



October 25, 2024

SENT VIA EMAIL

Michiko Martin, Regional Forester
333 Broadway Blvd SE
Albuquerque, NM, 87102
objections-southwestern-regional-office@usda.gov

Mr. Ted Wyka, Manager
DOE NNSA Los Alamos Field Office
3747 West Jemez Road
Los Alamos, NM 87544
theodore.wyka@nnsa.doe.gov

Re: Pueblo of Jemez Objection to Santa Fe National Forest Service (“Forest Service”) draft Decision Notice (“DN”) Finding of No Significant Impact (“FONSI”) and Final Environmental Assessment (“EA”) for the Los Alamos National Laboratory (“LANL”) Electrical Power Capacity Upgrade (“EPCU”) Project and Associated Land Management Plan (“Forest Plan”) Amendment

Dear Ms. Martin and Mr. Wyka,

The Pueblo of Jemez (“Pueblo”) is in receipt of the Forest Service’s draft decision notice determination of a FONSI and final EA for the LANL EPCU project and associated Forest Plan amendment. I understand the Forest Service’s draft decision would amend the Forest Plan with the establishment of a new management area known as the S/N Transmission Line Utility Corridor Management Area (“SNTUC”) and approve issuance of a special use permit to LANL for the construction and continued operation of a 115-kilovolt electrical line across National Forest System lands. The Pueblo unequivocally rejects the draft decision and calls upon the Forest Service to immediately rescind its notice. The basis of this objection is outlined in detail below and rooted in the Forest Service’s failure to uphold its trust responsibilities, its disregard for the National Environmental Policy Act (“NEPA”) and National Historic Preservation Act (“NHPA”), and its neglect of Pueblo cultural and environmental interests.

Office of the Governor

4471 Highway 4, Box 100 • Jemez Pueblo • New Mexico • 87024
(575) 834-7359 • Fax (575) 834-7331

Michiko Martin
Ted Wyka
October 25, 2024
Page Two

As a preliminary matter, the agency has provided no clear indication of how or when Tribal input will be incorporated through this objection process. This approach fundamentally undermines the Pueblo's ability to engage in meaningful consultation, preventing the Pueblo from providing informed responses and coordinated approaches. Meaningful Tribal consultation is a comprehensive, responsive, and ongoing process in which federal agencies work directly, transparently, government-to-government, with impacted Tribes to ensure project development and decision-making considers and protects Tribal interests, including cultural resource preservation central to the living cultural identity of our community.

I. The Preservation of the Entire Caja del Rio Cultural Landscape Is Necessary for Pueblo Cultural Survival

The Caja del Rio Plateau is one of America's most unique and special landscapes located within an area of profound cultural and spiritual significance for our Pueblo and other Tribes. Located on 106,883 acres of Bureau of Land Management ("BLM") and Forest Service lands in north-central New Mexico, the Caja del Rio acts as an important area of spiritual connection, grounding and connectivity between the Pueblos—the area provides a sense of memory and self-identity that speaks to the sacred connection between land, water, plants, wildlife and people since time immemorial. The Caja del Rio is recognized by our Pueblo's traditional leadership as a significant region of Pueblo cultural properties where our ancestors-built structures, kivas, roads, irrigation infrastructure, petroglyphs and other cultural resources, including burial sites within the landscape. The Caja del Rio contains a dense concentration of thousands of sacred sites, structures, petroglyphs, irrigation systems, and other cultural resources. Our Pueblo maintains an ongoing connection and use of the Caja del Rio landscape and its cultural resources, and sacred sites through story, song, pilgrimage, and prayer, and preserving the landscape's original historic and cultural context and this setting is critical for ongoing cultural religious access and for maintaining the cultural values and practices the Pueblo has engaged in long before the landscape became public lands mixed with private ownership.

While the Caja del Rio is home to numerous archaeological resources associated with Pueblo ancestors, many of the most significant cultural resources to our Pueblo and other Tribes are not archaeological in nature. These non-archaeological resources, equally important for their cultural and spiritual value, include traditional cultural properties and other features that cannot be identified by archaeologists, but only by Puebloan traditional practitioners and Tribally-designated cultural resource identification experts. However, the Forest Service and other federal agencies have relied on outdated archaeological literature reviews in their EA, failing to incorporate the vast body of traditional ecological knowledge that our Pueblo and other Pueblos have stewarded for millennia. This omission leaves a critical gap in understanding the true cultural and spiritual significance of the Caja del Rio. Today, we are compelled to confront the federal government's ongoing failure to uphold its trust responsibility. The lack of sufficient Tribal consultation on this project and related actions threatens the cultural vitality of the Caja del Rio and the very survival of Pueblo traditions. This failure undermines both federal legal obligations and the cultural rights of the Pueblo.

