

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 1 NATURAL RESOURCES GENERAL PROVISIONS
PART 3 ADMINISTRATION OF THE NATURAL HERITAGE CONSERVATION ACT

19.1.3.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.
[19.1.3.1 NMAC - N, 7/30/2010]

19.1.3.2 SCOPE: 19.1.3 NMAC applies to application and selection procedures for conservation projects that may receive grants from the natural heritage conservation fund.
[19.1.3.2 NMAC - N, 7/30/2010]

19.1.3.3 STATUTORY AUTHORITY: 19.1.3 NMAC is adopted pursuant to the Laws of 2010, Chapter 83.
[19.1.3.3 NMAC - N, 7/30/2010]

19.1.3.4 DURATION: Permanent.
[19.1.3.4 NMAC - N, 7/30/2010]

19.1.3.5 EFFECTIVE DATE: July 30, 2010, unless a later date is cited at the end of a section.
[19.1.3.5 NMAC - N, 7/30/2010]

19.1.3.6 OBJECTIVE: 19.1.3 NMAC's objective is to establish procedures for carrying out the provisions of the Natural Heritage Conservation Act to protect New Mexico's natural heritage, customs and culture including establishing criteria for evaluating possible conservation projects to receive grants from the natural heritage conservation fund.
[19.1.3.6 NMAC - N, 7/30/2010]

19.1.3.7 DEFINITIONS:

A. "Agricultural easement" means a less than fee simple interest in land that is granted in perpetuity, which creates a legally enforceable land protection or preservation agreement and restricts or prohibits the future development, including subdivision, or alteration of the land or the permanent severance of any appurtenant water rights for a purpose other than agricultural production or the natural values of the land. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.

B. "Agricultural production" means the production for commercial purposes of crops, livestock or livestock products, including the processing or retail marketing of crops, livestock or livestock products that are primarily produced on site by an operator of a working farm, ranch or other agricultural land. The term includes use of land that is devoted to and meets requirements and qualifications for soil conservation programs under an agreement with an agency of the federal government and may include periodic fallowing and practices that promote conservation of land and water on and near the property.

C. "Applicant" means a qualified entity.

D. "Committee" means the natural lands protection committee established pursuant to NMSA 1978, Section 75-5-4(A).

E. "Conservation easement" means a less than fee simple interest in land granted in perpetuity, which creates a legally enforceable land protection or preservation agreement that restricts or prohibits further subdivision and may restrict or prohibit development, commercial and industrial uses or other activities, or alteration of the land or any appurtenant water rights necessary to maintain or preserve certain conservation values (*e.g.*, natural resource, wildlife habitat, scenic, open space, cultural, historic or recreational and educational) on the subject property. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.

F. "Conservation entity" means a private nonprofit charitable corporation or trust authorized to do business in New Mexico that has tax-exempt status as a public charity pursuant to the internal revenue code of 1986 and that has the power to acquire, hold or maintain land or interests in land.

G. "Conservation project" means the acquisition of conservation or agricultural easements from a willing seller or a land restoration project that protects the state's natural heritage, customs and culture through

action that preserves and conserves water quality and quantity to conserve and restore natural ecosystem function and processes; protects agricultural production on working farms, ranches and other agricultural lands; protects and restores New Mexico's forests and watersheds; conserves and restores wildlife habitat; maintains natural areas; provides outdoor recreation opportunities, including hunting and fishing and trails; or preserves cultural and historic sites with natural resources heritage value.

H. "Department" means the energy, minerals and natural resources department.

I. "Fund" means the natural heritage conservation fund.

J. "In-kind" means property or services that benefit a grant-supported conservation project that are contributed without charge or at less than fair market value. In-kind contributions for purposes of land restoration projects may consist of the cost of operating equipment or equipment rental, goods or services, including labor, directly benefitting the land restoration project and specifically identifiable to the land restoration project. Labor costs included as in-kind shall be documented as reasonable and reference rates applicable to the local area and type of service. In-kind contributions for purposes of agricultural or conservation easements means the donation of interests in real property or the payment of transactional costs such as appraisals, environmental assessments, title insurance or surveys.

K. "Land restoration project" means actions intended to renew a degraded, damaged or destroyed natural land area and associated vegetation or water features through active intervention, where the action is founded upon science-based technical information and prediction of the intervention's outcome such that it stimulates or accelerates natural system health, integrity and sustainability toward a specified outcome. Restoration includes an array of actions including erosion control, reforestation, forest thinning, re-vegetation of disturbed sites, repair of aquatic systems, removal of non-native species of animals and plants and the related sustainable re-establishment of native species, re-establishment of extirpated native species, measures taken to restrict disturbance to areas of crucial habitat or to develop and restore more suitable habitat and improved outdoor recreation opportunities and overall habitat and range improvements for native species benefit. A project includes related assessment and monitoring to judge long-term effectiveness and determine and implement periodic corrective or additional actions needed to achieve objectives.

