



# Agenda

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## ARCHAEOLOGICAL REVIEW COMMITTEE HEARING

THURSDAY, April 21, 2016 at 4:30 PM

CITY COUNCILORS CONFERENCE ROOM

CITY HALL - 200 LINCOLN AVENUE, SANTA FE, NM

- A. CALL TO ORDER
- B. ROLL CALL
- C. APPROVAL OF AGENDA
- D. APPROVAL OF MINUTES
- E. MATTERS FROM THE FLOOR
- F. ACTION ITEMS

- 1. Case #AR-07-16. Bishop's Lodge, Brownell-Howland and Terral Roads. Suburban Archaeological Review District. City of Santa Fe, owner, requests amendment of approval for alternate means of compliance for an Archaeological Monitoring Plan for the Proposed, City of Santa Fe Water Main Replacement Project on Bishop's Lodge Road between Stagecoach Drive and Hillcrest Drive, Brownell-Howland and Terral Road, and Lugar de Monte Vista, Santa Fe, New Mexico.

### G. DISCUSSION ITEMS

- 1. Discussion of the Santa Fe Archaeological Review Districts Overlay Zoning Ordinance Draft (Section 14-3.13).

### H. MATTERS FROM THE COMMITTEE

### I. ADMINISTRATIVE MATTERS AND COMMUNICATIONS

- 1. Reminder to submit a letter of interest to renew term.
- 2. Nominations for the 2016 Heritage Preservation Awards.

### J. ADJOURNMENT

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520 five (5) working days prior to date.

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ARCHAEOLOGICAL REVIEW COMMITTEE HEARING  
Thursday, April 21, 2016

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
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APPROVAL OF MINUTES:	None	2
MATTERS FROM THE FLOOR	None	2
<u>ACTION ITEMS</u>		
CASE #AR-07-16. BISHOP'S LODGE, BROWNELL-HOWLAND AND TERRAL ROADS, SUBURBAN ARCHAEOLOGICAL REVIEW DISTRICT. CITY OF SANTA FE OWNER, REQUESTS AMENDMENT OF APPROVAL FOR ALTERNATE MEANS OF COMPLIANCE FOR AN ARCHAEOLOGICAL MONITORING PLAN FOR THE PROPOSED, CITY OF SANTA FE WATER MAIN REPLACEMENT PROJECT ON BISHOP'S LODGE ROAD BETWEEN STAGECOACH DRIVE AND HILLCREST DRIVE, BROWNELL-HOWLAND AND TERRAL ROAD AND LUGAR DE MONTE VISTA, SANTA FE, NEW MEXICO	Postponed to 05/05/16	2-18
<u>DISCUSSION ITEMS</u>		
DISCUSSION OF THE SANTA FE ARCHAEOLOGICAL REVIEW DISTRICTS OVERLAY ZONING ORDINANCE DRAFT (SECTION 14-3.13)	Information/discussion/direction	18-21
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<u>ADMINISTRATIVE MATTERS AND COMMUNICATIONS</u>		
Reminder to submit a letter of interest to renew term	Information/discussion	21
Nominations for the 2016 Heritage Preservation Awards	Information/discussion	21
ADJOURNMENT		21-22

**MINUTES OF THE  
CITY OF SANTA FE  
ARCHAEOLOGICAL REVIEW COMMITTEE HEARING  
City Councilors Conference Room  
April 21, 2016**

**A. CALL TO ORDER**

The Archaeological Review Committee Hearing was called to order by David Eck, Chair, at approximately 4:30 p.m., on April 21, 2016, in the City Councilor's Conference Room, City Hall, Santa Fe, New Mexico.

**B. ROLL CALL**

**Members Present**

David Eck, Chair

Tess Monahan, Vice-Chair

Derek Pierce

Gary Funkhouser

**Members Excused**

James Edward Ivey

**Others Present**

David Rasch, Historic Preservation Division

Nicole Thomas, Historic Preservation Division

Zachary Shandler, Assistant City Attorney

Melessia Helberg, Stenographer

**NOTE: All items in the Committee packet for all agenda items are incorporated herewith to these minutes by reference, and the original Committee packet is on file in, and may be obtained from, the City of Santa Fe Historic Preservation Division.**

**C. APPROVAL OF AGENDA**

**MOTION:** Gary Funkhouser moved, seconded by Derek Pierce, to approve the Agenda as presented.

**VOTE:** The motion was approved unanimously on a voice vote.

**D. APPROVAL OF MINUTES:**

There were no minutes for approval.

**E. MATTERS FROM THE FLOOR**

There were no matters from the floor.

**F. ACTION ITEMS**

- 1) **CASE #AR-07-16. BISHOP'S LODGE, BROWNELL-HOWLAND AND TERRAL ROADS, SUBURBAN ARCHAEOLOGICAL REVIEW DISTRICT. CITY OF SANTA FE OWNER, REQUESTS AMENDMENT OF APPROVAL FOR ALTERNATE MEANS OF COMPLIANCE FOR AN ARCHAEOLOGICAL MONITORING PLAN FOR THE PROPOSED, CITY OF SANTA FE WATER MAIN REPLACEMENT PROJECT ON BISHOP'S LODGE ROAD BETWEEN STAGECOACH DRIVE AND HILLCREST DRIVE, BROWNELL-HOWLAND AND TERRAL ROAD AND LUGAR DE MONTE VISTA, SANTA FE, NEW MEXICO**

A Memorandum dated April 21, 2016, to the Archaeological Review Committee, from Nicole A. Ramirez-Thomas, Senior Planner, Historic Preservation Division, setting out the facts and issues in this case, is incorporated herewith to these minutes as Exhibit "1."

A copy of a document for discussion purposes, regarding the Historic Downtown Archaeological Review District, entered for the record by Zachary Shandler, is incorporated herewith to these minutes as Exhibit "2."

Ms. Ramirez-Thomas said she has nothing to add at the moment.

Ron Winters, Archaeologist for the project, said at the last meeting the Committee ruled that the project should be monitored, because a part of a bigger project didn't meet the linear threshold, noting that is in process right now. He said he spoke with Ms. Ramirez-Thomas and with Eric Ulibarri, Water Division about the 3<sup>rd</sup> phase of this project. He said his background didn't [inaudible] with the surrounding streets. He said on a flip side, there hasn't been a whole lot done in that area. He said one of the solutions we discussed was doing a surface survey, and spot monitoring after the surface survey was done if there are, in fact, resources found in the monitoring in those areas. And if not, at least giving you a profile of the different streets named in this report so we can see the stratigraphy. He said in past reports he has suggested a 3 meter segment of the trench be drawn to indicate and photograph in the stratigraphy.

Ms. Ramirez-Thomas said she posed her questions in the Memo [Exhibit "1"] because we've had some utility projects come up and she has questions about how to deal with them, and there is some contentiousness with other arms of the City. She said from her perspective, this is a methodological question – what do we want to talk about moving forward as we rewrite the Ordinance. She said she told Mr. Funkhouser, in her experience you do a survey before you make recommendations for monitoring, unless there is absolutely no opportunity to survey. This is the perspective she has in regard to this project.

Mr. Winters said he understands the Water Division's concern, but he knows the needs of the Committee and how Ordinance reads. He said he isn't trying to suggest one alternative or another. He said he and Ms. Ramirez-Thomas talked about alternative means to address these segments of the project.

Mr. Shandler said, as a layperson, what he thought is that utilities equal monitoring, that you go to that automatically. He said it might be what the utility still could do is a survey, or archaeological investigation or a reconnaissance in certain circumstances. And when you can't do that, then the fallback position would be the monitoring. He said the threshold question on the table is, if that his second understanding is correct, then maybe the segments on Bishop's Lodge Road should have been surveyed/reconnaissance. If that is methodologically true, that also benefits the water division, because his understanding of that is it a less expensive cost. So that is a special question, or perhaps he could be wrong.

Eric Ulibarri, Water Division, said on Bishop's Lodge Road there are quite a few utilities on that shoulder they will be working. He said Bishop's Lodge Road has had quite a bit of disturbance along that shoulder by NMDOT, paving and such. He said they will be installing water mains and doing work on those shoulders, noting it is a dirt road there.

Chair Eck said he understands none of this falls within previously surveyed space, and Ms. Ramirez-Thomas said no.

Chair Eck said then NMDOT has worked on the road.

Ms. Ramirez-Thomas said it isn't reported in NMCRIS or in the City as a *[inaudible]*.

Mr. Winters said we know there are previously buried utilities, but in a file search, it didn't show up as having been surveyed.

Chair Eck said there is no record of the previous utilities having been monitored.

Ms. Ramirez-Thomas said this is correct. She we talked about some of the utilities, and for many of them, it was a very long time ago.

### **Tess Monahan**

Ms. Monahan said, "The light-weight isn't weighing in today."

### **Gary Funkhouser**

Mr. Funkhouser said he will pass to Mr. Pierce.

### **Derek Pierce**

Mr. Pierce said monitoring always has been an alternative means of compliance. There is nothing in the Code, whether you're talking block surveys or utilities, that requires *[inaudible]*.

Chair Eck said an alternative means of compliance implies that there is something other than that.

Mr. Pierce said it is in line with how most under agencies, State, federal, conduct pipeline studies and things like that, so he isn't opposed to utility lines being surveyed when it is possible to do so, and when there is good visibility. He said, "However, let me state in this case that the survey is done before clearance is granted, not concurrent with. So I think, in this case, the damage is already done. You might have to go back, do a survey, do a report to submit to this Committee before you do any work, or you have to monitor. Those are the only two options in this case."

Mr. Pierce continued, "I'm also concerned, just in general principle, with the idea of surveying some of the project and monitoring others. While it might make sense methodologically, practically, it's really hard to enforce. Construction people barely monitor now at all when they're supposed to. Do we really expect them to know that they can monitor from 0-50 and from 125 in surveys everywhere else. I just don't see this happening."

Ms. Ramirez-Thomas said this is a general challenge with the way projects are constructed, and that's another side. We have to issue this *[inaudible]* and so what's best to be surveyed in town, versus other parts of town. And there is the question of how practical it is to expect people to comply with these different..... She said, "On your end, my understanding is that these projects are bundled based on need and immediacy."

Mr. Pierce said he would put out his thoughts as to how this could have worked if we had anticipated it a long time ago. He said the two longer lines up the hill have good surface visibility and are discrete, meaning they are separate from the other one which clearly needs monitoring. He wouldn't have opposed doing it that way if we had set up, from the beginning, to survey those two and monitor the other, because they are discrete. He said he probably would have a problem with the scenario where the same line, regardless of how long, is partially surveyed and partially monitored, just because it's impossible to do that practically. So if they are discrete units, not connected, and not a single where you're trying to stop at a *[inaudible]* station, he might go for that.

Ms. Ramirez-Thomas said this project has just kind of emerged as a test for discussion. She said she and Mr. Ulibarri have discussed him asking Historic Preservation to help earlier in the planning process so we can look for other solutions for better ways to approach working to protect the resources and meeting the needs of their projects.

Mr. Ulibarri said, "We definitely want to do the right thing at City Water, and we want to do what's right. It's not that we're trying to go under the radar on something like this." He said he has been working with Ms. Ramirez-Thomas, and believes they have a good communication with your group now, and it will be possible for them to be able to come up with better solutions before we jump right into site monitoring, and maybe we can find new ways to search for clearances that have already been conducted and such.

Mr. Shandler said he is unclear on the facts. He said, "It's not like Lugar, there's already been a trench open. Is that correct Ron."

Ms. Winters said, "Yes, we're monitoring."

Mr. Shandler said, "And you're already monitoring. How much of the linear feet have been opened so far."

Mr. Winters said, " 226 feet of the 410, so it's over half."

Mr. Shandler asked if trenches have been opened on any other segment.

Mr. Winters said no.

Mr. Shandler said, "Okay. How fast can you get out there and survey or inventory or reconnaissance Bishop's Lodge and type something up for submittal to this Committee."

Mr. Winters said he can have the survey done in a couple of days and he can send a letter report pretty quickly. He said it certainly could have been a proposed alternative, as in the past, when you monitored – if it met a certain threshold you monitored. He said most of these, especially the City utilities, it makes no sense to... there are built environments, they are paved. This is a different situation.

Chair Eck asked, "But is it different. We hear there are already utilities in there, and therefore, there has already been disturbance. Therefore, the visibility is less than ideal, and if I were sitting on the other side of the Plaza in the other office, I would say, therefore if we don't monitor we have to survey to State standards, and that's a known 50-foot width survey. How wide is the right-of-way. Is the right-of-way 100 feet wide and you could do 50 feet between one hypothetical fence. I know there probably no fences, and edge of payment, or edge of road, because there is no point in surveying a road. You can't see anything."

Mr. Ulibarri said there definitely isn't that much right-of-way.

Ms. Ramirez-Thomas said Brownell-Howland doesn't have development on either side narrowed.

Mr. Windows said on those roads it could be surveyed fenceline to fenceline, the road included, because in fact it is dirt, commenting he doesn't know if it is 100 feet. He said it is a different situation closer to town on Bishop's Lodge.

Chair Eck said that might be underground, saying his point is that we have to look at undisturbed area or you are wasting your survey time.

Mr. Winters said he agrees absolutely.



Mr. Pierce said we are trying to settle this case, talking about the precedent and how to adjust the Code. He said there is nothing in Code that dictates what is the logical width of a survey corridor for a pipeline. And there is nothing to prevent somebody saying I'm just going to survey this two-foot corridor and accept it.

Chair Eck said we are part of the State, and State standards dictate clearly, that the minimum width of a project area/area of potential effect/survey area is 50 feet. It can be larger, but the minimum is 50 feet.

Mr. Winters said you can accomplish that on the upper section, but certainly not on Bishop's Lodge from the end of the pavement to the *[inaudible]*.

Chair Eck said that probably is 20 feet.

Mr. Winters believes, regarding the upper areas as depicted on the plan, you could go from property line to property line and do that whole roadway.

Chair Eck said, regarding the existing Ordinance and the monitoring solution for utilities, it probably isn't written, but the reason monitoring was chosen is because, as Ron said, you can't see because of the pavement or it's all been disturbed because of road construction and you can see. He said he can think of only one instance where he would be comfortable in advance of utility installation, and that is in advance of any ground disturbance. He said the survey there has the optimum chance of being affected. It has a very severely handicapped chance of being effective in any other condition, and of course it decrease to zero when you get downtown under the pavement.

Chair Eck continued, saying he would be reticent to say a survey would be a good option in any case other than brand new construction where there is virtually a pristine are. He said his gut feeling is that monitoring always will be the preferred solution, the preferred alternative, for situations where we no longer have a chance of seeing the surface and surface manifestations. He said in an area where there is a known archaeological site you have to monitor anyway. So we've kind of run the full gamut.

Mr. Pierce said he doesn't disagree, but that's a very subjective call for archaeologists in the field. .

Chair Eck said there is nothing subjective about it, if we adopt Zach's interpretation one – utility monitoring. In all cases if it's new country, no prior disturbance, it would always be best to survey first, and then perhaps monitor in specific places as indicated by a few archaeologists observations. He said if we change things, and we have that opportunity to propose a change to the public, city and the world at large, he would want to be as clear and simple as possible, so there

are no subjective infield calls. And then, in every case, rely on the field archaeologist having made an observation that does not fit with standard expectations to talk to staff and get guidance before taking an option that is other than what would be the most prudent.

Ms. Ramirez-Thomas asked, if we say all utilities require monitoring, there is the existing and recurring issue of existing utilities. So that is another hurdle that we can tackle as we move forward with the Ordinance, noting we can't answer that question tonight. She said, "People are asking."

Chair Eck said if they are replacing a line by digging up the line and putting their disturbance as previously placed, and the previous installation had been monitored, he would argue there is a small reason for new monitoring, unless you are going to dig any new area. Chair Eck said, "In all other cases, it hasn't been monitored or the record doesn't exist and 12 of us swear it was monitored, but we can't find a document that says so. Tough. Monitor it."

Chair Eck continued, saying he thinks if we always got to the default interpretation and then make exceptions or consider a new alternative only after that has been exhausted, we are safer. He reiterated he doesn't want to consider new alternatives just because.

Mr. Ulibarri said, "If we have existing lines and we know it has been disturbed early on, and we go in and start laying a new line in the same location, and we find something with some archaeological importance, what is the value at that point of finding something when all of the area has been disturbed." He said you can't go back in and figure out exactly what is down there because it's all been disturbed.

Mr. Funkhouser said you can look at a percentage of what is there, noting it is more a shuffling of materials when you get it done.

Chair Eck said the answer is always it depends on the situation. He has seen pit houses that have been absolutely bisected by a 36 inch trench that passed a meter below its floor, and they said "it's all been disturbed." So there is still 3/4 of the pithouse left that is not disturbed. So, it all depends. He has seen other things completely destroyed, and what you find in a trench might be the highly disturbed remnants of something that was once some place, somewhere within that trench, but no you long have any idea where it was. In that case he agrees.

Chair Eck continued, "But if it was monitored, that's where I'm arguing that there would be no need for new monitoring, assuming you are digging in exactly the same trench. But, if it has not been monitored, I think we owe it to the City, the citizens and the archaeological community to find out what is in the trench wall. And we can't see that until we dig a hole. Monitoring."

Mr. Winters talked about the Water Project from Paseo to Cathedral where it really was disturbed, noting he recovered 1,200 artifacts out of that, that tell a story of that area. He said when they dug previously, the stuff was just thrown in. He said he doesn't have intact deposits, he has a lense where all these things existed in a cultural level the length of the utility corridor.

Mr. Funkhouser said it probably was the same going down St. Francis right by the old penitentiary.

Mr. Winters said yes, absolutely, commenting he found part of the foundation of the old fence, reiterating they are following the existing corridor.

Mr. Shandler said for purposes of discussion, he and Ms. Ramirez-Thomas worked outside the box on what the Code should say, and handed out a document for discussion purposes [Exhibit "2"].

Mr. Shandler said, "Let's say that two weeks ago that Ron and Eric said, you know what, we're going to monitor everything on the proposal, and in role play that I'm Eric's boss. And let's say Eric had a budget of \$20,000. I didn't know how much you budgeted. And I said, Eric, what did you just agree to. The word monitoring isn't in the Code. In fact the Code talks only about new extensions. It doesn't talk about replacements. This whole idea of a project, well I disagree with that interpretation of project. This is based on our list of types most likely to break. This isn't some type of unitary project. And oh my gosh, Mr. Winters is going to be paid \$50 an hour for 8 hours, but our project is supposed to take 30 days. How are we going to possibly pay for all this monitoring. Eric, what have you done. This hypothetical person will say, you know, we're going to challenge it. We were very nice. We volunteered to the monitor even though the *'inaudible'*. The linear feet requirement, but now this is all going to break our budget and we would like to challenge the ARC Committee. So I'm going to call David Rasch and Nicole and see if I can work out some type of compromise if you will."

Mr. Shandler continued, "And so that's what Nicole's memo is, that she's trying to create some type of compromise to offer to you. As policy-makers, you're free to accept or reject that. The Water Division team may want to challenge that if they feel like, oh I've got to monitor and pay on all this for all that. That being said, Ron's proposal, regardless of 30 days, it sounds like 2-3 days. So maybe you could come and weigh out your proposed budget, and maybe Eric won't blow through \$20,000 or whatever he has. So maybe it's a 'tempest in a teapot,' or maybe for me it's a real chance like, this is where I really should rewrite the Code to make it more clear so we don't have this type of situation. I think, as member Funkhouser or member Pierce has said, we have this situation here, but you also have how long have you been in discussion the last 45 minutes of the meeting. Maybe the Code should be rewritten a little bit better."

Mr. Funkhouser said it's not a mutually exclusive thing. In the absence of the ability for survey, then monitoring would still be recommended and end up with both phased projects and monitoring to be recommended, not if a survey could have said things. It just depends on how this worked out. And a lot of that would come too in what could have been expected to be there in terms of the density of it. In the Historic Downtown it's a lot."

Ms. Ramirez-Thomas said she spoke with SHPO last week and they talked about how downtown absolutely has to be monitored. She said that discussion will come up as we move forward with the Ordinance.

Ms. Monahan apologized for not being here at the prior meeting where that came up, so she is operating out of ignorance. She said, "However, if I'm in a neighborhood where there are leaking pipes, and maybe some of those pipes are corroded. Then we have a problem, because public safety comes first, so leaking water pipes have to be replaced. We could wait until it burst and everything is destroyed because it all washes out, and we have emergency crews up and down the road. And there is no review process period. So we have conflicting goals here, and we have conflicting needs here that I don't think are being addressed adequately. I can easily see where it becomes a matter of us not doing the work until it has to be done without supervision."

Mr. Ulibarri said, "First of all, that was totally fictional, my boss didn't say any of that. In fact, that is exactly the case in regard to most of these, if you could journey down them before all this work had been done. There are patches up and down the street. We've been doing this work for 10-15 years over and over and over. And like you say, these are unmonitored repairs over and over, so there are patches up and down street that street. That's just something to point out. You are right."

