



February 20, 2024

NNSA Los Alamos Field Office  
ATTN: EPCU Project NEPA  
3747 West Jemez Road  
Los Alamos, NM 87544

*Submitted via email to [EPCUEA@nnsa.doe.gov](mailto:EPCUEA@nnsa.doe.gov)*

**Re: Comments on Draft Environmental Assessment for Proposed LANL Transmission Line Across the Caja del Rio Plateau; Electrical Power Capacity Upgrade (EPCU) Project, DOE/EA-2199, LA-UR-23-325753**

Dear National Nuclear Security Administration:

Thank you for this opportunity to provide input on the National Nuclear Security Administration (NNSA) proposal to construct and operate a new 14-mile, 115-kilovolt (kV) power transmission line across the Caja del Rio plateau (Caja) to serve as a second redundant source of power for Los Alamos National Laboratory (LANL) (EPCU Project). At approximately 107,000 acres, managed by the Santa Fe National Forest (SFNF), the Bureau of Land Management (BLM), and the National Park Service (NPS), the Caja is one of the most ecologically rich and culturally significant landscapes in the American Southwest. The undersigned organizations, representing millions of members, have been working for permanent land, wildlife, watershed, and cultural resource protections on the Caja for years, and have a vested interest in projects, like this proposal, that will permanently and irreparably damage the naturalness, recreational opportunities, and wildlife habitat and corridors, as well as unique cultural and archaeological resources present on the Caja.

NNSA, along with cooperating agency SFNF and participating agency BLM, has issued a draft environmental assessment (EA) for the Project. To move forward, the EPCU Project would require a new right-of-way (ROW) on BLM land (about 2.5 miles), a special use permit (SUP) from the SFNF, and an amendment to the Land Management Plan (LMP) for the SFNF that took effect in August 2022.

The draft EA reflects that the potential environmental impacts of the EPCU Project would be significant to the human and natural environment, especially the sensitive cultural and natural resources of the Caja. NNSA must therefore either choose the no action alternative or analyze this proposal through the use of an Environmental Impact Statement (EIS), rather than proceed with a final EA and a finding of no significant impact (FONSI). If NNSA prepares a full EIS, it must also consider additional reasonable alternatives, such as onsite renewable energy generation and reconductoring lines to increase existing line capacity, that would allow LANL to meet its energy needs and national security mission without compromising the sensitive natural and cultural resources on the Caja.

**A. THE PROJECT WILL CAUSE SIGNIFICANT ADVERSE IMPACTS TO THE CULTURAL AND NATURAL RESOURCES OF THE CAJA DEL RIO.**

The Caja del Rio is located on approximately 107,000 acres of BLM and SFNF public lands in north-central New Mexico. If constructed, the EPCU Project would result in new transmission lines and towers bisecting the Caja, including 2.5 miles of infrastructure across BLM lands and 8.6 miles of infrastructure across SFNF lands, before ultimately spanning White Rock Canyon across the Rio Grande. The NNSA’s proposal poses an imminent threat to the delicate balance of the Caja, risking irreversible damage to its ecological and cultural resources.

Local governments, including the City of Santa Fe, Santa Fe County, and San Miguel County, have adopted resolutions affirming that the Caja is “one of the United States’ most iconic landscapes, an area of profound cultural, historical, archaeological, and ecological significance.”<sup>1</sup> The Board of Directors for the Northern Río Grande National Heritage Area has likewise recognized the significance of the Caja landscape.<sup>2</sup> In creating the National Heritage Area in 2006,<sup>3</sup> Congress expressly found that

- (1) northern New Mexico encompasses a mosaic of cultures and history, including 8 Pueblos and the descendants of Spanish ancestors who settled in the area in 1598;
- (2) the combination of cultures, languages, folk arts, customs, and architecture make northern New Mexico unique; [and]
- (3) the area includes spectacular natural, scenic, and recreational resources[.]<sup>4</sup>

The Caja exemplifies all of these values, as further discussed below.

---

<sup>1</sup> **Exhibit A**, City of Santa Fe, New Mexico, Resolution No. 2022-34, A Resolution Supporting the Permanent Preservation of the Caja del Rio Cultural Landscape and Wildlife Area (June 29, 2022); see also **Exhibit B**, Board of County Commissioners of Santa Fe County, Resolution No. 2022-830, A Resolution Supporting the Permanent Preservation of the Caja del Rio Cultural Landscape and Wildlife Area (May 11, 2022); **Exhibit C**, San Miguel County Resolution No. 03-14-23-B-Commission, Supporting the Permanent Preservation of the Caja del Rio Cultural Landscape & Wildlife Area (Mar. 14, 2023).

<sup>2</sup> **Exhibit D**, Northern Rio Grande National Heritage Area, Resolution No. 2023-02, A Resolution Supporting the Permanent Preservation of the Caja del Rio Cultural Landscape & Wildlife Area (Feb. 18, 2023).

<sup>3</sup> National Heritage Areas Act of 2006, Pub. L. 109-338 (Oct. 12, 2006).

<sup>4</sup> *Id.* at Sec. 202.

**1. The Project Will Significantly Affect the Cultural, Traditional, Spiritual, Historical, and Archaeological Values of the Caja.**

The Caja landscape holds profound cultural and spiritual significance for both sovereign Indigenous and traditional Hispanic communities in northern New Mexico.

The Caja has been inhabited by Native and Indigenous communities from time immemorial to the present, with evidence of human occupation going back over 12,000 years.<sup>5</sup> In 2021, the All Pueblo Council of Governors (APCG) adopted a resolution supporting preservation of the Caja as a traditional cultural landscape and urging the United States Forest Service (USFS) and Department of Energy (DOE) to fully assess potential environmental and cultural resources impacts of the proposed Project.<sup>6</sup> As stated in the resolution, Pueblo traditional leadership recognizes the Caja “as a significant region of Pueblo cultural properties where our ancestors built housing structures, ceremonial kivas, roads, irrigation infrastructure, petroglyphs and other cultural resources.”<sup>7</sup> The Caja contains a “dense concentration of thousands of sacred sites, structures, petroglyphs, irrigation systems, and other cultural resources,” including many cultural resources and sacred sites that are not documented.<sup>8</sup> Cultural artifacts found on the Caja include well-preserved petroglyphs depicting thunderbirds, elk, spirals, stars, and more that decorate the black basalt escarpment and canyon walls on the site’s eastern plateau. Pueblos continue to use this cultural landscape and maintain a connection to it through ongoing traditional use of flora and fauna and cultural religious practices, including storytelling, songs, pilgrimage, and prayer.<sup>9</sup> Preserving the landscape’s historic and cultural context is critical for ongoing cultural religious access and use.

The Caja also retains deep historical significance for traditional local Hispanic communities.<sup>10</sup> The Caja represents the key landscape demarcation between what the Spanish colonial world termed the “Rio Abajo” and “Rio Arriba” regions of New Mexico.<sup>11</sup> The Caja is home to one of the most iconic stretches of the famed El Camino Real de Tierra Adentro, the longest Euro-American trade route in North America that ran from Mexico City to Ohkay Owingeh Pueblo.<sup>12</sup> Considered one of

---

<sup>5</sup> NNSA, Los Alamos National Laboratory Electrical Power Capacity Upgrade Project, Draft Environmental Assessment, at 3-14 (Nov. 2023) [hereinafter “Draft EA”].

<sup>6</sup> **Exhibit E**, All Pueblo Council of Governors, Res. No. APCG 2021-013, Supporting Preservation of the Caja del Rio Traditional Cultural Landscape and Urging the United States Forest Service (“USFS”) and Department of Energy (“DOE”) to Fully Assess Potential Environmental and Cultural Resource Impacts of the Proposed Electrical Power Capacity Upgrade Project (Nov. 29, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See generally Santa Fe New Mexican, My View by Carmichael Dominguez & Michael Romero Taylor, It’s personal: We must unite to protect the Caja (Jan. 27, 2024), available at [https://www.santafenewmexican.com/opinion/my\\_view/its-personal-we-must-unite-to-protect-the-caja/article\\_2b22f1d8-bb3c-11ee-8e8d-df8fae5d6737.html](https://www.santafenewmexican.com/opinion/my_view/its-personal-we-must-unite-to-protect-the-caja/article_2b22f1d8-bb3c-11ee-8e8d-df8fae5d6737.html).

<sup>11</sup> Exhibit B, *supra* note 1.

<sup>12</sup> Santa Fe National Forest, Land Management Plan, at 189 (July 2022), available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd1046331.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd1046331.pdf) [hereinafter “SFNF LMP”].

the most important trade routes to the Spanish Crown and designated as a National Historic Trail (NHT) by the United States Congress, El Camino Real de Tierra Adentro was used for over 300 years (16<sup>th</sup>-19<sup>th</sup> century) to bring social, cultural, and economic exchange to northern New Mexico.<sup>13</sup> Various petroglyphs and archaeological sites along El Camino Real de Tierra Adentro speak to the arrival, culture, and influence of the Spanish in the area.<sup>14</sup> On the Camino Real, the Caja served as the gateway to the City of Santa Fe; in fact, Santa Fe may not even exist today if it were not for the historic stretches of the Camino Real that run along the Caja. The proposed transmission line will impact one of the oldest sections of El Camino Real de Tierra Adentro that was utilized from 1598-1610, before the capital was moved from Ohkay Owingeh to Santa Fe.

Local Hispano communities, including Jacona, Agua Fria, La Cieneguilla, La Cienega, and La Bajada, maintain deep ties and living roots in the Caja cultural landscape as “Ejido” (communal) through perpetuation and practice of traditional uses of flora and fauna and by pilgrimage and prayer, and act as living repositories of traditional ecological and cultural knowledge of the area.<sup>15</sup>

Today, the traditions endure, with members of the Pueblos and traditional Hispanic communities engaging in religious practices, hunting, fishing, herb gathering, firewood collection, and piñon gathering. Traditional livestock production continues on the Caja through cooperation between livestock permittees, traditional merced and acequia communities as political subdivisions of New Mexico, and federal agencies.<sup>16</sup> Moreover “residents and spiritual leaders throughout Santa Fe County and the United States recognize the sacred value of the Caja del Rio and utilize the area as a place of prayer, silence, solitude, worship and sacred pilgrimage.”<sup>17</sup>

The importance of cultural and archaeological sites on the Caja is reflected by the Galisteo Basin Archaeological Sites Protection Act.<sup>18</sup> The Act identifies multiple sites on and near the Caja as “well preserved prehistoric and historic archaeological resources of Native American and Spanish colonial cultures,” including “the largest ruins of Pueblo Indian settlements in the United States, spectacular examples of Native American rock art, and ruins of Spanish colonial settlements.”<sup>19</sup>

As discussed throughout these comments, the EPCU Project puts the cultural, traditional, historical, religious, and archaeological values of the Caja at risk. The Caja already faces an array of significant threats to these resources, including petroglyph defacement, desecration of sacred and archaeological sites, vandalism, theft, illegal shooting and poaching of wildlife and livestock, illegal dumping, theft of stock tanks, unlawful off-highway vehicle (OHV) use, habitat

---

<sup>13</sup> Exhibit B, *supra* note 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Galisteo Basin Archaeological Sites Protection Act, 118 Stat. 558, Pub. L. No. 108-208 (Mar. 19, 2004).

<sup>19</sup> 118 Stat. 559.

fragmentation, disturbance and erosion from illegal roads, and unmanaged/unlawful recreation.<sup>20</sup> Due to these issues, the “New Mexico Heritage Preservation Alliance has listed the Caja del Rio as one of the ‘most endangered places’ in New Mexico.”<sup>21</sup> The EPCU Project will intensify these problems at a time when local communities are fighting to provide the Caja with permanent protection, responsible stewardship, and long-term management.

## **2. The Project Will Significantly Affect Wildlife, Wildlife Habitat, and Wildlife Corridors on the Caja.**

The Caja contains an array of wildlife, wildlife habitat, and wildlife corridors that would be harmed by the EPCU Project, including endangered, threatened, and sensitive species; migratory birds; eagles and other raptors; riparian and cliff-side habitat; and large mammals and game species that depend on the project area for breeding and movement. Impacts to wildlife resources dictate that NNSA must either choose the no action alternative or proceed with the preparation of an EIS and robust biological assessment.

In the recently adopted SFNF Land Management Plan (Forest Plan or LMP), the USFS specifically recognizes that “the Caja is diverse in plant and animal species, both in overall numbers (population) as well as what species are found in the area (biodiversity).”<sup>22</sup> The Caja’s habitat and biodiversity are especially “rich due to the interplay between the locally diverse environments . . . when compared to other areas of the forest, including the range from steep canyon riparian to open grassland on the south end and rugged volcanic country on the plateau above the river.”<sup>23</sup>

It is inevitable that the EPCU Project will have significant negative effects on resident and migratory species of wildlife that live in or pass through the project area. The construction of 14 miles of 115 kV electric power transmission line on 70-foot towers within a 100-foot ROW would introduce a new, permanent feature into the landscape that would disturb wildlife, cause wildlife to adopt new behavior patterns that avoid the transmission line, and fragment and bisect habitat. The high mesa proposed for placement of the new transmission line is already subject to fragmentation by natural features, roads and off-highway vehicle (OHV) trails, and the existing Reeves and Norton transmission lines, all of which create cumulative impacts that must be further analyzed.

The draft EA properly considers potential impacts to species listed under the federal Endangered Species Act of 1973 (ESA),<sup>24</sup> New Mexico state-listed species,<sup>25</sup> USFS “at-risk” species and Species

---

<sup>20</sup> Exhibit B, *supra* note 1.

<sup>21</sup> *Id.*; see also Exhibits A, C, *supra* note 1.

<sup>22</sup> SFNF LMP, *supra* note 12, at p. 200.

<sup>23</sup> *Id.*

<sup>24</sup> Endangered Species Act of 1973 (ESA), 16 U.S.C. §§ 1531-1544.

<sup>25</sup> N.M. Wildlife Conservation Act, NMSA 1978, §§ 17-2-37 to -46 (1974, as amended through 1995); see NMSA 1978, §§ 17-1-14 to -26 (granting rulemaking authority to the state game commission); see also 19.33.6 NMAC (List of Threatened and Endangered Species).

of Conservation Concern (SCC), BLM sensitive species, migratory birds, and bald and golden eagles. The analysis in the draft EA contains serious shortcomings, however, including failure to identify and analyze impacts to a federally listed species, reliance on too-narrow surveys that likely missed protected and sensitive species including migratory birds and raptors, underestimates of the impacts to many species that are addressed, a lack of detailed analysis for many species, the omission of impacts to large mammals and game species, an inadequate cumulative impacts analysis, and insufficient mitigation measures. To remedy these issues, the NNSA must either adopt the No Action alternative or prepare a more detailed EIS and Biological Assessment and initiate informal consultation with the U.S. Fish and Wildlife Service under Section 7 of the ESA.

**a. Inadequate Analysis of Impacts to Federally Listed Species under the Endangered Species Act**

Most glaringly, the draft EA fails to analyze impacts to the federally endangered New Mexico meadow jumping mouse (*Zapus hudsonius luteus*), despite the presence of suitable riparian habitat along the Rio Grande.<sup>26</sup> The draft EA does include brief consideration of the species as a New Mexico endangered species and species of greatest conservation need, but the analysis is flawed.<sup>27</sup> The Wildlife Report identifies the presence of the willow-alder ecosystem along the Rio Grande and states that the New Mexico meadow jumping mouse uses this habitat, yet the draft EA reaches the arbitrary conclusion that the EPCU Project will not impact the species due to a lack of suitable habitat. The NNSA must consider the potential impacts resulting from spanning the river canyon and associated construction on either side of the canyon for this species and others. The NNSA cannot discharge this obligation on its own and must initiate informal consultation with the U.S. Fish and Wildlife Service or else risk placing the entire EPCU Project in violation of the ESA.

Section 7 consultation is also needed to confirm the NNSA's conclusion that there would be no effect on other federally listed species, despite the possibility of transient individuals. The draft EA acknowledges that several listed species, including the endangered Mexican gray wolf (*Canis lupus baileyi*), endangered southwestern willow flycatcher (*Empidonax traillii extimus*), and threatened yellow-billed cuckoo (*Coccyzus americanus*), might be present in the vicinity but would not be impacted because they "would avoid the project area."<sup>28</sup> Yet the southwestern willow flycatcher has designated critical habitat along the Rio Grande, both south and north of the project area, and likely uses the project area to disburse and migrate.<sup>29</sup> Similarly, the project is located within the habitat range map for the yellow-billed cuckoo, which has designated critical habitat only 24 miles south of the project site, and the riparian habitat along the Rio Grande meets baseline habitat

---

<sup>26</sup> Draft EA, *supra* note 5, at pp. E-10 (identifying .6 acres of willow-thinleaf alder ecosystem along the Rio Grande); E-17 (noting that New Mexico meadow jumping mouse uses riparian areas along perennial streams that are composed of willows and alders).

<sup>27</sup> *Id.* at p. E-17.

<sup>28</sup> *Id.* at pp. E-14, E-15.

<sup>29</sup> *Id.* at p. E-14; see also U.S. Fish & Wildlife Serv., ECOS Environmental Conservation Online System, Southwestern willow flycatcher, <https://ecos.fws.gov/ecp/species/6749>.

requirements for the species.<sup>30</sup> The recent documentation of a Mexican gray wolf in the vicinity of the project area demonstrates that the Caja could serve a vital role in the disbursement and recovery of this species.<sup>31</sup> Mexican gray wolves that travel outside the experimental population area, which is located south of Interstate 40, are fully protected as an endangered species under the ESA.<sup>32</sup>

The fact that these listed species would avoid the project is itself an effect on those species, if their avoidance of the area is in response to the Project. Rather than assume no effect on federally listed species, the NNSA should initiate informal consultation on this Project, and prepare a comprehensive EIS and biological assessment.

**b. Inadequate Analysis of Impacts to State-Listed Species and Sensitive Wildlife Species**

The NNSA must address impacts to the array of sensitive riparian and cliff-dwelling species in greater detail in the EA/EIS analysis. The EA does recognize the presence of numerous riparian and cliff-dwelling species in the canyon of the Rio Grande, but asserts that the EPCU project will have no effect or low effect on these species because the conductor will pass over the canyon, and installation will occur outside the timeframe of November through December and February through March to avoid the highest migration periods of sandhill cranes and waterfowl.

Identified species in this category include state-listed and SCGN species (New Mexico meadow jumping mouse, spotted bat (*Euderma maculatum*), bald eagle (*Haliaeetus leucocephalus*), Bell's vireo (*Vireo bellii*), common black hawk (*Buteogallus anthracinus*), least tern (*Sternula antillarum*), northern beardless-tyrannulet (*Camptostoma imberbe*), and peregrine falcon (*Falco peregrinus*), also listed as a Forest Service SCC); and BLM sensitive species (spotted bat (*Euderma maculatum*), Townsend's big-eared bat (*Corynorhinus townsendii*), western yellow bat (*Lasiurus xanthinus*), and northern leopard frog (*Lithobates pipiens*)). While some of these species may not be affected by overhead wires or construction occurring at or near the top of their cliffside homes, the NNSA must analyze each in greater depth before proceeding with the project.

Similarly, the NNSA must address impacts on additional species that rely on the Caja plateau. The draft EA does recognize impacts on the state-listed SCGN species gray vireo (*Vireo vicinior*), which will be affected by the EPCU Project, but concludes that it will not be affected simply because

---

<sup>30</sup> Draft EA, *supra* note 5, at p. E-15; see also U.S. Fish & Wildlife Serv., ECOS Environmental Conservation Online System, Yellow-billed cuckoo, <https://ecos.fws.gov/ecp/species/3911>.

<sup>31</sup> U.S. Fish & Wildlife Service, Female Mexican Wolf Captured and Paired with Mate in Captivity (Dec. 11, 2023), <https://www.fws.gov/press-release/2023-12/female-mexican-wolf-captured-and-paired-mate-captivity>.

<sup>32</sup> National Park Service, Valles Caldera National Preserve, Mexican Wolf, <https://www.nps.gov/vall/learn/nature/mexican-wolf.htm#:~:text=They%20have%20been%20listed%20as,for%20more%20than%2090%20years.>

additional habitat is available in the area. However, as the New Mexico Department of Game and Fish (NMDGF) has recognized, “[w]hen wildlife [is] displaced due to habitat loss and fragmentation, it moves into areas of lower habitat value or quality, and/or areas which are already occupied at their carrying capacity. Thus, overall carrying capacity is reduced at the population level” for these affected species.<sup>33</sup> Before proceeding, the NNSA must analyze the specific impacts of the project upon each of the species that will be displaced.

Moreover, the draft EA omits mention of additional state-listed and SCGN species that occur on the Caja, including juniper titmouse (*Baeolophus ridgwayi*), Western bluebird (*Sialia mexicana*), mountain bluebird (*Sialia currucoides*), Bendire’s thrasher (*Toxostoma bendirei*), Cassin’s sparrow (*Peucaea cassinii*), common nighthawk (*Chordeiles minor*), and black-throated gray warbler (*Setophaga nigrescens*). The New Mexico Avian Conservation Partners<sup>34</sup> have identified numerous additional species of concern that have been documented on, or could occur on, the Caja: Woodhouse’s scrub-jay (*Aphelocoma woodhouseii*), scaled quail (*Callipepla squamata*), bushtit (*Psaltriparus minimus*), broad-tailed hummingbird (*Selasphorus platycercus*), canyon towhee (*Melospiza fusca*), mountain chickadee (*Poecile gambeli*), rock wren (*Salpinctes obsoletus*), rufous-crowned sparrow (*Aimophila ruficeps*), Townsend’s solitaire (*Myadestes townsendi*), violet-green swallow (*Tachycineta thalassina*), and Western screech-owl (*Megascops kennicottii*).

Additionally, the draft EA fails to acknowledge or analyze project impacts on Western burrowing owl (*Athene cunicularia ssp. hypugaea*), listed as a Forest Service SCC. The Wildlife Report notes the presence of their Colorado Plateau/Great Basin Grassland habitat throughout the project area, which consists of grasses and interspersed shrubs.<sup>35</sup> The Wildlife Report also states that burrowing owls occur in grasslands and desert scrub, usually in association with burrowing rodents.<sup>36</sup> The vegetation surveys conducted for the EPCU Project specifically checked for burrowing owls and found evidence of active burrows and mounds (likely in current use by kangaroo rats). The burrows of Gunnison prairie dogs often function as primary burrowing owl habitat, and these burrows occur throughout the project area both on BLM land as well as on SFNF land throughout the plateau where the proposed line and accompanying roads will traverse. Yet the Wildlife Report reaches the arbitrary conclusion that this “species does not occur in the project area due to lack of suitable habitat.”<sup>37</sup>

As the BLM (a participating agency) knows, Western burrowing owls do use the Caja, and they have already suffered impacts from development and unmanaged recreation, including target

---

<sup>33</sup> NMDGF, Oil and Gas Development Guidelines: Conserving New Mexico’s Wildlife Habitat and Wildlife, at p.9 (2007), available at <https://www.wildlife.state.nm.us/download/conservation/habitat-handbook/project-guidelines/Oil-and-Gas-Guidelines.pdf>.

<sup>34</sup> New Mexico Avian Conservation Partners, <https://avianconservationpartners-nm.org/mission/>.

<sup>35</sup> Draft EA, *supra* note 5, at p. E-9.

<sup>36</sup> *Id.* at p. E-26.

<sup>37</sup> *Id.*



shooting.<sup>38</sup> Additionally, studies of New Mexico’s populations of burrowing owls have shown that loss of suitable nesting habitat and degraded habitat are primary reasons for their decline.<sup>39</sup> With a culture of illegal OHV use and a lack of adequate federal resources to currently support responsible travel management on the Caja, new permanent and temporary roads and spurs created by the proposed project raise serious short and long-term concerns about the destruction to burrowing owl habitat.<sup>40</sup> Further, the U.S. National Partners in Flight classify burrowing owls as a species of “high responsibility” based on breeding survey trends and breeding range within western physiographic areas.<sup>41</sup> If the NNSA seeks to proceed with the project, then it has a high responsibility to fully analyze and assess short and long-term impacts to Western burrowing owls, including cumulative impacts, in an EIS.

**c. Inadequate Surveys and Analysis of Impacts to Birds and Raptors, Including Migratory Birds and Eagles**

As recognized in the SFNF Forest Plan, the Caja is “an important bird area; declining grassland bird species can be found on the plateau, as well as other birds such as golden and bald eagles and peregrine falcons.”<sup>42</sup> The Wildlife Report<sup>43</sup> reflects that the Caja has been designated an Important Bird Area (IBA) by Audubon,<sup>44</sup> based on the presence of species of conservation concern and desert species that are rarely found so far north, creating a unique mix of species.

Due to “the increased focus on conservation in IBAs,” the Wildlife Report states that an avian point count survey was conducted over four days in April and May 2021, which identified 40 species visible or audible from 19 points along the project route.<sup>45</sup> Identified species included many species protected by the Migratory Bird Treaty Act of 1918 (MBTA).<sup>46</sup> However, because the avian survey was conducted in only one year and one season, it likely represents a significant undercount of the species that utilize the project area.

The draft EA states that mitigation measures will be undertaken to protect these species, but without a complete picture of the species present or any information regarding if and how they will

---

<sup>38</sup> BLM Press Release, \$5000 Reward for Burrowing Owl Case in New Mexico (July 22, 2016), *available at* <https://www.blm.gov/press-release/5000-reward-burrowing-owl-case-new-mexico>; *see also* Taos News, Rare burrowing owl shot to death (Jul. 6, 2016), *available at* [https://www.taosnews.com/news/rare-burrowing-owl-shot-to-death/article\\_36a0a5a0-f751-574e-8d96-631eaa47d915.html](https://www.taosnews.com/news/rare-burrowing-owl-shot-to-death/article_36a0a5a0-f751-574e-8d96-631eaa47d915.html).

<sup>39</sup> See Patricia C. Arrowood, Carol A. Finley, & Bruce C. Thompson, *Analyses of Burrowing Owl Populations in New Mexico*, 35 J. of Raptor Research 362 (Jan. 2024), *available at* <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=2539&context=jrr>.

<sup>40</sup> See NMDGF, State Wildlife Action Plan, Burrowing Owl, *available at* <https://nmswap.org/species/162/burrowing-owl>.

<sup>41</sup> See Arrowood et al., *Analyses of Burrowing Owl Populations in New Mexico*, *supra* note 39.

<sup>42</sup> SFNF LMP, *supra* note 12, at p. 200.

<sup>43</sup> Draft EA, *supra* note 5, at p. E-6.

<sup>44</sup> See Audubon, Important Bird Areas, <https://www.audubon.org/important-bird-areas>.

