

Programmatic Agreement for Fluid Mineral Leasing, Applications for Permit to Drill, and
Associated Rights-of-Way Development under the Farmington Mancos-Gallup
Resource Management Plan Amendment

Programmatic Agreement

Among

Bureau of Land Management New Mexico,
Bureau of Indian Affairs Navajo Regional Office,
New Mexico State Historic Preservation Officer,
Navajo Nation Tribal Historic Preservation Officer,
and the Advisory Council on Historic Preservation,

Regarding Fluid Mineral Leasing, Applications for Permit to Drill,
and Associated Rights-of-Way Development Identified in the
Farmington Mancos-Gallup Resource Management Plan Amendment,
San Juan, Rio Arriba, McKinley, and Sandoval Counties, New Mexico

PREAMBLE

The Decision Area that is the subject of this Programmatic Agreement is part of a larger ancestral homeland that, since time immemorial, has been an integral part of the histories and continuing lifeways of many southwestern Indian Tribes. The San Juan Basin is a multi-layered cultural landscape that is a palimpsest of separate, overlapping cultural landscapes of individual Tribes, with each of these layers representing a significant part of an individual Tribe's homeland. Based on their respective histories, each Tribe possesses and maintains a unique, continuing, and active relationship with their cultural landscape and its component parts that is fundamental to their understanding and preservation of their culture, identity, history, values, beliefs, and practices. The landscapes are an ecosystem of culture and nature interacting; the people and the landscape are inseparable. The Tribes participating in development of this Programmatic Agreement have provided input to the Agreement that is in accordance with their respective community's land ethics to serve both as stewards of their homeland and trustees of their cultural inheritance.

Within this cultural landscape, the Decision Area is composed of interconnected places of traditional religious, cultural, spiritual, and historical value. These cultural resources include not just those with a human signature, such as archaeological sites, but also aspects of the natural environment such as earth, water, rock formations, minerals, fossils, vegetation, animals, air, and night sky, as well as soundscapes, view sheds, and sightlines. Tribal members consider everything in these landscapes, including archaeological resources, as an inheritance from their ancestors which are imbued with life and spirit; therefore, the material and sentient aspects of the environment cannot be divorced from the social and spiritual.

Each part of this cultural and natural ecosystem is considered by Tribes as an essential component of their cultural landscape within the San Juan Basin. These are the places that maintain the connections between people and their culture and identity, and include lands central to tribal origins, places of ancestral and ongoing importance, burial grounds, repositories of religious offerings, places vital to the Tribes' ongoing stewardship roles in the basin, and lands inherently important to Tribes' cultural identities. These cultural resources are individual parts of a living, dynamic cultural process, connected to each other and the people.

Comment [KD1]: Not sure this dichotomy is appropriate; Zuni and presumable other Tribal people do not see a distinction between culture and nature. All practices in Zuni are directed toward promoting health and well-being for all life within the world.

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1 Native people’s cultural-natural symbiotic relationships are embedded in the landscape, both above
2 and below the surface of land and water and are germane to the continued survival of their inherent
3 cultural identities, language, and way of life. These relationships and associations are maintained
4 through continuing interactions between the people and these places through cultural practices such as
5 pilgrimage, prayer, ritual, and ceremony, as well as inhabitation, history, memory, and belief. For some
6 Tribes, water is known not only as the life essence of people, plants, animals, clouds, and spirits, but
7 also as a medium within the landscape through which blessings move among the cultural landscape’s
8 elements, thereby reinforcing these connections. Maintenance of the connections and associations
9 reaffirm the historical and contemporary values and identity of each community as well as each place
10 in the landscape. It is these associations that demonstrate the Tribes’ views that the San Juan Basin is
11 a traditional cultural property.

12 Tribes have expressed to the agencies that the Undertaking will likely result in adverse effects to
13 historic properties that are of significance to the Tribes, resulting in not only impacts to the physical
14 and material aspects of properties, but also the cultural, historical, and spiritual values and associations
15 of the properties. Changing the relationships and associations between the Native people and resources
16 in the cultural landscape is believed to result in direct and indirect impacts at the personal (mental,
17 physical, and spiritual health) and community (cultural, religious, social, and economic viability)
18 levels. It would interrupt the transmission of prayers and blessings and prevent tribal communities from
19 passing on the collective memory and knowledge to future generations, affecting the basic
20 underpinnings of tribal culture and identity.

21 The Bureau of Land Management and Bureau of Indian Affairs, Navajo Regional Office, acknowledge
22 and respect Tribes’ view and beliefs regarding the cultural landscapes of the San Juan Basin and the
23 important places and resources within it. The agencies also acknowledge that there are cultural
24 resources, including traditional cultural properties, within the Decision Area that can only be identified,
25 documented, and evaluated with the active participation of the Tribes that have unique and valuable
26 knowledge, understanding, and expertise, and the agencies can benefit from that knowledge. They
27 acknowledge the cumulative body of tribal knowledge and beliefs about the historic and current
28 relationships of living beings with the landscape and the natural and cultural resources there.

29 It is with this mutually understood perspective, in the spirit of this preamble, and in the spirit of positive
30 government-to-government collaboration, that the following recitals and stipulations are developed,
31 organized, and implemented by the parties to this Programmatic Agreement, to guide future
32 consultation with regard to the activities of the Undertaking and their potential to affect historic
33 properties.

34 RECITALS

35 WHEREAS, the United States Department of Interior, Bureau of Land Management (BLM) has
36 identified a need to amend the BLM Farmington Field Office’s 2003 Resource Management Plan
37 (RMP) to adapt to changing oil and gas development patterns in the Farmington-area Mancos
38 shale/Gallup formation (FMG), including innovations in horizontal drilling technology and multi-
39 stage hydraulic fracturing, while providing for multiple use and protecting valid existing rights; and

Comment [KD2]: Perhaps consider using the term identified in the 1992 amendments to the NHPA: "Properties of traditional religious and cultural importance." My preference is to use language or terms that are in the legislation or implementing regulations because they have a legal definition.

Comment [KD3]: Do not possess that knowledge and therefore, do not possess the expertise to evaluate tribal knowledge and must rely on the tribe regarding determinations of effect. This is expressly stated in 36 CFR 800.4(c).

Comment [KD4]: Perhaps this needs to be defined in the document if it is going to be stated here, because BLM/BIA definition of "spirit of positive g-to-g collaboration may be very different from the tribal perspective. Also, the definition of "meaningful" and "good faith" should be added to consultation.

Comment [KD5]: Consider adding the following clauses:

WHEREAS, Bureau of Land Management finds that the term "historic property" includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization (PTRCIs) that meet the National Register of Historic Places (NRHP) criteria (in accordance with 36 CFR § 800.16(1)(1)); and

WHEREAS, Bureau of Land Management finds that the term traditional cultural property (TCP) and traditional cultural landscape (TCL) are forms of historic property significance that corresponds to PTRCIs and can apply to any property type eligible or potentially eligible for NRHP listing, including Indian Tribe ancestral places (objects, sites, structures, buildings, or historic districts) designated and/or recorded as "archaeological"; and

WHEREAS, Bureau of Land Management finds and acknowledges that Indian Tribes with historical and cultural affiliation to the area of Farmington-area Mancos

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1 WHEREAS, the BLM proposes to amend the 2003 RMP to provide management actions and
2 allocations that identify where oil and gas-related activities are prohibited, where they may be
3 permitted after further analysis, and how such activities should generally be conducted where they
4 are allowed; and

5 WHEREAS, the BLM and United States Department of the Interior, Bureau of Indian Affairs (BIA),
6 Navajo Regional Office (BIA NRO) recognize the existence of mixed land management, including
7 federal, state, Navajo Nation Indian Allotment, Navajo Nation Trust, and private lands, within the
8 BIA NRO Eastern Agency within the external boundaries of the Navajo Nation; and

9 WHEREAS, the BIA NRO is responsible for the administration and management of land, minerals,
10 and other interests held in trust by the United States of America for American Indians and Tribes,
11 including those tribal trust and individual Indian allotment lands and minerals on the Navajo Nation
12 within the area where the BIA NRO has authority to make land use and management decisions; and

13 WHEREAS, the BIA NRO has leasing decision-making authority for individual Navajo allottees on
14 Navajo individual Indian allotments, and the BLM and BIA NRO share some management
15 responsibilities related to oil and gas development on Navajo tribal trust lands and individual Indian
16 allotments within the environmental impact statement (EIS) Decision Area (see Appendix A to this
17 Agreement); and

18 WHEREAS, the BIA NRO proposes to develop stipulations and other conditions to guide their
19 management of oil and gas trust resources owned by the Navajo Nation and individual Indian
20 allottees; and

21 WHEREAS, the BLM and BIA NRO have prepared an EIS for the RMP amendment (FMG RMPA)
22 that analyzes the potential impacts to the human and natural environment from management
23 alternatives for each agency that address the changing oil and gas development patterns in the
24 Mancos shale/Gallup formation, as well as realty actions specifically related to oil and gas
25 development activities and associated right-of-way (ROW) development; and

26 WHEREAS, the BLM and BIA NRO serve as co-lead federal agencies for purposes of compliance
27 with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic
28 Preservation Act (NHPA) and related requirements for the FMG RMPA and associated EIS; and

29 WHEREAS, through its Record of Decision (ROD), the BLM will determine whether and how to
30 amend the 2003 RMP, and any terms and conditions established by the ROD will apply to new leases
31 and Applications for Permission to Drill (APDs) and associated oil and gas ROW (OG/ROW)
32 development within the EIS Decision Area for which the BLM has granting authority; and

33 WHEREAS, through its ROD, the BIA NRO will determine whether to change their management of
34 oil and gas resources and associated activity decisions, and any terms and conditions established by
35 the ROD will apply to new leases within the EIS Decision Area for which the BIA NRO has granting
36 authority; and

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1 WHEREAS, the BLM and BIA NRO have determined that the FMG RMPA and the selection of an
2 alternative through issuance of a ROD for the FMG RMPA EIS is an Undertaking subject to review
3 under Section 106 of the NHPA at 54 U.S.C. § 306108 and the regulations of the Advisory Council
4 on Historic Preservation (ACHP) implementing Section 106 at 36 C.F.R. Part 800; and

5 WHEREAS, the BLM and BIA NRO recognize that oil and gas development for the FMG RMPA
6 Undertaking occurs tiered to the RMPA, that certain adverse effects from future development are
reasonably foreseeable at the leasing stage, especially those that occur at the scale of cultural landscapes,
and that other adverse effects from leasing are necessarily tied to
7 future development that is defined later in time and thus are not specifically knowable until an APD
8 is submitted, and that direct and indirect adverse effects are only specifically definable at the APD
9 and OG/ROW stages; and

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10 WHEREAS, the BLM and BIA NRO recognize that assessment of cumulative effects from the FMG
11 RMPA cannot effectively occur at the level of individual lease, APD, and OG/ROW undertakings,
12 but should occur for the RMPA Undertaking as a whole and take past and future undertakings into
13 account; and

14 ~~WHEREAS, pursuant to 36 C.F.R. § 800.4(a)(1), the BLM and BIA NRO have defined the~~
15 ~~Undertaking's area of potential effects (APE) as the surface land and subsurface mineral estate~~
16 ~~within the EIS Decision Area under the BLM's and BIA NRO's authority to make land use and~~
17 ~~management decisions exclusive of those lands and minerals managed by the Forest Service, Bureau~~
18 ~~of Reclamation (BOR), National Park Service (NPS), or the tribal trust lands and minerals of the~~
19 ~~Jicarilla Apache Nation or Ute Mountain Ute Tribe (see Appendix A to this Agreement); and~~

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20 WHEREAS, all parties to this agreement recognize that the BLM and BIA do not have authority to
make any decisions regarding lands beyond their own respective areas of jurisdiction; and
21 WHEREAS, the BLM and BIA recognize that decisions made by the two agencies within their own
respective areas of jurisdiction may have effects that extend beyond the surface land and subsurface
mineral estate within the EIS decision Area, pursuant to 36 C.F.R. 800.4(a)(1), the BLM and BIA
NRO have defined the Undertaking's area of potential effects (APE) as the entire Planning Area
described in the February 2020 Farmington Mancos-Gallup Draft Resource Management Plan
Amendment and Environmental Impact Statement, and

222 ~~WHEREAS, the Undertaking's APE totals nearly 2.4 million acres and includes lands managed by~~
223 ~~the BLM, BIA NRO, Navajo Nation, New Mexico State Land Office (NMSLO), and New Mexico~~
224 ~~Department of Game and Fish (NMDGF), as well as individual Indian allotments and private~~
225 ~~property; and~~

2426 ~~WHEREAS, the BLM and BIA NRO have previously identified historic properties within the~~
2527 ~~Undertaking's APE through literature research, remote sensing studies, tribal consultation,~~
2628 ~~ethnographic survey, archaeological survey, monitoring, and archaeological testing (see Appendix B~~
2729 ~~to this Agreement), and acknowledge that the identification effort is not complete and will continue~~
2830 ~~through the implementation of this Agreement; and~~

2931 ~~WHEREAS, the BLM and BIA NRO acknowledge the specialized expertise that Tribes possess in~~

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3032 identifying and assessing the eligibility of historic properties that may possess religious and cultural
3133 significance to them; and has included Appendix C to this Agreement where Tribes have provided
3234 summary statements describing their connection with the San Juan Basin, their association with
3335 historic properties in the basin, and the significance of those resources to the Tribes; and

3436 WHEREAS, the BLM and BIA NRO acknowledge that each Tribe has its own unique perspective,
3537 understanding, and knowledge about the cultural landscapes in the APE, their role in their Tribe's
3638 history, and the historic properties located therein, and that Tribes have special expertise to identify
3739 historic properties that have traditional cultural significance to the Tribes; and

Comment [KD6]: How is this different from the statement made in the preamble? Is BLM/BIA holding tribes to a higher standard for eligibility than the criterion d overly utilized by Western archaeology?

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1 WHEREAS, the BLM and BIA NRO acknowledge that current Section 106 consultation processes
2 with Tribes and other knowledgeable consulting parties, conducted to identify historic properties and
3 assess potential adverse effects from individual oil and gas development activities and associated
4 OG/ROW development actions proposed in the Undertaking’s APE, and conducted under the current
5 U.S. Department of the Interior policies and processes, may not always result in consulting parties
6 being able to provide timely and meaningful input; and

7 WHEREAS, the BLM and BIA NRO have determined that the identification and evaluation of
8 historic properties that may be affected by the Undertaking, and the identification and assessment of
9 effects on historic properties, cannot be fully determined prior to approval of the Undertaking, in
10 accordance with 36 C.F.R. § 800.4(b)(2), and have chosen to identify historic properties, assess
11 potential adverse effects from the Undertaking, and provide for the resolution of any such effects
12 through the implementation of this Programmatic Agreement consistent with 36 C.F.R. §
13 800.14(b)(3) and (b)(1)(ii); and

14 WHEREAS, the BLM and BIA NRO have also developed this Agreement to replace the Section 106
15 consultation process and facilitate the provision of timely and meaningful input by Tribes and other
16 consulting parties with regard to the identification and evaluation of historic properties that may be
17 affected by the Undertaking, the identification and assessment of potential effects on historic
18 properties, and the resolution of adverse effects; and

19 WHEREAS, this Agreement is a program alternative for the Section 106 compliance process and
20 will be used to meet Section 106 and 36 C.F.R. Part 800 obligations for all future undertakings
21 described herein and located within this Agreement; and

22 WHEREAS, this Agreement will pertain to the whole of those undertakings described herein that are
23 located completely within the EIS Decision Area and those that are located both within the Decision
24 Area and extend outside into the EIS Planning Area; and

25 WHEREAS, the BLM and BIA NRO will continue to conduct current identification, assessment,
26 resolution, and consultation procedures per 36 C.F.R. Part 800 for compliance with Section 106 of
27 the NHPA for oil and gas development undertakings pertaining to Navajo Nation Indian Allotments
28 and this Agreement does not pertain to those lands and minerals; and

29 WHEREAS, the BLM and BIA NRO have consulted with the New Mexico State Historic
30 Preservation Officer (NMSHPO) on development of this Agreement, and the NMSHPO is authorized
31 by existing law and regulation to enter into this Agreement in order to fulfill its role of advising and
32 assisting Federal agencies in carrying out Section 106 responsibilities pursuant to 36 C.F.R. §
33 800.2(c)(1)(i) and 36 C.F.R. § 800.6(b), and the NMSHPO reflects the interests of the State of New
34 Mexico and its citizens in the preservation of their cultural heritage, and the NMSHPO is a Signatory
35 to this Agreement (36 C.F.R. § 800.6[c][1][ii]); and

36 WHEREAS, the Undertaking’s APE includes Navajo Nation lands (tribal trust and individual Indian
37 allotments), and the Navajo Nation government manages, protects, conserves, and preserves the

Comment [KD7]: Zuni tribal members and members of other tribes hold dual citizenship in their respective tribal nations and as a citizen of the United States and the State of New Mexico. Because of this, the NMSHPO has a responsibility to reflect the interests of these tribal communities as well. This should be explicitly stated in this whereas clause.

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1 Navajo Nation’s natural and cultural resources for the benefit of the Navajo people, and the Navajo
2 Nation may attach religious or cultural significance to historic properties within the Undertaking’s
3 APE that could be affected by the Undertaking pursuant to Section 101(d)(6)(B) of the NHPA, 36
4 C.F.R. § 800.2(c)(2), and other legal authorities; and

5 WHEREAS, the Navajo Nation Tribal Historic Preservation Officer (NNTHPO) is authorized by
6 existing law and regulation to enter into this Agreement in order to fulfill its role of advising and
7 assisting Federal agencies in carrying out Section 106 responsibilities for Navajo Nation lands
8 pursuant to 36 C.F.R. § 800.2(c)(2)(i)(A) and 36 C.F.R. § 800.6(b); and

9 WHEREAS, the BLM and BIA NRO have consulted with the NNTHPO on the development of this
10 Agreement, and the NNTHPO is a Signatory to this Agreement (36 C.F.R. § 800.6[c][1][ii]); and

11 WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1) and the BLM Nationwide Programmatic
12 Agreement, the BLM and BIA NRO have notified the ACHP about the Undertaking and that the
13 effects of the Undertaking on historic properties cannot be fully assessed prior to approval of the
14 Undertaking, and have invited the ACHP to participate in the development of this Agreement
15 pursuant to 36 C.F.R. § 800.6(a)(1)(i)(C), and the ACHP has elected to participate by formal
16 notification received September 3, 2014, and is a Signatory to this Agreement; and

17 WHEREAS, pursuant to the special relationship between the Federal Government and federally
18 recognized Tribes, as codified in 36 C.F.R. § 800.2(c)(2)(ii), the American Indian Religious Freedom
19 Act (42 U.S.C. 1996), Executive Orders 13007 and 13175, and Sections 3(c) and 12 of the Native
20 American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. § 3001 et seq.), the BLM
21 and BIA NRO are responsible for government-to-government consultation with federally recognized
22 Tribes; and

23 WHEREAS, some Tribes have expressed to the BLM and BIA NRO that the Undertaking may
24 result in adverse effects to historic properties and cultural landscapes in the APE, the associative values
25 that Tribes ascribe to
26 those historic properties and landscapes, and the tribal communities and people to whom those
27 properties and landscapes are
28 significant; and

29 WHEREAS, the BLM and BIA NRO have invited 25 Tribes, that may attach religious or cultural
30 significance to historic properties and cultural landscapes that have the potential to be affected by the
31 Undertaking pursuant
32 to Section 101(d)(6)(B) of the NHPA, 36 C.F.R. § 800.2(c)(2), and other legal authorities, and are
33 entitled to be consulted about the identification and assessment of effects on historic properties and
34 cultural landscapes, and
35 to consult on the development of this Agreement; and

36 WHEREAS, those Tribes invited are the Hopi Tribe, Jicarilla Apache Nation, Navajo Nation, Ohkay
37 Owingeh, Pueblo of Acoma, Pueblo de Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna,
38 Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of San Felipe,

Comment [KD8]: Would suggest including the Religious Freedom Restoration Act, E.O 12898 and EO 13985.

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- 35 Pueblo de San Ildefonso, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo,
36 Pueblo of Taos, Pueblo of Tesuque, Pueblo of Ysleta del Sur, Pueblo of Zia, Pueblo of Zuni,
37 Southern Ute Indian Tribe, and Ute Mountain Ute Tribe; and

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1 WHEREAS, the BLM and BIA NRO have invited these Tribes to sign this Agreement as Invited
2 Signatories (36 C.F.R. § 800.6[c][2][ii]); and

3 WHEREAS, the BLM and BIA NRO will carry out their responsibilities to consult with Tribes that
4 request such consultation with regard to historic properties and cultural landscapes to which they attach
religious and cultural
5 significance, with the further understanding that, notwithstanding any decision by these Tribes to
6 decline signature or concurrence, the BLM and BIA NRO will continue to consult with these Tribes
7 throughout the implementation of this Agreement; and

8 WHEREAS, the BLM and BIA NRO acknowledge that no provision of this Agreement will be
9 construed by any of the Signatories, Invited Signatories, or Concurring Parties as abridging or
10 debilitating any sovereign powers or rights of the Tribes, or interfering with the government-to-
11 government relationship between the United States and the Tribes; and

12 WHEREAS, the BOR is responsible for the administration and management of BOR lands within
13 the external boundaries of the Undertaking's APE, the BLM and BIA NRO have invited the BOR to
14 consult on the development of this Agreement, and the BOR is invited to sign this Agreement as a
15 Concurring Party (36 C.F.R. § 800.6[c][3]); and

16 WHEREAS, the National Park Service (NPS) is responsible for the administration and management
17 of NPS lands within the external boundaries of the Undertaking's APE, the BLM and BIA NRO have
18 invited the NPS to consult on the development of this Agreement, and the NPS is invited to sign this
19 Agreement as a Concurring Party (36 C.F.R. § 800.6[c][3]); and

20 WHEREAS, the U.S. Forest Service, Carson National Forest (CNF) is responsible for the
21 administration and management of CNF lands within the external boundaries of the Undertaking's
22 APE and the BLM and BIA NRO have invited the CNF to consult on the development of this
23 Agreement, and the CNF is invited to sign this Agreement as a Concurring Party (36 C.F.R. §
24 800.6[c][23]); and

25 WHEREAS, the NMSLO is responsible for the administration and management of New Mexico
26 State Trust lands within the Undertaking's APE, the BLM and BIA NRO have invited the NMSLO to
27 consult on the development of this Agreement, and the NMSLO is invited to sign this Agreement as
28 a Concurring Party (36 C.F.R. § 800.6[c][3]); and

29 WHEREAS, the NMDGF is responsible for the administration and management of NMDGF lands
30 within the Undertaking's APE, the BLM and BIA NRO have invited the NMDGF to consult on the
31 development of this Agreement, and the NMDGF is invited to sign this Agreement as a Concurring
32 Party (36 C.F.R. § 800.6[c][3]); and

33 WHEREAS, the BLM and BIA NRO have invited local governments that retain jurisdictions within
34 or near the Undertaking's APE to consult on the development of this Agreement (36 C.F.R. §
35 800.2[c][3]), including City of Farmington, City of Bloomfield, City of Aztec, San Juan County,

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1 McKinley County, Rio Arriba County, and Sandoval County, and they are invited to sign this
2 Agreement as Concurring Parties (36 C.F.R. § 800.6[c][3]); and

3 WHEREAS, the BLM and BIA NRO have invited 18 Chapters of the Navajo Nation to consult on
4 the development of this Agreement pursuant to 36 C.F.R. § 800.2(c)(5) because they have a
5 demonstrated interest in the Undertaking and a concern for its effects on historic properties and
cultural landscapes; and

6 WHEREAS, the 18 Chapters are Becenti, Burnham, Counselor, Huerfano, Hogback, Lake Valley,
7 Nageezi, Nenahnezad, Newcomb, Ojo Encino, Pueblo Pintado, Sanostee, Tiis Tsoh Sikaa,
8 Torreon/Star Lake, Tse Daa K'aan, Upper Fruitland, White Rock, and Whitehorse Lake, and they are
9 invited to sign this Agreement as Concurring Parties (36 C.F.R. § 800.6[c][3]); and

10 WHEREAS, the BLM and BIA NRO have invited the All Pueblo Council of Governors,
11 Archaeological Society of New Mexico, Archaeology Southwest, Chaco Alliance, National Trust for
12 Historic Preservation, New Mexico Archeological Council, Old Spanish Trail Association, San Juan
13 Citizens Alliance, and Society for American Archaeology to consult on the development of this
14 Agreement pursuant to 36 C.F.R. § 800.2(c)(5) because they have a demonstrated interest in the
15 Undertaking and a concern for its effects on historic properties and cultural landscapes, and they are
16 invited to sign this
Agreement as Concurring Parties (36 C.F.R. § 800.6[c][3]); and

17 WHEREAS, signing of this Agreement indicates participation in the Section 106 consultation
18 process and acknowledgment that their party's views were taken into consideration, but does not
19 necessarily indicate approval of the outcome of the FMG RMPA EIS ROD associated with the
20 Undertaking nor does it indicate a preference for or endorsement of a specific alternative; and

21 WHEREAS, for the purposes of this Agreement, the Signatories, Invited Signatories, parties invited
22 to sign as Concurring Parties, and all consulted Tribes and entities, regardless of their decision to
23 sign this Agreement, are referred to collectively as "Consulting Parties" or individually as
24 "Consulting Party;" and

25 WHEREAS, the BLM and BIA NRO have sought and considered the views of the public regarding
26 the Undertaking, and afforded the public the opportunity to provide input on this Agreement, through
27 the scoping and outreach conducted for the FMG RMPA EIS and Section 106 processes (36 C.F.R. §
28 800.2[d]); and

29 WHEREAS, the BLM and BIA NRO recognize their continued obligations under other federal,
30 state, and Navajo Nation laws, regulations, statutes, rules, policies, and procedures, and nothing in
31 this Agreement precludes the agencies from abiding by those obligations;

32 NOW, THEREFORE, the BLM, BIA NRO, NMSHPO, NNTHPO, and ACHP, collectively known
33 as "Signatories," mutually agree that the Undertaking will be carried out in accordance with the
34 following stipulations in order to take into account and resolve the effects of the Undertaking on
35 historic properties.

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1 STIPULATIONS

2 The BLM and BIA NRO have considered the views and recommendations of the Consulting Parties
3 regarding the identification, evaluation, protection, treatment, and/or management of historic
4 properties possibly affected by the Undertaking under this Agreement and have taken this
5 information into account in developing the following stipulations which will guide the decision-
6 making processes. The BLM and BIA NRO shall ensure that the following measures are carried out:
7

8 I. DEFINITIONS

9
10 The definitions of terms used in this Agreement can be found in Appendix D.

11
12 II. PROFESSIONAL REQUIREMENTS

13
14 A. All efforts to identify historic properties and cultural landscapes carried out pursuant to this
Agreement will be

15 carried out by or under the direct supervision of individuals meeting the qualifications in
16 the discipline appropriate to the properties being treated under the Secretary of the
17 Interior's Standards as referenced in 36 CFR Part 61 Appendix A, or in accordance with
18 the requirements of the Section 106 Lead Agency and the requirements of the federal or
19 state agency or tribal entity responsible for management of resources located at the place
20 of investigation.

21
22 B. Traditional cultural practitioners of the Tribes hold relevant and unique training,
23 experience, and special expertise necessary to identifying and understanding historic
24 properties with traditional cultural and religious importance, evaluating the eligibility of
25 those properties, and assessing the effects of undertakings on the properties. Their
26 communities have the knowledge and ability to identify the practitioners who possess the
27 requisite experience and training to participate in this Undertaking for informed and
28 responsible management of cultural resources. Traditional practitioners, who are
29 identified by a Tribe's Points of Contact (POCs), are recognized as cultural experts for
30 the Tribe for their traditional and cultural knowledge and do not need to meet the
31 Secretary of the Interior's Standards.

32
33 C. All efforts to identify historic properties and cultural landscapes carried out pursuant to this
Agreement will be

34 conducted in accordance with the laws, regulations, statutes, rules, directives, policies,
35 procedures, standards, and guidelines applicable to the Section 106 Lead Agency and the
36 requirements of the federal or state agency or tribal entity responsible for management of
37 resources located at the place of investigation.

38
39 III. COMMUNICATION AMONG THE PARTIES

40
41 A. Points of Contact

42
43 1. Within 30 days of execution of this Agreement, the BLM shall collect from each
44 Consulting Party information on two POCs who will receive communications on

Comment [KD9]: Important to acknowledge here, that the BLM/BIA NRO likely do not possess individuals who have commensurate training and knowledge that traditional cultural practitioners for each Tribe; therefore, the federal agency personnel are incapable of evaluating the information provided by the Tribe regarding eligibility (i.e., significance); effect and resolution of adverse effect. Therefore, the agencies must defer to the Tribes as the experts for compliance.

