



Office of the Governor
Pueblo of Tesuque

20 TP828
Santa Fe, New Mexico 87506

October 7, 2024

SENT VIA EMAIL

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

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

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

Dear Ms. Martin,

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

the National Environmental Policy Act (“NEPA”) and National Historic Preservation Act (“NHPA”), and its neglect of the Pueblo’s cultural and environmental interests.

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

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

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

II. Lack of Sufficient Tribal Consultation and Cultural Resource Analysis

Despite the Pueblo's consistent and good-faith efforts to engage in meaningful consultation with the DOE NNSA and the Forest Service, the agencies have consistently failed to prioritize the completion of a Tribally-led ethnographic study. This study is not merely a recommendation—it is a legal requirement under NEPA and NHPA Section 106 and must be completed before any further development decisions are made. Without the completion of this study, any further development decisions are not only premature but in direct violation of the federal government's legal obligations under NEPA and NHPA. These actions undermine the federal trust responsibility to Tesuque and other Pueblos. The Pueblo has repeatedly requested detailed information on the EPCU route and the associated Forest Plan amendments. However, these amendments fail to adequately identify cultural resources or sacred sites, thus undermining the environmental review process. This approach fundamentally undermines the Pueblo's ability to engage in meaningful consultation, preventing the Pueblo from providing informed responses and coordinated approaches. Without accurate identification of cultural resources, the environmental and cultural analysis remain incomplete and insufficient under NEPA and NHPA.

The EPCU Project will cause significant adverse impacts to the Caja del Rio wholly and in particular to the Caja del Rio Wildlife and Cultural Interpretive Area (“Caja Management Area”) by bisecting it with a 100-foot wide SNTUC utility corridor, a temporary 300-foot wide construction zone and ROW, and permanent transmission lines, towers, and infrastructure. The Caja Management Area was designated to support wildlife diversity and connectivity and to maintain cultural and archeological integrity. To safeguard the resources of the Caja Management Area, the Forest Plan incorporates a key standard: “Maximize use of existing utility line corridors for additional utility line needs. New utility corridors and communication sites will not be allowed.”¹ In response to the EPCU project, however, the NNSA and Forest Service proposes an exception to this standard: “except for the Los Alamos National Laboratory Electrical Power Capacity Upgrade Project, S/N transmission line.”²

The proposed modification significantly undermines the ecological and cultural integrity of the Caja Management Area, violating the federal government's trust responsibility to Tesuque and other Pueblos. The EPCU Project entails constructing 4.2 miles of new utility corridor within the Caja, including 2.96 miles of new transmission line paralleling the existing Reeves line, and requires additional spur roads for access. The remaining 1.2 miles of new transmission line would traverse undeveloped land, disrupting areas currently managed for their ecological and cultural significance. The new transmission line corridor would introduce substantial development into the Caja, negatively affecting cultural resources, soils, wildlife, vegetation, recreational use, and scenic value. Furthermore, the project would involve vegetation removal for wildfire risk reduction

¹ Id. at p. 201 (standard MA-CAJA-S) (emphasis added).

² Draft EA, supra note 5, at p. A-3.

and engineering compliance, increased public access to undeveloped areas, and the use of heavy machinery, leading to further disturbances to the environment and cultural sites.

The Pueblo most recently engaged in a consultation meeting with the DOE NNSA and Forest Service on August 30th, 2024, at which time the Pueblo requested information on the EPCU draft EA and the Forest Plan amendment. The Pueblo conveyed to the federal agencies that while engaging in the development of a Section 106 Memorandum of Understanding (“MOU”) to resolve adverse effects is welcomed, that the completion of a Pueblo-led ethnographic study must precede any development decisions on the entire Caja del Rio plateau. The Forest Service indicated that there was no draft decision or amendment language available and did not provide any details on the timeline for the soon-to-be published draft DN, FONSI, and final EA. This opacity compromises the ability of the Pueblo to provide input, concerns, and questions proactively and receive responses in a timely manner to inform our review and analysis of the draft decision. Instead, the Pueblo has been relegated to participating in a flawed written objection process, which is primarily intended for public participation rather than meaningful government-to-government consultation. The agency has provided no clear indication of how or when Tribal input will be incorporated, beyond vague promises of an MOU to address adverse effects to traditional cultural properties.