L. "Natural resource heritage value" means a vegetation community component, animal species assemblage or combination thereof; other naturally occurring representation of biological diversity; or esthetically appealing vistas of natural landscape that are significant or important.

M. "Partner" means a conservation entity or other individual or entity cooperating or assisting a qualified entity with planning, applying for and executing a conservation project, which is specifically identified in an application, and will be a participant in a public-private conservation project.

N. "Qualified entity" means a state agency, a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, a political subdivision of the state; or, for conservation projects wholly within New Mexico, an Indian tribe or pueblo.

O. "Working farm, ranch or other agricultural land" means land that has been primarily devoted to active agricultural production for at least two of the five years immediately prior to consideration for an agricultural easement or other conservation project.

[19.1.3.7 NMAC - N, 7/30/2010]

19.1.3.8 GENERAL PROVISIONS: The department administers the Natural Heritage Conservation Act, which establishes a fund and a competitive grant program to select and fund conservation projects. The committee evaluates proposed conservation projects and recommends to the department which proposed conservation projects should receive funding.

[19.1.3.8 NMAC - N, 7/30/2010]

19.1.3.9 ELIGIBLE APPLICANTS: Only qualified entities may apply for grants from the fund. Conservation entities may not individually apply for or receive grants directly from the fund, but they may partner with qualified entities on conservation projects. If a conservation entity will jointly acquire a conservation or agricultural easement or is a partner on a land restoration project, the conservation entity shall be identified in the application.

[19.1.3.9 NMAC - N, 7/30/2010]

19.1.3.10 CONSERVATION PROJECTS: Conservation projects that may receive grants from the fund include the following:

- A.** acquisition of conservation easements from willing sellers by qualified entities, including the department, which may or may not be in partnership with conservation entities;
 - B.** acquisition of agricultural easements from willing sellers by qualified entities, including the department, which may or may not be in partnership with conservation entities; or
 - C.** land restoration projects by qualified entities, including the department, which may or may not be in partnership with conservation entities.
- [19.1.3.10 NMAC - N, 7/30/2010]

19.1.3.11 GRANT APPLICATION PROCESS:

A. If funding is available, the department may establish one or more competitive grant application cycles each calendar year and specify the required format, forms and deadline for application submittal. Each application cycle announcement shall specify any priority area, ecological, geographic, funding, type of project or other limitations applicable to that cycle, as related to funds available, accomplishments to date and criteria specified in Subsection C of 19.1.3.12 NMAC.

B. The applicant shall submit an application in a format specified by the department that includes at a minimum the following information:

- (1) the type of conservation project (*e.g.*, conservation easement, agricultural easement or land restoration);
- (2) the applicant's address, contact information and contact person;
- (3) the landowner's address and contact information;
- (4) general information about the property including a legal description of the property;
- (5) information demonstrating how the proposed conservation project meets the requirements of the Natural Heritage Conservation Act, 19.1.3.12 NMAC and the criteria in Subsection B of 19.1.3.12 NMAC;
- (6) for grant applications seeking funding to acquire a conservation easement or agricultural easement:
 - (a) property details supplied by the landowner to the qualified entity, including ownership interests, liens, mortgages and encumbrances;
 - (b) a draft deed of conservation easement or deed of agricultural easement or a descriptive list of intended easement provisions including acreage, building envelopes, conservation provisions and reserved uses;
 - (c) a written statement from the landowner that the landowner wishes to sell a conservation easement or agricultural easement to the applicant;
 - (d) a written description of the applicant's authority to acquire and hold land or interests in land, including conservation easements or agricultural easements; and
 - (e) a written statement or other proof that the applicant has the experience and the ability to manage lands for conservation, natural resource heritage value or agricultural value;
- (7) for land restoration projects, a statement describing the intended land restoration activities with specific objectives and a designated project manager identified to be responsible for implementation of the approved project including overseeing contractor or subcontractor administration, providing liaison with affected landowners, ensuring technical viability of the project, ensuring funds expended are within budget and obtaining any necessary permits;
- (8) the name of any qualified entities or conservation entities that are partnering with the qualified entity on the conservation project, a description of each entity's role and contribution and a written commitment from each conservation entity identifying that entity's proposed responsibilities and contributions;
- (9) how the conservation project relates to applicable state, tribal, county or local plans;
- (10) projected beginning and completion dates for the conservation project and a schedule of activities required to complete the conservation project with projected beginning and completion dates for those activities;
- (11) a full budget for the project detailing the costs and in-kind contributions, if any; and
- (12) a list of any permits, certifications and clearances needed to implement the project.

