



United States
Department of
Agriculture

Forest
Service

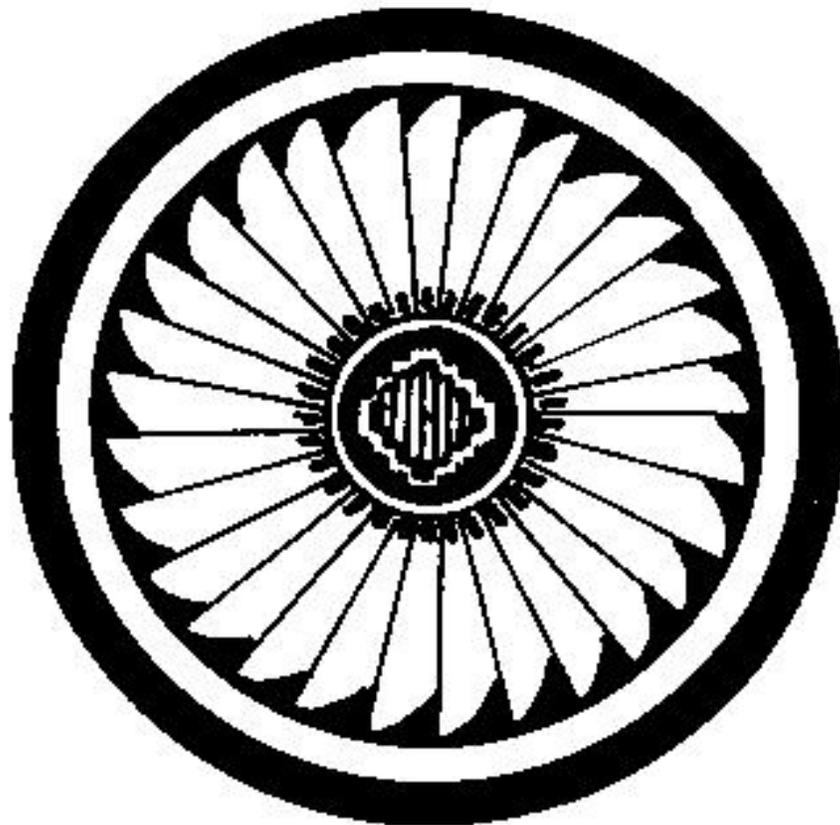
Southwestern
Region

MB-R3-10-8



Record of Decision for the Settlement Act Land Transfers: Pueblo de San Ildefonso, Pueblo of Santa Clara, and Los Alamos County

**Santa Fe National Forest,
Los Alamos, Rio Arriba and Santa Fe
Counties, New Mexico**



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Printed on recycled paper – August 2008

Record of Decision for the Settlement Act Land Transfers: Pueblo de San Ildefonso, Pueblo of Santa Clara, and Los Alamos County

**Santa Fe National Forest
Los Alamos, Rio Arriba and Santa Fe Counties, New Mexico**

Lead Agency:

USDA Forest Service
Santa Fe National Forest

Responsible Official:

Daniel J. Jiron
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Santa Fe National Forest
1474 Rodeo Road
P.O. Box 1689
Santa Fe, NM 87504-1689

For further information, contact:

Sandy Hurlocker
Española Ranger District
P.O. Box 3307
Española, NM 87533
(505) 753-7331

Record of Decision

Introduction

This Record of Decision documents a decision to approve a selected alternative as described in the “Draft Environmental Impact Statement for the Settlement Land Transfers: Pueblo de San Ildefonso, Pueblo of Santa Clara, and Los Alamos County.” No comments on the draft environmental impact statement (DEIS) resulted in the need for additional analysis so the DEIS will serve as the final environmental impact statement (DEIS/FEIS). Appendix A to the DEIS/FEIS provides the response to comment received on the DEIS.

The purpose of this project is to implement certain portions of the Pueblo de San Ildefonso Claims Settlement Act of 2005 (Public Law 109-286) (the Settlement Act), which was signed into law on September 27, 2006. The purpose of the act is to resolve title claims asserted against the United States by the Pueblo de San Ildefonso under the proceedings of the Indian Claims Act (Docket No 354). The act requires conveyance of the specific lands and so only one action alternative meets the purpose of the act.