Under 36. CFR § 800.8(c) of the National Historic Preservation Act requires that during the preparation of a NEPA EA, the relevant federal agencies must do the following:

1. Identify consulting parties: This includes Tribes, SHPO/THPOs, and other stakeholders that may have interest in historic properties or cultural resources associated with a federal undertaking.
2. Identify historic properties and assess effects. The agency must follow standards and criteria of § 800.8(c) Identify historic properties and assess effects: The agency must follow standards and criteria of 36 CFR §§ 800.4 and 800.5 to identify historic properties, assess potential impacts, and evaluate whether these impacts are adverse.
3. Consult regarding effects on historic properties: Consultation must occur with SHPO/THPOs, Indian tribes, and others during NEPA scoping, environmental analysis, and preparation of NEPA documents.
4. Involve the public: The agency must involve the public as required under NEPA to ensure transparency and engagement with impacted communities.
5. Develop alternatives and mitigation measures: Agencies must develop alternatives and mitigation measures in consultation with identified parties to avoid or minimize adverse effects on historic properties.

The EPCU EA grossly fails to meet the mandatory procedural obligations of both NEPA and NHPA, particularly in its incomplete identification of historic properties and sacred sites. The

Environmental Assessment lacks the rigorous cultural resource analysis required under Section 106, and by proceeding without this analysis, the Forest Service not only ignores its obligations but also sets a dangerous precedent for future projects involving tribal connections on public lands. Instead, the EA details that the consultation process will proceed with the development of a MOU. This is contrary to the input provided by Tesuque, other Pueblos who have repeatedly raised concerns with DOE, the Forest Service, and BLM about the lack of meaningful Tribal consultation with the Pueblos, resulting in the federal agencies failure to obtain critical cultural resource information regarding cultural resources in the Caja del Rio for many years. In fact, the All Pueblo Council of Governors through Resolution and many letters has urged the federal agencies to approach Tribal consultation that supports a Tribally-led ethnographic study to precede development decisions.^{3 4}

In particular, the Pueblos have called for an ethnographic study to inform the NHPA Section 106 process. Meaningful Tribal consultation is a comprehensive, responsive, and ongoing process in which federal agencies work directly, transparently, government-to-government, with impacted Tribes to ensure project development and decision-making considers and protects Tribal interests, including cultural resource preservation central to the living cultural identity of our community. We urge the Forest Service to engage with us openly and honestly, ensuring that our input, questions, and interests are duly recognized and addressed throughout the project's development in order to uphold the solemn federal Indian trust responsibility and respect for the political status of Tribes as sovereign nations.

Additionally, the Pueblo has raised objections to the Forest Service's proposed Forest Plan amendment via written and verbal technical comments. Over a five-year period, the Pueblo actively participated as a cooperating agency to contribute to the Forest Plan Revision. On January 11, 2017, the Pueblo of Tesuque officially became a Cooperating Agency. The Land Management Plan was finalized in September 2021, with the completed version published in July 2022.⁵ In this time, the Pueblo consistently advocated for the protection of the Caja del Rio as a living and sacred traditional cultural landscape, including support for increased protections of cultural resources of the Caja Management Area. The Pueblo's persistent involvement underscores a dedication to safeguarding the Caja del Rio cultural landscape, while also contributing to the formulation of a plan that aligns with Tribal cultural preservation priorities, conservation goals, and support the

³ APCG Resolution 2021-13 Supporting Preservation of the Caja del Rio Traditional Cultural Landscape and Urging the United States Forest Service and Department of Energy to Fully Assess Potential Environmental and Cultural Resource Impacts of the Proposed Electrical Power Capacity Upgrade Project. On file with APCG Office.