C. The department shall review applications for timeliness and completeness before providing the grant applications it has received to the committee. The committee may consider the grant applications at a regularly scheduled meeting or at a special meeting scheduled for the purpose of considering grant applications.

[19.1.3.11 NMAC - N, 7/30/2010]

19.1.3.12 APPLICATION REVIEW:

A. The committee shall review applications that are timely, that are complete and that comply with the Natural Heritage Conservation Act and 19.1.3 NMAC and evaluate them against the criteria in Subsection B of 19.1.3.12 NMAC. The committee may reject untimely applications, incomplete applications or applications that do not comply with the Natural Heritage Conservation Act or 19.1.3 NMAC. The department secretary, upon request by the committee, may provide technical assistance through staff assignment or a group of public agency and private individuals selected to assist during a specified review cycle. After review, the committee shall make its recommendations on all evaluated conservation projects to the department.

B. The committee shall evaluate applications for conservation projects based upon the following criteria:

- (1) the degree to which the conservation project serves the purposes of the Natural Heritage Conservation Act;
- (2) the extent of cash and in-kind matching financial support for the conservation project from sources other than the state, in context with the amount of funding requested and available overall;
- (3) the applicant's and partner's technical qualifications and its ability to complete and maintain the proposed conservation project;
- (4) the degree to which the conservation project fosters and integrates with existing conservation plans, strategies and initiatives;
- (5) the potential for benefits at the landscape and ecosystem scale;
- (6) the potential for improved public access for outdoor recreation opportunities, including hunting and fishing;
- (7) the potential for economic benefits, including direct commerce and ecosystem services, of the completed conservation project;
- (8) complementary or strategic values through proximity to other conservation actions, priorities or projects;
- (9) conservation project readiness for completion on a timely schedule;
- (10) degree and extent of partner involvement;
- (11) the likelihood that the conservation project as proposed will have long-term success in achieving its purposes and will have long-term sustainability, including involvement of land dedicated to conservation purposes and an explicit monitoring plan.

C. The committee will evaluate and categorize applications according to the following matrix of factors and relative values and base its assessment and recommendations on the matrix. The committee has discretion to determine how to use the information from the matrix to determine value assignments among features of each application, in consideration of any limitations identified in the application cycle announcement as provided for in Subsection A of 19.1.3.11 NMAC.

Factor	Level 4	Level 3	Level 2	Level 1
Serves purposes of the Natural Heritage Conservation Act	Clearly serves all purposes	Clearly serves multiple purposes	Clearly serves one purpose and may serve others	Questionable if any purposes are adequately served
Extent of matching cash and in-kind financial support	Applicant/Partner provide more than 75% of project costs	Applicant/Partner provide 50 to 75% of project costs	Applicant/Partner provide 25 to 49% of project costs	Applicant/Partner provide less than 25% of project costs
Qualifications and ability of applicant and partners to complete and maintain proposed project	Substantial past experience and continuing capability to do proposed work and follow-up	Demonstrated completions of similar work and is fully structured to do similar work	Demonstrates some past ability and basic documented qualifications and infrastructure	Indicates uncertain capability or has no prior experience and necessary infrastructure
Degree of fostering existing conservation plans, strategies and initiatives (PSIs) specified in the cycle announcement	Project has substantial relation to most PSIs and directly fosters several	Project clearly fosters multiple PSIs and directly relates to several	Project has clear relation to one PSI and possible service to others	Project has uncertain relation to any PSIs or no clear degree of fostering