<sup>45</sup> Draft EA, *supra* note 5, at pp. E-11, E-12.

<sup>46</sup> Migratory Bird Treaty Act of 1918 (MBTA), 16 U.S.C. §§ 703-712.

respond to proposed mitigation measures, the analysis is incomplete. An EIS is necessary to provide an appropriately thorough and complete explanation of NNSA's plan to conserve these vital, internationally protected species.

Of particular concern, burrowing owls and pinyon jays, two imperiled, sensitive species protected by the MBTA,<sup>47</sup> heavily rely on the project area. As discussed above, burrowing owl habitat exists along various points along the proposed project area across Forest Service land as well as along the BLM land running along Dead Dog Leg Road and Buckman Road. As discussed further below, pinyon jays nest and feed in the piñon-juniper forests within the project area and in surrounding areas throughout the year. The EPCU Project would result in the removal and degradation of pinyon jay habitat. Additionally, the installation of power lines could potentially affect pinyon jay reproductive output, because ravens, one of the pinyon jay's primary egg, nestling, and fledgling predators, could use towers and power lines as perches to more easily see where pinyon jays are nesting or where creches (groups) of recently fledged pinyon jays are located.<sup>48</sup> As further addressed elsewhere in these comments, the draft EA fails to adequately identify impacts to these two species.

Raptors, including bald and golden eagles protected by the Bald and Golden Eagle Protection Act,<sup>49</sup> will also be affected by the EPCU Project. The Wildlife Report acknowledges that the project would have some impact (low impact) on bald eagles and peregrine falcons because both species use suitable habitat along the Rio Grande.<sup>50</sup> The identification of an unoccupied golden eagle nest 1.3 miles from the project area demonstrates that golden eagles likewise use the project area.<sup>51</sup> Other species of raptors also use the area and were simply missed, like additional species of migratory birds, because of inadequate surveys. Rather than assume that planned mitigation measures will adequately protect these species, the NNSA should prepare an EIS that includes more robust survey information and analysis of how raptors will respond to mitigation.

#### **d. Inadequate Surveys and Analysis of Impacts to Mammals, Migratory Species, and Wildlife Corridors**

As reflected in the Forest Plan, the Caja's "remote setting, limited motorized routes, and continuity with recommended and designated wilderness as well as inventoried roadless areas along the corridor of the Rio Grande River provide habitat connectivity for daily and seasonal wildlife movement along and across the river and the potential for long-distance range shifts of species."<sup>52</sup>

---

<sup>47</sup> List of Birds Protected by the Migratory Bird Treaty Act, 50 C.F.R. § 10.13, *available at* <https://www.ecfr.gov/current/title-50/chapter-I/subchapter-B/part-10/subpart-B/section-10.13>

<sup>48</sup> Johnson, K., and R. P. Balda. 2020. Pinyon Jay (*Gymnorhinus cyanocephalus*), version 2.0. In *Birds of the World* (P. G. Rodewald and B. K. Keeney, Editors). Cornell Lab of Ornithology, Ithaca, NY, USA. <https://doi.org/10.2173/bow.pinjay.02>.

<sup>49</sup> Bald and Golden Eagle Protection Act of 1940, 16 U.S.C. § 668.

<sup>50</sup> Draft EA, *supra* note 5, at pp. E-18, E-19.

<sup>51</sup> *Id.* at pp. 3-9, 3-12, E-31.

<sup>52</sup> SFNF LMP, *supra* note 12, at p. 200.

Despite the importance of the Caja to wildlife, the draft EA overlooks most species of mammals that are present in the area, including sensitive species and larger migratory species such as mule deer (*Odocoileus hemionus*), elk (*Cervus elaphus nelsoni*), black bear (*Ursus americanus*), mountain lion (*Puma concolor*), gray fox (*Urocyon cinereoargenteus*), coyote (*Canis latrans*), and American badger (*Taxidea taxus*). The project area includes crucial habitat for these species, including migration paths, breeding grounds, and essential areas for relocation during wildfires in surrounding forested areas and for adaptation to a changing climate. The project will fragment and bisect this important wildlife habitat and corridor area and fails to consider the complex “interplay” of biodiversity and ecosystems the USFS has acknowledged that make this area “unique” and worthy of special management.<sup>53</sup>

Yet, when preparing the Wildlife Report, the only surveys conducted were bird and vegetation surveys that included looking for special status species and the burrows and mounds used by Gunnison’s prairie dog (*Cynomys gunnisoni*) and burrowing owl (*Athene cunicularia*). The surveys did not consider the presence of large mammals, including game species, migratory species, and ungulates. Moreover, the vegetation surveys covered only a 300-foot strip, including the permanent 100-foot ROW and the additional 200-foot temporary ROW needed for construction. The draft EA does not consider the impacts that will occur outside the 300-foot construction corridor, making it inadequate for evaluating impacts on wildlife, including large mammals, black-tailed prairie dog (*Cynomys ludovicianus*), and other species that may utilize the project area but are not considered in the draft EA.

The Caja has been identified as part of the Western Wildway Priority Wildlife Corridor<sup>54</sup> and provides crucial wildlife habitat and corridors both on the mesa top and along the Rio Grande. The draft EA recognizes that many species of wildlife present in the project area have suffered declines due to development, recreation, and habitat fragmentation. However, in considering the cumulative impacts of the EPCU Project on these species, the EA concludes that most impacts would be temporary and due to construction activities. The draft EA acknowledges that there may be permanent impacts such as displacement, loss of cover, and loss of forage. It omits the likelihood of additional permanent impacts caused by 70-foot towers, overhead wires, and a continuous 100-foot ROW that will not just fragment but bisect habitat. The NNSA must undertake a more rigorous and complete cumulative effects analysis to fully capture the effects of the project on wildlife living in and migrating through the project area.

As wildlife and ecosystems in New Mexico face increasing pressure from development and climate change, protected wildlife corridors and habitat connectivity provide crucial connections between habitat areas, enabling migration, colonization, and breeding opportunities for plants and wildlife.

---

<sup>53</sup> *Id.*

<sup>54</sup> Wildlands Network, Restoring the Western Wildway (Aug. 24, 2023), <https://wildlandsnetwork.org/news/restoring-the-western-wildway>.

The State of New Mexico has taken considerable steps to prioritize wildlife corridors and increase habitat connectivity. In 2019, the New Mexico Legislature enacted the Wildlife Corridors Act,<sup>55</sup> which directs the New Mexico Department of Transportation (NMDOT) and the NMDGF to develop a statewide action plan.<sup>56</sup> The New Mexico Wildlife Corridors Action Plan was finalized in 2022.<sup>57</sup> The Action Plan identifies a number of species of concern that use the Caja, including mountain lions, foxes, black bear, American badger, mule deer, and elk, which are being adversely affected by habitat fragmentation, exacerbated by human-caused barriers.<sup>58</sup>

Like the State of New Mexico, federal land management agencies have adopted policies to promote wildlife corridors and habitat connectivity. Relevant here, Secretarial Order 3362 “directs appropriate bureaus within the Department of the Interior (Department) to work in close partnership with the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming to enhance and improve the quality of big-game winter range and migration corridor habitat on Federal lands under the management jurisdiction of this Department in a way that recognizes state authority to conserve and manage big-game species and respects private property rights.”<sup>59</sup> Consistent with the Secretarial Order, the NMDGF has identified key priority landscapes for improving big-game winter range and migration corridors in the Action Plan.

Similarly, BLM Instruction Memorandum No. 2023-005 helps the BLM fulfill aspects of its multiple use and sustained yield mandate by ensuring habitats for native fish, wildlife, and plant populations are sufficiently interconnected. As part of that work, the policy directs the BLM state offices to consult with state fish and wildlife agencies and Tribes to assess habitat connectivity to manage as best as possible for intact, connected habitat.<sup>60</sup>

Additionally, guidance issued by the Council on Environmental Quality (CEQ) addresses the role that federal agencies should play in safeguarding ecological connectivity and wildlife corridors. The CEQ guidance establishes a national policy to promote greater wildlife habitat connectivity as a means to sustain the nation’s biodiversity and “enable wildlife to adapt to fluctuating environmental conditions, including those caused by climate change.”<sup>61</sup> Pursuant to the CEQ

---

<sup>55</sup> N.M. Wildlife Corridors Act, NMSA 1978, §§ 17-9-1 to -5 (2019).

<sup>56</sup> NMSA 1978, § 17-9-3.

<sup>57</sup> N.M. Dep’t of Transp. & NMDGF, N.M. Wildlife Corridors Action Plan (June 2022), *available at* [https://wildlifeactionplan.nmdotprojects.org/wp-content/uploads/sites/39/2022/07/Wildlife-Corridors-Action-Plan\\_June-2022\\_FINAL-reduced.pdf](https://wildlifeactionplan.nmdotprojects.org/wp-content/uploads/sites/39/2022/07/Wildlife-Corridors-Action-Plan_June-2022_FINAL-reduced.pdf).

<sup>58</sup> *Id.* at ES-2.

<sup>59</sup> U.S. Dep’t of Interior, Secretarial Order 3362, Improving Habitat Quality in Western Big-Game Winter Range and Migration Corridors (Feb. 9, 2018), *available at* <https://www.blm.gov/sites/blm.gov/files/Final-SO3362-report-081120.pdf>.

<sup>60</sup> BLM, Instruction Memorandum (IM) No. 2023-005, Habitat Connectivity on Public Lands (Nov. 18, 2022), *available at* <https://www.blm.gov/policy/im-2023-005-change-1>.

<sup>61</sup> CEQ, Guidance for Federal Departments and Agencies on Ecological Connectivity and Wildlife Corridors (Mar. 21, 2023), *available at* <https://www.whitehouse.gov/wp-content/uploads/2023/03/230318-Corridors-connectivity-guidance-memo-final-draft-formatted.pdf>.

guidance, federal agencies are expected to assess connectivity and corridor values on the public lands they manage; develop policies to “conserve, enhance, protect, and restore” corridors and connectivity; and actively identify and prioritize actions that promote greater connectivity.<sup>62</sup>

The EPCU Project, as currently proposed, does not promote wildlife connectivity, as required by state and federal policies. The ROW itself, including the 70-foot elevated towers and conductor, presents a significant physical and visual obstacle that will permanently change the behavior of resident and migratory mammals as they carry out the different functions of their life cycles. Species such as mule deer, elk, black bear, mountain lion, gray fox, and coyote in the project area will change their behaviors in response to not only the disturbance of construction activities but also the completed, permanent transmission line. Impacts upon these species must be considered, and are another reason the NNSA must prepare an EIS.

**e. Failure to Address Cumulative Impacts and Provide Robust Mitigation Measures in the Draft EA Analysis**

The draft EA recognizes that many species of wildlife present in the project area have suffered declines due to development, recreation, and habitat fragmentation. However, in considering the cumulative impacts of the EPCU project on these species, the EA concludes that most impacts would be temporary and due to construction activities. Although the draft EA acknowledges that there may be some permanent impacts such as displacement, loss of cover, and loss of forage, the draft EA omits the likelihood of additional permanent impacts caused by 70-foot towers, overhead wires, and a continuous 100-foot ROW that will not just fragment but bisect habitat. The draft EA asserts that “wildlife would be able to transect the utility ROW because no permanent fencing or other barriers will be installed,”<sup>63</sup> which fails to acknowledge that permanent transmission lines and towers present considerable barriers and hazards to birds and bats, including many sensitive species. As noted above, when wildlife is “displaced due to habitat loss and fragmentation, it moves into areas of lower habitat value or quality, and/or areas which are already occupied at their carrying capacity,” reducing the landscape’s ability to support current wildlife numbers.<sup>64</sup> The draft EA notes that increased recreational use is relevant to the cumulative impacts analysis yet fails to address impacts of increased OHV traffic that will result from improved access for transmission line construction and maintenance. The NNSA must undertake a more rigorous and complete cumulative effects analysis to fully capture the effects of the project on wildlife living in and migrating through the project area.

To the extent that long-term cumulative impacts are recognized, the EA proposes a few mitigation measures and design features to minimize impacts. Specific mitigation measures are included for bald and golden eagles and other raptors in the form of restricting construction during peak

---

<sup>62</sup> *Id.*

<sup>63</sup> Draft EA, *supra* note 5, at p. 3-13.

<sup>64</sup> NMDGF, Oil and Gas Development Guidelines, *supra* note 33.

breeding season and the design of transmission structures and conductors to minimize injury to birds, such as collision-deterrence devices. Installation of the conductor over the Rio Grande will not occur in November through December or February through March to minimize impacts on sandhill cranes and migratory waterfowl; yet the draft EA omits consideration of migratory songbirds and raptors that migrate outside these timeframes. The draft EA provides no analysis of the effectiveness of individual mitigation measures or design features, nor does it analyze how each impacted species is expected to respond to mitigation measures.

In fact, no provision is made for mitigation of impacts to any species other than raptors or migratory birds. Before proceeding with this Project, the NNSA must develop a robust mitigation plan that considers all of the species that will be impacted by the EPCU project.

### **3. The Project Will Significantly Affect Sensitive Plants and Vegetation Communities and Associated Species on the Caja.**

The SFNF Forest Plan reflects the unique composition of the vegetation communities on the Caja, explaining that the “plateau does not conform to the typical notion of forest land: juniper grass, Colorado Plateau Great Basin, piñon-juniper shrub, piñon-juniper woodland, and piñon-juniper sagebrush ERUs make up the management area. Its grasslands and other ecosystems provide habitat for many sensitive species.”<sup>65</sup> The draft EA fails to adequately consider the Project’s impacts to sensitive plant communities and associated species on the Caja. These impacts will result from the significant ground disturbance required for project construction and ongoing maintenance, as well as cumulative impacts of ground disturbance that will result from increased access and OHV use in undeveloped portions of the Caja.

The extensive ground disturbance required for the EPCU Project includes the following:

- Designation and development of 104 acres as a utility corridor, including 85 acres of currently undeveloped or semi-developed land;<sup>66</sup>
- New transmission lines and towers crossing approximately 2.5 miles of BLM land and 8.6 miles of SFNF land, and ultimately spanning White Rock Canyon across the Rio Grande;<sup>67</sup>
- New 300-foot ROW (100-foot permanent ROW plus additional 200-foot temporary ROW for construction);<sup>68</sup>
- 14 construction staging areas ranging in size from 2 to 5 acres each;<sup>69</sup>
- New temporary road segments crossing approximately 1.44 miles of BLM and SFNF lands;<sup>70</sup>

---

<sup>65</sup> SFNF LMP, *supra* note 12, at p. 200.

<sup>66</sup> *Id.* at pp. 2-15, 3-29.

<sup>67</sup> *Id.* at p. 2-1.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at p. 2-2.

<sup>70</sup> *Id.* at p. 2-5.

- New permanent road segments crossing approximately 1.69 miles of SFNF lands;<sup>71</sup> and
- New permanent road spurs totaling approximately .55 miles to reach 17 new electrical towers located parallel to the existing Reeves transmission line.<sup>72</sup>

**(a) Impacts to Sensitive Plants**

The draft EA considers potential impacts to species listed under the ESA, as well as New Mexico state-listed species.<sup>73</sup> Biologists conducted vegetation surveys along the 300-foot corridor that will be disturbed for the ROW, including a 100-foot permanent ROW and a 200-foot temporary ROW for construction.<sup>74</sup> Surveyors encountered the rare grama grass cactus (*Sclerocactus papyracanthus*), previously listed as a sensitive species and considered a species to watch by the BLM.<sup>75</sup>

**(b) Impacts to Milkweed and Monarch Butterfly**

Surveyors also encountered four species of milkweed (*Asclepias spp.*), which serves as a host plant for the monarch butterfly (*Danaus plexippus*), which is federally listed as a candidate species under the ESA.<sup>76</sup> Recent surveys of monarch butterfly populations in their wintering areas in Mexico demonstrate that the numbers have dropped by 59 percent this year, resulting in the second-lowest population levels since record keeping began.<sup>77</sup> The draft EA includes mitigation measures for milkweed but fails to provide further protection for the other flowering plants used by monarch butterflies, including goldenrods and asters that serve as a crucial food source,<sup>78</sup> which are abundant on the Caja.

**(c) Disturbance of Native Vegetation and Proliferation of Invasive Plants**

The draft EA acknowledges that the EPCU Project could result in invasive plant species introduction from construction activities and new roads and disturbance.<sup>79</sup> The draft EA states that ground-disturbing construction work will follow the SFNF's Guide to Noxious Weeds Prevention Practices (USDA 2001).<sup>80</sup> But the draft EA fails to identify, analyze, and mitigate the cumulative

---

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> N.M. Endangered Plant Species Act, NMSA 1978, § 75-6-1 (1985); see also 19.21.2 NMAC (List of Endangered Plant Species).

<sup>74</sup> Draft EA, *supra* note 5, at pp. 3-7, E-10 to -11.

<sup>75</sup> *Id.* at pp. 3-7, E-11.

<sup>76</sup> *Id.*

<sup>77</sup> See, e.g., Xerces Society for Invertebrate Conservation, Eastern Monarch Butterfly Overwintering Area In Mexico Drops Precipitously (Feb. 7, 2024); Associated Press, Mark Stevenson, The number of monarch butterflies at their Mexico wintering sites has plummeted this year (Feb. 7, 2024), *available at* <https://apnews.com/article/mexico-monarch-butterflies-climate-change-9b8a69f58f3f576af0413fd045340c6e>.

<sup>78</sup> Draft EA, *supra* note 5, at p. E-15.

<sup>79</sup> *Id.* at p. 3-8.

<sup>80</sup> *Id.*

impacts that will result from increased access and OHV use in the undeveloped portions of the Caja, which will be a more significant and persistent source of invasive plant introduction than the temporary construction activities.

**(d) Impacts to Piñon-juniper Forests, Mature Trees, and Obligate Species**

The draft EA fails to provide adequate analysis of impacts to piñon-juniper sagebrush and piñon-juniper woodland communities on the Caja, including old growth and mature trees. Forest Service data confirms that the Caja encompasses a moderate degree of mature piñon juniper forest.<sup>81</sup>

According to the New Mexico Avian Conservation Partners,<sup>82</sup> more bird species of highest conservation concern occur in piñon-juniper woodlands than any other ecosystem type.<sup>83</sup> Piñon juniper habitats support rare and sensitive species including the pinyon jay (*Gymnorhinus cyanocephalus*), a gregarious and iconic western bird, which is plummeting in number and needs the protection of the ESA to dodge extinction. The BLM has identified the pinyon jay as a BLM Sensitive Species, and as a Migratory Bird of Conservation Concern in the 2012 Taos Resource Management Plan (RMP).<sup>84</sup> On August 17, 2023, the USFWS found that a petition to list the pinyon jay as endangered presented substantial scientific information to indicate that an ESA listing may be warranted.<sup>85</sup> The pinyon jay is also included on the International Union for the Conservation of Nature (IUCN) Red List of Threatened Species. It is one of only a few bird species in New Mexico included on this worldwide list. Bendire's thrasher, also found on the Caja, is one of the other bird species in New Mexico that is included on the IUCN Red List.

Other bird species that are obligates or semi-obligates of piñon-juniper habitat include gray flycatcher, ash-throated flycatcher, Woodhouse's scrub-jay, juniper titmouse, bushtit, Bewick's wren, gray vireo, black-throated gray warbler, lark sparrow, and Brewer's sparrow,<sup>86</sup> all of which live on the Caja.<sup>87</sup> Other sensitive species that rely on piñon pines include peregrine falcons, Gunnison's prairie dogs, and Western burrowing owls.<sup>88</sup>

---

<sup>81</sup> USDA, United States Forest Service - Climate Risk Viewer (Beta 0.2.4) - Mature and Old-Growth Forest, <https://experience.arcgis.com/experience/37cb7e33db6949c79f1f87f87968e51a>.

<sup>82</sup> New Mexico Avian Conservation Partners, <https://avianconservationpartners-nm.org/>.

<sup>83</sup> **Exhibit F**, New Mexico Avian Conservation Partners Species Conservation Level One List (see list on page 2); **Exhibit G**, New Mexico Avian Conservation Partners Species Conservation Level Two List (see list on page 2).

<sup>84</sup> BLM Taos Field Office, Taos Resource Management Plan, p. 7 (May 2012), available at [https://eplanning.blm.gov/public\\_projects/lup/68121/86167/103325/Approved\\_Taos\\_RMP\\_-\\_5.16.12\\_\(print\\_version\).pdf](https://eplanning.blm.gov/public_projects/lup/68121/86167/103325/Approved_Taos_RMP_-_5.16.12_(print_version).pdf) [hereinafter "2012 Taos RMP"].

<sup>85</sup> U.S. Fish and Wildlife Service, Endangered and Threatened Wildlife and Plants; 90-Day Findings for Five Species, 88 Fed. Reg. 55991 (Aug. 17, 2023).

<sup>86</sup> New Mexico Partners in Flight. 2007. New Mexico Bird Conservation Plan Version 2.1. C. Rustay and S. Norris, compilers. Albuquerque, New Mexico.

<sup>87</sup> Draft EA, *supra* note 5, at pp. E-11 to E-12.

<sup>88</sup> *Id.* at p. E-23.



The Project will require the conversion of 85 acres of previously undeveloped or semi-developed land to a designated utility right of way<sup>89</sup> and the removal of vegetation for construction and operation of the transmission line.<sup>90</sup> The draft EA fails to evaluate impacts to mature and old growth piñon-juniper communities and the sensitive and obligate species found there, and lacks mitigation measures to protect this sensitive vegetation community and ecosystem.

In April 2022, President Biden issued an Executive Order on Strengthening the Nation’s Forests, Communities, and Local Economies, intended to conserve and restore America’s mature and old growth forests.<sup>91</sup> The executive order recognizes the critical importance of protecting mature and old growth forests on federal lands, which “provide clean air and water, sustain the plant and animal life fundamental to combating the global climate and biodiversity crises, and hold special importance to Tribal Nations.”<sup>92</sup> America’s forests are a key climate solution, absorbing carbon dioxide equivalent to more than 10% of U.S. annual greenhouse gas emissions.<sup>93</sup> Old and mature forests are vital to providing clean water, absorbing carbon pollution, and supplying habitat for wildlife. Much of the proposed LANL project area on the Caja occurs within pinyon-juniper forest, much of which can be considered old and mature forest. Recently, the White House specifically “highlighted that Pinyon and juniper woodlands encompass tens of millions of acres of federal lands across the West, and have significant biodiversity, climate, and cultural values.”<sup>94</sup> Pinyon-juniper woodlands are the most abundant forest type in the federally managed inventory of mature and old-growth forests, and are the majority of mature and old-growth forests managed by the BLM. The White House has recognized a need to pay more attention “to the importance of mature and old-growth pinyon-juniper ecosystems.”<sup>95</sup>

To implement the executive order, the U.S. Department of Agriculture has issued a preliminary proposal to amend all 128 national forest plans to establish new protections to promote old-growth forests.<sup>96</sup> Further, to ensure consistency during the amendment process, proposed management actions in old-growth forests will be governed by an interim policy outlined in more

---

<sup>89</sup> *Id.* at p. 1-11.

<sup>90</sup> *Id.* at p. 3-8.

<sup>91</sup> E.O. 14072, Executive Order on Strengthening the Nation’s Forests, Communities, and Local Economies, 87 Fed. Reg. 24851 (Apr. 22, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-04-27/pdf/2022-09138.pdf>; see <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/22/fact-sheet-president-biden-signs-executive-order-to-strengthen-americas-forests-boost-wildfire-resilience-and-combat-global-deforestation/>.

<sup>92</sup> *Id.*

<sup>93</sup> See The White House, Factsheet: Biden-Harris Administration Advances Commitment to Protect Old Growth Forests on National Forest System Lands, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/19/fact-sheet-biden-harris-administration-advances-commitment-to-protect-old-growth-forests-on-national-forest-system-lands/>.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> USDA, Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System, 88 Fed. Reg. 88042 (Dec. 20, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-12-20/pdf/2023-27875.pdf>.

detail in a letter from the deputy chief of the USFS to regional foresters. This letter specifically states, “the purpose of this letter is to reserve to the National Forest System Deputy Chief the decision making authority over management of old growth forest conditions on National Forest System lands during the amendment process. Effective immediately, any projects proposing vegetation management activities that will occur where old growth forest conditions (based on regional old growth definitions) exist on National Forest System lands shall be submitted to the National Forest System Deputy Chief for review and approval.”<sup>97</sup> The purpose of the letter is “to ensure the careful evaluation of proposed vegetation management activities occurring in areas where old growth forest conditions exist while the national old growth amendment is developed.” The draft EA lacks sufficient analysis around the impact the project will have on old and mature forests, is inconsistent with the Administration’s goals to conserve these areas, and fails to follow the process outlined in the USFS Deputy Chief’s letter.

#### **4. The Project Will Significantly Affect Geology and Watersheds on the Caja.**

Regarding geology and watersheds, the Caja “is a landscape of dramatic topography whose geological processes stem from the Rio Grande rift” that “contains two dynamic watersheds - the Santa Fe River Canyon and the Rio Grande corridor from Buckman to Cochiti Lake.”<sup>98</sup> In addition to the Rio Grande, the project area includes many arroyos and ephemeral and intermittent streams, which are important to local watersheds.<sup>99</sup> Unfortunately, several reaches within the Rio Grande have been listed as impaired, indicating that the water quality is not meeting its potential biotic integrity.<sup>100</sup>

The EPCU Project will result in soil disturbance, compaction, and erosion, which will in turn cause water quality degradation in the Caja’s watersheds. Construction, operation, and maintenance of the EPCU Project will cause increased erosion, topsoil loss, and sedimentation, and may change drainage patterns.<sup>101</sup> Construction activities near the steep slopes on the sides of the Rio Grande and around Ortiz Mountain, located in a primitive portion of the Caja and characterized by well-drained soils subject to erosion, are especially susceptible to causing adverse soil and water quality impacts.<sup>102</sup> The draft EA asserts that these impacts will be minimal and short term, which fails to consider the cumulative impacts of ongoing infrastructure and ROW maintenance and of increased access and OHV use, which will cause long-term erosion and water quality impacts. The draft EA acknowledges that the EPCU Project “would impact long-term productivity of

---

<sup>97</sup> U.S. Forest Service, Letter from Deputy Director Christopher B. French to Regional Foresters (Dec. 18, 2023), *available at* <https://www.fs.usda.gov/sites/default/files/ReviewOfProposedProjectsWithManagementOfOldGrowthForestConditions-NFSDC.pdf>

<sup>98</sup> Exhibit B, *supra* note 1.

<sup>99</sup> Draft EA, *supra* note 5, at p. 3-4.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at p. 3-6.