The Forest Service has completed and documented the detailed analysis of the effects of the project in the DEIS/FEIS. The analysis has been conducted in compliance with the National Environmental Policy Act of 1969 (NEPA) and other applicable laws and regulations.

The decision is consistent with the “Santa Fe National Forest Land and Resource Management Plan.” It is based on:

- a comparison of the potential environmental effects of the proposed action and no action alternatives (FEIS, Chapter 3);
- the significant issues and how well each alternative addressed them (FEIS, Chapter 2); and
- comments received during scoping and the 45-day comment period on the DEIS. (Refer to Appendix A of the DEIS/FEIS attached to this ROD for comments on the DEIS and the responses.)

Decision

I have decided to implement the proposed action alternative (proposed action) as described in the DEIS/FEIS. Therefore, this decision will authorize the conveyance of approximately 8,785 acres¹ of National Forest System lands to the following parties:

- Pueblo de San Ildefonso (7,120 acres),
- the Pueblo of Santa Clara (750 acres), and
- Los Alamos County (915 acres).

¹ Area estimates (acres) of the parcels used for this analysis start with approximate boundaries established in the settlement agreements. Then the boundaries were drawn in a Geographic Information System (GIS). Final area determinations will be made before final transfers can occur.

The decision will also authorize reconstruction of Forest Road (FR) 416v to a high-clearance, level 2 standard². The U.S. Department of Agriculture (USDA) would acquire legal access on the Puye, Sawyer Canyon Roads and Tract B of the Townsite lands. The USDA would grant legal access on the Northern Tier lands to Department of Energy, private landowners, and the Pueblo de San Ildefonso. In order to avoid predicted effects of the transfer, the proposed action includes an area closure, heritage resource site monitoring, and other measures.

Decision Rationale

As the responsible official, I have limited discretion within the Settlement Act because conveyance or offering for conveyance of those designated lands is mandated. Reconstruction of Forest Road 416v is also mandated as an action that must be completed before the land conveyance can occur.

I have selected the proposed action in order to comply with the Settlement Act, as well as provide protection to resources in the area. The proposed action, including mitigation, fulfills the Settlement Act and so is the selected alternative.

Public Involvement

The public involvement for this analysis began with publication in the Federal Register of a Notice of Intent to prepare an environmental impact statement in June 2007. Scoping included contacting interested and potentially affected individuals, groups and agencies by mail and public announcements.

Most comments raised a concern with continued access to the lands that lie to the west of the lands to be conveyed to the Pueblo de San Ildefonso and Pueblo of Santa Clara. Comments noted the importance of keeping these lands open to the public.

Concerns regarding the lands near Los Alamos were expressed by one commenter who asked that the analysis consider these parcels separately, presupposing that these lands would eventually be developed beyond water system use. This commenter asked that alternatives be developed for these lands. Other comments ranged from support of the idea of conveyance to disagreement with the purpose of the Settlement Act and the conveyance.

During comments on the draft environmental impact statement, the concern regarding a lack of alternatives and cumulative effects analysis was expressed again (Appendix A to the FEIS). Agency review of the DEIS raised some technical questions that have been answered in Appendix A to the FEIS.

Consultation With Tribal Governments

Tribal consultation has been ongoing. The Pueblo de San Ildefonso meets with the Forest Service, Bureau of Indian Affairs, and other agencies monthly. Other tribal governments in the area were

² According to FSH 7709.58.10.12.3, road maintenance level 2 is “[a]ssigned to roads open for use by high-clearance vehicles. Passenger car traffic is not a consideration. Traffic is normally minor, usually consisting of one or a combination of administrative, permitted, dispersed recreation or other specialized uses.”

contacted as part of the tribal consultation. An offer to meet was made to other tribal governments in the vicinity, but to date, no meetings have been held specific to this project.

Issues and Alternatives Development

Planning issues are defined as disputes or controversies about existing and potential land and resource allocations, levels of resource use, production, and related management practices. No significant issues were identified during the scoping period.