Office of the Governor

4471 Highway 4, Box 100 • Jemez Pueblo • New Mexico • 87024
(575) 834-7359 • Fax (575) 834-7331

II. Lack of Sufficient Tribal Consultation and Cultural Resource Analysis

By concluding that the project would not significantly impact cultural resources, the agency makes apparent the inadequacy of its assessment under the NHPA Section 106 Process and NEPA, including requirements to identify, assess, and mitigate impacts to cultural resources. The final EA fails to adequately identify cultural resources or sacred sites, and the living connection of our Pueblo to this region, thus undermining the cultural review process and FONSI. The final EA lacks the rigorous cultural resource analysis required under Section 106, and by proceeding without this analysis, the Forest Service not only ignores its obligations but also sets a dangerous precedent for future projects involving tribal connections on public lands. Instead, the EA details that the consultation process will proceed with the development of a MOU. This is contrary to the input provided by Pueblos who have repeatedly raised concerns with DOE, the Forest Service, and BLM about the lack of meaningful Tribal consultation with the Pueblos, resulting in the federal agencies failure to obtain critical cultural resource information regarding cultural resources in the Caja del Rio for many years. In fact, the All Pueblo Council of Governors through Resolution and many letters has urged the federal agencies to approach Tribal consultation that supports a Tribally-led ethnographic study to precede development decisions.

This study is not merely a recommendation—it is a legal requirement under NEPA and NHPA Section 106 and must be completed before any further development decisions are made. Any evaluation by DOE NNSA, BLM, and Forest Service, of the ancestral Puebloan archaeological sites as significant historical properties does not constitute adequate identification, documentation, and assessment because such archaeological information previously identified and compiled is merely a beginning point. To fulfill the DOE NNSA, BLM, and Forest Service objective in their respective federal undertakings to identify historic properties of cultural and religious significance, as well as its traditional cultural practices, the Pueblos need to inspect the proposed federal undertaking's project localities to evaluate the possibility that other Pueblo cultural resources, both archeological and natural exist. This expertise is something only the Pueblos alone possess. We urge the Forest Service to engage with us openly and honestly, ensuring that our input, questions, and interests are duly recognized and addressed throughout the project's development in order to uphold the solemn federal Indian trust responsibility and respect for the political status of Tribes as sovereign nations.

III. The Need for a Tribally Led Ethnographic Study

The Pueblo stands committed to supporting the proposed Tribally led ethnographic study, which takes a comprehensive approach to identifying and evaluating the cultural resources, sacred sites, and traditional practices tied to the Caja del Rio landscape. This study is essential for fulfilling the legal obligations under Section 106 of NHPA, which mandates the assessment of impacts to potentially eligible historic properties. The study will also provide critical data for compliance with other federal laws. This proposal

Michiko Martin
Ted Wyka
October 25, 2024
Page Four

consists as a baseline Pueblo ethnographic information related to affiliated Pueblo's connection and definition of cultural landscapes tied to Caja del Rio. However, this will not be an exhaustive cultural resource inventory of the region. The DOE NNSA, Forest Service, BLM, and BIA, along with their designated cultural resource management ("CRM") contractors, must collaborate with the Pueblo to ensure that cultural resource inventories for federal undertakings are accurate, comprehensive, and informed by Pueblo cultural expertise.

As consistently communicated by the Pueblo and affirmed in the EPCU EA and its related Cultural Resource Reports, there is extensive literature establishing the Pueblo's relationship to the Caja del Rio but not by or in coordination with Pueblo cultural specialists, the descendants of the peoples who stewarded this culturally vital landscape. The reliance by federal agencies on outdated literature reviews and archaeological surveys without the inclusion of Pueblo cultural specialists is wholly insufficient and unacceptable to our Pueblo. Such an approach fails to account for the living cultural knowledge that only Pueblo practitioners can provide.

As previously documented, many Pueblos maintain important traditional cultural affiliation with the Caja del Rio Traditional Cultural Landscape. Based on available literature, some Ancestral Puebloan archaeological sites and features, such as petroglyphs and ancestral villages related to the Caja del Rio have been identified. However, no available information exists, even at a general level, to evaluate these sites and features through present Pueblo ethnographic information. Many of the known archaeological sites and features may be held as significant cultural and historic properties by affiliated Pueblos; as such, the inclusion of relevant Pueblo perspectives in the formal evaluation of significance, many of these properties, as well as other cultural resources that do not compromise usual archaeological material traces, will likely be recommended as being potentially eligible for listing as historic properties or traditional cultural properties to the National Register of Historic Places.