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behalf of that Consulting Party extended pursuant to consultation efforts

45

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1 conducted under this Agreement. The information collected for each POC will
2 include name, position (if any), telephone number, mailing address, and email
3 address. The BLM shall compile this information into an initial POC list.
4

- 5 2. The BLM shall distribute this initial POC list to all Consulting Parties.
6
- 7 3. After the initial POC list is distributed, if a Consulting Party's POCs change or
8 their contact information changes, it is the responsibility of that Consulting Party
9 to notify both the BLM and BIA NRO and provide them with the new POC
10 information.
11
- 12 4. If the BLM or BIA NRO POC information changes, it is that agency's
13 responsibility to notify all the Consulting Parties.
14
- 15 5. The POC list will be reviewed during the annual meeting described in Stipulation
16 XVIII(A) of this Agreement. Within 30 days following the annual meeting, the
17 BLM shall distribute to all Consulting Parties an updated POC list with any
18 changes that have occurred over the previous year or reported at the annual
19 meeting.
20

21 B. Areas of Interest
22

- 23 1. Within 30 days of execution of this Agreement, the BLM shall send via electronic
24 mail and regular mail to each of the Consulting Parties a formal request for
25 designation of those portions of the Undertaking's APE for which the Consulting
26 Party would like to be consulted regarding the potential for effects to historic
27 properties from the Undertaking as described in this Agreement.
28
- 29 2. The Consulting Party shall provide the designation in writing to the BLM within
30 30 days of receipt of the request. The format of the designation will be determined
31 by the Consulting Party, and could include a descriptive narrative, maps,
32 electronic geospatial files, or some other format.
33
- 34 3. The BLM shall provide a copy of each designation received to the BIA NRO.
35
- 36 4. If no designation is received from a Consulting Party, the BLM and BIA NRO
37 shall assume that the Consulting Party wishes to be consulted on the entirety of the
38 Undertaking's APE.
39
- 40 5. At any time, a Consulting Party's POC can change their designation by notifying
41 the BLM in writing. The BLM shall provide a copy of the change in designation to
42 the BIA NRO.
43

- 44 C. The BLM and BIA NRO shall explore development of a web-based portal to use for
45 communication and sharing of information with the Consulting Parties to facilitate
46 consultation under this Agreement.

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IV. TRIBAL CONSULTATION

- A. The BLM and BIA NRO acknowledge that the Federal government has a special and unique relationship with Tribes as set forth in the Constitution of the United States, treaties, statutes, and court decisions, and that consultation with Tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this PA alters, amends, repeals, interprets, or modifies tribal sovereignty, treaty rights, or other rights of a Tribe, or preempts, modifies, or limits the exercise of such rights, as set forth in 36 C.F.R. § 800.2(c)(2)(ii)(B).
- B. The Tribes may contact the BLM or BIA NRO at any time to request government-to-government consultation.
- C. Pursuant to 36 C.F.R. § 800.2(c)(5), certain individuals or organizations with a demonstrated interest in the Undertaking may participate as Consulting Parties due to the nature of their relationship with the Undertaking or their concern with the Undertaking's effects on historic properties. The BLM and BIA NRO recognize the 18 Chapters of the Navajo Nation invited to be Concurring Parties as Consulting Parties who have special knowledge regarding potential historic properties with religious and cultural significance.
- D. In the event that a line officer at BLM or BIA NRO changes, the agency shall send a letter notifying Tribes and Chapters of the change and offering for the new line officer to meet with them.
- E. The BLM and BIA NRO shall offer to conduct field visits with tribal representatives to areas within the Undertaking APE. The purpose of the field visits will be to allow for collection of baseline information by Tribes, BLM, and BIA NRO outside of the leasing, APD, and OG/ROW processes.
 - 1. BLM and BIA NRO shall consult with Tribes in determining field visit locations, and shall prioritize unleased areas.
 - 2. BLM and BIA NRO shall consult with the NNHHPD to determine if visits can be made to Navajo Nation tribal trust lands and shall attempt to obtain all required permits from NNHHPD.
 - 3. Frequency of field visits and support provided by the BLM and BIA NRO will be subject to available agency funding.

Comment [KD10]: The federal government's "trust responsibility" should be identified in this section and that the federal government has a responsibility to protect, support and enhance the Tribe's capacities to fulfill their traditional stewardship responsibilities to the ancestors and all more-than-human life forms that occupy the Tribe's cultural landscape.

Comment [RVD11]: Prior the offering of any parcel for leasing? Can we ask them to put this here?

Comment [KD12]: As part of BLM/BIANRO compliance responsibilities it may necessitate in-field visitation to sites on Navajo Reservation; these visitations should not be subjected to the possible capricious actions of the NNHHPD or personalities within the NNHHPD. This language is somewhat troubling.

V. CONFIDENTIALITY

- A. The BLM and BIA NRO shall maintain confidentiality of sensitive information regarding historic properties and cultural landscapes to which a Tribe may attach religious or cultural significance to the maximum extent allowed by federal and state law. However, any documents or records the BLM or BIA NRO has in its possession are subject to the Freedom of Information

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1 Act (FOIA) (5 U.S.C. § 552 et seq.) and its exemptions, as applicable. In the event that a
2 FOIA request is received for records or documents that relate to a historic property ~~to~~
cultural landscape to
3 which a Tribe may attach religious or cultural significance and that contain information
4 that the BLM or BIA NRO is authorized to withhold from disclosure by statute including
5 Section 304 of the NHPA (54 U.S.C. § 307103; 36 C.F.R. § 800.11[c]), Section 9 the
6 Archaeological Resources Protection Act (16 U.S.C. § 470hh), and Section (b)(3) of the
7 FOIA (5 U.S.C. § 552), then the BLM or BIA NRO shall consult with such Tribe prior to
8 making a determination in response to that FOIA request.
9

10 B. The BLM and BIA NRO shall comply with the Executive Order No. 13556 of November
11 4, 2016 (32 C.F.R. Part 2002) standards for managing information that requires
12 safeguarding or dissemination controls. The BLM and BIA NRO shall also comply with
13 the Federal Controlled Unclassified Information policy of November 14, 2016, for
14 designating, handling, and decontrolling sensitive information related to this PA that
15 qualifies as Controlled Unclassified Information.
16

17 C. For all undertakings off tribal lands, the NMSHPO agrees to restrict the location of any
18 archaeological site or burial from public disclosure, as provided for under Section 18-6-
19 11.1 New Mexico Statutes Annotated (NMSA)1978 of the New Mexico Cultural
20 Properties Act (§§ 18-6-1 through 18-6-17, as amended through 2015).
21

22 D. Data Sharing Memoranda of Understanding
23

24 1. Upon request by a Consulting Party, the BLM and BIA NRO shall develop a Data
25 Sharing memorandum of understanding (MOU) between the agencies and the
26 Consulting Party to address confidentiality of sensitive information provided by
27 that Consulting Party.
28

29 2. The purpose of the Data Sharing MOU will be to control and protect sensitive
30 information regarding cultural resources, historic properties, and associated beliefs
31 and practices provided by a Consulting Party to a Section 106 Lead Agency for
32 purposes of consultation under this Agreement.
33

34 3. Development
35

36 a) The BLM and BIA NRO shall have separate Data Sharing MOUs with
37 Consulting Parties.
38

39 b) Consulting Parties that wish to develop a Data Sharing MOU shall initiate
40 the effort by contacting the Section 106 Lead Agency. Consulting Parties
41 may initiate development of a Data Sharing MOU at any time while this
42 Agreement is in effect.
43

44 c) The Section 106 Lead Agency and the Consulting Party shall work
45 together in good faith to develop a mutually acceptable agreement.
46

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- 1 E. The BLM and BIA NRO shall provide the relevant review parties, as specified throughout
2 this Agreement, with sufficient information to meaningfully consult with the Section 106
3 Lead Agency, while at the same time honoring BLM and BIA NRO commitments to the
4 Tribes to restrict the dissemination of confidential information. Any review party may
5 request additional information from the Section 106 Lead Agency to complete reviews
6 and provide comments. If, however, the Section 106 Lead Agency determines that the
7 requested information may be culturally sensitive to one or more of the Tribes, it will
8 meet with the review party and the affected Tribe to address the request for information
9 through dialogue. If this effort fails to result in an accommodation that meets the needs of
10 the review party and the affected Tribe, the Section 106 Lead Agency shall resolve the
11 dispute through formal means in accordance with Stipulation XX of this Agreement.
12
- 13 F. All Consulting Parties to this Agreement shall ensure that sensitive information shared
14 with them by the Section 106 Lead Agency in furtherance of the goals of this Agreement
15 is protected from release. The Consulting Parties agree to maintain the confidentiality of
16 information received under this Agreement, with access limited to those people
17 specifically designated as representatives, as appropriate. Such information provided
18 under this Agreement will not be duplicated or shared outside of the Consulting Parties or
19 their specifically authorized representatives.
20

21 VI. CUMULATIVE EFFECTS
22

23 ~~A. As described in the Preamble to this Agreement, Tribes and other Consulting Parties have~~
24 ~~expressed concern that the leasing of parcels for oil and gas development, issuance of~~
25 ~~APDs, and development of associated OG/ROWs may result in effects to historic~~
26 ~~properties and the cultural landscapes within which they reside. They have also expressed~~
27 ~~concern that these effects could be cumulative, arising not only from individual lease,~~
28 ~~APD, and OG/ROW undertakings but cumulatively from the implementation of the FMG~~
29 ~~RMPA (the Undertaking) over time across the APE.~~

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30 A. As described in the Preamble to this Agreement, the BLM and BIA NRO, the Tribes,
31 and other Consulting Parties recognize that the San Juan Basin is a multi-layered cultural
32 landscape in which connections and relationships between its individual components are
33 integral. Activities related to development of oil and gas, including leasing of rights to
34 develop these resources, may result in direct and indirect effects to specific historic
35 properties and also to the cultural landscapes within which they reside. The parties to this
Agreement recognize that these effects could be cumulative, arising not only from
individual lease, APD, and OG/ROW undertakings, but cumulatively from the
implementation of the FMG RMPA (the Undertaking) over time across the APE.

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31 B. The BLM and BIA NRO acknowledge that assessment of the cumulative effect to historic
32 Properties and the historic landscapes in which they reside, as called for in 36 C.F.R.
33 800.5(a)(1), must be taken into account at all stages of authorization related to oil and gas
34 development, including cannot effectively occur at the level of
35 individual lease, APD, and OG/ROW undertakings, and from the implementation of, but is
best conducted for the FMG
RMPA Undertaking as a whole.

Comment [KD13]: BLM/BIA NRO should have data on all the historic properties that have been impacted to date (including the last 30-40 years of development) which directly contributes to the "cumulative effects" of impacting another historic property; especially, if these properties have traditional cultural values to a Tribe(s)

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36 ~~C. Implementation of this stipulation will assess the cumulative effects to historic properties~~
37 ~~from the FMG RMPA Undertaking and lease, APD, and OG/ROW undertakings that will~~
38 ~~occur pursuant to this Agreement and the RMPA, within the term of the RMPA. The term~~
39 ~~of the RMPA is defined as starting with signature of the ROD and lasting 20 years.~~
40 ~~Assessments of effects for individual lease, APD, and OG/ROW undertakings, as~~
41 ~~described in Stipulations VII through XIV of this Agreement, initiated during the term of~~
42 ~~the RMPA will not address cumulative effects because they are addressed through~~
43 ~~implementation of Stipulation VI of this Agreement. Undertakings are considered to be~~
44 ~~“initiated” as follows:~~

45

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1 ~~1. Leases are considered initiated when the BLM distributes electronically the~~
2 ~~request for consultation letter as described in Stipulation VII(A)(2) of this~~
3 ~~Agreement or when the BIA NRO distributes electronically the request for~~
4 ~~consultation letter as described in Stipulation IX(A)(1) of this Agreement.~~

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5
6 ~~2. APDs are considered initiated when the BLM distributes electronically the notice~~
7 ~~of onsite visit as described in Stipulation X(B)(2) of this Agreement or when the~~
8 ~~BLM distributes electronically the request for consultation letter as described in~~
9 ~~Stipulation XI(B)(2) of this Agreement.~~

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10
11 ~~3. OG/ROWs to be developed~~
12

13 D. The BLM and BIA NRO shall develop a methodology for analyzing potential cumulative
14 effects to historic properties and the landscapes within which they reside from the FMG
15 RMPA Undertaking, which includes all
16 leasing, APD, and OG/ROW undertakings completed in the APE pursuant to the
17 implementation of this Agreement.

18 1. The methodology, which will be documented in a Plan of Analysis, will be
19 developed by the BLM and BIA NRO in consultation with the Consulting Parties.
20 The Plan of Analysis will be finalized within 2 years of execution of this
21 Agreement.

22
23 2. The Plan of Analysis will describe how the cumulative effects analysis will be
24 performed and will address such topics as defining the cumulative effects APE for
25 the FMG RMPA Undertaking; the nature and characteristics of historic properties
26 to include in analysis; identification of historic properties; types of past, present,
27 and future undertakings to be analyzed; incorporation of ethnographic information
28 and analyses being collected through tribally-led cultural resources studies; types
29 of effects to consider; determining what constitutes cumulative adverse effects;
30 and defining thresholds for adverse cumulative effects; among others.

31
32 E. The methodology developed in the Plan of Analysis will be applied to the FMG RMPA
33 Undertaking within the Undertaking's APE. The analysis will be completed within 5
34 years of execution of this Agreement (i.e., 3 years after the Plan of Analysis). Completion
35 is defined as submittal of the determinations of eligibility, assessment of effects, and
36 associated documentation to the NMSHPO and NNTHPO for consultation.

37
38 F. If the analysis results in a determination of adverse effect, the BLM and BIA NRO shall
39 seek to amend this Agreement with stipulations to address and resolve the adverse effect,
40 in accordance with Stipulation XXI of this Agreement.

41
42 VII. LEASING: BLM AS LEAD AGENCY, WITH FEDERAL, STATE, AND PRIVATE
43 SURFACELANDS

44
45 The following process describes how the BLM will complete all components of Section 106
46 compliance for those lease sales that involve federal minerals with surface management or ownership

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1 by the BLM, state agencies, counties, cities, or private individuals (not Indian Allottees) within the
2 APE for this Agreement. This includes private lands (not Indian Allotted) within the exterior
3 boundaries of the Navajo Nation. ~~The purpose of review at the leasing stage is to identify parcels~~
4 ~~with cultural resource issues, and parcels for which lease stipulations as identified in the FMG~~
5 ~~RMPA as well as contained in policies and regulations should be included in the lease.~~

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56 All parties to this agreement recognize that direct physical impacts to specific cultural properties are
best evaluated at the APD/ROW stage, when definite locations of the proposed developments are
known. However, at the leasing stage the general nature of oil and gas development is known, and
many impacts, particularly indirect impacts, cumulative impacts, and landscape-scale impacts can be
reasonably foreseen. The purpose of review at the leasing stage is to identify parcels with cultural
resources issues that cannot be effectively addressed at a later stage of development, and to determine
how these impacts might be mitigated through special lease stipulations or disclaimers or through
removal of the parcel from the pool of lands available for oil and gas leasing.

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6
7 A. Notification of Pending Lease Sale/Request for Consultation

- 8
9 1. As soon as the BLM cultural resources staff have been notified of the completion
10 of the adjudication process to determine which BLM- nominated or publicly
11 nominated parcels will be proposed for lease sale, the BLM shall prepare a letter
12 notifying Consulting Parties of the pending lease sale and requesting consultation
13 under this Agreement.
14
15 2. The BLM shall send the letter within 15 days of the completion of adjudication via
16 electronic mail and U.S. Postal Service to those Consulting Parties that retain
17 interest in the areas of the proposed parcels, per Stipulation III(B) of this
18 Agreement.
19
20 a) The BLM shall send the letter to the POCs defined through the process in
21 Stipulation III(A) of this Agreement.
22
23 b) For Tribes receiving the letter, the BLM shall also send the letter to that
24 Tribe's head of government to initiate government-to-government
25 consultation.
26
27 3. In the notification letter, the BLM shall notify the Consulting Party of the pending
28 lease sale, briefly describe the schedule for the lease sale and associated NEPA
29 and Section 106 processes, and request consultation with and information from the
30 Consulting Party regarding concerns they have for potential effects to historic
31 properties and places of religious and/or cultural importance. The BLM shall also
32 describe the planned efforts for identifying historic properties and cultural
landscapes, and assessing the
33 potential effects of leasing. The BLM shall allow 30 days for a response from the
34 Consulting Party indicating a desire to continue consultation and shall describe
35 methods for submitting such response (e.g., email address, fax number, mailing
36 address) in the notification letter.
46

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45

4. The BLM shall include in the letter the following information for each proposed parcel:
 - a) A description of each proposed lease parcel.
 - b) The BLM's initial definition of the Physical Effects and Audio-Visual Effects APEs developed in accordance with Stipulation VII(B) of this Agreement.

46

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- 1 c) Maps showing the location of each proposed parcel. These maps will be
2 shown at larger scales and smaller scales to show the relationship of the
3 parcel to surrounding topography as well as where the parcel resides
4 within the larger San Juan Basin. Man-made features such as roads,
5 townsites, etc. will be included to help orient the viewer. Chapter
6 boundaries will also be shown on the maps. Both topographic and aerial
7 photograph backgrounds will be used for the maps.
8
9 d) Maps will not show known cultural resources unless their locations are
10 common knowledge.
11
12 e) Maps will show generally known springs and seeps, watersheds, vegetation
13 types, and soil data.
14
15 f) Maps will include information on surface land ownership or administration.

16
17 5. The BLM shall provide geospatial data for the parcels upon request by a
18 Consulting Party. The BLM shall provide contact information for requesting this
19 information in the notification letter.
20

21 B. Defining the APEs
22

- 23 1. In defining the APEs, the BLM shall consider cumulative effects, in addition to
24 potential direct and indirect effects to historic properties and the landscapes in which they reside, as applicable. This
25 includes effects to aspects of historic
26 integrity such as setting, feeling or association when those aspects are important to
a historic property's eligibility, the eligibility of a historic property or its associated
cultural landscape.
27
28 2. APEs will be initially defined according to standard APEs for oil and gas leasing
29 undertakings in the BLM Farmington Field Office. These standard APEs are
30 described in detail in Appendix E of this Agreement.
31
32 a) The BLM shall initially establish the Physical Effects APE for lease
33 parcels as the parcel plus a quarter (1/4) mile surrounding the parcel.
34
35 b) The BLM shall initially establish the Audio-Visual Effects APE for lease
36 parcels as the Physical Effects APE plus 1 mile surrounding that APE.
37
38 3. If the proposed lease parcel is within 1.25 miles of Navajo Nation tribal trust lands
39 or Indian Allotted lands, the BLM shall consult with the NNTHPO on the
40 definition of the APEs, identification of historic properties, and assessment of
41 effects.
42
46

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- 43 4. If the undertaking's APE extends onto surface land owned or administered by an
44 entity that is not a Consulting Party, the BLM shall invite that entity to consult on
45 the undertaking.

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- 1 a) If the entity is a federal agency, the BLM shall consult with that agency to
2 determine which agency will be the Lead Agency for Section 106
3 compliance.
4
5 b) If the entity is private, the NMSHPO shall participate in consultation on
6 their behalf.
7

8 5. The BLM may modify the Physical Effects or Audio-Visual Effects APEs ~~based to~~
9 enhance protection of historic properties and cultural landscapes based
10 on the characteristics of the undertaking, the nature of the location, or should
11 additional relevant information become available through the consultation process
12 with the Consulting Parties.

13 C. Records Search

- 14
15 1. The BLM shall conduct a records search of existing information to gather data on
16 known historic properties and cultural landscapes located within and near the APEs
17 and to make estimates
18 of site density and site typology within the APEs.
19
20 2. The BLM shall include in their research, as appropriate, BLM cultural resource
21 records, information maintained in the New Mexico Cultural Resources
22 Information System (NMCRIS) maintained by the Archaeological Records
23 Management Section of the New Mexico Historic Preservation Division, National
24 Register of Historic Places (NRHP) and New Mexico State Register of Cultural
25 Properties (SRCP) listings, existing ethnographic records that identify historic
26 ~~properties~~Properties and cultural landscapes, General Land Office (GLO) records,
27 existing information regarding the
28 presence of potential Chaco-related roads and Navajo defensive sites, information
29 from aerial photography, and existing Light Detection and Ranging (LiDAR)
30 information.
31
32 3. When potential lease parcels are located within 1.25 miles of Navajo Nation tribal
33 trust lands or Indian Allotted lands, the BLM shall include research of Navajo
34 Nation Heritage and Historic Preservation Department (NNHHPD) maintained
35 cultural resource records as allowed by NNHHPD.
36
37 4. The BLM shall consider the quality of previously conducted cultural resource
38 inventories and previous recordings of cultural resources within the APEs.
39
40 5. The BLM acknowledges that research of existing records and data will not
41 identify all historic properties located within the APEs; however, in most cases, and
42 in combination with the public outreach provisions of this document, the effort is
43 consistent with the reasonable and good faith effort at the leasing stage.

D. Participating Consulting Party Consultation

Comment [RVD14]: Does this mean that the BLM can just decide not to care about the presence of sites or impacts to APEs? I added some words to make it go the OTHER way, but I'm guessing this is not appropriate here?

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- 44 1. The BLM shall consult further with any Consulting Party who responds in writing
45 (via email or regular mail) to the request for consultation letter described in
46 Stipulation VII(A) of this Agreement stating that further consultation is requested.

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1 Such parties will be regarded as Participating Consulting Parties for the specific
2 undertaking.
3

4 2. The BLM and the Participating Consulting Parties shall work in good faith to
5 identify and consider the potential direct, indirect, and cumulative effects of leasing a
6 parcel on specific historic
7 properties and the landscapes in which they reside.

8 3. The BLM shall meet to consult with any Participating Consulting Party if such a
9 meeting is requested. The BLM and the requesting Consulting Party shall work in
10 good faith to schedule and attend the consultation meeting within a reasonable
11 timeframe. Good faith for scheduling the meeting is defined as the BLM making at
12 least three attempts via a combination of emails and telephone calls within a two-
13 week period to the Participating Consulting Party POCs.
14

15 4. The BLM shall consider requests made by Participating Consulting Parties for
16 field trips or site investigations on a case-by-case basis. The BLM and the
17 requesting Consulting Party shall work in good faith to schedule and attend the
18 field trip within a reasonable timeframe. Good faith for scheduling the trip is
19 defined as the BLM making at least three attempts via a combination of emails and
20 telephone calls within a two-week period to the Participating Consulting Party
21 POC. If field trips are not feasible, the BLM shall work with the Participating
22 Consulting Parties to develop additional information in lieu of a site visit (e.g.,
23 photographs, maps of soil values and slope, etc.).
24

25 5. The BLM may share the results of their records search conducted pursuant to
26 Stipulation VII(C) of this Agreement with any Participating Consulting Party
27 requesting the results, as appropriate.
28

29 a) If a Participating Consulting Party has signed this Agreement, they will be
30 bound to protect sensitive information per Stipulation V of this
31 Agreement.
32

33 b) If a Participating Consulting Party has not signed this Agreement, sensitive
34 information will not be shared with them by the BLM until a data sharing
35 agreement has been executed between the Participating Consulting Party
36 and the BLM per Stipulation V(D) of this Agreement.
37

38 c) The BLM shall not share the results of research of NNHHPD site files, if
39 such research is conducted, without the expressed permission, in writing,
40 of the NNHHPD.
41

42 6. The BLM may modify the Physical Effects or Audio-Visual Effects APEs to
43 enhance protection of historic properties and cultural landscapes should
44 additional relevant information become available through the consultation process
45 with the Participating Consulting Parties.

Comment [RVD15]: Ditto the above.

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46

E. Eligibility Determinations

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1. The BLM shall include the eligibility determination for cultural resources identified during the records search and information from the consultation process for each parcel's APE(s) for the purposes of making an assessment of effect.
2. The BLM shall evaluate the eligibility of cultural resources utilizing a cultural landscape approach that incorporates the results of the records search, ethnographic studies, and input provided by the Participating Consulting Parties into the evaluation.
3. If the BLM becomes aware of a specific cultural resource with undetermined eligibility that is of a type poorly represented in existing BLM or NMCRIS data or is significant for its traditional cultural values, and that could be affected by development arising from the lease of a parcel, the BLM shall treat the resource as eligible.
4. If a cultural resource has been previously determined not eligible, but the BLM thinks there is the possibility the site is actually eligible, or if a cultural resource has been previously determined eligible under Criterion D only but is likely eligible under Criteria A, B, and/or C as well, then the BLM shall note the possibility of additional NRHP values for the resource as part of the Lease Sale Report and consider the property's additional values during the assessment of effects. The Lease Sale Report will state that the identified resource(s) requires additional analysis and evaluation at the APD stage.
5. The BLM shall take into account comments and input provided by Participating Consulting Parties.

Comment [KD16]: Presumably, this eligibility determination is based solely on the information acquired during the records check. The agency has not actually physically inspected the property to verify a "eligibility recommendation" or if the historic property still maintains its integrity.

F. Assessment of Effects

1. The BLM shall assess the potential for effects to historic properties and their associated cultural landscapes from subsequent development of a parcel if leased, including effects to the setting, feeling, association, location, design, materials, and workmanship of such properties (see definition of aspects of historic integrity in Appendix D of this Agreement). The assessment of effects will consider reasonably foreseeable effects following from leasing that may occur later in time or be farther removed in distance. At the lease stage, these are generally related to the reasonably foreseeable development scenario that is used as an estimate of the number, scope, and type of wells that may be proposed at the APD stage, and may take into consideration possible development sites. Assessment of effects shall also take into account the foreseeable continuing long-term effects of daily operation and maintenance of oil and gas developments.
 - a) If setting, feeling, or association are aspects of historic integrity important to a property's eligibility, the BLM shall consider the potential for visual, auditory, and atmospheric effects of the undertaking on that historic

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45 property. When assessing the potential for effects to the setting of historic
46 properties, the BLM shall use the guidelines described in Appendix E of

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1 this Agreement and standard practices. Appendix E includes the standard
2 APEs for leasing undertakings as well as methodologies for assessing
3 effects within those APEs. Appendix E may be updated from time to time
by BLM as new information becomes available.

- 4
5 b) When making the assessment of effect, the BLM shall take into account
6 comments and input provided by Participating Consulting Parties.
7
8 c) The BLM shall consider options to avoid or minimize effects to historic
9 properties where possible. Only those options that are enforceable through
10 lease stipulations or APD conditions of approval, in accordance with BLM
11 oil and gas leasing policies, will be considered. Options can include, but
12 are not limited to, No Surface Occupancy, Controlled Surface Use, Timing
13 Limitation, and Lease Notice.
14

15 2. No Historic Properties Affected

- 16
17 a) The BLM shall consider the following when determining whether a finding
18 of “No Historic Properties Affected” is appropriate for the proposed lease
19 sale:
20
21 i. Intact historic properties are unlikely to be present due to ground
22 disturbance in the APE.
23
24 ii. Previous inventory in the Physical Effects APE has been
25 conducted to current BLM standards and no cultural resources
26 were found, or if there are historic properties present, they are not
27 expected to be affected by the potential facility development due to
28 stipulations incorporated by the BLM into the lease sale to avoid or
29 minimize effects at the APD stage.
30
31 iii. An audio-visual effects analysis been completed, and the area of
32 potential facility development could occur without auditory or
33 visual effects to a historic property for which setting is an
34 important aspect of historic integrity for the property’s eligibility.
35
36 iv. No concerns been provided by the Participating Consulting Parties
37 to the BLM regarding the potential effects of the lease sale on
38 historic properties or cultural landscapes.
39

40 3. No Adverse Effect

- 41
42 a) The BLM shall consider the following when determining whether a finding
43 of “No Adverse Effect” is appropriate for the proposed lease sale:
44
45 i. The historic property would be affected by reasonably foreseeable
46 oil and gas development that may follow from a proposed lease

Comment [KD17]: The agency does not possess the expertise to make this determination based on tribal or Zuni associative values to a historic property; only a knowledgeable tribal person and/or Zuni can make this type of determination.

