89.

**History of Repealed Material:** [RESERVED]

**Other History:** HPD Rule 89-2, Regulations for the Implementation of the New Mexico Prehistoric and Historic Sites Preservation Act (filed 9/15/89) was renumbered, reformatted, and replaced by 4 NMAC 10.12, Implementation of the New Mexico Prehistoric and Historic Sites Preservation Act, effective 11/15/97. 4 NMAC 10.12, Implementation of the New Mexico Prehistoric and Historic Sites Preservation Act (filed 11/03/97) renumbered, reformatted, and replaced by 4.10.12 NMAC, Implementation of the New Mexico Prehistoric and Historic Sites Preservation Act, effective 1/1/08.

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES [MAY BE FOUND ONLINE](#).

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION ARE AS FOLLOWS:

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

**APPENDIX B: Joint Powers Agreement, Example**

**EXAMPLE JOINT POWERS AGREEMENT**

Contract No. \_\_\_\_\_  
Vendor No. \_\_\_\_\_  
Project No. \_\_\_\_\_  
Control No. \_\_\_\_\_

JOINT POWERS AGREEMENT  
BETWEEN THE DEPARTMENT OF CULTURAL AFFAIRS  
HISTORIC PRESERVATION DIVISION  
AND THE  
\_\_\_\_\_

**THIS AGREEMENT** is made and entered into on \_\_\_\_\_, 2024, pursuant to the Joint Powers Act, Section 11-01-01 et seq., NMSA 1978, and is between the Department of Cultural Affairs, Historic Preservation Division, hereinafter referred to as “HPD,” and the \_\_\_\_\_ hereinafter referred to as the “Agency.”

**WITNESSETH:**

**WHEREAS**, HPD is a public agency as defined in Section 11-1-2 NMSA 1978 and the AGENCY is a political subdivision of the State of New Mexico as defined in 11-6-3(E) NMSA 1978; and

**WHEREAS**, on May 18, 2023, Governor Michelle Lujan Grisham signed Senate Bill 9, the “Land of Enchantment Legacy Fund” which established dedicated recurring funding for conservation and preservation efforts. The legislation was a bipartisan effort sponsored by Senators Peter Wirth and Steven Neville, and Representative Nathan Small in the 2023 Legislative Session and supports state agencies requiring matching funds for federal conservation grants as well as historic preservation projects; and

**WHEREAS**, the Department of Cultural Affairs (hereinafter “DCA”) is one of eight State Departments receiving funding from the Legacy Fund; and

**WHEREAS**, funding is administered through the Department of Cultural Affairs (hereinafter “DCA”), Historic Preservation Division, via the Cultural Properties Protection Act 18-6A-1 – 18-6-6 NMSA 1978; and the Cultural Properties Restoration Fund, (hereinafter “CPRF”), NMAC 4.10.13; and

**WHEREAS**, one million in funding will be distributed to the CPRF in 2024; and

**WHEREAS**, the State Historic Preservation Officer and the Cultural Properties Review Committee (hereinafter “CPRC”) are authorized to review and select grant applications to the CPRF; and

**WHEREAS**, the Historic Preservation and the Agency desire to enter into a Joint Powers agreement to exercise their common power to administer grant funds to political subdivisions of the State of New Mexico and state agencies/departments to complete a historic preservation project as outlined in this Agreement; and

**NOW THEREFORE, the parties agree as follows:**

1. **Purpose.** HPD and the AGENCY shall enter into a Joint Powers Agreement (hereinafter “Agreement”) to expend grant funds to complete a historic preservation project (hereinafter “Project”).
2. **Scope of Work.** The Project’s Scope of Work (hereinafter “SOW”) shall include the following stipulations.