<sup>102</sup> *Id.* at p. 3-2.

approximately 119 acres of soil south of the Rio Grande on SFNF/BLM lands,” which will further exacerbate impacts of erosion and runoff.<sup>103</sup>

Increasing the extent of impaired function of the watershed will have adverse effects on designated uses within the project vicinity, including aquatic and wildlife uses. As noted in the SFNF Forest Plan, the Caja includes habitat, “such as intermittent ponds and playas, [that] support aquatic life.”<sup>104</sup> Aquatic species and sensitive fish species, including the Rio Grande cutthroat trout (*Oncorhynchus clarkii virginalis*), Rio Grande sucker (*Catostomus plebeius*), peppered chub (*Macrhybopsis tetranema*), and Northern leopard frog (*Lithobates pipiens*), rely on high water quality.<sup>105</sup> The draft EA fails to provide adequate analysis of water quality impacts on these species and mitigation for these impacts.

##### **5. The Project Will Significantly Affect Recreational, Educational, Economic, and Scenic Values of the Caja.**

The Caja is popular with locals and visitors alike for an array of cultural, educational, and recreational opportunities, including hiking, mountain biking, gravel biking, rock climbing, horseback riding, primitive camping, rafting, kayaking, canoeing, legal OHV use, and recreational target shooting.<sup>106</sup> The Caja is a place of immense value and significance for communities of color who traditionally have had less access to outdoor recreation opportunities. Both local Pueblo and Hispanic leaders have acknowledged the importance of the Caja as critical to both cultural understanding and outdoor equity for youth, families, and communities surrounding the Caja.<sup>107</sup> Santa Fe County has recognized the importance of the Caja’s multi-recreational access to local health and well-being,<sup>108</sup> and has also designated the county as a regional and international equestrian destination that has a substantial economic impact to the county.<sup>109</sup>

Local governments, including Santa Fe County, the City of Santa Fe, and San Miguel County, have recognized that the Caja has “tremendous potential for sustainable outdoor recreation and to create jobs and enhance local economies.”<sup>110</sup> The Caja “serves as a critical landscape in creating a historical, cultural, ecological, and eco-tourism corridor connecting to Bandelier National

---

<sup>103</sup> *Id.* at p. 3-3.

<sup>104</sup> SFNF LMP, *supra* note 12, at p. 200.

<sup>105</sup> Draft EA, *supra* note 5, at pp. E-15, E-29.

<sup>106</sup> *Id.* at pp. 3-16 to 3-17

<sup>107</sup> Santa Fe New Mexican, “On the Caja, Young People Can Learn, Explore,” [https://www.santafenewmexican.com/opinion/my\\_view/on-the-caja-young-people-can-learn-explore/article\\_b09bc938-1566-11ee-ab34-0ff559804ef4.html](https://www.santafenewmexican.com/opinion/my_view/on-the-caja-young-people-can-learn-explore/article_b09bc938-1566-11ee-ab34-0ff559804ef4.html).

<sup>108</sup> Exhibit B, *supra* note 1.

<sup>109</sup> Board of County Commissioners of Santa Fe County, Resolution No. 2015-38, A Resolution to Support the Equine Culture in the Final Development and Implementation of the Sustainable Land Development Code (SLDC) and that Santa Fe County Promote the Development of Santa Fe as a Regional and International Horse Destination (Feb. 24, 2015), *available at* <https://www.santafecountynm.gov/documents/ordinances/2015-38.pdf>

<sup>110</sup> Exhibit B, *supra* note 1; *see also* Exhibits A, C, *supra* note 1.

Monument and adjacent sites of Kasha-Katuwe Tent Rocks National Monument, El Rancho de los Golondrinas, and the Leonora Curtin Wetland Preserve.”<sup>111</sup> The multi-layered Caja del Rio landscape is highly interconnected with adjacent culturally significant landscapes, with Bandelier National Monument, located within the 23,267-acre Bandelier Wilderness Area, directly west across the Rio Grande from the Caja del Rio Plateau. Present-day descendants, including the Pueblos of Cochiti, Santo Domingo, San Felipe, and San Ildefonso, utilize and maintain close traditional ties with the cultural sites and properties throughout Bandelier National Monument and Wilderness Area, as with the entire Caja del Rio landscape. The proximal and cultural link between sites like Bandelier, Kasha-Katuwe, and others mentioned above with the Caja del Rio highlights the importance of consistent protections across this connected landscape.

The Project will adversely affect sustainable, regulated recreation and will facilitate the proliferation of illegal and unmanaged recreation, including unlawful OHV use, more widespread disbursed target shooting and poaching, and illegal dumping. Rampant illegal dumping is already heavily occurring along the existing Norton ROW, and without more dedicated staff and resources, this problem will only grow worse as more roads into the Caja are created by the proposed EPCU Project. While NNSA does mention the potential to have locked gates along some of these newly constructed roads under the powerline, given that there have been two fires on the Caja within the last year alone, LANL fails to recognize that these locked gates may act as a barrier and become especially problematic to firefighting, first responder, and search and rescue activities on the Caja.<sup>112</sup> Second, given a lack of federal agency law enforcement personnel and resources, which lends to a culture of “wild west lawlessness” on the Caja, it is not uncommon to find the locks of gates, or even the gates themselves, stolen, broken, or sold for scrap metal.<sup>113</sup>

The Project would introduce visual elements to the landscape, including transmission line structures approximately 70’ tall and a massive line 1,500 feet in the air spanning the Rio Grande at White Rock Canyon.<sup>114</sup> NNSA does include a visual impact analysis in the draft EA, which uses the Strava Global Heatmap to identify where people are actively recreating on the Caja.<sup>115</sup> NNSA concludes that the EPCU Project will impact 5.1% of the routes regularly used for recreation on the Caja; the remaining recreation routes either have a powerline visible already or will not be

---

<sup>111</sup> *Id.*

<sup>112</sup> See Santa Fe New Mexican, Crews Contain 50-Acre Fire on the Caja del Rio (Aug. 20, 2023), *available at* [https://www.santafenewmexican.com/news/local\\_news/crews-contain-50-acre-blaze-on-caja-del-rio/article\\_940cefae-3fc3-11ee-9153-1bfe19790a6d.html](https://www.santafenewmexican.com/news/local_news/crews-contain-50-acre-blaze-on-caja-del-rio/article_940cefae-3fc3-11ee-9153-1bfe19790a6d.html); see also Santa Fe New Mexican, My view by Andrew Black, Protecting the Caja protects local communities (Sept. 9, 2023), *available at* [https://www.santafenewmexican.com/opinion/my\\_view/protecting-the-caja-protects-local-communities/article\\_fd9566ec-4b8d-11ee-b626-1380621cbeec.html](https://www.santafenewmexican.com/opinion/my_view/protecting-the-caja-protects-local-communities/article_fd9566ec-4b8d-11ee-b626-1380621cbeec.html).

<sup>113</sup> Santa Fe New Mexican, My View by Andrew Black, Wild West Lawlessness at the Caja Must Stop (Jan. 28, 2023), *available at*: [https://www.santafenewmexican.com/wild-west-lawlessness-at-caja-must-stop/article\\_83d51d46-9e6f-11ed-abcb-775396f2d083.html](https://www.santafenewmexican.com/wild-west-lawlessness-at-caja-must-stop/article_83d51d46-9e6f-11ed-abcb-775396f2d083.html)

<sup>114</sup> Draft EA, *supra* note 5, at p. 1-10.

<sup>115</sup> *Id.* at p. F-8.

impacted by the new powerline.<sup>116</sup> This analysis does not consider, however, that the effect of seeing two high-voltage powerlines, located approximately 150' apart and creating a wide industrial corridor, would be significantly more impactful for recreational users than a single powerline. Additionally, the impacted areas are located within areas that the SFNF has designed for management for High desired scenic integrity (21.3%) and Medium scenic integrity (78.7%).<sup>117</sup>

Moreover, the visual impacts of the EPCU Project will specifically alter the historical and cultural experience of El Camino Real de Tierra Adentro NHT. As described in Part A.1 *infra*, the Caja is home to one of the most iconic stretches of the famed El Camino Real de Tierra Adentro, the longest Euro-American trade route in North America. Lifting up the importance of El Camino Real de Tierra Adentro as a cultural and educational tourism opportunity, the NPS recommends visitors “travel along El Camino Real de Tierra Adentro National Historic Trail to experience and learn from a complicated legacy of 300 years of conflict, cooperation, and cultural exchange between a variety of empires—European and non-European alike. El Camino Real de Tierra Adentro NHT is jointly administered by the Bureau of Land Management New Mexico Office, and the National Trails Office Regions 6|7|8, in Santa Fe, New Mexico.”<sup>118</sup> While NPS perpetuates a vision of people being able to step onto the Camino Real and thus step back in time, having major modern power lines running over the top and alongside this famed path hardly lends to such historical and cultural understanding.

As noted in the draft EA, “management activities in NHT corridors should be consistent with or make progress toward achieving scenic integrity objectives of high or very high within the foreground of the trail (up to 0.5 mile either side) or within the identical trail viewshed.”<sup>119</sup> In various places along the proposed project area, the powerline will directly cross over or run alongside significant portions of the famed El Camino Real. The proposed transmission line would impact one of the oldest sections of El Camino Real de Tierra Adentro, which was utilized from 1598-1610 before the capital was moved from Ohkay Owingeh to Santa Fe. The project will also impede use and enjoyment of the historical trail during various construction phases.

The draft EA asserts that the new transmission line will not change recreation experiences or visual composition of the project area, including the inventoried roadless area because the new line will “not contrast with the existing view of the Reeves Line” and will include design features to make it blend in.<sup>120</sup> But constructing the project with brown transmission structures and low-reflective conductors will do little to mitigate the impacts to recreational opportunities and visual resources in the project area, especially in sensitive areas like El Camino Real de Tierra Adentro NHT.

---

<sup>116</sup> *Id.* at p. F-13.

<sup>117</sup> *Id.* at p. F-14.

<sup>118</sup> See NPS, The Royal Road of the Interior Land, <https://www.nps.gov/elca/index.htm>.

<sup>119</sup> Draft EA, *supra* note 5, at p. 2-16

<sup>120</sup> *Id.* at p. 3-1.

The EPCU Project will have significant adverse impacts on the recreational, educational, economic, and scenic values of the Caja. NNSA must either choose the no action alternative or conduct an EIS that better analyzes these impacts and offers reasonable alternatives.

**B. THE SFNF SHOULD NOT APPROVE AMENDMENTS TO THE RECENTLY ADOPTED LAND MANAGEMENT PLAN AND SHOULD NOT GRANT A SPECIAL USE PERMIT.**

The EPCU Project cannot be approved or implemented unless the SFNF approves amendments to its Land Management Plan (LMP or Forest Plan), which took effect in August 2022,<sup>121</sup> and grants a special use permit for the project. The SFNF supervisor must make decisions on these issues based on the laws, regulations, and guidance that govern the USFS. The draft EA reflects that the NNSA “intends to adopt the decision of the Forest Service” with respect to whether to amend the LMP and whether to grant the special use permit.<sup>122</sup> We urge the SFNF to reject the proposed LMP amendment and to deny the special use permit due to procedural and substantive flaws in the EPCU Project as proposed, and we urge NNSA to stand by its commitment to adopt the decisions of the SFNF on these matters.

**1. The SFNF Should Reject the Forest Plan Amendment Due to Procedural and Substantive Flaws.**

The SFNF should reject the proposed amendments to the LMP because the proposed amendments are procedurally and substantively inconsistent with the laws and regulations that govern the planning process. The agencies have failed to provide adequate opportunities for public participation and collaboration. The resulting LMP amendments run contrary to the intent of the forest plan to promote ecological integrity and to provide public benefits including clean air and water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural uses.

The planning process is subject to the National Forest Management Act (NFMA) of 1976,<sup>123</sup> which requires the USDA Forest Service to “develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.”<sup>124</sup> During the planning process, NFMA mandates that the Forest Service

shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least

---

<sup>121</sup> SFNF LMP, *supra* note 12.

<sup>122</sup> Draft EA, *supra* note 5, at p. 1-11.

<sup>123</sup> National Forest Management Act of 1976 (NFMA), 16 U.S.C. § 1600 et seq.

<sup>124</sup> 16 U.S.C. § 1604(a).

three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions.<sup>125</sup>

The substance of a forest plan must be based on “a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences”<sup>126</sup> and must provide for multiple use and sustained yield in accordance with the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), including “coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness.”<sup>127</sup>

Additionally, the planning process must proceed in accordance with the 2012 Planning Rule<sup>128</sup> and the Forest Service’s associated 2015 planning directives.<sup>129</sup> The express purpose of the 2012 Planning Rule is as follows:

[T]o guide the collaborative and science-based development, amendment, and revision of land management plans that promote the ecological integrity of national forests . . . . Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability; consist of ecosystems and watersheds with ecological integrity and diverse plant and animal communities; and have the capacity to provide people and communities with ecosystem services and multiple uses that provide a range of social, economic, and ecological benefits for the present and into the future. These benefits include clean air and water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural benefits.<sup>130</sup>

Once a final Forest Plan has been adopted, the Forest Service may amend the Forest Plan, but amendments must be consistent with the requirements of the NFMA and MUYSYA.<sup>131</sup> Important here, if an amendment “would result in a significant change” to the Forest Plan, the Forest Service must use public participation procedures comparable to those required for adoption of the plan.<sup>132</sup> Additionally, amendments must be developed in accordance with the substance and procedure of the 2012 Planning Rule.

---

<sup>125</sup> 16 U.S.C. § 1604(d)(1).

<sup>126</sup> 16 U.S.C. § 1604(b).

<sup>127</sup> Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.

<sup>128</sup> 36 C.F.R. Part 219.

<sup>129</sup> Forest Service Manual 1920; Forest Service Manual 1909.12.

<sup>130</sup> 36 C.F.R. § 219.1(c).

<sup>131</sup> 16 U.S.C. § 1604(f)(4).

<sup>132</sup> 16 U.S.C. § 1604(f)(4) (citing the procedures in 16 U.S.C. § 1604(d)).

**a. Inadequate Public Process for Amending the Forest Plan**

In 2022, the SFNF finalized its new Land Management Plan (Forest Plan or LMP)<sup>133</sup> in accordance with the NFMA, MUSYA, the 2012 Planning Rule,<sup>134</sup> and the Forest Service’s associated 2015 planning directives.<sup>135</sup> In doing so, the SFNF followed a robust and lengthy process for public participation and collaboration. In 2014, the SFNF offered the first opportunities for public engagement in the planning process by conducting listening sessions and assessment meetings.<sup>136</sup> From 2014 to 2019, when the SFNF issued its draft plan and draft environmental impact statement, the SFNF planning team held over 250 meetings, over 3100 people attended, and 3,237 unique public comments were submitted.<sup>137</sup> Diverse stakeholder groups that worked together to formulate the forest plan included 13 cooperating agencies, other federal agencies, state and local governments, Native American tribes and Pueblos, land grants, grazing permittees, private individuals, and public and private organizations.<sup>138</sup>

Less than two years into the implementation of the 2022 LMP, the NNSA is asking the SFNF to amend the LMP through a fundamentally unfair process that fails to provide meaningful opportunities for public participation. Unlike the initial planning process, which took years, entailed a detailed environmental impact statement, and included hundreds of opportunities for public participation, for the EPCU Project the NNSA has proposed to amend the plan through two non-contiguous 30-day comment periods,<sup>139</sup> a cursory environmental assessment, and two public meetings. The SFNF has not conducted any scoping for the proposed LMP amendment; and NNSA’s scoping period for the EPCU Project occurred before the LMP went into effect. This process is inconsistent with the NFMA, which provides that when USFS considers an amendment that would result in a “significant change” to a forest plan, the USFS must “use public participation procedures comparable to those required for adoption of the plan.”<sup>140</sup>

Instead of trying to amend the LMP through this hasty, rushed, non-transparent, and fundamentally unfair process, the NNSA should have participated in the SFNF’s planning process, along with the many other governmental, tribal, and public and private stakeholders that collaborated in the effort, and should have proposed incorporating the EPCU Project into the LMP during the planning

---

<sup>133</sup> SFNF LMP, *supra* note 12.

<sup>134</sup> 36 C.F.R. Part 219.

<sup>135</sup> Forest Service Manual 1920; Forest Service Manual 1909.12.

<sup>136</sup> USDA SFNF, Opportunities to engage on the Santa Fe National Forest Plan Revision! (June 26, 2019), available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd643252.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd643252.pdf).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> The initial public comment period for the EPCU Project ran from December 19, 2023, through January 17, 2024. In response to public outcry and multiple requests from stakeholders, including the Caja Coalition and the New Mexico congressional delegation, the NNSA agreed to grant a second public comment period, from January 22, 2024 through February 20, 2024. The non-contiguous nature of these comment periods has caused confusion for participants and may result in the NNSA declining to consider submissions received on the four days that fell between the two comment periods.

<sup>140</sup> 16 U.S.C. § 1604(f)(4) (citing the procedures in 16 U.S.C. § 1604(d)).



process.<sup>141</sup> This would have enabled NNSA to treat the EPCU Project and the forest planning process as connected actions under the National Environmental Policy Act of 1969 (NEPA),<sup>142</sup> discussed in the same environmental impact statement and subject to meaningful public participation.<sup>143</sup>

#### **b. Arbitrary Exceptions to Forest Plan Conservation Provisions**

Following the robust public process described above, the SFNF adopted the current Forest Plan, which took effect in August 2022. Consistent with the 2012 Planning Rule, the Forest Plan reflects an overarching goal of ecological integrity<sup>144</sup> and emphasizes restoration of natural resources to improve forest health.<sup>145</sup> Relevant here, the Forest Plan contains important administrative protections and special land use designations for the Caja del Rio, including the Caja del Rio Wildlife and Cultural Interpretive Management Area, the Arroyo Montoso Inventoried Roadless Area (IRA), and high scenic integrity standards for the viewshed associated with El Camino Real de Tierra Adentro NHT.

To implement the EPCU Project, NNSA proposes to establish a new management area called the S/N Transmission Line Utility Corridor Management Area (SNTUC).<sup>146</sup> The SNTUC, which was not considered during the SFNF's forest planning process, would run the entire length of the EPCU Project area across SFNF-managed lands.<sup>147</sup> It would be 100-foot wide, encompass approximately 104 total acres, and include approximately 1.69 miles of new roads.<sup>148</sup> The SNTUC would serve LANL. It would not fulfill any of the multiple uses contemplated by the NFMA and MUSYA, and it certainly would not implement the ecological objectives of 2012 Planning Rule. To accommodate the SNTUC management area, NNSA seeks to amend the Forest Plan provisions that protect the ecological and cultural integrity of designated special management areas by adding arbitrary exceptions for the EPCU Project. These arbitrary exceptions will result in significant adverse impacts to the areas and resources that have been designated for conservation-oriented management, as further described below.

#### **(i) Caja Del Rio Wildlife and Cultural Interpretive Management Area**

The EPCU Project would cause significant adverse impacts by bisecting the Caja Del Rio Wildlife and Cultural Interpretive Management Area (Caja Management Area) with the 100-foot wide SNTUC utility corridor, a temporary 300-foot wide construction zone and ROW, and permanent

---

<sup>141</sup> See 40 CFR § 1501.2 (directing agencies to apply NEPA early in process and integrate with other planning and authorization processes at the earliest reasonable time).

<sup>142</sup> National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 et seq.

<sup>143</sup> See 40 C.F.R. § 1501.9(e)(1).

<sup>144</sup> 36 C.F.R. §§ 219.1(c), 219.19.

<sup>145</sup> 36 C.F.R. § 219.19.

<sup>146</sup> Draft EA, *supra* note 5, at 2-15.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

transmission lines, towers, and infrastructure. The Caja Management Area was designated to support wildlife diversity and connectivity and to maintain cultural and archeological integrity.<sup>149</sup> As described in the Forest Plan,

The Caja is diverse in plant and animal species, both in overall numbers (population) as well as what species are found in the area (biodiversity). The plateau does not conform to the typical notion of forest land: juniper grass, Colorado Plateau Great Basin, piñon-juniper shrub, piñon-juniper woodland, and piñon-juniper sagebrush ERUs [Ecological Response Units] make up the management area. Its grasslands and other ecosystems provide habitat for many sensitive species. The area is also an important bird area; declining grassland bird species can be found on the plateau, as well as other birds such as golden and bald eagles and peregrine falcons. Other habitats, such as intermittent ponds and playas, support aquatic life. The interplay between the locally diverse environments and bird and animal species is unique when compared to other areas of the forest, including the range from steep canyon riparian to open grassland on the south end and rugged volcanic country on the plateau above the river. The remote setting, limited motorized routes, and continuity with recommended and designated wilderness as well as inventoried roadless areas along the corridor of the Rio Grande River provide habitat connectivity for daily and seasonal wildlife movement along and across the river and the potential for long-distance range shifts of species.

The area also contains nationally significant cultural resources including the ancestral homes of modern Pueblo communities, numerous petroglyph localities, and the intact remains of historic roads and trails such as the original alignment of Route 66 and the El Camino Real de Tierra Adentro. The archeological integrity of these features, which consists of their location and physical environment, materials and workmanship, and design help preserve their aesthetic or historic sense that make them valuable.<sup>150</sup>

The management framework established by the Forest Plan includes “standards,” which are “technical design constraints that must be followed when an action is being taken.”<sup>151</sup> Standards create rules that the SFNF must follow; the SFNF cannot deviate from a standard without a forest plan amendment.<sup>152</sup> The Forest Plan also includes “guidelines,” which are “required technical design features or constraints on project and activity decision making that help make progress toward desired conditions.”<sup>153</sup> If deviation from a guideline will not meet the original intent of the

---

<sup>149</sup> SNNF LMP, *supra* note 12, at pp. 200-202.

<sup>150</sup> *Id.* at p. 200.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

guideline, “a plan amendment is required.”<sup>154</sup> Standards and guidelines “make up the ‘rules’ that [SFNF] must follow.”<sup>155</sup>

To protect the resources of the Caja Management Area, the Forest Plan includes the following standard: “Maximize use of existing utility line corridors for additional utility line needs. **New utility corridors and communication sites will not be allowed.**”<sup>156</sup> To accommodate the EPCU Project, the NNSA asks the SFNF to add the following exception to the current standard: “except for the Los Alamos National Laboratory Electrical Power Capacity Upgrade Project, S/N transmission line.”<sup>157</sup>

By arbitrarily adding the proposed exception to the current standard, the NNSA and SFNF would significantly weaken the integrity of the Caja Management Area and its ability to support cultural and ecosystem services. The EPCU Project would result in 4.2 miles of new utility corridor across the Caja Management Area.<sup>158</sup> The new transmission line would parallel the exiting Reeves line for 2.96 miles,<sup>159</sup> and the two transmission line corridors would be separated by a distance of approximately 150 feet. Constructing and accessing the new line from the Reeves line will require .55 miles of new permanent spur roads from the Reeves line access road to get to the new line.<sup>160</sup> The remaining 1.2 miles of new transmission line and utility corridor will not parallel any existing infrastructure and will impact undeveloped land that is currently being managed to promote the Caja’s ecological and cultural values.

The expansive transmission line corridor created by the new transmission line would result in a huge swath of development bisecting the Caja, causing significant adverse impacts to cultural resources, soils, wildlife, vegetation, recreational uses, and scenic value.<sup>161</sup> In addition to adding new roads, lines, towers, and infrastructure to the landscape, the EPCU Project would require the removal of vegetation to reduce wildfire risk and meet engineering standards.<sup>162</sup> The public would gain access to currently undeveloped areas of the Caja via the new roads needed for construction, operation, and maintenance, which would result in a proliferation of unauthorized and unmanaged motorized use, recreational shooting, and illegal dumping. Moreover, construction and ongoing maintenance and operation of the project would require the use of heavy machinery, chain saws, and other tools, disturbing soils, vegetation, birds and wildlife, recreational use, and cultural resources.<sup>163</sup>

---

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at p. 201 (standard MA-CAJA-S) (emphasis added).

<sup>157</sup> Draft EA, *supra* note 5, at p. A-3.

<sup>158</sup> *Id.* at p. 3-7.

<sup>159</sup> *Id.* at p. 3-2.

<sup>160</sup> *Id.* at p. 3-3.

<sup>161</sup> *Id.* at p. 3-4.

<sup>162</sup> *Id.* at p. 3-7.

<sup>163</sup> *Id.* at p. 3-4.

Approving the proposed amendment would create a bad precedent and put the SFNF on a slippery slope for further weakening and degradation of the special land use designations in the Forest Plan. Although the draft EA asserts that “[a]dditional utility corridors would not be allowed,”<sup>164</sup> if SFNF approves an exception for this project, there is no reason to believe that the SFNF would deny future exceptions for project proponents that seek to deviate from existing rules, standards, and guidelines, for projects that do not support the multiple use mission or ecological objectives of forest management.

**(ii) Arroyo Montoso Inventoried Roadless Area**

The EPCU Project would include 2,600 feet of new transmission line, a 100-foot ROW, and up to two new towers within the Arroyo Montoso IRA. Implementation of the EPCU Project is likely to have significant adverse impacts on this IRA in violation of the 2001 Roadless Area Conservation Rule (Roadless Rule).<sup>165</sup> The purpose of the Roadless Rule is to conserve “ecological values and characteristics” of IRAs.<sup>166</sup>

IRAs are characterized by nine values or features: (1) high quality or undisturbed soil, water, and air; (2) sources of public drinking water; (3) diversity of plant and animal communities; (4) habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; (5) primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation; (6) reference landscapes; (7) natural appearing landscapes with high scenic quality; (8) traditional cultural properties and sacred sites, and (9) other locally identified unique characteristics.<sup>167</sup>

First, the draft EA acknowledges that one or two transmission poles may be built within the IRA.<sup>168</sup> To construct and maintain the new towers and lines, new access roads will need to be created.<sup>169</sup> But the Roadless Rule prohibits road construction and road reconstruction in IRAs, unless an exception is granted. The Responsible Official (usually the regional forester) may grant an exception to this prohibition if “[a] road is needed to protect public health and safety in cases of an imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property.” The EPCU Project does not appear to fit within this narrow exception. The draft EA fails to identify how the project will be completed in a manner that complies with the Roadless Rule’s restriction on road construction.

---

<sup>164</sup> *Id.* at p. 3-3.

<sup>165</sup> Roadless Area Conservation Rule, 66 Fed. Reg. 3244 (Jan. 12, 2001) (codified at 36 C.F.R. pt. 295) [hereinafter “Roadless Rule”].

<sup>166</sup> *Id.*; see also draft EA, *supra* note 5, at pp. H-2 to H-3.

<sup>167</sup> SFNF LMP, *supra* note 12, at p. 170.