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1 sale, but the effect would not diminish the aspects of integrity nor
2 alter any of the characteristics that make the property eligible for
3 listing in the NRHP.
4

5 ii. The portion of the historic property that would be affected lacks
6 integrity.
7

8 iii. If setting, feeling, and/or association are aspects of historic
9 integrity important to the eligibility of a historic property or cultural
10 landscape, the
11 development of the proposed lease parcel would be visible or
12 audible from the historic property or from within the cultural
13 landscape setting, but the project elements would
14 not dominate the setting or attract the attention of an observer.

15 b) Documentation supporting a “No Adverse Effect” finding must discuss
16 how the effect to the cultural landscape or historic property or the portion of
17 the property would
18 not diminish the aspects of integrity nor alter the characteristics that make
19 the property eligible for the NRHP. Options to be implemented to avoid or
20 minimize effects will be described.

21 c) The BLM shall consider ways to reduce the effect of the future
22 development of the lease through implementation of screening, paint
23 colors, alternate siting, vegetation, noise reduction, limitations on access, and
24 other measures, and the BLM shall memorialize
25 them in the leasing stipulations.

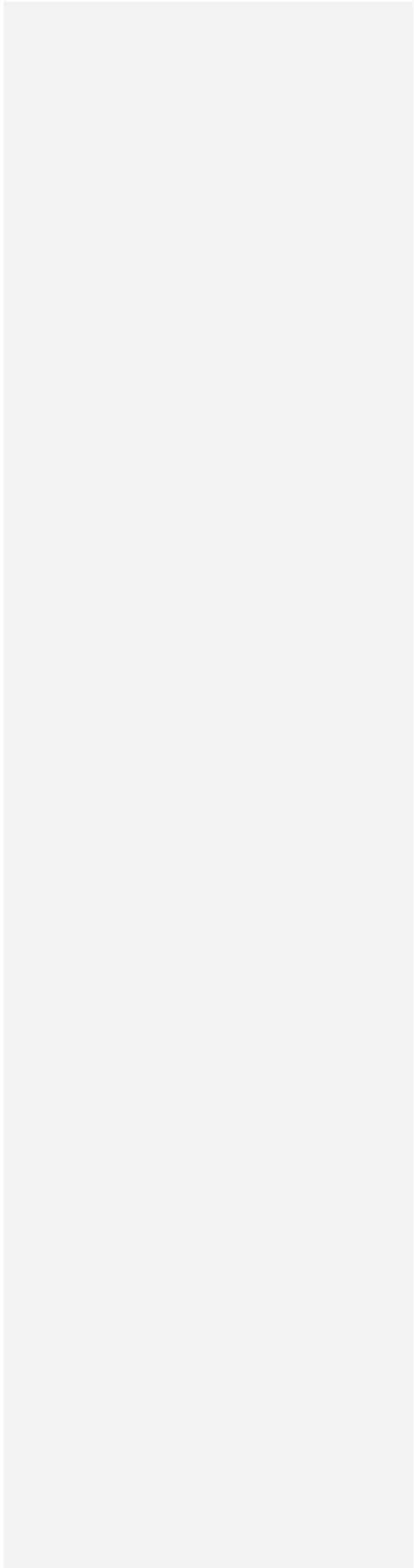
26 4. Adverse Effect

27 a) Per the Section 106 regulations at 36 C.F.R. § 800.5(a)(1), “An adverse
28 effect is found when an undertaking may alter, directly or indirectly, any
29 of the characteristics of a historic property that qualify the property for
30 inclusion in the NRHP in a manner that would diminish the integrity of the
31 property’s location, design, setting, materials, workmanship, feeling, or
32 association.” Consideration will be given to all qualifying characteristics
33 of a historic property or landscape, including those that may have been
34 identified after
35 the original evaluation of the property’s eligibility for the NRHP. Adverse
36 effects may include reasonably foreseeable effects caused by the
37 undertaking that may occur later in time or be farther removed in distance.
38 Because the adverse effects from leasing are necessarily tied to future
39 development of leases, they not only occur later in time, but also are not
40 specifically knowable until an APD is submitted.

41 b) If there are historic properties that may be affected by the undertaking, the
42 BLM shall apply the criteria of adverse effect and shall request and

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incorporate the input of Participating Consulting Parties in making its
finding.

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45



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1 c) The BLM shall consider the following when determining whether a finding
2 of “Adverse Effect” is appropriate for the proposed lease sale:
3

- 4 i. The setting, feeling, and/or association are contributing aspects to
5 the significance and integrity for a historic property, and the
6 potential facility development on the lease parcel would be visible
7 or audible from the historic property, and the reasonably
8 foreseeable project elements would dominate the setting. In the case
of cultural landscapes, BLM shall also consider interconnections
among the elements described in the preamble to this agreement,
along with the views and information provided by Consulting
Parties.
- 9 ii. The reasonably foreseeable development resulting from the
10 proposed lease sale would result in the physical destruction of or
11 damage to the integrity of a historic property, or disruption of
12 interconnections critical to the continuing function and integrity of a
cultural landscape.

13 d) Documentation supporting an “Adverse Effect” finding must discuss how
14 the effect to the property or the portion of the property would diminish the
15 aspects of integrity or alter the characteristics that make the property
16 eligible for the NRHP.
17

18
19 G. NMSHPO and NNTHPO Consultation
20

- 21 1. The document prepared for consultation will be the Lease Sale Report. This report
22 will include a summary of the proposed lease sale, a description of the
23 consultation process carried out pursuant to this Agreement, the efforts made to
24 identify historic properties, the efforts made to assess effects to historic properties,
25 the decisions made by the BLM, and the reasoning that resulted in those decisions.
26 The BLM shall ensure that information regarding the identification of historic
27 properties and assessments of effects thereto to be implemented for any future
28 APD reviews associated with the lease, such as the size of APEs, concerns of
29 Consulting Parties, the need for ethnographic assessments, and other information,
30 is included in the BLM’s files containing all supporting documentation regarding
31 the review of the lease sale, and in the BLM’s cultural resources database in GIS.
32
- 33 2. The BLM shall ensure that all documentation completed by BLM staff and by
34 contractors will be prepared according to 36 C.F.R. § 800.11 and follow relevant
35 guidance provided in BLM MS 8110 and H-8100-1 Procedures for Performing
36 Cultural Resource Fieldwork on Public Lands in the Area of New Mexico BLM
37 Responsibilities and any other relevant land managing entity’s requirements and
38 guidance.
39
- 40 3. The BLM shall submit the Lease Sale Report and associated documentation in
41 accordance with 36 C.F.R. § 800.11(e) and consult with the NMSHPO. If the

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42 undertaking's APE extends onto Navajo Nation tribal trust lands or Indian Allotted
43 lands, then the BLM shall also submit the Lease Sale Report and associated
44 documentation to the NNTHPO for consultation at the same time.
45

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- 1 4. The BLM shall ensure that the Lease Sale Report and all associated documents are
2 submitted to the NMSHPO, and the NNTHPO if being consulted with, in a timely
3 manner after making an effect finding, completing determinations of eligibility in
4 NMCRIS, and determining the documentation meets the appropriate standards.
5
- 6 5. The BLM shall submit the Lease Sale Report and associated documentation to the
7 Participating Consulting Parties at the same time the documentation is provided to
8 the NMSHPO and the NNTHPO is being consulted with. The BLM shall provide
9 copies of any responses received from the Participating Consulting Parties to the
10 NMSHPO and, if being consulted with, the NNTHPO within 3 days of receipt.
11
- 12 6. The NMSHPO and, if being consulted with, the NNTHPO shall review the Lease
13 Sale Report and associated documentation and provide comment on the
14 assessment of effect within 30 days of receipt of the documentation. If the
15 NMSHPO or NNTHPO does not respond within 30 days, the BLM may proceed
16 with the assessment of effect and the undertaking in accordance with any applied
17 lease stipulations and/or APD conditions of approval, provided there are no
18 unresolved objections from the Participating Consulting Parties.
19
- 20 7. If the BLM considered options to avoid or minimize effects to historic properties,
21 and those options were included in the assessment of effect, then the BLM shall
22 include these options in the Lease Sale Report and in the lease sale stipulations
23 and/or APD conditions of approval.
24
- 25 8. Non-Concurrence with Assessment of Effect
26
- 27 a) If the NMSHPO or NNTHPO disagrees with the BLM's assessment of
28 effects as outlined above, the NMSHPO or NNTHPO and the BLM shall
29 consult to resolve the objection.
30
- 31 b) If the objection cannot be resolved, the BLM shall seek the views of the
32 ACHP to resolve the objection per the dispute resolution process in
33 Stipulation XX of this Agreement.
34

35 H. Resolution of Adverse Effects
36

- 37 1. The BLM shall resolve adverse effects of leasing at the APD stage through the
38 provisions of Stipulation X of this Agreement. If there is a finding of adverse
39 effect, the BLM shall attach a lease notice or stipulation to the lease, consistent
40 with the RMPA, that states that development of the parcel will require resolution
41 of adverse effects that may require development of an agreement document that
42 includes the opportunity for all Consulting Parties to this Agreement to participate
43 in consultation.
44

Comment [J18]: Note that despite this stipulation, once the lease is issued BLM cannot require any mitigating measures that impinge upon the Leasee's "right to enjoy the benefits of the lease." BLM is required by law to allow development of the lease, even if adverse effects have not been resolved.

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- 1 2. Current guidance and best practices, including consultation with Consulting
2 Parties, will help guide the resolution of adverse effects (e.g., see “A Strategy for
3 Improving the Mitigation Policies and Practices of the Department of Interior”).
4

5 VIII. LEASING: BLM AS LEAD AGENCY, WITH NAVAJO TRIBAL TRUST SURFACE
6 LANDS
7

8 For BLM federal mineral lease sales within the APE for this Agreement that occur in areas where the
9 surface is Navajo Nation tribal trust lands, the BLM shall follow the same processes for assessing the
10 potential for adverse effects to historic properties and resolving those adverse effects as described
11 under Stipulation VII of this Agreement, with the following exceptions and considerations.
12

- 13 A. All responsibilities that are held by the NMSHPO under Stipulation VII of this
14 Agreement will be assumed by the NNTHPO per 36 C.F.R. § 800.3(c)(1).
15
16 B. If the proposed lease parcel is within 1.25 miles of non-tribal lands, the BLM shall
17 consult with the NMSHPO on the definition of the APEs, identification of historic
18 properties, and assessment of effects.
19
20 C. Access to Navajo Nation lands by Consulting Parties who are not Navajo Nation tribal
21 members or relevant staff representatives of a federal agency will require a permit(s)
22 issued through the NNHHPD. NNHHPD shall review the permit application and respond
23 within 30 days of receipt. The BLM is not responsible for requesting, facilitating, or
24 issuing such permit for the Consulting Parties.
25
26 D. The NNHHPD staff must be present at any consultation meetings regarding historic
27 properties located on Navajo Nation tribal trust lands.
28
29 E. The research of existing information described in Stipulation VII(C) of this Agreement
30 will also include review of records maintained by the NNHHPD, as stipulated in
31 NNHHPD policies.
32
33 F. All reporting and documentation must meet the policies, standards, and guidelines of the
34 NNHHPD.
35
36 G. The BLM shall submit all determinations of eligibility, assessments of effect, and
37 associated documentation to the NNHHPD for review and consultation.
38
39 H. Timelines for review, comment, and response by the NNTHPO on BLM’s determinations
40 of eligibility and assessments of effect will meet the requirements of 36 C.F.R. §
41 800.3(c)(4).
42
43 I. Relevant documentation recording cultural resource investigations and identified
44 properties will be submitted for curation to the NNHHPD instead of NMCRIS in
45 accordance with NNHHPD requirements.
46

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- 1 J. The BLM shall resolve adverse effects of leasing at the APD stage through the provisions
2 of Stipulation XI of this Agreement. If there is a finding of adverse effect, the BLM shall
3 attach a lease notice or stipulation to the lease, consistent with the FMG RMPA, that
4 states that development of the parcel will require resolution of adverse effects that may
5 require development of an agreement document that includes the opportunity for all
6 Consulting Parties to this Agreement to participate in consultation.
7

8 IX. LEASING: BIA NRO AS LEAD AGENCY, WITH NAVAJO TRIBAL TRUST
9 SURFACELANDS

10 The following processes describe how the BIA NRO will complete all components of Section 106 for
11 those fluid mineral operating agreements within the APE for this Agreement that involve Navajo
12 tribal trust fluid minerals where the surface is Navajo Nation tribal trust lands. The Navajo Nation
13 negotiates and consents to operating agreements for oil and gas development per the Indian Mineral
14 Development Act of 1982, which allows for Tribes to use other agreements for minerals instead of
15 standard BIA leases.
16

17 A. Notification of Pending Operating Agreement/Request for Consultation

- 18 1. Once the BIA NRO has received for review the final operating agreement that has
19 been negotiated between the Navajo Nation and the oil/gas developer, the BIA
20 NRO shall prepare a letter notifying Consulting Parties of the pending operating
21 agreement and requesting consultation under this Agreement.
22
23 a) The BIA NRO shall send the letter via electronic mail and U.S. Postal
24 Service to those Consulting Parties that retain interest in the areas of the
25 proposed parcels, per Stipulation III(B) of this Agreement.
26
27 b) The BIA NRO shall send the letter to the POCs defined through the
28 process in Stipulation III(A) of this Agreement to initiate the Section 106
29 consultation process.
30
31 2. In the notification letter, the BIA NRO shall notify the Consulting Party of the
32 pending operating agreement, briefly describe the schedule for the operating
33 agreement and associated NEPA and Section 106 processes, and request
34 consultation with and information from the Consulting Party regarding concerns
35 they have for potential effects to historic properties and places or religious and/or
36 cultural importance. The BIA NRO shall include a date by which a response is
37 requested – the date will allow a minimum of 30 days for submittal of a response –
38 and methods for submitting such response (e.g., email address, fax number,
39 mailing address).
40
41 3. The BIA NRO shall include in the letter the following information for each
42 proposed parcel:
43
44 a) A description of each proposed operating agreement parcel.
45
46

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- b) The BIA NRO's initial definition of the Physical Effects and Audio-Visual Effects APEs, developed in accordance with Stipulation IX(B) of this Agreement.
- c) Maps showing the location of each proposed parcel. These maps will be shown at multiple scales to show the relationship of the parcel to surrounding topography as well as where the parcel resides within the larger San Juan Basin. Man-made features such as roads, townsites, etc. will be included to help orient the viewer. Chapter boundaries will be shown on the maps.
- d) Maps will not show known cultural resources unless their locations are common knowledge.
- e) Maps will show generally known springs and seeps, watersheds, vegetation types, and soil data.
- f) Maps will include information on surface land ownership or administration.

B. Defining the APEs

1. In defining the APEs, the BIA NRO shall consider potential direct and indirect effects to historic properties, as applicable. This includes effects to aspects of historic integrity such as setting, feeling, or association when those aspects are important to a historic property's eligibility.
2. The APEs will be initially defined as follows:
 - a) The BIA NRO shall initially establish the Physical Effects APE for operating agreement parcels as the parcel plus a quarter (1/4) mile surrounding the parcel.
 - b) The BIA NRO shall initially establish the Audio-Visual Effects APE for operating agreement parcels as the Physical Effects APE plus 1 mile surrounding that APE.
3. If the proposed lease parcel is within 1.25 miles of non-tribal lands, the BIA NRO shall consult with the NMSHPO on the definition of the APEs, identification of historic properties, and assessment of effects.
4. If the undertaking's APE extends onto surface land owned or administered by the entity that is not a Consulting Party, the BIA NRO shall invite that entity to consult on the undertaking.

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1 a) If the entity is a federal agency, the BLM shall consult with that agency to
2 determine which agency will be the Lead Agency for Section 106
3 compliance.

4
5 b) If the entity is private, the NMSHPO shall participate in consultation on
6 their behalf.

7
8 5. The BIA NRO shall modify the APEs as appropriate based on the characteristics
9 of the undertaking, the nature of the location, or should additional relevant
10 information become available through the consultation process with the
11 Consulting Parties.

12
13 C. Records Search

- 14
15 1. The BIA NRO shall conduct a records search of existing information to gather
16 data on known cultural resources located within the APEs and to make estimates
17 of site density and typology within and near the APEs.
- 18
19 2. The BIA NRO shall include in their research the records of archaeological sites
20 and traditional places maintained at NNHHPD, listings of properties in the NRHP
21 and SRCP, aerial photography, and existing information regarding the presence of
22 potential Chaco-related roads and Navajo defensive sites.
- 23
24 3. When potential operating agreement parcels are located within 1.25 miles of non-
25 tribal lands, the BIA NRO shall include research of the NMCRIS cultural resource
26 records.
- 27
28 4. The BIA NRO shall consider the quality of previously conducted cultural resource
29 inventories and previous recordings of cultural resources within the APEs.
- 30
31 5. The BIA NRO acknowledges that research of existing records and data will not
32 identify all historic properties located within the APEs; however, the effort is
33 consistent with the reasonable and good faith effort at the operating agreement
34 stage.

35
36 D. Participating Consulting Party Consultation

- 37
38 1. The BIA NRO shall consult further with any Consulting Party who responds in
39 writing (via email or regular mail) to the request for consultation letter described
40 in Stipulation IX(A) of this Agreement stating that further consultation is
41 requested. Such parties will be regarded as Participating Consulting Parties for the
42 specific undertaking.
- 43
44 2. The NNHHPD, BIA NRO, and Participating Consulting Parties shall work in
45 good faith to identify and consider the potential effects of an operating agreement
46 on specific historic properties.

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- 1
2 3. The NNHHPD and BIA NRO shall meet to consult with any Participating
3 Consulting Party if such a meeting is requested. The NNHHPD, BIA NRO, and
4 requesting Consulting Party shall work in good faith to schedule and attend the
5 consultation meeting within a reasonable time frame. Good faith for scheduling
6 the meeting is defined as the BIA NRO making at least three attempts via a
7 combination of emails and telephone calls within a two-week period to the
8 Participating Consulting Party POCs.
9
- 10 4. The NNHHPD and BIA NRO shall consider requests made by Participating
11 Consulting Parties for field trips or site investigations on a case-by-case basis. The
12 NNHHPD, BIA NRO, and requesting Consulting Party shall work in good faith to
13 schedule and attend the field trip within a reasonable time frame. Good faith for
14 scheduling the trip is defined as the BIA NRO making at least three attempts via a
15 combination of emails and telephone calls within a two-week period to the
16 Participating Consulting Party POCs. If field trips are not feasible, the NNHHPD
17 and BIA NRO shall work with the Participating Consulting Parties to develop
18 additional information in lieu of a site visit (e.g., photographs, maps of soil values
19 and slope, etc.).
20
- 21 5. The BIA NRO may share the results of their records search conducted pursuant to
22 Stipulation IX(C) of this Agreement with any Participating Consulting Party that
23 requests the results, as appropriate.
24
 - 25 a) If a Participating Consulting Party has signed this Agreement, they will be
26 bound to protect sensitive information per Stipulation V of this
27 Agreement.
28
 - 29 b) If a Participating Consulting Party has not signed this Agreement, sensitive
30 information will not be shared with them by the BIA NRO until a data
31 sharing agreement has been executed between the Participating Consulting
32 Party and the BIA NRO per Stipulation V(D) of this Agreement.
33
- 34 6. The BIA NRO may modify the Physical Effects or Audio-Visual Effects APEs
35 should additional relevant information become available through the consultation
36 process with the Participating Consulting Parties.
37
- 38 7. If the BIA NRO becomes aware of a specific cultural resource that may be a
39 historic property that could be affected by the operating agreement, the BIA NRO
40 shall continue consultation with the Participating Consulting Party and gather
41 sufficient information about the property to determine its eligibility, assess the
42 effect of the operating agreement on the property, and consult on its
43 determinations prior to the BIA NRO issuing a decision on the operating
44 agreement.
45

46 E. Eligibility Determinations

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1. The NNTHPO shall make a determination of eligibility for any property identified through the records search or consultation undertaken in Stipulation IX(D) of this Agreement prior to the BIA NRO issuing a decision on whether to approve the operating agreement for the specific parcel associated with that property.
2. The NNTHPO shall evaluate the eligibility of cultural resources utilizing a cultural landscape approach that incorporates the results of the records search, ethnographic studies, and input provided by the Participating Consulting Parties into the evaluation.
3. If a cultural resource's NRHP eligibility remains undetermined, the BIA NRO shall treat that resource as eligible for purposes of making an initial effect assessment.
4. The NNTHPO and BIA NRO shall take into account comments and input provided by Participating Consulting Parties.

F. Assessment of Effects

1. The BIA NRO shall assess the potential for effects to historic properties and cultural landscapes from the operating agreement and subsequent development of the parcel, including effects to the setting, feeling, association, location, design, materials, and workmanship of such properties (see definition of aspects of historic integrity in Appendix D of this Agreement). The assessment of effect will consider reasonably foreseeable effects caused by the undertaking that may occur later in time or be farther removed in distance. At the operating agreement stage, these are generally related to the reasonably foreseeable development scenario that is used as an estimate of the number, scope, and type of wells that may be proposed at the APD stage, and may take into consideration possible development sites.
 - a) If setting, feeling, or association are aspects of historic integrity important to a property's eligibility, the BIA NRO shall consider the potential for visual, auditory, and atmospheric effects of the undertaking on that historic property. When assessing the potential for effects to the setting of historic properties, the BIA NRO shall use the guidelines described in Appendix E of this Agreement and standard practices. Appendix E includes the standard APEs for operating agreements as well as methodologies for assessing effects within those APEs.
 - b) When making the assessment of effect, the BIA NRO shall take into account comments and input provided by Participating Consulting Parties.
 - c) The BIA NRO shall consider options to avoid or minimize effects to historic properties where possible. Options can include, but are not limited

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1 to, No Surface Occupancy, Controlled Surface Use, and Timing
2 Limitations.
3

4 2. No Historic Properties Affected
5

6 a) The BIA NRO shall consider the following when determining whether a
7 finding of “No Historic Properties Affected” is appropriate for the
8 proposed operating agreement:
9

10 i. Intact historic properties or cultural landscapes are unlikely to be
11 present due to ground
12 disturbance in the APE.

13 ii. Previous inventory in the Physical Effects APE has been conducted
14 to current NNHHPD standards and no cultural resources were
15 found, or if there are historic properties and landscapes present, they
16 are not
17 expected to be affected by the potential facility development due to
18 stipulations incorporated by the BIA NRO into the operating
19 agreement to avoid or minimize effects at the APD stage.

20 iii. An audio-visual effects analysis has been completed, and the area
21 of potential facility development could occur without auditory or
22 visual effects to a historic property or cultural landscape for which
23 setting is an
24 important aspect of historic integrity for the property’s eligibility.

25 iv. No concerns have been provided by the Participating Consulting
26 Parties to the BIA NRO regarding the potential effects of the
27 operating agreement on historic properties.
28

29 3. No Adverse Effect
30

31 a) The BIA NRO shall consider the following when determining whether a
32 finding of “No Adverse Effect” is appropriate for the proposed operating
33 agreement:
34

35 i. The historic property or cultural landscape would be affected by
36 reasonably foreseeable
37 oil and gas development that may follow from a proposed
38 operating agreement, but the effect would not diminish the aspects
39 of integrity nor alter any of the characteristics that make the
40 property eligible for listing in the NRHP.

41 ii. The portion of the historic property or cultural landscape that would
42 be affected lacks
integrity.

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- iii. If setting, feeling, and/or association are aspects of historic integrity important to the eligibility of a historic property or cultural landscape, the development of the proposed parcel would be visible or audible

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1 from the historic property, but the project elements would not
2 dominate the setting or attract the attention of an observer.
3

4 b) Documentation supporting a “No Adverse Effect” finding must discuss
5 how the effect to the historic property, landscape, or ~~the~~ portion of the
6 property would
7 not diminish the aspects of integrity nor alter the characteristics that make
8 the property eligible for the NRHP. Options to be implemented to avoid or
9 minimize effects will be described.

10 c) The BIA NRO shall consider ways to reduce the effect of the future
11 development of the operating agreement through implementation of
12 screening, paint colors, alternative siting, vegetation, and other measures
13 and memorialize them in the operating agreement stipulations.
14

15 4. Adverse Effect
16

17 a) Per the Section 106 regulations at 36 C.F.R. § 800.5(a)(1), “An adverse
18 effect is found when an undertaking may alter, directly or indirectly, any
19 of the characteristics of a historic property that qualify the property for
20 inclusion in the NRHP in a manner that would diminish the integrity of the
21 property’s location, design, setting, materials, workmanship, feeling, or
22 association.” Consideration will be given to all qualifying characteristics
23 of a historic property, including those that may have been identified after
24 the original evaluation of the property’s eligibility for the NRHP. Adverse
25 effects may include reasonably foreseeable effects caused by the
26 undertaking that may occur later in time or be farther removed in distance.
27 Because the adverse effects from operating agreements are necessarily tied
28 to future development of the parcel, they not only occur later in time, but
29 also are not specifically knowable until an APD is submitted.
30

31 b) If there are historic properties or cultural landscapes that may be affected by
32 the potential facility
33 development, the BIA NRO shall apply the criteria of adverse effect and
34 shall request and incorporate the input of Participating Consulting Parties
35 in making its finding.
36

37 c) The BIA NRO shall consider the following when determining whether a
38 finding of “Adverse Effect” is appropriate for the proposed operating
39 agreement:

- 40 i. The setting, feeling, and/or association are contributing aspects to
41 the integrity and significance of a historic property or cultural
42 landscape, and the
43 potential facility development on the parcel would be visible or
44 audible from the historic property, and the reasonably foreseeable
project elements would dominate the setting.

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1 ii. The reasonably foreseeable development resulting from the
2 proposed operating agreement would result in the physical
3 destruction of or damage to the integrity of a historic property or
4 cultural landscape.

5 d) Documentation supporting a finding of “Adverse Effect” must discuss how
6 the effect to the property or the portion of the property would diminish the
7 aspects of integrity or alter the characteristics that make the property or
8 landscape
9 eligible for the NRHP.

10 G. Reporting and Submittals

- 11
- 12 1. The BIA NRO shall prepare a Cultural Resource Compliance Form (CRCF) with
13 the record search results, description of the consultation process, the consultation
14 results, the eligibility and effect findings, and recommendations for avoidance
15 measures and further work to be conducted at the APD stage.
 - 16 2. Documentation will meet the policies, standards, and guidelines of the NNHHPD
17 and BIA NRO.

18

19

20 H. Completion of Section 106 Consultation

- 21
- 22 1. The BIA NRO Cultural Resources staff shall submit the CRCF to the BIA NRO
23 Director with a recommendation for approval and signature. At this time, the BIA
24 NRO shall provide the unsigned CRCF to the Participating Consulting Parties.
25 Any response received from the Participating Consulting Parties will be forwarded
26 to the BIA NRO Director and NNHHPD within 3 days of receipt.
 - 27 a) If a Participating Consulting Party submits issues, concerns, or objections
28 with the documentation and/or findings to the BIA NRO, the BIA NRO
29 shall consult with the Participating Consulting Party to address them.
 - 30 b) If the issues, concerns, or objections cannot be resolved, the BIA NRO
31 shall seek the views of the ACHP to resolve the objection per the dispute
32 resolution process in Stipulation XX of this Agreement.
 - 33 c) If no issues, concerns, or objections are provided to the BIA NRO within
34 30 days, the BIA NRO Director will be notified by BIA NRO staff that the
35 CRCF is ready for signature.
 - 36 2. Within 30 days of the BIA NRO Director signing the CRCF, the BIA NRO shall
37 submit a letter of final findings to the Participating Consulting Parties, thereby
38 documenting conclusion of the Section 106 consultation process.
 - 39 3. The BIA NRO shall ensure that any options for avoiding or minimizing effects to
40 historic properties that were included in the assessment of effect are included in
41 the assessment of effect.
- 42
- 43
- 44
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the approved operating agreement.