⁴ APCG Resolution 2024-01 Supporting a Tribally Led Ethnographic Study of the Caja del Rio Traditional Cultural Landscape as Necessary to Ensure the Preservation of Pueblo Traditional Cultural Properties, Cultural Resources, Sacred Sites, and Ongoing Use by Pueblos. On file with APCG Office.

⁵ Concurrence Letter: "Concurrence Between The United States Forest Service and the Pueblo of Tesuque as a Cooperating Agency for Development of the Santa Fe National Forest Service Forest Plan Revision". Executed January 11, 2017. On file with Pueblo of Tesuque.

agency's compliance with applicable regulatory requirements. The agency's final EA and FONSI for the EPCU project starkly overlooks the Pueblo's consistently voiced priorities and concerns throughout the development of the updated Forest Plan, specifically those regarding cultural resource preservation.

In addition, the decision by the Forest Service to approve an amendment to the Forest Plan would significantly undermine the existing Memorandum of Understanding established between the Pueblo and the Forest Service.⁶ The Memorandum of Understanding, as affirmed by Pueblo of Tesuque Tribal Resolution 14-0604-2018, was designed to: 1) ensure that land management decisions respect and protect the Pueblo's cultural and environmental interests; 2) provide a framework for collaborative decision-making and mutual respect; and 3) promote increased respect for the customs and traditions of the Pueblo.⁷ By allowing an amendment that conflicts with the agreed-upon purpose, terms, and spirit of the Memorandum of Understanding, the Forest Service would breach the commitments enshrined therein, eroding a foundation of trust, cooperation, and compromise. Such a move not only disregards the Pueblo's concerns but also jeopardizes the integrity of the partnership, potentially leading to long-term repercussions for both the management of the Caja del Rio and the relationship between the Pueblo and the Forest Service. As a result, we urge the Forest Service to consider the impact of the proposed amendment on our shared duty to improve the Tribal-Forest partnership as referenced in the Memorandum of Understanding "to achieve common goals of wisely managing and sustaining natural resources, preserving cultural resources, improving Tribal-federal relations, protecting Tribal sovereignty, and providing for the interests of both the Forest Service and the Pueblo..."⁸ In light of these concerns, we strongly urge the Forest Service to prioritize the values outlined in the Memorandum of Understanding and work collaboratively with the Pueblo to ensure that any project decisions made reflect our shared commitment to preserving cultural integrity and fostering a respectful partnership.

III. Issuance of the FONSI Does Not Adhere to Public Participation Requirements

In addition to the above, the proposed Forest Plan Amendment is 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. Requirements under 36 C.F.R. § 219.4 for public participation of the Forest Service's regulations require the following:

⁶ MOU : Memorandum of Understanding between the Pueblo of Tesuque and the USDA Forest Service Santa Fe National Forest Service, 2018.

⁷ Pueblo of Tesuque Tribal Council Resolution 14-0604-2018. On file with Pueblo of Tesuque Governor's office.

⁸ MOU : Memorandum of Understanding between the Pueblo of Tesuque and the USDA Forest Service Santa Fe National Forest Service, 2018.

(a)...

(b) Coordination with other public planning efforts.

(1) The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.

(2) For plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes (43 U.S.C. 1712(b)), Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the plan area. The results of this review shall be displayed in the environmental impact statement (EIS) for the plan (40 CFR 1502.16(c), 1506.2). The review shall include consideration of:

(i) The objectives of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, as expressed in their plans and policies;

(ii) The compatibility and interrelated impacts of these plans and policies;

(iii) Opportunities for the plan to address the impacts identified or to contribute to joint objectives; and

(iv) Opportunities to resolve or reduce conflicts, within the context of developing the plan's desired conditions or objectives.