- (A) HPD Shall:
  - 1) Administer the Project in partnership with the Agency.
  - 2) Establish this Agreement and work with Agency to develop a Scope of Work outlined in this Agreement.
  - 3) Review AGENCY progress on the PROJECT.
  - 4) Ensure that Agency is paid for the Project before starting and that the project was completed per this Agreement.
- (B) The AGENCY shall:
  - 1) List task from Scope of Work
  - 2) List task from Scope of Work
  - 3) List task from Scope of Work
  - 4) List task from Scope of Work
- (C) HPD Shall:
  - 1) Review Agency's completion of the SOW and determine if work meets the SOW outlined herein.
  - 2) Confirm with Agency that work has been completed per the Agreement.
  - 3) Seek partial or full repayment from Agency if work has not been completed per this Agreement.

- 3. **Unexpended Funds.** Any unexpended or unencumbered amounts in the **FY2025** CPRF shall revert to HPD.
- 4. **Administering Agency.** DCA is designated as the administering agency of this agreement via the Historic Preservation Division (HPD).
- 5. **Disbursements.** All disbursements for permissible and approved costs incurred under this Agreement shall be made by HPD and shall provide for strict accountability of all receipts and disbursements. Disbursements will be made on a lump sum basis and an accurate accounting of expenditures and records will be required by the Agency.
- 6. **Term.** This Agreement shall not become effective until approved by the Department of Finance and Administration and a State of New Mexico Purchase Order (hereafter "PO") issued.  
  
The term of this Agreement is from the date of the issuance of the PO until DATE, 2026 . The term for this Agreement shall not exceed two years.
- 7. **Termination of Default.** If Agency fails to perform in the manner called for in this Agreement, DCA and/or HPD may terminate this Agreement for default.
- 8. **Assignment.** The Agency shall not assign interest in this Agreement or assign any other provision of this Agreement without written approval of HPD.
- 9. **Subcontracts.** Agency shall not assign any portion of its scope of work described under this



Agreement or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of HPD.

In the event HPD, with a request by the Agency to subcontract, such subcontract shall conform to applicable requirements of the Procurement Code and the Agency shall be responsible for any and all payments to the subcontractor.

Agency shall not assign any portion of the funding it receives or subcontract to private parties for Projects on privately owned properties.

10. **Records and Audits.** HPD shall permit the authorized representatives of DCA, Department of Finance and Administration, or the State Auditor to inspect and audit all data and records of DCA relating to its performance under this Agreement until the expiration of three (3) years after final payment under this Agreement.

The period of access and examination described above, for records which relate to (1) litigation of the settlement of claims arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been eliminated.

11. **Appropriations.** The terms of this Agreement are contingent upon sufficient appropriations and authorizations made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the New Mexico State Legislature or in the case of federal funds by the Congress of the United States, this Agreement shall terminate upon written notice by DCA to HPD. The decision as to whether sufficient appropriations are available shall be accepted by HPD and shall be final.
12. **Release.** The Agency, upon final payment of amounts due under this Agreement, releases HPD, its officer and employees and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.
13. **Confidentiality.** Both parties agree to comply with the confidentiality provisions of Section 304 of the National Historic Preservation Act, as amended, and Section 18-6-11.1 NMSA 1978 of the Cultural Properties Act in performing this Agreement.
14. **Product of Services; Copyright.** All materials developed or acquired by the Agency in performing its work under this Agreement which rightfully belongs to the Agency shall remain the property of the State of New Mexico and be delivered to HPD no later than the termination date of this Agreement. Nothing produced in whole or in part by the Agency using materials or information submitted by, or obtained from the Agency in performing work under this Agreement shall be the subject of an application for copyright by or on behalf of HPD without the prior approval in writing from HPD. However, it is understood that HPD has previously secured the copyright to some of the materials that will be utilized by the Agency in performing the scope of work under this Agreement.
15. **Amendment.** This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. The parties may mutually agree to extend the term of this Agreement for limited periods of time not to exceed the maximum two-year grant period.
16. **Scope of Agreement.** This Agreement incorporates all the agreements, preservation agreements and understandings between HPD and the Agency concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement.