<sup>168</sup> Draft EA, *supra* note 5, at p. H-1.

<sup>169</sup> *Id.* at pp. 3-4, 3-6, 3-7.

Second, the construction of new towers and associated access roads within the Arroyo Montoso IRA would require the removal of vegetation to create the ROW, reduce wildfire risk, and meet engineering standards.<sup>170</sup> But the Roadless Rule prohibits the cutting or removal of timber from within an IRA, subject to limited exceptions.<sup>171</sup> The draft EA fails to identify how the EPCU Project would be implemented consistent with the Roadless Rule’s prohibition on timber cutting.

Third, the construction of new towers and associated access roads within the Arroyo Montoso IRA would have adverse impacts on soil and water quality. The IRA consists of deep canyons that feed directly into the Rio Grande, and the undisturbed soils within the IRA “are rated as severe for potential erosion.”<sup>172</sup> Construction and ongoing maintenance of towers within the IRA will cause soil erosion that will flow directly into the river, impacting water quality. This portion of the river is already classified as having impaired function,<sup>173</sup> and adding more sediment from the EPCU Project will adversely impact water quality and hinder the watershed’s ability to meet water quality standards.

Fourth, the EPCU Project will have adverse impacts on wildlife habitat used by diverse plant and animal communities and habitat for listed species. These adverse impacts contravene the purpose of the Roadless Rule to conserve these ecological values. As described more fully above, the IRA is used by golden and bald eagles as well as many birds protected by the MBTA, including pinyon jay, which is under consideration for listing under the ESA.<sup>174</sup> The IRA is also used by large migratory mammals and other imperiled species, as discussed more fully above.

Fifth, allowing the proliferation of motorized use in an IRA would be contrary to the Forest Plan’s objective of ensuring that management actions move the forest toward desired conditions. One way the Forest Plan moves IRAs toward desired conditions is to “[p]rioritize roads in IRAs for decommissioning.”<sup>175</sup> The EPCU Project would move the IRA in the opposite direction.

Sixth, implementation of the EPCU Project would require arbitrary changes to the desired recreation opportunity spectrum (ROS) for the IRA. The USFS uses the desired ROS “to identify various development levels of recreation activities available to visitors.”<sup>176</sup> Under the current Forest Plan, the recreation opportunity spectrum (ROS) for the Arroyo Montoso IRA is “semiprimitive nonmotorized,”<sup>177</sup> which means the area is closed to motorized recreation and is “characterized by a predominantly natural or natural-appearing environment of moderate-to-large size.”<sup>178</sup> If the SFNF approves the forest plan amendment required for implementation of the EPCU project, the

---

<sup>170</sup> *Id.*

<sup>171</sup> Roadless Rule, *supra* note 165, at 3273.

<sup>172</sup> Draft EA, *supra* note 5, at p. H-2.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* (identifying protected species that occur within the IRA).

<sup>175</sup> SFNF LMP, *supra* note 12, at p. 318.

<sup>176</sup> *Id.* at p. 126.

<sup>177</sup> Draft EA, *supra* note 5, at p. 3-2.

<sup>178</sup> SFNF LMP, *supra* note 12, at p. 273.

ROS for the Arroyo Montoso IRA will be changed to semiprimitive motorized within the SNTUC, which would allow motorized recreation.<sup>179</sup> This will impact recreational users who currently enjoy primitive nonmotorized recreation within the IRA.

Seventh, the Roadless Rule provides that “[n]atural appearing landscapes with high scenic quality” are an important value of IRAs and explains that “[h]igh quality scenery, especially scenery with natural-appearing landscapes, is a primary reason that people choose to recreate. In addition, quality scenery contributes directly to real estate values in nearby communities and residential areas[.]”<sup>180</sup> The SFNF currently manages the IRA for a scenic integrity objective (SIO) of “high,” consistent with the Roadless Rule. The proposed forest plan amendment would arbitrarily change the SIO from high to low within the new transmission line corridor, contrary to the Roadless Rule.

Finally, the EPCU Project would result in adverse cumulative impacts because the new access roads within the Arroyo Montoso IRA and the change in ROS from nonmotorized to motorized would result in increased public access and the proliferation of motorized use.<sup>181</sup> This increased access and use will result in additional erosion and water quality impacts, illegal and unmanaged OHV usage, increased recreational shooting and illegal dumping, and intensified disturbance to wildlife and habitat.

### **(iii) El Camino Real de Tierra Adentro National Historic Trail**

The EPCU Project will have significant adverse impacts on El Camino Real de Tierra Adentro National Historic Trail (NHT), which Congress designated in 2000 pursuant to the National Trails System Act of 1968, as amended in 1978.<sup>182</sup> NHTs are

extended trails that follow the original routes of historically significant trails or roads, with the purpose of identifying and protecting the historic quality of the route and its remnants and artifacts. To qualify, a trail had to be: A route established by historic use; significant to the entire Nation as a result of that use; and possessing significant potential for recreational use or historic interest by the public due to historic interpretation and appreciation.<sup>183</sup>

The proposed transmission line will perpendicularly cross the El Camino Real de Tierra Adentro NHT.<sup>184</sup> This intersection “would impact one of the oldest sections of El Camino Real de Tierra Adentro, which was utilized from 1598-1610 before the capital was moved from Ohkay Owingeh to Santa Fe.”<sup>185</sup>

---

<sup>179</sup> Draft EA, *supra* note 5, at pp. 2-16, 3-2; A-2, A-3, H-2.

<sup>180</sup> Roadless Rule, *supra* note 165, at 3245.

<sup>181</sup> Draft EA, *supra* note 5, at p. 3-3.

<sup>182</sup> National Trails System Act of 1968, 16 U.S.C. §§ 1241–1249.

<sup>183</sup> SFNF LMP, *supra* note 12, at p. 189.

<sup>184</sup> Draft EA, *supra* note 5, at p. 3-2.

<sup>185</sup> Santa Fe New Mexican, My View by Carmichael Dominguez & Michael Romero Taylor, *supra* note 10.

The draft EA does not reflect any participation by or contributions from the NPS, despite the fact that El Camino Real de Tierra Adentro NHT is jointly administered by the two agencies, “who then collaborate with the Mexican government on trail management spanning the border.”<sup>186</sup> The BLM and the NPS completed a Comprehensive Management Plan and Final Environmental Impact Statement for El Camino Real de Tierra Adentro NHT in April 2004.<sup>187</sup> The NNSA must ensure the participation and input of the NPS.

To protect the values of national historic trails, the Forest Plan includes the following guideline: “Management activities in NHT corridors should be consistent with or make progress toward achieving scenic integrity objectives of high or very high within the foreground of the trail (up to .5 miles either side) or within the identical trail viewshed - the landscape area visible from the trail based on topography.”<sup>188</sup> The cultural and natural landscape is a fundamental resource of the NHT and important to the trail’s interpretive stories. Scenic and historic viewsheds are considered an important contributing factor to a positive visitor experience. To implement the EPCU Project, NNSA proposes to amend the Forest Plan by adding an exception to this guideline as follows: “except within the S/N Transmission Line Utility Corridor Management Area.”<sup>189</sup>

This proposed amendment to the Forest Plan would create an arbitrary exception to the NHT guideline intended to protect the viewshed and scenic integrity. Adopting this amendment would undermine many years of management work intended to protect this irreplaceable cultural resource. The SFNF should reject the proposed amendment and uphold the integrity of the El Camino Real de Tierra Adentro NHT.

## **2. The SFNF Should Deny the NNSA’s Application for a Special Use Permit for the Project.**

The EPCU Project is a use of National Forest System lands that would require a special use permit under 36 C.F.R. Part 251, Subpart B.<sup>190</sup> The requirements and procedures that apply to special use permit applications are set forth in the Code of Federal Regulations<sup>191</sup> and the Forest Service Handbook.<sup>192</sup> If the USFS does approve an application for a special use permit, the USFS must

---

<sup>186</sup> SFNF LMP, *supra* note 12, at p. 189.

<sup>187</sup> NPS, El Camino Real de Tierra Adentro Comprehensive Management Plan (Apr. 2004), *available at* <https://www.nps.gov/elca/getinvolved/trail-planning.htm>; *see also* A Management Plan for El Camino Real de Tierra Adentro on State Lands in New Mexico (2019), *available at* [https://www.nmhistoricpreservation.org/assets/files/historic-contexts-and-reports/ELCA%20Management%20Plan\\_State%20Lands\\_April%202019%20-%20Final%20sm.pdf](https://www.nmhistoricpreservation.org/assets/files/historic-contexts-and-reports/ELCA%20Management%20Plan_State%20Lands_April%202019%20-%20Final%20sm.pdf).

<sup>188</sup> SFNF LMP, *supra* note 12, at p. 191.

<sup>189</sup> Draft EA, *supra* note 5, at p. 2-16.

<sup>190</sup> 36 C.F.R. §§ 251.50(a) (scope); 251.53(l)(4).

<sup>191</sup> 36 C.F.R. § 251.54.

<sup>192</sup> U.S. Forest Service Handbook (FSH) 2709.11, Special Uses Handbook (Feb. 22, 2016), *available at* [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd526449.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd526449.pdf).

impose terms and conditions on the special use authorization in accordance with the regulations.<sup>193</sup>

In this case, the NNSA's proposed special use permit is not consistent with the Forest Plan. The NFMA prohibits the USFS from issuing special use permits for National Forest System lands when the special use permit would be inconsistent with the land management plan.<sup>194</sup> If a proposed project requiring a special use permit would be inconsistent with the Forest Plan, the USFS may either deny the permit or amend the Forest Plan to accommodate the project. As discussed above, the SFNF should disapprove the amendment to the Forest Plan. If the SFNF does so, the SFNF must also deny the application for a special use permit. NNSA's "proposal to obtain a special use authorization" for the EPCU Project "does not grant any right or privilege to use National Forest System lands."<sup>195</sup>

Additionally, when processing an application for special use permit, the SFNF "shall reject any proposal" for a special use permit if the SFNF "determines that: (i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or (ii) The proposed use would not be in the public interest."<sup>196</sup> In this case, granting the special use permit would be inconsistent and incompatible with the management of the Caja Del Rio Wildlife and Cultural Interpretive Management Area, Arroyo Montoso IRA, and El Camino Real de Tierra Adentro NHT. Additionally, granting the special use permit would be contrary to the public interest because NNSA has not afforded sufficient opportunities for public participation and input in the proposed Forest Plan amendment; the amendment would compromise the conservation provisions in the Forest Plan contrary to the NFMA, MUSYA, and 2012 Planning Rule; and the amendment would adopt arbitrary and capricious exceptions to the standards and guidelines in the plan. Accordingly, the SFNF must deny the application for a special use permit.

Finally, it is unclear whether the NNSA has complied with all applicable requirements of the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1935, as amended.<sup>197</sup> Applicable regulations provide that applicants seeking a special use permit for "[s]ystems and related facilities for generation, transmission, and distribution of electric energy" must comply with these requirements; yet the draft EA does not include the FERC in the list of agencies contacted.<sup>198</sup>

The SFNF should deny the application for a special use permit for the EPCU Project because the special use permit would require an arbitrary amendment to the Forest Plan, NNSA's justification for needing a special use permit is based on convenience and cost rather than actual need, the

---

<sup>193</sup> 36 C.F.R. § 251.56.

<sup>194</sup> 16 U.S.C. § 1604(i).

<sup>195</sup> 36 C.F.R. § 251.54(c).

<sup>196</sup> 36 C.F.R. § 251.54(e)(5)(i)-(ii), (g)(1).

<sup>197</sup> 16 U.S.C. §§ 791a et seq.

<sup>198</sup> Draft EA, *supra* note 5, at p. 4-1.



transmission line is inconsistent with the conservation purposes of the special designations on the Caja, and the special use permit is contrary to the public interest. If the SFNF does grant a special use permit, which should not occur without further environmental review under NEPA and preparation of an EIS, the SFNF must impose terms and conditions<sup>199</sup> to ensure that all standards and guidelines in the Forest Plan are met and that NNSA is following all best management practices.

### **C. THE BLM SHOULD NOT GRANT A NEW RIGHT OF WAY FOR THE PROJECT.**

The EPCU Project would require a new ROW on BLM land (about 2.5 miles), granted by the BLM Taos Field Office. The Taos Field Office manages this area pursuant to the 2012 Taos Resource Management Plan (RMP).<sup>200</sup> The 2012 Taos RMP provides, “[w]ithin the West Santa Fe planning unit, a 0.25-mile utility corridor will be designated along Buckman Road.”<sup>201</sup> The NNSA proposes to locate the BLM-portion of the EPCU Project within this designated corridor.<sup>202</sup>

While it is good that NNSA intends to use the existing designated utility corridor to co-locate the BLM portion of the EPCU Project adjacent to existing development, the BLM should consider whether granting the requested ROW is consistent with BLM policy, and in particular, whether the EPCU Project is consistent with the purpose and intent of the Conservation and Landscape Health Public Lands Proposed Rule.<sup>203</sup> The Rule would implement the Federal Land Policy and Management Act (FLPMA) of 1976,<sup>204</sup> specifically, the long-ignored statutory requirement that

the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use[.]<sup>205</sup>

To do so, the Proposed Rule provides policy for the BLM to protect intact functioning landscapes and to restore degraded habitat and ecosystems. As described throughout these comments, the Caja is an intact functioning landscape that has suffered some habitat and ecosystem degradation yet continues to provide irreplaceable wildlife habitat and cultural and ecosystem services. Proceeding with the proposed EPCU Project would bisect this landscape and intensify the threats

---

<sup>199</sup> 36 C.F.R. § 251.56.

<sup>200</sup> 2012 Taos RMP, *supra* note 84, at p. 7.

<sup>201</sup> *Id.* at p. 42.

<sup>202</sup> Draft EA, *supra* note 5, at p. 1-3.

<sup>203</sup> Dep’t of Interior, BLM, Conservation and Landscape Health Proposed Rule, 88 Fed. Reg. 19583 (Apr. 3, 2023), available at <https://www.federalregister.gov/documents/2023/04/03/2023-06310/conservation-and-landscape-health> [hereinafter Public Lands Conservation Rule].

<sup>204</sup> Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1785.

<sup>205</sup> 43 U.S.C. § 1701(a)(8).

of increased illegal OHV usage, recreational shooting, dumping, and vandalism. Given these adverse impacts, the BLM should deny the request for a new ROW.

If the BLM Taos Field Office determines that the ROW should be granted, the BLM must ensure that all other requirements of the 2012 Taos RMP will be met, including mitigations to protect other resources. For example, the BLM must ensure that NNSA adheres to the RMP's spatial and temporal limitations on surface disturbing activities to protect bald eagles, golden eagles, peregrine falcons, other raptor species, and gray vireo.<sup>206</sup> NNSA should conduct additional surveys for black tailed prairie dogs, which have potential habitat throughout the project area, to identify occupied prairie dog towns and ensure they are avoided by at least .25 miles.<sup>207</sup> NNSA should ensure that additional surveys and monitoring is conducted for burrowing owls and that timing restrictions and other mitigation measures are implemented for this species.<sup>208</sup> This short list is not comprehensive, but these few examples are provided to illustrate that the mitigation measures proposed by NNSA for the EPCU Project<sup>209</sup> are wholly inadequate and do not reflect all requirements of the 2012 Taos RMP. If the EPCU Project is going to move forward, NNSA must incorporate additional measures consistent with existing management guidance in the 2012 Taos RMP as well as best management practices (BMPs), following further environmental review and preparation of a full EIS.

#### **D. NNSA MUST FULFILL REQUIREMENTS FOR TRIBAL CONSULTATION AND NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE.**

Given the demonstrated importance of the Caja to multiple Pueblos, as described above, the NNSA, SFNF, and BLM should meet and exceed the legal requirements for Tribal consultation in the development of this project. This consultation must be consistent with the joint Secretarial Order filed by the Department of the Interior and the Department of Agriculture (Order No. 3404) in 2021<sup>210</sup> and the Permanent Instruction Memorandum, "Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes" issued in 2022.<sup>211</sup> The order acknowledges that both departments manage millions of acres of federal lands and are entrusted to protect Tribal interests. The agencies that manage federal lands have an obligation to maintain lands and waters that are both culturally and naturally significant to Indigenous peoples.

---

<sup>206</sup> 2012 Taos RMP, *supra* note 84, at p. 14.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at p. 198.

<sup>209</sup> Draft EA, *supra* note 5, at pp. C-1 to C-3.

<sup>210</sup> Dep't of Interior & U.S. Dep't of Agriculture, Joint Secretarial Order No. 3403, Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, *available at* <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf>

<sup>211</sup> BLM, Permanent Instructional Memorandum (PIM) No. 2022-011, Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary's Order 3403, *available at* <https://www.blm.gov/policy/pim-2022-011>.

Based on the draft EA and the public comments made on the record at the public meetings held January 11, 2024 and February 15, 2024,<sup>212</sup> it appears that NNSA has done an inadequate job of meeting its consultation requirements and may have misrepresented the positions of sovereign Pueblo governments with regard to the project. The draft EA states, “During [a] June 23 consultation session, both the Pueblo of Tesuque and the Pueblo de Cochiti provided positive feedback on the two new proposed routes,” and “one of those updated routes, with additional adjustments based on additional tribal input, has become the single Proposed Action alternative.”<sup>213</sup> However, at the public meetings for the EPCU Project, spokespersons for the Pueblo De Cochiti and Pueblo of Tesuque commented that those Pueblos did not support the EPCU Project as currently proposed. Given the statements made on the record at the meeting, it appears that NNSA’s Tribal consultation has not been sufficient or meaningful, and that the agency may even have misrepresented the views of Pueblos. The inconsistency between the statements in the draft EA and the testimony at the hearings highlight that NNSA did not conduct consultation on a timely basis and has failed to continue meaningful consultation as this proposal has advanced.<sup>214</sup>

Moreover, the NNSA’s decision to prepare an EA instead of an EIS for this project is inconsistent with the Resolution issued by the APCG on behalf of the nineteen Pueblos of New Mexico and one Pueblo in Texas.<sup>215</sup> In Resolution No. APCG-2021-13, the APCG expressly urged “USFS to fully analyze environmental and cultural impacts of the proposed EPCU project by conducting a full environmental impact statement.”<sup>216</sup> Despite this appropriate request three years ago, NNSA continues to analyze this project through an inadequate EA.

In addition to consultation under NEPA, the EPCU Project must comply with the National Historic Preservation Act (NHPA)<sup>217</sup> and the numerous federal executive orders specifically designed to protect culturally sensitive and archaeologically significant areas like the Caja, including Executive Order 13287.<sup>218</sup> Although NNSA issued a Notice of Intent to conduct scoping for the EPCU Project in April 2021, the APCG Resolution reflects that, as of November 29, 2021, the SFNF had “not initiated a Section 106 Process in accordance with the [NHPA] to gather requisite cultural resource information informed by tribal cultural experts designated by Federal Indian Tribes for the proposed route and alternatives.”<sup>219</sup> Section 106 of the NHPA requires NNSA, SFNF, and BLM to take into

---

<sup>212</sup> See <https://www.energy.gov/nnsa/articles/public-meeting-and-supplemental-comment-period-details-announced-proposed-lanl>.

<sup>213</sup> Draft EA, *supra* note 5, at p. 4-2.

<sup>214</sup> See *generally* Santa Fe New Mexican, My View by Reyes Devore and Joey Sanchez, Government is failing to consult with tribes (Feb. 14-, 2024), *available at* [https://www.santafenewmexican.com/opinion/my\\_view/government-is-failing-to-consult-tribes/article\\_0f7066f8-cb8d-11ee-8535-0bd03b427455.html](https://www.santafenewmexican.com/opinion/my_view/government-is-failing-to-consult-tribes/article_0f7066f8-cb8d-11ee-8535-0bd03b427455.html).

<sup>215</sup> Exhibit E, *supra* note 1.

<sup>216</sup> *Id.*

<sup>217</sup> National Historic Preservation Act (NHPA), 54 U.S.C. § 300101 et seq.

<sup>218</sup> Preserve America: Executive Order 13287 (Mar. 03, 2003).

<sup>219</sup> *Id.*

account the effect of its actions on historic properties.<sup>220</sup> Specifically, a federal “undertaking” triggers the Section 106 process, which requires the lead agency to identify historic properties affected by the action and to develop measures to avoid, minimize, or mitigate any adverse effects on historic properties.<sup>221</sup> NHPA regulations provide that an agency “shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey.”<sup>222</sup>

As with Tribal consultation, it appears that NNSA has not done enough to comply with the NHPA and related requirements.<sup>223</sup> The NNSA must ensure that all relevant legal requirements are met, including the development “with the identified consulting parties [of] alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects.”<sup>224</sup>

Additionally, the NNSA should be coordinating the Section 106 process under the NHPA with this NEPA process because these two processes require some of the same analysis of impacts. As one example, by developing new roads, ROW, and infrastructure in the undeveloped and semi-developed portions of the Caja, NNSA is creating a situation that will allow new and increased OHV disturbance to historic properties. As recognized in the environmental impact statement (EIS) for the 2012 Taos RMP:

Information from site forms and site monitoring reports show that archaeological sites are being impacted by roads and trails, OHV travel, overgrazing, erosion, inadvertent public uses, and vandalism. Perhaps the greatest threat to cultural resources is the dramatic increase in use of OHV and other recreational ventures near the towns and villages within the planning area. The uncontrolled use of OHVs entering public land from nearly every adjacent neighborhood is negatively affecting the condition of cultural resources. OHVs disturb soils that have been previously stable, which accelerates erosion and future damage to sites.<sup>225</sup>

As discussed throughout these comments, adding new roads and access to the undeveloped portions of the Caja will allow unmanaged and illegal OHV use to proliferate. Despite the impacts of the EPCU Project on the cultural landscape of the Caja, the draft EA reflects inadequate Tribal consultation and NHPA compliance. While NNSA may complete some of this work outside of this NEPA process, NNSA must ensure that these responsibilities are met. The EPCU Project is an

---

<sup>220</sup> 54 U.S.C. 306108.

<sup>221</sup> 16 U.S.C. § 470f; 36 C.F.R. §§ 800.4, 800.6.

<sup>222</sup> 36 C.F.R. § 800.4(b)(1).

<sup>223</sup> See Santa Fe Reporter, *Crashing Through the Caja* (Jan. 31, 2024), *available at* <https://www.sfreporter.com/news/2024/01/31/crashing-through-the-caja/> (quoting Pueblo of Tesuque Legal Counsel Jim James as saying, “We want to make sure that the National Nuclear Security Agency and the other participating agencies like BLM and the Forest Service are actually following the policies. What we’re seeing is that those agencies have, in our opinion, minimally complied with those provisions”).

<sup>224</sup> 36 C.F.R. § 800.8(c).

<sup>225</sup> BLM Taos Field Office, *Final Environmental Impact Statement*, Vol. I, p. 205 (Nov. 2011), *available at* <https://eplanning.blm.gov/eplanning-ui/project/68121/570> [hereinafter “Taos RMP Final EIS”].

impactful undertaking that NNSA must analyze under Section 106 of the NHPA, and given the overlap in the analysis, NNSA should do so in conjunction with this NEPA process.

#### **E. THE EPCU PROJECT WOULD HAVE DISPROPORTIONATE IMPACTS ON ENVIRONMENTAL JUSTICE COMMUNITIES.**

In the draft EA, NNSA has failed to take a hard look at the disproportionate impacts that the proposed EPCU Project would have on environmental justice communities. As defined by the U.S. Environmental Protection Agency, “environmental justice” means “the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>226</sup> Executive Order 12898 (EO 12898) requires each Federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”<sup>227</sup> Even more recently, President Biden’s January 27, 2021 “Executive Order on Tackling the Climate Crisis at Home and Abroad” (EO 14008) explicitly recognizes the inexorable links among climate, health, and environmental justice (which includes social and economic justice), and the corresponding need to address all of them in concert, with a whole-of-government approach.<sup>228</sup>

The EPCU Project will have direct, indirect, and cumulative impacts that will disproportionately impact environmental justice communities. As identified in the draft EA, communities within close proximity to LANL, i.e., within the 20-mile “region of influence” surrounding the project area, include 16 sovereign Pueblo governments.<sup>229</sup> As described above, the Caja is an area of great cultural significance to these communities. Additionally, 52.9 percent of the population in the region of influence is Hispanic or Latino, and 7.6 percent of the population is Native American.<sup>230</sup> The draft EA also reflects that the percentage of the population below the poverty level is 11.5% for Santa Fe County and 13.5% within the region of influence.

---

<sup>226</sup> See U.S. Environmental Protection Agency, Environmental Justice, [www.epa.gov/environmentaljustice](http://www.epa.gov/environmentaljustice).

<sup>227</sup> Exec. Order No. 12,898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 32 (Feb. 11, 1994), available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

<sup>228</sup> See Exec. Order No. 14008, Tackling the climate crisis at home and abroad, 86 Fed. Reg. 7619-7633, (Jan. 27, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-ontackling-the-climate-crisis-at-home-and-abroad/>. Section 201 (Policy), for example, recognizes the threat to public health posed by the climate crisis and the need to “deliver environmental justice in communities all across America.” Another part of the EO is expressly dedicated to “Securing Environmental Justice and Spurring Economic Opportunity,” and Section 219 expands on the language of EO 12898, directing agencies to make environmental justice part of their mission, to expressly include climate, cumulative impacts, and “accompanying economic challenges.”

<sup>229</sup> Draft EA, *supra* note 5, at p. 3-31.

<sup>230</sup> *Id.* at p. 3-33.

NNSA asserts that any long-term impacts on environmental justice communities have been avoided through Tribal consultation and that all other impacts, including noise, air emissions, and restricted access for recreation, are temporary in nature and will be borne equally by all who visit the Caja.<sup>231</sup> This analysis fails to account for the inadequacy of NNSA’s Tribal consultation, as discussed above, and the long-term degradation of cultural and natural resources, which will disproportionately impact Indigenous, Hispanic, and Latino communities.

As one significant example, by considering the population of Santa Fe County as a whole, the draft EA fails to consider the significantly disproportionate impacts on low-income, minority neighborhoods adjacent to the Caja in the City of Santa Fe. Data published by Santa Fe Trends and the Santa Fe Public Schools reflect that the communities that reside within the City of Santa Fe in close proximity to the southeastern boundary of the Caja have significantly higher minority and poverty rates than found in Santa Fe County or the region of influence.<sup>232</sup> There are over 4,000 children who go to public school within a 5-mile radius of the La Cieneguilla Petroglyphs.<sup>233</sup> This number includes students who attend Caesar Chavez Elementary School, Nina Otero Community School, El Camino Real Academy, and Capital High School, and does not include homeschooled children, children who attend private schools, or children who do not attend school. The data reflects that the population served by these four public schools are 93% Hispanic and have a median family income of only \$19,471 per year, well below the federal poverty line.<sup>234</sup> By comparison, the communities served by the larger Santa Fe Public School system are 80% Hispanic and have a median family income of \$48,494. This data reflects that by looking only at aggregated data for Santa Fe County, the draft EA dramatically misrepresents the effects that the EPCU Project would have on environmental justice communities that reside in the neighborhoods on the southside of the City of Santa Fe, or the population within the city limits.