Ms. Monahan said the sewer line on Bishop's Lodge Road gets dug up twice a year, because there are chronic clogs in the line that keep getting clogged, and it's an emergency situation and you have to deal with it, commenting she knows because she lives there. She said she thinks she is happy to have the dialogue, because she believes strongly that there has to be a body aligned with the City and the City's goals for us to be serving our public, because it's our public. And we have to do what we can to make it work to the best of everyone's interest."

Mr. Shandler said, "Let me just focus. There are segments that have been opened up. There has already been some monitoring, and even the hypothetical water person could say okay, that's going to be monitored. Then the question is about the two other larger segments. Should that also be monitored. Should it be surveyed in lieu of monitoring, or surveyed and then you have to do monitoring. Will it really take 60 days, and will an archaeologist be out there for 60 consecutive days. To actually come in under budget, there is the matter of when you would like to do that."

Chair Eck said to put the archaeologist presence in perspective, are you there 100% of the time from beginning construction to ending the construction.

Mr. Winters said anytime there is ground disturbance he's on the site.

Chair Eck said it doesn't take very long to dig a trench 400 feet long. After that, you don't need to be there, because there is this *[inaudible]*. He said, "I'm trying to get a grip on how much time it actually takes."

Mr. Winters said on what was finished last week, El Camino is nowhere dug yet, so it's 5 months on the project. He said, "But it could be an hour, it could be 7 hours. I only bill for the hours that I was there, and I was only there when they were digging. Certainly, part of the problem is they would dig a 20 foot section of trench and then put a piece of pipe in, then backfill and move on. And you can't leave the site, you can't come and go. But as soon as I would see that the digging was done for the day, I was off site. I never heard... on this project, I just now heard what is scheduled for Monte Vista. And two days ago, I heard what was scheduled for the Bishop's Lodge inspection. I always felt that part of problem was that there was not a pre-construction meeting with the City, including the archaeologist, the subcontractor and myself. So a schedule could be set, whether it was adhered to or not. But this is news to me, because on one of the sub-surfaces higher up the other day, I asked him pointedly about the exceptions. And he said a month or two on Bishop's Lodge, and the other one, 4 months. I heard from you 105 days."

Mr. Ulibarri said, "I would like to clarify. We have a signed contract with him, so you may be talking to somebody on the field that we have signed contracts with that are allowing them a specific timeframe, 15 days for Lugar de Monte Vista. I think it's 30 days on Bishop's Lodge, and about 45 on Brownell-Howland. So it's 105 total days."

Mr. Winters asked if they had that on Escondido, and what was the time frame.

Mr. Ulibarri said it was about 10 days, and additional days would have required a change order.

Mr. Winters said he was out there for 5 months.

Mr. Ulibarri said there are issues that affect the schedule.

*Too many people talking here at one time to transcribe*

Mr. Winters said, "I understand that, but the difference between 105 days and 5 months is a big discrepancy."

*Too many people talking here at one time to transcribe*

Mr. Winters said the problem is he can't bid on a project like that without knowing a beginning date and end date. And the last couple of projects, whether Palace or these others, just went on forever. He said this is the first project with the Water Division that the contractor has some dates. There always are variables on a project. He has talked with Eric about discussing the issues prior to getting into the field, but this hasn't been the case.

### **Chair Eck**

Responding to the Chair, Mr. Shandler said, "I think that what's on the agenda, whether you want to reconsider monitoring for the two larger areas and some kind of survey.

Ms. Ramirez-Thomas said she is not implying that the survey would replace monitoring.

Mr. Pierce said, "I'm still not clear, what exactly the proposal is in this case. What do you propose to do in lieu of monitoring those two segments."

Ms. Ramirez-Thomas said, "The proposal with regard to Monte Vista, it has to be monitored. But in Brownell-Howland in that area there is quite a bit of soil, the very soft kind of pavement that they don't necessarily pave. So there is some of that. It's a little patch. The water main runs down the center of the road, so that's where they will be doing their work. There are large exposed cut banks above and below the road and there's quite a bit of open area and zero surveys have been done in that area. Along Bishop's Lodge Road, maybe there's not 50 feet, it's too disturbed."

Chair Eck said he wants him to point out the 50 feet, because we should keep in that mind, and not embark on surveying a two foot wide hypothetical area of potential effect.

Ms. Ramirez-Thomas said there is a small spur off Stagecoach.

Chair Eck said, having the survey done, and as a Ron said, a schedule, if he was to do this he could give us something very preliminary, and perhaps show up and explain what he's seen by the next meeting.

Mr. Winters said yes, asking if that is the meeting on May 5, 2016.

Ms. Ramirez-Thomas said yes.

Chair Eck said he is saying he can come and talk, and he may very well hear from the Committee that now we need a report, and then we get the report. And then you may very well hear from the Committee that you need to monitor the majority of it. He asked, in terms of getting the project done, it makes sense to proceed and monitor under the existing approved plan. He is perfectly willing to consider anything else, and he is sure everybody else also is willing. However, it is project timing that starts to raise it's head. If we drag this out for two months talking about it and reviewing reports, it very well could be done in half of the time we're talking about.

Mr. Ulibarri said Mr. Winters has a long term contract with the City, and they will be running out money on that contract. He said this probably is something we'll have to go back to bid. He asked if it would possible for them to start with monitoring until possibly some other means is approved, and at that point, possibly stop the monitoring. He said he doesn't want to create a precedent, which he knows is of concern.

Mr. Pierce said it seems to him that the Committee approved the monitoring plan which remains in place until we approve something else, "so I think the answer would be yes."

Mr. Pierce said he would also add that Mr. Winters, as your contractor, is free to do a survey and bring it to the Committee and argue that the survey has been done, therefore no more monitoring is required. He said there is no guarantee that the Committee would decide on that, but that is what he would recommend.

*[Mr. Funkhouser's remarks here are inaudible].* He said if you took him out there to give you a preliminary idea of what he would recommend, then you would both have a better idea of what he would recommend, and make a decision based on that, which we can't see from here.

Mr. Pierce said it all boils down to whether the Committee would concur with the evaluation that there is enough undisturbed, virgin soil out there to do an adequate survey.

Chair Eck said we rapidly are approaching a place where he would feel very uncomfortable talking about any similar projects in either the actual or the hypothetical without scheduling a time, two weeks at least, for the Committee to go see the actual area in question. He said, "Because my gut feeling and my recollection, having driven your way up that road, is that it's too disturbed, visibility is too poor to even consider going on the basis of surface survey alone. I think default position of the approved alternative of monitoring is what I would have to stick with, unless I could put my eyes on it myself. And as far as I know, this Committee has not made a field visit to any place anywhere in the last 7 years."

Ms. Monahan said we have, but she think it is a bad idea to make field visits. She said they have consultants they rely on, and you are our eyes and ears on the field and we don't need to second guess your opinion.

Mr. Ulibarri noted the City Ordinance doesn't cover Monte Vista, and it didn't meet the threshold or any of the requirements. He said they would halt construction there, and move the contracts to Bishop's Lodge Road where it might be more evident if they need full monitoring. And appeal, possibly the monitoring on Lugar de Monte Vista.

Ms. Ramirez-Thomas said this would be a reversion back to the original way the project was brought to us. So, Monte Vista was excluded, under the precedent that utility projects are viewed as project in its whole and not its parts, and we asked that they would monitor Lugar de Monte Vista. And the Water Division agreed to that. If we were looking at that as the option. She said one of the concerns expressed outside of this room, is that the inclusion of parts of project as a whole, and this a challenge that different divisions of the City are contending with. Which is the reasons for the questions about how we will move forward in the City. She said regarding Monte Vista, technically it doesn't meet the threshold for monitoring. It is under 550 feet and it's in the Rivers & Trails Historic District. She said the original report was written, and Monte Vista was not included, despite that fact that there was one overarching project budget.

Mr. Winters said we had the same issue with the City with the shade on the playground, and it became one project.

Ms. Ramirez-Thomas said the fiber project was the other project. The question is overarching.

Ms. Monahan asked if there is a motion before the Committee, and the Chair said no.

Ms. Ramirez-Thomas continued, "So overarching the question is their concern, other divisions' concerns are the bundling of project areas, which is, even linear segments that don't meet the threshold for monitoring being included into projects. And we're trying to work on this with early planning, but they haven't been budgeted."

Mr. Funkhouser said this is not a "bind them up and put them together for a project." The project must have been under a common plan initially, regardless of how they spread the space or time.

Mr. Winters said those are created by the Agency, "so not by us, but by you."



Ms. Monahan said, in terms of what we're talking about tonight, she thinks the management of the project is up to the City. You have your plans you have brought to this committee, and how you manage those interests are yours, unless you change what this Committee has approved. She said, otherwise, we're dealing with hypotheticals about what might happen as a matter of precedents or the what-ifs. The what-ifs don't count until they are here.

Ms. Ramirez-Thomas said the question that Mr. Ulibarri is asking is if they can resubmit, excluding the portion that doesn't meet the threshold.

Chair Eck asked if they have started that project already.

Mr. Ulibarri said it is 3 different streets, and the contractors would more than likely jump to another street if we asked them. He said then we basically could ask for an appeal from what we had requested originally, and just do monitoring on that street that doesn't meet the threshold, and continue what you already have approved, which is to monitor Bishop's Lodge Road.

Chair Eck said 50% of the excavation and monitoring resources have been allocated to Lugar de Monte Vista. He asked what benefit would there be to stopping that work and then going elsewhere. He said in terms of your project, it just seems like it won't help you.

Ms. Monahan said, "The management of their project is theirs. If they want to stop it and move the monitoring resources to another section and then come back and ask for something else from us in the future. That's in the future. It is not before us tonight."

Mr. Ulibarri said he was curious if it was an option, commenting he thinks it is an option.

Mr. Pierce said he agrees, "Because that's the only way we're going to get out of here tonight, but that being said, then there is no action, because they're not doing anything tonight."

**MOTION:** Tess Monahan moved, seconded by Gary Funkhouser, with respect to Case #AR-07-16, "That the discussions tonight as an advisory matter, whether to exclude Lugar de Monte Vista from the previously approved monitoring plan, and to use the monitoring approvals for Bishop's Lodge Road and Brownell-Howland Road, rather than pursue it at Lugar de Monte Vista, and this Committee makes no decision on the advisement until we have no more detailed information or a proposal from the contractors."

**DISCUSSION:** Mr. Pierce said it sounds as if you're postponing to the next meeting.

Ms. Monahan said, "Well, if there's anything to consider, but they're not knocking. We don't have anything in front of use."

Mr. Ulibarri said and as for the two large streets, it would be based on whether a survey is provided at a later date.

Ms. Monahan said it is the management of this project. She said, "I don't see how we have any say, unless you want us out there looking over your shoulder which we don't want to do."

Mr. Pierce said that really isn't the question.

Ms. Ramirez-Thomas said, "For clarification, currently the project will proceed as approved in the last meeting, and if any other modifications are going to be asked for approval from this Committee, then it will be brought before you at the next meeting or a future meeting. Is that correct."

**CLARIFICATION:** Ms. Helberg asked if this is the motion.

**CLARIFICATION OF THE MOTION:** Mr. Pierce said it seems to him the motion is that we take no action. Ms. Monahan said yes, there is no action. Ms. Helberg suggested that is the way it should be stated.

Mr. Shandler said, "I would actually advise you to postpone it, and the reason is the fact that you are not taking final action, nor did you take a final action before. If it is appealed to the City Council, you can make an argument that you can only appeal a final decision. And this is being postponed until you get more information.

**RESTATEMENT OF THE MOTION:** Tess Monahan moved, seconded by Derek Pierce, with respect to Case #AR-07-16, that the Archaeological Review Committee postpone any decision until we get more information.

Mr. Winters said to help the Committee, he would recommend to Mr. Ulibarri that he can survey the upper areas and get a letter report with preliminary findings to Ms. Ramirez-Thomas so you can have that information.

Ms. Ramirez-Thomas said, "No. I think that letting it be as it is."

Mr. Winters said, "So it's monitor the whole thing."

Mr. Shandler said, "That's what the status quo is right now, monitor all 3 parts, so the Water Division can do some budget calculations. And even if you got the survey, that's more time. There is more uncertainty as to whether you might have to monitor as well. So this is an emergency. What's the risk. It will cost us more money in the end to survey more times. Is Ron coming in under budget already for similar projects. And then, how much would it cost to pay Ron to do the

survey, and the survey will be coming back. So I think a couple of moving parts... you guys have to figure out, and they may turn out that you don't get to come back, or they turn out that you want to come back with a certain plan based on more information."

Mr. Funkhouser said the difference between what is a necessary project and what is an emergency, is that an emergency is something that needs to be done immediately, now, all within its entirety and that can be dealt with as a separate issue. A necessary important project if it's still spread out over time, that's not necessarily an emergency."

Mr. Pierce said as we address the Code, we probably need to make that distinction, because it does make sense to give exemptions for emergencies.

*Too many people talking at the same time here to transcribe*

Mr. Ulibarri said before they could consider a survey only on the two longer streets, we would have a survey in hand to have it be looked at.

Mr. Pierce said we meet in two weeks, and Mr. Winters could come, as a matter from the floor or wherever appropriate, and state the conditions he saw on the ground, and whether the Committee has any advice on what would be appropriate. He said that isn't the same as preparing a survey report.

Mr. Winters reiterated his offer to do a survey with letter report, saying it would be part of the whole project report, but it wouldn't be a separate report.

Mr. Pierce said Mr. Winters could recommend that a survey was appropriate, do the survey and find nothing, bring that to the Committee and we could disagree, and then we're back to square one.

Mr. Winters said then the monitoring would occur as proposed initially.

Mr. Shandler said, "I think it's something you and the team have to think about. Is it going to cost \$5,000 for you to do that and if it costs you \$4,000 to do the monitoring, maybe you would say we don't need this survey. You guys probably need to go back and put pencil to paper, and figure out what, where you want to go, budget dollars and come back to the Committee."

Mr. Winters said he wasn't so concerned about that, if this is information the Committee would want to know, "however they rule."

Ms. Ramirez-Thomas said what we're deciding is there will be discussion and if there is something other than the proposed and approved monitoring plan, then you will come talk to the Committee. So the discussion has to happen outside of here.

**VOTE:** The motion was approved unanimously on a voice vote.

Chair Eck and the member of the Board thanked Mr. Winters and Mr. Ulibarri for bringing this forward, and said this is a subject that this Board really did need to discuss.

## **G. DISCUSSION ITEMS**

### **2. DISCUSSION OF THE SANTA FE ARCHAEOLOGICAL REVIEW DISTRICTS OVERLAY ZONING ORDINANCE DRAFT (SECTION 14-3.13).**

A copy of a document for discussion purposes, regarding the Historic Downtown Archaeological Review District, entered for the record by Zachary Shandler, is incorporated herewith to these minutes as Exhibit "2."

A copy of *The Santa Fe Archaeological Review Districts Overlay Zoning Ordinance Draft* (Sections 14-2.7 and 14-3.13, prepared by Zachary Shandler, Assistant City Attorney, is incorporated herewith to these minutes as Exhibit "3."

Mr. Shandler said, "Now applying the pain we just suffered and to try to put it into the Code to make it clear for everyone. This is thinking outside the box a little bit, some suggestions from David."

Mr. Shandler reviewed the proposed changes set out on page 1, in Exhibit "2." Please see Exhibit "2" for the specifics of this presentation. He said this is form based, moving away from numbers.

Mr. Shandler reviewed the proposed changes set out on page 2, in Exhibit "2." Please see Exhibit "2" for specifics of this presentation.

Mr. Shandler said the goal of these changes is to avoid what happened today and put it into positive language. He said he isn't asking the Committee to give him answers today. He said the members can study the proposed changes and discuss those at the next meeting.

Mr. Funkhouser asked if we can do like the State does and have limited testing under surveys so that some exploration of subsurface could be done.

Chair Eck said yes, but if it is above a certain threshold, it requires review and approval by the CPRC, and is subject to review and approval by the Agency and the SHPO staff.

Mr. Pierce asked the reason you don't do shovel testing to clear a utility corridor. He said most of what comes before this Committee is archaeology in immediate proximity to live lines, and it just doesn't work.

Chair Eck said doing a shovel test on disturbed soil is a waste of time.

Mr. Pierce said you have to go down to sterile every time, which means getting deep and hitting lines.

Chair Eck said it is high danger.

Mr. Pierce said he knows we are going to discuss this later, but what jumped out at him immediately was the idea of monitoring all projects at the *[inaudible]* preference. He said, "I don't like it. Monitoring is a last resort when a survey won't clear things, because monitoring is inherently destructive. You don't see something until you've already whacked it. That was a non-starter to me."

Mr. Funkhouser said we're doing the things that are disturbing the grounds anyway.

Mr. Pierce said, "Monitoring the construction of an entire parking lot, rather than just doing a survey, no."

Chair Eck said currently in the Downtown, there is also the 2% test which is inherently destructive, commenting he has always felt uneasy about that and it's what we do. And technically under the State regulations every one of those should have a testing plan approved by the CPRC, using mechanical equipment to investigate archaeology.

Ms. Ramirez-Thomas said another challenge is that we have discussions about reconnaissance and as treatment. We aren't clear what is considered treatment, and it has been a challenge for people to know which to do.

Chair Eck said one explanation is when a survey was conducted and covers the project area that is greater than 20 years old and a new survey cannot be performed, that's a whole bunch of if's.

Ms. Monahan asked why we are having this discussion now.

Chair Eck said he needs to understand this before he can read it and think about it for discussion.

Ms. Ramirez-Thomas said, "The thought behind that is, well if it's not a private parcel that was surveyed in the 1990's, there was this cultural easement designated. The property has been severely neglected over the past 20 years, and it would be good to have a new survey conducted to understand what has been able to be retained in regard to cultural material on the site, especially if the boundaries changed. I'm thinking of Section 110 is where this is coming from, a federal survey that didn't really exist now with restructuring from the Department of Defense. But there was a requirement to do part of a cultural resource management plan, to do a survey every 15 years in order to determine if the site has been sustained, if they've changed, if they've been destroyed, and if the boundaries have changed and such."

Mr. Pierce said he certainly appreciates the idea that surveys should expire after a certain period of time and are no longer valid. However, that's not how the Ordinance reads. We clear parcels in perpetuity. He said, "Just be aware that you are asking for a significant departure from that, and I would expect some resistance."

Ms. Ramirez-Thomas said one of the questions in the Memo is what are we considering in print.

Ms. Monahan said she has heard people say that was cleared within the last 10 years by "so and so, and you know he's terrible. We've got to do it again." She said we can't do that.

Chair Eck said he has heard those very words in this very room.

Ms. Monahan said she really appreciates those who have worked on the Ordinance, because it is so much better. She said the consistency in the language and terms is phenomenal. It makes it so clear, and she likes the consistent use of words that mean the same thing.

Ms. Monahan asked if we have a cosponsor.

Chair Eck said no, he hasn't received a response.

*Mr. Shandler departed the meeting*

Ms. Ramirez-Thomas said we discussed human burials at the last meeting. She said she spoke with Michelle and included the letter referenced by Mr. Shandler. She said we basically need to write a section that says we defer to the State regarding human burials and to be very clear about what that process entails. She said is planning to do that rewrite.

Ms. Ramirez-Thomas said she had suggested we recite NMAC 4.10.10.10 and in discussions with Ms. Ensey, she said it is better to be more general, so the better citation reference in that section would be NMSA.

#### **H. MATTERS FROM THE COMMITTEE**

There were no Matters from the Committee.

#### **I. ADMINISTRATIVE MATTERS AND COMMUNICATIONS**

##### **1. Reminder to submit a letter of interest to renew term.**

Chair Eck asked if everyone has submitted their letters of interest.

Mr. Pierce said he hasn't, but will get that done.

Ms. Monahan said the last time the appointments were made, the terms were for two years, but were staggered. She said her term will expire in June 2016.

Ms. Monahan said there should be something in writing where Lisa Roach confirmed we had all been reappointed, and it would be reflected in the minutes of that meeting.

Ms. Ramirez-Thomas said the City Clerk's Office shows the terms of all members of the Committee as having expired.

##### **2. Nominations for the 2016 Heritage Preservation Awards.**


Ms. Ramirez-Thomas said the Committee will have to make a decision at its next meeting with regard to nominations and who will be receiving awards.

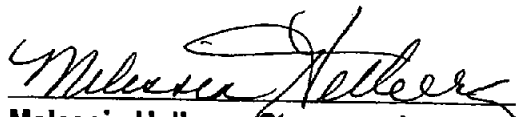
#### **I. ADJOURNMENT**

There was no further business to come before the Committee.

**MOTION:** Gary Funkhouser moved, seconded by Tess Monahan, to adjourn the meeting.

**VOTE:** The motion was approved unanimously on a voice vote, and the Committee was adjourned at approximately 6:05 p.m.

