

## **7.16. PROTECTION OF HISTORIC AND ARCHAEOLOGICAL RESOURCES.**

7.16.1. Purpose. This section is intended to preserve and enhance the historic, archeological and cultural heritage of Santa Fe County. The section defers to the protections established in state and federal law and in particular the Cultural Properties Act and the Historic Districts and Landmarks Act. It also intends to use established statutory tools available to local governments to provide additional protection beyond that which is provided by the State and federal governments. In particular, this section intends to utilize, to the greatest extent possible, the County's inherent police power and zoning authority to provide effective protection for historic and cultural sites that would otherwise go unprotected. This section also is intended to provide for additional investigation on property proposed for development to determine whether undiscovered historic or cultural properties exist, and if properties are discovered, to provide protection of those properties from development.

7.16.2. Designation of Registered Cultural Properties. The State of New Mexico, Historic Preservation Division maintains a list of archeological, historic and cultural properties that are deemed worthy of preservation. The list is called the "New Mexico Register of Cultural Properties." The list also includes properties that have been listed on the National Register of Historic Places of the National Park Service. Whenever in the SLDC reference is made to the list of Registered Cultural Properties, that reference shall refer to the most current list maintained by the State of New Mexico, Department of Cultural Affairs.

7.16.3. Development Affecting a Registered Cultural Property – Required Report.

7.16.3.1. Development that proposes to remove, demolish or adversely affect a property listed on the new Mexico Register of Cultural Properties and/or the National register of historic Places is not permitted unless the applicant first obtains a beneficial use and value determination pursuant to subsection 14.9.8 of the SLDC.

7.16.3.2. Development that affects in any way a Registered Cultural Property (including any removal or demolishing pursuant to the previous paragraph) is not permitted unless the applicant first submits a report concerning the proposed development for review of the Historic Preservation Office, Historic Preservation Officer. The report shall describe in detail the proposed changes to the Registered Cultural Property. Such a report shall be prepared by a professional qualified under § 7.16.8 of this subsection. The report shall include a complete treatment plan for protection and preservation of the Registered Cultural Property. The treatment plan shall be reviewed by the New Mexico State Historic Preservation Office, Historic Preservation Officer and conditions on the development proposed by the State Historic Preservation Officer may, as appropriate, be incorporated into the development permit.

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7.16.3.3. Any development affecting in any way a Registered Cultural Property requires a conditional use permit.

7.16.4. Designation of Archeological Districts. The County is hereby divided into three districts for purposes of determining the level of investigation, mitigation and treatment required for archeological resources for persons engaging in development within those districts. The three archeological districts are created in Appendix D. Each district corresponds to areas of high, "medium," and "low" potential for discovery of heretofore undiscovered archeological resources.

7.16.5. Development Within Areas of High Potential for Discovery of Archeological Resources;

## Required Investigation, Treatment and Mitigation.

7.16.5.1. Any proposed development of a (i) non-residential use, (ii) a multi-family use, or (iii) any division or subdivision of land encompassing 5.0 acres or more within an area of “high” potential, or 2.0 acres within a traditional community and in a “high” potential for discovery of archeological resources on Map 7-1, shall first investigate the property for archeological resources and shall preserve, mitigate, or treat the archeological resources as specified herein before a development permit is issued.

7.16.5.2. The investigation referred to in the previous paragraph shall include documentary research through the Archeological Records Management System (ARMS) of the State of New Mexico, Historic Preservation Division, records maintained by the federal Bureau of Land Management, and any other known documentary sources (such as those held by the University of New Mexico), to determine whether known archeological resources exist at the site.

7.16.5.3. The investigation referred to in the previous paragraphs shall have as its goal to determine in a definitive manner whether known archeological resources exist. If known archeological resources exist on the site, they shall be confirmed through direct field investigation conducted by a qualified professional under § 7.16.8.

7.16.5.4. If, as a result of the documentary investigation and any follow-up field investigation, archeological resources are verified to exist on the property, a treatment and mitigation plan shall be developed whose primary goal is preservation of the archeological resources. If preservation is not practicable, then a treatment and mitigation plan shall be prepared and incorporated into the report as described in the following paragraphs.

7.16.5.5. Notwithstanding the foregoing, a pedestrian survey of the property proposed for development to which this subsection applies shall be conducted by a qualified professional under § 7.16.8 for all properties to which this subsection applies. The pedestrian survey shall be consistent with the requirements for such surveys set forth in 4.10.15 NMAC (“Standards for Survey”). If the qualified professional determines that archeological resources may be present, shovel tests or other subsurface testing shall be performed.

7.16.5.6. The investigation referred to in the previous paragraphs shall culminate in the preparation of a detailed report concerning the investigation which shall, at a minimum, contain all of the following. The report shall be forwarded to SHPO for review and comment:

1. a map of the proposed development that includes the buildable area and all areas proposed to be disturbed and that also shows the location of any

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archeological resources or sites investigated as a result of the documentary and pedestrian survey and any property listed on the Register of Cultural Properties;

2. a description of all archeological resources that were found during the investigation;

3. a brief description of human occupation and land use in the vicinity of the proposed development;

4. a complete list of sources consulted during the investigation; 5. a site map of the proposed development and environs that includes depiction

of the archeological sites found and that depicts all the field work completed;

6. photographs of all archeological resources investigated;

7. copies of each site inventory and activity form completed on the site;

8. an overview of previous work and findings from the site of the proposed development and nearby

sites;

9. an assessment of the impact of the proposed development on the archeological remains found at the site;

10. any archeological resources identified in the report, categorized as either (a) not significant and no treatment is necessary, (b) significant, but that the proposed development will not affect the resources or can avoid the resources with careful placement, (c) significant, but that the resources can be effectively treated, or (d) that the archeological or cultural resources are significant, cannot be avoided, and treatment is not feasible;

11. a proposed treatment and mitigation plan that, if prepared, provides details concerning the means to undertake recovery and preservation of the archeological resources.