The students at these predominantly minority, low income public schools experience a disparity in access to natural spaces and outdoor recreational activities. Described as the “Nature Gap,” this disparity “disproportionately impacts communities of color and low-income households, denying them the physical, social, and emotional benefits of spending time in nature.”<sup>235</sup> In an analysis conducted by the Conservation Science Partners and commissioned by the Hispanic Access Foundation and the Center for American Progress, 67% of Hispanics and Latinos are nature

---

<sup>231</sup> *Id.* at p. 3-34.

<sup>232</sup> See City of Santa Fe, Santa Fe Trends (2010), available at [https://santafenm.gov/document\\_center/document/5057](https://santafenm.gov/document_center/document/5057); Santa Fe Public Schools, <https://www.sfps.info/page/sfps-demo> (providing current public data from the N.M. Public Education Department STARS state reporting system).

<sup>233</sup> BLM, La Cieneguilla Petroglyphs, <https://www.blm.gov/visit/la-cieneguilla-petroglyphs> (“La Cieneguilla Petroglyph Site is very close to the City of Santa Fe. From the intersection of Airport Road and NM 599, continue west on Airport Road for 3.3 miles.”).

<sup>234</sup> In 2023, the Federal Poverty Level for a family of four was \$30,000. See Healthcare.gov, <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>.

<sup>235</sup> The Momentum, Jonathan D. Bourdeau, What is the Nature Gap?, available at <https://www.themomentum.com/articles/what-is-the-nature-gap>.

deprived, and 71% of non-white low-income families with children are nature deprived.<sup>236</sup> A close look at the Santa Fe Trends and Santa Fe Public Schools data reveals that students on the southside of Santa Fe disproportionately fall into the Nature Gap.

The EPCU Project will increase the disparity in access to the Caja and outdoor recreational opportunities for environmental justice communities. As the draft EA acknowledges, the project would result in temporary restricted access to the Caja for recreational use during construction.<sup>237</sup> The draft EA erroneously concludes, however, that these impacts are merely temporary and will affect all users alike.<sup>238</sup> But the EPCU Project will create a huge swath of development bisecting the Caja, which provides the closest, most easily accessible outdoor recreation destination for low-income communities on the southside of Santa Fe. By degrading the natural and cultural resources of the Caja and limiting recreational access, even temporarily, the proposal will have disproportionate impacts on these adjacent communities, who may lack the resources to travel farther from home.

Moreover, the EPCU Project will not provide economic benefits to these impacted communities. As stated in the draft EA:

The transmission line would be constructed by a LANL subcontractor over a period of approximately 2 years. The total labor requirements are estimated to be less than 100 persons. Because of the relatively low number of workers and timeframe needed to construct the proposed transmission line, construction activities would have a negligible effect on the socioeconomic character of the surrounding communities. Maintenance and operation of the new transmission line and upgrades to the LANL electrical infrastructure would be performed by existing LANL utility staff or third-party contractor under LANL supervision. In total, it is not expected that the proposed project would affect, or potentially affect, elements of the human environment such as population, employment, income, cost of living, property values, housing, or public services.<sup>239</sup>

The draft EA thus reflects that the EPCU Project will create minimal jobs and provide little to no sustainable economic growth for local communities, whose culture, land, water, wildlife, and climate will bear the negative impacts of the proposed project. The result is environmental injustice, contrary to federal law and policy requiring NNSA to deliver environmental justice to communities impacted by its proposed action. According to EPA Guidance on environmental justice in the NEPA process, an environmental justice analysis must include “the cultural values

---

<sup>236</sup> Center for American Progress, *The Nature Gap: Confronting Racial and Economic Disparities in the Destruction and Protection of Nature in America* (July 2020), available at <https://www.americanprogress.org/wp-content/uploads/sites/2/2020/07/The-Nature-Gap4.pdf>.

<sup>237</sup> Draft EA, *supra* note 5, at 3-34.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.* at p. 1-9.

that the community and/or Indian Tribe may place on a natural resource at risk.”<sup>240</sup> The Guidance also states that it is “essential” for the “NEPA analyst to consider the cumulative impacts from the perspective of these specific resources or ecosystems which are vital to the communities of interest.”<sup>241</sup> The draft EA does not meet this standard.

Additionally, as discussed in Part F.1 below, the EPCU Project will primarily rely on non-renewable energy generated in the four corners region. The draft EA fails to consider the cumulative impacts of continued reliance on non-renewable energy on community health, water and air quality for environmental justice communities in the four corners area.<sup>242</sup>

NNSA must choose the no action alternative or conduct a full EIS that better addresses the direct, indirect, and cumulative disproportionate impacts on environmental justice, minority, and low-income communities, especially impacts on cultural resources and access to outdoor recreation.

#### **F. NNSA’S ANALYSIS OF CLIMATE, GREENHOUSE GASES, AND THE SOCIAL COST OF CARBON FAILS TO ADDRESS THE LINK BETWEEN CLIMATE AND NATIONAL SECURITY.**

Under current guidance from the CEQ, federal agencies should avoid and mitigate greenhouse gas (GHG) emissions to the greatest extent possible.<sup>243</sup> The guidance provides,

Given the urgency of the climate crisis and NEPA’s important role in providing critical information to decision makers and the public, NEPA reviews should quantify proposed actions’ GHG emissions, place GHG emissions in appropriate context and disclose relevant GHG emissions and relevant climate impacts, and identify alternatives and mitigation measures to avoid or reduce GHG emissions.<sup>244</sup>

NNSA’s proposal is inconsistent with this guidance because NNSA has failed to consider the link between climate and national security, and has not identified reasonable alternatives to avoid increased GHG emissions that would occur due to expanded power use at LANL without increased reliance on renewable energy sources.

---

<sup>240</sup> 1998 EPA NEPA Final Guidance, available at [https://www.epa.gov/sites/production/files/2015-02/documents/ej\\_guidance\\_nepa\\_epa0498.pdf](https://www.epa.gov/sites/production/files/2015-02/documents/ej_guidance_nepa_epa0498.pdf).

<sup>241</sup> *Id.*

<sup>242</sup> See, e.g., USCA Institute of the Environment and Sustainability, Impacts of Oil and Gas Drilling on Indigenous Communities in New Mexico’s Greater Chaco Landscape (Sept. 2020), available at <https://www.ioes.ucla.edu/wp-content/uploads/2020/09/ucla-ioes-practicum-impacts-of-oil-and-gas-on-indigenous-communities-in-new-mexico-final-report-9-2020.pdf>.

<sup>243</sup> CEQ, National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196 (Jan. 9, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00158.pdf>.

<sup>244</sup> *Id.*



As the EA notes, “LANL is a DOE/NNSA national laboratory whose primary mission is to solve national security challenges.”<sup>245</sup> The National Intelligence Council has found that “climate change will increasingly exacerbate risks to U.S. national security interests as the physical impacts increase and geopolitical tensions mount about how to respond to the challenge.”<sup>246</sup> Further, the U.S. Defense Department recognizes that climate change is a “threat multiplier” because it exacerbates existing environmental stresses and security risks. In a 2021 Department of Defense report, Secretary of Defense Lloyd Austin said that almost everything the U.S. Defense Department (DOD) does to defend the American people is jeopardized by climate change—the department’s strategies, plans, capabilities, missions, and equipment—and the risks are growing, especially since the world is not on track to meet its Paris Agreement goals.<sup>247</sup>

To address the climate and biodiversity crises, in 2021 the President Biden Administration established a national goal of conserving 30 percent of our lands and waters by 2030, known as the America the Beautiful Initiative.<sup>248</sup> The Caja has been identified as an important landscape worthy of preservation and conservation to implement the initiative.<sup>249</sup> The Climate Atlas, a mapping and analysis tool developed to evaluate which lands offer the best opportunities to store carbon and support biodiversity, states that “due to its high ecological stability and climate resilience, parts of Caja del Rio are among the top 20% of unprotected BLM and Forest Service lands with the highest conservation value in the lower 48 U.S. states.”<sup>250</sup>

The EPCU Project will not address the national security risk posed by climate change. According to PNM, the Norton Substation that would provide power to LANL’s proposed transmission line is currently running off of 60% non-renewable energy, with a majority of power coming from natural gas and coal generated in the four corners area. Speaking to the climate impacts of fossil fuel production in the four corners, a study done by NASA and the University of Michigan highlighted that “one small ‘hot spot’ in the U.S. Southwest is responsible for producing the largest

---

<sup>245</sup> Draft EA, *supra* note 5, at p. 1-1.

<sup>246</sup> National Intelligence Council, National Intelligence Estimate: Climate Change and International Responses Increasing Challenges to US National Security Through 2040, Report No. NIC-NIE-2021-10030-A, at p. I, *available at* [https://www.dni.gov/files/ODNI/documents/assessments/NIE\\_Climate\\_Change\\_and\\_National\\_Security.pdf](https://www.dni.gov/files/ODNI/documents/assessments/NIE_Climate_Change_and_National_Security.pdf); see also Columbia Climate School, Why Climate Change is a National Security Risk (Oct. 11, 2023), *available at* <https://news.climate.columbia.edu/2023/10/11/why-climate-change-is-a-national-security-risk/#:~:text=National%20security%20is%20no%20exception,to%20respond%20to%20the%20challenge.%E2%80%9D>.

<sup>247</sup> Department of Defense, Office of the Undersecretary for Policy (Strategy, Plans, and Capabilities). 2021. Department of Defense Climate Risk Analysis. Report Submitted to National Security Council. *available at* <https://media.defense.gov/2021/Oct/21/2002877353/-1/-1/0/DOD-CLIMATE-RISK-ANALYSIS-FINAL.PDF>.

<sup>248</sup> Exec. Order No. 14008, *supra* note 224.

<sup>249</sup> The Climate Atlas, Mapping our public lands opportunity, [https://www.theclimateatlas.org/caja\\_del\\_rio](https://www.theclimateatlas.org/caja_del_rio).

<sup>250</sup> *Id.*

concentration of the greenhouse gas methane seen over the United States -- more than triple a standard ground-based estimate.”<sup>251</sup>

Moreover, as noted above, America’s forests are a key climate solution, absorbing carbon dioxide equivalent to more than 10% of U.S. annual GHG emissions.<sup>252</sup> Yet, the climate effect of this project will not just be felt by utilizing even more fossil fuel resources, but also by reducing the amount of forest land to sequester carbon. The draft EA proposes the broad removal of countless forest trees and vegetation in the project area through the creation and expansion of ROWs, the creation of new and temporary roads, the development of construction staging areas, and the installation of massive transmission towers. In doing so, this project will negatively impact the forests of the Caja and their ability to sequester carbon. Accordingly, it is deeply troubling and ironic that while the Department of Defense has recognized climate as one of the largest risks to U.S. national security, the very federal agencies charged with upholding U.S. national security are now proposing a project that will further exacerbate climate change.

Further, by proposing to develop a key power source and unsecured transmission line for LANL on easily accessed public lands, NNSA also creates additional national security risks compared to developing more secure energy sources onsite. NNSA’s proposed action runs counter to LANL’s publicly stated mission of developing “reliable, secure, and sustainable carbon-neutral energy solutions for the nation.”<sup>253</sup> Additionally, as identified in the draft EA, severe weather events, including high winds, thunderstorms, heat waves, and intense cold periods, are the principal contributors to power outages.<sup>254</sup> The Caja frequently experiences these events, and adding a redundant power line in the same general location as the existing transmission lines does little to alleviate the risks posed by severe weather events to the power grid.

Speaking to the problems of LANL’s proposal, various local leaders living in communities around the Caja recently noted, “a major purpose of national security should be to safeguard the diverse cultural values and sacred landscapes that make us who we are today. Permanently protecting the Caja is not some distant or abstract issue; it’s a very personal and local issue that affects all of us who call Santa Fe and Northern New Mexico home. It is time to unite across New Mexico’s diverse cultures and communities to permanently protect this amazing cultural and natural landscape before it’s too late.”<sup>255</sup> To meet the broader mission of national security, NNSA and LANL should not be proposing to develop and dissect the Caja, but actively working to protect the Caja for its many unique ecological, climate, and national security benefits.

---

<sup>251</sup> NASA Jet Propulsion Laboratory, University of California Institute of Technology, Tiny U.S. Region Is Methane 'Hot Spot,' NASA Finds (Oct. 9, 2014), <https://www.jpl.nasa.gov/news/tiny-us-region-is-methane-hot-spot-nasa-finds>.

<sup>252</sup> See The White House, Factsheet, *supra* note 93.

<sup>253</sup> LANL, Energy Security Solutions, Developing reliable and sustainable energy solutions for the nation, <https://mission.lanl.gov/energy-security/>.

<sup>254</sup> Draft EA, *supra* note 5, at p. 1-2.

<sup>255</sup> Santa Fe New Mexican, My View by Carmichael Dominguez & Michael Romero Taylor, *supra* note 10.

## **G. NNSA MUST COMPLY WITH NEPA.**

The NNSA must comply with all requirements of NEPA, including but not limited to the requirements set forth below.

### **1. NNSA Has Failed to Identify an Adequate Purpose and Need.**

Under NEPA, NNSA is required to discuss the purpose and need for the proposed action in an EA or EIS.<sup>256</sup> In the “purpose and need” section of the draft EA, NNSA asserts that the EPCU Project is needed because “LANL’s electrical power demand is projected to exceed current import capacity from the PNM system by 2027.”<sup>257</sup> To support this assertion, NNSA relies on the 2017 Integrated Resource Plan Report prepared by Pace Global to assist the Caribbean Utilities Company with developing its energy portfolio for a 29-year planning period from 2017 to 2045.<sup>258</sup> The Global 2017 Report does not mention LANL and does not address energy needs in this country, let alone Los Alamos County. It is unclear why NNSA cites the Caribbean report as support for the EPCU Project purpose and Need. Meanwhile, in other parts of the draft EA, NNSA provides the inconsistent suggestion that the EPCU Project will not be used to support increased power supply, with statements such as, “increasing line *capacity* does not necessarily mean increasing *usage*.”<sup>259</sup>

Additionally, NNSA asserts that the third redundant powerline is needed to support DOE’s national security mission and to provide a contingency power supply if there is a failure on one of the existing lines.<sup>260</sup> However, since the new transmission line will connect to the Norton substation, which already serves the existing Norton transmission line, and the new line will parallel the existing Reeves line for much of its route, implementation of the EPCU Project would do little to alleviate the vulnerability of LANL and Los Alamos County to an event that affects two or more of the transmission lines, such as a weather or wildfire event, an act of terrorism, or a shutdown for routine scheduled maintenance. NNSA cannot achieve its stated purpose and need by adding another powerline to the existing system, which is antiquated and vulnerable.

NNSA’s failure to identify an adequate purpose and need for the project, inconsistent statements about whether the EPCU Project will be used to support expanded operations and energy usage at LANL, and its arbitrary reliance on a report from the Caribbean that is unrelated to LANL and Los Alamos County does not meet NEPA’s purpose and need requirement.

---

<sup>256</sup> See 42 U.S.C. § 4332(c)(3); 40 C.F.R. §§ 1501.5(c)(2); 1501.7(h)(4); 1502.13.

<sup>257</sup> Draft EA, *supra* note 5, at p. 1-3.

<sup>258</sup> Pace Global, 2017 Integrated Resource Plan Report Prepared for Caribbean Utilities Company, at p. 6 (July 28, 2017) [hereinafter Global 2017 Report].

<sup>259</sup> Draft EA, *supra* note 5, at p. 1-4.

<sup>260</sup> *Id.* at pp. 1-3 to 1-4.

## **2. NNSA Has Failed to Take a Hard Look at Environmental Consequences.**

NEPA dictates that NNSA take a “hard look” at the environmental consequences of a proposed action, and the requisite environmental analysis “must be appropriate to the action in question.”<sup>261</sup> To take the “hard look” required by NEPA, NNSA must assess impacts and effects that include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.”<sup>262</sup> NEPA regulations define “cumulative effects” as effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.<sup>263</sup>

To satisfy NEPA’s hard look requirement, the cumulative effects assessment must do two things. First, NNSA must catalog the past, present, and reasonably foreseeable projects in the area that might impact the environment.<sup>264</sup> Second, NNSA must analyze these impacts in light of the proposed action.<sup>265</sup> If NNSA determines that certain actions are not relevant to the cumulative impacts analysis, it must “demonstrat[e] the scientific basis for this assertion.”<sup>266</sup> A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient.<sup>267</sup>

As documented throughout these comments, NNSA has failed to take a hard look at the EPCU Project’s adverse impacts to the cultural, traditional, spiritual, historical, and archaeological values of the Caja; the wildlife, wildlife habitat, and wildlife corridors on the Caja; and the recreational, educational, economic, and scenic values of the Caja. NNSA’s cursory analysis of these impacts violates NEPA’s hard look requirement. Additionally, NNSA has failed to take a hard look at the climate impacts or the environmental justice impacts of the EPCU Project, which is a “relevant factor” that NNSA must take seriously under NEPA.<sup>268</sup> Therefore, as described throughout

---

<sup>261</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989); *Utahns for Better Transp. v. United States Dep’t of Transp.*, 305 F.3d 1152, 1162 (10th Cir. 2002).

<sup>262</sup> 40 C.F.R. § 1508.1(g)(4).

<sup>263</sup> 40 C.F.R. § 1508.1(g)(3).

<sup>264</sup> *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 809–10 (9th Cir. 1999).

<sup>265</sup> *Id.*

<sup>266</sup> *Sierra Club v. Bosworth*, 199 F. Supp. 2d 971, 983 (N.D. Ca. 2002).

<sup>267</sup> See, e.g., *Kern v. BLM*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for an entire area).

<sup>268</sup> See, e.g., *Latin Ams. for Social & Econ. Dev. v. Fed. Highway Admin.*, 756 F.3d 447, 465 (6th Cir. 2014); *Coliseum Square Ass’n, Inc. v. Jackson*, 465 F.3d 215, 232 (5th Cir. 2006); *Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C. Cir. 2004); *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 440 F. Supp. 3d 1, 9 (D. D.C. 2020), vacated by, in part, affirmed by, in part, *Standing Rock Sioux Tribe v. U.S. Army Corp of Eng’rs*, 985 F.3d 1032 (D.C. Cir. 2021); *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 87 (4th Cir. 2020).

these comments, NEPA dictates that NNSA conduct further environmental review and prepare an EIS with additional alternatives and mitigation measures before proceeding with the EPCU Project.

Additionally, the draft EA fails to disclose any direct, indirect, and cumulative effects on public utility rates. The EPCU Project will connect to the Norton substation owned by Public Service Company of New Mexico (PNM). PNM is a public utility under the supervision and regulation of the New Mexico Public Regulation Commission under the Public Utility Act.<sup>269</sup> NNSA should disclose whether this project will lead to a ratemaking or other action under the jurisdiction of the PRC.

The draft EA also includes inadequate discussion of the cumulative impacts related to wildfire risk. The draft EA does acknowledge that “[t]ransmission lines have been a contributing factor in initiating wildland fires” and proposes project design features intended to minimize these risks.<sup>270</sup> But the draft EA fails to consider the cumulative impacts of increasing the risk and potential sources of wildlife on the Caja, which has already experienced wildfires in recent years.<sup>271</sup> The draft EA notes that underground high-voltage powerlines “are typical . . . in areas with high wildland fire potential” because they do not pose the same risk of fire as above-ground lines, yet the EA dismisses this alternative as too “complex and costly.”<sup>272</sup>

Another issue missing from the draft EA is whether future connections to the optical ground wire installation, which is being incorporated into this project, will contribute to cumulative impacts under NEPA. The draft EA states that the project will include “optical ground wire installation along with route . . . along with an optical fiber splice box mounted to a pole structure at an accessible location for future connection by others between the Norton Substation and the Rio Grande Crossing.”<sup>273</sup> NNSA fails to disclose details of where and how this system will be accessed, and whether this aspect of the project will have additional impacts on cultural, natural, and recreational resources.

Finally, the draft EA is devoid of analysis or consideration of the cumulative impacts of expanded operations at LANL including the need for increased waste remediation. DOE is responsible for managing the cleanup activities for legacy waste at LANL, “including (1) legacy waste remediation and disposition, (2) soil and groundwater remediation, and (3) deactivating and decommissioning

---

<sup>269</sup> NMSA 1978, § 62-6-4 (2003).

<sup>270</sup> Draft EA, *supra* note 5, at p. 2-11.

<sup>271</sup> See, e.g., Santa Fe New Mexican, Crews contain 50-acre blaze on Caja del Rio (Aug. 20, 2023), *available at* [https://www.santafenewmexican.com/news/local\\_news/crews-contain-50-acre-blaze-on-caja-del-rio/article\\_940cefae-3fc3-11ee-9153-1bfe19790a6d.html](https://www.santafenewmexican.com/news/local_news/crews-contain-50-acre-blaze-on-caja-del-rio/article_940cefae-3fc3-11ee-9153-1bfe19790a6d.html); KRQE, Fire in Caja Del Rio Plateau burns about 158 acres, 100% containment (Aug. 31, 2020), *available at* <https://www.krqe.com/news/wildfires/fire-in-caja-del-rio-plateau-burns-about-30-50-acres/>;

<sup>272</sup> Draft EA, *supra* note 5, at p. 2-20.

<sup>273</sup> *Id.* at pp. iii, 2-2

(D&D) excess buildings and facilities.”<sup>274</sup> This cleanup is expected to cost about \$7 billion and to take until 2043 to complete.<sup>275</sup> In July 2023, the Government Accountability Office (GAO) published a report reflecting that DOE “hasn’t taken a comprehensive approach to prioritizing cleanup activities at the site.”<sup>276</sup> Given that the EPCU Project could be used to support increased operations at LANL, the draft EA should reflect the cumulative impacts of the EPCU Project on cleanup needs, costs, and timeline.

### **3. NNSA Has Failed to Evaluate a Reasonable Range of Alternatives.**

The range of alternatives is the foundation of an EIS or EA. NEPA requires NNSA to evaluate a reasonable range of alternatives to proposed federal actions.<sup>277</sup> “Reasonable alternatives means a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action.”<sup>278</sup> Project alternatives should be derived from the EA’s “purpose and need” section, which briefly defines “the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”<sup>279</sup> “The purpose and need statement informs the range of reasonable alternatives that the agency analyzes and considers.”<sup>280</sup>

The draft EA includes only one action alternative, i.e., the construction of new transmission poles and lines along a 14-mile path with a 100-foot ROW that would disrupt vulnerable wildlife species, damage the landscape, and potentially destroy irreplaceable cultural resources.

The draft EA states that other alternatives were considered but were eliminated from detailed study.<sup>281</sup> As one example, NNSA asserts that it “considered . . . the possibility of a transmission interconnection at a location other than PNM’s Norton Substation.”<sup>282</sup> Yet the draft EA says nothing at all about these other interconnections and why they are not included in the analysis. NNSA also asserts that additional power transmission is necessary yet fails to justify why the proposed transmission line would require building new infrastructure rather than use the existing infrastructure provided by the Reeves and Norton lines. NNSA has not made clear why upgrading and reconductoring the existing Reeves line is not a viable option.

---

<sup>274</sup> U.S. Gov. Accountability Office, Nuclear Waste Cleanup: DOE Needs to Address Weaknesses in Program and Contractor Management at Los Alamos, GAO-23-105665, at pp. 37-39 (July 19, 2023), *available at* <https://www.gao.gov/products/gao-23-105665>.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> 40 C.F.R. § 1502.14; 43 C.F.R. § 46.415(b).

<sup>278</sup> 40 C.F.R. § 1508.1(z); 43 C.F.R. § 46.420(b).

<sup>279</sup> 40 C.F.R. § 1502.13.

<sup>280</sup> 87 Fed. Reg. 23453-01 (April 20, 2022); *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 72–73 (D.C. Cir. 2011); *City of Carmel-By-The-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997); BLM NEPA Handbook, H-1790-1 § 6.2.1, pg. 36 (2008).

<sup>281</sup> Draft EA, *supra* note 5, at pp. 2-18 to 2-20.

<sup>282</sup> *Id.* at p. 2-19.

The draft EA reflects that the EPCU Project is proposed to meet predicted energy demand for existing and new projects. This raises important questions of whether there are current or future projects that are unnecessary and perhaps need to be eliminated. NNSA should choose the no action alternative or consider additional reasonable alternatives in a full EIS, as required by NEPA.

**a. NNSA Should Comprehensively Consider Renewable Energy Sources and Comply with Executive Order.**

In 2021, President Biden issued an executive order intended to catalyze America’s clean energy economy by making the federal government a leader in sustainability.<sup>283</sup> One of the main goals of this executive order is to direct the federal government to use its scale and procurement power to achieve “100 percent carbon pollution-free electricity (CFE) by 2030, at least half of which will be locally supplied clean energy to meet 24/7 demand.”<sup>284</sup> Further, this executive order seeks to: (1) transition federal infrastructure to zero-emission vehicles and buildings powered by carbon pollution-free electricity, which will reduce the federal government’s greenhouse gas emissions by 65 percent by 2030 and achieve net-zero emissions by 2050; (2) make federal agencies more adaptive and resilient to the impacts of climate change, and increase the sustainability of federal supply chains, achieving net-zero emissions from federal procurement by 2050; and (3) mainstream sustainability within the federal workforce, advance equity and environmental justice, and leverage partnerships to accelerate progress.<sup>285</sup> This executive order demonstrates “how the United States government will lead by example to provide a strong foundation for American businesses to compete and win globally in the clean energy economy while creating well paying, union jobs at home.”<sup>286</sup>

The DOE “controls some powerful levers that could help advance clean-energy technologies,” including its network of 17 national laboratories and billions of dollars in unused federal loan guarantees.<sup>287</sup> Unfortunately, rather than lead by example with innovation, LANL is simply doing things the same old way by tapping into the Norton Substation, which is currently running off of 60% non-renewable energy, with a majority of power coming from natural gas and coal generation. Publicly available data reveals that LANL is using the following power sources:

---

<sup>283</sup> Exec. Order No. 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, 86 Fed. Reg. 70935 (Dec. 8, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-12-13/pdf/2021-27114.pdf>; see also <https://www.whitehouse.gov/ceq/news-updates/2021/12/13/icymi-president-biden-signs-executive-order-catalyzing-americas-clean-energy-economy-through-federal-sustainability/>; <https://www.cnbc.com/2021/12/08/biden-to-order-federal-government-to-become-carbon-neutral-by-2050.html>.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> The New York Times, ‘Energy’ Is Its Name. But What Can the D.O.E. Actually Do on Climate? (Jan. 27, 2021), available at [https://www.nytimes.com/2021/01/27/climate/jennifer-granholm-senate-confirmation.html?unlocked\\_article\\_code=1.NE0.ySlq.6aG92gvmJN4k&smid=em-share](https://www.nytimes.com/2021/01/27/climate/jennifer-granholm-senate-confirmation.html?unlocked_article_code=1.NE0.ySlq.6aG92gvmJN4k&smid=em-share).