Although current archaeological data described in the final EA provides a general understanding of the Caja del Rio landscape, it remains incomplete without complementary ethnographic documentation. This additional documentation is essential for providing DOE NNSA, the Forest Service, and BLM with the specific cultural information required for compliance with Section 106 and engage in effective and meaningful consultation with the Pueblos in currently proposed federal undertakings. Additionally, the Pueblos maintain shrines, springs, other blessing places, plant and mineral gathering collection of loci, hunting tracts, trails, viewsheds in their cultural repertoire of relationship with the Caja del Rio. Many of these cultural resources, including sacred sites, shrines, and gathering places, are unknown to archaeologists due to their specialized nature. Their proper identification and culturally appropriate evaluation can only be conducted by traditional practitioners from affiliated Pueblos, who possess the unique expertise and lived experience required to recognize and assess these sites during the time that cultural resources inventories are completed in the field.

Office of the Governor

4471 Highway 4, Box 100 • Jemez Pueblo • New Mexico • 87024
(575) 834-7359 • Fax (575) 834-7331

Michiko Martin
Ted Wyka
October 25, 2024
Page Five

The Caja del Rio contains these natural features, as well as subtle and apparent archaeological traces, evidencing the presence of a community agricultural landscape and other features necessary for the ongoing cultural usages of the landscape for the Puebloan that few professional archaeologists and cultural resource managers possess the special experience and training to identify, document, and evaluate these landscapes reliably and accurately. Within this community-based perspective, the Caja del Rio is an essential cultural-geographic component of each Pueblo's cultural landscape and provides essential cultural-historical context for evaluating the significance and assessing the impacts including the cumulative effects of the proposed EPCU on our cultural resources, traditional cultural properties, and sacred sites.

Instead, the federal agencies have focused on identifying historic properties primarily based on their evaluation under one or more National Register of Historic Places (NRHP) Criterion D. However, to be eligible for inclusion in the NRHP, a property must meet additional criteria beyond just one of the four NRHP criteria. The Pueblos have urged federal agencies to consider whether the identified historic properties and cultural practices that are deemed significant also exhibit some of the following seven characteristics: integrity of location, design, setting, materials, workmanship, feeling, and association.

Our Pueblo needs to assess federal agency evaluation of the potential adverse effects of the Area of Potential Effect ("APE") related to the EPCU, as well as other federal undertakings, on identified historic resources, cultural landscapes, and cultural practices over time. Pueblos will consider how the potential operation of the proposed EPCU have the potential for destruction or damage of all or part of a property from its historic location; change the character of a property's use or physical features that contribute to its historic significance; or introduce visual, atmospheric, or audible elements that diminish a properties historic features or associations (36 CFR 800.5.a.1): "Assessment of adverse effects"). Instead, the EPCU EA does not provide an adequate evaluation, resulting in a cumulative effects determination that overlooks our concerns. In contrast, a Pueblo ethnographic study will include the Pueblos' assessments of potential adverse effects and discussion of the anticipated nature of these effects (e.g., negligible, minor, moderate, or severe) as well as their impact on cultural practices. This important aspect has been neglected thus far.

In light of the Forest Service's growing recognition of the cultural significance of the Caja del Rio, it is imperative that a Tribally-led ethnographic study be conducted prior to any further decision-making. The proposed development threatens to significantly disrupt sacred sites and cultural practices, and this study is not only appropriate but legally required to ensure that these resources are protected in accordance with federal law.

IV. Need for an Environmental Impact Statement ("EIS") on the Proposed EPCU Project, Forest Service Amendment

To ensure compliance with legal obligations and to allow for an adequate assessment of impacts to cultural resources, our Pueblo via the APCG has formally requested that DOE NNSA immediately halt all

Office of the Governor

4471 Highway 4, Box 100 • Jemez Pueblo • New Mexico • 87024
(575) 834-7359 • Fax (575) 834-7331

Michiko Martin
Ted Wyka
October 25, 2024
Page Six

development of environmental and cultural reviews under NHPA and NEPA. This pause is necessary to allow for the completion of the Tribally-led ethnographic study, and incorporation of its results to inform the NHPA Section 106 cultural resource identification, assessment, and resolving of impacts requirements. Given the need to sufficiently inform the Forest Service's cultural review, the Pueblo likewise requests the Section 106 process incorporate the Tribally-led ethnographic study and be completed prior to finalizing of the Forest Plan's environmental assessment and record of decision. This will ensure the findings, determination, and resolution to the Section 106 process, including the Tribally-led ethnographic study, meaningfully informs the development, preferred alternative, and record of decision of the final EA for the Forest Plan amendment. To achieve this for the Forest Plan EA, both the NHPA and NEPA processes should be incorporated into a single timetable where, by statutory obligation, the Section 106 review is completed prior to the issuance of an agency decision. While agency compliance requirements under NEPA and NHPA are independent, integrating these processes in this way aims to promote transparency and accountability, supports a broad discussion of effects to Tribal cultural resources and historic properties, and ensures that Tribal input is considered in project decision-making.