  
David Eck, Chair 04 April 2019

  
Melessia Helberg, Stenographer



# City of Santa Fe, New Mexico

## memo

DATE: April 21, 2016

TO: Archaeological Review Committee

VIA: David Rasch, Supervising Planner, Historic Preservation Division DR

FROM: Nicole A. Ramirez Thomas, Senior Planner, Historic Preservation Division NART

RE: Case #AR-07-16 Bishop's Lodge, Brownell Howland and Terral Roads, Suburban and Rivers and Trails Archaeological Review District. City of Santa Fe, owner, requests and amendment of approval for alternative means of compliance for An Archaeological Monitoring Plan for the Proposed, City of Santa Fe Water Main Replacement Project on Bishop's Lodge Road between Stagecoach Drive and Hillcrest Drive, Brownell-Howland and Terral Road, and Lugar de Monte Vista, Santa Fe, New Mexico.

### Introduction

This memo is written in an effort to address concerns expressed by City of Santa Fe Public Water Division regarding the inclusion of a portion of a proposed project which was excluded during the scope due to the threshold for utilities in the Rivers and Trails Archaeological Review District 14-3.13(4).

Some overarching considerations regarding this case and others include:

1. Interpretation of the current City of Santa Fe code and changes that may occur during the rewrite of the code. How can a discussion about this project help us develop a trajectory regarding linear utility projects within the City's archaeological review districts?
2. Appropriate strategies for conducting archaeological work in the diverse areas of Santa Fe.
3. An evaluation of thresholds of archaeological investigations per the current ordinance. How do we manage archaeological resources when the probabilities of resources are high in a particular area but the ordinance does not provide an opportunity for investigation?
4. Considerations of linear feet and acreage in regard to how they structure a project.
5. Archaeological work in areas where utility lines are being replaced or added to existing utility trenches.
6. How do we want to structure our standards for archaeological clearance?

Exhibit "1"

## **Purpose**

The report in question was approved April 7, 2016, by the Archaeological Review Committee (ARC), and at that time an additional section of the overall project along Lugar de Monte Vista, which was previously excluded from the project, was approved for inclusion. Inclusion of this section of the project was approved due to previous precedents sent in other cases that have come before the ARC (AR-22-14; AR-22-15).

The name of the report currently being discussed is by Ron Winters and is titled, *An Archaeological Monitoring Plan for the Proposed, City of Santa Fe Water Main Replacement Project on Bishop's Lodge Road between Stagecoach Drive and Hillcrest Drive, Brownell-Howland and Terral Road, and Lugar de Monte Vista, Santa Fe, New Mexico* (AR-07-16). Discussions between City of Santa Fe Historic Preservation Planning (HPD) staff, City of Santa Fe Water Division staff, and City of Santa Fe Attorney's office have resulted in the construction of a request for an amendment to the report and an adoption of alternative means of compliance from what was previously proposed. We ask that the ARC consider our statements and the request for revision which is described in detail below. The request is brought before the ARC in an effort to improve current practice regarding archaeological resource management within the City of Santa Fe and to seize an opportunity to improve communication and understanding between various arms of the City.

## **Description of Project History**

The project proposes to replace existing water main in three different locations around the city.

1. 410 linear feet of water main will be replaced along Lugar de Monte Vista. The proposed replacement will occur mostly along the west side of the street.. This section of the road was initially excluded because 14-3.13(4). After a monitoring plan was proposed for other portions of the project City of Santa Fe HPD staff asked the City of Santa Fe Water Division to include Lugar de Monte Vista due to the fact that the highest probability of finding archaeological material lay within this portion of the project and the fact that two previous cases that came before the ARC considered the acreage and linear feet of projects in their entirety rather than consider the impacts of their parts. The City of Santa Fe Water Division staff agreed to include the segment and contacted the archaeologist hired for the project, Ron Winters, to adjust the report to include Lugar de Monte Vista. During the April 7, 2016, ARC meeting the ARC agreed to approve the inclusion of Lugar de Monte Vista in the proposed monitoring plan upon the suggestion of City of Santa Fe HPD staff and agreement from the archaeological contractor.
2. 1180 linear feet of existing water main will be replaced along the west shoulder of the road between the southernmost portion of Stagecoach Drive and the Hillcrest Drive/Stagecoach Road. A small portion, 270 linear feet, on Stagecoach Drive at the intersection of Bishop's Lodge Road is also included in this segment of the project. Due to the length of work being done along this section of the project which is within the Suburban Archaeological Review District, archaeological monitoring was requested in order to comply with 14-3.13(4).
3. 1245 linear feet of existing water main will be replaced along the center of Brownell Howland Road to the intersection of a private drive that continues to the east and a private road also labeled Brownell Howland that extends south. 615 linear feet of Terral Road, a road that extend south from Brownell Howland Road, will have water main replaced as well. Due to the length of work

being done along within this section of the project which is within the Suburban Archaeological Review District, archaeological monitoring was requested in order to comply with 14-3.13(4).

### **Currently Approved Monitoring Plan**

The currently approved monitoring plan will monitor the entire length of each segment of the water main replacement project. Background research was conducted by the archaeologist for each segment of the project using the New Mexico Cultural Resource Information System (NMCRIS). The search was conducted for an area within 500 meters of each project segment. Please refer to the report for details regarding the research. Monitoring for archaeological material was the request made by the City of Santa Fe Water Division and monitoring for the placement or replacement of utility projects is the standard manner of management for archaeological resources within the City.

The challenge this methodology presents for City of Santa Fe HPD staff is that as a general rule survey and inventory are the preferred method of clearing project areas, and monitoring is an activity that occurs in the event that a known resource, or dense resource area, needs to be protected by visual inspection while project work is in progress. Survey provides the opportunity to assess, visually, the project area and provides the opportunity to find previously unrecorded resources. It also allows the archaeologist to properly record new resources, update known resources, evaluate the significance of the resource(s), and if necessary, conduct limited testing. While monitoring is necessary in urban areas where pavement and concrete cover natural soils, in areas where natural soils exist survey and inventory should be conducted to determine if culture resources exist or are likely to exist in the project area.

### **Request for Amendment to the Methodology**

It is the recommendation of City of Santa Fe HPD staff that the areas of this project where natural soils exist be surveyed as a right-of-way survey rather than have all activities within this area of the project monitored. Should archaeological resources be found during the survey then a monitoring plan targeting areas of concern should be proposed for consideration.

The following is put forth for your consideration:

1. Monitoring along Lugar de Monte Vista. City of Santa Fe HPD staff feels it is necessary and should remain as previously approved due to the high probability of encountering archaeological material, the proximity to the Downtown Archaeological Review District, and the fact that the entire surface of this part of the project area is covered with pavement or concrete. City of Santa Fe HPD staff through our files determined no previous archaeological clearance has been given to this area.
2. The areas of the project located along Bishop's Lodge Road, including Stagecoach Drive, Brownell Howland Road, and Terral Road, should be cleared using pedestrian survey unless specific areas are identified as sensitive for archaeological resources. Currently, this area of the project has not been surveyed as a check of both City of Santa Fe files and the NMCRIS database indicate.

### **Conclusion**

It is the request of City of Santa Fe staff, both from Land Use and Public Works, that the overarching implication of monitoring versus surveying, needs within districts, and thresholds for investigation not currently provided for in the ordinance be considered by the ARC. This case is immediate; however it also looks to address broader concerns regarding best practices and approaches to protecting archaeological resources and creating greater continuity in practice between the Land Use Department and other departments within the City.

FOR DISCUSSION PURPOSES Part 1 of 2

Historic Downtown Archaeological Review District

In this district, an archaeological clearance *permit* shall be required

(b) The requested activity will involve any utility installation, including planned or emergency installation for new or existing utility line of sixty (60) feet or more.

Suburban & River and Trails Archaeological Review District

In this district, an archaeological clearance *permit* shall be required

(b) The requested activity will involve utility installation, including planned or emergency installation for new or existing utility line of five hundred and fifty (550) feet or more and Land Use Department staff shall determine at least two of the following factors is present:

- (i) an Archaeological Investigation cannot be conducted due to coverage of natural soils;
- (ii) pre-field research indicates a high probability of archaeological resources in or near (within 100 meters or less) of the project area;
- (iii) a known "significant" resource is located in or near the project area;
- (iv) a known significant resources exists near the project area and complete site boundaries have not been established for the site;  
or
- (v) when a survey was conducted and covers the project area but the survey is greater than 20 years old and a new survey cannot be performed.

*Exhibit "2"*

**(D) Procedures for Utility Projects or Alternative Means of Compliance**

**(1) Pre-Application Conference**

Prior to submission of any *application* for an archaeological clearance *permit*, an *applicant* shall request a *pre-application* conference, to be conducted pursuant to Section 14-3.1(E).

**(2) Requests for Archaeological Monitoring. ~~The Committee must approve the Monitoring Plan prior to the commencement of ground disturbing activities by the private sector, the City or City contractors.~~ An Archaeological Monitoring process occurs when:**

(i) An applicant who needs an Archaeological Clearance Permit for utility project or utility installation in the **Downtown Archaeological Historic District**.

(ii) An applicant who needs an Archaeological Clearance Permit for utility project or utility installations in the **River and Trails or Suburban Districts** would prefer like to submit a Monitoring Plan as opposed to an **Archaeological Investigation Inventory Report**;

(iii) An applicant who needs an Archaeological Clearance Permit for any type of project, but would like to submit a Monitoring Plan as opposed to an **Archaeological Investigation Inventory Report** as a form of alternative means of compliance.

(iv) Land Use Department staff shall determine at least two of the following factors is present:

(i) **an Archaeological Investigation cannot be conducted due to coverage of natural soils;**

(ii) **pre-field research indicates a high probability of archaeological resources in or near (within 100 meters or less) of the project area;**

(iii) **a known “significant” resource is located in or near the project area;**

(iv) **a known significant resources exists near the project area and complete site boundaries have not been established for the site; or**

(v) **when a survey was conducted and covers the project area but the survey is greater than 20 years old and a new survey cannot be performed.**

**(3) Monitoring shall result in archaeological clearance for the shape of the segment that is disturbed, but shall not result in archaeological clearance of the entire right-of-way, roadway or parcel.**

**(4) Procedures for Monitoring Plan**

(i) **The Committee must approve the Monitoring Plan prior to the commencement of ground disturbing activities by the private sector, the City or City contractors.**

(ii) The applicant shall hire an archaeologist to complete a Monitoring Plan and Report. The archaeologist shall be “City Certified” under Subsection 14-2.7(E) and shall meet the professional qualifications set forth by the State Historic Preservation Division and City requirements if

**The Santa Fe  
Archaeological  
Review Districts  
Overlay Zoning  
Ordinance Draft  
(Sections 14-2.7 and 14-3.13)**

*Exhibit "B"*

**CITY OF SANTA FE, NEW MEXICO**

**BILL NO. 2016-\_\_**

**INTRODUCED BY:**

**AN ORDINANCE**

**AMENDING SUBSECTION 12-2.7 TO CLARIFY QUALIFICATIONS OF  
ARCHAEOLOGISTS, HISTORICAL ARCHAEOLOGISTS, HISTORIANS; AMENDING  
SUBSECTION 14-3.13 TO PROVIDE A "PURPOSE" SECTION; TO CLARIFY THE  
APPLICABILITY OF AN ARCHAEOLOGICAL CLEARANCE PERMIT; TO CLARIFY  
THE PERMIT PROCEDURES FOR PROJECTS; TO REPLACE THE TERM  
"RECONNAISSANCE REPORT" WITH "INVENTORY REPORT"; TO CLARIFY THE  
PERMIT PROCEDURES FOR UTILITY PROJECTS; TO REQUIRE ARCHAEOLOGICAL  
WORK TO BE DONE CONSISTENT WITH STATE ADMINISTRATIVE CODE  
REQUIREMENTS; TO STREAMLINE CODE PROVISIONS AND ELIMINATE  
DUPLICATIVE LANGUAGE; AND AMENDING SUBSECTION 14-5.3 TO CLARIFY  
WHEN ACTIONS ARE FORWARDED TO THE STATE HISTORIC PRESERVATION  
OFFICE.**



14-2.7 ARCHAEOLOGICAL REVIEW COMMITTEE

(A) Designation

There shall be an archaeological review committee of the *city*, which shall be referred to as the "archaeological review committee" or the "ARC".

(B) Delegation

The *governing body* and the planning commission hereby delegate their authority, as set forth generally in Chapter 3, Articles 19 through 21 NMSA 1978, to the ARC as described in this section, except for those powers retained by the *governing body* and the planning commission in the Santa Fe City Code.

(C) Powers and Duties

(1) The ARC shall meet at least once a month, unless there are no agenda items, and at such other times as the chair may determine. The ARC shall have the review and decision-making responsibilities set forth in Table 14-2.1-1, to be carried out in accordance with the terms of Chapter 14. In addition, the ARC shall:

(a) in accordance with Section 14-3.13, hold hearings to review ~~reconnaissance~~-inventory or monitoring reports, the recommended *significance* status of *archaeological sites*, the recommended treatment plan of *cultural remains* and final reports. The ARC may review and act on stages or portions of on-going archaeological studies. The ARC shall vote to approve, conditionally approve or disapprove requests for archaeological clearance *permits*;

(b) qualify or disqualify persons for inclusion on the *city's* list of approved archaeologists, historical archaeologists and historians upon review of resumes and related documents as set forth in this

section;

- (c) establish a *city* register of recognized *archaeological sites* and shall establish criteria for such a register; and
- (d) hear appeals of *final actions* of the *land use director* interpreting or applying archaeological review district regulations pursuant to Section 14-5.3.

(2) The ARC may:

- (a) advise the HDRB in regard to *applications* to that board for new construction, exterior *alteration*, demolition or on other matters relating to archaeology within the historic districts;
- (b) direct *applicants* to the *state* historic preservation division for information regarding *state* or federal law and regulations on the tax benefits of donating archaeological *properties* or easements;
- (c) recommend to the *governing body* that land containing *archaeological sites* of major interest to the *city* be purchased as part of the *city's* parks, recreation and *open space* system; and
- (d) recommend the expenditure of money from the *city* archaeological fund for projects meeting the criteria for archaeological fund projects set forth in Section 14-3.13 (Archaeological Permits). Expenditures of one thousand dollars (\$1,000) or less may be approved by the *land use director*. Expenditures over one thousand dollars (\$1,000) must be approved by the *governing body*.

- (3) When both a HDRB and an ARC review are required of a single project, the reviews may occur at the same time.

1           **(D)    Membership and Procedures**

2                   (1)    Composition

3                           The ARC consists of five members. One member shall be a historian, three  
4                           members shall be archaeologists or historical archaeologists and one member  
5                           shall be a representative of the construction, *development* or real estate  
6                           community.

7                   (2)    Appointment and Term

8                           The mayor, with the consent of the *governing body*, shall appoint each  
9                           member of the ARC. Members of the ARC serve two-year overlapping  
10                          terms, maintaining the original overlap of ARC terms. Members serve until  
11                          their successors have been appointed and qualified.

12           **(E)    Qualifications for ARC Members; Qualifications for Archaeologists, Historical**  
13           **Archaeologists and Historians; City Certified**

14                   (1)    ARC Members

15                           All archaeologists, historical archaeologists and historians appointed as ARC  
16                           members shall meet the qualifications set forth in this section.

17                   (2)    Archaeologists

18                           All archaeologists in actual direct charge of archaeological inventory or  
19                           monitoring ~~*reconnaissance*~~ or treatment required for an archaeological  
20                           *permit* shall meet the following minimum qualifications, as provided in a  
21                           resume or by other means:

- 22                           (a)    hold a master's degree in archaeology, anthropology or a closely  
23                                   related field with a specialization in archaeology or have equivalent  
24                                   training or field experience the sufficiency of which is determined by  
25                                   the ARC;

(b) have at least two years' experience in directing archaeology projects, including at least six months of field experience in the southwestern United States; and

(c) be listed in the *state* historic preservation division directory of archaeologists as a principal investigator or supervisory archaeologist. This requirement shall not apply to archaeologists who are currently on the *city's* list of approved archaeologists as of the effective date of Ordinance No. 2007-9 (April 23, 2007) or to archaeologists appointed as members of the ARC and;

(d) hold a current New Mexico state burial excavation permit for any location where human remains of historic age are found.

(3) Historical Archaeologists

All historical archaeologists in actual direct charge of *excavation* of historic period sites shall:

(a) meet the minimum qualifications for an archaeologist set forth in Subsection 14-2.7(E)(2);

(b) have a minimum of one year of experience in directing historical archaeology projects or equivalent training or field experience the sufficiency of which is determined by the ARC;

(c) have demonstrated experience in the historic downtown archaeological review district; and

(d) hold a current New Mexico *state* burial excavation *permit* for any location where human remains of historic age are found. (Ord. No. 2012-11 § 2)

(4) Historians

1 All historians in actual direct charge of *archival research* and analyses of  
2 land titles or historic maps shall meet the following minimum qualifications:

3 (a) hold a master's degree in history or have equivalent professional  
4 experience or demonstrate equivalent training, the sufficiency of  
5 which is determined by the ARC; and

6 (b) demonstrate the ability to carry out *archival research*.

7 (5) Waiver of Qualifications

8 Qualifications for archaeologists ~~and historical archaeologists and historians~~  
9 may be waived by the ARC in its discretion for good cause shown.

10 (6) List of Qualified Individuals

11 Archaeologists, historical archaeologists and historians qualified by the ARC  
12 as meeting the qualifications provided in this section and those qualifications  
13 set forth by the State Historic Preservation Division shall be placed on a list  
14 maintained by the *land use director*. Guidelines for documenting applicable  
15 experience and education for meeting the requirements of this section are as  
16 follows; available from the land use director. ~~Archaeologists, historical~~  
17 ~~archaeologists and historians who wish to remain on the list shall provide a~~  
18 ~~current resume and related documents upon request of the land use director.~~

19 (a) Archaeologists, historical archaeologists or historians who wish  
20 to be included on the City's list of qualified individuals must  
21 provide the following items to City staff for review and approval  
22 by the Archaeological Review Committee:

23 (i) a current curriculum vitae, including names and  
24 contact information of supervisory personnel  
25 and/or clients familiar with their job

performance for all employment listed on the

curriculum vitae;

(ii) proof of education, including transcripts,

certified copies of degrees or training

certificates, or other evidence acceptable to the

Committee;

(iii) a table or chart summarizing in terms of days,

months or years, all professional experience

conducting archaeological and/or historical

investigations in the Historic Downtown

Archaeological Review District; and

(iv) certified copies of all current archaeological

permits.

(b) Archaeologists, historical archaeologists or historians who wish

to remain on the City's list of qualified individuals must provide a

current vitae to City staff on an annual basis, in lieu of submitting an

updated vitae with every report submittal.

(7) Standards

(a) Archaeologists, historical archaeologists and historians are responsible for reports and performance that exhibit a high standard of professionalism and competence, including the following standards:

(i) any inventory and monitoring ~~reconnaissance~~

reports, treatment plans and final reports that are accepted by

1 the ARC with minor typographical, formatting or content  
2 errors and upon which an archaeological clearance *permit* is  
3 approved shall be returned with corrections to the *land use*  
4 *director* within forty-five days of the date the *permit* was  
5 approved. Failure to fulfill this requirement shall result in  
6 refusal by the *land use director* of any new *application* for  
7 an archaeological clearance *permit* until a corrected report  
8 has been submitted;

9 (ii) ~~*reconnaissance*~~ inventory and monitoring reports,  
10 treatment plans and final reports that are not approved by the  
11 ARC and resubmitted to the *land use director* without the  
12 necessary corrections shall be rejected by the *land use*  
13 *director* and no new *application* for an archaeological  
14 clearance *permit* shall be accepted by the *land use director*  
15 until a corrected report has been accepted and an  
16 archaeological clearance *permit* has been approved by the  
17 ARC;

18 (iv) (iii) rejection of three or more inventory and monitoring  
19 ~~*reconnaissance*~~-reports, treatment plans or final reports in a  
20 twelve-month period may result in the ARC removing the  
21 archaeologist, historical archaeologist or historian from the  
22 list of qualified archaeologists, historical archaeologists and  
23 historians for twelve months; and

24 (v) failure to submit a final report within the one-year time limit,  
25 or any extension of time provided by the ARC as set forth in

Section 14-3.13, may result in the ARC removing the archaeologist, historical archaeologist or historian from the list of qualified archaeologists, historical archaeologists and historians; and

- (vi) if an archaeologist, historical archaeologist or historian is removed from the City's list of approved archaeologists, historical archaeologists and historians, the consultant may re-apply to the Archaeological Review Committee for inclusion on the City's list of approved consultants after previous obligations have been met.

- (b) The *land use director* shall notify the following, in writing, of the actions taken in Subsection 14-2.7(E)(7)(a):

- (vii) (i) the state historic preservation officer;  
(viii) (ii) the affected archaeologist, historical archaeologist or historian; and  
(ix) (iii) the property owner and the applicant.

- (c) The affected archaeologist, historical archaeologist or historian may submit a written appeal to the ARC of the *final actions* taken by the *land use director* in Subsection 14-2.7(E)(7)(a).

- (d) Decisions of the ARC may be appealed to the *governing body* as set forth in Section 14-3.17.

#### 14-3.13 ARCHAEOLOGICAL CLEARANCE PERMITS

##### (A) Purpose and Intent

(1) The City of Santa Fe created Archaeological Clearance Permits for the purpose of



1 preserving Santa Fe's valuable archaeological resources, providing the means for  
2 identifying sites and mitigating any adverse effects of development. These  
3 requirements pertain to both private and public development activities and are in  
4 addition to pertinent State and Federal requirements.