No prior agreement or understanding, verbal or otherwise, of the parties of their agents shall be valid or enforceable unless embodied in this Agreement.

17. **Applicable Law.** This Agreement shall be governed by the laws of the State of New Mexico.
18. **Equal Opportunity Compliance.** The Agency agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Agency agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Agency is found to not be in compliance with these requirements during the term of the Agreement, the Agency agrees to take appropriate steps to correct these deficiencies.
19. **Civil Rights Laws and Regulations Compliance.** The Department and HPD shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The Agency and HPD further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, the Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (43 CFR 60). Accordingly, 49 CFR 21 is applicable to this Agreement and incorporated herein by reference.
20. **New Mexico Tort Claims Act.** Neither party shall be responsible for liability incurred as a result of the other party's act or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act Section 41-4-1, et seq., as amended thereto. This paragraph is intended only to define the liabilities as governed by common law or the New Mexico Tort Claims Act. HPD and its "public employees" as defined in the New Mexico Tort Claims Act and the Agency and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.
21. **Preservation Agreement.** Both parties of this Agreement shall complete a Preservation Agreement, attached as Appendix A, which stipulates the preservation and protection of the cultural property for ten years (10 years).

IN WITNESS WHEREOF, the parties have executed this Agreement.

STATE OF NEW MEXICO  
HISTORIC PRESERVATION DIVISION

AGENCY  
AGENCY

\_\_\_\_\_  
JEFF PAPPAS  
STATE HISTORIC PRESERVATION OFFICER

\_\_\_\_\_  
NAME  
TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

DEPARTMENT OF CULTURAL AFFAIRS

\_\_\_\_\_  
DEBRA GARCIA Y GRIEGO  
SECRETARY

\_\_\_\_\_  
DATE

Approved as to form and legal sufficiency on this \_\_\_\_ day of \_\_\_\_, 2024, by the Department of Cultural Affairs, General Counsel.

By: \_\_\_\_\_  
General Counsel

Approved as to form and legal sufficiency on this \_\_\_\_ day of \_\_\_\_, 2024, by the Office of the Attorney General.

By: \_\_\_\_\_  
Assistant Attorney General

This Agreement has been approved by:  
DEPARTMENT OF FINANCE AND ADMINISTRATION

By: \_\_\_\_\_ Date \_\_\_\_\_  
Assistant Attorney General

## APPENDIX C: Sample Preservation Agreement

### DRAFT EXAMPLE

#### PRESERVATION AGREEMENT – CULTURAL PROPERTIES RESTORATION FUND PROJECT

This preservation agreement is made this NUMBER day of 2024 between Name, as GRANTOR of a preservation agreement (hereafter referred to as the “Grantor”), and the State of New Mexico Historic Preservation Division of the Department of Cultural Affairs/Covenant Holder, as GRANTEE of the preservation agreement (hereafter referred to as The “Grantee”).

This preservation agreement is entered under NMSA 1978, Section 18-6-7 (A), 18-6-8, and 18-10-6 (C) and is for the purpose of supporting the rehabilitation of NAME OF CULTURAL PROPERTY, a site that is important culturally, historically, architecturally and/or archeologically.

1. **The Subject Property.** This agreement creates a preservation agreement in real estate legally described as NAME ADDRESS OF PROPERTY (hereafter referred to as the “Property”).
2. **Grant of Preservation Agreement.** In consideration of the sum of \$GRANT AMOUNT received in a lump sum from the State of New Mexico, Department of Cultural Affairs, Historic Preservation Division (“HPD”), the Grantor hereby grants to the Grantee a preservation agreement in the Property for the purpose of assuring preservation of the Property.
3. **Agreement Required for Federal Grant.** This preservation agreement is granted as a condition of the eligibility of the Grantor for the financial assistance from the State of New Mexico appropriated from the New Mexico Legislation.
4. **Conditions of Preservation Agreement:**
  - a. *Duration.* This preservation agreement is granted for a period of ten (10) years commencing on the date when it is filed with the County Clerk.
  - b. *Documentation of condition of the Property at time of grant of this agreement.* To make certain the full extent of Grantor’s obligations as to the preservation and maintenance of the Property, the Grantor must document the property in its current condition. Documentation includes both the interior and exterior and cultural property’s site.

