

November 24, 2008

Department of Cultural Affairs, Historic Preservation Division Comments on rule  
19.15.39.9 NMAC: Special Provisions for Santa Fe County and the Galisteo Basin  
HPD # 85790/85747

1. Under state law, protections should be afforded to a variety of cultural properties including marked and unmarked burial grounds (see 30-12-12 NMSA 1978 and 18-6-11.2 NMSA 1978). HPD has found that it helps applicants when the rule includes expanded text and eliminates the need to add a definition elsewhere in the rule. This proposed language is modeled after EMNRD's 19.19.6.602 NMAC (and subsections 603 & 604—new mining permits):
  - **Replace "registered cultural properties" with "cultural resources in or eligible for listing in either the national register of historic places and/or state register of cultural properties, known cemeteries and unmarked human burials"**
2. The map illustrating the boundaries for cultural properties B.(5) contains confidential information when those properties are archaeological sites (18-6-11.1 NMSA 1978) and cannot be included in a public posting of the application. OCD needs, as part of their administrative process, to insure that these maps are not posted on the website.
3. The Division (OCD) must provide HPD/SHPO a copy of the full application including the map with confidential information as part of OCD's consultation requirements pursuant to 18-6-8.1 NMSA 1978. Could the rule be amended for OCD to provide the full application, including map, to HPD at the time of the public notice? If so, we recommend amending "G" to add a new provision, possibly under G(2):
  - **"provide the state historic preservation officer with a copy of the application and request for review and comment."**
4. In subparagraph B(9) there is an error in the citation (4.16.7.9 NMAC should be "**4.10.7.9 NMAC**"), but also the section needs to take into account potential effects which include both direct and indirect effects including visual and auditory effects. The additional information should also be provided for any cultural resources found within one-half mile of the proposed exploration and development plan area. Recommended language:
  - **"if cultural resources listed in or eligible for listing in either the national register of historic places and/or state register of cultural properties, known cemeteries and unmarked human burials are located in the proposed exploration and development plan or within one-half mile of the area included in the plan, provide the information in 4.10.7.9 NMAC including a description of the effects the proposed operations may have on these sites and proposed mitigation measures."**

5. Subparagraph B(12): should call out protections for cultural resources. Recommend inserting after "environment": "**including cultural resources in or eligible for listing in either the national register of historic places and/or state register of cultural properties and known cemeteries and unmarked human burials**"

6. Subparagraph J(3) and J(4): We are concerned that an approval of an application will not take into account SHPO review comments pursuant to 4.10.7.9 NMAC. OCD needs the authority to impose conditions that protect or minimize adverse effects to cultural resources. The following recommendation is modeled after 19.10.6.603.C. (Assure Protection).

- in G(3): insert between "environment" and "from oilfield waste": "**including cultural resources**" AND
- insert after "oilfield waste" a new sentence: "**Cultural resources listed in or eligible for listing in either the national register of historic places and/or state register of cultural properties, known cemeteries and unmarked human burials shall be protected until clearance has been granted by the state historic preservation officer.**"