5 (2) The purpose of the permitting process is to:

6 (a) recognize the value of archaeological resources from all periods of history  
7 and prehistory, including prehistoric Native American settlements, Spanish  
8 colonization and settlement and the settlement and developments under  
9 Mexican and American governments;

10 (b) provide the means for identifying archaeological sites by requiring  
11 surveys and test excavations, depending on the district, through the  
12 development review and construction permit process;

13 (c) provide the means by which archaeological sites may be evaluated for  
14 their potential contribution to cultural, educational, historic, economic and  
15 scientific concerns;

16 (d) establish a procedure for treatment of archaeological resources on private  
17 and public land, thereby mitigating the information loss from the sometimes  
18 unavoidable destruction of archaeological resources and providing for the  
19 treatment of those resources that can be preserved; and

20 (e) provide methods for the emergency treatment of archaeological resources  
21 found through unexpected discovery.

22 (3) Three archaeological review districts are established to be known as the Historic  
23 Downtown, the River and Trails, and the Suburban Archaeological Review Districts.  
24 The boundaries of these districts are established as set forth in Section 14-5.3(C).

1 (B) Applicability

2 (1) An applicant submitting a request for following permits may also need to submit  
3 a request for an Archaeological Clearance Permit subject to Subsections 14-3.13  
4 (B)(3)-(5) or Subsection 14-3.13(E)(1):

5 \_\_\_\_\_ (a) Building permit;

6 \_\_\_\_\_ (b) Grading permit;

7 \_\_\_\_\_ (c) Excavation permit; or

8 \_\_\_\_\_ (d) Secondary permit.

9 (2) City staff or its contractors conducting activities on City-owned property may  
10 also need to submit a request for an Archaeological Clearance Permit subject to  
11 Subsections 14-3.13 (B)(3)-(5) or Subsection 14-3.13(E)(1), except as provided for  
12 under Subsection 14-3.13(D)(4).

13 (4) (3) Historic Downtown Archaeological Review District

14 In this district, an archaeological clearance *permit* shall be required:

15 (a) The requested activity will involve ground disturbance of more than  
16 ~~Prior to issuance of a *building permit* for projects with gross lot coverage of two~~  
17 ~~thousand five hundred (2,500) square feet or more involving new construction,~~  
18 ~~parking lots and/or alterations.~~

19 (b) The requested activity will involve utility installation of sixty (60)  
20 feet or more. ~~Prior to issuance of a *grading permit* for projects with two thousand~~  
21 ~~five hundred (2,500) square feet or more in gross lot coverage.~~

22 (c) ~~For all city projects over two thousand five hundred (2,500) square~~  
23 ~~feet in gross lot coverage.~~

24 (d) ~~For alterations, if the ground is dug up, graded, or otherwise~~  
25 ~~disturbed.~~

(c) No archaeological clearance *permit* is required for a demolition *permit* except as follows: For demolition requests for *structures* which are more than seventy-five years old and which are part of a project requiring an archaeological clearance *permit*, staff for the Archaeological Review Committee shall issue a report to the historic districts review board as set forth in Section 14-3.14. The report shall state whether demolition will damage possible archaeological ~~resources~~ *artifacts*. If the Board determines that damage may occur, then it may refer the case to the Archaeological Review Committee requesting that requirements for an archaeological clearance *permit* be met before a demolition *permit* is issued.

~~(2)~~ (4) River and Trails Archaeological Review District

In this district, an archaeological clearance *permit* shall be required: ~~prior to approval of the final development plan or plat for the following projects:~~

(a) The requested activity will be done in conjunction with a subdivision application or rezoning application, which involves a lot that is All annexations, rezonings, subdivisions, planned unit developments, or other development requiring approval by the Planning Commission, having over two acres, or having any part lying within the area identified as the Santa Fe Trail.

(b) The requested activity will involve utility installation of five hundred and fifty (550) feet or more.

~~(b) — All city projects over two (2) acres in size.~~

~~(c) — All city park projects over one (1) acre in size.~~

~~(3)~~ (5) Suburban Archaeological Review District

In this district, an archaeological clearance *permit* shall be required: ~~prior to approval of the final development plan or plat for the following projects:~~

(a) The requested activity will be done in conjunction with a subdivision application or rezoning application, which involves a lot that is All annexations, rezonings, subdivisions, planned unit developments, or other development requiring approval by the Planning Commission, having over ten (10) acres.

(b) The activity requested will involve utility installation of five hundred and fifty (550) feet or more.

~~(b) All city projects over two (2) acres in size.~~

~~(c) All city park projects over one (1) acre in size.~~

~~(4) Utility Mains~~

~~An archaeological clearance permit is required for new construction of sewer mains or main lines of other utilities such as telephone lines, gas lines, and fiber optics, including the entire construction easement:~~

~~(a) With an extension of sixty (60) feet or more if the main is in the historic downtown archaeological review district;~~

~~(b) With an extension of five hundred fifty (550) or more if the main is in the river and trails or suburban archaeological review district.~~

~~(6) (5) Exemptions~~

(a) A City Project on a parcel that is under two (2) acres in size in the Rivers and Trails or the Suburban Archaeological Review District.

(b) A City Park Project on a parcel that is under one (1) acre in size in the Rivers and Trails or the Suburban Archaeological Review District. This exemption does not apply to a City Park Project on multiple parcels whose sum is over one (1) acre in size in the Rivers and Trails or the Suburban Archaeological Review District.

1            ~~(c)~~ (a) *Applicants* who are requesting archaeological approval from federal  
2            agencies are exempted from requirements of the Archaeological  
3            Review Districts Ordinance, except that *applicants* must submit  
4            evidence to *city* staff of the *application* to the federal agency. In  
5            addition the applicant shall submit to *city* staff the inventory or  
6            monitoring ~~*reconnaissance*~~ report and other reports made to the  
7            federal agencies.

8            ~~(b) — Applicants requesting a lot split subdivision are exempted from the~~  
9            ~~requirement of archaeological review districts and for archaeological~~  
10           ~~clearance permits.~~

11           (d) (e) In the river and trails or suburban districts, *applicants* with  
12           inheritance transfer *subdivisions* are also exempted.

13           (e) (d) *Applicants* whose land is in areas where archaeological inventory or  
14           monitoring report ~~*reconnaissance*~~, *excavation*, or other treatment has  
15           previously been completed, are exempted from the inventory or  
16           monitoring report ~~*reconnaissance*~~, *excavation*, or other treatment as  
17           required, upon submitting evidence for such work to *city* staff. ~~An~~  
18           ~~exemption from any one requirement for a clearance permit does not~~  
19           ~~exempt the applicant from other requirements of the Archaeological~~  
20           ~~Review Districts Ordinance.~~

21           (f) (e) In the historic downtown district, no clearance *permit* is required for  
22           projects for which a construction *permit application* was made  
23           before September 30, 1987. In the river and trails and suburban  
24           districts, no clearance *permit* is required for projects for which  
25           *application* has been made for review by the Planning Commission

before September 30, 1987. (Ord. No. 2012-11 § 7)

(7) (6) Environmental Assessments or Impact Statements

All environmental assessment or impact statements produced by or for the city for city projects shall include an archaeological element containing as a minimum, an archaeological inventory or monitoring report ~~reconnaissance~~ as required for the archaeological review districts in which the project is located.

**(C) Procedures for All Projects Except Utility Projects**

**(1) Pre-Application Conference**

Prior to submission of any *application* for an archaeological clearance *permit*, an *applicant* shall request a *pre-application* conference, to be conducted pursuant to Section 14-3.1(E).

**~~(2) Initiation of Building Permit~~**

~~*Application for an archaeological clearance permit is considered to be initiation of application for a building permit.*~~

**~~(3) Hearings; Notice~~**

~~The Archaeological Review Committee shall make all determinations at a public hearing. The *applicant* shall be notified and staff shall post the preliminary committee agenda at City Hall at least seven days in advance of the meeting.~~

**(2) (4) Inventory Procedures for Historic Downtown District**

The *applicant* shall meet the following procedures before an archaeological clearance *permit* is issued for ~~projects in the historic downtown~~ archaeological review districts:

**(a) Reconnaissance-Inventory Procedures**

1                   ~~Reconnaissance~~ The applicant shall hire ~~An Inventory shall be~~  
2                   ~~completed by an archaeologist to complete an Inventory Report~~  
3                   ~~hired by the applicant. The archaeologist shall be "City Certified"~~  
4                   ~~under Subsection 14-2.7(E) and shall meet meeting the professional~~  
5                   ~~qualifications set forth by the State Historic Preservation Division~~  
6                   ~~and City requirements when the project is in the Historic Downtown~~  
7                   ~~District. The archaeologist shall be "City Certified" under Subsection~~  
8                   ~~14-2.7(E) and shall meet the professional qualifications set forth by~~  
9                   ~~the State Historic Preservation Division when the project is in the~~  
10                   ~~River and Trails and Suburban Districts. in Section 14-~~  
11                   ~~2.7(E). Reconnaissance An Inventory Report~~ requiring archaeology  
12                   dealing with historic period sites shall be completed by person  
13                   qualified as a historical archaeologist and as a historian. As a  
14                   minimum, an Inventory Report ~~the reconnaissance is a written~~  
15                   document that shall consist of:

- 16                   (i)     Statement of cultural history and setting based upon  
17                             previously completed and accepted archaeological and  
18                             documentary research, including a summary of relevant  
19                             cultural/historic periods with bibliographical references  
20                             and a summary table and map of previous archaeological  
21                             activities in the vicinity;  
22                   (ii)    (i) Archival research and analysis of land titles, historic  
23                             maps, the archaeological records management systems  
24                             (ARMS) files of the state of New Mexico, and other  
25                             existing data;

- (iii) (ii) Visual survey examination of the *property* for evidence of *archaeological features, artifacts* or *culturally altered landscapes* at least seventy-five years old. Visual surveys must adhere to the State of New Mexico Standards for Survey and Inventory, NMAC 4.10.15; A sample of surface artifacts shall be recovered; and
- (iv) (iii) Test *excavations* encompassing a minimum of two percent of the total *lot* area, when the project is in the Historic Downtown District. At least eighteen (18) square feet shall be dug by hand after which further *excavations* may be made by mechanical equipment. *Excavations* shall proceed to a depth where no *archaeological features* or *artifacts* are encountered, or until the maximum depth to which *excavations* can be safely made. Test excavations must adhere to the State of New Mexico Standards for Excavation and Test Excavation, NMAC 4.10.16. The Committee may also consider on a case-by-case basis the option of alternatives for the two percent testing requirement based on an evaluation of whether at least one percent of the lot can be test excavated, the timing of the proposed excavation, whether the remainder of the required excavations may be made during trenching for foundations or utilities and whether there is also a need for a Monitoring Plan and Report; and



(v) Sufficient documentation, which complies with State of New Mexico Standards and including NMCRIS Investigation Abstract Form, Laboratory Anthropology Site Record Forms (if applicable), Historic Cultural Properties Inventory Forms (if applicable) and other relevant State documents.

(b) ~~Reconnaissance~~ Committee Meeting to Approve Inventory Report

Upon the completion of the Inventory Report ~~reconnaissance~~, the applicant shall request to be on the Committee's agenda for approval of the report and the ~~a reconnaissance~~ report shall be submitted by the applicant to the ~~Archaeological Review~~ Committee containing materials prepared to the specifications of the Committee.

(c) Review and Decision by Committee

At a hearing the Committee shall review the applicant's Inventory ~~reconnaissance~~ Report and vote to approve or disapprove the recommended *significance* status and if required, the recommended treatment of archaeological resources. The determination made by the Committee for treatment shall be a condition of approval for the archaeological clearance *permit* and the ~~building or grading permit~~.

(i) If the project site is determined by the Committee not to be *significant*, then no further treatment is required and an archaeological clearance *permit* shall be issued.

(ii) If the project site is determined by the Committee to be *significant* and the Committee determines that the data potential of the site is exhausted because a sufficient sample

has been taken and no subsurface cultural remains exist, then no further treatment is required and an archaeological clearance *permit* shall be issued.

- (iii) If the project site is determined to be *significant*, then the applicant is subject to the requirements of Subsection 14-3.13(C)(2)(d).

(d) Treatment

If the project site is determined by the committee to be *significant* and to contain further potential data, the applicant needs to hire an archaeologist to write a Treatment Plan. The archaeologist shall be "City Certified" under Subsection 14-2.7(E) and shall meet the professional qualifications set forth by the State Historic Preservation Division and City requirements when the project is in the Historic Downtown District. The archaeologist shall be "City Certified" under Subsection 14-2.7(E) and shall meet the professional qualifications set forth by the State Historic Preservation Division when the project is in the River and Trails and Suburban Districts. The Treatment Plan is a written document that then the recommended treatment shall be reviewed and shall include the following proposed plans and procedures:

- (i) A plan with procedures that if additional surface remains exist, then additional collections shall be made; and/or if subsurface *cultural remains* do exist then the test pits shall be expanded, *artifacts* shall be collected, and an *excavation* shall be made of *archaeological features* such as hearths,

1 living surfaces, or other non-portable *cultural remains*. In  
2 addition further archival research shall be conducted  
3 concerning human occupation and the land use of the project  
4 site; or

5 (ii) (iii) A plan that the site will shall either be treated with a  
6 protective as a public or private open space designation,  
7 such or shall be treated in such a way that no subsurface  
8 disturbance takes place. The procedure is intended as an  
9 alternate to paragraph (i) above. The designation choice of  
10 alternatives is made by the applicant should be done in  
11 accordance with the New Mexico Cultural Properties  
12 Preservation Easement Act (NMSA 1978, Section 47-12A-  
13 3), where a Cultural Properties Preservation Easement is  
14 dedicated and recorded on a scaled plat of survey, prepared  
15 by a licensed New Mexico surveyor with the open space  
16 described by metes and bounds and labeled on the final plat.  
17 A note shall be placed on the final plat to state, "No Activity  
18 Which Disturbs Ground Surface Shall Occur Within the  
19 Boundaries of the Cultural Properties Preservation Easement  
20 on this Plat." If the applicant pursues this course of action,  
21 the applicant shall submit a copy of the final plat to the  
22 Committee for its file records. The committee may  
23 recommend but not require that one alternative rather than  
24 another be chosen.

25 (e) Treatment Plan to the Committee

1 (i) ~~(iv)~~—Upon the completion of the Treatment Plan ~~reconnaissance~~,  
2 the applicant shall request to be on the Committee's agenda  
3 for approval of the Plan and the Plan shall be submitted by  
4 the applicant to the Committee.

5 (ii) At a hearing the Committee shall review the applicant's Plan  
6 and vote to approve or disapprove it. If the Committee  
7 approves the Plan, the applicant can commence work on the  
8 project.

9 (iii) Following implementation of the treatment plan, a treatment  
10 report is required containing a description of the collection,  
11 excavation, research, and other procedures, and a summary  
12 of the findings.

13 (F) Treatment Report to the Committee

14 (vi) Upon the completion of the Treatment Report, the  
15 applicant shall request to be on the Committee's agenda  
16 for approval of the Report and the Report shall be  
17 submitted by the applicant to the Committee.

18 (vii) At a hearing the Committee shall review the applicant's  
19 Report and vote to approve or disapprove it. If the  
20 Committee approves the Report, the report shall be  
21 submitted by the applicant to and approved by the  
22 committee before the an archaeological clearance permit  
23 is issued. A final report with correct citations and  
24 typographical corrections is due within one year of the  
25 date of the issuance of the clearance permit. Upon

request of the archaeologist, the committee may grant a  
one-year's extension.

~~(v)(viii)~~ A mapped and written record shall be kept by *city* staff of all  
surveyed areas and test *excavations*.

(g) Maximum Funding Limit

In the historic downtown archaeological review districts, in no case  
shall the *applicant* be required to spend more than one percent of the  
valuation of the *property* shown on the *building permit* in providing  
reports and other information requested by the Archaeological  
Review Committee. In the River and Trails District, in no case shall  
the *applicant* be required to spend more than three thousand dollars  
(\$3,000) dollars plus one hundred dollars (\$100) per acre for the  
treatment of an *archaeological site*. In the Suburban District, in no  
case shall the *applicant* be required to spend more than four thousand  
dollars (\$4,000) plus one hundred dollars (\$100) per acre for the  
treatment of an *archaeological site*.

(f) Maximum Time for Excavations and for Excavation of Significant  
Sites in the Historical Downtown District

In the historic downtown archaeological review district, in no case  
shall the archaeologist be required to spend more than 15 eight hour  
equivalent days in carrying out test *excavations*, or an additional 20  
eight hour equivalent days in carrying out additional *excavation* of  
*significant* sites.

(5) ~~Procedures for River and Trails Area, Suburban Area, and Utility Mains~~

~~The following procedures shall be met before an archaeological clearance~~

~~permit is issued to an applicant in the archaeological review districts for the river and trails district, the suburban district, or a utility main.~~

~~(a) — Reconnaissance~~

~~Reconnaissance shall be completed by an archaeologist, hired by the applicant, meeting the professional qualifications set forth in the Archaeological Review Districts Ordinance. Reconnaissance requiring archaeology dealing with historic period sites shall be completed by a person qualified as a historical archaeologist and as a historian. The reconnaissance shall consist of:~~

~~(i) — Archival research and analysis of land titles, historic maps, ARMS files and other existing data; and~~

~~(ii) — Visual examination of the property for evidence of archaeological features, artifacts, or culturally altered landscapes at least seventy-five years old. Linear transects at intervals not exceeding twenty-five (25) feet shall be walked. If a sample of surface artifacts is recovered during reconnaissance, then the archaeologist in charge of the reconnaissance shall inform the property owner of the desirability of permanently storing the artifacts in a statewide repository such as the museum of New Mexico.~~

~~(b) — Reconnaissance Report~~

~~Upon the completion of the reconnaissance, a reconnaissance report shall be submitted by the applicant to the Archaeological Review Committee containing materials prepared to the specifications of the Committee.~~

1                   (e) ~~Committee Review and Decision~~

2                   The Committee shall review the ~~reconnaissance~~ report and vote to  
3                   approve or disapprove recommended ~~significance~~ status on an  
4                   ~~archaeological site~~ by site basis and, if required, the recommended  
5                   treatment of archaeological resources. The Committee's  
6                   determination for treatment shall be a condition of approval for the  
7                   archaeological clearance ~~permits~~. Treatment shall be completed  
8                   before approval by the Planning Commission of the final  
9                   ~~development plan or plat~~. For phased projects, treatment shall be  
10                  completed before approval of the final ~~development plan or plat~~ for  
11                  the phase in question.

12                  (d) ~~Treatment~~

13                  (i) ~~No further treatment is required if the archaeological site is~~  
14                  determined by the Committee not to be ~~significant~~, and an  
15                  archaeological clearance ~~permit~~ shall be issued.

16                  (ii) ~~If the archaeological site is determined by the Committee to~~  
17                  be ~~significant~~ and to contain potential data then the  
18                  recommended treatment shall be reviewed and shall meet the  
19                  following:

20                   A. ~~A sample of surface artifacts shall be collected; and~~

21                   B. ~~If there is reason to believe that subsurface remains~~  
22                   do exist, then test ~~excavations~~ shall take place. At  
23                   least eighteen (18) square feet shall be dug by hand,  
24                   after which further ~~excavations~~ may be made using  
25                   mechanical equipment. ~~Excavations shall proceed to~~

~~a depth where no archaeological features or artifacts are encountered, or until the maximum depth to which excavation can be safely extended.~~

~~C. In addition, further archival research shall be conducted concerning human occupation and the land use of the site; or~~

~~D. Surface artifacts shall be collected and documented.~~

~~The site shall alternatively be treated as a public or private open space, park or greenbelt or shall be treated in such a manner that no subsurface disturbance takes place. The choice of alternatives is made by the applicant. The committee may recommend but not require that one alternative rather than another be chosen.~~

~~(iii) Following implementation of the treatment plan, a treatment report is required containing a description of the collection, excavation, research, and other procedures, and a summary of the findings. The report shall be submitted to and approved by the committee before an archaeological clearance permit is issued and before approval of the final development plan by the Planning Commission. A final report is due within one year of the date of the issuance of the clearance permit. Upon the request of the archaeologist, the committee may grant a one-year's extension.~~

~~(iv) A map and written record shall be kept by city staff of all~~



surveyed areas and test excavations.

(c) River and Trails and Suburban Area: Funding Limit

(i) ~~In the river and trails area, in no case shall the applicant be required to spend more than three thousand dollars (\$3,000) dollars plus one hundred dollars (\$100) per acre for the treatment of an archaeological site.~~

(ii) ~~In the suburban area, in no case shall the applicant be required to spend more than four thousand dollars (\$4,000) plus one hundred dollars (\$100) per acre for the treatment of an archaeological site.~~

(iii) ~~The definition of treatment of an archaeological site is as set forth in this chapter. The procedures for treatment are set forth in Subsection (5)(d) above.~~

(iv) ~~The dollar amounts of the cost ceiling shall be reviewed on an annual basis and updated for cost of living increases.~~

(D) Procedures for Utility Projects or Alternative Means of Compliance

(1) Pre-Application Conference

Prior to submission of any application for an archaeological clearance permit, an applicant shall request a pre-application conference, to be conducted pursuant to Section 14-3.1(E).