Documentation shall include:

- i. Photographs – Grantor shall photograph the subject Property in its current condition and include a keyed map indicating locations of photographs. Photographs should portray the subject Property in its entirety – both exterior and interior. Character-defining materials and spaces should be documented.

Historic Photographs – Grantor may opt to include historic photographs of the subject Property if these provide documentation of the site in current condition.

Drawings – Grants shall provide drawings of building floor plans, elevations, and archaeological sites if available.

A list of character-defining materials, features and spaces, including archeological features (if known) are incorporated as “Exhibit A” at the end of this agreement.

The Grantor shall submit documentation as “Exhibit A.”

- c. *Activities that may affect cultural property/cultural properties:*

- i. The Grantor agrees that no construction, alteration, or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Property which would affect spaces and features identified in "Exhibit A" without consultation with the Grantee to determine effects.

Grantee will review proposals from the Grantor to ensure that proposed work will meet The Secretary of the Interior's Standards for the Treatment of Historic Properties (hereinafter "SOI Standards").

Activities include the proposed rehabilitation of the interior and the exterior of the Property, changes to architectural details, form, fenestration, and changes to the height of the property or structural soundness.

- ii. The Grantor agrees that no ground disturbing activity shall be undertaken or permitted to be undertaken on the Property identified in "Exhibit A" without review of the proposed work by the Grantee affirming that the proposed project complies with the SOI Standards.

- d. *Property Maintenance.* The Grantor agrees at all times to maintain the Property in a good and sound state of repair and to maintain the Property, including the other structures or features of the site, according to the Standards so as to prevent deterioration and preserve the architectural and historical integrity of the Property in ways that protect and enhance those qualities that make the property eligible for listing in the National Register of Historic Places.
- e. *Maintenance of recovered materials.* The Grantor agrees to ensure that any data and unanticipated archaeological materials (i.e., metal, wood, lithic, ceramic, bone, or darkly stained sediment) are identified during construction, all construction activity should cease and the Historic Preservation Division office should be notified for further consultation. The Grantor shall meet the requirements of the Native American Graves Protection and Repatriation Act, 36 CFR 79, and 43 CFR 10.
- f. *Right to inspect.* The Grantor agrees that the Grantee, its employees, agents, and designees shall have the right to inspect the Property at reasonable times, with twenty-four hours (24) written notice, in order to ascertain whether the conditions of this agreement are being observed.
- l. *Anti-discrimination.* The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 (d)), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodation to qualified disabled persons shall be made in consultation with the State Historic Preservation Office.
- j. *Agreement shall run with the land; conditions on conveyance.* This preservation agreement shall run with the land and be binding on the Grantor, its successors, and assigns. The Grantor agrees to insert an appropriate reference to this agreement in any deed or other legal instrument by which it divests itself of either the fee simple title or other lesser estate in the Property or any part thereof.
- k. *Casualty Damage or Destruction.* In the event that the Property or any part of it shall be damaged or destroyed by fire, flood, windstorm, earth movement, or other casualty, the Grantor shall notify the Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed.

No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety shall be undertaken by the Grantor without the Grantee's prior written approval indicating that the proposed work will meet the

Standards. The Grantee shall give its written approval, if any, of any proposed work within thirty (30) days of receiving the request from the Grantor.

If after reviewing the condition of the property, the Grantee determines that the features, materials, appearance, workmanship, and environment which made the property a Cultural Property are in question, the Grantee will notify Grantor in writing of the loss.