46

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- 1
2 4. The BIA NRO shall not allow operating agreements to be completed without
3 adequate provisions for the timely completion of all documentation and associated
4 records generated under the terms of this Agreement.
5

6 I. Resolution of Adverse Effects
7

- 8 1. The BIA NRO shall resolve adverse effects of approving an operating agreement
9 at the APD stage through the provisions of Stipulation XI of this Agreement. If
10 there is a finding of adverse effect, the BIA NRO shall attach a stipulation to the
11 operating agreement that states that development of the parcel will require
12 resolution of adverse effects that may require development of an agreement
13 document that includes the opportunity for all Consulting Parties to this
14 Agreement to participate in consultation.
15
16 2. Current guidance and best practices, including consultation with Consulting
17 Parties, will help guide the resolution of adverse effects (e.g., see “A Strategy for
18 Improving the Mitigation Policies and Practices of the Department of Interior”).
19

20 X. APD: BLM AS LEAD AGENCY, WITH FEDERAL, STATE, AND PRIVATE SURFACE
21 LANDS
22

23 The following process describes how the BLM will complete all components of Section 106
24 compliance for processing those APDs that involve federal minerals with surface management or
25 ownership by the BLM, state agencies, counties, cities, or private individuals (not Indian Allottees)
26 within the APE for this Agreement. This includes private lands (not Indian Allotted) within the
27 exterior boundaries of the Navajo Nation.
28

29 A. Incorporation of Lease Information
30

- 31 1. The BLM shall ensure that information regarding designations of APEs, concerns
32 of Participating Consulting Parties, the need for ethnographic assessments, and
33 other information regarding the identification of historic properties and
34 assessments of effects thereto, collected during the review of a lease sale, is
35 included during the review of proposed APDs associated with the lease.
36
37 2. The cultural resources information will be found in the Lease Sale Report, in
38 BLM’s files containing all supporting documentation regarding the review of the
39 lease sale, and in the BLM’s cultural resources database in GIS, as described in
40 Stipulation VII(G).
41

42 B. Onsite Visit
43

- 44 1. An onsite visit to the proposed APD project area will occur no sooner than 2
45 weeks after the notification of onsite visit has been distributed to the Consulting
46 Parties.

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2. Notification of Onsite Visit

- a) The BLM shall send a notice via electronic mail to all the Consulting Parties informing them of the onsite visit to occur for the APD being processed.
 - i. The BLM shall send the notice to the POCs defined through the process in Stipulation III(A) of this Agreement.
 - ii. The BLM shall include in the notification a general description of the proposed project, the project location, and the place, date, and time to meet for the onsite visit.
- b) The BLM shall send to all the Consulting Parties an electronic calendar invite to the onsite visit with an automatic reminder that occurs 3 days prior to the onsite visit.
- c) The BLM shall provide electronic geospatial files of the proposed APD project area upon request by a Consulting Party. The BLM shall provide contact information for requesting this information in the notice.

3. Input provided by Consulting Parties during an onsite visit will be used by the BLM to work with the Project Proponent to potentially alter the undertaking to avoid or minimize potential effects to historic properties.

4. Sensitive information provided during the onsite visit will be protected per Stipulation V of this Agreement.

C. Request for Consultation

1. After the BLM receives the final APD from the Project Proponent following the onsite visit, the BLM shall prepare a letter notifying Consulting Parties of the submittal of an APD and requesting consultation under this Agreement.
2. The BLM shall send the letter within 15 days of receipt of the final APD via electronic mail and U.S. Postal Service to those Consulting Parties that retain interest in the proposed area of the APD, per Stipulation III(B) of this Agreement.
 - a) The BLM shall send the letter to the POCs defined through the process in Stipulation III(A) of this Agreement.
 - b) For Tribes receiving the letter, the BLM shall also send the letter to that Tribe's head of government to initiate government-to-government consultation.

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- 1 3. In the request letter, the BLM shall notify the Consulting Party of the proposed
2 APD and request consultation with and information from the Consulting Party
3 regarding concerns they have for potential effects to historic properties and places
4 of religious and/or cultural importance. The BLM shall also describe the planned
5 efforts for identifying historic properties and assessing the potential effects of the
6 APD. The BLM shall allow 30 days for a response from the Consulting Party
7 indicating a desire to continue consultation and shall describe methods for
8 submitting such response (e.g., email address, fax number, mailing address) in the
9 request letter.
10
11 4. The BLM shall include in the letter the following information for each proposed
12 APD:
13
14 a) A description of the proposed APD facilities and infrastructure.
15
16 b) The BLM’s initial definition of the Physical Effects and Audio-Visual
17 Effects APEs developed in accordance with Stipulation X(D) of this
18 Agreement.
19
20 c) Maps showing the location of the proposed APD project area. These maps
21 will be shown at larger scales and smaller scales to show the relationship
22 of the parcel to surrounding topography as well as where the parcel resides
23 within the larger San Juan Basin. Man-made features such as roads,
24 townsites, etc. will be included to help orient the viewer. Navajo Chapter
25 boundaries will also be shown on the maps. Both topographic and aerial
26 photograph backgrounds will be used for the maps.
27
28 d) Maps will not show known cultural resources unless their locations are
29 common knowledge.
30
31 e) Maps will show generally known springs and seeps, watersheds, vegetation
32 types, and soil data.
33
34 f) Maps will include information on surface land ownership or administration.
35
36 5. The BLM shall provide electronic geospatial files of the proposed APD project
37 area upon request by a Consulting Party. The BLM shall provide contact
38 information for requesting this information in the letter.
39

40 D. Defining the APEs

- 41
42 1. In defining the APEs, the BLM shall consider potential direct and indirect effects
43 to historic properties, as applicable. This includes effects to aspects of historic
44 integrity such as setting, feeling, or association when those aspects are important
45 to a historic property’s eligibility.
46

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- 1 2. The BLM shall initially establish the Physical Effects APE for APDs as the
2 proposed construction area, which includes not only the footprint of facilities,
3 infrastructure, excavation, and clearing, but also staging, laydown, and parking
4 areas, plus a buffer of 100 feet surrounding these block construction areas, or a
5 buffer of 50 feet around linear components that do not require a separate ROW.
6 The BLM shall initially establish the Audio-Visual Effects APE for APDs as the
7 Physical Effects APE plus 1 mile surrounding that APE.
8
- 9 3. If the proposed APD project area is within 1 mile of Navajo Nation tribal trust
10 lands, the BLM shall consult with the NNTHPO on the definition of the APEs,
11 identification of historic properties, and assessment of effects.
12
- 13 4. If the undertaking's APE extends onto surface land owned or administered by an
14 entity that is not a Consulting Party, the BLM shall invite that entity to consult on
15 the undertaking.
16 a) If the entity is a federal agency, the BLM shall consult with that agency to
17 determine which agency will be the Lead Agency for Section 106
18 compliance.
19 b) If the entity is private, the NMSHPO shall participate in consultation on
20 their behalf.
21
- 22 5. The BLM may modify the Physical Effects or Audio-Visual Effects APEs based to
23 enhance protection for historic properties and cultural landscapes based
24 on the characteristics of the undertaking, the nature of the location, or should
25 additional relevant information become available through the consultation process
26 with the Consulting Parties. This can also include when an APE buffer extends
27 onto lands to which the BLM cannot gain entry.
28

29
30 E. Participating Consulting Party Consultation
31

- 32 1. The BLM shall consult further on the proposed APD with any Consulting Party
33 who responds in writing (via email or regular mail) to the request for consultation
34 letter described in Stipulation X(C) of this Agreement stating that further
35 consultation is requested. Such parties will be regarded as Participating Consulting
36 Parties for the specific APD undertaking.
37
- 38 2. The BLM and the Participating Consulting Parties shall work in good faith to
39 identify and consider the potential effects of the APD on specific historic
40 properties.
41
- 42 3. The BLM shall meet to consult with any Participating Consulting Party if such a
43 meeting is requested. The BLM and the requesting Consulting Party shall work in
44 good faith to schedule and attend the consultation meeting within a reasonable
45 timeframe. Good faith for scheduling the meeting is defined as the BLM making at

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1 least three attempts via a combination of emails and telephone calls within a two-
2 week period to the Participating Consulting Party POCs.
3

4 4. The BLM shall consider requests made by Participating Consulting Parties for
5 field trips or site investigations at the proposed APD project area on a case-by-case
6 basis. The BLM and the requesting Consulting Party shall work in good faith to
7 schedule and attend the field trip within a reasonable time frame. Good faith for
8 scheduling the trip is defined as the BLM making at least three attempts via emails
9 and telephone calls within as two-week period to the Participating Consulting
10 Party POCs. If field trips are not feasible, the BLM shall work with the
11 Participating Consulting Parties to develop additional information in lieu of a site
12 visit (e.g., photographs, maps of soil values and slope, etc.).
13

14 5. The BLM shall share the draft cultural resources survey report submitted to the
15 BLM by the Project Proponent's permitted cultural resources contractor with any
16 Participating Consulting Party requesting the report, as appropriate.
17

18 a) If a Participating Consulting Party has signed this Agreement, they will be
19 bound to protect sensitive information per Stipulation V of this
20 Agreement.
21

22 b) If a Participating Consulting Party has not signed this Agreement, sensitive
23 information will not be shared with them by the BLM until a data sharing
24 agreement has been executed between the Participating Consulting Party
25 and the BLM per Stipulation V(D) of this Agreement.
26

27 c) The BLM shall not share the results of research of NNHHPD site files, if
28 such research is conducted, without the expressed permission, in writing,
29 of the NNHHPD.
30

31 6. The BLM may modify the Physical Effects or Audio-Visual Effects APEs to
32 enhance protection for historic properties and cultural landscapes should
33 additional relevant information become available through the consultation process
34 with the Participating Consulting Parties.

35 7. If information pertinent to the identification of historic properties, evaluations of
36 NRHP eligibility, or assessments of effect are provided to the BLM by the
37 Participating Consulting Party, the BLM shall, in consultation with the
38 Participating Consulting Party, share the information with the Project Proponent
39 for inclusion in the findings of the final cultural resource survey report.
40

41 F. Eligibility Determinations

42 1. The BLM shall evaluate the eligibility of any property identified in the cultural
43 resources survey report or through the consultation undertaken in Stipulation X(E)
44 of this Agreement prior to issuing a decision on whether to approve the proposed
45 APD.
46

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2. BLM shall evaluate eligibility by applying all the NRHP criteria and criteria considerations found at 36 C.F.R. § 60.4. The BLM shall guide their NRHP evaluations by the Secretary’s Standards and Guidelines for Evaluation, the National Register Bulletin How to Apply the National Register Criteria for Evaluation, other National Register bulletins, and appropriate historic contexts. The integrity of location, setting, design, materials, workmanship, feeling, and association will be considered as part of the evaluation, taking into account the nature of the property and its setting where setting is an important aspect of integrity.
3. The BLM shall evaluate the eligibility of cultural resources utilizing a cultural landscape approach that incorporates the results of the cultural resource survey, ethnographic studies, and input provided by the Participating Consulting Parties into the evaluation.
4. When the proposed APD undertaking could affect properties on surface lands owned or administered by another federal agency or state agency or department, the BLM shall seek the views of the agency.
5. BLM shall report its NRHP eligibility evaluations on the appropriate NMCRIS forms. BLM shall enter its determinations into NMCRIS.
6. If a property’s NRHP eligibility remains uncertain, the BLM shall treat that property as eligible for purposes of the BLM making an effect determination. If the property will be affected by the proposed APD undertaking, the BLM shall conduct additional studies as appropriate to make a final determination of NRHP eligibility. Additional studies will be planned and implemented in consultation with the Participating Consulting Parties, the NMSHPO, and any agencies that own or administer involved surface lands,
7. If the BLM finds it appropriate to change the eligibility of a previously documented historic property from eligible to not eligible or from undetermined to not eligible, the BLM shall seek NMSHPO concurrence on the changed determination. The BLM shall submit changes in eligibility as a separate NMSHPO consultation.
 - a) The BLM shall forward the report, site forms, and other documentation as appropriate to the NMSHPO and include the reasoning for the change and initiate consultation.
 - b) If the NMSHPO does not respond within 10 days or within a mutually agreed period (if the NMSHPO needs additional time), the BLM may assume concurrence with the change in eligibility.

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1 c) If concurrence cannot be achieved through further discussions, the BLM
2 shall follow the steps in Stipulation X(F)(8) of this Agreement.
3

4 8. The NMSHPO shall monitor a sample of determinations of eligibility and
5 complete the NMSHPO block in NMCRIS for the sample monitored.
6

7 9. If the NMSHPO disagrees with a BLM determination of eligibility, the NMSHPO
8 shall provide comments immediately to the BLM upon review.
9

10 a) If the APD has already been approved, the BLM shall take the NMSHPO's
11 comments on eligibility into consideration on future determinations of like
12 properties and, if the property has not been completely destroyed by the
13 undertaking, the property's eligibility will be undetermined for future
14 undertakings until the BLM consults with NMSHPO on eligibility
15 following the process in Stipulation X(F)(8)(b) of this Agreement.
16

17 b) If the APD has not already been approved, the BLM and NMSHPO shall
18 consult to reach consensus on the determination of eligibility in a timely
19 manner. If the BLM and the NMSHPO cannot agree through further
20 discussions on the eligibility of a historic property, they shall seek
21 assistance from the BLM state office to help reach agreement. If
22 agreement cannot be reached, then the BLM shall follow the process in
23 Stipulation X(F)(10) of this Agreement. BLM cannot proceed with a final
24 assessment of effect until the eligibility of a property has been resolved or
25 the adverse effects to that property have been avoided.
26

27 10. If the NMSHPO identifies patterns in differences in eligibility determinations
28 (e.g., for specific types of properties or aspects of integrity), the NMSHPO shall
29 contact the BLM to discuss the matter further. The NMSHPO and BLM may
30 conduct onsite meetings, contact the BLM state office, or implement other
31 measures as appropriate to resolve the matter and improve BLM-NMSHPO
32 agreement on eligibility evaluations.
33

34 11. If agreement on eligibility cannot be reached, then the BLM shall request a formal
35 determination of eligibility from the Keeper of the National Register of Historic
36 Places (Keeper), pursuant to 36 C.F.R. § 800.4(c)(2). The process detailed in 36
37 C.F.R. Part 63, the NPS regulations on Eligibility for Inclusion in the NRHP will
38 be followed. The Keeper's determination will be final.
39

40 G. Assessments of Effect
41

42 1. The BLM shall assess the effects of the proposed APD undertaking on historic
43 ~~properties~~Properties and cultural landscapes, including effects to the setting, feeling,
44 association, location, design,
45 materials, and workmanship of such properties. The assessment of effects will
46 consider reasonably foreseeable effects caused by the undertaking that may occur
later in time or be farther removed in distance. If setting is a contributing aspect of

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1 integrity for an historic property or cultural landscape, the BLM shall consider the
2 potential for visual,
3 auditory, and atmospheric effects of the undertaking on the property’s setting.

4 2. When making the assessment of effect, the BLM shall take into account the
5 comments and input provided by Participating Consulting Parties.

6
7 3. The BLM shall avoid or minimize effects to historic properties and cultural
8 landscapes where possible by
9 integrating standard measures, best management practices (BMPs), and other
10 Conditions of Approval (COAs) in the APD approval.

11 4. The BLM shall submit the effect finding and associated documentation and
12 consult with the NMSHPO as described in this section below.

13
14 5. No Historic Properties Affected

15
16 a) The BLM shall consider the following guidance when determining whether
17 a finding of “No Historic Properties Affected” is appropriate for the
18 proposed APD.

19
20 i. Intact historic properties or cultural landscapes are unlikely to be
21 present due to ground
22 disturbance in the APE.

23 ii. A setting analysis is completed, and the proposed APD facilities
24 would not be visible from an historic property in the Audio-Visual
25 Effects APE.

26
27 iii. Historic properties or cultural landscapes are within the APEs, but are
28 not expected to be
29 affected by the proposed APD due to BMPs, standard measures,
30 and other COAs that would be part of the APD approval and are
31 designed to avoid or minimize effects.

32 b) For “No Historic Properties Affected” findings, the BLM shall upload their
33 review documentation into NMCRIS. A list of “No Historic Properties
34 Affected” undertakings and copies of the associated review documentation
35 will be submitted monthly to the NMSHPO. The BLM shall notify the
36 Participating Consulting Parties of the finding and may proceed with the
37 undertaking.

38
39 c) The NMSHPO shall review a sample of the BLM’s “No Historic Properties
40 Affected” findings and associated review documentation for APD
41 undertakings. If the NMSHPO has questions about the documentation or
42 the findings, they shall provide comments to the BLM immediately upon
43 review. The BLM shall take these comments into consideration on future

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44 APD reviews. If the NMSHPO identifies a pattern indicating that the BLM
45 is not taking NMSHPO comments into consideration, the NMSHPO shall
46 contact the BLM to discuss the matter further to reach consensus, if

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1 possible. The NMSHPO and BLM may conduct onsite meetings, contact
2 the BLM state office, or implement other measures as appropriate to
3 improve BLM-NMSHPO agreement.
4

5 6. No Adverse Effect

6
7 a) The BLM shall consider the following guidance when determining whether
8 a finding of “No Adverse Effect” is appropriate for the proposed APD.
9

10 i. An historic property or cultural landscape would be affected by a
11 proposed APD, but the
12 effect would not diminish the aspects of integrity nor alter, directly
13 or indirectly, any of the characteristics that make the property
14 eligible for listing in the NRHP. This would apply to all historic
15 properties located within the APEs.

16 ii. It can be demonstrated that the portion of the historic property that
17 would be affected, directly or indirectly, lacks integrity. For
18 archaeological sites this would usually involve documentation on
19 how the archaeological site has been previously disturbed and a
20 discussion of how the integrity of the deposits has been previously
21 compromised.
22

23 iii. The setting, feeling, and/or association are contributing aspects of
24 integrity for any historic property or cultural landscape, and the
25 proposed APD facilities
26 would be visible or audible from the historic property, but the
27 project elements would not dominate the setting or attract the
28 attention of an observer.

29 b) If BLM makes a finding of “No Adverse Effect” and the proposed APD
30 would affect historic properties eligible only under Criterion D:
31

32 i. The BLM shall upload their review documentation into NMCRIS.
33 A list of “No Adverse Effect” undertakings and copies of the
34 associated review documentation will be submitted monthly to the
35 NMSHPO. The BLM shall notify Participating Consulting Parties
36 of the finding and may proceed with the undertaking.
37

38 ii. The NMSHPO shall review a sample of the BLM’s “No Adverse
39 Effect” findings and associated review documentation for APD
40 undertakings that only involve historic properties eligible under
41 Criterion D. If the NMSHPO has questions about the
42 documentation or the findings, the NMSHPO shall provide
43 comments to the BLM immediately upon review. The BLM will
44 take these comments into consideration on future APD
45 undertakings. If the NMSHPO identifies a pattern indicating that

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46

the BLM is not taking NMSHPO comments into consideration, the

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1 NMSHPO shall contact the BLM to discuss the matter further to
2 reach consensus, if possible. The NMSHPO and BLM may
3 conduct onsite meetings, contact the BLM state office, or
4 implement other measures as appropriate to improve BLM-
5 NMSHPO agreement.
6

- 7 c) If BLM makes a finding of “No Adverse Effect” and the proposed APD
8 would affect historic properties eligible under Criteria A, B, and/or C:
9
- 10 i. The BLM shall submit its finding and associated review
11 documentation to the NMSHPO. The documentation must discuss
12 how the effect to the property or the portion of the property will
13 not diminish the aspects of integrity nor alter the characteristics
14 that make the property eligible for the NRHP. The BLM shall also
15 provide its finding and associated review documentation to the
16 Participating Consulting Parties.
17
 - 18 ii. The NMSHPO and the Participating Consulting Parties will have
19 the opportunity to review and comment on the effect determination
20 within 30 days of receipt of the documentation.
21
 - 22 iii. The BLM, NMSHPO, and Participating Consulting Parties shall
23 consult in good faith to resolve any objections or concerns with the
24 BLM’s assessment of effect.
25
 - 26 iv. If the NMSHPO does not respond within 30 days, the BLM may
27 proceed with the undertaking, provided there are no unresolved
28 objections from the Participating Consulting Parties.
29

30 7. Adverse Effect
31

- 32 a) Per the Section 106 regulations at 36 C.F.R. § 800.5(a)(1), “An adverse
33 effect is found when an undertaking may alter, directly or indirectly, any
34 of the characteristics of a historic property that qualify the property for
35 inclusion in the NRHP in a manner that would diminish the integrity of the
36 property’s location, design, setting, materials, workmanship, feeling, or
37 association.” Consideration will be given to all qualifying characteristics
38 of a historic property or cultural landscape, including those that may have
39 been identified after
40 the original evaluation of the property’s eligibility for the NRHP. Adverse
41 effects may include reasonably foreseeable effects caused by the
42 undertaking that may occur later in time or be farther removed in distance.
43
- 44 b) If there are historic properties or cultural landscapes that may be affected by
45 the undertaking, the
BLM shall apply the criteria of adverse effect and shall request and
incorporate the input of Participating Consulting Parties in making its

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46 finding. In addition, the BLM shall consider the following guidance when

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1 determining whether a finding of “Adverse Effect” is appropriate for the
2 proposed APD:
3

4 i. The setting, feeling, and/or association are contributing aspects of
5 integrity for an historic property or cultural landscape, and a
6 proposed APD would be
7 visible or audible from the historic property, and the project
8 elements would dominate the setting.

9 ii. The proposed APD would result in the physical destruction of or
10 damage to all or part of an historic property or the landscape in
11 which it resides.

12 c) If the proposed APD will have an “Adverse Effect” on historic properties,
13 the BLM shall document this finding and notify NMSHPO and the
14 Participating Consulting Parties.

15 d) If the BLM makes a finding of “Adverse Effect”:
16

17 i. The BLM shall submit its finding and associated review
18 documentation to the NMSHPO. The documentation must discuss
19 how the effect to the property or the portion of the property will
20 diminish the aspects of integrity or alter the characteristics that
21 make the property eligible for the NRHP. The BLM shall also
22 provide its finding and associated review documentation to the
23 Participating Consulting Parties.

24 ii. The NMSHPO and the Participating Consulting Parties will have
25 the opportunity to review and comment on the effect determination
26 within 30 days of receipt of the documentation.
27

28 iii. The BLM, NMSHPO, and Participating Consulting Parties shall
29 consult in good faith to resolve any objections or concerns with the
30 BLM’s assessment of effect.
31

32 iv. If the NMSHPO does not respond within 30 days, the BLM may
33 assume concurrence with determinations of eligibility and effect,
34 provided there are no unresolved objections from the Participating
35 Consulting Parties.
36

37
38
39 8. Non-Concurrence with Assessment of Effect
40

41 a) If the NMSHPO disagrees with the BLM’s assessment of effect as outlined
42 above, the NMSHPO and the BLM shall consult to resolve the objection.
43

44 b) If the objection cannot be resolved, or if the NMSHPO does not respond
45 and unresolved objections from the Participating Consulting Parties exist,

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1 the BLM shall seek the views of the ACHP to resolve the objection per the
2 dispute resolution process in Stipulation XX of this Agreement.
3

4 H. Reporting and Submittals
5

6 1. Reporting and Documentation Standards
7

8 a) The BLM shall ensure that all documentation completed by BLM staff and
9 by contractors will be prepared according to the latest guidance provided
10 in H-8100-1 Procedures for Performing Cultural Resource Fieldwork on
11 Public Lands in the Area of New Mexico BLM Responsibilities and any
12 other relevant land managing entity's requirements and guidance.
13

14 b) The BLM shall ensure that cultural resource investigations are registered in
15 NMCRIS and that all identified sites, buildings, structures, objects, and
16 districts are documented online using the appropriate NMCRIS forms,
17 including but not limited to the NMCRIS Investigation Abstract Form, the
18 Laboratory of Anthropology site record, the Historic Cultural Property
19 Inventory form, and other specialized statewide forms. These forms will be
20 prepared according to the current User's Guide to the New Mexico
21 Cultural Resource Information System: Guidelines for Submitting Cultural
22 Resource Records.
23

24 2. Completion of Cultural Resource Documentation
25

26 a) The BLM shall not allow projects to be completed without adequate
27 provisions for the timely completion of all documentation and associated
28 records generated under the terms of this Agreement.
29

30 b) The BLM shall ensure that all associated documents are submitted in a
31 timely manner either monthly or within 30 days after making an effect
32 finding, completing determinations of eligibility in NMCRIS, and
33 determining the documentation meets the appropriate standards, per
34 Stipulations X(G)(5) through X(G)(7) of this Agreement.
35

36 I. Resolution of Adverse Effects
37

38 1. The BLM shall resolve the adverse effects of APD approval through one of two
39 processes: with or without an agreement document, as follows:
40

41 a) If a Consulting Party wishes to participate in the resolution of adverse
42 effects, the BLM shall develop an agreement document.
43

44 b) If no Consulting Party wishes to participate in the resolution of adverse
45 effects, the BLM shall follow a streamlined process as described in this
46 section that does not require an agreement document.

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- 1
2 c) If a historic property or cultural landscape located on Navajo Nation tribal
trust land or Indian
3 Allotted land would be affected by the undertaking, then the BLM shall
4 consult with the NNTHPO under Stipulations X(I)(1)(a and b) of this
5 Agreement.
6
7 d) If a historic property or cultural landscape located off of Navajo Nation tribal
trust land would
8 be affected by the undertaking, then the BLM shall consult with the
9 NMSHPO under Stipulations X(I)(1)(a and b) of this Agreement.
10
11 e) The BLM shall notify the ACHP of the adverse effect determination and
12 which process (streamlined or with an agreement document) will be
13 utilized to resolve the adverse effect, and invite them to participate per 36
14 C.F.R. § 800.6.1.
15
16 2. The BLM shall notify all Consulting Parties of the adverse effect determination
17 and shall invite their comments and participation in development of appropriate
18 mitigation. The BLM shall send a letter via electronic mail and U.S. Postal Service
19 to the Consulting Parties that retain interest in the area of the APD, per Stipulation
20 III(B) of this Agreement.
21
22 a) The BLM shall send the letter to the POCs defined through the process in
23 Stipulation III(A) of this Agreement.
24
25 b) For Tribes receiving the letter, the BLM shall also send the letter to that
26 Tribe's head of government to initiate government-to-government
27 consultation.
28
29 c) The BLM shall allow 30 days for a response from the Consulting Party
30 indicating a desire to participate and shall describe methods for submitting
31 such response (e.g., email address, fax number, mailing address) in the
32 notification letter.
33
34 3. Based on the effect of the undertaking on the historic property and the historic
35 property's NRHP criteria, BLM shall resolve adverse effects by developing and
36 implementing a treatment plan to avoid, minimize, and mitigate the adverse effect
37 as appropriate. Treatment measures may include data recovery, Historic American
38 Buildings Survey/Historic American Engineering Record/Historic American
39 Landscapes Survey (HABS/HAER/HALS) documentation, archival research,
40 ethnographic research, oral history collection, public education and outreach,
41 and/or other compensatory mitigation. Public education and outreach will be
42 included in any treatment plan, commensurate with the public's interest and the
43 scale of the undertaking's effects. Current guidance and best practices will help
44 guide the development of treatment plans (e.g., see "A Strategy for Improving the
45 Mitigation Policies and Practices of the Department of Interior").

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46

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4. Resolutions of Adverse Effects Not Requiring an Agreement Document

- a) If no Consulting Parties wish to participate in the resolution of adverse effects, the BLM shall consult with NMSHPO/NNTHPO as described in this section to resolve adverse effects.
- b) Data Recovery and Research Excavation: When the BLM proposes to resolve adverse effects through data recovery, then the BLM shall prepare, or cause to be prepared, a data recovery plan and the BLM shall implement the procedures as follows. This plan will most often involve properties eligible under Criterion D only, but could include properties eligible under D and other criteria. The actions carried out to resolve adverse effects will not, in themselves, be considered additional adverse effects.

- i. Data Recovery Plan: The BLM shall submit the treatment plan to BLM's Data Recovery Review Team (DRRT). The DRRT is comprised of senior BLM cultural resource specialists including the Deputy Preservation Officer (DPO), the BLM Permit Administrator, and the designated individuals from the BLM Farmington District Office. The DRRT shall comment on and suggest improvements to testing, data recovery and other mitigation proposals and communicate any needed changes to the BLM Field Office archeologists within 15 days of receipt of all materials.

Once the plan is accepted by DRRT, the BLM shall send the plan to NMSHPO/NNTHPO for review and comment. The NMSHPO/NNTHPO shall provide comments to the BLM within 10 days of receiving the data recovery plan. If the NMSHPO/NNTHPO does not respond within 10 days, the BLM may assume NMSHPO/NNTHPO concurrence with the plan. Comments submitted by the NMSHPO/NNTHPO will be taken into consideration by BLM and the data recovery plan revised, if necessary. BLM shall submit a written response to comments to NMSHPO/NNTHPO prior to the start of data recovery.

Compliance with the approved data recovery plan will be included in the proposed APD's COAs. Objection to or failure to implement or comply with the approved data recovery plan will require consultation with NMSHPO/NNTHPO to determine BLM's next steps.