(2) Requests for Archaeological Monitoring. The Committee must approve the Monitoring Plan prior to the commencement of ground disturbing activities by the private sector, the City or City contractors. An Archaeological Monitoring process occurs when:

(i) An applicant who needs an Archaeological Clearance Permit for

1 utility project or utility installations would like to submit a  
2 Monitoring Plan as opposed to an Inventory Report; or  
3 (ii) An applicant who needs an Archaeological Clearance Permit for  
4 any type of project, but would like to submit a Monitoring Plan as  
5 opposed to an Inventory Report as a form of alternative means of  
6 compliance.

7 (3) Procedures for Monitoring Plan

8 (i) The applicant shall hire an archaeologist to complete a  
9 Monitoring Plan and Report. The archaeologist shall be "City  
10 Certified" under Subsection 14-2.7(E) and shall meet the  
11 professional qualifications set forth by the State Historic  
12 Preservation Division and City requirements if in the Historic  
13 Downtown District. The archaeologist shall be "City Certified"  
14 under Subsection 14-2.7(E) and shall meet the professional  
15 qualifications set forth by the State Historic Preservation Division if  
16 in the River and Trails and Suburban Districts.

17 (ii) As a minimum, the Monitoring Plan is a written document that  
18 shall satisfy the State of New Mexico Standards for Archaeological  
19 Monitoring, NMAC 4.10.7.

20 (iii) The applicant who needs a staged, phased or partial approval  
21 shall notate this information on the plan. The applicant is  
22 encouraged to notify staff and the Committee early in the process if  
23 such request is anticipated.

24 (4) Committee Meeting to Approve Monitoring Plan

25 Upon the completion of the Monitoring Plan, the applicant shall request to be on the

1 Committee's agenda for approval of the plan and the plan shall be submitted by the  
2 applicant to the Committee. The Committee may approve a Monitoring Plan for a  
3 project that requests utility boring on a case-by-case basis, but utility boring should  
4 be minimized.

5 (5) Review and Decision by Committee of Monitoring Plan

6 At a hearing the Committee shall review the applicant's plan and vote to approve or  
7 disapprove the plan. If the Committee approves the plan, then the project can  
8 commence concurrent with the archaeological monitoring activities.

9 (6) Committee Meeting to Approve Monitoring Report

10 (i) Following implementation of the Monitoring Plan, a  
11 Monitoring Report is required to prepared for the  
12 Committee.

13 (ii) As a minimum, the Monitoring Report is a written document  
14 that shall satisfy the State of New Mexico Standards for  
15 Archaeological Monitoring, NMAC 4.10.7.

16 (iii) Upon the completion of the Monitoring Report, the applicant  
17 shall request to be on the Committee's agenda for approval  
18 of the Report and the Report shall be submitted by the  
19 applicant to the Committee.

20 (7) Review and Decision by Committee of Monitoring Report

21 At a hearing the Committee shall review the applicant's report and vote to approve or  
22 disapprove the recommended significance status and if required, the recommended  
23 treatment of archaeological resources. The determination made by the Committee for  
24 treatment shall be a condition of approval for the archaeological clearance permit

25 (i) If the project site is determined by the Committee not to be

significant, then no further treatment is required and an archaeological clearance permit shall be issued.

(ii) If the project site is determined by the Committee to be significant and the Committee determines that the data potential of the site is exhausted because a sufficient sample has been taken and no subsurface cultural remains exist, then no further treatment is required and an archaeological clearance permit shall be issued.

(iii) If the project site is determined by the committee to be significant and to contain further potential data, the applicant needs to hire an archaeologist to write a Treatment Plan and Treatment Report in accordance with the procedures in Subsection 14-3.13(C)(2).

~~(6) — Procedures for Santa Fe Trail~~

~~(a) — The tracks of the Santa Fe Trail are shown on the map located in the city land use department and incorporated herein by reference.~~

~~(b) — For development within such an area as set forth by Subsection (a) above, the applicant is required to submit a reconnaissance report which identifies on an aerial map of at least a scale of one inch equals four hundred (400) feet the precise location of the tracks, and which recommends measures for the on-site preservation of the tracks. The committee shall approve the reconnaissance report before the issuance of an archaeological clearance permit.~~

~~(c) — In no case shall the tracks of the Santa Fe Trail be disturbed by the development, except upon the approval of the archaeological review districts committee. Criteria for approval by the Committee for allowing disturbance of the tracks shall be as follows:~~

- (i) ~~The tracks have been mapped and photographed and such information has been provided to city staff; and~~
- (ii) ~~The portion of the tracks to be disturbed is ten percent or less of the total square footage of tracks on the applicant's site; or~~
- (iii) ~~The square footage of the tracks constitutes more than sixty percent of the total square footage of the lot and preservation of all of the tracks would constitute a "taking" of the lot.~~

~~(7)~~ Appeals

~~Any aggrieved person may appeal a final action of the Archaeological Review Committee to the governing body pursuant to Section 14-3.17.~~

~~(D)~~(E) Other General Provisions

(1) Procedures for Santa Fe Trail

- (a) The tracks of the Santa Fe Trail are shown on the map located in the city land use department and incorporated herein by reference.
- (b) For development within such an area as set forth by Subsection (a) above, the applicant is required to submit an Inventory reconnaissance report which identifies on an aerial map of at least a scale of one inch equals four hundred (400) feet the precise location of the tracks, and which recommends measures for the on-site preservation of the tracks. The committee shall approve the Inventory reconnaissance Report before the issuance of an archaeological clearance permit.
- (c) In no case shall the tracks of the Santa Fe Trail be disturbed by the development, except upon the approval of the archaeological review districts committee. Criteria for approval by the Committee for

allowing disturbance of the tracks shall be as follows:

- (i) The tracks have been mapped and photographed and such information has been provided to city staff; and
- (ii) The portion of the tracks to be disturbed is ten percent or less of the total square footage of tracks on the applicant's site; or
- (iii) The square footage of the tracks constitutes more than sixty percent of the total square footage of the lot and preservation of all of the tracks would constitute a "taking" of the lot.

(2) Ownership of Artifacts

All artifacts discovered as a result of an inventory or monitoring report reconnaissance or further treatment, with the exception of human remains, are the property of the property owner. Property owners are encouraged to donate artifacts to the museum of New Mexico or a similar repository.

(2) (3) Human Remains

- (a) If human remains are discovered, compliance with Section 18-6-11.2 NMSA 1978 is required in addition to the requirements of this section. Persons making the discovery shall contact the city police department to ensure compliance with state law and the city land use department to ensure compliance with city law and the New Mexico State Historic Preservation Office to ensure compliance with State and Federal law.
- (b) All unmarked human remains, regardless of their age, discovered on private or public property, fall under the jurisdiction of the New Mexico State Historic Preservation Office. A Treatment Plan and Report meeting the requirements of City Code and NMAC 4.10.11

1 shall be approved by the Committee and the State Historic  
2 Preservation Office prior to the initiation of treatment activities. If  
3 ~~the human remains are determined to be prehistoric, or from the~~  
4 ~~historical period and older than seventy-five years, then the site is~~  
5 ~~considered to be significant. In this case, a treatment plan and report~~  
6 ~~for the remains, meeting the requirements of this section shall be~~  
7 ~~approved by the Archaeological Review Committee.~~

8 (c) Any treatment plan dealing with human remains shall include  
9 consideration of local Native American or other religious concerns,  
10 if applicable.

11 (d) If the remains represent an unplatted cemetery from the historical  
12 period, they may not be disturbed unless a district court order is  
13 granted authorizing their removal in conformance with state law.  
14 ~~Section 30-12-12 NMSA 1978 as amended.~~

15 (3) (4) Unexpected Discoveries

16 (a) Any *cultural remains* that are discovered during construction  
17 activities shall be reported to *city* staff. Construction activities shall  
18 immediately cease within the area of the discovery for a maximum of  
19 twenty-four hours from time of discovery. Sunday hours may not be  
20 included in the twenty-four hour time period. No construction  
21 activity shall continue that in any way endangers the *cultural*  
22 *remains*. Every effort should be made by the *city* to prevent  
23 unnecessary construction delays. Designated *city* staff and one  
24 archaeologist from the Archaeological Review Committee shall visit  
25 the site and shall determine the archaeological *significance* and the

1 data potential of the site. If the site is determined to be *significant*  
2 and to have data potential, then:

3 (i) Designated *city* staff and one archaeologist from the  
4 Archaeological Review Committee shall determine a buffer  
5 area in which construction activities shall temporarily cease;  
6 and

7 (ii) The *property owner* shall present a treatment plan to the  
8 committee for their approval. The treatment plan shall meet  
9 the requirements of City Code. ~~Subsections (C)(4) or (5)~~  
10 ~~above, depending on the archaeological district in which the~~  
11 ~~discovery is located pursuant to Sections 18-6-11 and 18-6-~~  
12 ~~11.1 NMSA 1978 as amended.~~

13 (b) Failure to report such finds can result in a suspension of construction  
14 *permits*.

15 (c) If human remains are discovered, *city* officials and the State Historic  
16 Preservation Office must be contacted. If remains are determined to  
17 be deposited less than seventy-five years ago, determination of  
18 jurisdiction will be made by the New Mexico Office of the Medical  
19 Investigator. If the remains are determined to be prehistoric or  
20 isolated burials of early historical age, consultation with the  
21 Archaeological Review Committee shall be undertaken to identify an  
22 appropriate treatment plan. The Treatment Plan and all treatment  
23 activities shall be performed by an archaeologist with a State of New  
24 Mexico Permit to Excavate Unmarked Human Burials and shall  
25 conform with all standards outlined in NMAC 4.10.11 ~~This treatment~~



plan shall indicate consideration of local Native American or other religious concerns, if applicable. If the remains represent an unplatted cemetery, they may not be disturbed less a district court order is granted authorizing their removal in conformance with Section 30-12-12 NMSA 1978 as amended. (Ord. No. 2013-16 § 16)

(4) Emergency Actions

Nothing in this Section 14-3.13 shall be construed as preventing or delaying emergency actions as needed to protect human health or well being, or public or private *property*. However, if *cultural remains* are uncovered or disturbed as a consequence of such emergency actions, the disturbed *remains* will be treated as unexpected discoveries in accordance with Subsection (D)(3) above once a state of emergency has ceased to exist.

(5) (6) Archaeological Fund and Projects

(a) An archaeological fund shall be established to receive revenue from construction *permits*, the general fund and other sources.

(b) The Archaeological Review Committee may recommend expenditure of money from this fund for the following projects:

(i) Additional analysis or other treatment of a site or an "unexpected discovery" of citywide significance, which contributes to the body of knowledge of archaeological or historical matters, when the funding limit for treatment of a site as set forth in this section has been reached;

(ii) ~~Additional analysis or other treatment of a site designated as an "unexpected discovery" by the Archaeological Review Districts Ordinance, when the funding limit for treatment of~~

a site as set forth in this section has been reached and the site  
is determined to have citywide significance;

(iii)(ii) Analysis of *artifacts* from a site of citywide *significance*  
collected prior to adoption of the Archaeological Review  
Districts Ordinance; or

(iv)(iii) Archaeological surveys or studies of a citywide scope.

(c) For the purpose of this section, citywide *significance* means:

- (i) An outstanding example of a certain category of site or of a  
type not adequately documented; or
- (ii) A site associated with a person or event of special historical  
*significance* to Santa Fe.

**~~(E)~~ (F) Approval Criteria / Archaeological Significance**

Sites identified as *significant* shall be those that have yielded or may be likely to  
yield information important in the study of prehistory or history. These shall be  
those:

- (1) With *cultural remains* that are more than seventy-five years old; and
- (2) With *cultural remains* that are directly associated with events or  
developments that have made an important contribution to local history or  
prehistory; or
- (3) With *cultural remains* that are directly associated with the lives of persons  
*significant* in local history; or
- (4) Areas where a high frequency, *density*, diversity or a substantial number of  
prehistoric *cultural remains* are present; or
- (5) Areas having *cultural remains* known to rarely occur in the Santa Fe area; or
- (6) Any site containing human remains over seventy-five years old.

**(G) Appeals**

Any aggrieved person may appeal a final action of the Archaeological Review Committee to the governing body pursuant to Section 14-3.17.

**14-5.3 ARCHEOLOGICAL REVIEW DISTRICTS**

(Ord. No. 2011-37 § 6)

**(A) Purpose**

To promote the economic, cultural and general welfare of the people of Santa Fe, the governing body deems it essential that the qualities relating to the unique cultural traditions, prehistory and history of Santa Fe, which attract tourists and residents alike, be preserved by establishing three archaeological review districts. The purpose of these districts is to:

- (1) recognize the value of archaeological resources from all periods of history and prehistory, including prehistoric Native American settlements, Spanish colonization and settlement and settlement and *developments* under Mexican and American governments;
- (2) provide the means for identifying *archaeological sites* by requiring surveys and test *excavations*, depending on the district, through the *development* review and construction *permit* process;
- (3) provide the means by which *archaeological sites* may be evaluated for their potential contribution to cultural, educational, historic, economic and scientific concerns;
- (4) establish a procedure for treatment of archaeological resources on private and public land, thereby mitigating the information loss from the sometimes

unavoidable destruction of archaeological resources and providing for the treatment of those resources that can be preserved; and

- (5) provide methods for the emergency treatment of archaeological resources found through unexpected discovery.

**(B) Application to State and Its Agencies, Political Subdivisions or Instrumentalities**

Pursuant to Sections 3-22-1 through 3-22-6 NMSA 1978 (Historic Districts and Landmarks), the provisions of this section apply to the *state* and its agencies, political subdivisions and instrumentalities, as well as to any other entity or activity in the archaeological review districts. Whenever the Archaeological Review Committee is considering a case on city property, public right-of-way or otherwise on State jurisdiction, the Committee's action shall be forwarded to the New Mexico State Historic Preservation Office for final approval before work proceeds.

**(C) Establishment of Districts; Boundaries**

**(1) Districts Established**

Three archaeological review districts are established, to be known as the historic downtown, the river and trails and the suburban archaeological review districts.

**(2) Boundaries**

The boundaries of the historic downtown, the river and trail and the suburban archaeological review districts are as shown on the official zoning map. The boundaries are determined by the following criteria:

**(a) Historic Downtown Archaeological Review District**

The center of Santa Fe since 1610 and occupied by Native Americans prior to that time, land within the historic downtown archaeological review district has a high potential of containing

1                    *significant cultural remains* and is part of the historic core of Santa  
2                    Fe;

3                    (b)     River and Trails Archaeological Review District

4                    An area of prehistoric Native American occupation, settled by early  
5                    Spanish colonists, and being primary transportation routes important  
6                    to the settlement of Santa Fe, the river and trails archaeological  
7                    review district has a high potential of containing *significant cultural*  
8                    *remains* and is part of the Santa Fe river *floodplain*, escarpment, or  
9                    ridges above the escarpment, and land adjacent to those areas, and  
10                   contains historic trails such as Santa Fe Trail, Galisteo Road and  
11                   Agua Fria;

12                   (c)     Suburban Archaeological Review District

13                   Land within the suburban archaeological review district has a  
14                   moderate potential of containing *significant cultural remains* and is  
15                   not a part of the historic downtown or river and trails archaeological  
16                   review districts.

17                   (3)     Map Revisions

18                   The archaeological review districts may be revised upon a recommendation of the  
19                   archaeological review committee as approved by the *governing body*. In revising the  
20                   district boundaries the committee shall follow the criteria set forth in Subsection 14-  
21                   5.3(C)(2).

22                   (D)     Archaeological Clearance Permit Required

23                   An archaeological clearance *permit* is required for certain types of *development*  
24                   activity within the archaeological review districts, as described in Section 14-3.13.  
25                   (Ord. No. 2014-31 § 9)

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4 APPROVED AS TO FORM:

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7 \_\_\_\_\_  
KELLEY A. BRENNAN, CITY ATTORNEY

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9 M/Legislation/Bills 2015/Archaeological Revisions

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14-3.13 **ARCHAEOLOGICAL CLEARANCE PERMITS**

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**(A) Purpose and Intent**

(1) The City of Santa Fe created Archaeological Clearance Permits for the purpose of preserving Santa Fe's valuable archaeological resources, providing the means for identifying sites and mitigating any adverse effects of development. These requirements pertain to both private and public development activities and are in addition to pertinent State and Federal requirements.

Comment [RNA1]: Should we offer something about our CLG status?

(2) The purpose of the permitting process is to:

(a) recognize the value of archaeological resources from all periods of history and prehistory, including prehistoric Native American settlements, Spanish colonization and settlement and the settlement and developments under Mexican and American governments;

(b) provide the means for identifying archaeological sites cultural properties by requiring surveys and test-excavations archaeological investigations, depending on the district to the extent that is appropriate for the district, through the development review and construction permit process;

(c) provide the means by which archaeological sites cultural properties may be evaluated for their potential City-wide contribution to cultural, educational, historic, economic and scientific concerns;

(d) establish a procedure for treatment of archaeological resources cultural properties on private and public land, thereby mitigating the information loss from the sometimes unavoidable destruction of archaeological cultural resources and providing for the treatment of those resources that can be preserved; and

(c) provide methods for the emergency treatment of archaeological-cultural

resources found through unexpected discovery.

(3) Three archaeological review districts are established to be known as the Historic Downtown, the River and Trails, and the Suburban Archaeological Review Districts. The boundaries of these districts are established as set forth in Section 14-5.3(C).

**(B) Applicability**

(1) An applicant submitting a request for following permits may also need to submit a request for an Archaeological Clearance Permit subject to Subsections 14-3.13 (B)(3)-(5) or Subsection 14-3.13(E)(1):

- \_\_\_\_\_ (a) Building permit;
- \_\_\_\_\_ (b) Grading permit;
- \_\_\_\_\_ (c) Excavation permit; or
- \_\_\_\_\_ (d) Secondary permit.

(2) City staff or its contractors conducting activities on City-owned property may also need to submit a request for an Archaeological Clearance Permit subject to Subsections 14-3.13 (B)(3)-(5) or Subsection 14-3.13(E)(1), except as provided for under Subsection 14-3.13(D)(4).

(4) ~~(3)~~ Historic Downtown Archaeological Review District

In this district, an archaeological clearance *permit* shall be required:

(a) The requested activity will involve ground disturbance of more than ~~Prior to issuance of a building permit for projects with gross lot coverage of two thousand five hundred (2,500) square feet or more involving new construction, parking lots and/or alterations.~~

(b) The requested activity will involve utility installation of sixty (60) feet or more. ~~Prior to issuance of a grading permit for projects with two thousand five hundred (2,500) square feet or more in gross lot coverage.~~

**Comment [RNA2]:** I think we should create a definition for ground disturbance. We do not currently have one.



(c) ~~For all city projects over two thousand five hundred (2,500) square feet in gross lot coverage.~~

(d) ~~For alterations, if the ground is dug up, graded, or otherwise disturbed.~~

(c) No archaeological clearance *permit* is required for a demolition *permit* except as follows: For demolition requests for *structures* which are more than ~~seventy-five years old~~ fifty years old and which are part of a project requiring an archaeological clearance *permit*, ~~staff for the Archaeological Review Committee~~ City of Santa Fe Historic Preservation Division staff shall issue a report to the historic districts review board as set forth in Section 14-3.14. The report shall state whether demolition will damage ~~possible the archaeological resources~~ cultural resource(s) ~~artifacts~~. If the Board determines that damage may occur, then it may refer the case to the Archaeological Review Committee requesting that requirements for an archaeological clearance *permit* be met before a demolition *permit* is issued.

(2) (4) River and Trails Archaeological Review District

In this district, an archaeological clearance *permit* shall be required: ~~prior to approval of the final development plan or plat for the following projects:~~

(a) ~~The requested activity will be done in conjunction with a subdivision application or rezoning application, which involves a lot that is All annexations, rezonings, subdivisions, planned unit developments, or other development requiring approval by the Planning Commission, having over two acres, or having any part lying within the area identified as the Santa Fe Trail.~~

(b) The requested activity will involve utility installation of five hundred and fifty (550) feet or more.

(b) ~~— All city projects over two (2) acres in size.~~

(c) ~~— All city park projects over one (1) acre in size.~~

(3) (5) Suburban Archaeological Review District

In this district, an archaeological clearance *permit* shall be required: ~~prior to approval of the final development plan or plat for the following projects:~~

(a) The requested activity will be done in conjunction with a subdivision application or rezoning application, which involves a lot that is All annexations, rezonings, subdivisions, planned unit developments, or other development requiring approval by the Planning Commission, having over ten (10) acres.

(b) The activity requested will involve utility installation of five hundred and fifty (550) feet or more.