(3) Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the plan area, nor will the responsible official conform management to meet non-Forest Service objectives or policies.

The agencies have not provided sufficient opportunities for public involvement and collaboration, resulting in Forest Plan amendments that contravene the forest plan's objectives of maintaining ecological integrity and ensuring public benefits such as clean air and water, habitat for diverse species, and opportunities for recreational, educational, and cultural uses. The planning process is governed by the National Forest Management Act ("NFMA") of 1976, which mandates the Forest Service to "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System," in coordination with state, local, and federal agencies. NFMA requires the Forest Service to adhere to this process throughout its planning efforts. 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" and must provide for multiple use and sustained yield in accordance with the Multiple-Use Sustained-Yield Act ("MUSYA"), including "coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness."⁹

By the issuance of the FONSI, the Forest Service has completely ignored its own rules and, in fact, clearly was designed to "conform management to meet non-Forest Service objectives or policies." The federal agency responsible for overseeing the management of public lands cannot in good

⁹ Multiple-Use Sustained-Yield Act of 1960 (MUSYA), 16 U.S.C. §§ 528-531.

faith or conscience blatantly disregard the rules it established to comply with applicable statutory requirements.

IV. The Need for a Tribally Led Ethnographic Study

The Pueblo of Tesuque has proposed a Tribally led ethnographic study, which takes a comprehensive approach to identifying and evaluating the cultural resources, sacred sites, and traditional practices tied to the Caja del Rio landscape. This study is essential for fulfilling the legal obligations under Section 106 of NHPA, which mandates the assessment of impacts to potentially eligible historic properties. The study will also provide critical data for compliance with other federal laws. This proposal consists as a baseline Pueblo ethnographic information related to affiliated Pueblo's connection and definition of cultural landscapes tied to Caja del Rio. However, this will not be an exhaustive cultural resource inventory of the region. The DOE NNSA, Forest Service, BLM, and BIA, along with their designated cultural resource management ("CRM") contractors, must collaborate with the Pueblo to ensure that cultural resource inventories for federal undertakings are accurate, comprehensive, and informed by Pueblo cultural expertise.

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

The proposed ethnographic work consists of two interrelated tasks: (1) identify cultural and sacred site resources, with which workgroup Pueblos maintain affiliation through traditional cultural practices and recommend as potentially eligible to the National Register of Historic Places within the context of the cultural landscape in which they occur; and (2) provide information on these cultural landscapes, cultural resources, sacred sites and traditional cultural practices to assist DOE NNSA, USFS, and BLM in its preparation of any NEPA-required analyses and assessments, and other federal undertakings, on significant properties and important traditional practices under Section 106 of the NHPA and other federal mandates.

As previously documented, many Pueblos maintain important traditional cultural affiliation with the Caja del Rio Traditional Cultural Landscape. Based on available literature, some Ancestral Puebloan archaeological sites and features, such as petroglyphs and ancestral villages related to the Caja del Rio have been identified. However, no available information exists, even at a general level, to evaluate these sites and features through present Pueblo ethnographic information. Many

of the known archaeological sites and features may be held as significant cultural and historic properties by affiliated Pueblos; as such, the inclusion of relevant Pueblo perspectives in the formal evaluation of significance, many of these properties, as well as other cultural resources that do not compromise usual archaeological material traces, will likely be recommended as being potentially eligible for listing as historic properties or traditional cultural properties to the National Register of Historic Places.