- ii. Data Recovery Reports: Preliminary (status) reports, if prepared, and draft final data recovery reports will be provided to the NMSHPO/NNTHPO within 30 days of BLM review and acceptance. The NMSHPO/NNTHPO shall provide comments

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1 within 30 days of receipt of the draft. The BLM may request a
2 shorter timeframe depending on the complexity of the project. If
3 the NMSHPO/NNTHPO does not intend to provide comments, the
4 NMSHPO/NNTHPO shall notify the BLM immediately upon
5 making this decision. Comments submitted by the
6 NMSHPO/NNTHPO will be taken into consideration by the BLM
7 and the draft data recovery report will be revised, if necessary.
8

9 Final data recovery reports will be provided to the
10 NMSHPO/NNTHPO within 30 days of BLM review and
11 acceptance. The BLM shall concurrently submit the documentation
12 (report and updated site forms) to NMCRIS or NNHHPD, as
13 appropriate. The NMSHPO/NNTHPO may review the BLM's final
14 reports. If NMSHPO/NNTHPO has concerns regarding the report,
15 the NMSHPO/NNTHPO shall provide comments to the BLM. The
16 BLM shall take these comments into consideration on future data
17 recovery projects.
18

19 c) Other Treatment Measures: If there are historic properties or cultural
landscapes within the APE

20 that will be adversely affected and data recovery is not the only treatment
21 to resolve adverse effects or is not the appropriate treatment measure,
22 BLM shall conduct alternate treatment measures. Other treatments may
23 include, but are not limited to, the following:
24

25 Historic American Buildings Survey/Historic American Engineering
26 Record/Historic American Landscapes Survey (HABS/HAER/HALS).
27 Typically, HABS/HAER documentation will be prepared for buildings and
28 structures eligible only under Criterion C. Any HABS/HAER/HALS
29 projects should be coordinated with the NPS HABS/HAER/HALS
30 Program.
31

32 Preservation, Rehabilitation, Restoration, or Reconstruction. Treatment
33 plans involving preservation (including stabilization), rehabilitation,
34 restoration, or reconstruction will follow the Secretary of Interior's
35 standards and guidance found in <http://www.nps.gov/history/tps/>.
36

37 Archival Research. Treatment may involve researching the history of the
38 historic property and/or the region and its people to address research
39 themes. This may include primary research at sources including national,
40 state, or local archives, university collections, museum collections,
41 HABS/HAER documentation, census data, GLO records, local
42 newspapers, family histories, land deeds, photos, maps, and regional and
43 economic data.
44

45 Oral Histories. Treatment plans involving oral history should follow the
46 guidance found in Handbook for Oral History-NPS, 2004 by Janet A.

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1 McDonnell (found at <http://www.cr.nps.gov/history/oh/oralh1.htm>) and Oral
2 History Association: Principles and Best Practices, 2009 (found at
3 <http://www.oralhistory.org/about/principles-and-practices>).
4

5 Ethnography. Treatment plans involving ethnography should follow the
6 guidance found in the NPS's Essential Competencies for an Ethnography,
7 American Anthropological Association's Statement on Ethnography
8 (found at <http://www.aaanet.org/stmts/irb.htm>), and NPS's NRHP Bulletin
9 38, Guidelines for Evaluating and Documenting Traditional Cultural
10 Properties, Appendix II, Professional Qualifications for Ethnography.
11

12 Translations. Treatment may involve translation of documents to English,
13 Spanish, or other languages as appropriate.
14

15 Public Education and Outreach. Treatment may involve workforce training
16 and education on cultural sensitivity; preparation of papers, brochures,
17 articles, books or booklets, web-based digital and video materials written
18 for the general public in jargon-free language and include professional
19 quality photographs and/or drawings as appropriate; preparation of a
20 curriculum for use in schools; a public interest story to be posted on the
21 BLM's web site, press release, or article for NewsMAC; and exhibits,
22 including formal displays, posters, wayside exhibits, etc.
23

- 24 i. NMSHPO/NNTHPO Review of Treatment Plan: BLM is
25 encouraged to discuss alternate treatment measures with the
26 NMSHPO/NNTHPO prior to preparation of a treatment plan. The
27 BLM may submit the plan to the DRRT for review. BLM shall
28 submit the treatment plan to NMSHPO/NNTHPO for review and
29 comment. If the NMSHPO/NNTHPO does not respond within 30
30 days, BLM may assume concurrence with the proposed treatment
31 plan. Comments provided by the NMSHPO/NNTHPO will be
32 taken into consideration by the BLM and the treatment plan
33 revised, if necessary. The BLM shall submit a written response to
34 the comments to NMSHPO/NNTHPO prior to implementation of
35 the plan.
36
- 37 ii. Draft and Final Reports: Preliminary documentation and draft final
38 documentation will be provided to the NMSHPO/NNTHPO within
39 30 days of BLM review and acceptance. The NMSHPO/NNTHPO
40 shall provide comments within 30 days of receipt of the draft. The
41 BLM may request a shorter timeframe. If the NMSHPO/NNTHPO
42 does not intend to provide comments, the NMSHPO/NNTHPO
43 shall notify the BLM immediately upon making this decision.
44 Comments submitted by the NMSHPO/NNTHPO will be taken
45 into consideration by the BLM and the draft documentation will be
46 revised, if necessary.

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1
2 Final documentation will be provided to the NMSHPO/NNTHPO
3 within 30 days of BLM review and acceptance. The BLM shall
4 ensure that the documentation is concurrently submitted to
5 NMCRIS or NNHHPD, as appropriate. The NMSHPO/NNTHPO
6 may review the BLM's final documentation. If
7 NMSHPO/NNTHPO has concerns regarding the documentation,
8 the NMSHPO/NNTHPO shall provide comments to the BLM. The
9 BLM shall take these comments into consideration on future
10 projects.

- 11
12 d) Compliance with the approved mitigation and treatment plans will be
13 included in the approved APD's COAs. Objection to or failure to comply
14 with the approved mitigation and treatment plans will require consultation
15 with NMSHPO/NNTHPO and negotiation of an agreement.
16

17 5. Resolution of Adverse Effects Requiring an Agreement Document
18

- 19 a) If a Consulting Party wishes to participate in the resolution of adverse
20 effects, the BLM shall follow the process outlined in 36 C.F.R. § 800.6
21 and shall prepare an agreement document. Upon receipt of
22 NMSHPO/NNTHPO concurrence of a determination of adverse effect,
23 BLM shall continue consultation with NMSHPO/NNTHPO, interested
24 Consulting Parties, the Project Proponent, and, if participating, the ACHP
25 to develop an agreement document.
26

27 b) Agreement Document Preparation
28

- 29 i. Preparation of an agreement will follow consultation between the
30 BLM, NMSHPO/NNTHPO, the ACHP, interested Consulting
31 Parties, and the Project Proponent. Unless otherwise agreed upon,
32 the BLM shall be responsible for preparing the agreement.
33 Stipulations included in the agreement will come from consultation
34 and will be incorporated into BLM's COAs for the APD. The
35 BLM State Office shall always participate.
36
37 ii. Consultation to develop the agreement will be conducted in good
38 faith by the BLM, the NMSHPO/NNTHPO, the ACHP, and the
39 interested Consulting Parties. Consultation could include meetings,
40 site visits, review of documentation, and other efforts.
41
42 iii. Review of draft documentation will be conducted within 30 days,
43 unless a different time period is agreed to by the BLM,
44 NMSHPO/NNTHPO, ACHP, interested Consulting Parties, and
45 the Project Proponent.
46

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1 iv. The agreement document will delineate the mitigation and
2 treatment measures to be implemented to resolve the adverse effect
3 of the APD. The types of measures to be considered include those
4 discussed in Stipulation X(I)(4) of this Agreement.
5

6 c) Compensatory Mitigation
7

8 i. Compensatory mitigation, or compensating for an effect by
9 replacement or providing substitute resources or environments, can
10 occur at, or immediately adjacent to, the area affected but can also
11 be located anywhere in the same general geographic area or, in the
12 case of linear properties, at other places along that specific
13 resource.
14

15 ii. Compensatory mitigation may include, but is not limited to:
16 educational materials, completion of NRHP nominations,
17 professional publications, web-based digital and video materials,
18 acquisition of conservation easements containing historic
19 properties, development of interpretation plans, physical
20 restoration of National Historic Trail segments, removal or
21 modification of modern developments in settings of historic
22 properties to restore integrity, acquisition of land or a historic
23 property, through exchange or another process, where public
24 access is possible, and/or stabilization of an associated property
25 (e.g. a stage station along the trail). Compensatory mitigation
26 generally provides a public benefit and must be appropriate to the
27 scale and scope of the effect being mitigated.
28

29 iii. Any compensatory mitigation will result from consultation among
30 BLM, NMSHPO/NNTHPO, ACHP (if participating), the Project
31 Proponent, and interested Consulting Parties. It will be
32 incorporated into the agreement document and attached to the APD
33 as a COA. The BLM shall notify the DPO as soon as they
34 recognize that a proposed undertaking may require consideration
35 of compensatory mitigation. The DPO will monitor the use of
36 compensatory mitigation for consistency of application by the
37 BLM statewide.
38

39 XI. APD: BLM AS LEAD AGENCY, WITH NAVAJO TRIBAL TRUST SURFACE LANDS
40

41 The following processes describe how the BLM will complete Section 106 compliance, with the
42 assistance of the BIA NRO and NNTHPO, for processing those APDs within the APE for this
43 Agreement where surface lands are Navajo Nation tribal trust lands.
44

45 A. Incorporation of Lease Information
46

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1 1. For APDs Associated with BLM-Issued Leases
2

3 a) The BLM shall ensure that information regarding designations of APEs,
4 concerns of Participating Consulting Parties, the need for ethnographic
5 assessments, and other information regarding the identification of historic
6 properties and assessments of effects thereto, collected during the review
7 of a lease sale, is included during the review of proposed APDs associated
8 with the lease.

9
10 b) The BLM shall provide the necessary information to the BIA NRO. This
11 information will be located in the Lease Sale Report, in BLM's files
12 containing all supporting documentation regarding the review of the lease
13 sale, and in the BLM's cultural resources database in GIS, as described in
14 Stipulation VII(G) of this Agreement.
15

16 2. For APDs Associated with BIA-Issued Operating Agreements
17

18 a) The BIA NRO shall ensure that information regarding designations of
19 APEs, concerns of Participating Consulting Parties, the need for
20 ethnographic assessments, and other information regarding the
21 identification of historic properties and assessments of effects thereto,
22 collected during the review of an operating agreement is included during
23 the review of proposed APDs associated with the operating agreement.
24

25 b) This information will be in the BIA NRO's documentation prepared during
26 the operating agreement stage, as described in Stipulation IX(G)(1) of this
27 Agreement.
28

29 B. Request for Consultation
30

31 1. After the BLM receives the final APD from the Project Proponent, the BLM shall
32 prepare a letter notifying Consulting Parties of the submittal of an APD and
33 requesting consultation under this Agreement.
34

35 2. The BLM shall send the letter within 15 days of receipt of the APD via electronic
36 mail and U.S. Postal Service to those Consulting Parties that retain interest in the
37 area of the proposed APD, per Stipulation III(B) of this Agreement.
38

39 a) The BLM shall send the letter to the POCs defined through the process in
40 Stipulation III(A) of this Agreement.
41

42 b) For Tribes receiving the letter, the BLM shall also send the letter to that
43 Tribe's head of government to initiate government-to-government
44 consultation.
45

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- 1 3. In the request letter, the BLM shall notify the Consulting Party that the BIA NRO,
2 in consultation with the NNTHPO, will be conducting the consultation with the
3 Participating Consulting Parties, making eligibility determinations, and assessing
4 the effect of the undertaking, and that these findings will be provided to and
5 adopted by the BLM as the Lead Agency for completion of Section 106
6 consultation for processing the proposed APD undertaking.
7
8 4. In the request letter, the BLM shall notify the Consulting Party of the proposed
9 APD and request consultation with and information from the Consulting Party
10 regarding concerns they have for potential effects to historic properties and places
11 of religious and/or cultural importance. The BLM shall also describe the planned
12 efforts for identifying historic properties and assessing the potential effects of the
13 proposed APD. The BLM shall allow 30 days for a response from the Consulting
14 Party indicating a desire to continue consultation and shall describe methods for
15 submitting such response (e.g., email address, fax number, mailing address) in the
16 request letter.
17
18 5. The BLM shall include in the letter the following information for each proposed
19 APD:
20
21 a) A description of the proposed APD facilities and infrastructure.
22
23 b) The BLM's initial definition of the Physical Effects and Audio-Visual
24 Effects APEs developed in accordance with Stipulation XI(C) of this
25 Agreement, as follows:
26
27 i. The Physical Effects APE for APDs as the construction area, which
28 includes not only the footprint of facilities, infrastructure,
29 excavation, and clearing, but also staging, laydown, and parking
30 areas, plus a buffer of 100 feet surrounding the construction area.
31
32 ii. The Audio-Visual Effects APE for APDs as the Physical Effects
33 APE plus 1 mile surrounding that APE.
34
35 c) Maps showing the location of the proposed APD project area. These maps
36 will be shown at larger scales and smaller scales to show the relationship
37 of the parcel to surrounding topography as well as where the parcel resides
38 within the larger San Juan Basin. Man-made features such as roads,
39 townsites, etc. will be included to help orient the viewer. Chapter
40 boundaries will also be shown on the maps. Both topographic and aerial
41 photograph backgrounds will be used for the maps.
42
43 d) Maps will not show known cultural resources unless their locations are
44 common knowledge.
45

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1 e) Maps will show generally known springs and seeps, watersheds, vegetation
2 types, and soil data.

3
4 f) Maps will include information on surface land ownership or administration.
5

6 6. The BLM shall provide all responses to the request for consultation to the BIA
7 NRO. The BIA NRO shall conduct the remainder of the consultation process with
8 the Participating Consulting Parties for the proposed APD undertaking.
9

10 C. Defining the APEs
11

12 1. The BIA NRO shall consult with the NNTHPO regarding the BLM's initial
13 definition of the APEs and refine those definitions, if needed.
14

15 2. In defining the APEs, the BIA NRO shall consider potential direct and indirect
16 effects to historic properties, as applicable. This includes effects to aspects of
17 historic integrity such as setting, feeling, or association when those aspects are
18 important to a historic property's eligibility.
19

20 3. If the proposed APD project area is within 1 mile of non-tribal lands, the BIA
21 NRO shall consult with the NMSHPO on the definition of the APEs, identification
22 of historic properties, and assessment of effects.
23

24 4. If the undertaking's APE extends onto surface land owned or administered by an
25 entity that is not a Consulting Party, the BIA NRO shall invite that entity to
26 consult on the undertaking.
27

28 a) If the entity is a federal agency, the BLM shall consult with that agency to
29 determine which agency will be the Lead Agency for Section 106
30 compliance.
31

32 b) If the entity is private, the NMSHPO shall participate in consultation on
33 their behalf.
34

35 5. The BIA NRO may modify the Physical Effects or Audio-Visual Effects APEs, in
36 consultation with the NNTHPO, based on the characteristics of the undertaking,
37 the nature of the location, or should additional relevant information become
38 available through the consultation process with the Participating Consulting
39 Parties.
40

41 D. Participating Consulting Party Consultation
42

43 1. The BIA NRO shall conduct consultation on the proposed APD with any
44 Consulting Party who responds in writing (via email or regular mail) to the request
45 for consultation letter described in Stipulation XI(B) of this Agreement stating that
46 further consultation is requested. Such parties will be regarded as Participating

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1 Consulting Parties for the specific APD undertaking. The BIA NRO shall notify
2 the NNTHPO in writing of any Participating Consulting Parties.
3

4 2. The BIA NRO, NNTHPO, and the Participating Consulting Parties shall work in
5 good faith to identify and consider the potential effects of the proposed APD on
6 specific historic properties.
7

8 3. The BIA NRO, with NNHHPD staff present, shall meet to consult with any
9 Participating Consulting Party if such a meeting is requested. The BIA NRO,
10 NNHHPD, and the requesting Consulting Party shall work in good faith to
11 schedule and attend the consultation meeting within a reasonable timeframe. Good
12 faith for scheduling the meeting is defined as the BIA NRO making at least three
13 attempts via a combination of emails and telephone calls with a two-week period
14 to the Participating Consulting Party POCs.
15

16 4. APD Project Area Visit
17

18 a) If a Participating Consulting Party that is not a Navajo Nation tribal
19 member wishes to conduct a field visit to the proposed APD project area,
20 they shall apply for and acquire a permit issued by NNHHPD to conduct
21 the visit, per Navajo Nation requirements. NNHHPD shall review the
22 permit application and respond within 30 days of receipt. The BIA NRO is
23 not responsible for requesting, facilitating, or issuing such permit for the
24 Participating Consulting Party. Both the BIA NRO and NNHHPD staff
25 shall attend the project area visit.
26

27 b) If a field visit is not feasible, the BIA NRO shall work with the
28 Participating Consulting Parties to develop additional information in lieu
29 of a site visit (e.g., photographs, maps of soil values and slope, etc.).
30

31 5. The BLM shall provide to the BIA NRO the draft cultural resources survey report
32 submitted by the Project Proponent's permitted cultural resources contractor.
33

34 6. Participating Consulting Parties may request from the BIA NRO a copy of the
35 draft cultural resources survey report. The BIA NRO shall notify the NNTHPO if
36 any Participating Consulting Party has requested a copy of the draft cultural
37 resources survey report. The NNTHPO has sole authority to determine if the draft
38 report will be provided to the Participating Consulting Party.
39

40 a) If a Participating Consulting Party has signed this Agreement, they will be
41 bound to protect sensitive information per Stipulation V of this
42 Agreement.
43

44 b) If a Participating Consulting Party has not signed this Agreement, sensitive
45 information will not be shared with them by the BIA NRO or the
46 NNTHPO until a data sharing agreement has been executed between the

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1 Participating Consulting Party and the BIA NRO per Stipulation V(D) of
2 this Agreement.
3

4 7. The BIA NRO may modify the Physical Effects or Audio-Visual Effects APEs to
5 better protect historic properties and cultural landscapes, in
6 consultation with the NNTHPO, and with the NMSHPO ~~as is~~ appropriate, should
7 additional relevant information become available through the consultation process
8 with the Participating Consulting Parties.

9 8. If information pertinent to the identification of historic properties and cultural
10 landscapes, evaluations of
11 NRHP eligibility, or assessments of effect are provided to the BIA NRO by the
12 Participating Consulting Party, the BIA NRO shall, in consultation with the
13 Participating Consulting Party, share the information with the NNTHPO and the
14 Project Proponent for inclusion in the findings of the final cultural resource survey
15 report.

16 E. Eligibility Determinations

- 17
- 18 1. The BIA NRO shall evaluate the eligibility of any property identified in the
19 cultural resources survey report or through the consultation undertaken in
20 Stipulation XI(D) of this Agreement.
21
 - 22 2. The BIA NRO shall consult with the NNTHPO on all eligibility determinations.
23
 - 24 3. The BIA NRO shall evaluate eligibility by applying all the NRHP criteria and
25 criteria considerations found at 36 C.F.R. § 60.4. The BIA NRO shall guide their
26 NRHP evaluations by the Secretary's Standards and Guidelines for Evaluation, the
27 National Register Bulletin How to Apply the National Register Criteria for
28 Evaluation, other National Register bulletins, and appropriate historic contexts.
29 The integrity of location, setting, design, materials, workmanship, feeling, and
30 association will be considered as part of the evaluation, taking into account the
31 nature of the property and its setting where setting is an important aspect of
32 integrity.
33
 - 34 4. The BIA NRO shall evaluate the eligibility of cultural resources utilizing a
35 cultural landscape approach that incorporates the results of the cultural resources
36 survey, ethnographic studies, and input provided by the Participating Consulting
37 Parties into the evaluation.
38
 - 39 5. When the proposed APD undertaking could affect properties on surface lands
40 owned or administered by another federal agency or state agency or department,
41 the BIA NRO shall seek the views of the agency.
42
 - 43 6. If a property's NRHP eligibility remains uncertain, the BIA NRO shall treat that
44 property as eligible for purposes of the BIA NRO making an effect determination.
45 If the property will be affected by the proposed APD undertaking, the BIA NRO

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shall conduct additional studies as appropriate and in consultation with the

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1 NNHHPD to make a final determination of NRHP eligibility. Additional studies
2 will be planned and implemented in consultation with the Participating Consulting
3 Parties, the NNTHPO, the BLM, and any agencies that own or administer involved
4 surface lands.

- 5
6 7. If agreement on eligibility cannot be reached, then the BIA NRO shall request a
7 formal determination of eligibility from the Keeper of the National Register of
8 Historic Places (Keeper), pursuant to 36 C.F.R. § 800.4(c)(2). The process detailed
9 in 36 C.F.R. Part 63, the NPS regulations on Eligibility for Inclusion in the NRHP
10 will be followed. The Keeper's determination will be final.

11
12 F. Assessments of Effect

- 13
14 1. The BIA NRO shall assess the effects of the proposed APD undertaking on
15 historic properties and cultural landscapes, including effects to the setting, feeling,
16 association, location,
17 design, materials, and workmanship of such properties. The assessment of effects
18 will consider reasonably foreseeable effects caused by the undertaking that may
19 occur later in time or be farther removed in distance. If setting is a contributing
20 aspect of integrity for an historic property, the BIA NRO shall consider the
21 potential for visual, auditory, and atmospheric effects of the undertaking on the
22 property's setting.

- 23 2. The BIA NRO shall consult with the NNTHPO on all assessments of effect.

- 24 3. When making the assessment of effect, the BIA NRO shall take into account the
25 comments and input provided by Participating Consulting Parties.

- 26 4. The BIA NRO shall avoid or minimize effects to historic properties and cultural
27 landscapes where
28 possible by integrating standard measures, BMPs, and other COAs in the APD
29 approval.

- 30 5. No Historic Properties Affected

- 31 a) The BIA NRO shall consider the following guidance when determining
32 whether a finding of "No Historic Properties Affected" is appropriate for
33 the proposed APD.

34 i. Intact historic properties or cultural landscapes are unlikely to be
35 present due to ground
36 disturbance in the APE.

37 ii. A setting analysis is completed, and the proposed APD facilities
38 would not be visible from an historic property or cultural landscape in
39 the Audio-Visual
40 Effects APE.

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- 44
| 45 iii. Historic properties [or cultural landscapes](#) are within the APEs, but are
46 not expected to be
 affected by the proposed APD due to BMPs, standard measures,

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1 and other COAs that would be part of the APD approval and are
2 designed to avoid or minimize effects.

3
4 6. No Adverse Effect

5
6 a) The BIA NRO shall consider the following guidance when determining
7 whether a finding of “No Adverse Effect” is appropriate for the proposed
8 APD.

9
10 i. An historic property or cultural landscape would be affected by a
11 proposed APD, but the
12 effect would not diminish the aspects of integrity nor alter, directly
13 or indirectly, any of the characteristics that make the property
14 eligible for listing in the NRHP. This would apply to all historic
15 properties and cultural landscapes located within the APEs.

16 ii. It can be demonstrated that the portion of the historic property or
17 cultural landscape that
18 would be affected, directly or indirectly, lacks integrity. For
19 archaeological sites this would usually involve documentation on
20 how the archaeological site has been previously disturbed and a
21 discussion of how the integrity of the deposits has been previously
22 compromised.

23 iii. The setting, feeling, and/or association are contributing aspects of
24 integrity for any historic property or cultural landscape, and the
25 proposed APD facilities
26 would be visible or audible from the historic property or landscape,
27 but the
28 project elements would not dominate the setting or attract the
29 attention of an observer.

30 b) Documentation supporting a “No Adverse Effect” finding must discuss
31 how the effect to the historic property, cultural landscape, -or the portion of
32 the property would
33 not diminish the aspects of integrity nor alter the characteristics that make
34 the property eligible for the NRHP.

35 7. Adverse Effect

36 a) Per the Section 106 regulations at 36 C.F.R. § 800.5(a)(1), “An adverse
37 effect is found when an undertaking may alter, directly or indirectly, any
38 of the characteristics of a historic property that qualify the property for
39 inclusion in the NRHP in a manner that would diminish the integrity of the
40 property’s location, design, setting, materials, workmanship, feeling, or
41 association.” Consideration will be given to all qualifying characteristics
42 of a historic property, including those that may have been identified after

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the original evaluation of the property's eligibility for the NRHP. Adverse
effects may include reasonably foreseeable effects caused by the
undertaking that may occur later in time or be farther removed in distance.

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1 b) The BIA NRO shall consider the following guidance when determining
2 whether a finding of “Adverse Effect” is appropriate for the proposed
3 APD:
4

5 i. The setting, feeling, and/or association are contributing aspects of
6 integrity for an historic property or cultural landscape, and a
7 proposed APD would be
8 visible or audible from the historic property or on the cultural
9 landscape, and the project
10 elements would dominate the setting.

11 ii. The proposed APD would result in the physical destruction of or
12 damage to all or part of an historic property or the landscape in
13 which it resides.

14 c) Documentation supporting a finding of “Adverse Effect” must discuss how
15 the effect to the property, landscape, or the portion of the property would
16 diminish the
17 aspects of integrity or alter the characteristics that make the property
18 eligible for the NRHP.

19 8. The BIA NRO shall submit the assessment of effect and associated review
20 documentation (e.g., cultural resource survey report) to the Participating
21 Consulting Parties.

22 a) The Participating Consulting Parties will have the opportunity to review
23 and comment on the effect finding within 30 days of receipt of the
24 documentation. The BIA NRO shall share any further input received from
25 the Participating Consulting Parties during the review period with the
26 NNTHPO, with that Party’s permission.

27 b) The BIA NRO and NNTHPO shall consult in good faith to resolve any
28 objections or concerns with the BIA NRO’s assessment of effect.

29 c) If the objection cannot be resolved, the BIA NRO shall seek the views of
30 the ACHP to resolve the objection per the dispute resolution process in
31 Stipulation XX of this Agreement.

32 d) The BIA NRO shall revise and finalize the assessment of effect and review
33 documentation and provide it to the NNTHPO.
34

35 G. Completion of Section 106 Consultation
36

37 1. The NNTHPO shall ensure that all cultural resources documentation prepared for
38 the APD review meets the policies, standards, and guidelines of the Navajo
39 Nation.
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2. The NNTHPO shall prepare a CRCF that incorporates the record search results, cultural resource survey results, description of the consultation process, the consultation results, the eligibility and effect findings, and recommendations for

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1 avoidance measures and further work to be conducted at the APD stage. The
2 NNTHPO shall submit the CRCF to the BIA NRO Cultural Resources staff.
3

4 a) The BIA NRO Cultural Resources staff shall submit the CRCF to the BIA
5 NRO Director with a recommendation for approval and signature.
6

7 b) Within 30 days of the BIA NRO Director signing the CRCF, the BIA NRO
8 shall provide a copy of the signed CRCF to the NNTHPO and the BLM.
9

10 3. The BLM, as the Lead Agency, shall adopt the determinations of eligibility and the
11 assessment of effects described in the signed CRCF and shall ensure that any
12 measures for avoiding or minimizing effects to historic properties that were
13 included in the assessment of effects and the signed CRCF are included in the
14 COAs for the APD.
15

16 4. The BLM shall not allow Section 106 consultation to be completed without
17 adequate provisions for the timely completion of all documentation and associated
18 records generated under the terms of this Agreement.
19

20 H. Resolution of Adverse Effects
21

22 1. The BLM shall follow the process outlined in 36 C.F.R. § 800.6 and shall prepare
23 an agreement document to resolve the adverse effects of APD approval.
24

25 a) If a historic property or cultural landscape located on Navajo Nation tribal
26 trust land or Indian

27 Allotted land would be affected by the undertaking, then the BLM shall
28 consult with the NNTHPO to develop the agreement.
29

30 b) If a historic property or cultural landscape located off of Navajo Nation tribal
31 trust land would

32 be affected by the undertaking, then the BLM shall consult with the
33 NMSHPO to develop the agreement.
34

35 c) The BLM shall notify the ACHP of the adverse effect determination and
36 development of an agreement document to resolve the adverse effect, and
37 invite them to participate per 36 C.F.R. § 800.6.1.
38

39 2. The BLM shall notify all Consulting Parties of the adverse effect determination
40 and shall invite their comments and participation in development of appropriate
41 mitigation. The BLM shall send a letter via electronic mail and U.S. Postal Service
42 to the Consulting Parties that retain interest in the area of the APD, per Stipulation
43 III(B) of this Agreement.
44

45 a) The BLM shall send the letter to the POCs defined through the process in
Stipulation III(A) of this Agreement.