(b) ~~— All city projects over two (2) acres in size.~~

(c) ~~— All city park projects over one (1) acre in size.~~

(4) ~~— Utility Mains~~

~~An archaeological clearance permit is required for new construction of sewer mains or main lines of other utilities such as telephone lines, gas lines, and fiber optics, including the entire construction easement:~~

(a) ~~— With an extension of sixty (60) feet or more if the main is in the historic downtown archaeological review district;~~

(b) ~~— With an extension of five hundred fifty (550) or more if the main is in the river and trails or suburban archaeological review district.~~

(6) (5) Exemptions

(a) A City Project on a parcel that is under two (2) acres in size in the Rivers and Trails or the Suburban Archaeological Review District.

(b) A City Park Project on a parcel that is under one (1) acre in size in the Rivers and Trails or the Suburban Archaeological Review District. This exemption does not apply to a City Park Project on multiple parcels whose sum is over one (1) acre in size in the Rivers and Trails or the Suburban Archaeological Review District.

(c) (a) Applicants who are requesting archaeological approval from federal agencies are exempted from requirements of the Archaeological Review Districts Ordinance, except that *applicants* must submit evidence to *city* staff of the *application* to the federal agency. In addition the applicant shall submit to *city* staff the ~~inventory or monitoring~~ the archaeological investigations ~~reconnaissance~~ report and other reports made to the federal agencies.

Comment [RNA3]: Do we want to be specific that these are for Section 106, 4f projects etc.?

~~(b) Applicants requesting a lot split subdivision are exempted from the requirement of archaeological review districts and for archaeological clearance permits.~~

(d) (e) In the river and trails or suburban districts, *applicants* with inheritance transfer *subdivisions* are also exempted.

(c) (d) Applicants whose land is in areas where archaeological ~~inventory or monitoring report reconnaissance, excavation, or other~~ treatment investigations have previously been completed, are exempted from ~~further archaeological investigation~~ the ~~inventory or monitoring report reconnaissance, excavation, or other treatment as~~ required, upon submitting evidence for such work to *city* staff. An exemption from any one requirement for a clearance permit does not exempt the applicant from other requirements of the Archaeological

Review Districts Ordinance.

- (f) (e) In the historic downtown district, no clearance *permit* is required for projects for which a construction *permit application* was made before September 30, 1987. In the river and trails and suburban districts, no clearance *permit* is required for projects for which *application* has been made for review by the Planning Commission before September 30, 1987. (Ord. No. 2012-11 § 7)

(7) (6) Environmental Assessments or Impact Statements

All environmental assessment or impact statements produced by or for the city for city projects shall include a cultural resources assessment ~~an archaeological element~~ containing as a minimum, an archaeological inventory ~~or monitoring report reconnaissance~~ as required for the archaeological review districts in which the project is located.

Comment [RNA4]: Might look at this section more closely.

Comment [RNA5]: Possibly we should change define inventory or make what we want out of the EIS more clear so that cultural resources are not check listed for an EA.

(C) Procedures for All Projects Except Utility Projects

(1) Pre-Application Conference

Prior to submission of any *application* for an archaeological clearance *permit*, an *applicant* shall request a pre-application conference, to be conducted pursuant to Section 14-3.1(E).

(2) ~~Initiation of Building Permit~~

~~Application for an archaeological clearance permit is considered to be initiation of application for a building permit.~~

(3) ~~Hearings; Notice~~

~~The Archaeological Review Committee shall make all determinations at a public hearing. The applicant shall be notified and staff shall post the preliminary committee agenda at City Hall at least seven days in advance of~~

the meeting.

(2) (4) Inventory Procedures for Historic Downtown District

**Comment [RNA6]:** Possibly we should retitle this section "Archaeological Investigations" and provide clear guidance as to the expected procedures for each type of investigation. This would allow for a clean incorporation of many of the current external policies and their intent.

The applicant shall meet the following procedures before an archaeological clearance permit is issued for projects in the historic downtown archaeological review districts:

(a) Reconnaissance Inventory Procedures

~~Reconnaissance~~ The applicant shall hire An Inventory shall be completed by an archaeologist to complete an Inventory Report. hired by the applicant. The archaeologist shall be "City Certified" under Subsection 14-2.7(E) and shall meet meeting the professional qualifications set forth by the State Historic Preservation Division and City requirements when the project is in the Historic Downtown District. The archaeologist shall be "City Certified" under Subsection 14-2.7(E) and shall meet the professional qualifications set forth by the State Historic Preservation Division when the project is in the River and Trails and Suburban Districts. in Section 14-2.7(E). ~~Reconnaissance~~ An Inventory Report requiring archaeology dealing with historic period sites shall be completed by person qualified as a historical archaeologist and as a historian. As a minimum, an Inventory Report the reconnaissance is a written document that shall consist of:

- (i) Statement of cultural history and setting based upon previously completed and accepted archaeological and documentary research, including a summary of relevant cultural/historic periods with bibliographical references

and a summary table and map of previous archaeological activities in the vicinity;

(ii) (i) Archival research and analysis of land titles, historic maps, the archaeological records management systems (ARMS) files of the state of New Mexico, and other existing data;

(iii) (ii) Visual survey examination of the *property* for evidence of *archaeological features, artifacts* or *culturally altered landscapes* at least seventy-five years old. Visual surveys must adhere to the State of New Mexico Standards for Survey and Inventory, NMAC 4.10.15; A sample of surface artifacts shall be recovered; and

(iv) (iii) Test *excavations* encompassing a minimum of two percent of the total *lot* area, when the project is in the Historic Downtown District. At least eighteen (18) square feet shall be dug by hand after which further *excavations* may be made by mechanical equipment. *Excavations* shall proceed to a depth where no *archaeological features* or *artifacts* are encountered, or until the maximum depth to which *excavations* can be safely made. Test excavations must adhere to the State of New Mexico Standards for Excavation and Test Excavation, NMAC 4.10.16. The Committee may also consider on a case-by-case basis the option of alternatives for the two percent

testing requirement based on an evaluation of whether at least one percent of the lot can be test excavated, the timing of the proposed excavation, whether the remainder of the required excavations may be made during trenching for foundations or utilities and whether there is also a need for a Monitoring Plan and Report; and

- (v) Sufficient documentation, which complies with State of New Mexico Standards and including NMCRIS Investigation Abstract Form, Laboratory Anthropology Site Record Forms (if applicable), Historic Cultural Properties Inventory Forms (if applicable) and other relevant State documents.

(b) Reconnaissance Committee Meeting to Approve Inventory Report

Upon the completion of the Inventory Report ~~reconnaissance~~, the applicant shall request to be on the Committee's agenda for approval of the report and the ~~a reconnaissance~~ report shall be submitted by the applicant to the Archaeological Review Committee containing materials prepared to the specifications of the Committee.

**Comment [RNA7]:** Again, maybe replace this with archaeological investigations as it is my understanding that the ARC needs to approve all archaeological proposals, research designs, and plans.

(c) Review and Decision by Committee

At a hearing the Committee shall review the applicant's Inventory submittal ~~reconnaissance~~ Report and vote to approve or disapprove the recommended ~~significance~~ status and if required, the recommended activity treatment of archaeological resources. The determination made by the Committee for treatment shall be a condition of approval for the archaeological clearance ~~permit~~ and the

**Comment [RNA8]:** Should we be more explicit about the submittal process? It technically is submitted through HP to the committee.

**Comment [RNA9]:** We can add an evaluation of significance comment in the ordinance but we should also outline the procedure for recommending something for significance. This brings up a broader discussion regarding what is significant to the City, the State, and the Federal government and what is the intent of our code? In regard to historic resources reviewed by the HDRB the determination of City significance is what is considered. I think we need to provide more clarity and guidance regarding significance.

~~building or grading permit.~~

(i) If the project site is determined by the Committee not to be *significant*, then no further treatment is required and an archaeological clearance *permit* shall be issued.

(ii) If the project site is determined by the Committee to be *significant* and the Committee determines that the data potential of the site is exhausted because a sufficient sample has been taken and no subsurface cultural remains exist, then no further treatment is required and an archaeological clearance *permit* shall be issued.

(iii) If the project site is determined to be *significant*, then the applicant is subject to the requirements of Subsection 14-3.13(C)(2)(d).

(d) Treatment

If the project site is determined by the committee to be *significant* and to contain further potential data, the applicant needs to hire an archaeologist to write a Treatment Plan. The archaeologist shall be "City Certified" under Subsection 14-2.7(E) and shall meet the professional qualifications set forth by the State Historic Preservation Division and City requirements when the project is in the Historic Downtown District. The archaeologist shall be "City Certified" under Subsection 14-2.7(E) and shall meet the professional qualifications set forth by the State Historic Preservation Division when the project is in the River and Trails and Suburban Districts. The Treatment Plan is a written document that

Comment [RNA10]: I think we should replace treatment with "mitigation" as the intent of the word mitigation is to reduce loss or impacts.

Comment [RNA11]: Should we make the requirements for certification more blanket. This would help us incorporate External Policy 10.



**End of Comments**

**Ordinance Discussion Notes from 4.7.16**

**From: Nicole A. Ramirez Thomas meeting notes**

ARC members agreed to the use of the word “graduate degree” over “master’s degree.”

ARC members agreed to keep a statement about a graduate degree or *equivalent training or field experience* will be kept as part of the criteria for qualification of certification.

ARC members agreed to the use of “archaeological investigations” over “survey and inventory.”

Staff recommends restructuring of this section.

The term “significant” will be defined in regard to archaeology.

Archaeological material will be anything 50 years and older; a change from 75 years or older.

Staff suggested the use of “cultural properties” to discuss archaeological sites. However, this term did not satisfy so an appropriate term still needs to be discussed.

Ms. Thomas is to discuss preferred terminology and desired treatment of human burials with Michele Ensy and bring the discussion to the committee.

Ms. Thomas is to review guidance from NAGPRA to present to the committee.

**TITLE 4           CULTURAL RESOURCES**  
**CHAPTER 10    CULTURAL PROPERTIES AND HISTORIC PRESERVATION**  
**PART 10        CERTIFIED LOCAL GOVERNMENT PROGRAM**

**4.10.10.1       ISSUING AGENCY:** Department of Cultural Affairs, State Historic Preservation Division.  
[4.10.10.1 NMAC - Rp, 4 NMAC 10.10.1, 1/1/08]

**4.10.10.2       SCOPE:** Applies to the historic preservation division, the cultural properties review committee, the United States secretary of the interior and local governments such as a city, county, village, town, municipality or any political subdivision of the state.  
[4.10.10.2 NMAC - Rp, 4 NMAC 10.10.2, 1/1/08]

**4.10.10.3       STATUTORY AUTHORITY:** This regulation is created pursuant to the Cultural Properties Act, Section 18-6-8 NMSA 1978, which authorizes the state historic preservation officer to administer the Cultural Properties Act, including to serve as the administrative head of all the Cultural Properties Act's functions assigned to the historic preservation division by law and to coordinate all duties performed by and cooperate with entities, public or private, involved with cultural properties. Pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(b)-(d), the state historic preservation officer is the designated state official who shall be responsible for the administration of the state historic preservation program which includes providing a mechanism for the certification by the state historic preservation officer of local governments to carry out the purposes of the National Historic Preservation Act.  
[4.10.10.3 NMAC - Rp, 4 NMAC 10.10.3, 1/1/08]

**4.10.10.4       DURATION:** Permanent  
[4.10.10.4 NMAC - Rp, 4 NMAC 10.10.4, 1/1/08]

**4.10.10.5       EFFECTIVE DATE:** January 1, 2008, unless a later date is cited at the end of a section.  
[4.10.10.5 NMAC - Rp, 4 NMAC 10.10.5, 1/1/08]

**4.10.10.6       OBJECTIVE:** Since its initial enactment in 1966 and through several amendments, the National Historic Preservation Act has provided the statutory framework for the national historic preservation partnership. Federal, state, tribal and local governments have well-defined and significant roles in the identification, evaluation, designation and protection of historic and prehistoric properties. The certified local government program is the primary way through which qualified and interested local governments participate in the national historic preservation partnership. The objective of this rule is to establish the requirements and procedures for the certified local government program and to describe how the program works in New Mexico.  
[4.10.10.6 NMAC - Rp, 4 NMAC 10.10.6, 1/1/08]

**4.10.10.7       DEFINITIONS:**

- A. **"Certified local government" or "CLG"** means a local government whose local historic preservation program has been certified pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(c).
- B. **"Cultural properties review committee" or "CPRC"** means the committee appointed by the governor of the state as provided for in Section 18-6-4 NMSA 1978.
- C. **"Cultural property"** means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance as defined in Section 18-6-3 NMSA 1978 and includes "historic property" or "properties" as defined in the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*
- D. **"Historic preservation division" or "HPD"** means the division within the department of cultural affairs created pursuant to Section 18-6-8 of the Cultural Properties Act and Section 9-4A-4 of the Cultural Affairs Department Act.
- E. **"Historic preservation grants manual" or "grants manual"** means the secretary of interior standards for national park service historic preservation fund grants, June 2007 release, which includes standards for grants issued to certified local governments.
- F. **"Historic preservation review commission" or "commission"** means a board, council, commission, committee or other similar collegial body established through state or local legislation and selected by

the chief elected local official, pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(c)(1)(B) and 16 U.S.C. 470w(13).

G. **"Historic property"** means any prehistoric or historic district, site, building, structure or object included in or eligible for inclusion in the national register, including artifacts, records and material remains related to such a property as defined in the National Historic Preservation Act at 16 U.S.C. 470w(5).

H. **"Local government"** means a city, county, village, town, municipality or any political subdivision of the state.

I. **"National Historic Preservation Act"** means the act codified at 16 U.S.C. 470 et seq.

J. **"National register"** means the national register of historic places established by the National Historic Preservation Act, 16 U.S.C. 470a(a).

K. **"Preservation"** or **"historic preservation"** means identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding cultural properties as defined in the National Historic Preservation Act at 16 U.S.C. 470w(5).

L. **"Registered cultural property"** means a cultural property that has been placed on the New Mexico register of cultural properties as defined in Section 18-6-3 NMSA 1978.

M. **"Secretary"** means the United States secretary of the interior.

N. **"State historic preservation officer"** or **"SHPO"** means the director of the historic preservation division of the department of cultural affairs, as provided for in Section 18-6-8 NMSA 1978.

[4.10.10.7 NMAC - Rp, 4 NMAC 10.10.7, 1/1/08]

**4.10.10.8 DESCRIPTION AND STATEMENT OF PURPOSE:** Pursuant to 36 CFR 61, the certified local government program is designed to promote the identification, evaluation, nomination and protection of cultural properties by establishing a partnership between the local government and the HPD which seeks to encourage and expand local involvement in preservation issues. Such partnerships will help to assure that:

- A. historic preservation issues are understood and addressed at the local level and are integrated into the local planning and decision-making process at the earliest possible opportunity;
- B. local interests and concerns are integrated into the historic preservation process of the HPD;
- C. information concerning local historic preservation issues is provided to the HPD and to the public;
- D. local historic district and landmark legislation and historic preservation review commissions are established in local governments where they do not yet exist and are updated, if necessary, where they already exist;
- E. existing archaeological records and historic cultural properties inventory information maintained by the HPD is made available to the local community to use in identifying and defining community and neighborhood development and historic district areas; and
- F. by participating in the preservation of cultural properties within their communities, CLGs:
  - (1) assume a leadership role in the preservation of the community's prehistoric and historic resources;
  - (2) have a formal role in the national register nomination review process;
  - (3) participate in the establishment of regional and state historic preservation objectives;
  - (4) are eligible to apply for subgrants from a designated certified local government fund established annually by the HPD whenever such funds are available; and
  - (5) receive technical and advisory services from the HPD.

[4.10.10.8 NMAC - Rp, 4 NMAC 10.10.8, 1/1/08]

**4.10.10.9 ELIGIBILITY:**

A. Any general purpose political subdivision of the state such as a city, village, county or town which meets the criteria set forth in this rule is eligible to apply for certification.

B. The National Historic Preservation Act and the historic preservation fund grants manual contain five broad standards which must be met by a local government seeking certification. The local government must:

- (1) enforce appropriate state or local legislation for the designation and protection of historic properties;
- (2) establish an adequate and qualified historic preservation review commission by state or local legislation;
- (3) maintain a system for the survey and inventory of historic properties;

(4) provide for adequate public participation in the local historic preservation program including the process of recommending properties to the national register; and

(5) satisfactorily perform the responsibilities delegated to it under the act.

C. Each state is required to see that CLGs satisfy these minimum requirements and may specify additional requirements. The minimum requirements for certification of local governments in New Mexico are further defined below.

[4.10.10.9 NMAC - Rp, 4 NMAC 10.10.9, 1/1/08]

**4.10.10.10 MINIMUM REQUIREMENTS FOR LOCAL LEGISLATION:** Each CLG shall enact a local preservation ordinance which shall contain, at a minimum, the following provisions for the designation and protection of cultural properties by CLGs in New Mexico:

A. an authorizing statement citing Sections 3-22-1 through 3-22-5 NMSA 1978 of the Historic District and Landmark Act;

B. statement of purpose;

C. definitions;

D. membership and duties of a historic preservation review commission;

E. designation and protection procedures for local landmarks and districts pursuant to Section 3-22-3 NMSA 1978 and the National Historic Preservation Act;

F. criteria for designation of local landmarks and districts pursuant to Section 3-22-3 NMSA 1978 and the National Historic Preservation Act;

G. provisions for holding a public hearing on proposed designations of local landmarks and districts and adequate public notification of such hearing;

H. mandatory review of alterations, demolitions or new construction to listed landmarks and cultural properties within listed historic districts;

I. specific guidelines to be used by the historic preservation review commission including as appropriate the secretary's standards for rehabilitation in 36 CFR 67 and the secretary's *standards and guidelines for archaeology and historic preservation*, available on the the national park service website at [http://www.nps.gov/history/local-law/arch\\_stnds\\_0.htm](http://www.nps.gov/history/local-law/arch_stnds_0.htm);

J. specific timeframes for reviews and for consideration of alternatives;

K. penalties for noncompliance; and

L. criteria to enforce appropriate state or local legislation related to the preservation of cultural properties of historic and prehistoric significance.

[4.10.10.10 NMAC - Rp, 4 NMAC 10.10.10, 1/1/08]

[Additional information on standards for the treatment of historic properties with guidelines for preserving, rehabilitating, restoring and reconstructing buildings is available from the national park service web page at <http://www.nps.gov/history/hps/tps/standguide/>.]

**4.10.10.11 MINIMUM REQUIREMENTS AND DUTIES OF HISTORIC PRESERVATION REVIEW COMMISSIONS**

A. The minimum membership and procedural requirements for historic preservation review commissions for CLGs in New Mexico are detailed below.

(1) The commission shall have at least five members, all of whom have a demonstrated positive interest, competence or knowledge in the professions of architecture, historic architecture, architectural history, archaeology, anthropology, history, historic preservation, planning, real estate, design, building trades, landscape architecture, conservation, law, finance or related disciplines to the extent that these professionals are available in the community. The chief elected local official shall appoint all commission members.

(2) The commission is encouraged to appoint two historic preservation review commission members who meet the professional qualifications standards in appendix A of 36 CFR 61.

(3) Terms of office for commission members shall be no less than two years and shall be staggered;

(4) Rules of procedure shall be established and made public;

(5) The commission shall meet as often as necessary to complete commission responsibilities in a timely fashion, holding no less than four meetings per year, and the meetings shall be held at regular intervals, in a public place, advertised in advance and open to the public; notices of each public meeting shall be mailed to the HPD in advance.

(6) Commission decisions shall be made in a public forum and applicants shall be notified of meetings and advised of decisions.

(7) Written minutes, detailing, at a minimum, the actions and decisions of the commission, and reasons for such actions or decisions, shall be made available for public inspection except when confidentiality of site location is required pursuant to Section 18-6-11 NMSA 1978 and the Archaeological Resources Protection Act, 16 U.S.C. 470hh.

(8) An annual report of its activities shall be provided to the SHPO as detailed at Section 4.10.10.16 NMAC below.

(9) Vacancies on the commission shall be filled within 90 calendar days, unless an extension is requested.

B. Duties of the historic preservation review commissions shall include, at a minimum, the following:

(1) conducting or causing to be conducted a continuing survey of cultural properties in the community according to guidelines established by the HPD;

(2) making recommendations for designation of local landmarks and historic districts to the appropriate local governing body;

(3) establishing and using written guidelines for the conservation of designated local landmarks and historic districts and cultural properties of historic and prehistoric significance in decisions on requests for permits for alterations, demolition or additions to listed landmarks and buildings within historic districts;

(4) acting in an advisory role to other officials and departments of local government regarding the protection of local cultural properties;

(5) acting as a liaison on behalf of the local government to individuals and organizations concerned with historic preservation; and

(6) working toward the continuing education of citizens within the CLG's jurisdiction regarding historic preservation issues and concerns.

C. Each commission is required to set aside at least one regular meeting for informational or educational purposes per year, to be attended by HPD staff, pertaining to the work and functions of the commission or to historic preservation.

D. The CLG historic preservation review commission, in addition to the above stated duties, reviews all proposed national register nominations for properties within the boundaries of the CLG's jurisdiction. When a commission reviews a nomination or other action that will impact properties within the boundaries and such reviews are normally evaluated by a professional in a specific discipline which is not represented on the commission, the commission shall seek expertise in this area before rendering its decision.