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

To highlight the significant challenges Pueblos encounter in this consultation effort to identify historic properties and cultural practices within and around the Area of Potential Effect (“APE”) for the proposed LANL EPCU, it’s important to note that the final APE for direct physical effects, according to the Final EA, encompasses a 200-foot-wide corridor along the Reeves Line and a 400-foot-wide corridor east of the Reeves Line, covering National Forest System lands and BLM-administered lands. The APE also encompasses the staging areas and access roads, along with an additional 50-foot buffer around these areas of proposed disturbance. The visual area of potential effects is identified as a 3-mile radius around the proposed power line. Any evaluation by DOE NNSA, BLM, and Forest Service, of the ancestral Puebloan archaeological sites as significant historical properties does not constitute adequate identification, documentation, and assessment because such archaeological information previously identified and compiled is merely a beginning point. To fulfill the DOE NNSA, BLM, and Forest Service objective in their respective federal undertakings to identify historic properties of cultural and religious significance, as well as its traditional cultural practices, the Pueblos need to inspect the proposed federal undertaking’s project localities to evaluate the possibility that other Pueblo cultural resources, both archeological and natural exist. This expertise is something only the Pueblos alone possess.

The Caja del Rio contains these natural features, as well as subtle and apparent archaeological traces, evidencing the presence of a community agricultural landscape and other features necessary

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

Instead, the federal agencies have focused on identifying historic properties primarily based on their evaluation under one or more National Register of Historic Places (NRHP) Criterion D.¹⁰ However, to be eligible for inclusion in the NRHP, a property must meet additional criteria beyond just one of the four NRHP criteria. The Pueblos have urged federal agencies to consider whether the identified historic properties and cultural practices that are deemed significant also exhibit some of the following seven characteristics: integrity of location, design, setting, materials, workmanship, feeling, and association.

Tesuque and other Pueblos need to assess federal agency evaluation of the potential adverse effects of the Area of Potential Effect ("APE") related to the EPCU, as well as other federal undertakings, on identified historic resources, cultural landscapes, and cultural practices over time.¹¹ Pueblos will consider how the potential operation of the proposed EPCU have the potential for destruction or damage of all or part of a property from its historic location; change the character of a property's use or physical features that contribute to its historic significance; or introduce visual, atmospheric, or audible elements that diminish a properties historic features or associations (36 CFR 800.5.a.1): "Assessment of adverse effects"). Instead, the EPCU EA does not provide an adequate evaluation, resulting in a cumulative effects determination that overlooks our concerns. In contrast, a Pueblo ethnographic study will include the Pueblos' assessments of potential adverse effects and discussion of the anticipated nature of these effects (e.g., negligible, minor, moderate, or severe) as well as their impact on cultural practices. This important aspect has been neglected thus far.

By concluding that the project would not significantly impact these resources, the agency makes apparent the inadequacy of its assessment under the NHPA Section 106 Process and NEPA, including requirements to identify, assess, and mitigate impacts to cultural resources. Deferring

¹⁰ In addition to Criterion (d) – Cultural resources that possess the potential to yield or may be likely to yield information important in history or prehistory, there are three other National Register criteria for evaluation significance; Criterion (a) – Association that have made a significant contribution to the broad patters of our history; Criterion(b) –Associations with the lives of persons significant in our past; and Criterion (C) – Embodiment of the distinctive characteristics of a type, period, or method of construction, or representative of the work of a master, or a possession of high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

¹¹ An adverse effect is realized when an undertaking may alter, either directly or indirectly, any of the characteristics of a significant historic property or cultural practice that diminishes its integrity (36 CFR 800.5.a.1: "Assessment of adverse effects,(36 CFR Part 60, cited in Parker and King 1998:11)."

the Forest Service's responsibility for complying with NHPA Section 106 requirements to the DOE NNSA environmental assessment is inappropriate given the Forest Service is its own federal agency with statutory obligations to fulfill cultural and environmental review requirements under NHPA and NEPA for a Forest Plan amendment. According to the Forest Service Handbook (FSH) 1909.12, Chapter 24 - Cultural Resources Management, "The Forest Service is responsible for ensuring compliance with Section 106 of the National Historic Preservation Act (NHPA) for all projects that may affect historic properties. This includes land management plan amendments, which are considered federal undertakings and therefore trigger the Section 106 review process."¹²

As Tesuque has provided via letter and in the August consultation meeting with DOE NNSA and the Forest Service, the agencies lack information pertaining to the Pueblos' shared and individual unique cultural resources and ongoing cultural use of the Caja del Rio.¹³ In light of the Forest Service's growing recognition of the cultural significance of the Caja del Rio, it is imperative that a Tribally-led ethnographic study be conducted prior to any further decision-making. The proposed development threatens to significantly disrupt sacred sites and cultural practices, and this study is not only appropriate but legally required to ensure that these resources are protected in accordance with federal law.