The EPCU Project cannot move forward or be put into action without the Forest Service's approval of amendments to its Forest Plan, which has been in effect since August 2022, and the issuance of a special use permit for the project. The Forest Service supervisor is responsible for making decisions on these matters in accordance with the applicable laws, regulations, and guidelines governing the Forest Service. The Pueblo strongly urges the Forest Service to reject the proposed Forest Plan amendment and deny the special use permit due to significant procedural violations and substantive deficiencies in the EPCU Project, as outlined in this letter. Proceeding with the project without addressing these critical issues would represent a failure to meet federal legal requirements and trust obligations to the Pueblo.

Moreover, when evaluating a special use permit application, the Forest Service is required to reject any proposal if it finds that: (i) the proposed use conflicts with the land's management objectives or with existing uses, or (ii) the proposed use does not serve the public interest. In this case, approving the special use permit would be at odds with the management goals for the Caja Del Rio Wildlife and Cultural Interpretive Management Area. This amendment threatens to undermine conservation efforts outlined in the Forest Plan and contravenes the National Forest Management NFMA, MUSYA, and 2012 Planning Rule by introducing arbitrary exceptions to the established standards and guidelines. Consequently, the Forest Service should deny the permit application. Therefore, the Forest Service should reject the special use permit for the EPCU project due to its need for an unjustified amendment to the Forest Plan, the reliance on convenience over necessity, and its misalignment with the conservation objectives for the Caja. If the Forest Service considers granting the permit, it should only proceed after further environmental review under NEPA and preparation of an EIS, and it must ensure that stringent terms and conditions are imposed to uphold all Forest Plan standards and best management practices.

Office of the Governor

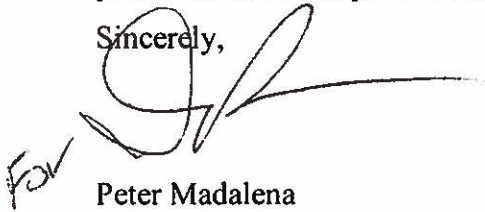
4471 Highway 4, Box 100 • Jemez Pueblo • New Mexico • 87024
(575) 834-7359 • Fax (575) 834-7331

Michiko Martin
Ted Wyka
October 25, 2024
Page Seven

V. Conclusion

In conclusion, approving the proposed amendment would set a troubling precedent and place the SFNF on a dangerous path toward further erosion and degradation of the special land use designations in the Forest Plan. While the final EA claims that “[a]dditional utility corridors would not be allowed,” granting an exception for this project undermines the credibility of this commitment and disregards and disrespects the eight years of cooperative and collaborative work that all stakeholders contributed to the original forest management plan. Once the door is opened for such exceptions, there is little assurance that the Forest Service will reject future requests or, that the public will be willing to engage in meaningful dialogue with the Forest Service, on proposals that deviate from established rules, standards, and guidelines, particularly for projects that do not align with the forest’s multiple use mission, ecological goal, and commitment in accordance with executive and secretarial orders to coordinate with Tribes, including our Pueblo, in the preservation of this precious and invaluable living landscape.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Madalena", with a long horizontal flourish extending to the right.

Peter Madalena
Governor

cc: Shaun Sanchez, Forest Supervisor
Santa Fe National Forest Service

The Honorable Martin Heinrich,
United States Senator

The Honorable Ben Ray Lujan,
United States Senator

The Honorable Teresa Leger Fernandez,
United States Representative (NM-CD-03)

The Honorable Melanie Stansbury,
United States Representative (NM-CD-01)

The Honorable Gabe Vasquez,
United States Representative (NM-CD-02)

The Honorable Deb Haaland,
Secretary of the United States Department of the Interior

The Honorable Tom Vilsack
Secretary of the United States Department of Agriculture

The Advisory Council on Historic Preservation

Office of the Governor

4471 Highway 4, Box 100 • Jemez Pueblo • New Mexico • 87024
(575) 834-7359 • Fax (575) 834-7331