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1 b) For Tribes receiving the letter, the BLM shall also send the letter to that
2 Tribe's head of government to initiate government-to-government
3 consultation.
4

5 c) The BLM shall allow 30 days for a response from the Consulting Party
6 indicating a desire to participate and shall describe methods for submitting
7 such response (e.g., email address, fax number, mailing address) in the
8 notification letter.
9

10 3. Based on the effect of the undertaking on the historic property or cultural landscape
and the historic

11 property's NRHP criteria, BLM shall resolve adverse effects by developing and
12 implementing a treatment plan to avoid, minimize, and mitigate the adverse effect
13 as appropriate. Treatment measures may include data recovery, Historic American
14 Buildings Survey/Historic American Engineering Record/Historic American
15 Landscapes Survey (HABS/HAER/HALS) documentation, archival research,
16 ethnographic research, oral history collection, public education and outreach,
17 and/or other compensatory mitigation. Public education and outreach will be
18 included in any treatment plan, commensurate with the public's interest and the
19 scale of the undertaking's effects. Current guidance and best practices will help
20 guide the development of treatment plans (e.g., see "A Strategy for Improving the
21 Mitigation Policies and Practices of the Department of Interior").
22

23 4. Agreement Document Preparation
24

25 a) Preparation of an agreement will follow consultation between the BLM,
26 BIA NRO, NNTHPO/NMSHPO, the ACHP if participating, interested
27 Consulting Parties, and the Project Proponent. The BLM State Office shall
28 always participate. Unless otherwise agreed upon, the BLM shall be
29 responsible for preparing the agreement. Stipulations included in the
30 agreement will come from consultation and will be incorporated into
31 BLM's COAs for the APD.
32

33 b) Consultation to develop the agreement will be conducted in good faith by
34 the BLM, BIA NRO, NNTHPO/NMSHPO, the ACHP if participating, and
35 the interested Consulting Parties. Consultation could include meetings, site
36 visits, review of documentation, and other efforts.
37

38 c) Review of draft documentation will be conducted within 30 days, unless a
39 different time period is agreed to by the BIA NRO, NNTHPO/NMSHPO,
40 the ACHP if participating, interested Consulting Parties, and the Project
41 Proponent.
42

43 d) The agreement document will delineate the mitigation and treatment
44 measures to be implemented to resolve the adverse effect of the APD. The
45 types of measures to be considered include those discussed in Stipulation
46 X(I)(4) of this Agreement.

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5. Compensatory Mitigation

- a) Compensatory mitigation, or compensating for an effect by replacement or providing substitute resources or environments, can occur at, or immediately adjacent to, the area affected but can also be located anywhere in the same general geographic area or, in the case of linear properties, at other places along that specific resource.
- b) Compensatory mitigation may include, but is not limited to: educational materials, completion of NRHP nominations, professional publications, web-based digital and video materials, acquisition of conservation easements containing historic properties, development of interpretation plans, physical restoration of National Historic Trail segments, removal or modification of modern developments in settings of historic properties to restore integrity, acquisition of land or a historic property, through exchange or another process, where public access is possible, and/or stabilization of an associated property (e.g. a stage station along the trail). Compensatory mitigation generally provides a public benefit and must be appropriate to the scale and scope of the effect being mitigated.
- c) Any compensatory mitigation will result from consultation among the BLM, BIA NRO, NNTHPO/NMSHPO, the ACHP if participating, the Project Proponent, and interested Consulting Parties. It will be incorporated into the agreement document and attached to the APD as a COA.

XII. ASSOCIATED ROWS: BLM AS LEAD AGENCY, WITH FEDERAL, STATE, AND PRIVATE SURFACE LANDS

To be developed

XIII. ASSOCIATED ROWS: BLM AS LEAD AGENCY, WITH NAVAJO TRIBAL TRUST SURFACE LANDS

To be developed

XIV. ASSOCIATED ROWS: BIA NRO AS LEAD AGENCY, WITH NAVAJO TRIBAL TRUST SURFACE LANDS

To be developed

XV. HISTORIC PROPERTY PROTECTION MEASURES

- A. The BLM and BIA NRO shall implement measures during APD and associated OG/ROW development undertakings to reduce the likelihood for inadvertent adverse

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1 effects to historic properties [and cultural landscapes](#).

- 2
3 1. The BLM and BIA NRO shall ensure that all construction activities, including
4 staging, laydown, parking, and driving of vehicles and equipment, occur only in
5 the APD's or OG/ROW's Physical Effects APE for any proposed undertaking
6 under this Agreement.
7
8 2. The BLM and BIA NRO shall ensure all ground-disturbing activities conducted
9 within 100 feet of known historic properties [and cultural landscapes](#) located within
10 the undertaking's
11 Physical Effects APE will be monitored by cultural resource experts meeting the
12 requirements in Stipulation II of this Agreement. Additional need for monitors,
13 such as for activities occurring more than 100 feet from known historic properties
14 or for activities occurring near certain types of historic properties, can be
15 developed and implemented based on consultation with Participating Consulting
16 Parties under Stipulations VII through XIV. For tribal trust lands on the Navajo
17 Nation, any monitors will need the required permits from NNHHPD.

- 18 B. The BLM and BIA NRO shall ensure erosion control methods are incorporated into
19 construction plans and are implemented in the vicinity of historic properties [and cultural
20 landscapes](#) to minimize
21 the potential for construction and other ground-disturbing activities to indirectly affect
22 historic properties.

23 XVI. POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS

- 24
25 A. Surface and subsurface disturbing activities have the potential to affect historic properties
26 through post-review discoveries and unanticipated effects. Post-review discoveries
27 typically occur when previously undetected cultural resources are exposed during
28 construction or other permitted disturbing activities, but after the federal agency has
29 completed the Section 106 process. Cultural resources may be discovered by construction
30 personnel, an archaeological monitor, an agency inspector, or others who may be present
31 during construction or operations activities. Unanticipated effects typically occur from
32 erosion derived from undertaking activities or from unplanned activities occurring during
33 undertakings.
34
35 B. The BLM and BIA NRO shall ensure that discoveries made on Navajo Nation tribal trust
36 lands are treated in accordance with the NNHHPD's Guidelines for the Treatment of
37 Discovery Situations, which is attached to this Agreement as Appendix F.
38
39 C. The BLM shall develop Post-Review Discoveries Plan to address discoveries of cultural
40 resources made on federal, state, local, and private lands during undertakings included in
41 this Agreement.
42
43 1. The Plan will be developed in consultation with the ACHP and Consulting Parties.
44 The Plan will be completed and made a part of this Agreement pursuant to
45 Stipulation XXI of this Agreement within 2 years of execution of this Agreement.

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1 2. The BLM shall ensure that discoveries made on BLM, other federal agency,
2 NMSLO, NMDGF, county, city, and private lands during undertakings included in
3 this Agreement are treated in accordance with the Plan.
4

5 3. Until the Post-Review Discoveries Plan is made part of this Agreement, the BLM
6 shall ensure that discoveries made on BLM and other federal agency lands are
7 treated in accordance with 36 C.F.R. § 800.13, and that discoveries made on
8 NMSLO, NMDGF, county, city, and private lands are treated in accordance with
9 New Mexico Administrative Code, Title 4, Cultural Resources, Chapter 10,
10 Cultural Properties and Historic Preservation.
11

12 D. Post-review discoveries of human remains, associated and unassociated funerary objects,
13 objects of cultural patrimony, and sacred objects will be treated in accordance with
14 applicable law and statute, including the NAGPRA for discoveries on tribal and non-
15 tribal federal lands; the Navajo Nation Policy for the Protection of Jishchaa': Gravesites,
16 Human Remains, and Funerary Items for discoveries on Navajo Nation lands; and the
17 New Mexico Cultural Properties Act (§ 18-6-11.2 NMSA 1978; implementing rule at
18 4.10.11 NMAC) for discoveries on state, local, and private lands, as appropriate.
19

20 E. Unanticipated effects to historic properties in the Physical Effects APE and Audio-Visual
21 Effects APE may occur after an undertaking is initiated. Resolution of unanticipated
22 adverse effects to historic properties [and cultural landscapes](#) shall be conducted in
23 accordance with Stipulation X
24 of this Agreement for BLM, other federal agency, state, local, and private lands, and
25 Stipulation XI of this Agreement for Navajo Nation tribal trust lands.
26

27 XVII. TRAINING

28 A. The BLM and BIA NRO shall coordinate a training workshop to educate third-party
29 cultural resources specialists working in the Undertaking's APE for this Agreement or
30 others who may wish to participate.
31

32 1. The focus of the workshop will be to educate those conducting cultural resource
33 inventories to recognize important resources that may not be readily identifiable
34 without specialized regional experience.
35

36 2. The workshop will be hosted by the BLM, conducted every two years starting in
37 2023, and will last two days.
38

39 3. The BLM and BIA NRO shall encourage Tribes to participate in the training to
40 educate attendees on tribal values and the types of resources important to them.
41

42 B. The BLM and BIA NRO shall conduct annual internal agency joint trainings regarding
43 leasing and APD processes and associated efforts to meet the requirements of this
44 Agreement.
45

46 C. The BLM and BIA NRO shall conduct annual webinar training for the Consulting Parties

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1 regarding what this Agreement does, how it functions, and what the role of the
2 Consulting Parties is in its implementation.
3

4 XVIII. AGREEMENT MONITORING AND REPORTING
5

6 A. Annual Meeting
7

- 8 1. The BLM and BIA NRO shall coordinate an annual meeting of the Consulting
9 Parties each year to occur within one (1) month of the execution date of this
10 Agreement.
11
- 12 2. The meeting location will alternate between Farmington and Gallup, and
13 participation via conference call will be arranged by the agencies.
14
- 15 3. The purposes of the meeting will be to discuss activities carried out pursuant to
16 this Agreement during the preceding year, activities scheduled for the upcoming
17 year, and the effectiveness of the Agreement and its stipulations. The meeting will
18 also address updates to POC information per Stipulation III(A)(5) of this
19 Agreement and collect information regarding anticipated scheduling of annual
20 tribal cultural events for the upcoming year.
21
- 22 4. The BLM shall be responsible for preparing the official record of the meeting and
23 distributing the draft meeting minutes to all Consulting Parties for review within
24 one (1) month of the meeting. The Consulting Parties will have 30 days to review
25 and provide comments on the minutes. The BLM shall take the comments into
26 account when finalizing the minutes. The BLM shall distribute the final meeting
27 minutes to all Consulting Parties.
28
- 29 5. The BLM shall also distribute an updated Consulting Party POC list based on
30 information provided at the meeting per Stipulation III(A)(5) of this Agreement.
31 The BLM shall send the list to all of the Consulting Parties within one (1) month
32 of the meeting.
33

34 B. Annual Reporting
35

- 36 1. The BLM and BIA NRO shall each prepare an annual report documenting
37 compliance with the stipulations of this Agreement. The reports will be available
38 to the public 15 days prior to the annual meeting discussed in Stipulation XVIII(A)
39 of this Agreement.
40
- 41 2. BLM Annual Report
42
 - 43 a) The BLM shall prepare an annual report that outlines completion of
44 activities as they relate to compliance with the stipulations of this
45 Agreement. Any efforts completed pursuant to this Agreement by the
46 NNHHPD or NNTHPO will be summarized.

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- b) The annual report will include succinct information on the following:
 - i. List of undertakings that fell under the Agreement, involvement of Consulting Parties, the final eligibility determinations and assessments of effect, and status of completed reports.
 - ii. Resolutions of adverse effects.
 - iii. Post-review discoveries.
 - iv. Disputes and how they were resolved.
 - v. Recommendations for any amendments to improve the effectiveness of the Agreement.
- c) The BLM shall make its annual report available to the public on the BLM New Mexico website. The BLM shall notify the Consulting Parties when the report is available on the website and provide the link to the report.

3. BIA NRO Annual Report

- a) The BIA NRO shall prepare an annual report that outlines completion of activities as they relate to compliance with the stipulations of this Agreement. Any efforts completed pursuant to this Agreement by the NNHHPD or NNTHPO will be summarized.
- b) The annual report will include succinct information on the following:
 - i. List of undertakings that fell under the Agreement, involvement of Consulting Parties, the final eligibility determinations and assessments of effect, and status of completed reports.
 - ii. Resolutions of adverse effects.
 - iii. Post-review discoveries.
 - iv. Disputes and how they were resolved.
 - v. Recommendations for any amendments to improve the effectiveness of the Agreement.
- c) The BIA NRO shall make its annual report available to the public on the BIA NRO website. The BIA NRO shall notify the Consulting Parties when the report is available on the website and provide the link to the report.

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1 XIX. ANTI-DEFICIENCY ACT PROVISIONS

- 2
3 A. The Anti-Deficiency Act (31 U.S.C. § 1341) prohibits employees of the federal
4 government from making or authorizing expenditures that exceed an amount authorized
5 by Congress or involve an obligation for payment before funding is appropriated by
6 Congress.
7
8 B. The BLM's and BIA NRO's obligations under this Agreement are subject to the
9 availability of appropriated funds, and the stipulations of this Agreement are subject to
10 the provisions of the Anti-Deficiency Act.
11
12 C. The BLM and BIA NRO shall make reasonable and good faith efforts to secure the
13 necessary funds to implement this Agreement in its entirety.
14
15 D. If compliance with the Anti-Deficiency Act alters or impairs the BLM's or BIA NRO's
16 ability to implement the stipulations of this Agreement, the BLM and BIA NRO shall
17 consult with the Consulting Parties in accordance with the amendment and termination
18 procedures found at Stipulations XXI and XXII of this Agreement.
19

20 XX. DISPUTE RESOLUTION

- 21
22 A. Should any Consulting Party to this Agreement object at any time to any actions proposed
23 or the manner in which the terms of this Agreement are being implemented, the BLM and
24 BIA NRO shall consult with such Party to attempt to resolve the objection.
25
26 B. All Other Disputes
27
28 1. If any Consulting Party to this Agreement objects at any time to the process by
29 which this Agreement is being implemented, the BLM and BIA NRO shall consult
30 with the objecting party to resolve the issue. If the BLM, BIA NRO, and objecting
31 party are unable to resolve the issue, the BLM or BIA NRO (whichever agency is
32 included in the dispute) shall refer the matter to the ACHP.
33
34 a) The BLM or BIA NRO shall forward all documentation relevant to the
35 dispute, including the agency's proposed resolution, to the ACHP. The
36 ACHP shall review the relevant documentation; request additional
37 information as needed; consult with the objecting part(ies), the BLM or
38 BIA NRO, NMSHPO/NNTHPO, and other Consulting Parties as
39 necessary; and (if requested) arrange a meeting amongst the parties to
40 gather information to inform its response. The ACHP shall provide the
41 BLM or BIA NRO with its advice on the resolution of the objection within
42 thirty (30) days of receiving documentation meeting the 36 C.F.R. §
43 800.11 standards. The ACHP at its discretion may extend that time period
44 for up to an additional 15 days, in which case it shall notify the parties of
45 such extension prior to the end of the initial 30-day period. The BLM or
46 BIA NRO shall prepare a written response that proposes a final decision

Programmatic Agreement for Fluid Mineral Leasing, Applications for Permit to Drill, and
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1 that takes into account any timely advice or comments regarding the
2 dispute from the ACHP and the Consulting Parties, and provide them with
3 a copy of this written response. The written response shall include the
4 reasoning for its proposed final decision and a description of how the
5 advice was considered. If requested, the BLM or BIA NRO shall consider
6 hosting a meeting amongst the objecting party(ies), the BLM or BIA NRO,
7 ACHP, NMSHPO/NNTHPO, and other Consulting Parties as necessary to
8 discuss the proposed final decision. The BLM or BIA NRO shall consider
9 any additional input received then proceed according to its final decision.
10

11 b) If the ACHP does not provide its advice regarding the dispute within the
12 designated period, the BLM or BIA NRO shall prepare a written response
13 that proposes a final decision that takes into account any timely comments
14 regarding the dispute from the Consulting Parties, and provide them and
15 the ACHP with a copy of this written response. The written response shall
16 include the reasoning for its proposed final decision and a description of
17 how the comments were considered. If requested, the BLM or BIA NRO
18 shall consider hosting a meeting amongst the objecting party(ies), the
19 BLM or BIA NRO, ACHP, NMSHPO/NNTHPO, and other Consulting
20 Parties as necessary to discuss the proposed final decision. The BLM or
21 BIA NRO shall consider any additional input received then proceed
22 according to its final decision.
23

24 2. The BLM's and BIA NRO's responsibility to carry out all other actions subject to
25 the terms of this Agreement that are not the subject of the dispute will remain
26 unchanged.
27

28 **XXI. AMENDMENT**
29

- 30 A. Any Signatory or Invited Signatory to this Agreement may request that the other
31 Signatories consider amending the Agreement if circumstances change over time and
32 warrant revision of the stipulations of this Agreement. Except in the case of amendments
33 addressing resolution of disputes pursuant to Stipulation XX of this Agreement,
34 amendments will be executed in writing and will be signed by all Signatories in the same
35 manner as the original Agreement.
36
- 37 B. The BLM and BIA NRO shall consult with all Consulting Parties regarding proposed
38 amendments and consider their issues and concerns.
39
- 40 C. The amendment will be effective on the date of the ACHP signature affixed to the
41 amendment.
42
- 43 D. During the amendment process, the undertaking will proceed, and the existing Agreement
44 will remain in force.
45

46 **XXII. TERMINATION**

Programmatic Agreement for Fluid Mineral Leasing, Applications for Permit to Drill, and
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- 1
2 A. If any Signatory or Invited Signatory to this Agreement determines that its terms will not
3 or cannot be carried out, that Signatory shall immediately consult with the other
4 Signatories to attempt to develop an amendment per Stipulation XXI of this Agreement.
5 If within thirty (30) days (or another time period agreed to by all Signatories) an
6 amendment cannot be reached, any Signatory may terminate the Agreement upon written
7 notification to the other Signatories.
8
9 B. Once the Agreement is terminated, and prior to work continuing on the Undertaking, the
10 BLM and BIA NRO shall either:
11
12 1. Execute a new Agreement pursuant to 36 C.F.R. § 800.14; or
13
14 2. Follow the processes in 36 C.F.R. § 800.3 through 800.6 for the Undertaking.
15
16 C. The BLM and BIA NRO shall notify the Consulting Parties as to the course of action they
17 will pursue.
18

19 **XXIII. TERM OF AGREEMENT**

20
21 This Agreement will remain in effect for 5 years after the date of execution thereof unless the
22 Agreement is terminated earlier in accordance with Stipulation XXII of this Agreement or amended
23 to continue longer in accordance with Stipulation XXI of this Agreement. The BLM and BIA NRO
24 shall re-evaluate the Agreement thereafter every 5 years in consultation with the Consulting Parties.
25

26 **XXIV. EXECUTION AND COMPLETION OF SECTION 106**

- 27
28 A. Execution of this Agreement by the BLM, BIA NRO, NMSHPO, NNTHPO, and ACHP
29 and implementation of its terms evidence that the BLM and BIA NRO have taken into
30 account the effects of the undertaking on historic properties and afforded the ACHP an
31 opportunity to comment, in accordance with Section 106 of the NHPA and its
32 implementing regulations 36 C.F.R. Part 800, and has satisfied its NHPA Section 106
33 responsibilities for all actions associated with the undertaking.
34
35 B. In witness whereof, the Consulting Parties to this Agreement, through their duly
36 authorized representatives, have executed this Agreement on the dates set out below, and
37 certify they have read, understood, and agreed to the terms and conditions of this
38 Agreement as set forth herein.
39
40 C. This Agreement may be signed by using counterpart signature pages. The BLM and BIA
41 NRO shall distribute copies of this Agreement and all signed pages to the Signatories,
42 Invited Signatories, and all those invited to be Concurring Parties once the Agreement is
43 executed.
44
45 D. The effective date of this Agreement is the date of the ACHP signature affixed to these
46 pages.

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Resource Management Plan Amendment

Programmatic Agreement

Among

Bureau of Land Management New Mexico,
Bureau of Indian Affairs Navajo Regional Office,
New Mexico State Historic Preservation Officer,
Navajo Nation Tribal Historic Preservation Officer,
and the Advisory Council on Historic Preservation,

Regarding Fluid Mineral Leasing, Applications for Permit to Drill,
and Associated Rights-of-Way Development Identified in the
Farmington Mancos-Gallup Resource Management Plan Amendment,
San Juan, Rio Arriba, McKinley, and Sandoval Counties, New Mexico

BUREAU OF LAND MANAGEMENT, NEW MEXICO (Signatory)

Date:

Timothy Spisak, State Director

Programmatic Agreement for Fluid Mineral Leasing, Applications for Permit to Drill, and
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Programmatic Agreement

Among

Bureau of Land Management New Mexico,
Bureau of Indian Affairs Navajo Regional Office,
New Mexico State Historic Preservation Officer,
Navajo Nation Tribal Historic Preservation Officer,
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and Associated Rights-of-Way Development Identified in the
Farmington Mancos-Gallup Resource Management Plan Amendment,
San Juan, Rio Arriba, McKinley, and Sandoval Counties, New Mexico

BUREAU OF INDIAN AFFAIRS, NAVAJO REGIONAL OFFICE (Signatory)

Date:

Gregory Mehojah, Regional Director

Programmatic Agreement for Fluid Mineral Leasing, Applications for Permit to Drill, and
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Programmatic Agreement

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Bureau of Land Management New Mexico,
Bureau of Indian Affairs Navajo Regional Office,
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and Associated Rights-of-Way Development Identified in the
Farmington Mancos-Gallup Resource Management Plan Amendment,
San Juan, Rio Arriba, McKinley, and Sandoval Counties, New Mexico

NEW MEXICO STATE HISTORIC PRESERVATION OFFICER (Signatory)

Date:

Jeffrey Pappas, Director
New Mexico Historic Preservation Division

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Programmatic Agreement

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Bureau of Indian Affairs Navajo Regional Office,
New Mexico State Historic Preservation Officer,
Navajo Nation Tribal Historic Preservation Officer,
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and Associated Rights-of-Way Development Identified in the
Farmington Mancos-Gallup Resource Management Plan Amendment,
San Juan, Rio Arriba, McKinley, and Sandoval Counties, New Mexico

NAVAJO NATION (Signatory)

Date: _____

Jonathan Nez, President

NAVAJO NATIONAL TRIBAL HISTORIC PRESERVATION OFFICER (Signatory)

Date: _____

Richard Begay, Manager

Navajo Nation Heritage and Historic Preservation Department

Programmatic Agreement for Fluid Mineral Leasing, Applications for Permit to Drill, and
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Programmatic Agreement

Among

Bureau of Land Management New Mexico,
Bureau of Indian Affairs Navajo Regional Office,
New Mexico State Historic Preservation Officer,
Navajo Nation Tribal Historic Preservation Officer,
and the Advisory Council on Historic Preservation,

Regarding Fluid Mineral Leasing, Applications for Permit to Drill,
and Associated Rights-of-Way Development Identified in the
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ADVISORY COUNCIL ON HISTORIC PRESERVATION (Signatory)

Date:

John Fowler, Executive Director

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1 ADDITIONAL SIGNATURE PAGES TO BE ADDED:
2

3 Invited Signatories (n = 25)

4 25 Tribes: Hopi Tribe, Jicarilla Apache Nation, Navajo Nation, Ohkay Owingeh, Pueblo of
5 Acoma, Pueblo de Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of
6 Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of San Felipe,
7 Pueblo de San Ildefonso, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo
8 Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Ysleta del Sur, Pueblo of Zia,
9 Pueblo of Zuni, Ute Mountain Ute Tribe, and Southern Ute Indian Tribe
10

11 Concurring Parties (n = 38)

12 3 Federal Agencies: BOR, NPS, CNF

13 2 State Agencies: NMSLO, NMDGF

14 7 County and City Entities: City of Farmington, City of Bloomfield, City of Aztec, San Juan
15 County, Rio Arriba County, McKinley County, Sandoval County

16 18 Chapters: Becenti, Burnham, Counselor, Huerfano, Hogback, Lake Valley, Nageezi,
17 Nenahnezad, Newcomb, Ojo Encino, Pueblo Pintado, Sanostee, Tiis Tsoh Sikaa,
18 Torreon/Star Lake, Tse Daa K'aa, Upper Fruitland, White Rock, and Whitehorse Lake

19 9 Non-Governmental Organizations: All Pueblo Council of Governors, Archaeological
20 Society of New Mexico, Archaeology Southwest, Chaco Alliance, National Trust for Historic
21 Preservation, New Mexico Archeological Council, Old Spanish Trail Association, San Juan
22 Citizens Alliance, and Society for American Archaeology
23

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List of Acronyms

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ACHP	Advisory Council on Historic Preservation
AIRFA	American Indian Religious Freedom Act
APD	Application for Permission to Drill
APE	area of potential effects
BIA NRO	Bureau of Indian Affairs, Navajo Regional Office
BLM	Bureau of Land Management
BMP	best management practices
BOR	Bureau of Reclamation
C.F.R.	Code of Federal Regulations
CNF	Carson National Forest
COA	Conditions of Approval
CRCF	Cultural Resource Compliance Form (Navajo Nation)
DPO	Deputy Preservation Officer (for BLM)
DRRT	Data Recovery Review Team
EIS	environmental impact statement
FMG	Farmington Mancos-Gallup
FOIA	Freedom of Information Act
GLO	General Land Office
HABS	Historic American Buildings Survey
HAER	Historic American Engineering Record
HALS	Historic American Landscapes Survey
LiDAR	Light Detecting and Ranging
MOU	memorandum of understanding
NAGPRA	Native American Graves Protection and Repatriation Act
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMCRIS	New Mexico Cultural Resources Information System
NMDGF	New Mexico Department of Game and Fish
NMSA	New Mexico Statutes Annotated
NMSHPO	New Mexico State Historic Preservation Officer
NMSLO	New Mexico State Land Office
NNHHPD	Navajo Nation Heritage and Historic Preservation Department
NNTHPO	Navajo Nation Tribal Historic Preservation Officer
NPS	National Park Service
NRHP	National Register of Historic Places
OG/ROW	oil and gas/right-of-way
POC	point of contact
RMP	resource management plan
RMPA	Resource Management Plan Amendment
ROD	record of decision
ROW	right-of-way
SRCP	State Register of Cultural Properties (New Mexico)
U.S.C.	United States Code

3

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APPENDIX A

Map of the Decision Area and the Area of Potential Effects

DRAFT

Programmatic Agreement for Fluid Mineral Leasing, Applications for Permit to Drill, and
Associated Rights-of-Way Development under the Farmington Mancos-Gallup
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1 new map is in development

2

DRAFT

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APPENDIX B

Historic Property Identification Summary

To be developed.

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APPENDIX C

Summary Statements Regarding Tribal Associations with the San Juan Basin

To be developed.

Programmatic Agreement for Fluid Mineral Leasing, Applications for Permit to Drill, and
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APPENDIX D

Definition of Terms Used in this Agreement

Programmatic Agreement for Fluid Mineral Leasing, Applications for Permit to Drill, and
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1 DEFINITION OF TERMS

2

3 Adverse Effect occurs when an undertaking may alter, directly or indirectly, any of the
4 characteristics that qualify a historic property for inclusion in the National Register of Historic Places
5 in a manner that would diminish the integrity of the property's location, design, setting, materials,
6 workmanship, feeling, or association.

7 Advisory Council on Historic Preservation is an independent executive Federal agency established
8 pursuant to section 201 of the National Historic Preservation Act that reports to and advises the
9 President and the Congress on historic preservation matters. Under Section 106 of the National
10 Historic Preservation Act, the Council must be afforded an opportunity to comment on Federal,
11 federally assisted, or federally licensed undertakings that may affect historic properties.

12 Area of Potential Effects means the geographic area(s) within which an undertaking may directly or
13 indirectly cause changes in the character or use of historic properties, if any such properties exist.

14 Aspects of Historic Integrity include location, setting, feeling, association, design, workmanship, and
15 materials. Integrity is the ability of a property to convey its significance. To be evaluated as eligible
16 for listing in the National Register (i.e., be determined as an historic property), a property must retain
17 its integrity. Seven aspects or qualities, in various combinations, define integrity. To retain historic
18 integrity a property will always possess multiple, and usually most, of the aspects.

19 Chapters refers to those Navajo Chapters invited to sign this Agreement as Concurring Parties.

20 Concurring Parties are those interested parties who have been asked to sign this Agreement, but do
21 not have the rights to amend or terminate the Agreement. Their signature shows that they are familiar
22 with the terms of the Agreement and do not object to it.

23 Consultation means the process of seeking, discussing, and considering the views of other
24 participants and, where feasible, seeking agreement with them regarding matters arising in the
25 Section 106 process.

26 Consulting Parties refers to a group of entities who have consultative roles in the Section 106 process
27 for this Agreement. They are comprised of the Signatories to this Agreement, those invited to sign
28 this Agreement as Invited Signatories, and those invited to sign this Agreement as Concurring
29 Parties.