- Laramie River Station entitlement (coal, 10 megawatts);
- El Vado hydroelectric facility (renewable hydropower, 9 megawatts);
- Abiquiu hydroelectric facility (renewable hydropower, 17 megawatts);
- Los Alamos' Western Area Power Administration entitlement (renewable hydropower, 10 megawatts);
- Photovoltaic array on East Jemez landfill site (renewable solar, 1 megawatt);
- County transmission arrangements;
- County purchased power contracts;
- Power Purchase Agreement (mix of renewable wind, photovoltaic and coal, 45 megawatts); and
- Los Alamos National Laboratory's combustion turbine (natural gas, 25 megawatts).<sup>288</sup>

Analysis of LANL's current power supply coupled with information about the power sources feeding the Norton Substation demonstrate that LANL must tap into and develop more renewable energy sources to meet the goals of President Biden's executive order. Further, while PNM is seeking to move toward more renewable energy generation, recent failed mergers have resulted in serious doubts and concerns about whether PNM can accomplish these goals in a timely manner and in alignment with federal goals.<sup>289</sup> Rather than waiting for others to develop a more climate friendly renewable energy portfolio to supply LANL with power, LANL should be a national and world leader by modernizing, updating, and creating innovative solutions around its power grid as well as the Lab's future energy use and sources.

First, NNSA has failed to consider the reasonable alternative of generating solar energy onsite. In the EA, LANL asserts,

solar energy is not a viable option because it would require a significant land area (approximately 400 to 500 acres). The scale at which a facility would need to be built would not make up for the electrical power shortfall (LANL 2016; van de Ven et al. 2021). Intermittency of solar generation is not compatible with LANL's demand pattern without significant grid support. Future plans exist for energy generation via a PV system on approximately 55 acres within DOE/NNSA-managed lands; however, this system would not be of the extent and scale needed to meet the purpose and need for the project.<sup>290</sup>

---

<sup>288</sup> Los Alamos Reporter, Board of Utilities to Hold Hybrid Town Hall Meeting on Future Energy Generation for Los Alamos (Jan. 22, 2023), available at <https://losalamosreporter.com/2023/01/22/board-of-utilities-to-hold-hybrid-town-hall-meeting-on-future-energy-generation-for-los-alamos/>.

<sup>289</sup> See, e.g., PR Newswire, PNM Resources Announces Avangrid Termination of Merger Agreement, Schedules Financial Update (Jan. 2, 2024), <https://www.prnewswire.com/news-releases/pnm-resources-announces-avangrid-termination-of-merger-agreement-schedules-financial-update-302024318.html> (last visited Feb. 12, 2024); see also Joe Monahan, Business Bombshell: Avangrid Ditches PNM; Merger Off; Enviro Lobby Stunned; Stock Crashes; State's Renewable Energy Goal Now Questionable; PNM Exec Jobs On Line After Epic Fail? (Jan. 3, 2024), <https://joemonahansnewmexico.blogspot.com/2024/01/business-bombshell-avangrid-ditches-pnm.html> (last visited Feb. 12, 2024).

<sup>290</sup> Draft EA, *supra* note 5, at p. 2-19.



But according to DOE, LANL spans almost 40 square miles of DOE-owned property and has almost 900 individual facilities and 8.4 million square feet in buildings.<sup>291</sup> Given the size of LANL’s property, for LANL to say solar is not a viable option based on land constraints is simply ridiculous. Moreover, LANL would not need to create a large solar array requiring “400 to 500 acres” because with over 8.4 million square feet in buildings, there is plenty of opportunity for LANL to create solar power on the roofs of these buildings as well as over parking lots. Along these lines, LANL has admitted that it has “exceptional solar resource available at the Laboratory,”<sup>292</sup> and “the Laboratory could support a number of roof mounted PV installations.”<sup>293</sup>

While LANL prides itself on being a world innovation leader on energy security and “developing new ideas for reliable, secure, and sustainable carbon-neutral energy solutions for the nation,”<sup>294</sup> the truth of the matter is that the City of Santa Fe<sup>295</sup> and State of New Mexico<sup>296</sup> have been more innovative leaders when it comes to generating onsite solar and battery storage for their government buildings, parking lots, and facilities. The draft EA fails to even consider roof-mounted solar installations and lacks analysis of the impacts of modernizing LANL buildings by installing energy saving technologies and developing onsite solar for the hundreds of LANL buildings.

LANL also fails to analyze and consider the impacts of how updating and removing these buildings from the current energy grid could free-up additional power for current and future projects and make the redundant line unnecessary. Further, by modernizing existing facilities and alleviating pressure on the grid, LANL would not need to rely on solar battery power for certain projects and could tap into traditional power sources for projects that require such. Investing in energy saving technologies and developing onsite solar projects for buildings, parking lots, and facilities throughout LANL’s 8.4 million square feet of buildings would not only alleviate pressure on the existing energy grid for LANL and Los Alamos County, but would also create local jobs sustaining the economies of northern New Mexico and help LANL implement the President’s executive order by updating and modernizing federal buildings.

Second, given that some of the power from the proposed LANL transmission line will be going to Los Alamos County, Los Alamos County should also develop more solar and accomplish its

---

<sup>291</sup> LANL, About the Lab, <https://about.lanl.gov/#:~:text=LANL%20spans%20almost%2040%20square,%2439.1%20billion%20replacement%20plant%20value>.

<sup>292</sup> LANL & Los Alamos County, Renewable Energy Feasibility Study, at p. 6 (Nov. 2008), *available at* [https://www.energy.gov/sites/prod/files/2019/03/f61/LANL\\_LA%20County%202008.pdf](https://www.energy.gov/sites/prod/files/2019/03/f61/LANL_LA%20County%202008.pdf) [hereinafter “Renewable Study”].

<sup>293</sup> *Id.* at p. 31.

<sup>294</sup> LANL, Energy Security Solutions, <https://mission.lanl.gov/energy-security/>.

<sup>295</sup> See City of Santa Fe, Groundbreaking of city Solar Project (Oct. 15, 2021), *available at* <https://santafenm.gov/news/groundbreaking-of-city-solar-project>.

<sup>296</sup> See N.M. General Services Division, State Buildings Green Energy Project (2019), *available at* <https://www.generalservices.state.nm.us/green-energy-project/>.

renewable energy goals. The local community has demonstrated strong support for this initiative. In 2013, the Los Alamos Board of Public Utilities (BPU) “adopted a broad goal of being a ‘carbon neutral electric provider by 2040,’” based on surveys reflecting that 70 percent of customers were willing to pay more on their electric bills for renewable energy.<sup>297</sup> “Adoption of this goal by the BPU was in direct response to its customers, and to migrate away from carbon-producing energy sources.”<sup>298</sup> By utilizing a transmission line fueled by the Norton Substation that is powered by over 60% with fossil fuels and non-renewable energy, Los Alamos County continues to support projects that are not aligned with their customers or overall energy goals. While the County's portfolio includes 30% renewable energy sources, the remainder is “coal-fired electric generation.”<sup>299</sup> Given the predicted power supply needs of the County and the Lab, the County should develop renewables and incentivize private homeowners and businesses to use solar and renewable energy to alleviate pressure on the current grid. Rather than damage public lands, water, wildlife and cultural and sacred landscapes in Santa Fe County with the proposed transmission project, it is time for LANL and Los Alamos County to be creative and innovative by modernizing their existing facilities, incentivizing renewable energy for homeowners and businesses, and creating their own renewable energy sources.

Third, the EA fails to explore opportunities for LANL and Los Alamos County to genuinely partner with neighboring Tribes to provide renewable energy to LANL and the County. LANL and Los Alamos County could work to create equitable, fair, and transparent partnerships with various surrounding Pueblos to develop renewable energy sources.

Finally, NNSA’s draft EA is flawed because it fails to analyze a comprehensive approach to energy alternatives. The draft EA quickly dismisses various individual alternatives, but the analysis fails to consider how various individual alternatives, if embraced together, could provide necessary power. NNSA should consider the sum of these various alternatives. For example, can LANL modernize its facilities with onsite solar generation, update existing facilities for energy saving, develop a smaller onsite solar array or multiple arrays, develop a microgrid, partner with neighboring Tribes for renewable energy development, and begin the process of reconductoring existing lines in a way that ensures reliable power to the County and LANL? The last publicly available comprehensive feasibility study of renewable energy for LANL was done in 2008.<sup>300</sup> This study is incredibly outdated in terms of both its analysis of renewable technologies as well as available federal and state incentives.

Albert Einstein is quoted as saying, “No problem can be solved from the same level of consciousness that created it.”<sup>301</sup> The DOE, LANL, and New Mexico’s congressional delegation

---

<sup>297</sup> See Solar Toolkit, Los Alamos County, <https://www.heinrich.senate.gov/solar-toolkit/success-stories/los-alamos-county>.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> Renewable Study, *supra* note 292, at p. 6.

<sup>301</sup> See, e.g., Brainy Quote, [https://www.brainyquote.com/quotes/albert\\_einstein\\_130982](https://www.brainyquote.com/quotes/albert_einstein_130982).

should partner to move to a deeper level of consciousness by using the many problems this proposed project would create as the impetus to develop a new comprehensive renewable energy plan that provides the necessary actions steps to modernize the energy facilities of LANL and Los Alamos County for a more sustainable and secure climate and energy future.

#### **4. NNSA Must Not Commit Resources Prejudicing the Selection of Alternatives Before Making a Final Decision.**

The draft EA states that LANL has known since at least 2017 that the power demand is expected to exceed current important capacity by 2027.<sup>302</sup> Given the amount of time LANL has had to prepare to meet this demand, NNSA's presentation of a single action alternative, coupled with its refusal to consider reasonable alternatives, suggests that the agency made a final decision to proceed with the EPCU Project prior to issuing the draft EA. NEPA provides that federal agencies "shall not commit resources prejudicing selection of alternatives before making a final decision."<sup>303</sup> An EA or EIS for a proposal must describe "any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented."<sup>304</sup> The DOE's regulations for NEPA state that the agency "shall complete its NEPA review for each DOE proposal before making a decision on the proposal (e.g., normally in advance of, and for use in reaching, a decision to proceed with detailed design)."<sup>305</sup> Here, NNSA has put the cart before the horse by dedicating resources to its single, myopic proposal without conducting adequate analysis of impacts and alternatives.

#### **5. NNSA Improperly Segmented this Project from Related Projects.**

Under NEPA, it is improper for an agency to segment and separately analyze actions that are "connected" because such actions are "closely related and therefore should be discussed in the same impact statement."<sup>306</sup> Additionally, connected actions should be considered together for purposes of determining whether the effects of the proposed action are "significant" and therefore require an EIS instead of an EA.<sup>307</sup> "It is DOE's policy to follow the letter and spirit of NEPA; comply fully with the CEQ Regulations; and apply the NEPA review process early in the planning stages for DOE proposals."<sup>308</sup>

---

<sup>302</sup> Draft EA, *supra* note 5, at p. 1-3.

<sup>303</sup> 40 C.F.R. § 1502.2(f); *see also* 40 C.F.R. § 1502.2(g) ("Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."); § 1506.1 (stating that until an agency issues a FONSI or ROD, no action may be taken that would limit the choice of reasonable alternatives).

<sup>304</sup> 43 U.S.C. § 4332(C)(v).

<sup>305</sup> 10 C.F.R. § 1021.210(b)

<sup>306</sup> 40 C.F.R. § 1501.9(e)(1).

<sup>307</sup> 40 C.F.R. § 1501.3(b).

<sup>308</sup> 10 C.F.R. § 1021.101.

The EPCU Project should have been evaluated in conjunction with the recent NEPA process for the SFNF Forest Plan. NNSA conducted scoping for the EPCU Project before the SFNF adopted the final Forest Plan, yet these projects were not considered together. As discussed at length above in Part B.1, NNSA should have asked the SFNF to incorporate this project into the Forest Plan as part of the comprehensive public planning process. Instead, NNSA seeks to amend the new Forest Plan by adding arbitrary and capricious exceptions to accommodate the EPCU Project, which will have significant adverse impacts to the natural and cultural resources that are now protected by the special land use designations in the LMP.

Moreover, the EPCU Project is inextricably linked with the current and future mission at LANL.<sup>309</sup> The project is intended to meet expected future demand, and many of the impacts of the Project will occur on DOE/NNSA lands.<sup>310</sup> On August 19, 2022, NNSA issued a Notice of Intent (NOI) to prepare a Site-Wide Environmental Impact Statement (SWEIS) to evaluate environmental impacts for the continued operation of LANL and for legacy waste remediation.<sup>311</sup> The NOI reflects three preliminary alternatives: (1) no action; (2) modernizing current operations; and (3) expanded operations.<sup>312</sup> Since NNSA is conducting comprehensive site planning for LANL, and NNSA's selection of one of the preliminary SWEIS alternatives will directly impact future energy needs, i.e., the purpose and need for the EPCU Project, NNSA should be considering the EPCU Project and the SWEIS as connected actions. If NNSA chooses the SWEIS alternative to modernize operations, this action would dovetail with an innovative clean energy solution, as described above. If NNSA chooses the SWEIS alternative for expanded operations at LANL, the EPCU Project would result in an increased risk of radioactive contamination and exposure, increased pressure on water resources and water quality, increased air emissions, and increased impacts on natural and cultural resources, among other impacts. Without evaluating the SWEIS and EPCU projects together, NNSA cannot evaluate the direct, indirect, and especially the cumulative impacts on the environment, as required by NEPA.

## CONCLUSION

The EPCU Project will cause significant adverse impacts to the cultural and natural resources of the Caja del Rio. NNSA should choose the no action alternative and explore reasonable alternatives, especially innovative clean energy solutions, for meeting LANL's energy and security needs.

---

<sup>309</sup> Draft EA, *supra* note 5, at p. iii.

<sup>310</sup> *Id.* at pp. 2-8 to 2-10.

<sup>311</sup> DOE NNSA, Notice of Intent To Prepare a Site-Wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory, 87 Fed. Reg. 51083 (Aug. 19, 2022), *available at* <https://www.govinfo.gov/content/pkg/FR-2022-08-19/pdf/2022-17901.pdf>.

<sup>312</sup> *Id.* at 51084.

If NNSA seeks to proceed with the EPCU Project, NEPA requires NNSA to prepare an EIS because the proposed action will have significant effects on the environment.<sup>313</sup> The NNSA must further analyze environmental and cultural impacts of the proposed Project, consult with the USFWS pursuant to the ESA, prepare a comprehensive biological assessment, and comply with all Tribal consultation and NHPA requirements. Additionally, the EIS must fully consider reasonable alternatives, including transporting power from somewhere other than across the Caja del Rio plateau, reconductoring existing transmission infrastructure, developing a microgrid, and generating renewable energy onsite to meet future energy needs. Finally, NNSA must prepare an EIS because the length of the draft EA exceeds the 75-page limit for environmental assessments that was recently established by the Financial Responsibility Act.<sup>314</sup>

The SFNF should decline to amend the Forest Plan through this inadequate public process and should reject NNSA's proposal to add arbitrary and capricious exceptions to the provisions designed to protect sensitive natural and cultural resources on the Caja. The SFNF should also deny the application for a special use permit, which is contrary to the public interest. NNSA should stand by its intention to follow the decision of the SFNF.<sup>315</sup>

The BLM Taos Field Office should decline to issue a right-of-way for the project because the Caja is an intact landscape, important for averting the climate and biodiversity crises, and should require NNSA to comply with the all management direction set forth in the 2012 Taos RMP.

Finally, if any approvals are granted through this process, which should not occur without additional NEPA review and preparation of an EIS that presents reasonable alternatives, all agencies must impose all standards and guidelines set forth in the SFNF Forest Plan and 2012 Taos RMP, robust mitigation measures, and best management practices to minimize adverse impacts to natural and cultural resources.

Sincerely,

Reverend Andrew Black  
EarthKeepers 360 &  
First Presbyterian Church of Santa Fe  
208 Grant Avenue  
Santa Fe, NM 87505  
[Andrew@fpcsantafe.org](mailto:Andrew@fpcsantafe.org)

Sally Paez, Staff Attorney  
New Mexico Wilderness Alliance  
6000 Uptown Blvd. NE  
Albuquerque, NM 87110  
(505) 843-8696  
[sally@nmwild.org](mailto:sally@nmwild.org)

---

<sup>313</sup> 42 U.S.C. §§ 4332(2)(C), 4336(b)(2); 40 C.F.R. § 1500.4(b); 40 CFR § 1501.3.,

<sup>314</sup> See 42 USC § 4336a(e); see also 50 C.F.R. § 1501.5(f); but see 40 CFR 1508.1(v) ("Page means 500 words and does not include explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information.").

<sup>315</sup> Draft EA, *supra* note 5, at p. 1-11.

Michael Fiebig, Director  
American Rivers, Southwest River Protection  
Program  
227 E. 14th Street, Suite 202  
Durango, CO 81301  
[fieligmi@gmail.com](mailto:fieligmi@gmail.com)

Shannon Romeling, Projects and  
Foundations Coordinator  
Amigos Bravos  
PO Box 238 Taos, NM 87571  
575-758-3874  
[Sromeling@anigosbravos.org](mailto:Sromeling@anigosbravos.org)

Brian Nowicki, Southwest Deputy Director  
Center for Biological Diversity  
Albuquerque, NM  
505-917-5611  
[bnowicki@biologicaldiversity.org](mailto:bnowicki@biologicaldiversity.org)

Romir Lahiri, Associate Program Director  
Conservation Lands Foundation  
835 E 2nd Avenue  
Suite 314  
Durango, CO 81301  
(575) 386-3475  
[romir@conservationlands.org](mailto:romir@conservationlands.org)

Greg Peters, Vice President of Programs  
Conservation Voters New Mexico  
PO Box 636  
Santa Fe, NM 87504  
(505) 992-8683  
[greg@cvnm.org](mailto:greg@cvnm.org)

Peggy Darr, New Mexico Representative  
Defenders of Wildlife, Southwest Program  
Santa Fe, NM  
(505) 395-7330  
[PDarr@defenders.org](mailto:PDarr@defenders.org)

Carmichael Dominguez  
EarthKeepers 360  
208 Grant Avenue  
Santa Fe, NM 87505  
[carmichaeldominguez@yahoo.com](mailto:carmichaeldominguez@yahoo.com)

Joseph Brophy Toledo, Co-founder  
Flower Hill Institute  
P.O. Box 692  
Jemez Pueblo, NM 87024  
[facebroz@gmail.com](mailto:facebroz@gmail.com)  
720-220-7720

Sr. Joan Brown, osf, Executive Director  
Interfaith Power and Light  
New Mexico & El Paso Region  
PO Box 27162  
Albuquerque, NM 87125-7162  
[joankansas@swcp.com](mailto:joankansas@swcp.com)

Emily Wolf, New Mexico Program Manager  
National Parks Conservation Association  
314 S. Guadalupe St., Suite D North  
Santa Fe, NM 87505  
[ewolf@npca.org](mailto:ewolf@npca.org)

Jesse Deubel  
Executive Director  
New Mexico Wildlife Federation  
3620 Wyoming Blvd NE Suite 222  
Albuquerque, NM 87111  
[jesse@nmwildlife.org](mailto:jesse@nmwildlife.org)

Alexandra Merlino  
Executive Director  
Partnership for Responsible Business  
Santa Fe, New Mexico  
PRB New Mexico.org  
[info@prbnewmexico.org](mailto:info@prbnewmexico.org)

Drew Ayotte, Owner  
Seedling Innovations  
1215 Barelax Rd. SW  
Albuquerque, NM 87102  
[drew@seedlinginnovations.com](mailto:drew@seedlinginnovations.com)

John Buchser, Northern Group Chair  
Sierra Club, Rio Grande Chapter  
369 Montezuma Ave #575,  
Santa Fe, NM 87501  
505-820-0201  
[jbuchser@comcast.net](mailto:jbuchser@comcast.net)

Michael Casaus, New Mexico State Director  
The Wilderness Society  
317 Commercial St. NE Ste. 313  
Albuquerque, NM 87102  
505-247-0834  
[michael\\_casaus@twc.org](mailto:michael_casaus@twc.org)

Tannis Fox  
Senior Attorney  
Western Environmental Law Center  
409 East Palace Avenue, Suite 2  
Santa Fe, New Mexico 87501  
[fox@westernlaw.org](mailto:fox@westernlaw.org)

Andrew Rothman  
Wild Places Program Director,  
WildEarth Guardians  
301 N. Guadalupe St., Ste. 201  
Santa Fe, NM 87501  
[arothman@wildearthguardians.org](mailto:arothman@wildearthguardians.org)

Cc: Shaun Sanchez, Supervisor, Santa Fe National Forest  
Melanie Barnes, BLM New Mexico State Director  
Eric Valencia, Acting Field Manager, BLM Taos Field Office

Encl: Exhibit A, City of Santa Fe, New Mexico, Resolution No. 2022-34  
Exhibit B, Board of County Commissioners of Santa Fe County, Resolution No. 2022-830  
Exhibit C, San Miguel County Resolution No. 03-14-23-B-Commission  
Exhibit D, Northern Rio Grande National Heritage Area, Resolution No. 2023-02  
Exhibit E, All Pueblo Council of Governors, Resolution No. APCG 2021-013  
Exhibit F, New Mexico Avian Conservation Partners Species Conservation Level One List  
Exhibit G, New Mexico Avian Conservation Partners Species Conservation Level Two List

# **Exhibit A:**

City of Santa Fe, New Mexico

Resolution No. 2022-34

A Resolution Supporting the  
Permanent Preservation of the Caja del Rio  
Cultural Landscape and Wildlife Area

June 29, 2022



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CITY OF SANTA FE, NEW MEXICO**

**RESOLUTION NO. 2022-34**

**INTRODUCED BY:**

Councilwoman Renee Villarreal

Councilor Chris Rivera

Councilor Amanda Chavez

Councilor Michael J. Garcia

Councilor Jamie Cassutt

**A RESOLUTION**

**SUPPORTING THE PERMANENT PRESERVATION OF THE CAJA DEL RIO  
CULTURAL LANDSCAPE AND WILDLIFE AREA.**

**WHEREAS**, the City of Santa Fe (“City”) has an incredible array of public lands that encompass a stunning wealth of landscapes that are enjoyed by residents and non-residents alike; and

**WHEREAS**, the Caja del Rio is located on 106,883 of Bureau of Land Management and U.S. Forest Service public lands in north-central New Mexico and it is considered one of the United States’ most iconic landscapes, an area of profound cultural, historical, archeological, and ecological significance; and

**WHEREAS**, the Caja del Rio is a landscape of dramatic topography with geological processes that stem from the Rio Grande rift and that has boundaries stretching from the northwestern boundary of the Rio Grande to the southern and western boundaries of the La Bajada Escarpment, Santa Fe River, and Cañada Ancha; and

**WHEREAS**, the Caja del Rio contains two dynamic watersheds - the Santa Fe River

1 Canyon and the Rio Grande corridor from Buckman to Cochiti Lake - and both watersheds have  
2 critical cultural, hydrological, ecological, agricultural, and economic significance; and

3 **WHEREAS**, the Caja del Rio is one of the most remarkable natural landscapes in the  
4 American Southwest with cactus forests, birds ranging from burrowing owls to bald eagles, herds  
5 of deer and elk, black bears, and cougars; and

6 **WHEREAS**, the Caja del Rio has been a critical habitat to wildlife for millennia and a  
7 wide variety of bird and animal species continue to use the area as a migratory corridor, breeding  
8 grounds, and an area of relocation during wildfires and changing climates.

