

TITLE 4
CHAPTER 10
PART 7
CULTURAL RESOURCES
CULTURAL PROPERTIES AND HISTORIC PRESERVATION
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[Note: The words *or paragraph*, above, are no longer applicable.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 National Historic Preservation Act of 1966, as amended.
[8/21/87; 4.10.7.6 NMAC - Rn, 4 NMAC 10.7.6, 1/1/08]

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.