30 Controlled Surface Use is a type of moderate constraint stipulation that modifies the terms and
31 conditions on a standard lease form at the time of a fluid mineral lease sale. It allows some use and
32 occupancy of public land while protecting identified resources or values, and is applicable to fluid
33 mineral leasing and all activities associated with fluid mineral leasing. Controlled Surface Use areas
34 are open to fluid mineral leasing, but the stipulation allows the BLM to require special operational
35 constraints, or the activity can be shifted more than 200 meters (656 feet) to protect the specified
36 resource or value.

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1 Cultural Landscape is a geographic area, including both cultural and natural resources, associated
2 with a historic event, activity, or person, or exhibiting other cultural or aesthetic values
3 (www.nps.gov/subjects/culturallandscapes/understand-cl.htm). There are four non-mutually
4 exclusive cultural landscape types:

5 Historic Designed Landscape – a landscape significant as a design or work of art; was
6 consciously designed and laid out either by a master gardener, landscape architect, architect,
7 or horticulturalist to a design principle, or by an owner or other amateur according to a
8 recognized style or tradition; has a historical association with a significant person, trend, or
9 movement in landscape gardening or architecture, or a significant relationship to the theory
10 or practice of landscape architecture.

11 Historic Site – a landscape significant for its association with a historic event, activity, or
12 person.

13 Historic Vernacular Landscape – a landscape whose use, construction, or physical layout
14 reflects endemic traditions, customs, beliefs, or values; in which the expression of cultural
15 values, social behavior, and individual actions over time is manifested in physical features
16 and materials and their interrelationships, including patterns of spatial organization, land use,
17 circulation, vegetation, structures, and objects; in which the physical, biological, and cultural
18 features reflect the customs and everyday lives of people.

19 Ethnographic Landscape – a landscape containing a variety of natural and cultural resources
20 that associated people define as heritage resources. Small plant communities, animals,
21 subsistence, and ceremonial grounds are included.

22 Cultural Resource means a location of human activity, occupation, or use. The term includes
23 archaeological, historic, or architectural sites, structures, or places, as well as locations of traditional
24 cultural or religious importance to specified social and/or cultural groups. Not all cultural resources
25 exhibit evidence of alteration by humans, thus while all archaeological resources are cultural
26 resources, not all cultural resources are archaeological in nature. Within the broad range of cultural
27 resources are those that have recognized significance and are determined eligible for the National
28 Register of Historic Places.

29 Days refers to calendar days.

30 Decision Area is defined in detail in the FMG RMPA/EIS. In summary, the BLM decision area is the
31 surface land and subsurface mineral estate in the EIS planning area over which the BLM has
32 authority to make land use and management decisions. This includes some subsurface mineral estate
33 underlying Navajo tribal trust surface lands in the decision area. The BIA decision area includes
34 approximately 900,000 surface and mineral estate acres divided between Navajo tribal trust and
35 individual Indian allotments for which the BIA NRO has authority to make decisions regarding
36 mineral leasing and associated activities.

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1 Effect on a historic property occurs when an undertaking may alter characteristics of the property that
2 may qualify it for inclusion in or eligibility for the National Register of Historic Places. An effect
3 may be either negative or positive.

4 Good Faith refers to a sincere and honest intention to deal fairly with others. Good faith is an abstract
5 and comprehensive term that encompasses a sincere motive without any malice or the desire to
6 defraud others.

7 Historic Property is any prehistoric or historic district, site, building, structure, or object included in,
8 or eligible for inclusion in, the National Register of Historic Places. This term includes artifacts,
9 records, and remains that are related to and located within such properties. The term includes
10 properties of traditional religious or cultural importance to a tribe that meet the National Register of
11 Historic Properties criteria. Properties that have been determined eligible for inclusion are accorded
12 the same protections as properties listed in the National Register of Historic Places.

13 Lease Notice is an Information Notice (43 CFR 3101.1-3) in the Notice of Competitive Lease Sale
14 that advises potential lessees of important resource concerns and the possibility of additional
15 constraints at the time of permitting for a particular lease parcel. A "buyer beware", so to speak.

16 National Register of Historic Places is the official list of districts, sites, buildings, structures, and
17 objects significant in American history, architecture, archaeology, engineering, and culture
18 maintained by the Keeper of the National Register on behalf of the Secretary.

19 No Adverse Effect means that the undertaking will not alter any of the characteristics of a historic
20 property that qualify it as eligible for the National Register of Historic Places by diminishing its
21 historic integrity.

22 No Historic Properties Affected means there are no cultural resources in the Area of Potential
23 Effects, there are cultural resources in the Area of Potential Effects but none are determined to be
24 eligible for the National Register of Historic Places, or there are historic properties but none will be
25 affected by the undertaking.

26 No Surface Occupancy is a type of major constraint stipulation that modifies the terms and
27 conditions on a standard lease form at the time of a fluid mineral lease sale. This stipulation is issued
28 when use or occupancy of the land surface for fluid mineral exploration or development and all
29 activities associated with fluid mineral leasing are prohibited within a parcel to protect identified
30 resource values. Areas identified as No Surface Occupancy are open to fluid mineral leasing, but
31 surface occupancy or surface-disturbing activities associated with fluid mineral leasing cannot be
32 conducted on the surface of the land. Access to fluid mineral deposits would require horizontal
33 drilling from outside the boundaries of the No Surface Occupancy area.

34 Participating Consulting Parties is a term specific to this Programmatic Agreement that refers to
35 those Consulting Parties who have requested further consultation in response to a notification of an
36 undertaking sent by the Section 106 Lead Agency.

37 Programmatic Agreement means a document that records the terms and conditions agreed upon to
38 resolve the potential effects of a Federal agency program or complex undertaking. The Agreement

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- 1 can establish alternative agency procedures to substitute for the government-wide procedures in 36
2 C.F.R. Part 800 for complying with Section 106 of the National Historic Preservation Act
- 3 Property of Religious and Cultural Significance means any site, building, structure, object or district
4 eligible for inclusion in the National Register of Historic Places that is important to an Tribe because
5 of its association with the practices or beliefs of the Tribe that a) are rooted in the Tribe's history, and
6 b) are important in maintaining the continuing cultural identity of the Tribe.
- 7 Section 106 is the section of the National Historic Preservation Act that requires Federal agency
8 officials to take into account the effects of their undertakings on properties eligible for or included in
9 the National Register of Historic Places, and to afford the Advisory Council on Historic Preservation
10 a reasonable opportunity to comment on the undertaking. The regulations at 36 C.F.R. Part 800
11 implement Section 106.
- 12 Section 106 Lead Agency refers to the Federal agency that has the statutory responsibility to comply
13 with Section 106 and this Programmatic Agreement.
- 14 Signatories or Invited Signatories are parties that assume obligations under the Programmatic
15 Agreement and have the right to terminate or agree to amend the Programmatic Agreement.
- 16 Significance or Significant mean that a property meets the criteria for eligibility for the National
17 Register of Historic Places. Properties may be found to qualify for the National Register of Historic
18 Places at local, State, or national levels of significance.
- 19 State Historic Preservation Officer is the official appointed or designated by the Governor pursuant
20 to Section 101(b)(1) of the National Historic Preservation Act to administer the State historic
21 preservation program.
- 22 Timing Limitation is a type of moderate constraint stipulation that modifies the terms and conditions
23 on a standard lease form at the time of a fluid mineral lease sale. A Timing Limitation stipulation is
24 applicable to fluid mineral leasing, all activities associated with fluid mineral leasing, and other
25 surface-disturbing activities. Areas identified for a Timing Limitation are closed to fluid mineral
26 exploration and development, surface-disturbing activities, and intensive human activity during
27 identified time frames. This stipulation does not apply to operation and basic maintenance, including
28 associated vehicle travel, unless otherwise specified. Construction, drilling, completions, and other
29 operations considered to be intensive are not allowed. Intensive maintenance, such as workovers on
30 wells, is not permitted. Timing Limitations can overlap spatially with No Surface Occupancy and
31 Controlled Surface Use stipulations, as well as with areas that have no other restrictions.
- 32 Traditional Cultural Properties are historic properties that derive significance from traditional values
33 associated with it by a social and/or cultural group such as an tribe or local community. A traditional
34 cultural property qualifies for the National Register of Historic Places based on its associations with
35 the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living
36 community. Traditional cultural properties are specific, definite places that figure directly and
37 prominently in a particular group's cultural practices, beliefs, or values, when those practices, beliefs,
38 or values (i) are widely shared within the group, (ii) have been passed down through the generations,

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1 and (iii) have served a recognized role in maintaining the group’s cultural identity for at least 50
2 years.

3 Traditional Value refers to a social and/or cultural group’s traditional systems of religious belief,
4 cultural practice, or social interaction, not closely identified with definite locations. Another group’s
5 shared values are abstract, nonmaterial, ascribed ideas that one cannot know about without being
6 told. Traditional values are taken into account through public participation during planning and
7 environmental analysis or through tribal consultation, as applicable. Traditional values may imbue a
8 place with historic significance.

9 Tribal Historic Preservation Officer is the tribal official appointed by the Tribe’s chief governing
10 authority or designated by a tribal ordinance or preservation program who has assumed the
11 responsibilities of the State Historic Preservation Officer for purposes of Section 106 compliance on
12 tribal lands.

13 Tribal Lands means all lands within the exterior boundaries of any Indian reservation and all
14 dependent Indian communities.

15 Tribes refers to the federally recognized Tribes who are Signatories to this Agreement or are invited
16 to sign this Agreement as Invited Signatories.

17 Undertaking is a project, activity, or program funded in whole or in part under the direct or indirect
18 jurisdiction of a federal agency including: (1) those carried out by or on behalf of the agency; (2)
19 those carried out with Federal financial assistance; and (3) those requiring a federal permit, license,
20 or approval.

21

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APPENDIX E

Standard Areas of Potential Effects and Assessment of Effect Methodologies
for Oil and Gas Leasing, Bureau of Land Management, Farmington Field Office

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1 Standard Areas of Potential Effects and Assessment of Effect Methodologies
2 for Oil and Gas Leasing,
3 Bureau of Land Management, Farmington Field Office
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5

6 The following provides a description of the Bureau of Land Management's (BLM's) standard areas
7 of potential effects (APEs) for oil and gas leasing in the Farmington Field Office (FFO). These APEs
8 address both direct and indirect sources of potential effects. As stated in the stipulations of the
9 Programmatic Agreement, these standard APEs are a starting point for Section 106 consultation for
10 oil and gas leasing undertakings and can be modified pending receipt by the BLM of additional
11 information on an undertaking-by-undertaking basis.
12

13
14 Area of Potential Effects for Physical Effects (Physical APE)
15

16 The area of potential effects (APE) for physical effects (physical APE) includes the area of the lease
17 parcel itself and a one quarter-mile area around its perimeter. It reflects the area of foreseeable
18 development associated with the lease under current industry standards and horizontal or directional
19 drilling technologies, as demonstrated by an internal review of AFMSS and ONGARD map data.
20 Any known or undiscovered historic properties in this area could be physically disturbed by the fluid
21 minerals facility development that is a foreseeable consequence of leasing the parcel(s) in question. It
22 does not account for unforeseeable development scenarios that are technically feasible but not likely,
23 such as wells with a horizontal surface hole to target formation entry of more than one quarter
24 surface mile, or facilities that are likely to be built but are unpredictable or variable in their location
25 or non-essential to operation of the foreseeable wells, such as staging areas, roads, or pipelines. Since
26 road and pipeline acreage may be estimated as a per-well average, even if specific locations are
27 wholly unknown at the leasing stage, these facilities still contribute to calculations of total expected
28 disturbance and determinations of whether or not development of the parcel is compatible with full
29 physical avoidance of historic properties given the parcel's estimated site density.
30

31 Net contribution to the overall APE: the area of the lease parcel, plus a one-quarter mile buffer.
32
33

34 Area of Potential Effects for Visual Contrast/Viewshed Effects (Visual APE)
35

36 The visual APE encompasses areas within one mile of the physical APE and within direct line-of-
37 sight to sites sensitive to viewshed impacts. Line-of-sight, in this case, is generally modeled
38 assuming a viewer height of 2 meters, a facility height of 3 meters, a bare earth surface, and (for
39 expediency) a flat rather than curved earth – it accounts for object and viewer height and over-
40 estimates real-world visibility. A one-mile visual APE includes areas where nonroutine best
41 management practices (BMPs), design features, or mitigations may be necessary, even in areas of
42 average or above average visual absorptive capacity, to diminish the visual contrast of common oil
43 and gas infrastructure elements and avoid effects or adverse effects to sites. This APE assumes that
44 the threshold for effect to most sites sensitive to viewshed impacts lies somewhere above visibility
45 with the naked eye and below “weak contrast” with the visual background. This is in accordance with

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1 Appendix C of the Wyoming BLM/State Historic Preservation Officer (SHPO) Protocol, “Guidance
2 on the Assessment of Setting,” which has been used successfully for developing APEs and
3 determinations of effect relating to multiple leasing and development projects that met no explicit
4 objection from consulting parties and concurrence from the New Mexico SHPO and/or Navajo
5 Nation Tribal Historic Preservation Officer (THPO). In effect, this Appendix C uses the existing
6 mechanism of visual contrast ratings, as explained in BLM Manual 8431, to assess effects to the
7 setting of sensitive sites. It equates a rating of “no contrast” with “no historic properties affected,” a
8 rating of “weak contrast” with “no adverse effect,” and a rating of “moderate contrast” or “strong
9 contrast” to “adverse effect.” The one-mile visual APE is also consistent with the Foreground-
10 Middleground Zone defined in BLM Manual H-8410-1, Visual Resource Inventory. This area, which
11 includes all areas in direct line-of-sight within 3 to 5 miles of a reference travel route, represents the
12 distance at which plants are visible as individual forms or textures, not just as general patterns of
13 color or light and dark.
14

15 A 2017 FFO field study of facilities visible from Pierre’s Site and Twin Angels supports a visual
16 APE of about one mile. The study was conducted in response to Ruth Van Dyke’s early 2017
17 assessment of oil and gas infrastructure in the area around Pierre’s Site (Van Dyke 2017a and b).
18 This report and its associated video (Van Dyke 2016a through e) prominently feature the Hoss Com
19 095 well, which sits only 4/10ths of a mile from the Pierre’s Site Acropolis. It also identifies 12
20 pumpjacks, as well as assorted other developments mentioned generically but not identified
21 individually. FFO staff identified additional facilities visible from Pierre’s Site and, with AFMSS and
22 ONGARD data, facilities within the modeled direct line-of-sight but not readily visible to the naked
23 eye. The reassessment then categorized sites within the modeled viewshed as visible and identifiable
24 without binoculars, visible to the naked eye but identifiable only with binoculars, or not visible to the
25 naked eye. Most facilities visible at the time, including several legacy facilities and many
26 developments not involving Federal surface or minerals, were painted light colors like white, primer
27 gray, or Carlsbad Canyon (tan) rather than the more appropriate Covert Green or Juniper Green
28 generally required for new Federal undertakings. FFO staff then assessed developments visible from
29 Twin Angels site in as consistent a manner as possible, applying similar rankings. The FFO report
30 concluded that stationary facilities smaller than saltwater disposal wells with large, multiple-tank
31 batteries were not clearly visible or identifiable at distances beyond 1.7 to 3.5 miles even when
32 painted light, contrasting colors. The most distant facilities that were visible and identifiable without
33 the use of binoculars were 1.5 miles away from Pierre’s Site and 1.0 mile from Twin Angels. The
34 report also found instances of facilities as close as 6/10ths of a mile away that escaped detection in
35 Van Dyke’s original report or were identified as effectively camouflaged – that is, facilities
36 presenting no visual contrast – due to being painted more appropriate environmental colors. Given
37 that the use of appropriate environmental colors is required for all well projects that are Federal
38 undertakings and usually included by project design, and that the foreseeable well facilities
39 associated with new leases do not include moving pumpjacks or large multiple tank batteries,
40 expected future developments should not create any visual contrast (or any effect) beyond about one
41 mile or any moderate or strong visual contrast (adverse effect) beyond about 2/3 of a mile.
42

43 Net contribution to the overall APE: compatibility of the auditory and visual APEs encourages use of
44 a more expansive visual APE value of one mile instead of a more conservative value of two-thirds of
45 a mile. Otherwise, it would contribute an irregular area between two-thirds and one mile and within
46 direct line-of-sight from the physical APE. If special cases should arise where avoidance of

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1 silhouetting and use of environmental colors are neither a design feature included by the proponent
2 nor a conditional of approval enforced by the agency, the visual APE should likely be expanded,
3 depending on the size, nature, and placement of surface facilities.
4

5
6 Area of Potential Effects for Noise/Soundscape Effects (Auditory APE)
7

8 The auditory APE includes areas within one mile of the physical APE. This extension represents the
9 distance at which foreseeable, long-term industrial noise is either below audibility in general contexts
10 under normal atmospheric conditions or is quiet or imperceptible in quiet contexts. It is assumed the
11 threshold for effect for most noise sensitive sites lies somewhere above the threshold of audibility
12 under the most favorable conditions for sound propagation (i.e., above 20 dBA) but below the
13 ambient background sounds of an urban setting (50 to 70 dBA). The FFO's existing standard for
14 noise sensitive areas in its 2004 Notice to Lessees (NTL) offers 48.6 dBA, a standard value for
15 multiple industries compatible with 1972-1974 Environmental Protection Agency (EPA) guidelines
16 to protect against both activity interference and hearing loss in residential contexts (EPA 1972;
17 1974). The same 1974 report cites a standard of 32 dB for expected sound pressure levels within
18 homes at night. The World Health Organization's 1993 guidelines recommend that outdoor levels
19 should not exceed 55dB in the day and 45 dB at night, so that noise does not exceed 30 dB inside
20 bedrooms (WHO 1993). In the absence of better specific examples, it is assumed values around 30
21 dBA provide a threshold for effect to the most sensitive sites and values closer to 50 dBA (i.e., 48.6
22 dBA) represent a threshold for other sites that are less sensitive.
23

24 Past estimates and measurements of sound propagation support this one-mile buffer for the auditory
25 APE. Comparisons of results from the 2015 Chaco Culture National Historic Park (CCNHP)
26 Acoustic Monitoring Report and various reported standards show that, under normal atmospheric
27 conditions and using a simple model of sound dissipation based on the inverse square law, noises
28 associated with typical oil and gas developments reach parity with the daytime ambient sounds of
29 quiet rural environments like CCNHP (35.8 dBA) in as little as one third of a mile away (see table on
30 next page, Documented and Predicted Noise Levels from Fluid Minerals Developments; Nelson
31 2015). The same noises fall to marginal audibility (30 dBA) between one half to two thirds of a mile
32 away, and to levels quiet or inaudible in quiet contexts (25 dBA) at 9/10^{ths} to 1 2/10^{ths} of a mile away.
33 During a 2017 field study of auditory effects conducted by FFO staff at Pierre's Site and Twin
34 Angels, observers did not discern sources of industrial noise greater than 0.9 miles away over natural
35 sounds such as wind, even in areas of full-field or near full-field development. Taken together, this
36 strongly suggests that facility generated noise falls to parity with natural sounds of very quiet
37 environments or below normal human hearing at around one mile. This encompasses the zone of
38 potential foreseeable effects from noise, which reaches out to two-thirds of a mile, plus an additional
39 margin to compensate for the unmodeled acoustic effects of local terrain and variable atmospheric
40 conditions.
41

42 Net contribution to the overall APE: a one-mile buffer around the physical APE.

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Table: Documented and Predicted Noise Levels from Fluid Minerals Developments.					
Data Source	Baseline Noise Level Intensity	At or just below parity with reference at <i>n</i> miles:			
		CCHNP Existing, Day (35.8 dBA) ¹	Just Audible in General Contexts (30 dBA) ²	Quiet to Inaudible in Quiet Contexts (25 dBA) ²	CCNHP Existing, Night (21.0 dBA) ¹
La Plata County 2002 Impact Report ³	50 dBA at 325 feet	0.32	0.62	1.10	1.74
COGCC dBA limit for areas zoned residential, agricultural, or rural (night) ⁴	50 dBA at 350 feet	0.34	0.67	1.18	1.87
BLM-FFO 2004 Noise NTL-compliant ⁵	48.6 dBA at 400 feet	0.34	0.65	1.15	1.82
Measured facility: Hoss Com 096 ⁶	65.6 dBA at 50 feet	0.30	0.58	1.02	1.61
Measured facility: Pipkin Gas Com A 001 ⁶	53.9 dBA at 177 feet	0.27	0.53	0.94	1.49
Calculations based on baseline levels and: $dBA_2 = dBA_1 - 20 \log_{10} (\text{Distance}_2/\text{Distance}_1)$					
Sources:	¹ Nelson, Misty D. 2015 <i>Chaco Culture National Historic Park Acoustic Monitoring Report</i> . Natural Resource Report NPS/NRSS/NSNS/NRR—2015/907. United States Department of the Interior, National Park Service, Natural Sounds and Night Skies Division. Fort Collins, CO. ² Bureau of Land Management (BLM) 2000 <i>Draft Resource Management Plan Amendment/Environmental Impact Statement for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties</i> . United States Department of the Interior, Bureau of Land Management, Las Cruces Field Office. Las Cruces, NM. ³ La Plata County 2002 <i>La Plata County Impact Report</i> . La Plata County. Durango, CO. ⁴ Leonard, Michael 2016 <i>COGCC Noise Control and Regulations, Garfield County EAB</i> . Colorado Oil & Gas Conservation Commission (COGCC), Department of Natural Resources, State of Colorado. Denver, CO. ⁵ Bureau of Land Management (BLM) 2014 <i>Notice to Lessees and Operators on Onshore Oil and Gas Leases Within the Jurisdiction of the Farmington Field Office (FFO), (NTL 04-2 FFO)</i> . United States Department of the Interior, Bureau of Land Management, Farmington Field Office. Farmington, NM. ⁶ Recorded on 12/5/2017 by FFO Natural Resource Specialist Chris Wenman, accompanied by Archaeologists Geoff Haymes and Kim Adams, with a Quest Technologies Model 2900 Sound Level Meter, Type 2 (accuracy of ± 2 dB; operational range of 20 to 80 dB; set to measure sound pressure level using the A-weighted scale [dBA]).				

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Area of Potential Effects for Unauthorized Collection and Vandalism

The foreseeable increase in unauthorized collection or vandalism stemming from increased access to remote sites is a potential indirect adverse effect of lease development. A 2006 study of vandalism in Range Creek, Utah, offered a synopsis of major work on the subject to-date and analysis of an outstanding outdoor laboratory for quantifying the relationship between access and site degradation (Spangler et al. 2006). Range Creek contains a locked gate on the north side, effectively limiting public access anywhere farther south in the canyon to pedestrians. Among other interesting

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1 conclusions, the study found that over 2/3 of all vandalism south of the locked gate occurred within
2 the first kilometer (0.62 miles). Beyond this, incidents of vandalism were relatively rare and more
3 evenly distributed. This demonstrates an elevated risk of vandalism within 1km of public motorized
4 access. The potential for increased unauthorized collection, then, supports an APE for the indirect
5 effects of increased motorized access incorporating a 1km buffer from potential areas of
6 development, where not already within 1km from existing roads. It is worth noting, however, that
7 this study examined an area that is both remote and popularly recognized for a high concentration of
8 valuable and obvious cultural resources – areas with less visible resources and greater general public
9 visibility should be less susceptible to clandestine looting activities.

10
11 New road construction resulting from the proposed leases is not likely to increase public access and
12 the resulting potential for unauthorized collection or vandalism by any great amount. A 1km buffer
13 on 2019 TIGER/Line (Census Bureau) road data shows that about 90% of lands within the FFO's
14 external boundaries (including reservation lands) are already within about 2/3 of a mile from a
15 mapped road. A brief comparison of the areas falling outside this buffer with legacy 100k topo maps
16 and recent Google Earth imagery demonstrate that this is a gross underestimate, with many
17 unmapped two-tracks or bladed roads crossing these areas. Actual values likely approach 95% to
18 100%. Because leasing and development will not change land ownership status and the resulting
19 level of public access, no consideration is given beyond the physical ability for vehicles to access an
20 area – two-tracks currently closed to public use by locked gates are likely to remain closed to public
21 use if upgraded for well facility access.

22
23 Net contribution to the overall APE: in most parts of northwest New Mexico, the additional APE
24 acreage represented by a two-thirds mile buffer on the physical APE minus any areas within two-
25 thirds mile of an existing road would be negligible. Regardless of proximity to existing roads, the
26 hypothetical looting/vandalism APE is wholly subsumed in the one-mile audio-visual APE.

27
28
29 Area of Potential Effects for Vibrations and Induced Seismicity

30
31 Vibrations resulting from oil & gas development, including both construction-related vibrations and
32 induced seismicity, represent another high-profile example of potential effects undermining the
33 physical integrity of sites. In the National Park Service's (NPS's) December 14, 2017, comments on
34 the draft environmental assessment for FFO's proposed March 2018 lease sale, NPS recommends
35 vibration risk assessments for resources within 1 kilometer of oil and gas operations, and avoidance
36 buffers of up to 100m [ca. 330 feet] for operations commonly associated with such developments
37 (and up to 500m [1640 feet or 0.31 miles] for certain facilities rarely associated with oil and gas
38 development) to avoid potential adverse effects.

39
40 Though there has been little recent study on the effects of construction-related vibrations to standing
41 Chacoan structures, a corpus of detailed studies from the 1980s and 1990s provide important
42 conclusions. A salient example analyzed the vibrational effects of various activities associated with
43 construction of a bridge across the Chaco Wash arroyo in CCNHP on Pueblo Bonito, some 230
44 meters (755 feet or 0.14 miles) to the north (King et al. 1991). The study concluded that vehicles
45 below a 60,000-pound limit imposed by the NPS could operate as close as 10m (33 feet) from
46 prehistoric masonry structures with no substantial potential for adverse effects (p.21). Likewise,

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1 drilling operations for bridge foundation piling-holes, including extraction of bore-hole casings,
2 generated vibrations well within safe limits. Though drilling operations were not comparable in depth
3 to oil and gas developments, deeper drilling operations reaching to 12 meters below ground (40 feet)
4 notably produced less effect on the structure than shallow drilling, near 2.5 meters in depth (8 feet;
5 p.4). Also, vibrations resulting from drilling itself were more intense than those from other related
6 activities measured during the study. The study authors conclude that “induced motions from a
7 drilling operations [sic] could increase by a factor of 20 above those that were documented” without
8 substantial potential for adverse effects to Pueblo Bonito, and that similar drilling “could be
9 accomplished at approximately 100 meters from a sensitive archaeological site without inducing
10 motions” beyond their established safety limits (p. 21).

11
12 Because most prehistoric or historic masonry structures outside CCNHP and Aztec National
13 Monument are unexcavated and therefore more stable than sites like Pueblo Bonito, and because they
14 are generally protected by BLM area of critical environmental concern (ACEC) boundaries reaching
15 farther than 100 meters from structures, construction-related vibrations may be dismissed as a
16 significant threat to the vast majority of sensitive archaeological resources where development is not
17 immediately adjacent. Any APE should include a minimum buffer greater than 330 feet (ca. 100
18 meters) to account for potential adverse effects from construction-related vibrations.

19
20 Despite frequently voiced concerns over the threat of induced seismicity to Chacoan structural sites,
21 numerous studies have demonstrated that induced seismicity is not a substantial and credible threat to
22 cultural resources in the San Juan Basin. This conclusion is based on observations that the San Juan
23 Basin has little potential for induced seismicity, rather than the inability for induced seismicity to
24 result in adverse effects to sites. Indeed, past studies note the probability that natural seismicity has
25 contributed significantly, if not greatly, to the general deterioration of structures within Chaco
26 Canyon (King et al. 1985). A recent USGS study of seismic hazards across the United States, both
27 natural and induced, identified the Paradox Valley of Colorado (1991-present) and Raton Basin of
28 northeast New Mexico and southeast Colorado (2001-present) as the nearest zones of potential
29 induced seismicity (Petersen et al. 2014:23). A 2016 one-year forecast verifies and expands upon this
30 data, outlining the San Juan Basin’s very low potential for damage from earthquakes in 2016 (i.e., a
31 less than 1% chance) and a lack of seismic activity clustering between 1980 and 2015, such as
32 demonstrate both areas of high natural seismic activity and areas of induced seismicity (Petersen et
33 al. 2016:10, 35). This study considered wells in the San Juan Basin and expressly identified them as
34 “wells not associated with earthquakes,” while cautioning that even some fraction of their wells
35 identified as “associated” may result from geographic coincidence of drilling and natural seismic
36 activity rather than a direct causal relationship (2016:6, 14).