9 **WHEREAS**, in connecting various mountain ranges and wildlife habitats, the Caja del Rio  
10 acts as a cornerstone for wildlife connectivity and is essential for maintaining wildlife movement  
11 throughout the Upper Rio Grande; and;

12 **WHEREAS**, preserving the Caja del Rio is critical for sustaining the City's rich and  
13 diverse cultures, traditions, heritage, and the vibrant community we are blessed to collectively  
14 share; and

15 **WHEREAS**, the Caja del Rio plateau has been inhabited by Native and Indigenous  
16 communities since time immemorial; and

17 **WHEREAS**, the Caja del Rio is recognized by various Pueblos' traditional leadership as  
18 a significant region of cultural properties where Pueblo ancestors built housing structures,  
19 ceremonial kivas, roads, irrigation infrastructure, petroglyphs, and other cultural resources; and

20 **WHEREAS**, the Caja del Rio contains a dense concentration of thousands of sacred sites,  
21 structures, petroglyphs, irrigation systems, and other significant cultural artifacts; and

22 **WHEREAS**, the Pueblos maintain an ongoing connection and use of the Caja del Rio  
23 landscape and its cultural resources, and sacred sites through story, song, pilgrimage, and prayer,  
24 and preserving the landscape is critical for ongoing cultural religious access and use; and

25 **WHEREAS**, the Caja del Rio also is the key landscape demarcation between what the

1 Spanish colonial world termed the “Rio Abajo” and “Rio Arriba” regions of New Mexico, where  
2 the people of Santa Fe’s traditional Hispano villages maintain deep ties and living roots as “Ejido”  
3 (communal) through perpetuation and practice of traditional uses of flora and fauna and by  
4 pilgrimage and prayer; and

5         **WHEREAS**, the Caja del Rio Hispano communities, including Jacona, Agua Fria, La  
6 Cieneguilla, La Cienega, La Bajada, and Santa Fe’s Southside remain deeply connected to the Caja  
7 del Rio and act as living repositories of traditional ecological and cultural knowledge of the area;  
8 and

9         **WHEREAS**, the City recognizes the importance of traditional livestock production on the  
10 Caja del Rio plateau and supports continued responsible range management as has been conducted  
11 through the cooperation of cattle growers and livestock permittees, traditional *merced* and acequia  
12 communities as political subdivisions of New Mexico, and federal agencies; and

13         **WHEREAS**, the Caja del Rio is still used by the Pueblo Nations and traditional Hispano  
14 communities to exercise traditional land use values including the following: hunting, fishing,  
15 grazing, wood gathering, piñon harvesting, herb and plant gathering, sacred pilgrimage, and the  
16 historic community use of the land in other traditional ways; and

17         **WHEREAS**, the Caja del Rio also contains a major and historically significant travel  
18 corridor along the National Historic Trail of El Camino Real de Tierra Adentro, an important trade  
19 route that, according to the National Park Service, ran from Mexico City to the Pueblo of Ohkay  
20 Owingeh, New Mexico from 1598 to 1881; and

21         **WHEREAS**, various petroglyphs and archeological sites found along El Camino Real de  
22 Tierra Adentro and throughout the Caja del Rio speak to the arrival, presence, history, culture, and  
23 influence of the Spanish in the area; and

24         **WHEREAS**, residents and spiritual leaders throughout the Santa Fe and the United States  
25 recognize the sacred value of the Caja del Rio and utilize the area as a place of prayer, silence,

1 solitude, worship and sacred pilgrimage; and

2       **WHEREAS**, in the early 1900s, the main travel corridor of El Camino Real de Tierra  
3 Adentro along the Caja del Rio transformed to become famous for its iconic stretches of New  
4 Mexico Highway 1 and ultimately Route 66; and

5       **WHEREAS**, the Caja del Rio also serves as a critical landscape in creating a historical,  
6 cultural, ecological, and eco-tourism corridor, connecting Bandelier National Monument and the  
7 adjacent sites of Kasha-Katuwe Tent Rocks National Monument, El Rancho de los Golondrinas  
8 and the Leonora Curtin Wetland Preserve; and

9       **WHEREAS**, the New Mexico Heritage Preservation Alliance has listed the Caja del Rio  
10 as one of the “most endangered places” in New Mexico; and

11       **WHEREAS**, there are many significant threats to the Caja del Rio’s land, water, wildlife  
12 and cultural and archeological antiquities including, but not limited to the following: petroglyph  
13 defacement, vandalism, and theft; illegal shooting and poaching of wildlife and livestock; illegal  
14 dumping; theft of stock tanks; unlawful off-highway vehicle usage; habitat fragmentation from  
15 illegal roads; unmanaged/unlawful recreation; and recent sales of federal lands by the BLM for  
16 other public purposes; and

17       **WHEREAS**, according to New Mexico Wild, the Caja del Rio’s cultural and wildlife  
18 resources remain under significant threat from the Los Alamos National Labs proposals<sup>1</sup> to run a  
19 major transmission line and fiber optic line cutting across the Caja del Rio landscape as well as the  
20 proposal for the development of a major highway to be created through the area; and

21       **WHEREAS**, the federal agencies with jurisdiction over the area have provided insufficient  
22 management and resources to patrol, monitor, and protect the many antiquities within the Caja del  
23 Rio; and

24       **WHEREAS**, Pueblo Nations with a deep connection to the Caja del Rio would like for the

---

<sup>1</sup> <https://www.lanl.gov/environment/epcu/index.shtml>

1 federal government to provide the protections needed to preserve and protect traditional Native  
2 sacred sites as well as maintain Pueblo access and co-stewardship of these sites; and

3 **WHEREAS**, in furtherance of this desire, the All Pueblo Council of Governors adopted a  
4 Resolution on November 29, 2021 urging the USFS to “fully analyze environmental and cultural  
5 impacts of the proposed [transmission line] by conducting a full environmental impact statement”  
6 and to comply with statutory obligations under the National Environmental Policy Act and the  
7 National Historic Preservation Act; and

8 **WHEREAS**, the Governing Body believes that the Caja del Rio should become an  
9 important experiential learning “classroom” for the area’s surrounding youth and a place to teach  
10 children the cultural, historical, ecological, geological, hydrological and biological aspects of this  
11 remarkable landscape; and

12 **WHEREAS**, portions of the Caja del Rio have tremendous potential for sustainable  
13 outdoor recreation to create jobs and enhance local economies, so long as these regulated activities  
14 do not adversely impact the cultural, hydrological, and ecological resources of the landscape; and

15 **WHEREAS**, on the northeast edge of the Caja del Rio there is a heavily used City and  
16 County utility corridor along and in the vicinity of the Buckman Road that includes, among other  
17 critical infrastructure, thirteen deep water wells, a river diversion, two large water transmission  
18 pipelines, and a natural gas pipeline; and

19 **WHEREAS**, the permanent protection of the Caja del Rio will help New Mexico reach  
20 the 30 by 30 goals of the America the Beautiful initiative and New Mexico’s 30 by 30 Executive  
21 Order No. 2021-52, focused on protecting biodiversity and conserving 30% of lands and waters by  
22 2030; and

23 **WHEREAS**, the Governing Body unanimously adopted Resolution No. 2021-7 that  
24 supports the 30 by 30 campaign in January, 2021; and

25 **WHEREAS**, the America the Beautiful initiative encourages locally led and voluntary

1 efforts to conserve, connect, and restore lands, waters, and wildlife upon which we all depend; and

2           **WHEREAS**, the Caja del Rio protection efforts are locally driven and led, characterized  
3 by community collaboration that supports the priorities of Tribal Nations, while also engaging other  
4 local stakeholders.

5           **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
6 **CITY OF SANTA FE**, that the Governing Body supports the permanent protection, long-term  
7 preservation, and responsible stewardship of the Caja del Rio landscape through an appropriate  
8 federal land use designation.

9           **BE IT FURTHER RESOLVED** that the Governing Body supports the collaboration, co-  
10 management, and co-stewardship of the Caja del Rio among responsible federal agencies, the local  
11 governments of traditional Hispano communities, and sovereign Tribal Nations for the permanent  
12 protection and preservation of this precious natural and cultural landscape.

13           **BE IT FURTHER RESOLVED** that the Governing Body supports all efforts to empower  
14 Pueblo Nations and traditional Hispano communities in performing meaningful cultural  
15 interpretation, environmental education, and historical preservation of this treasured landscape.

16           **BE IT FURTHER RESOLVED** that the Governing Body supports co-stewardship and  
17 responsible management of wildlife and the wild environs of the Caja del Rio Plateau, for the  
18 benefit of the public today, and for future generations.

19           **BE IT FURTHER RESOLVED** that the Governing Body supports the continuation and  
20 sustainment of traditional uses of the Caja del Rio including the following: hunting, fishing,  
21 grazing, wood gathering, piñon harvesting, herb and plant gathering, sacred pilgrimage, and the  
22 historic community use of the land in other traditional ways.

23           **BE IT FURTHER RESOLVED** that while the City opposes additional development in  
24 the Caja del Rio, particularly in roadless areas, the existing utility corridor and wellfield near the  
25 Buckman Road are critical to City and County resilience, and the City does not intend with this

1 resolution to limit future City and County near- and long-term utility infrastructure development.

2 **BE IT FURTHER RESOLVED** that the Governing Body directs the City Clerk upon  
3 adoption of this resolution, to deliver this resolution to the City of Santa Fe State legislative  
4 delegation, New Mexico's congressional delegation, the leadership of the United States Senate and  
5 United States House, and the President of the United States.

6 PASSED, APPROVED, and ADOPTED this 29<sup>th</sup> day of June, 2022.

7  
8 

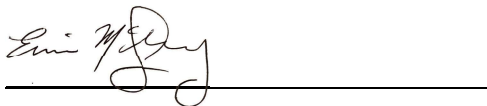
9  
10 ALAN WEBBER, MAYOR

11 ATTEST:

12  
13 

14 KRISTINE MIHELIC, CITY CLERK

15 APPROVED AS TO FORM:

16  
17 

18 ERIN K. McSHERRY, CITY ATTORNEY

19  
20  
21  
22  
23  
24  
25 *Legislation/2022/Resolutions/2022-34 Supporting Caja del Rio Preservation*

## **Exhibit B:**

Board of County Commissioners of Santa Fe County

Resolution No. 2022-830

A Resolution Supporting the Permanent Preservation  
of the Caja del Rio Cultural Landscape and Wildlife Area

May 11, 2022



**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

**RESOLUTION NO. 2022-830**

Introduced by:  
Commissioner Anna Hansen and Commissioner Rudy Garcia

---

**A RESOLUTION  
SUPPORTING THE PERMANENT PRESERVATION OF THE CAJA DEL RIO  
CULTURAL LANDSCAPE & WILDLIFE AREA**

---

**WHEREAS**, Santa Fe County has an incredible array of public lands that encompass a stunning wealth of landscapes that are enjoyed by residents and non-residents alike. The national public lands model is a remarkable asset for both Santa Fe County and New Mexico; and

**WHEREAS**, the Caja del Rio is located on 106,883 acres of the Bureau of Land Management (“BLM”) and U.S. Forest Service (“USFS”) public lands in north-central New Mexico and is considered one of America’s most iconic landscapes and an area of profound cultural, historical, archeological, and ecological significance; and

**WHEREAS**, the Caja del Rio is a landscape of dramatic topography whose geological processes stem from the Rio Grande rift and whose boundaries stretch from Santa Fe County’s northwestern boundary of the Rio Grande to the southern and western boundaries of the La Bajada Escarpment, Santa Fe River, and Cañada Ancha; and

**WHEREAS**, the Caja del Rio contains two dynamic watersheds – the Santa Fe River Canyon and the Rio Grande corridor from Buckman to Cochiti Lake – and both watersheds have critical cultural, hydrological, ecological, agricultural, and economic significance; and

**WHEREAS**, the Caja del Rio is one of the most remarkable natural landscapes in the American Southwest with cactus forests, birds ranging from burrowing owls to bald eagles, herds of deer and elk, and black bears and cougars; and

SFC CLERK RECORDED 05/11/2022

**WHEREAS**, the Caja del Rio has been a critical habitat to wildlife for millennia and a wide variety of bird and animal species continue to use the area as a migratory corridor, breeding grounds and an area of relocation during wildfires and changing climates; and

**WHEREAS**, in connecting various mountain ranges and wildlife habitats, the Caja del Rio acts as a lynchpin of wildlife connectivity and is essential for maintaining wildlife movement throughout the Upper Rio Grande; and

**WHEREAS**, preserving the Caja del Rio's historic and cultural context is critical for sustaining Santa Fe County's rich and diverse cultures, traditions, heritage, and the vibrant community we are blessed to collectively share; and

**WHEREAS**, the Caja del Rio plateau has been inhabited by Native and Indigenous communities since time immemorial; and

**WHEREAS**, the Caja del Rio is recognized by various Pueblos' traditional leadership as a significant region of cultural properties where Pueblo ancestors built housing structures, ceremonial kivas, roads, irrigation infrastructure, petroglyphs, and other cultural resources; and

**WHEREAS**, the Caja del Rio contains a dense concentration of thousands of sacred sites, structures, petroglyphs, irrigation systems, and other cultural resources; and

**WHEREAS**, the Pueblos maintain 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 historic and cultural context is critical for ongoing cultural religious access and use; and

**WHEREAS**, the Caja del Rio landscape has a revelatory, sacred, and communal Pueblo connection. This communal connection brings memory back to be a conduit of self-understanding that we are all one earth people who with the four legged, winged, finned, pollinators and aquatic micro invertebrates are together connected as one in the sacred web of

SFC CLERK RECORDED 05/11/2022

life. This communal connection then also extends to the traditional local Hispanic community and the broader Santa Fe community who also see the landscape as spiritual and sacred; and

**WHEREAS**, the Caja del Rio also represents the key landscape demarcation between what the Spanish colonial world termed the Rio Abajo and Rio Arriba regions of New Mexico and where the people of Santa Fe County's Traditional Hispano villages maintain deep ties and living roots in the Caja del Rio cultural landscape as "Ejido" (communal) through perpetuation and practice of traditional uses of flora and fauna and by pilgrimage and prayer; and

**WHEREAS**, Santa Fe County's Caja del Rio Hispano communities, including Jacona, Agua Fria, La Cieneguilla, La Cienega, and La Bajada, remain deeply connected to the Caja del Rio and act as living repositories of traditional ecological and cultural knowledge of the area; and

**WHEREAS**, Santa Fe County recognizes the importance of traditional livestock production on the Caja del Rio plateau and supports continued responsible range management as has been conducted through the cooperation of cattle growers and livestock permittees, traditional merced and acequia communities as political subdivisions of New Mexico, and federal agencies; and

**WHEREAS**, portions of the Caja del Rio have tremendous potential for sustainable outdoor recreation and to create jobs and enhance local economies so long as these regulated activities do not adversely impact the cultural, hydrological, and ecological resources of the landscape. Santa Fe County recognizes the importance of multi-use recreational access and has designated Santa Fe County as a regional and international equestrian destination that has a substantial economic impact to the County (Resolution 2015-38); and

**WHEREAS**, the Caja del Rio is still used by the Pueblo Nations and traditional Hispano communities to exercise traditional land use values including: hunting, fishing, grazing, wood gathering, piñon harvesting, herb and plant gathering, sacred pilgrimage, and the historic community use of the land in other traditional ways; and

SFC CLERK RECORDED 05/11/2022

**WHEREAS**, the Caja del Rio also contains a major and historically significant travel corridor along the National Historic Trail of El Camino Real de Tierra Adentro, an important trade route that ran from Mexico City to the Pueblo of Ohkay Owingeh, New Mexico, from 1598 to 1881; and

**WHEREAS**, various petroglyphs and archeological sites found along El Camino Real de Tierra Adentro and throughout the Caja del Rio speak to the arrival, presence, history, culture and influence of the Spanish in the area; and

**WHEREAS**, residents and spiritual leaders throughout Santa Fe County and the United States recognize the sacred value of the Caja del Rio and utilize the area as a place of prayer, silence, solitude, worship and sacred pilgrimage; and

**WHEREAS**, in the early 1900s the main travel corridor of El Camino Real de Tierra Adentro along the Caja del Rio transformed to become famous for its iconic stretches of New Mexico Highway 1 and ultimately Route 66; and

**WHEREAS**, the Caja del Rio also serves as a critical landscape in creating a historical, cultural, ecological, and eco-tourism corridor connecting to Bandelier National Monument and the adjacent sites of Kasha-Katuwe Tent Rocks National Monument, El Rancho de los Golondrinas and the Leonora Curtin Wetland Preserve; and

**WHEREAS**, the New Mexico Heritage Preservation Alliance has listed the Caja del Rio as one of the “most endangered places” in New Mexico; and

**WHEREAS**, there are many significant threats to the Caja del Rio’s land, water, wildlife, and cultural and archeological antiquities including, but not limited to: petroglyph defacement, vandalism, and theft, illegal shooting and poaching of wildlife and livestock, illegal dumping, theft of stock tanks, unlawful OHV usage and habitat fragmentation from illegal roads,

SFC CLERK RECORDED 05/11/2022

unmanaged/unlawful recreation, and recent sales of federal lands by the BLM for other public purposes; and

**WHEREAS**, the Caja del Rio’s cultural and wildlife resources remain under significant threat from the Los Alamos National Labs proposals to run a major transmission line and fiber optic line cutting across the Caja del Rio landscape as well as the proposal for the development of a major highway to be created through the area; and

**WHEREAS**, the federal agencies with jurisdiction over the area have provided insufficient management and resources to patrol, monitor, and protect the many antiquities within the Caja del Rio; and

**WHEREAS**, traditional land use permittees wish to work collaboratively with the federal agencies and ask these agencies to recognize the historical and cultural significance of traditional uses within New Mexico’s Hispano communities and honor such uses in perpetuity; and

**WHEREAS**, Pueblo Nations with a deep connection to the Caja del Rio would like for the federal government to provide the protections needed to preserve and protect traditional Native sacred sites as well as maintain Pueblo access and co-stewardship of these sites; and

**WHEREAS**, the Caja del Rio should become an important experiential learning “classroom” for the area’s surrounding youth and a place to teach children the cultural, historical, ecological, geological, hydrological, and biological aspects of this remarkable landscape; and

**WHEREAS**, the permanent protection of the Caja del Rio will help New Mexico reach the 30x30 goals of “America the Beautiful” initiative and the State’s 30x30 Executive Order 2021-052 focused on protecting biodiversity and conserving 30% of lands and waters by 2030; and

**WHEREAS**, the America the Beautiful initiative encourages locally led and voluntary efforts to conserve, connect, and restore lands, waters, and wildlife upon which we all depend,

SFC CLERK RECORDED 05/11/2022

and the Caja del Rio protection efforts are locally driven and led, characterized by community collaboration, and support the priorities of Tribal Nations, while also engaging other local stakeholders.

**NOW THEREFORE BE IT RESOLVED**, that the Board of County Commissioners of Santa Fe County hereby:

1. Supports the permanent protection, long-term preservation, and responsible stewardship of the Caja del Rio landscape;
2. Supports the collaboration, co-management, and co-stewardship of the Caja del Rio among responsible federal agencies, the local governments of traditional Hispano communities, and sovereign Tribal Nations for the permanent protection and preservation of this precious natural and cultural landscape;
3. Supports all efforts to empower Pueblo Nations and traditional Hispano communities in performing meaningful cultural interpretation, environmental education, and historical preservation of this treasured landscape;
4. Supports co-stewardship and responsible management of wildlife and the wild environs of the Caja del Rio Plateau, for the benefit of the public today, and for future generations;
5. Supports the continuation and sustainment of traditional uses of the Caja del Rio including hunting, fishing, grazing, wood gathering, piñon harvesting, herb and plant gathering, sacred pilgrimage, and the historic community use of the land in other traditional ways; and
6. Opposes new development and construction of highways, power transmission lines, or other infrastructure encroachments on the landscape of the Caja del Rio.

**BE IT FURTHER RESOLVED**, that the Board of County Commissioners of Santa Fe County hereby requests that the President of the United States and the U.S. Congress initiate the process to bring permanent protections to the Caja del Rio.

**BE IT FURTHER RESOLVED**, that the Board of County Commissioners of Santa Fe County requests that the County Manager forward this Resolution to the U.S. Secretary of the

SFC CLERK RECORDED 05/11/2022

Interior, the Bureau of Land Management Director, the U.S. Forest Service National Director, New Mexico's Senators and Representatives in Congress, the New Mexico Governor, State Senators and Representatives in the New Mexico Legislature representing Santa Fe County, New Mexico Counties' Executive Board of Directors, and other elected officials representing political subdivisions wholly or partially within the boundaries of Santa Fe County.

**PASSED, APPROVED, AND ADOPTED ON THIS 10<sup>th</sup> DAY OF MAY, 2022.**

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: Anna T. Hamilton  
Anna T. Hamilton, Chair



**ATTESTATION:**

Katharine E. Clark  
Katharine E. Clark  
Santa Fe County Clerk

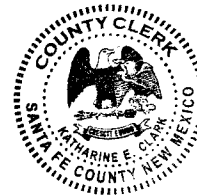
Date: 5/10/22

COUNTY CLERK RECORDED 05/11/2022

**Approved as to form:**

Rachel A. Brown  
Rachel A. Brown  
Interim Santa Fe County Attorney

COUNTY OF SANTA FE            )  
STATE OF NEW MEXICO        ) ss  
BCC RESOLUTIONS  
PAGES: 7  
I Hereby Certify That This Instrument Was Filed for  
Record On The 11TH Day Of May, 2022 at 11:14:18 AM  
And Was Duly Recorded as Instrument # 1988246  
Of The Records Of Santa Fe County



Witness My Hand And Seal Of Office  
Katharine E. Clark  
Deputy Destiny Romero County Clerk, Santa Fe, NM

# **Exhibit C:**

San Miguel County

Resolution No. 03-14-23-B-Commission

Supporting the Permanent Preservation of the  
Caja del Rio Cultural Landscape & Wildlife Area

Mar. 14, 2023





**SAN MIGUEL COUNTY**  
**RESOLUTION NO. 03-14-23-B: Commissioner**  
**SUPPORTING THE PERMANENT PRESERVATION OF THE CAJA DEL RIO**  
**CULTURAL LANDSCAPE & WILDLIFE AREA**

**WHEREAS**, San Miguel County has an incredible array of public lands that encompass a stunning wealth of landscapes that are enjoyed by residents and non-residents alike. The national public lands model is a remarkable asset for both San Miguel County and New Mexico; and

**WHEREAS**, San Miguel County includes the Pecos National Historic Park, the ancestral home of Pecos Pueblo, a powerful and prominent Pueblo that was a center of great trade among the Pueblos of the Rio Grande Valley and Western Apache; and

**WHEREAS**, after various hardships during the colonial period, the people of Pecos Pueblo sought refuge at the Pueblo of Jemez and today the descendants of the Pecos Pueblo reside with Jemez and are one with the people, Pueblo, and culture; and

**WHEREAS**, Jemez Pueblo actively maintains the connection to Pecos Pueblo and the Second Lieutenant Governor for Jemez Pueblo also serves as the Pecos Pueblo Governor, a tribal leadership role created when Pecos and Jemez merged in 1838; and

**WHEREAS**, the Pecos Eagle Society, a traditional religious society from Pecos Pueblo, annually returns to its aboriginal homelands at Pecos to perform ceremonial rites at shrines that exist to this day; and

**WHEREAS**, the Caja del Rio located on 106,883 acres of the Bureau of Land Management ("BLM") and U.S. Forest Service ("USFS") public lands in north-central New Mexico acts as an important area of spiritual connection, grounding and travel between the Jemez and Pecos Pueblos providing a sense of memory and self-identity that speak to the sacred connection between land, water, wildlife and people since time immemorial; and

**WHEREAS**, the Caja del Rio is considered one of America's most iconic landscapes and an area of profound cultural, historical, archeological, and ecological significance; and

**WHEREAS**, the Caja del Rio is a landscape of dramatic topography whose geological processes stem from the Rio Grande rift and whose boundaries stretch from the boundary of the Rio Grande to the southern and western boundaries of the La Bajada Escarpment, Santa Fe River, and Canada Ancha; and

**WHEREAS**, the Caja del Rio contains two dynamic watersheds — the Santa Fe River Canyon and the Rio Grande corridor from Buckman to Cochiti Lake — and both watersheds have critical cultural, hydrological, ecological, agricultural, and economic significance; and

**WHEREAS**, the Caja del Rio is one of the most remarkable natural landscapes in the American Southwest with cactus forests, birds ranging from burrowing owls to bald and golden eagles, herds of deer and elk, and black bears and cougars; and

**WHEREAS**, the Caja del Rio has been critical habitat to wildlife throughout northern New Mexico for millennia and a wide variety of bird and animal species continue to use the area as a migratory corridor, breeding grounds and an area of relocation during wildfires and changing climates; and

**WHEREAS**, in connecting various mountain ranges and wildlife habitats, the Caja del Rio acts as a lynchpin of wildlife connectivity and is essential for maintaining wildlife movement throughout the Upper Rio Grande; and

**WHEREAS**, preserving the Caja del Rio's historic and cultural context is critical for sustaining San Miguel County's rich and diverse history, cultures, traditions, heritage, and the vibrant community we are blessed to collectively share; and

**WHEREAS**, the Caja del Rio plateau has been inhabited by Native and Indigenous communities since time immemorial; and

**WHEREAS**, the Caja del Rio is recognized by various Pueblos' traditional leadership as a significant region of cultural properties where Pueblo ancestors built housing structures, ceremonial kivas, roads, irrigation infrastructure, petroglyphs, and other cultural resources; and

**WHEREAS**, the Caja del Rio contains a dense concentration of thousands of sacred sites, structures, petroglyphs, irrigation systems, and other cultural resources; and

**WHEREAS**, the Pueblos maintain 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 historic and cultural context is critical for ongoing cultural religious access and use; and

**WHEREAS**, the Caja del Rio landscape has a revelatory, sacred, and communal Pueblo connection. This communal connection brings memory back to be a conduit of self- understanding that we are all one earth people who with the four legged, winged, finned, pollinators and aquatic micro invertebrates are together connected as one in the sacred web of life. This communal connection then also extends to the traditional local Hispanic community and broader northern New Mexico communities who also see this landscape as spiritual and sacred; and

**WHEREAS**, the Caja del Rio also represents the key landscape demarcation between what the Spanish colonial world termed the Rio Abajo and Rio Arriba regions of New Mexico and where the people of Northern New Mexico's Traditional Hispano villages maintain deep ties and living roots in the Caja del Rio cultural landscape as "Ejido" (communal) through perpetuation and practice of traditional uses of flora and fauna and by pilgrimage and prayer; and

**WHEREAS**, San Miguel County acknowledges the importance of traditional Hispano communities, including Jacona, Agua Fria, La Cieneguilla, La Cienega, and La Bajada, that remain deeply connected to the Caja del Rio and act as living repositories of traditional ecological and cultural knowledge of the area; and

**WHEREAS**, San Miguel County recognizes the importance of traditional livestock production on the Caja del Rio plateau and supports continued responsible range management as has been conducted through the

cooperation of cattle growers and livestock permittees, traditional merced and acequia communities as political subdivisions of New Mexico, and federal agencies; and

**WHEREAS**, portions of the Caja del Rio have tremendous potential for sustainable outdoor recreation and to create jobs and enhance local economies so long as these regulated activities do not adversely impact the cultural, hydrological, and ecological resources of the landscape. San Miguel County recognizes the importance of multi-use recreational access; and

**WHEREAS**, the Caja del Rio is still used by the Pueblo Nations and traditional Hispano communities to exercise traditional land use values including: hunting, fishing, grazing, wood gathering, pinion harvesting, herb and plant gathering, sacred pilgrimage, and the historic community use of the land in other traditional ways; and

**WHEREAS**, also the Caja del Rio contains a major and historically significant travel corridor along the National Historic Trail of El Camino Real de Tierra Adentro, an important trade route that ran from Mexico City to the Pueblo of Ohkay Owingeh, New Mexico, from 1598 to 1881; and

**WHEREAS**, various petroglyphs and archeological sites found along El Camino Real de Tierra Adentro and throughout the Caja del Rio speak to the arrival, presence, history, culture and influence of the Spanish in the area; and

**WHEREAS**, residents and spiritual leaders throughout San Miguel County and the United States recognize the sacred value of the Caja del Rio and utilize the area as a place of prayer, silence, solitude, worship and sacred pilgrimage; and

**WHEREAS**, in the early 1900s the main travel corridor of El Camino Real de Tierra Adentro along the Caja del Rio transformed to become famous for its iconic stretches of New Mexico Highway 1 and ultimately Route 66; and

**WHEREAS**, the Caja del Rio also serves as a critical landscape in creating a historical, cultural, and ecological corridor connecting to Bandelier National Monument and the adjacent sites of Kasha-Katuwe Tent Rocks National Monument, El Rancho de los Golondrinas and the Leonora Curtin Wetland Preserve; and

**WHEREAS**, the New Mexico Heritage Preservation Alliance has listed the Caja del Rio as one of the "most endangered places" in New Mexico; and

**WHEREAS**, there are many significant threats to the Caja del Rio's land, water, wildlife, and cultural and archeological antiquities including, but not limited to: petroglyph defacement, vandalism, and theft, illegal shooting and poaching of wildlife and livestock, illegal dumping, theft of stock tanks, unlawful OHV usage and habitat fragmentation from illegal roads, unmanaged/unlawful recreation, and recent sales of federal lands by the BLM for other public purposes; and

**WHEREAS**, the Caja del Rio's cultural and wildlife resources remain under significant threat from the Los Alamos National Labs proposals to run a major transmission line cutting across the Caja del Rio landscape as well as the proposal for the development of a major highway to be created through the area; and

**WHEREAS**, the federal agencies with jurisdiction over the area have provided insufficient management and resources to patrol, monitor, and protect the many antiquities within the Caja del Rio; and

**WHEREAS**, traditional land use permittees wish to work collaboratively with the federal agencies and ask these agencies to recognize the historical and cultural significance of traditional uses within New Mexico's Hispano communities and honor such uses in perpetuity; and

**WHEREAS**, Pueblo Nations with a deep connection to the Caja del Rio would like the federal government to provide the protections needed to preserve and protect traditional Native sacred sites as well as maintain Pueblo access and co-stewardship of these sites; and

**WHEREAS**, the Caja del Rio should become an important experiential learning "classroom" for the area's surrounding youth and a place to teach children the cultural, historical, ecological, geological, hydrological, and biological aspects of this remarkable landscape; and

**WHEREAS**, the permanent protection of the Caja del Rio will help New Mexico reach the goals of "America the Beautiful" initiative and the State's Executive Order 2021-052 focused on protecting biodiversity and conserving lands and waters by 2030; and

**WHEREAS**, the America the Beautiful initiative encourages locally led and voluntary efforts to conserve, connect, and restore lands, waters, and wildlife upon which we all depend, and protection efforts are locally driven and led, characterized by community collaboration, and support the priorities of Tribal Nations, while also engaging other local stakeholders.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of County Commissioners of San Miguel County:

1. Supports the permanent protection, long-term preservation, and responsible stewardship of the Caja del Rio landscape;
2. Supports the collaboration and stewardship of the Caja del Rio among responsible federal agencies, sovereign Tribal Nations and traditional Hispano communities, for the permanent protection and preservation of this precious natural and cultural landscape;
3. Supports all efforts to empower sovereign Tribal Nations and traditional Hispano communities in performing meaningful cultural interpretation, environmental education, and historical preservation of this treasured landscape;
4. Supports the strong stewardship and responsible management of wildlife and the wild environs of the Caja del Rio Plateau, for the benefit of the public today, and for future generations;
5. Supports the continuation and sustainment of traditional uses of the Caja del Rio including hunting, fishing, grazing, wood gathering, piñon harvesting, herb and plant gathering, sacred prayer and pilgrimage, and the historic community use of land in other traditional ways; and
6. Opposes new development and construction of highways, power transmission lines, or other infrastructure encroachments on the landscape of the Caja del Rio.