Factor	Level 4	Level 3	Level 2	Level 1
Potential for benefits at landscape or ecosystem scale	Substantial landscape and ecological scale benefits are evident in completed work	Substantial landscape or ecological scale benefits are evident in completed work	Desired scale benefits are evident, but are judged minimal	No clear benefits are evident at desired scale
Potential for improved public access to outdoor recreation opportunities on or off project site	Multiple enhanced recreation opportunities are evident, including hunting and fishing	Some enhanced outdoor recreation opportunities are evident and have prospect for growth	Some enhanced outdoor recreation opportunities are evident but are limited	Proposal has no discernible outdoor recreation elements
Potential economic benefits of completed project	Project has multiple economic benefits at multiple scales	Project has some economic benefits locally and broader	Project shows economic benefits, at least locally	Project has no discernible economic benefits
Complementary or strategic values through proximity to other ongoing or completed conservation actions, including any priority areas formally identified by the committee	Project is within a priority area or directly links to nearby completed or ongoing conservation actions and provides added heritage values	Project is within a priority area but has limited relationship to other conservation actions that will provide synergistic heritage values	Project is not within a priority area but has proximity to other actions that may provide synergy or economy of scale or cost effectiveness	Project has no proximity to other conservation endeavors and is not otherwise distinctive as a starting point
Degree of readiness to start and complete project on timely schedule	Readiness and time schedule are clear and background work is complete; timely execution is essentially assured	Readiness and time schedule are clear and reasonable to the project, but could experience some delay	Readiness and time schedule are clear, but have acknowledged or likely delays inconsistent with the nature of the project	Readiness and completion scheduling is unspecified, unclear or uncertain
Degree and extent of partner involvement	Multiple entity project where reasonable partnering is included with clear and substantive involvement and contribution	Multiple entity project where reasonable partnering is included beyond minimal but is not extensive	Single or multiple entity project where partnering is included, but is minimal	Single entity project with no partner involvement when such partnership is possible and advised
Likely long-term success and sustainability	Project is well-described and accomplishable with substantive provisions for sustained maintenance and routine outcome assurance	Project is well-described and accomplishable with basic provisions for sustained maintenance and periodic outcome assessment	Project is inherently achievable but contains limited provisions for maintenance over the long-term	Project appears basically achievable, but long-term outcome is questionable or uncertain

D. A summary of committee judgments, without attribution to individual committee members, among factors described in Subsection C of 19.1.3.12 NMAC will be made public regarding all applications that are recommended to the department for funding and those that are not recommended to be funded.
[19.1.3.12 NMAC - N, 7/30/2010]

19.1.3.13 GRANT AWARDS:

A. A conservation project involving acquisition of a conservation or agricultural easement requires an appraisal that establishes the fair market value of the conservation or agricultural easement and meets United States treasury regulations and the uniform standards of professional appraisal practice before the department will disburse the funds to the qualified entity.

B. In addition, for conservation projects involving acquisition of a conservation or agricultural easement, the qualified entity or partner conservation entity shall provide as specified by the department documents including a title commitment; phase I environmental site assessment and, if needed based on phase I environmental site assessment, a phase II environmental site assessment; a title opinion certifying that the landowner owns the minerals rights or a report, satisfactory to the department, from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible; and if deemed necessary by the department, a property boundary survey. If the landowner owns the mineral rights, an easement shall prohibit subsequent sale or development of mineral rights by the landowner granting the conservation or agricultural easement. A baseline documentation report of the property shall be recorded with the deed of conservation easement or agricultural easement in the office of the applicable county clerk.

C. Agricultural and conservation easements shall contain a provision that if a qualified entity, other than the department, or a partner conservation entity fails to enforce the easement as determined by a court or if either the qualified entity or conservation entity cease to exist, that the easement will go to another qualified entity or partner conservation entity as specified in the easement and agreed to by that qualified entity, or otherwise the easement shall become vested in the department as recommended by the department and other extant easement right holders. Any qualified entity's interest in an easement shall only go to another governmental entity. The department shall have the option to provide similar rights of enforcement or possession to other governmental entities (e.g., federal partners) where such partners have similar rules, regulations or requirements and demonstrated capacity to manage or enforce easements.

D. Grant awards may be approved for use to pay transactional costs for easement projects such as appraisals, title insurance, title opinions, surveys or environmental reviews up to three percent of the total value of the conservation project funded or 10 percent of the amount of the grant, whichever is less. The committee and the department may consider and approve grant requests for paying only transaction costs for easement projects, subject to the grant being for up to three percent of the total value of the conservation project or \$45,000, whichever is less.

E. Overhead and administrative expenses used as in-kind contributions may be no more than 10 percent of the total cost of a project.

F. A qualified entity or conservation entity may use contractors or subcontractors so long as their use is explained in the application, all applicable procurement requirements are met and the contractors or subcontractors are identified by name in the application, to the extent known. If contractors or subcontractors are identified in the application, the qualified entity or entities shall include documentation in the application that demonstrates all applicable procurement requirements were met. The qualified entity or entities associated with an approved project shall be wholly responsible for the project execution and performance, whether or not contractors or subcontractors are used. Use of contractors or subcontractors not identified in an application shall require the department's prior written approval.

G. Prior to commencing any work, any contractors or subcontractors may be required to furnish state certification from insurers for coverage in the minimum amounts as designated by the state. Appropriate coverage shall be maintained in full force and effect during the term of the project and shall not serve to limit any liabilities or any other contractor obligations. The state and the department must be added as additional insured as required by statute, agreement or other obligation.