37
38 A corpus of recent literature noted in Petersen et al. 2016, especially Weingarten et al. 2015, has
39 demonstrated a nearly exclusive causal relationship between high-volume wastewater injection and
40 induced seismicity. Rubinstein and Mahani similarly refute the notion that hydraulic fracturing
41 contributes greatly to induced seismicity in the United States in their synopsis of current research on
42 the matter, which is readily available online (2015). Though northwest New Mexico contains several
43 wastewater disposal wells, with the ONGARD database listing 107 active saltwater disposal wells as
44 of 2017 with spud dates from 1947 through 2014, and a long history of hydraulic fracturing for fluid
45 mineral wells, some combination of low fluid injection rates and natural seismic stability has
46 demonstrably avoided inducing seismic activity in the San Juan Basin.

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1
2 Net contribution to the overall APE: a conservative vibrational effects APE would include a buffer of
3 ca. 350 feet from the physical APE, and NPS' more expansive recommended values would support a
4 buffer of less than two-thirds of a mile (1km). These buffers are wholly subsumed by the
5 recommended one-mile audio-visual APE.

6
7
8 Area of Potential Effects for Air Quality

9
10 Certain historic properties may be susceptible to various kinds of effects related to diminished air
11 quality. These could include viewshed impacts, increased chemical weathering, increased abrasive
12 weathering, or general impacts of strong odors or toxic pollutants on the setting and feeling of a
13 historic property. While past consultations and project comments from Indian Tribes or traditional
14 religious practitioners indicate that many consider the air an inseparable part of cultural landscapes
15 incorporating identifiable TCPs, TCP-candidate sites, and historic properties, the National Historic
16 Preservation Act's involvement is limited to addressing specific, foreseeable impacts to discrete,
17 identified properties. That is, while it is recognized that impacts to air quality could result in effects
18 to historic properties, it does not follow that impacts to air quality always yield effects to historic
19 properties or that all historic properties are susceptible to effect by impacts to air quality.

20
21 As outlined in BLM Manual 7300, BLM actions and authorizations must comply with the Clean Air
22 Act to protect areas with special "natural, recreational, scenic, or historic value." Where occurring in
23 special nonattainment or maintenance areas designated by the EPA, activities must comply with EPA
24 regulations at 40 C.F.R. Parts 51 and 93.

25
26 Net contribution to the overall APE: none, except where warranted on a case-by-case basis. It is
27 assumed that a project's failure to rise above the threshold for a significant impact to air quality (as
28 determined in National Environmental Policy Act (NEPA) review and/or noncompliance with EPA
29 regulations, where applicable, would likewise fail to rise above the threshold for potential effects to
30 most sensitive historic properties. Exceptions may occur where localized phenomena resulting from a
31 proposed project, such as strong odors or the potential for a hydrogen sulfide hazard, could occur to
32 especially sensitive sites in the immediate vicinity. The standard audio-visual APE of one mile or the
33 pre-field records search of one-quarter mile or one mile for new Class III inventories for applications
34 for permit to drill (APDs) would identify any especially sensitive sites that have previously been
35 recorded or disclosed to the agency prior to the authorization of any development of new oil and gas
36 facilities. Where this occurs, special consideration and, potentially, special identification measures
37 may be necessary to identify and avoid or resolve potential effects.

38
39
40 Area of Potential Effects for Surface and Subsurface Water

41
42 In general, the Department of Agriculture / Department of the Interior Onshore Order No. 1 requires
43 those submitting an APD to develop and submit drilling plans and a Surface Use Plan of Operations
44 (SUPO) that, among other things, identify geologic formations that will be impacted by drilling and
45 the project design features that ensure compliance with various environmental protection authorities.
46 Based on the content of these plans and the results of BLM's environmental analysis pursuant to

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1 NEPA, the BLM Authorized Officer (AO) may attach additional general or site-specific conditions
2 of approval (COAs) to the APD. 43 C.F.R. 3162 is key among environmental protection authorities,
3 mandating that the operator 1) disposes of produced water by subsurface injection or other methods
4 approved by the AO, 2) reports spills or leakages of oil, gas, produced water, toxic liquids, etc. and
5 remediate them by methods approved by the AO, 3) develop and submit a contingency plan for
6 handling such situations, if and where necessary, and 4) isolate wells from formations bearing
7 freshwater or water with 5,000 ppm or less of dissolved solids (for comparison, “brackish” coastal
8 water has 1,000 to 15,000 ppm and seawater 30,000 to 40,000).

9
10 BLM discloses sources and amounts of fresh water used for well completion or fracking, though it
11 has little regulatory oversight in surface water use. Water use is regulated by the State of New
12 Mexico through the Office of the State Engineer consistent with valid and existing water rights,
13 including those established by treaty. Water used for hydraulic fracturing is allocated by and subject
14 to the same water rights laws that allow for “beneficial use” of surface water for any other
15 agricultural, commercial, industrial, and recreational purposes – that is, it represents a competing use
16 for surface waters already legally allocated rather than a new and additional allocation. Drilling and
17 fracking do not consume water that might not otherwise be consumed and, so, has no unique impact
18 on freshwater availability.

19
20 New well, road, pipeline, or other projects are assessed for their potential to impact surface waters.
21 The primary foreseeable impact is some contribution to sedimentation of streams and ephemeral
22 washes, but other potential impacts include diversion of waterways and contamination of surface
23 waters from spills or leaks. Under the Clean Water Act, significant or “blue line” streams and
24 drainages fall under the authority of the U.S. Army Corps of Engineers (USACE), with whom BLM
25 must consult when impacts to these “jurisdictional Waters of the U.S.” might occur. Where
26 avoidance of surface waterways is not feasible, BLM attaches COAs developed through this review
27 and consultation process to the APD, outlining the requisite diversions, culverts, etc. to avoid
28 discharge into or obstruction of natural waterways and, in general, to avoid significant impact to
29 surface waters. A permit from USACE may also be required before the project can proceed.

30
31 The geologic information in the drilling plan helps BLM to assess the potential for hydraulic
32 fracturing, or fracking, to impact formations bearing fresh or weakly saline waters. In the Mancos-
33 Gallup Shale play, for example, fracking occurs at depths of about 4,000 feet, with fractures not
34 extending beyond the Mesa Verde sandstone overlying the target Mancos Shale, all below the
35 impermeable Lewis Shale. Where the well bore passes through water-bearing formations above the
36 confining layer of the Lewis Shale, it is cased to prevent contamination.

37
38 Orders first enacted in 1983 and continuously developed and amended through 2017 outline in more
39 detail the methods to prevent contamination of surface and subsurface fresh water. Onshore Order
40 No. 2 details minimum standards for constructing and testing well casings to isolate subsurface
41 sources of fresh and weakly brackish water. Casings for new wells and plugs for wells to be
42 abandoned are designed, built, and tested under review and direct monitoring by BLM engineers.
43 Casing essentially involves lining the part of the well passing through freshwater-bearing formations
44 with a metal jacket set in an outer cement buffer between the pipe and native rock that is
45 impermeable to water and tested to withstand high pressures without developing leaks. Order No. 7
46 explains the “procedures and practices approved or prescribed by the [AO]” to dispose of produced

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1 water and required at 43 C.F.R. Part 3162. These generally include injection back into the original
2 source formation or other deep, isolated formations containing similarly brackish waters for disposal
3 or using the water for fracking new wells in such formations (water recycling), sometimes after
4 temporary storage in lined pits. The Safe Drinking Water Act, implemented by the EPA, further
5 regulates the subsurface injection of produced water for disposal in addition to establishing reference
6 guidelines used to measure water quality where monitoring is conducted.
7

8 Avoidance of water sources is currently achieved through BLM's blanket authority under Onshore
9 Order No. 1 to relocate proposed facilities up to 660 feet without rejecting the APD in full. Where
10 developments are proposed near springs, potential impacts are assessed and disclosed through the
11 NEPA process. While this assessment of potential impacts to water and the development of any
12 necessary avoidance or mitigation measures are made on a case-by-case basis and could vary due to
13 local geological and topographical factors, threats to springs, wells, and surface water would
14 generally follow ranking criteria established in BLM Farmington and Albuquerque Districts' 1993
15 "Surface Impoundment Closure Guidelines" to guide the intensity and immediacy for soil
16 remediation projects, transmitted in FFO's NTL 94-1. In this ranking system, potential impact
17 sources less than 50 feet above groundwater, less than 200 horizontal feet from a surface water body,
18 less than 1000 feet from a community water source, or less than 200 feet from a private domestic
19 water source are given a higher ranking while sources 50-99 feet above groundwater or 20-1000 feet
20 from a surface water body are given a lower, non-zero ranking, and sources more distant still are of
21 the least priority.
22

23 As with other natural resources that have the potential for associated values, springs and other water
24 sources are not treated as cultural resources under NHPA or any other relevant law or policy unless
25 existing cultural resource data or new identifications made in response to new consultation or
26 coordination with tribal cultural resource or native traditional religious experts shows they did or
27 presently do serve an active cultural function – see IBLA decision 2016-129 for a specific example
28 of this general policy guiding management of fossil resources. However, where such a spring has
29 previously been identified as a TCP-candidate site or where contract archaeologists and/or BLM
30 personnel suspect such a spring to hold these values based on location, experience, or associated rock
31 art or material culture, they may be regarded as possible historic properties subject to the Section 106
32 process. To date, almost 50 springs have been identified in or adjacent to the BLM-FFO management
33 area as potential TCPs or important components of TCPs. Some of these identifications come with
34 generic recommendations for avoidance by a minimum of 300 feet, while others call for site-specific
35 avoidance or mitigation measures to be developed through consultation. Several others in association
36 with major prehistoric or early historic rock art sites are protected through the ACEC designation of
37 their surrounding area.
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39 As with air quality, and excepting those cases where springs within the vicinity of a proposed
40 development have been identified as cultural resources, BLM assumes a proposed action that does
41 not rise above the threshold for significant impacts to waterways, surface water, or subsurface water
42 would likewise fail to meet the threshold for effect to any unidentified historic properties associated
43 with natural water resources. Where such resources have been identified as known or probable TCPs
44 or TCP-candidate sites, a finding of "no significant effect" in NEPA, especially when not contested
45 by the tribe(s) associated with the site, could support an agency determination of no effect or no
46 adverse effect.

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2 Net contribution to the overall APE: none – wholly subsumed in the 1-mile audiovisual APE.
3 Otherwise, NTL 94-1 would argue for an APE of up to 1,000 feet for springs, lakes, etc. that could
4 have cultural significance. Past ethnographic information suggests avoidance by as little as 300 feet
5 could be appropriate under normal circumstances.
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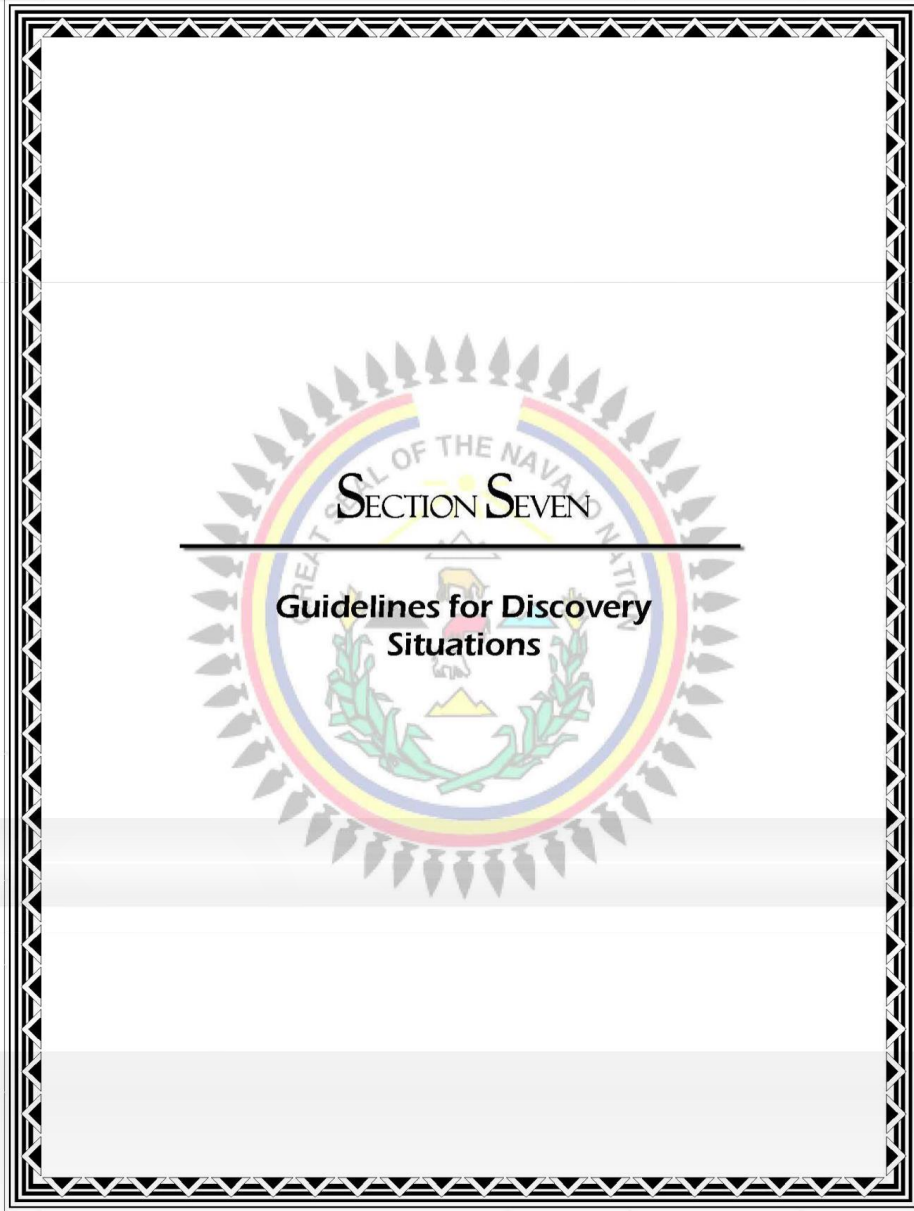
APPENDIX F

Guidelines for the Treatment of Discovery Situations

(from Navajo Nation Heritage and Historic Preservation Department)

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**THE NAVAJO NATION
HISTORIC PRESERVATION DEPARTMENT
Cultural Resource Compliance Section**

GUIDELINES FOR THE TREATMENT OF DISCOVERY SITUATIONS

INTRODUCTION

The Bureau of Indian Affairs, Navajo Area Office (BIA) and the Navajo Nation have entered into a contract pursuant to the Indian Self-determination and Education Act (P.L. 93-638, as amended) under which the Navajo Nation Historic Preservation Department (HPD) performs selected historic preservation functions as the agent of the BIA, including Section 106 consultations.

Pursuant to 36 CFR 800.11(a), these *Guidelines* will be complied with in the event of discovery of cultural and historic properties, and human remains; or unanticipated effects on identified cultural and historic properties, and human remains during the course of an undertaking or any other activity funded or permitted by the BIA within the boundaries of the Navajo Nation.

The BIA, through HPD, is responsible for ensuring identification of both previously recorded and unrecorded cultural and historic properties, and human remains, and evaluation of the effect(s) a project will have on such properties.

These *Guidelines* require adherence to the following policies, standards, and guidelines in addition to relevant cultural and historic preservation laws and regulations:

1. Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.
2. Advisory Council on Historic Preservation's Treatment of Archeological Properties: A Handbook.
3. Navajo Nation Interim Fieldwork and Report Standards and Guidelines.
4. Navajo Nation Policy and Procedures for the Protection of Cemeteries, Gravesites and Human Remains.
5. Navajo Nation Historic Preservation Department Guidelines for the Treatment of Historic, Modern, and Contemporary Abandoned Sites.
6. Navajo Nation Policy to Protect Traditional Cultural Properties.
7. Native American Graves Protection and Repatriation Act (NAGPRA).
8. National Register Bulletin 38.

The BIA is ultimately responsible for compliance with 36 CFR 800.

DEFINITIONS

1. The term "discovery" refers to finding; locating; observing; uncovering; unearthing; learning about through conversation, discussion, or interview; or otherwise detecting human remains or any kind of cultural or historic property, as defined below.
2. A "historic property" is defined in Section 301(5) of the National Historic Preservation Act, as amended (1992), as 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 or resource.

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Pursuant to *National Register Bulletin* 38 and Section 101(d) (6) (A) of the National Historic Preservation Act, as amended (1992), "historic property" includes properties of traditional religious and cultural importance to an Indian tribe.

3. "Cultural properties" as defined by Section 10(c) of the Navajo Nation Cultural Resources Protection Act (NNCRPA, CMY-19-88) will also be identified and protected. The types of properties and landmarks eligible for listing on the Navajo Nation Register of Cultural Properties and Cultural Landmarks are defined in Section 101(a-c) of the NNCRPA.
4. The term "contemporary" refers to sites, properties, places, or burials that are 50 years of age or less.
5. The term "historical" refers to sites, properties, places, or burials that post-date 1539.
6. The term "prehistoric" refers to sites, properties, places, or burials that pre-date 1539.
7. The term "scope-of-work" refers to a plan that includes one or more of the following procedures, which may be necessary to identify, evaluate, and mitigate adverse effects on cultural and historic properties.
 - A. Archaeological work may include:
 1. Identification and evaluation of archaeological properties, including recommendations of eligibility for nomination to the National Register of Historic Places;
 2. Testing of potentially eligible historic properties for a determination of significance and eligibility for nomination to the National Register of Historic Places;
 3. Testing of historic properties to determine the nature and extent of cultural deposits;
 4. Data recovery.
 - B. Ethnographic work may include:
 1. Identification and evaluation of traditional cultural properties, other cultural properties, and burial sites, including, as applicable, recommendations of eligibility for nomination to the National Register of Historic Places;
 2. Treatment of the sites and properties;
 3. Conflict resolution.

PROTOCOL

These guidelines must be followed in any situation involving the discovery of any kind of cultural or historic property, including historical and prehistoric archaeological sites and traditional cultural properties, and human remains, whether previously identified or unknown.

In the event of a discovery, the project sponsor will inform the project contractor to temporarily cease work within 50 feet of the site. A 100-foot-radius avoidance zone will be maintained around discoveries containing human remains.

HPD will be contacted within one (1) working day at (928) 871-7198 or 7134 to arrange for proper evaluation of any discovery.

When a cultural or historic property is discovered:

1. HPD will make a determination of effect and significance of the cultural or historic property (ies) by the most efficient and expeditious means and notifies the BIA of these determinations.

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2. HPD will consult with interested parties, including other Indian tribes, during development of a scope-of-work and will take into account comments from interested parties into the scope-of-work.
3. In the event of a dispute concerning the disposition of human remains discovered on the Navajo Nation, the Navajo Nation Historic Preservation Officer will make all final decisions regarding resolution of disputes in accordance with Navajo Nation policies.

ADMINISTRATIVE PROCEDURES

In the event of a declaration of a discovery, the following the actions will be taken.

1. For discovery situations where a scope-of-work has been approved:
 - A. HPD will define a 50-foot-radius avoidance zone around the discovery (100-foot-radius if the discovery contains human remains) to remain in effect for the duration of investigations at the site.
 - B. HPD will make recommendations regarding significance and eligibility for nomination to the National Register of Historic Places for each discovered property.
 - C. If the property is eligible, HPD will establish a schedule to complete treatment.
 - D. HPD will implement or direct its contractor to implement the scope-of-work at each discovery consistent with the approved scope-of-work for the undertaking.
 - E. The methods of excavation, recordation, conservation, analysis, preservation, storage, interviewing or consultation with knowledgeable individuals and interested parties, and reporting of discoveries shall be consistent with the scope-of-work, the general and specific methods of treatment outlined below, and stipulations of any existing memorandum of agreement or programmatic agreement applicable to the undertaking.
 - F. HPD will simultaneously notify the BIA and all declared interested parties upon the completion of treatment.
 - G. The BIA will wait three (3) working days after work is completed at the discovery before letting the project contractor continue work in the avoidance zone. This period will enable consulting and interested parties to submit comments.
 - H. The results of the investigations at a discovery will be incorporated into the draft technical report. Confidential data resulting from the ethnographic assessment and provenience data for all cultural and historic sites will be provided in one or more detachable appendices. Confidential appendices will only be distributed to appropriate parties.
 - I. The contractor will finalize the technical report, incorporating or addressing comments received from HPD.
2. For discoveries situations where a scope-of-work has not been approved:
 - A. HPD will define a 50-foot-radius avoidance zone around the discovery (100-foot-radius if the discovery contains human remains) to remain in effect for the duration of investigations at the discovery.
 - B. HPD will make recommendations regarding significance and eligibility for nomination to the National Register of Historic Places for each discovered property.
 - C. If the property is eligible, HPD will establish a schedule to complete treatment.

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- D. HPD will prepare or direct a cultural resource management contractor to provide a scope-of-work within five (5) working days of the request.
- E. The methods of excavation, recordation, conservation, analysis, preservation, storage, consultation, and reporting of discoveries shall be consistent with the scope-of-work, the general and specific methods of treatment outlined below, and stipulations of any existing memorandum of agreement or programmatic agreement applicable to the undertaking.
- F. Upon approval of the scope-of-work by HPD, HPD will direct its contractor to implement the plan.
- G. HPD will simultaneously notify the BIA and all declared interested parties upon the completion of treatment.
- H. BIA will wait three (3) working days after work is completed at the discovery before letting the project contractor continue work in the avoidance zone.
- I. The results of investigations at a discovery will be incorporated into a draft technical report. Confidential data resulting from the ethnographic assessment and provenience data for all cultural and historic sites will be provided in one or more detachable appendices. Confidential appendices will only be distributed to appropriate parties.
- J. The contractor will finalize the technical report, incorporating or addressing comments received from HPD.

GENERAL METHODS OF TREATMENT

In all discovery situations the existing ground surface in the vicinity of the discovery will be mapped to show the relationship of the discovery to the project area, topographic features, cultural features, and surface artifacts. The map will be prepared using, at a minimum, a compass and measuring tape.

ARCHAEOLOGICAL METHODS: Assessment and treatment of cultural resources may be accomplished using archaeological methods. Data recovery strategies for historic properties may include in situ preservation, scientific testing and excavation, and documentation. This information will be used to develop a scope-of-work for treatment of affected properties. The plan will be implemented after approval of HPD.

The general process for treatment of archaeological components of historic properties is as follows:

1. Assessment of situation by a qualified archaeologist.
2. Development of a strategy to determine the significance of the property if significance is not explicit from visible evidence. Initiate a testing program if necessary.
3. Development of a strategy for data recovery and implementation of the plan for data recovery.

ETHNOGRAPHIC METHODS: Assessment and treatment of cultural resources and burials may be accomplished using ethnographic methods. Methods include conducting interviews with chapter officials, local and customary land users, and other knowledgeable individuals to elicit information regarding these surface features. This information will be used to develop a scope-of-work for treatment of affected properties. The plan will be implemented after approval of HPD.

The general process for treatment of traditional cultural properties, historical sites, and burials (not found in the context of a historic property) is as follows:

1. Assessment of situation by a qualified anthropologist and/or cultural specialist.

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2. Consultation with chapter officials, local and customary land users, and other knowledgeable individuals.
3. In the case of unclaimed human remains, consultation with interested parties, including officials from other Indian tribes.
4. Development of a scope-of-work, in consultation with HPD.
5. Implementation of the scope-of-work upon approval by HPD.
6. Preparation of a technical report; confidentiality of information will be ensured.

Burials not found in the context of a historic property will be treated in accordance with the Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains and the Native American Graves Protection and Repatriation Act.

SPECIFIC METHODS OF TREATMENT

The following methods of treatment are offered for situations in which a research design or scope-of-work has not been approved for the undertaking. If a research design or scope-of-work has been approved for a specific undertaking, discovered historic and cultural properties, and human remains, shall be treated in a manner consistent with the research design or scope-of-work, using the following treatment methods as a guideline.

ASH STAINS, HEARTHES, AND OTHER THERMAL FEATURES: The location will be mapped and the feature will be profiled and photographed. Excavated fill will be screened through quarter-inch or smaller mesh. If it appears that the feature can be dated through association of artifacts or stratigraphy, appropriate samples may be taken, including charcoal fragments for radiocarbon dating. Should the feature appear likely to yield botanical remains, pollen and flotation samples may be collected. HPD must be consulted before any samples are analyzed.

STORAGE PITS: The location will be mapped and the feature will be profiled and photographed. The feature will be fully excavated, and the fill must be screened through quarter-inch or smaller mesh screen. If it appears that the feature can be dated through association of artifacts or stratigraphy appropriate samples may be taken. Should the feature appear likely to yield botanical remains, pollen and flotation samples may be collected. All artifacts will be collected. HPD must be consulted before any samples are analyzed.

BURIED OR PARTIALLY BURIED STRUCTURES, MIDDENS, AND OTHER FEATURES: Examples of buried or partially buried features include pit structures, pothouses, and kivas. The location will be mapped and the feature will be profiled and photographed. Treatment of buried or partially buried features is a two-stage process involving (1) nature and extent testing within the area of effect to define the boundary of the feature and detect the presence of additional features and (2) data recovery within the area of effect. Systematic trenching in conjunction with 1 by 1 m test units, or other subsurface investigative techniques, may be used within the area of effect. Consultation with HPD is required after the initial recording has been completed for review of the data recovery plan.

Excavated fill will be screened through quarter-inch or smaller mesh. If it appears that the feature can be dated through association of artifacts or stratigraphy, or by radiographic or archeomagnetic dating, appropriate samples may be taken. Should the feature appear likely to yield botanical remains, pollen and flotation samples may be collected. HPD must be consulted before any samples are analyzed.

MISCELLANEOUS PREHISTORIC FEATURES: Examples of miscellaneous features include buried cultural horizons and agricultural features. The location will be mapped and the feature will be profiled and photographed. The strategy for treatment of miscellaneous prehistoric features is the same as that for buried or partially buried features.

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SURFACE FEATURES: Examples of surface features include field houses, jacal structures, ramadas, masonry structures, historical, contemporary, and modern structures, and various types of historic landscapes. The location will be mapped and the feature(s) will be photographed. Treatment of surface features may be a multistage process involving (1) intensive and extensive documentation of the property to define the boundary of the feature and detect the presence of additional features, (2) consultation with local and customary users, and other knowledgeable individuals, in order to determine the nature of the site, place, property, or feature and recommend a treatment plan, and (3) implementation of data recovery or the treatment plan within the area of effect.

The strategy discussed above for treatment of buried or partially buried features may be the appropriate way to treat some surface features and should be used as a guideline for data recovery. Alternatively, the strategy espoused below for traditional cultural properties and historical sites may be more appropriate and should be used as a guideline for treatment.

TRADITIONAL CULTURAL PROPERTIES (TCPs) AND HISTORICAL SITES: Examples of traditional or historical features include named landscape features, mineral or herb gathering areas, offering areas, hogans, trail markers, cairns, sheep corrals, ceremonial sites (e.g., Enemy Way sites), sweathouses, and tepee grounds. If a TCP or historical site is encountered, or information about a possible site is provided to the project sponsor or their agent by any knowledgeable or concerned individual, the project sponsor must ensure that work is discontinued within a 50-foot-radius of the property and contact HPD within one (1) day of the discovery. Treatment of TCPs or historical sites is a two-stage process involving (1) consultation with HPD along with local and customary users, and other knowledgeable individuals, in order to determine the nature of the site, place, property, or feature and recommend a scope-of-work and (2) implementation of the scope-of-work. Examples of treatment include, but are not limited to, the following:

1. Avoiding the remaining portion of the property through use of protective fencing or redesign of the undertaking or project.
2. Monitoring the remaining portion of the property during construction and/or erection of protective fencing to ensure protection.
3. Moving material remains of the TCP. This activity may include participation of local medicine men or women for ceremonial blessings.
4. Restricting construction activities to certain seasons or times of the day.
5. Conducting ceremonies for the well-being of properties that have been affected.

HPD will recommend the best possible treatment as guided by interviews and consultation.

HUMAN REMAINS: If human remains (whether modern, contemporary, historical, or prehistoric) are encountered at any phase of work, the project sponsor shall immediately take steps to preserve and protect the remains in situ. Work must cease within a 100-foot-radius of the remains and HPD must be contacted within one (1) working day of the discovery. Treatment of the human remains shall be dependent upon consultation with HPD. *Under no circumstances* shall the project sponsor or the project contractor further disturb human remains except under the formal direction of HPD. All human remains must be treated in accordance with the laws of the Navajo Nation. Claimed human remains shall not be disturbed without the consent of the next-of-kin. Unclaimed human remains shall be treated according to the provisions of the Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains and the Native American Graves Protection and Repatriation Act.