The Grantee will evaluate the findings and notify the Grantor in writing of any decision made about the Property and will then notify the Grantor that the agreement is null and void. If the damage or destruction is deliberately caused by gross negligence of the Grantor, then the Grantee will initiate legal action to recover the grant funds applied to the Property which will then be returned to the New Mexico Legislature.

- l. *Enforcement.* The Grantee shall have the right to prevent and correct violations of the terms of this agreement. If the Grantee, upon inspection of the property, finds what appears to be a violation, it may exercise its discretions to seek injunctive relief in a court having jurisdiction. Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical, and architectural importance of the Property, the Grantee shall give the Grantor written notice of the violation and allow thirty (30) days to correct the violation before taking any formal action, including but not limited to, legal action.

If a court, having jurisdiction, determines that a violation exists or has occurred, the Grantee may obtain an injunction to top the violation, temporarily or permanently. A court may also issue a mandatory injunction requiring the Grantor to restore to the Property to a condition that would be consistent with preservation purposes of the grant from the NPS. In any case where a court finds that a violation has occurred, the court may require the Grantor to reimburse the Grantee and the State Attorney General for all the State’s expenses incurred in stopping, preventing, and correcting the violation, including but not limited to reasonable attorney’s fees. The failure of the Grantee to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time.

- m. *Amendments.* The parties may by mutual written agreement jointly amend this agreement, provided the amendment shall be consistent with preservation purpose of this agreement and shall not reduce its term of duration. Any such amendment shall not be effective unless it is executed in the same manner as this agreement, refers expressly to this agreement, and is filed with the COUNTY CLERK.

- n. *Effective date: severability.* This preservation agreement shall become effective when the Grantor files it in the Office of the County Clerk of COUNTY NAME, State of New Mexico, with a copy of the recorded instrument provided to the Grantee for its preservation agreement file. If any part of this preservation agreement is held to be illegal by a court, the validity of the remaining parts shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the preservation agreement does not contain the particular part held to be valid.

GRANTOR: \_\_\_\_\_  
By: NAME OF ORG, NAME OF PERSON  
Name and Title

\_\_\_\_\_: On this \_\_\_\_\_ day of \_\_\_\_\_ 2024, before me the undersigned, a Notary Public for said State, personally appeared \_\_\_\_\_, to me personally known, who stated the they are \_\_\_\_\_, that no seal has been procured by said corporation, and that the foregoing instrument

was signed on behalf of said corporation by authority of its City Council, and that such officer, they acknowledged that they executed the foregoing instrument as their voluntary act and the voluntary act of the corporation.

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NOTARY PUBLIC

GRANTEE: Historic Preservation Division, Office of Cultural Affairs, State of New Mexico

By: \_\_\_\_\_  
Jeff Pappas, Ph.D., State Historic Preservation Officer / Director

\_\_\_\_\_ : On this \_\_\_\_\_ day of \_\_\_\_\_ 2024, before me, a Notary Public for said State, personally appeared Jeff Pappas, who stated that they are duly appointed and actively serving as the Director of the State Historic Preservation Office, and that they executed the foregoing preservation agreement as their voluntary act and as the voluntary act of the State of New Mexico Office of Cultural Affairs.

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NOTARY PUBLIC

#### EXHIBIT "A" TO PRESERVATION AGREEMENT

\_\_\_\_\_  
Enter name of property and location

To remain eligible for listing on the National Register of Historic Places, a property must be able to convey its significance. The following character-defining materials, spaces, and features have been identified as those that help convey the significance of \_\_\_\_\_, photographic documentation is attached.

Exhibit A must be submitted at the time of signing the grant agreement.

Grantee must:

- Take photographs of all four sides of the building
- Take photographs of significant exterior features
- Take photographs of interior spaces, specifically communal areas of building.
- Take photographs of character-defining features and spaces.

Photographs must be attached as EXHIBIT A to this grant agreement.

A State of New Mexico Purchase Order will not be available until the Historic Preservation Division is in receipt of this signed Preservation Agreement and sufficient documentation for Exhibit A.