[19.1.3.13 NMAC - N, 7/30/2010]

19.1.3.14 PUBLIC-PRIVATE CONSERVATION PROJECTS:

A. Conservation or agricultural easements. Conservation projects that are the joint acquisition of a conservation easement or agricultural easement by a qualified entity and a conservation entity and are funded in part with a grant to a qualified entity shall meet the following requirements.

(1) The qualified entity and conservation entity shall hold title to the conservation easement or agricultural easement as cotenants having undivided interests in proportion to each entity's share of the acquisition.

(2) The conservation entity shall acquire no less than 10 percent of the easement as a percentage of the appraised easement value and may do so through cash or in-kind contributions to the total project value not paid by a qualified entity. If an in-kind contribution, no portion of that contribution shall be comprised of the portion of a donation by a landowner for which the landowner has been previously compensated through a state tax incentive or

credit, but nothing in this provision shall diminish the ability for any landowner to be eligible to apply for any state tax incentive or credit.

(3) The conservation entity, as part of the qualified entity's application, shall submit a plan for the conservation and stewardship of the lands for which the conservation entity and the qualified entity are responsible. The plan shall comply with the purposes of the Natural Heritage Conservation Act and shall specifically identify the entity responsible for ongoing monitoring and stewardship.

B. Land restoration. When a conservation entity has partnered with a qualified entity on a land restoration project that is funded in part with a grant to a qualified entity, the following requirements apply.

(1) The conservation entity shall provide at least 10 percent of the cost of the conservation project and may do so, all or in part, through cash or in-kind contributions to the total project cost not paid by a qualified entity.

(2) The qualified entity shall submit a plan for management of the lands for which the qualified entity and conservation entity are responsible. A conservation entity partner may prepare the management plan. The management plan shall comply with the purposes of the Natural Heritage Conservation Act and shall specifically identify the entity responsible for ongoing management, stewardship and monitoring.

[19.1.3.14 NMAC - N, 7/30/2010]

19.1.3.15 MONITORING REPORT REQUIREMENTS:

A. Qualified entities awarded grants from the fund shall submit annual reports, by December 1 each year, to the department for 10 years after the date of the acquisition of the conservation or agricultural easement or the date of a grant agreement for a land restoration project, unless a longer or shorter monitoring period is mutually agreed in writing among the department and the qualified entity. On joint public-private conservation projects, the qualified entity may delegate this requirement to a conservation entity. The designated responsible qualified entity or conservation entity shall document easement monitoring activities in perpetuity and keep all documentation available for review by the department at any time. Annual reporting and perpetual documentation shall describe the subject property's management by the landowner and include the details of the qualified entity's and any partner conservation entity's stewardship and monitoring activities. For land restoration projects, the report shall provide at least a qualitative assessment of the degree to which the project has accomplished or is accomplishing the objectives specified in the land restoration project application and grant agreements. Monitoring involves assessment of a conservation project for indications that the pre-specified objectives and intent are being met or that trends are in that direction; there is no requirement for scientific-based, cause-effect research and data collection unless such efforts are specifically made a part of the project agreement at the outset or in subsequent amendments of the agreement. The qualified entity or any designated partner entity shall collect sufficient baseline information during the first year of the project such that subsequent monitoring and description of change can be accomplished.

B. A qualified entity's failure to comply with the reporting or documentation requirements, including ensuring proper reporting or documentation by the conservation entity if this requirement is delegated, may disqualify the qualified entity from receiving future grant funding.

[19.1.3.15 NMAC - N, 7/30/2010]

19.1.3.16 COMPLIANCE: The department may audit a qualified entity's or conservation entity's records including stewardship records, financial statements and supporting records relating to the grant award. The qualified entity shall retain such documents pursuant to state and federal requirements, except for stewardship records, which the qualified or conservation entity shall maintain for 10 years, unless a longer or shorter period is mutually agreed in writing among the department and the qualified entity. If the qualified entity is partnering with a conservation entity, the qualified entity shall have a written agreement with the conservation entity that requires the conservation entity to maintain its records for the same time period and allow the department to audit those records. The department may terminate a grant agreement or disqualify a qualified entity from receiving future grants upon discovery of a violation of the terms of the grant agreement or 19.1.3 NMAC.

[19.1.3.16 NMAC - N, 7/30/2010]

19.1.3.17 STATUS REPORTING: The department shall report, including committee outcomes, annually by December 15 to the governor and legislature on status of applications and funded projects.

[19.1.3.17 NMAC - N, 7/30/2010]

HISTORY OF 19.1.3 NMAC: [RESERVED]