**BE IT FURTHER RESOLVED**, that the Board of the County Commissioners of San Miguel County hereby requests that the President of the United States and the U.S. Congress initiate the process to bring permanent protections to the Caja del Rio.

**BE IT FURTHER RESOLVED**, that the Board of County Commissioners of San Miguel County requests that the County Manager forward this Resolution to the U.S. Secretary of the Interior, the Bureau of Land Management Director, the U.S. Forest Service National Director, New Mexico's Senators and

Representatives in Congress, the New Mexico Governor, State Senators and Representatives in the New Mexico Legislature representing San Miguel County, New Mexico Counties' Executive Board of Directors, and other elected officials representing political subdivisions wholly or partially within the boundaries of San Miguel County.

**PASSED, APPROVED AND ADOPTED ON THIS 14<sup>TH</sup> DAY OF MARCH, 2023.**

  
Harold M. Garcia, Chair, District 1

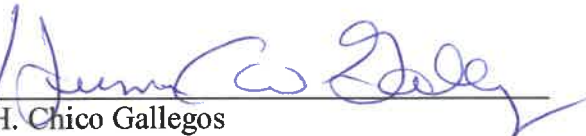
  
Janice C. Varela, Member, District 2

  
Max O. Trujillo, Member, District 3

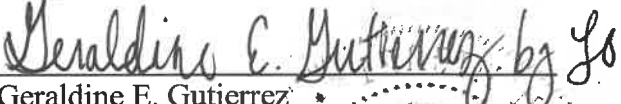
  
Martin Sena, Vice-Chair, District 4

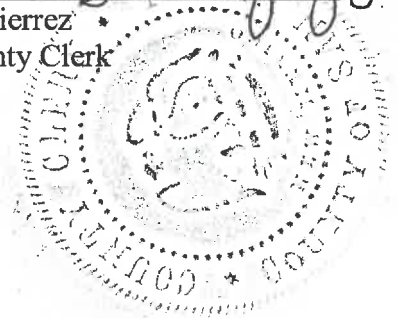
  
Kenneth Medina, Member, District 5

APPROVED AS TO LEGAL SUFFICIENCY:

  
H. Chico Gallegos  
San Miguel County Attorney

ATTEST:

  
Geraldine E. Gutierrez  
San Miguel County Clerk



## **Exhibit D:**

Northern Rio Grande National Heritage Area

Resolution No. 2023-02

A Resolution Supporting the Permanent Preservation  
of the Caja del Rio Cultural Landscape & Wildlife Area

Feb. 18, 2023

**NORTHERN RIO GRANDE NATIONAL HERITAGE AREA**

**RESOLUTION NO. 2023-02**

---

**A RESOLUTION  
SUPPORTING THE PERMANENT PRESERVATION OF THE CAJA DEL RIO  
CULTURAL LANDSCAPE & WILDLIFE AREA**

---

**WHEREAS**, Northern Rio Grande National Heritage Area (NRGNHA) has an incredible array of public lands that encompass a stunning wealth of landscapes that are enjoyed by residents and non-residents alike. The national public lands model is a remarkable asset for both Rio Arriba County, Santa Fe County, Taos County and New Mexico; and

**WHEREAS**, the Caja del Rio is located on 106,883 acres of the Bureau of Land Management (“BLM”) and U.S. Forest Service (“USFS”) public lands in north-central New Mexico and is considered one of America’s most iconic landscapes and an area of profound cultural, historical, archeological, and ecological significance; and

**WHEREAS**, the Caja del Rio is a landscape of dramatic topography whose geological processes stem from the Rio Grande rift and whose boundaries stretch from Santa Fe County’s northwestern boundary of the Rio Grande to the southern and western boundaries of the La Bajada Escarpment, Santa Fe River, and Cañada Ancha; and

**WHEREAS**, the Caja del Rio contains two dynamic watersheds – the Santa Fe River Canyon and the Rio Grande corridor from Buckman to Cochiti Lake – and both watersheds have critical cultural, hydrological, ecological, agricultural, and economic significance; and

**WHEREAS**, the Caja del Rio is one of the most remarkable natural landscapes in the American Southwest with cactus forests, birds ranging from burrowing owls to bald eagles, herds of deer and elk, and black bears and cougars; and

life. This communal connection then also extends to the traditional local Hispanic community and the broader NRGNHA community who also see the landscape as spiritual and sacred; and

**WHEREAS**, the Caja del Rio also represents the key landscape demarcation between what the Spanish colonial world termed the Rio Abajo and Rio Arriba regions of New Mexico and where the people of Santa Fe County's Traditional Hispano villages maintain deep ties and living roots in the Caja del Rio cultural landscape as "Ejido" (communal) through perpetuation and practice of traditional uses of flora and fauna and by pilgrimage and prayer; and

**WHEREAS**, Santa Fe County's Caja del Rio Hispano communities, including Jacona, Agua Fria, La Cieneguilla, La Cienega, and La Bajada, remain deeply connected to the Caja del Rio and act as living repositories of traditional ecological and cultural knowledge of the area; and

**WHEREAS**, NRGNHA recognizes the importance of traditional livestock production on the Caja del Rio plateau and supports continued responsible range management as has been conducted through the cooperation of cattle growers and livestock permittees, traditional merced and acequia communities as political subdivisions of New Mexico, and federal agencies; and

**WHEREAS**, portions of the Caja del Rio have tremendous potential for sustainable outdoor recreation and to create jobs and enhance local economies so long as these regulated activities do not adversely impact the cultural, hydrological, and ecological resources of the landscape. Santa Fe County recognizes the importance of multi-use recreational access and has designated Santa Fe County as a regional and international equestrian destination that has a substantial economic impact to the County (Resolution 2015-38); and

**WHEREAS**, the Caja del Rio is still used by the Pueblo Nations and traditional Hispano communities to exercise traditional land use values including: hunting, fishing, grazing, wood gathering, piñon harvesting, herb and plant gathering, sacred pilgrimage, and the historic community use of the land in other traditional ways; and



**WHEREAS**, the Caja del Rio's cultural and wildlife resources remain under significant threat from the Los Alamos National Labs proposals to run a major transmission line and fiber optic line cutting across the Caja del Rio landscape as well as the proposal for the development of a major highway to be created through the area; and

**WHEREAS**, the federal agencies with jurisdiction over the area have provided insufficient management and resources to patrol, monitor, and protect the many antiquities within the Caja del Rio; and

**WHEREAS**, traditional land use permittees wish to work collaboratively with the federal agencies and ask these agencies to recognize the historical and cultural significance of traditional uses within New Mexico's Hispano communities and honor such uses in perpetuity; and

**WHEREAS**, Pueblo Nations with a deep connection to the Caja del Rio would like for the federal government to provide the protections needed to preserve and protect traditional Native sacred sites as well as maintain Pueblo access and co-stewardship of these sites; and

**WHEREAS**, the Caja del Rio should become an important experiential learning "classroom" for the area's surrounding youth and a place to teach children the cultural, historical, ecological, geological, hydrological, and biological aspects of this remarkable landscape; and

**WHEREAS**, the permanent protection of the Caja del Rio will help New Mexico reach the 30x30 goals of "America the Beautiful" initiative and the State's 30x30 Executive Order 2021-052 focused on protecting biodiversity and conserving 30% of lands and waters by 2030; and

**WHEREAS**, the America the Beautiful initiative encourages locally led and voluntary efforts to conserve, connect, and restore lands, waters, and wildlife upon which we all depend, and the Caja del Rio protection efforts are locally driven and led, characterized by community

Director, New Mexico's Senators and Representatives in Congress, the New Mexico Governor, State Senators and Representatives in the New Mexico Legislature representing Santa Fe County, and other elected officials representing political subdivisions wholly or partially within the boundaries of Northern Rio Grand National Heritage Area.

**PASSED, APPROVED, AND ADOPTED ON THIS 30<sup>th</sup> DAY OF JULY, 2022.**

**BOARD OF NORTHERN RIO GRANDE NATIONAL HERITAGE AREA**

By: Anna Hansen  
Anna C. Hansen, President of the NRGNHA

**ATTESTATION:**

David A. Fernandez  
Vice President, David Fernandez of the  
NRGNHA

Date: 2/18/23

## **Exhibit E:**

All Pueblo Council of Governors

Resolution No. APCG 2021-013

Supporting Preservation of the Caja del Rio Traditional Cultural Landscape and Urging the United States Forest Service (“USFS”) and Department of Energy (“DOE”) to Fully Assess Potential Environmental and Cultural Resource Impacts of the Proposed Electrical Power Capacity Upgrade Project

Nov. 29, 2021



All Pueblo  
Council of  
Governors

Officers:  
Wilfred Herrera, Jr., Chairman  
Governor Phillip A. Perez, Vice-Chair  
David M. Toledo, Secretary

**RESOLUTION**

ALL PUEBLO COUNCIL OF GOVERNORS

RESOLUTION NO. APCG 2021 – 13

**SUPPORTING PRESERVATION OF THE CAJA DEL RIO TRADITIONAL CULTURAL LANDSCAPE AND URGING THE UNITED STATES FOREST SERVICE (“USFS”) AND DEPARTMENT OF ENERGY (“DOE”) TO FULLY ASSESS POTENTIAL ENVIRONMENTAL AND CULTURAL RESOURCE IMPACTS OF THE PROPOSED ELECTRICAL POWER CAPACITY UPGRADE PROJECT**

**WHEREAS**, the All Pueblo Council of Governors (APCG) is comprised of the Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Ohkay Owingeh, Picuris, Pojoaque, San Felipe, San Ildefonso, Sandia, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia and Zuni, and one pueblo in Texas, Ysleta Del Sur, each having the sovereign authority to govern their own affairs;

**WHEREAS**, the purpose of the All Pueblo Council of Governors is to advocate, foster, protect, and encourage the social, cultural and traditional well-being of the Pueblo Nations;

**WHEREAS**, through their inherent and sovereign rights, the All Pueblo Council of Governors will promote the language, health, economic and natural resources, and educational advancement of all Pueblo people;

**WHEREAS**, the 20 Pueblos possess inherent government authority and sovereignty over their lands;

**WHEREAS**, the Pueblos possess their own cultural territory and sovereign right to protect their cultural resources, including their traditional cultural properties and sacred sites, whether or not these cultural resources are located within each Pueblo’s current exterior boundaries; and

**WHEREAS**, in the course of colonization of the American Southwest by Spain, Mexico, and the United States our Pueblo landholdings were unjustly encroached by non-Indians without the expressed consent of the Pueblos to reside or lay claim to Pueblo lands;

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni



# All Pueblo Council of Governors

Officers:  
Wilfred Herrera, Jr., Chairman  
Governor Phillip A. Perez, Vice-Chair  
David M. Toledo, Secretary

**WHEREAS**, the United States Supreme Court issued United States v. Joseph (1876) ruling Pueblo peoples as New Mexico citizens and not as Indians leaving the Pueblos without the protection of the federal government from land encroachment;

**WHEREAS**, the Supreme Court reversed prior precedent established in Joseph to declare the Pueblos' and their people as Indians in United States v. Sandoval (1913) and declaring the Pueblos fall under the federal government's authority and guardianship, thus requiring the involvement of Congress to resolve the estimated 3,000 non-Indian claimants of Pueblo lands between 1876 thru 1934;

**WHEREAS**, the Pueblo Lands Act of 1924 was enacted by the federal government that would establish the Pueblo Lands Board with the authority to determine the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico and in question between non-Indians and the Pueblos;

**WHEREAS**, in the history of the United States federal land management policy, Pueblo People have been absent in the decision making and stewardship of our existing cultural resources and landscapes;

**WHEREAS**, the protection of the Pueblos' cultural resources, landscapes and access to continued use of lands beyond our Pueblos existing landholdings is necessary for our survival;

**WHEREAS**, our Pueblo peoples are deeply connected to our languages, traditions, and cultural resources, all of which embody the gifts of the Creator, to support our responsibilities to be caretakers and stewards of the present world;

**WHEREAS**, the Caja del Rio is recognized by our Pueblo's traditional leadership as a significant region of Pueblo cultural properties where our ancestors built housing structures, ceremonial kivas, roads, irrigation infrastructure, petroglyphs and other cultural resources;

**WHEREAS**, the Caja del Rio contains a dense concentration of thousands of sacred sites, structures, petroglyphs, irrigation systems, and other cultural resources;

**WHEREAS**, Pueblos maintain 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 setting is critical for ongoing cultural religious access and use; and

**WHEREAS**, many of these cultural resources and sacred sites are not documented and the Caja del Rio cultural landscape may be eligible for nomination

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni



# All Pueblo Council of Governors

Officers:  
Wilfred Herrera, Jr., Chairman  
Governor Phillip A. Perez, Vice-Chair  
David M. Toledo, Secretary

and inclusion as a traditional cultural property in the National Register of Historic Places;

Acoma

**WHEREAS**, the Caja del Rio is a multi-jurisdictional landscape containing federal, state, and private land, and currently managed by the United States Forest Service (USFS), New Mexico State Land Office, and the Bureau of Land Management;

Cochiti

Isleta

**WHEREAS**, under the existing multi-jurisdictional landscape, the Caja del Rio continues to suffer longstanding management challenges including the desecration of cultural sites, misuse of off highway vehicles (OHV) beyond authorized law, undeterred dumping of refuse, poaching, and unregulated shooting, all of which continue to result in serious unmitigated, cumulative, and irreversible impacts to cultural resources;

Jemez

Laguna

Nambe

**WHEREAS**, the DOE's National Nuclear Security Administration ("NNSA") is proposing to construct and operate a 12.5-mile-long, 3-phase, overhead 115-kilovolt power transmission line to begin at the Norton Substation on BLM land spanning approximately 9.7 miles across the USFS section of Caja del Rio and 2.7 miles across White Rock Canyon to terminate at the Los Alamos National Laboratory Substation on Department of Energy land;

Ohkay Owingeh

Picuris

Pojoaque

**WHEREAS**, the Santa Fe National Forest Service ("SNFS") and DOE are joint lead agencies for the proposed project with DOE as the project proponent tasked with developing the environmental and cultural resource analysis under the National Environmental Policy Act ("NEPA") and SNFS tasked with evaluating environmental and cultural resource impacts (National Historic Preservation Act, 54 U.S.C. §§ 300101-307108) of the proposed EPCU project, and is in the process of developing a draft environmental assessment; and

Sandia

San Felipe

San Ildefonso

Santa Ana

**WHEREAS**, the National Historic Preservation Act ("NHPA") 36 CFR § 800.8(c) requires that during preparation of a NEPA Environmental Assessment the relevant federal agencies must "(1) identify consulting parties; (2) identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5..."; (3) consulting regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents; (4) [i]nvolve the public in accordance with the agency's published NEPA procedures..." and (5) [d]evelop in consultation with identified consulting parties alternatives and proposed measures that might avoid,

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni



# All Pueblo Council of Governors

Officers:  
Wilfred Herrera, Jr., Chairman  
Governor Phillip A. Perez, Vice-Chair  
David M. Toledo, Secretary

minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or [Draft Environmental Impact Assessment]”;

**WHEREAS**, the Santa Fe National Forest Service has not initiated a Section 106 Process in accordance with the National Historic Preservation Act to gather requisite cultural resource information informed by tribal cultural experts designated by Federal Indian Tribes for the proposed route and alternatives; and

**WHEREAS**, on November 15, 2021 the Department of the Interior and the Department of Agriculture issued a joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Water that enjoins the federal government to the principle of Stewardship and Co-Stewardship of cultural landscapes.

**NOW, THEREFORE BE IT RESOLVED**, the 20 Pueblo members of the All Pueblo Council of Governors recognizes the Caja Del Rio as a significant cultural landscape important to its member Pueblos and urge the federal government that all federal management designations shall be subject to the direction and guidance of the Pueblos in accordance to the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) expressed Free, Prior and Informed Consent (FPIC) principle.

**BE IT FURTHER RESOLVED THAT**, the All Pueblo Council of Governors recognizes ongoing address by Pueblos of concerns and disputes related to unresolved historic reacquisition of land grants in the Caja del Rio cultural landscape; and

**BE IT FURTHER RESOLVED THAT**, the All Pueblo Council of Governors urges USFS to fully analyze environmental and cultural impacts of the proposed EPCU project by conducting a full environmental impact statement; and

**BE IT FURTHER RESOLVED THAT**, the 20 Pueblo members of the All Pueblo Council of Governors urges USFS to comply with statutory obligations under the National Environmental Policy Act and National Historic Preservation Act’s Section 106 Tribal Consultation process to fully analyze the historic and cultural impacts of the proposed EPCU project in coordination and in accordance with the UNDRIP’s FPIC principle consistent with the expressed cultural survival of the Pueblos and until such consent if achieved, to be incorporated into the environmental assessment and a full environmental impact statement; and

**BE IT FINALLY RESOLVED THAT**, the All Pueblo Council of Governors hereby authorizes the All Pueblo Council of Governors Chairman, and his designee(s), to execute all actions and documents necessary to carry out the intent of this Resolution.

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni



All Pueblo  
Council of  
Governors


Officers:  
Wilfred Herrera, Jr., Chairman  
Governor Phillip A. Perez, Vice-Chair  
David M. Toledo, Secretary

**CERTIFICATION**

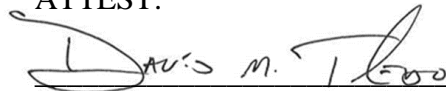
We, the undersigned officials of the All Pueblo Council of Governors hereby certify that the foregoing Resolution No. APCG 2021-13 was considered and adopted at a duly called council meeting held on 29<sup>th</sup> day of November 2021, and at which time a quorum was present and the same was approved by a vote of 15 in favor, 0 against, 0 abstain, and 5 absent.

**ALL PUEBLO COUNCIL OF GOVERNORS**

By:

  
Wilfred Herrera Jr., APCG Chairman

ATTEST:

  
David M. Toledo, APCG Secretary

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni



## **Exhibit F:**

New Mexico Avian Conservation Partners

Species Conservation Level One List



## New Mexico Avian Conservation Partners Species Conservation Level One List\*

Bendire's Thrasher (all seasons;22)  
Brown-capped Rosy-Finch (all seasons;21)  
Lesser Prairie-Chicken (all seasons;21)  
Black Rosy-Finch (winter;19)  
Chestnut-collared Longspur (winter;19)  
Flammulated Owl (breeding;19)  
Juniper Titmouse (all seasons;19)  
Pinyon Jay (all seasons;19)  
Virginia's Warbler (breeding;19)  
Grace's Warbler (breeding;18)  
Lewis's Woodpecker (all seasons;18)  
Thick-billed Longspur (winter;18)\*\*  
Spotted Owl (all seasons;18)  
Mexican Whip-poor-will (breeding;17)  
Red-faced Warbler (breeding;17)  
Scaled Quail (all seasons;17)  
Woodhouse's Scrub-Jay (all seasons;17)\*\*\*

*\*Assessment scores shown in parentheses;  
the higher the score, the more vulnerable the species;  
see back of page for listed species' habitat  
associations; subspecies not scored*

*\*\*Formerly McCown's Longspur*

*\*\*\*Formerly Western Scrub-Jay*

**Habitat Associations for Species with Scores  $\geq$  19**

Piñon-Juniper Woodland: 4  
Alpine/Tundra: 2  
Ponderosa Pine Forest: 2  
Chihuahuan Desert Grassland: 1  
Chihuahuan Desert Shrub: 1  
Great Basin Desert Shrub: 1  
Madrean Pine-Oak Woodland: 1  
Mixed-Conifer Forest: 1  
Montane Shrub: 1  
Plains and Mesa Grassland: 1  
Plains-Mesa Sand Shrub: 1

**Habitat Associations for Level 1 Species**

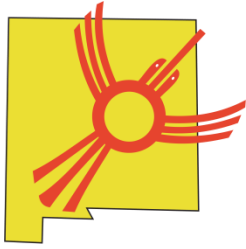
Ponderosa Pine Forest: 7  
Piñon-Juniper Woodland: 5  
Mixed-Conifer Forest: 4  
Chihuahuan Desert Grassland: 3  
Plains and Mesa Grassland: 3  
Alpine/Tundra: 2  
Chihuahuan Desert Shrub: 1  
Great Basin Desert Shrub: 1  
Madrean Pine-Oak Woodland: 1  
Middle Elevation Riparian: 1  
Montane Shrub: 1  
Montane Riparian: 1  
Plains-Mesa Sand Shrub: 1

Habitat descriptions may be found at: <http://avianconservationpartners-nm.org/bird-conservation-plan-2/99-2/>

# **Exhibit G:**

New Mexico Avian Conservation Partners

Species Conservation Level Two List



## New Mexico Avian Conservation Partners Species Conservation Level Two List\*

- |   |   |
|---|---|
| Band-tailed Pigeon (breeding;16)          | Mountain Bluebird (all seasons;15/14**) |
| Black-chinned Sparrow (breeding;16)       | Olive Warbler (breeding;15)             |
| Black-throated Gray Warbler (breeding;16) | Painted Redstart (breeding;15)          |
| Broad-tailed Hummingbird (breeding;16)    | Sage Thrasher (winter;15)               |
| Cassin's Finch (winter;16)                | Western Grebe (winter;15)               |
| Clark's Grebe (winter;16)                 | Williamson's Sapsucker (all seasons;15) |
| Clark's Nutcracker (all seasons;16)       | Brewer's Sparrow (winter;14)            |
| Gray Vireo (breeding;16)                  | Cactus Wren (all seasons;14)            |
| Montezuma Quail (all seasons;16)          | Canyon Towhee (all seasons;14)          |
| Pygmy Nuthatch (all seasons;16)           | Green-tailed Towhee (all seasons;14)    |
| Sagebrush Sparrow (all seasons;16)        | Loggerhead Shrike (all seasons;14)      |
| Steller's Jay (all seasons;16)            | Mountain Chickadee (all seasons;14)     |
| Bushtit (all seasons;15)                  | Northern Pintail (winter;14)            |
| Cassin's Sparrow (all seasons;15)         | Pyrrhuloxia (winter;14)                 |
| Crissal Thrasher (all seasons;15)         | Rock Wren (all seasons;14)              |
| Elf Owl (breeding;15)                     | Rufous-crowned Sparrow (all seasons;14) |
| Evening Grosbeak (all seasons;15)         | Townsend's Solitaire (all seasons;14)   |
| Greater Pewee (breeding;15)               | Vesper Sparrow (breeding;14)            |
| Lark Bunting (winter;15)                  | Violet-green Swallow (breeding;14)      |
| Long-eared Owl (winter;15)                | Western Bluebird (all seasons;14)       |
| Lucy's Warbler (breeding;15)              | Western Screech-Owl (all seasons;14)    |

*\*Assessment scores shown in parentheses;  
the higher the score, the more vulnerable the species;  
see back of page for listed species' habitat  
associations; subspecies not scored*

*\*\* Mountain Bluebird has a breeding score of 15 and a  
wintering score of 14*

### **Habitat Associations for Level 2 Species**

Piñon-Juniper Woodland: 20  
Ponderosa Pine Forest: 15  
Mixed-Conifer Forest: 14  
Madrean Pine-Oak Woodland : 13  
Chihuahuan Desert Shrub: 11  
Spruce-Fir Forest: 6  
Great Basin Desert Shrub: 5  
Plains and Mesa Grassland: 5  
Southwest Riparian: 4  
Chihuahuan Desert Grassland: 3  
Emergent Wetlands and Lakes: 3  
Plains-Mesa Sand Shrub: 3  
Montane Riparian: 2  
Montane Shrub: 2  
Cave/Rock/Cliff: 1  
Middle Elevation Riparian: 1  
Wet Meadow and Montane Grassland: 1

Habitat descriptions may be found at: <http://avianconservationpartners-nm.org>