E. Pursuant to chapter 3 of the grants manual, historic preservation review commission members shall not engage in activities that would appear to conflict with the fair, impartial and objective performance of commission responsibilities.

[4.10.10.11 NMAC - Rp, 4 NMAC 10.10.11, 1/1/08]

#### **4.10.10.12 PROFESSIONAL CONSULTANT TO CERTIFIED LOCAL GOVERNMENT:**

A. In order to carry out the duties delegated to it, the CLG shall employ or have regular access by contract or letter of agreement to the equivalent of one professional who meets the professional qualification standards of the secretary of the interior's standards and guidelines for archaeology and historic preservation. The HPD will consider written proposals for alternative arrangements for CLGs who submit evidence that they have not been able to obtain such expertise due to a lack of financial resources or available professionals. Such alternatives must ensure that adequate expertise exists to allow the CLG to undertake its responsibilities.

B. Consultants shall be approved by the HPD to ensure that personnel have the necessary skills to carry out the specific responsibilities of that CLG. Staff requirements will vary according to the types of programs which the CLG undertakes and the duties delegated to it. Annual funds transferred to CLGs, as discussed in 4.10.10.19 NMAC below, may be used toward retaining a preservation consultant.

[4.10.10.12 NMAC - Rp, 4 NMAC 10.10.12, 1/1/08]

**4.10.10.13 SURVEY STANDARDS:** CLGs shall establish a process for surveying the cultural properties within their jurisdiction. Where inventories of cultural properties have already been undertaken or are underway, a process for the continuation, maintenance and organization of these data shall be defined.

A. All inventory activities shall be coordinated with and complementary to the New Mexico cultural resource information system (NMCRIS) which is HPD's archaeological records management and historic cultural properties inventory system.

B. Local inventories shall be in a format which is compatible with and can be easily integrated into the statewide comprehensive historic preservation planning system and other appropriate planning processes used by the HPD.

C. There shall be a cultural properties inventory for each designated historic district.

D. All inventory material shall be updated periodically to reflect changes, alterations, and demolitions. At a minimum, this shall include the updating of forms for all major work to significant and contributing cultural properties in an historic district and to landmarks.

E. All inventory material shall be maintained securely and shall be accessible to the public except when confidentiality of site location is required pursuant to Section 18-6-11 NMSA 1978 and the Archaeological Resources Protection Act, 16 U.S.C. 470hh.

[4.10.10.13 NMAC - Rp, 4 NMAC 10.10.13, 1/1/08]

#### **4.10.10.14 PUBLIC PARTICIPATION:**

A. All meetings of the historic preservation review commission shall be publicly announced, open and accessible to the public, and have a previously available agenda. Public notice shall be provided prior to any special meetings. Minutes of all decisions and actions of the commission, including the reasons for making these decisions, shall be kept on file and available for public inspection.

B. The SHPO and the CLG will work together to provide ample opportunity for public participation in the nomination of properties to the national register. All reports submitted by the CLG to the HPD regarding the eligibility of properties shall include assurances of public input. The CLG shall retain a list of all persons contacted during the evaluation period and note comments which it received. If a public meeting was held, a list of those attending shall be included in the report.

[4.10.10.14 NMAC - Rp, 4 NMAC 10.10.14, 1/1/08]

#### **4.10.10.15 CLG PARTICIPATION IN THE NATIONAL REGISTER PROCESS:**

A. The CLG shall submit a report to the HPD regarding the eligibility of each cultural property or district proposed for nomination to the national register within its jurisdiction. This report shall include the recommendation of the historic preservation review commission and the chief elected local official.

B. The report may be as simple as an affirmation that the cultural property is eligible or as lengthy as a researched report stating why the property should or should not be nominated. The report should concentrate on the property's eligibility under the national register criteria. If it is felt that the property is not eligible, adequate reasons must be given based on national register criteria.

C. Failure to submit reports on the eligibility of cultural properties nominated within the jurisdiction of the CLG after the HPD has informed the CLG of a pending nomination will be considered during the annual performance evaluation.

D. The CLG will be involved in the national register process.

(1) In accordance with 36 CFR 61, the HPD will forward a copy of completed national register nominations to the CLG for all properties located in that CLG's jurisdiction within 30 calendar days of receipt unless the CLG itself has initiated the nomination. If the CLG initiates its own nomination(s), it shall provide the completed nomination to the HPD within 30 calendar days of receipt.

(2) After reasonable opportunity for public comment and within 60 calendar days of receipt of the nomination, the CLG shall inform the HPD and the property owner(s) as to its opinion regarding the eligibility of the property. If the historic preservation review commission and the chief elected local official do not agree, both opinions shall be forwarded to the CPRC. If the SHPO does not receive a recommendation within 60 calendar days, the HPD shall continue the nomination process.

(3) If both the commission and the chief elected local official, or their designated representative, recommend that a property not be nominated, the HPD will so inform the property owner(s) and the CPRC and the property will not be nominated unless an appeal is filed with the SHPO under the regulations established for the appeals process, as outlined in the National Historic Preservation Act.

(4) If either or both the commission and the chief elected local official, or their designated representative, agree that the property should be nominated, the nomination will be scheduled for review by the

CPRC. The opinion or opinions of the commission and the chief elected local official, or their designated representative, will be presented to the CPRC for their consideration.

(5) The CPRC, after considering all opinions, shall make its recommendation to the SHPO. If the property is determined to be eligible, the SHPO shall forward the nomination to the keeper of the national register; if the property is determined to not be eligible, the SHPO shall return the nomination to the CLG and the owner(s). Either the commission or the chief elected local official, or their designated representative, may appeal the final SHPO decision under the aforementioned appeals procedure.

(6) CLGs shall participate in review and approval of national register nominations whether or not they elect to apply for grants from the historic preservation fund.  
[4.10.10.15 NMAC - Rp, 4 NMAC 10.10.15, 1/1/08]

#### **4.10.10.16 PERFORMANCE ASSESSMENT:**

A. In order to determine that the CLG is satisfactorily performing the responsibilities delegated to it by the HPD, the CLG shall submit an annual report of the activities of the commission. These reports shall include, but are not limited to, such items as number of cases reviewed, new designations made, revised resumes of commission members, appointments to the commission, attendance records, all minutes related to the national register nominations and goals and objectives of the commission for the coming year. The report shall also document the educational meetings which commission members attended.

B. Notification of commission meetings shall be provided throughout the year to the HPD in a timely manner so that the HPD may attend such meetings or provide pertinent information.

C. The annual report shall be accompanied by a report on the expenditures of any grants received from the HPD during that year and shall follow fiscal accountability guidelines pursuant to the grants manual.

D. The report shall be due within 60 calendar days of the end of each federal fiscal year or at the end of the portion of the fiscal year in the first year of the establishment of the commission. Continued certification shall be based upon performance and review of the annual report of the activities of the commission. The HPD will review the CLG's final report within 45 calendar days of its receipt.

[4.10.10.16 NMAC - Rp, 4 NMAC 10.10.16, 1/1/08]

#### **4.10.10.17 PROCESS FOR CERTIFICATION OF LOCAL GOVERNMENTS:**

A. The chief elected local official of the appropriate local governing body shall request certification from the HPD. The request shall include:

- (1) a written assurance that the local government has fulfilled all of the requirements outlined above;
- (2) a copy of the local historic preservation ordinance;
- (3) a list and accompanying maps of the areas designated as historic districts or individual landmarks within the local government's jurisdiction;
- (4) resumes for each of the members of the historic preservation review commission; and
- (5) a written provision that the local government will provide for a consultant who meets the secretary of interior's professional qualification standards to assist the commission, if needed.

B. The SHPO shall respond to the chief elected local official within 60 calendar days of receipt of an adequately documented written request. If the SHPO determines that the local government fulfills the requirements for certification, the SHPO will forward the decision to the United States secretary of the interior, or designee. The secretary of the interior has 15 working days from receipt to take exception to the certification. The SHPO shall respond to the local government within 15 working days of the secretary's response.

C. When a local government's certification request has been approved in accordance with this rule, the HPD shall prepare a written certification agreement that lists the specific responsibilities of the local government. The responsibilities shall include the four minimum requirements and duties as outlined in Section 4.10.10.10 NMAC above and shall also include any additional responsibilities required by legislation or any additional duties delegated to all CLGs in New Mexico.

D. The HPD will forward to the secretary a copy of the approved request and the certification agreement. If the secretary does not take exception to the request or the agreement within 15 working days of receipt, the local government shall be regarded as certified.

[4.10.10.17 NMAC - Rp, 4 NMAC 10.10.17, 1/1/08]

#### **4.10.10.18 MONITORING AND DECERTIFICATION:**



A. The HPD will conduct periodic review and monitoring of CLGs to assure that each CLG is meeting applicable standards and fulfilling its duties, including the responsibilities delegated to the CLG under the National Historic Preservation Act. The CLG procedures shall also be in conformance with federal and state standards, including standards for statewide comprehensive historic preservation planning and other appropriate planning processes. These standards will be provided by the HPD. The HPD shall also review the annual reports, records of the administration of funds allocated from the HPD to the CLG, and other documents as necessary.

B. If the HPD evaluation indicates that the performance of a CLG is inadequate, the HPD shall document that assessment and delineate for the CLG ways to improve its performance. The CLG shall have a period of not less than 30 calendar nor more than 180 calendar days, depending on the corrective measures required, to implement improvements. If the HPD determines that sufficient improvement has not occurred, the HPD will recommend decertification of the local government to the secretary of the interior, citing specific reasons for the recommendations. When the local government is decertified, the HPD will terminate any financial assistance and will conduct a close-out review of any grants the CLG received from the HPD.

[4.10.10.18 NMAC - Rp, 4 NMAC 10.10.18, 1/1/08]

#### **4.10.10.19 TRANSFER OF HISTORIC PRESERVATION FUNDS TO CLGs:**

A. Pursuant to the National Historic Preservation Act, 16 U.S.C. 470c, a minimum of 10 percent of the state's annual appropriation from the historic preservation fund of the department of the interior will be designated for funding projects by CLGs as provided by congress. In any year in which the annual historic preservation fund state grant appropriation exceeds \$65,000,000, one-half of the amount above \$65,000,000 shall also be transferred to CLGs according to procedures to be provided by the secretary of the interior. All grants may be awarded on a matching basis for funding of specific projects or activities which meet the state's historic preservation plan and chapter 9 of the grants manual.

B. All funds will be awarded on a competitive basis. CLGs receiving grants through the HPD from the CLG share of the historic preservation fund of the department of the interior shall be considered subgrantees of the state. All local governments which have been certified are eligible to apply for funds but will not automatically receive funds.

C. CLGs receiving funds must maintain an adequate financial management system by adhering to all requirements of the grants manual.

D. Specifically, grants made from the historic preservation fund cannot be used as a matching share for other federal grants. Local financial management systems shall be auditable in accordance with the grants manual. Unless the CLG has a current indirect cost rate approved by the cognizant federal agency, only direct costs may be charged against grant funds.

E. Each CLG shall complete a grant application by the annual deadline. Application forms, annual HPD priorities for funding, and criteria for awarding grants will be made available to allow sufficient time for the CLG to complete projects within a two-year federal grant cycle.

F. Applications will be ranked by the HPD. In general, eligible activities will include any project which furthers the goals of historic preservation of the community's cultural properties. This may include survey, nomination of properties to the national register, public education programs, planning studies, research, adoption and publication of local historic district and landmarks legislation, establishment of commissions and the development of a comprehensive historic preservation plan.

G. Grant funds may be used for the purpose of retaining a preservation consultant to the historic preservation review commission as outlined in Section 4.10.10.12 NMAC above. Priority will be given to projects which assist the CLG in establishing a process for incorporating historic preservation goals and objectives into the community's planning process and which increase the community's awareness and understanding of historic preservation, or which increase the capability and effectiveness of the CLG in addressing local historic preservation issues and needs.

H. The HPD will provide on an annual basis the selection criteria and funding requirements for grant proposals.

I. Once a local government is certified, it remains certified, without further action, unless officially decertified.

J. Grants for CLGs are awarded on a yearly competitive basis, according to availability of funds. Because a CLG is given a grant one year does not mean a grant will be available the following year. The HPD shall make available to the public, upon request, the rationale for the applicants selected and the amounts awarded. The HPD shall make reasonable efforts to distribute funds among the maximum number of eligible local governments to

the extent that such distribution is consistent with the selection criteria in Subsection H of 4.10.10.19 NMAC, above. The HPD shall also seek to ensure a reasonable distribution between urban and rural areas in the state, and that no CLG receives a disproportionate share of the allocation. CLG requirements will be included in the state's required written grant agreements with local governments.

K. Use of federal funds will be limited by all existing restrictions imposed by the grants manual. Any state-directed specific uses of funds are to be for activities that are eligible for historic preservation fund assistance. Use of such funds is to be consistent with the state comprehensive historic preservation planning process outlined in the National Historic Preservation Act. The intent of historic preservation fund assistance is to augment, not replace, existing local commitment to historic preservation activities.

L. The HPD is ultimately responsible, through financial audit, for the proper accounting of the CLG share of the historic preservation fund in accordance with the grants manual.  
[4.10.10.19 NMAC - Rp, 4 NMAC 10.10.19, 1/1/08]

**HISTORY OF 4.10.10 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center & archives under HPD Rule 86-1 Certified Local Government Program, filed 7/14/86.

**History of Repealed Material:**

4 NMAC 10.10, Certified Local Government Program, (filed 11/03/1997) repealed 1/1/08.

**Other History:**

HPD Rule 86-1 Certified Local Government Program (filed 7/14/86) renumbered, reformatted and replaced by 4 NMAC 10.10, Certified Local Government Program, effective 11/15/97.

4 NMAC 10.10, Certified Local Government Program (filed 11/03/97) renumbered, reformatted and replaced by 4.10.10 NMAC, Certified Local Government Program, effective 1/1/08.

**TITLE 4            CULTURAL RESOURCES**  
**CHAPTER 10       CULTURAL PROPERTIES AND HISTORIC PRESERVATION**  
**PART 11           ISSUANCE OF PERMITS TO EXCAVATE UNMARKED HUMAN BURIALS IN THE**  
**STATE OF NEW MEXICO**

**4.10.11.1           ISSUING AGENCY:** Office of Cultural Affairs, State Historic Preservation Division.  
[11-15-97; 4.10.11.1 NMAC - Rn, 4 NMAC 10.11.1, 1/1/08]

**4.10.11.2           SCOPE:** The historic preservation division, the office of the medical investigator, the cultural properties review committee, persons who discover unmarked human burials, applicants for permits to excavate unmarked human burials and individuals holding such permits. Section 18-6-11.2 NMSA 1978 applies to all lands of the state of New Mexico and all private lands in the state of New Mexico. It does not apply to federal lands or to lands held in trust for an Indian tribe by the federal government.  
[11-15-97; 4.10.11.2 NMAC - Rn, 4 NMAC 10.11.2, 1/1/08]

**4.10.11.3           STATUTORY AUTHORITY:** Section 18-6-11.2 of the Cultural Properties Act NMSA 1978.  
[9/15/89; 4.10.11.3 NMAC - Rn, 4 NMAC 10.11.3, 1/1/08]

**4.10.11.4           DURATION:** Permanent.  
[11-15-97; 4.10.11.4 NMAC - Rn, 4 NMAC 10.11.4, 1/1/08]

**4.10.11.5           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; 4.10.11.5 NMAC - Rn, 4 NMAC 10.11.5, 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.]

**4.10.11.6           OBJECTIVE:** The objective of Part 11 of Chapter 10 is to establish the procedures under which permits for the removal of unmarked human burials shall or may be issued and the requirements and stipulations for analysis, treatment and disposition of unmarked human burials.  
[9-15-89; 4.10.11.6 NMAC - Rn, 4 NMAC 10.11.6, 1/1/08]

**4.10.11.7           DEFINITIONS:**

A. "Committee" means the cultural properties review committee, as authorized and defined in Section 18-6-4, NMSA 1978, which consists of seven members as follows:

- (1) the state historian at the state records center and archives;
- (2) one person professionally recognized in the discipline of architectural history;
- (3) one person professionally recognized in the discipline of history;
- (4) one person professionally recognized in the discipline of architecture;
- (5) one person professionally recognized in the discipline of archaeology;
- (6) one person professionally, recognized in the discipline of historic archaeology;
- (7) one additional person who is professionally recognized in history, architectural history or

architecture, or archaeology.

B. "State archaeologist" means the state official described in Section 18-6-15, NMSA 1978.

C. "State historian" means the state official described in Section 18-6-14, NMSA 1978.

D. "State historic preservation officer" (SHPO) means the state official described in Section 18-6-8, NMSA 1978.

E. "Permitting authority" means the SHPO, the cultural properties review committee and the state archaeologist.

F. "Permit" means a written authorization issued by the permitting authority to conduct archaeological excavations of human burials.

G. "Unmarked burial ground" means a location where there exists a burial or burials of any human beings that are not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials and includes any funerary object, material object or artifact associated with the burial or burials.

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

I. **"Appropriate efforts to determine age"** means estimation of the date of burial based on historic records (e.g., county or municipal vital statistics, church records, or other archival materials) or on associated funerary objects, material objects or artifacts or on interviews with area residents or any other efforts determined appropriate by the permitting authority.

J. **"Living persons who may be related to the human burial"** means the designated spokesperson of any tribal group or clan or any person or persons with demonstrable consanguinity, affinity or direct historical association with the burial in question.

K. **"Lawful disposition of the human burial"** means disposition of the human remains and associated funerary objects in a manner approved by the permitting authority, including, but not limited to, reburial or curation by a museum or similar facility.

L. **"Appropriate location"** means the location of reburial of human remains and associated funerary objects, material objects or artifacts, as required by the permitting authority and as determined in consultation with the landowner and with any person who may be related to the human burial.

M. **"Medical investigator" (MI)** means the licensed physician described in Section 24-11-3 NMSA 1978.

N. **"Skeletal remains"** means any part of the body of a deceased human being in any stage of decomposition.

N. **"Landowner"** means the public or private owner of any land or estate in which a burial is interred.

O. **"Office of Indian affairs" (OIA)** means the commission created by Section 28-12-4 NMSA 1978.

[9-15-89; 4.10.11.7 NMAC - Rn, 4 NMAC 10.11.7, 1/1/08]

#### **4.10.11.8 COORDINATION WITH THE STATE MEDICAL INVESTIGATOR:**

A. Excavation, removal, disturbance or destruction of an unmarked human burial or unmarked burial ground may be carried out only by authority of the state medical investigator or of the permitting authority.

B. Any case of sudden, violent or untimely death, any death whose cause is unknown, and any death by criminal act or omission is presumed to have medicolegal significance. It is the responsibility of the MI, in cooperation with the law enforcement agency of jurisdiction, to determine whether an unmarked human burial or unmarked burial ground has such medicolegal significance.

C. Consistent with this responsibility, all unmarked human burials and unmarked burial grounds in the state of New Mexico shall be presumed to fall under the authority of the MI pursuant to Section 18-6-11.2(D) NMSA 1978.

D. Any person who discovers an unmarked human burial or unmarked burial ground shall cease any activity that may disturb that burial or burial ground or any object or artifact associated with that burial or burial ground and shall notify the local law enforcement agency having jurisdiction in the area. The local law enforcement agency shall notify the MI and the SHPO. The local law enforcement agency may choose not to notify the SHPO in cases in which it is manifestly evident that the burial is recent and death was caused by a criminal act.

E. When notified by law enforcement the SHPO will designate a staff archaeologist or another professional archaeologist, holding a permit as described below (Subsection B of 4.10.11.9 NMAC), to respond to the discovery of an unmarked human burial or unmarked burial ground. Such permitted professional must be prepared to show adequate and appropriate identification or authorization to law enforcement or to MI personnel. When the MI and such professional archaeologist concur in a determination that the unmarked burial or burial ground is without medicolegal significance, the case shall be terminated by the MI to the SHPO in writing.

F. Following termination of jurisdiction by the MI, discoveries of additional human burials within the same unmarked burial ground may be deemed by the MI to fall within the same case and may be terminated in the same case file as the original find.

G. If no representative of the permitting authority is present to inspect the site of the discovery of an unmarked human burial, the burial shall be presumed to fall under the authority of the MI. The MI may terminate jurisdiction to the SHPO in such case.

H. Either the MI or the SHPO may request that an authorized representative of the other office take sole responsibility for making a field examination of an unmarked human burial and for determining whether the burial has cultural significance.

I. Unmarked human burials or burial grounds shall not be excavated by the MI except as the MI or the representative of the MI and law enforcement deem necessary to determine medicolegal significance. When a staff archaeologist of the SHPO or other professional archaeologist permitted by the permitting authority responds to

the discovery of an unmarked human burial or burial ground, excavation of that burial or burial ground to determine medicolegal significance will be carried out, to the greatest extent deemed feasible by the MI or representative of the MI, under the direction of the professional archaeologist.