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

To ensure compliance with legal obligations and to allow for an adequate assessment of impacts to cultural resources, the Pueblo of Tesuque has formally requested that DOE NNSA immediately halt all development of environmental and cultural reviews under NHPA and NEPA. This pause is necessary to allow for the completion of the Tribally-led ethnographic study, and incorporation of its results to inform the NHPA Section 106 cultural resource identification, assessment, and resolving of impacts requirements. Given the need to sufficiently inform the Forest Service's cultural review, the Pueblo likewise requests the Section 106 process incorporate the Tribally-led ethnographic study and be completed prior to finalizing of the Forest Plan's environmental assessment and record of decision. This will ensure the findings, determination, and resolution to the Section 106 process, including the Tribally-led ethnographic study, meaningfully informs the development, preferred alternative, and record of decision of the final EA for the Forest Plan amendment. To achieve this for the Forest Plan EA, both the NHPA and NEPA processes should

¹² U.S. Forest Service. (2014). Forest Service Handbook (FSH) 1909.12, Chapter 24 - Cultural Resources Management. Retrieved from <https://www.fs.fed.us/im/directives/fsh/1909.12/>.

¹³ Pueblo of Tesuque Letter Response to Department of Energy National Nuclear Security Administration ("DOE NNSA") Electrical Power Capacity Upgrade ("EPCU") Project National Historic Preservation Act ("NHPA") Section 106 Process Determination of Adverse Impact to Cultural Resources and Request for Tribal Consultation. July 2024.

be incorporated into a single timetable where, by statutory obligation, the Section 106 review is completed prior to the issuance of an agency decision. While agency compliance requirements under NEPA and NHPA are independent, integrating these processes in this way aims to promote transparency and accountability, supports a broad discussion of effects to Tribal cultural resources and historic properties, and ensures that Tribal input is considered in project decision-making.

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

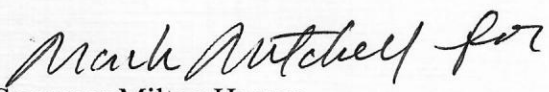
Moreover, when evaluating a special use permit application, the Forest Service is required to reject any proposal if it finds that: (i) the proposed use conflicts with the land's management objectives or with existing uses, or (ii) the proposed use does not serve the public interest. In this case, approving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

VI. Conclusion

In conclusion, approving the proposed amendment would set a troubling precedent and place the SFNF on a dangerous path toward further erosion and degradation of the special land use designations in the Forest Plan. While the final EA claims that "[a]dditional utility corridors would not be allowed," granting an exception for this project undermines the credibility of this commitment and disregards and disrespects the six years of cooperative and collaborative work

that all stakeholders contributed to the original forest management plan. Once the door is opened for such exceptions, there is little assurance that the Forest Service will reject future requests or, that the public will be willing to engage in meaningful dialogue with the Forest Service, on proposals that deviate from established rules, standards, and guidelines, particularly for projects that do not align with the forest's multiple use mission, ecological goal, and commitment in accordance with executive and secretarial orders to coordinate with Tribes, including our Pueblo, in the preservation of this precious and invaluable living landscape.

Respectfully submitted,


Governor Milton Herrera
Pueblo of Tesuque

CC:
All Pueblo Council of Governors

Shaun Sanchez, Forest Supervisor
Santa Fe National Forest Service

The Honorable Ben Ray Lujan,
United States Senator

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

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

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

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

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

The Advisory Council on Historic Preservation