7.16.5.7. If the report referred in the previous paragraph proposes a treatment plan, the treatment plan shall be carried out as a condition precedent to obtaining a development permit. The treatment of the archeological resources shall continue until no archeological resources are encountered. As an alternative to carrying out a treatment plan prior to issuance of a development permit, the Administrator may accept financial assurance for the completion of the treatment plan and issue a development permit conditioned upon completion of the treatment plan.

7.16.5.8. If archeological resources are found, the resources shall be tested and analyzed during the field investigation, and quantitative and qualitative summaries of the archeological remains shall be provided in the report.

7.16.5.9. Archeological resources which are identified as significant as a result of the investigation shall be avoided and permanently protected by a non-disturbance easement, or mitigated and treated. The property on which archeological resources are located may be voluntarily transferred or sold to a federal, State or County government for further protection as an alternative to protection by a non-disturbance easement.

7.16.5.10. For those resources determined to be significant under the previous paragraph  
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and for which a treatment plan is recommended, a sample of surface artifacts shall be collected and documented, and if there is any reason to believe that subsurface resources exist, excavations shall be conducted according to the most current standards of the Historic Preservation Officer set forth in 4.10.16 NMAC (“standards for Excavation and Test Excavation”).

7.16.5.11. In consultation with the State Historic Preservation Officer, the Administrator may determine that an investigation is not required for areas where cultural resources have been destroyed by previous development.

7.16.5.12. The total cost of treatment shall not exceed ten percent (10%) of the total cost of development of the applied-for development, including all future phases. If future phases are not planned sufficiently to determine development total costs, then development of future phases consistent with the applied-for development shall be assumed. To the extent that the cost of treatment exceeds ten percent of development costs, treatment shall be completed to the extent that funds do not exceed ten percent of the costs of development. If treatment is incomplete, the applicant shall contact the State Historic Preservation Officer and the County’s Open Space and Trails Division for additional funds to complete the treatment. Only if such requests are denied may the treatment plan be terminated and a development permit issued.

7.16.5.13. If an applicant does not agree with the findings and a proposed treatment plan, the applicant may consult with another qualified professional to review the findings and treatment plan and render a second opinion. If, after the second opinion, the applicant still does not agree, the applicant may request an opinion from the State of New Mexico, State Historic Preservation Officer. The opinion of the State Historic Officer shall be final.

7.16.6. Development Within Areas of Medium Potential for Discovery of Archeological Resources, Required Investigation; Treatment and Mitigation.

7.16.6.1. Any proposed development of a (i) non-residential use, (ii) a multi-family use, or (iii) any division or subdivision of land encompassing 10.0 acres or more within an area of “medium” potential for discovery of archeological resources on Map 7-1, shall first investigate the property for archeological resources, and shall preserve, mitigate, or treat the archeological resources as specified herein before making application for a development permit.

7.16.6.2. The investigation, treatment and mitigation required in the previous paragraph shall encompass all the items described in subsections 7.16.5.2. through 7.16.5.13.

7.16.7. Development Within Areas of Low Potential for Discovery of Archeological Resources, Required Investigation; Treatment and Mitigation.

7.16.7.1. Any proposed development of a (i) non-residential use, (ii) a multi-family use, or (iii) any division or subdivision of land encompassing 40.0 acres or more within an area of “low” potential for discovery of archeological resources on Map 7-1, shall first investigate the property for archeological resources, and shall preserve, mitigate, or treat the archeological resources as specified herein before making application for a development permit.

7.16.7.2. The investigation, treatment and mitigation required in the previous paragraph shall encompass all the items described in subsections 7.16.5.2. through 7.16.5.13.

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7.16.8. Professional Qualifications. Where an investigation called for in this subsection requires a qualified professional, that investigation shall be conducted by a professional archeologist, anthropologist or historian qualified and approved by the State of New Mexico Cultural Affairs Division, Historic Preservation Officer to conduct archeological surveys on State lands, who shall also be approved by the Administrator.

7.16.9. Unexpected Discoveries. Any unexpected discoveries of archeological or cultural resources during construction, whether investigated or not pursuant to the SLDC, shall be immediately reported to the Administrator. Absent further instructions from the Administrator, construction activities shall immediately cease. The Applicant shall be responsible for having a person qualified pursuant to this section conduct an investigation of the site within forty-eight (48) hours to investigate, prepare a report, treat and mitigate the site as necessary and as described in subsection 7.16.5. The Administrator may only issue a permit authorizing construction to continue when all the items set forth in subsections 7.16.5.2. through 7.16.5.13 have been accomplished and approved by the Administrator,

7.16.10. Unexpected Discoveries of Human Remains. An unexpected discovery of human remains invokes duties under State Law. Any such discovery shall be reported to the Administrator and to the Office of the Medical Investigator immediately. All construction activities shall cease until the Medical

Investigator has cleared further work.

7.16.11. Tribal Notification. Each investigation completed pursuant to this section shall be treated as a public record except as provided in NMSA 1978, Section 18-6-11.1, and mailed to any Tribal government within Santa Fe County that has made a written request of the Administrator for such information.

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