



SOCIETY FOR AMERICAN ARCHAEOLOGY

October 30, 2014

Mr. Stephen Robertson
United States Fish and Wildlife Service
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Re: “Draft Memorandum of Agreement among the U.S. Fish and Wildlife Service, The Advisory Council On Historic Preservation, The Arizona State Historic Preservation Officer, The Arizona Game And Fish Department, The Arizona State Museum, Pueblo Of Zuni, Acoma Pueblo, The Hopi Tribe, and the Navajo Nation Regarding the Treatment Of Disturbances To, And Long-Term Preservation Of, The Amity Pueblo Site (AZ Q:15:74[ASM]) Near Eagar In Apache County, Arizona.”

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 7,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

The Society for American Archaeology (SAA) offers the following comments:

1. The SAA recommends that accurate regulatory references and language need to be incorporated throughout the MOA. For example, the fourth Whereas Clause on p. 1 should be amended to read “ **WHEREAS**, the purpose of this Memorandum of Agreement (MOA or Agreement) is to resolve the adverse effects to the Amity Pueblo Site, AZ Q 15:74 (ASM), that resulted from the Undertaking.” Additionally, the last clause on page 4 should be amended to read “**NOW THEREFORE**, the Signatories agree that the following stipulations will be implemented in order to mitigate the adverse effects of the Undertaking on the Amity Pueblo Site (AZ Q 15:74 [ASM]) and to satisfy the Service’s responsibilities under Section 106 of the NHPA.”
2. The SAA would like to see the federal and state agencies whose undertaking resulted in adverse effects to Amity Pueblo commit to funding the work required to mitigation those adverse effects. To wit: the statement under Item III, Treatment of the Spoils Pile and Berm at Amity Pueblo” on p. 4 should be amended to read: “The Service shall work with AGFD to provide the funding needed to recover artifacts and bone material from the spoils pile and berm at Amity Pueblo that were created during the disturbance caused by the Undertaking.” Specific timeframes by which this mitigation is to be concluded also need to be included, as the duration for the MOA is noted as four years.

3. The SAA would like to see a separate stipulation, to be referred to as Item IV, titled “Long-Term Protection and Monitoring Plan” that will detail exactly how, and within what timeframes, the Service shall work with AGFD and the signatories to this MOA to determine the best approach to the protection and monitoring of Amity Pueblo and develop a written document describing the protection and monitoring plans to be implemented in perpetuity. (This would result in the deletion of Task 5 under Item III and the last sentence in III.B.)
4. The SAA notices that the only mitigation obligations discussed in the draft PA are those related to data recovery and a long-term protection and monitoring program. Our concern is that due to the significance of the Amity Pueblo Site under both NRHP Criteria A and B, and the disruption of human burials, these mitigative actions may not address all of the signatory Tribes’ needs nor address all of the impacts in a way that is commiserate with the effects of the Undertaking on the Site and the communities that are affiliated with it.
5. The SAA would recommend the ACHP review the language in stipulation XII, “Anti-Deficiency Act.” This language is often included in Programmatic Agreements (PAs) that seek to codify an alternative Section 106 process. However, this is not language typically found in MOAs, as mitigation under Section 106 of the NHPA is a requirement of the lead agency(ies) when adverse effects to historic properties cannot be avoided, regardless of costs and despite the fact in such post-review discovery situations like that experienced at the Amity Pueblo Site funding is often not authorized or allotted prior to adverse effects occurring. If a reference to the Anti-Deficiency Act is required, the SAA would recommend the following language be added: “The Service will aggressively seek sufficient funding through established procedures to fulfill its obligations under this MOA, in their entirety and within its agreed upon timeframes. If compliance with the Anti-Deficiency Act alters or impairs the Service’s ability to implement any portion of this MOA, the Service will consult with the signatories to this agreement under stipulation X, Amendments.

Thank you for your time and attention to this important matter.

Sincerely,



Jeffrey Altschul, Ph.D., RPA
President

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