J. When the MI determines that an unmarked human burial or burial ground has medicolegal significance, the MI shall retain jurisdiction of that burial or burial ground and shall proceed consistent with Section 24-11-5 [ff.] NMSA 1978 and established investigative protocols of the MI and of the law enforcement agency of jurisdiction.

K. Any unmarked human burial which is determined by the MI not to have medicolegal significance shall be presumed to have cultural significance and shall be deemed to fall under the provisions of Section 18-6-11.2(E-I) NMSA 1978.

L. On the request of the SHPO to the MI in any case in which the MI retains jurisdiction of an unmarked human burial or burial ground, that burial or burial ground will be excavated, removed and analyzed, to the greatest extent deemed feasible by the MI, under the direction of a staff archaeologist or professional archaeologist permitted by the permitting authority.

[9-15-89; 4.10.11.8 NMAC - Rn, 4 NMAC 10.11.8, 1/1/08]

#### **4.10.11.9 PERMITTING PROCEDURES AND REQUIREMENTS PERTAINING TO THE REMOVAL OF HUMAN BURIALS:**

A. Permitting procedures - individual permits.

(1) All applicants for a permit to exhume human burials shall meet the following requirements:

(a) hold a graduate degree in archaeology, anthropology, or equivalent training acceptable to the permitting authority; or

(b) be a member in good standing of an amateur archaeological society certified by the archaeological society of New Mexico; and

(c) have at least 6 months of archaeological field experience within the region where the project will be undertaken, under the guidance of or in cooperation with a recognized professional archaeologist, or demonstrated competence based on analogous experience acceptable to the permitting authority; and

(d) demonstrate an ability to carry out archaeological excavation, documentation and report preparation; amateur societies may be required to coordinate with a professional archaeologist to provide the necessary technical assistance;

(e) applicants shall provide the SHPO with vitas of all members of the applicants' organization expected to supervise the excavation of a burial; vitas need not be submitted with subsequent permit applications, provided that the applicant ensures that the information contained in this file is current at the time of a subsequent permit application; the use of volunteers or other individuals who may not meet the specified qualifications is acceptable only if they will be directly supervised by the permittee or qualified personnel.

(2) Individual case permits will be issued to excavate all burials in specific unmarked burial grounds. The permitting authority will take action on the permit within 60 days of receipt of application.

(3) Applications for individual permits will include the following:

(a) a legal description of the location of the burial (i. e., township, range, section, to the 1/4 1/4 section), land ownership, and a copy of the appropriate USGS 7.5' quad with the location identified;

(b) current vitas of personnel who may supervise the excavation; such persons must be present while burials are being excavated and must directly supervise any volunteers or assistants who participate in the excavation of the burial;

(c) a preliminary set of recommendations outlining the methods and techniques to be employed during the permitted activity, including methods for estimating the date of interment and general procedures that may be used to identify and notify living persons who may be related to the human burial; all excavation and analysis will be conducted in accordance with the guidelines listed in 4.10.11.10 NMAC;

(d) written authorization from the landowner to remove the burial(s);

(e) the information requested in 4.10.11.11 NMAC and any preliminary proposals for reinterment or other appropriate disposal of the human burial consistent with the guidelines listed in 4.10.11.12 NMAC.

(4) The application information and all attachments shall be reviewed by the permitting authority.

(5) The SHPO will notify the applicant in writing of the approval or disapproval of the permit by the permitting authority.

(6) The term of an individual permit will be set by the permitting authority, not to exceed 1 year.

(7) The permitting authority may expedite the review process in emergency discovery situations.

B. Permitting procedures - annual permits.

(1) Permits to excavate burials may be issued on an annual basis. The annual permits are intended to provide for expeditious removal of burials in discovery situations by eliminating the 60 day review period required for an individual permit. Excavations of human remains under an annual permit may take place after notification of the SHPO.

(2) All applicants for annual permits to exhume human burials shall meet the following requirements:

(a) hold a graduate degree in archaeology, anthropology, or closely related field or equivalent training acceptable to the permitting authority; and

(b) have at least 6 months of archaeological field experience within the region where the project will be undertaken, under the guidance of or in cooperation with a recognized professional archaeologist, or demonstrated competence based on analogous experience acceptable to the permitting authority; and

(c) demonstrate an ability to carry out archaeological excavation, documentation and report preparation.

(3) Applications for annual permits will include the following:

(a) current vitas of personnel who may supervise excavation of a human burial or unmarked burial ground; vitas need not be submitted with subsequent permit applications, provided that the applicant ensures that the information contained in this file is current at the time of a subsequent permit application; the use of volunteers or other individuals who may not meet the specified qualifications is acceptable only if they will be directly supervised by the permittee or qualified personnel;

(b) a brief discussion of the methods and techniques to be employed during the permitted activity, including methods for estimating the date of burial, general procedures that may be employed to identify and notify living persons who may be related to the human burial, and general procedures for determining the disposition of human burials, including curation agreements; all excavation and analysis will be conducted in accordance with the guidelines listed in 4.10.11.10 NMAC.

(4) The application information and all attachments shall be reviewed by the permitting authority.

(5) Upon completion of the review process, the SHPO will notify the applicant in writing of the approval or disapproval of the permit.

(6) The term of an annual permit shall be the end of calendar year in which it was approved.

(7) Written notice of a permittee's intent to use an annual permit shall be submitted in writing to the SHPO before excavation begins and will include:

(a) a legal description of the location of the burial (i.e., township, range, section, to the 1/4 1/4 section), land ownership, and a copy of the appropriate USGS 7.5' with the location identified;

(b) written authorization from the landowner to remove the burial(s);

(c) the information requested in 4.10.11.11 NMAC;

(d) a list of the personnel supervising and conducting excavations of the human burial.

(8) The holder of a blanket permit may act as a representative of the SHPO in consultation with the MI under 4.10.11.8 NMAC above. If it is determined that the human burial or unmarked burial ground falls under Section 18-6-11.2(F) NMSA 1978, the permit holder may proceed to remove the burial, consistent with the terms of the permit, immediately following notification of the SHPO.

C. Procedures for appeal of permit denial.

(1) Any applicant denied a permit by the permitting authority or aggrieved by the terms of a permit shall have the right to appeal the decision.

(2) The SHPO shall inform the applicant, in writing, that a permit has been denied and shall specify the reason for denial.

(3) Any applicant wishing to appeal the denial of a permit or the terms of a permit shall write to the SHPO requesting a hearing. The hearing board may designate an alternative to serve in his place if, for any reason, he believes it would be inappropriate to serve on the hearing board. Within 2 weeks of receipt of a request for a hearing, the SHPO will inform the applicant in writing of the date, time, and place of the hearing at which the appeal will be heard.

(4) The chairman of the committee will serve as the chairman of the hearing board. The hearing will be conducted in accordance with the committee's rules of procedure. Decisions in any case brought before the board will be decided by a majority vote of the members of the board. The SHPO will inform the applicant in writing of the decision of the hearing board. The decision of the hearing board will be a final administrative decision.

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

D. Permit stipulations.

(1) Recipients of burial excavation permits issued by the permitting authority agree to abide by all stipulations contained in this regulation and any special stipulation that may be imposed by the permitting authority.

(2) Costs incurred in the execution of the activities conducted under the permit shall be borne by the permittee or the permittee's client or sponsor.

(3) The state of New Mexico, including its bureaus and employees and landholding agencies, shall be held blameless for any and all events, deeds or mishaps resulting from the activities of the permittee, regardless of whether or not they arise from operations authorized under the permit.

(4) The permitting authority shall determine, in consultation with any living relative, conditions for the appropriate disposition of the human remains and any or all of the associated funerary objects, material objects or artifacts. All conditions for final disposition will become stipulations of the permit.

(5) Documentation of all funerary objects, material objects, or artifacts associated with a human burial will be provided to the SHPO, consistent with provisions in Subsection D of 4.10.11.10 NMAC. The permittee will ensure that all documented items are disposed of in accordance with the disposition plan. The permit will also stipulate measures to ensure that the burials and associated funerary objects, material objects, or artifacts remain undisturbed after disposition.

(6) If the excavation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period, the permittee shall contact the SHPO in writing to request an extension of the term of the permit. This request must be received by the SHPO prior to the expiration date of the permit in order to be considered.

(7) If the excavation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify the SHPO in writing to request a cancellation of the permit. Disposition of any human remains and associated funerary objects, material objects or artifacts collected during the excavation conducted under the permit and of copies of all written and photographic records resulting from a discontinued excavation will be determined by the permitting authority.

(8) Failure by a permittee to comply with these and any additional special stipulations set forth in this regulation or on the permit itself shall be considered adequate reason for revocation of a permit and denial of future permits.

(9) If fieldwork is not begun within the permit period, and an extension has not been requested as described above, the permit shall become void at the end of the permit period.

[9-15-89; 4.10.11.9 NMAC - Rn, 4 NMAC 10.11.9, 1/1/08; A, 05/30/2008]

#### **4.10.11.10 GUIDELINES FOR EXCAVATION OF HUMAN BURIALS:**

##### **A. Methodology:**

(1) Excavation of human burials will be consistent with current professional archaeological standards.

(2) Specific excavation methods may be stipulated by the permitting authority.

##### **B. Records: The following documents will be prepared whenever a burial is excavated.**

(1) archaeological records management system (ARMS) forms for each burial ground, if not previously recorded;

(2) plan maps of each burial and associated funerary objects, material objects or artifacts;

(3) photographs of each burial in situ with associated funerary objects, material objects or artifacts;

(4) description of field methodology, including observations about soils and the context of each burial within the burial ground.

##### **C. Analysis of human remains will include but is not limited to:**

(1) sex, age, basic measurements;

(2) pathologies;

(3) photodocumentation.

##### **D. Analysis of associated funerary objects, material objects, or artifacts will include, but is not limited to:**

(1) a written inventory list of all items associated with the burial and removed from the burial ground, to be submitted to the SHPO before final disposition of the remains. The list must be specific in terms of material, typology, quantity and condition of the items recovered (e.g., 2 sherds of a Rio Grande Glaze A bowl, 4 complete projectile points and 1 bone awl).

(2) scaled photographs of all recovered items, to be submitted with written inventory. The photographs should be labeled with the name of the permittee, provenience of the burial (e.g., burial number, site number, county), date of excavation and disposition of items (e.g., reburied on site, curatorial repository).

[9-15-89; 4.10.11.10 NMAC - Rn, 4 NMAC 10.11.10, 1/1/08]

**4.10.11.11 GUIDELINES FOR IDENTIFICATION AND NOTIFICATION OF LIVING PERSONS WHO MAY BE RELATED TO A BURIAL:**

- A. Unmarked burials - Native American:
- (1) With an application for a one-time permit or a notification of activation of an annual permit, the applicant or permittee shall provide the following information to SHPO:
    - (a) a description of the context of the burial (e.g., historic or prehistoric archaeological site) with information about the site type, probable cultural affiliation, and apparent date of interment; and
    - (b) tentative date of completion of excavations.
  - (2) Upon receipt of the permit application or notification of an excavation under an annual permit, the SHPO will notify the state office of Indian affairs in writing of the location and will transmit to the OIA any available information about the human burial or unmarked burial ground.
  - (3) The OIA will attempt to identify living persons who may be related to the human burial. The office of Indian affairs or a designated spokesperson for a tribe or clan claiming a relationship to a human burial may make recommendations for disposition of human remains as it considers appropriate. Recommendations for disposition must be received within 30 days of notification to OIA by the SHPO.
- B. Unmarked burials - Non-native American:
- (1) With an application for a one-time permit or a notification of activation of an annual permit, the applicant or permittee shall provide the following information to the SHPO:
    - (a) a description of the context of the burial (e.g., historic or prehistoric archaeological site) with information about the site type, probable cultural affiliation, and apparent date of interment; and
    - (b) tentative date of completion of excavations; and
    - (c) actions to be taken to identify persons who may be related to the human burial.
  - (2) The permittee will attempt to locate and notify any persons who may be related to the human burial in writing or through legal notices.
- C. If contacted, persons who may be related to a human burial shall be requested by the permittee to make recommendations within 30 days on the disposition of the human remains and associated funerary objects, material objects or artifacts.
- [9-15-89; 4.10.11.11 NMAC - Rn, 4 NMAC 10.11.11, 1/1/08]

**4.10.11.12 GUIDELINES FOR DISPOSITION OF HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS, MATERIAL OBJECTS OR ARTIFACTS:**

- A. SHPO notification:
- (1) The permittee will notify the SHPO within 45 days of completion of permitted excavations and will submit a recommended plan for the disposition of human remains to the SHPO for approval.
  - (2) These recommendations will take into consideration any permit stipulations imposed by the permitting authority, comments from any living person who may be related to the burial, and the wishes of the landowner. The plan will provide a legal location of the reburial site or the location of an approved curatorial facility. An inventory list of all funerary objects, material objects or artifacts found in association with the burial, or collected in the course of excavation, will be submitted with the plan for disposition.
  - (3) The SHPO will review the permittee's recommendations for approval or denial, ensuring that any living person who may be related to the burial will have been notified and given an opportunity to provide comments on final disposition of the human remains and associated funerary objects, material objects and artifacts.
  - (4) Upon completion of the review process, the SHPO will notify the permittee in writing of approval or disapproval of the recommended plan. If the recommendations in the plan are disapproved the SHPO will provide direction for proper disposition.
- B. Implementation of the disposition plan:
- (1) Once accepted, the disposition plan will be implemented within 30 days, or within a specified period to be agreed upon by the SHPO. The permittee will provide written notice to the SHPO of completion of the disposition plan.
  - (2) If reinterment or disposition is delayed as a result of unforeseen circumstances and cannot be completed within the time period specified in the permit, the permittee shall contact the SHPO in writing to request an extension. This request must be received prior to expiration of the specified time period in order to be considered.
  - (3) The cost of reinterment will be born by the permittee except when, having specified reinterment in a manner requested by a tribe, clan or person who has claimed and demonstrated a relationship to the human burial, the SHPO requires that tribe, clan or person to assume such cost.



(4) Funerary objects, material objects or artifacts associated with a human burial will be released to the landowner by written instrument, after all other terms of the permit are met, unless a specific request for reinterment is made by a tribe, clan or person claiming and demonstrating a relationship to the human burial and approved by the SHPO.

C. Review of conditions of disposition plan:

(1) At the timely request of any affected landowner or any person claiming a relationship to a human burial, the permitting authority may review the conditions of a disposition plan prior to its being made final. A request for such review must be made in writing to the SHPO. Within 2 weeks of receipt of request for such review, the SHPO will inform the requesting party of the date, time and place of such review.

(2) The chairman of the committee will serve as the chairman of the review panel. The hearing will be conducted consistent with the committee's rules of procedure. Any decisions as to the terms of the disposition plan will be incorporated into the plan, which will be made final by vote of the permitting authority. The SHPO will transmit the final disposition plan to the requesting party and to the permittee.

(3) All requests for review shall include a statement of the requesting party's reason for requesting such review and will contain any additional information that the requesting party believes will support the appeal. [9-15-89; 4.10.11.12 NMAC - Rn, 4 NMAC 10.11.12, 1/1/08]

**4.10.11.13 REPORTING GUIDELINES:**

A. Reporting requirements:

(1) Within 12 months of the completion of fieldwork, all permittees are required to submit 2 copies of a final report on the excavations of a human burial or burial ground conducted under the permit to the SHPO. If, as a result of unforeseen circumstances, the final report cannot be submitted within this period, the permittee shall submit 2 copies of an interim report to the SHPO, giving an estimated completion date for the final report.

(2) Upon acceptance of the final report by the permitting authority, the SHPO shall send written notification to the permittee of the completion of the permit responsibilities. All reports submitted in fulfillment of the permit requirements shall conform to report guidelines set forth in this section. The permittee shall submit 2 copies of the final report on the excavations of human burials or unmarked burial grounds.

(3) If, due to unforeseen circumstances, a permitted excavation is not undertaken, the permittee shall notify the SHPO in writing and request a cancellation of the permit or permit activation notification. This request, which shall contain a statement that no fieldwork was conducted and state the reason for the request, shall be accepted in lieu of the above required report, and the SHPO shall notify the permittee in writing of the cancellation.

(4) Failure by a permittee to submit the required reports in a timely manner or in conformance with current reporting guidelines shall be considered adequate reason for denial of future permits.

B. Minimal standards for human burial excavation reports:

(1) Abstract or summary shall provide brief information with regard to who, what, where.

(2) Provenience information:

(a) General project area: Provide a brief verbal description of the location of the burial with reference to township, range, and section (to the 1/4 1/4 section). Ownership of the land should be clearly stated. Surface lessee should be indicated if known.

(b) Map: Include a map of the general area showing major terrain reference points and project location. UTM coordinates may be given for the location of burial excavations. Maps should include a copy of a USGS topographic quadrangle. All maps should include project identification, name of person preparing map, scale and north arrow.

(3) Excavation methodology shall include a description of excavation and recordation techniques. The field personnel should also be identified.

(4) Description of burials:

(a) Physical description: Discuss the nature of the burial, associated remains, relation of the burial to other cultural features in the immediate area. Note any particular characteristics of the human remains and associated funerary objects (e.g., flexed burial oriented to the east, covered in a woven blanket of hair, with a mano positioned near the feet).

(b) Cultural/temporal affiliations: State and discuss the criteria used to make this determination.

(c) Plan: Depict the positioning of the human remains and associated funerary objects in relation to the burial. This may be accomplished by a sketch map, but should include a north arrow, scale, and key to map symbols.

(d) Inventory: A list of all funerary objects, material objects and artifacts associated with the burial. The inventory list should be accompanied by scaled, labeled photographs of each item.

(e) Photodocumentation: All burials should be photographed and the photos cataloged. The report should explicitly describe where the photographs will be stored. Glossy black and white photographs are preferred.

(f) Analysis summary section: Analysis of human remains and associated funerary objects, material objects and artifacts will be discussed. The results of the analysis will also be presented.

(g) Final disposition: Disposition of the human remains and associated funerary objects, material objects and artifacts will be described. If the human remains are reinterred, the exact location of the reinterment site should appear in the disposition plan but not in the final report. If curated, the location of human remains or funerary objects, material objects or artifacts associated with the burial should be identified in the report (e.g., museum of New Mexico, or artifacts in the possession of a landowner, including address).  
[9-15-89; 4.10.11.13 NMAC - Rn, 4 NMAC 10.11.13, 1/1/08]

#### **HISTORY OF 4.10.11 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 89-1, Regulations for the Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico, filed 9/15/89.

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

**Other History:** HPD Rule 89-1, Regulations for the Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico (filed 9/15/89) was renumbered, reformatted and replaced by 4 NMAC 10.11, Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico, effective 11/15/97.

4 NMAC 10.11, Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico (filed 11/03/97) renumbered, reformatted and replaced by 4.10.11 NMAC, Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico, effective 1/1/08.



Susana Martinez  
Governor

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

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April 2, 2015

Lisa Roach  
Historic Preservation Division  
City of Santa Fe  
200 Lincoln Avenue  
Santa Fe, NM 87504

Dear Ms. Roach:

I am writing in response to the invitation from David Eck, Chair of the Archaeological Review Committee (ARC), to provide comment on the ARC's proposed revision of the City Code. I understand that the public will be provided additional opportunity to comment on proposed revisions as this process proceeds, thus at this time, my comments are fairly general in nature.

The State Historic Preservation Office (SHPO) recommends replacing the word "reconnaissance" with "intensive survey" because the word reconnaissance can imply that an intensive or 100% survey of an area was not conducted.

The SHPO also recommends changing the definition of a historic property so that they are at least fifty years old rather than seventy-five to be consistent with state and federal standards.

In addition, the current language suggests that a sample of surface artifacts shall be recovered during the survey. The SHPO usually discourages the collection of artifacts from the surface during the survey phase to eliminate the problem of curating the artifacts and to avoid complete collection of archaeological sites if they will not be completely destroyed.

The ARC may want to consider adding more specific requirements for survey reports and treatments plan. The SHPO has detailed guidelines with regards to reporting standards and data recovery/research designs because at one time we had concerns about the quality of the reports. The ARC may not want to follow our example, but some additional detail regarding what the ARC expects may be helpful.

Although other sections of the City's code pertaining to the ARC were not forwarded for comments at this time, I encourage the ARC to review the other sections and make a decision on whether revisions will be necessary. Revisions will be necessary to the section on Human Remains because it is not accurate with regards to the requirements under state law. Under the

Cultural Properties Act, all unmarked human remains, regardless of their age, from state or private land, fall under the jurisdiction of the State Historic Preservation Office if the remains are non-medicolegal. The current city code makes a distinction between remains that are older than seventy-five years and requires the ARC to approve a treatment plan. Treatment plans for any remains must be approved by the SHPO in addition to the ARC. Lastly, Section 30-12-12 NMSA deals with marked cemeteries, not unmarked human remains. Unmarked human remains in an unplatted cemetery would still fall under the SHPO's jurisdiction.

Thank you for providing the SHPO an opportunity to provide comments on the revisions to the city code. I look forward to working with the City and the ARC.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michelle M. Ensey', written in a cursive style.

Michelle M. Ensey  
Archaeologist

Log: 100989

Cc: Jan Biella, Deputy State Historic Preservation Officer