Alternatives Considered but Eliminated from Detailed Study

Federal agencies are required by NEPA to rigorously explore and objectively evaluate all reasonable alternatives and to briefly discuss the reasons for eliminating any alternatives that were not developed in detail (40 CFR 1502.14).

For this project, one approach was considered that would segment the decision into separate conveyance alternatives, so that the Settlement lands, Northern Tier lands, Water System lands and Townsite lands would be considered in different alternatives. These alternatives were not analyzed in detail because the Settlement Act ties these land conveyances together by making the occurrence of one dependent on the occurrence of the others. Thus, any alternative that authorizes only one or some of the transfers without the others would not meet the purpose of the project or the Settlement Act. To meet the purpose of the Settlement Act and the purpose of this project, Settlement lands, Water System lands, and Northern Tier lands must be conveyed, and the Townsite lands must be offered for conveyance.

The second alternative considered but not analyzed in detail was to place restrictions on the use of the lands to be transferred to the county to limit use to water system purposes and ensure there was no future resale or development of the land for other purposes. The Los Alamos Agreement was ratified by the Settlement Act which states that the lands would be transferred subject to the terms and conditions agreed upon in the agreement. The agreement makes no provision for additional restrictions or reservations on future use of these lands other than those specified in the agreement and act. Imposing such a restriction or reservation would be inconsistent with the Settlement Act and the agreement and would, therefore, not meet the purpose and need.

Environmentally Preferred Alternative

The environmentally preferred alternative is the alternative that best meets the goals of section 101 of the National Environmental Policy Act and is required by 40 CFR 1505.2(b) to be identified in a Record of Decision. Ordinarily, this is the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural and natural resources. I have determined that because land and resource management will remain much the same under either alternative, and because the social benefits to the communities involved of the proposed action, I regard the proposed action as the environmentally preferred alternative.

Adoption of All Practicable Means to Avoid Environmental Harm

The agency is required by 40 CFR 1505.2(c) to identify in a Record of Decision whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted. I have determined that all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted at this time, however further consultation to resolve adverse effects to cultural resources will occur and may result in further measures to avoid, mitigate, or resolve those adverse effects.

Findings Required by NEPA and Other Laws

The planning and decisionmaking process for this project was conducted in accordance with all applicable laws, regulations, policies and plans. This section briefly describes my findings regarding the legal requirements most relevant to this project decision.

National Environmental Policy Act

The planning and decisionmaking process for this project was conducted in accordance with the requirements in the National Environmental Policy Act and its implementing regulations (40 CFR 1500, 1986) as supported by the contents of the environmental impact statement and the project record.

National Forest Management Act

The selected alternative and mitigation and monitoring requirements are consistent with the 1987 “Santa Fe National Forest Plan” (forest plan), which sets forth programmatic direction in accordance with the National Forest Management Act. This finding is based on the following factors:

- The selected alternative, including mitigation measures (DEIS/FEIS, pp. 11-13), are consistent with the Santa Fe Forest Plan goals (DEIS/FEIS pp. 7-9) described for heritage resources, visual quality, wildlife and fish, soil and water, and riparian areas.
- The mitigation measures and best management practices identified for implementation (DEIS/FEIS pp. 12-13) ensure the environmental consequences of implementation (DEIS/FEIS, pp. 19-49) are consistent with the forest plan standards and guidelines.

National Historic Preservation Act

I find that this project is consistent with the requirements of Section 106 of the National Historic Preservation Act and 36 CFR 800 regulations, based on the following factors:

- Formal consultation with the State Historic Preservation Office (SHPO) under Section 106 has been conducted and completed. Documentation of required heritage resource inventories and evaluations were submitted to SHPO; the appropriate SHPO concurrences and clearances have been received.

- The Forest Service has engaged in consultation with tribes regarding the potential impacts of the alternatives on National Forest System lands according to the National Historic Preservation Act and associated legal requirements (DEIS/FEIS p. 5)
- A heritage resource impact analysis was conducted (DEIS/FEIS, pp. 32-36). Additional details are contained in archeologist reports on file with the Santa Fe Forest Supervisor's Office.
- The results of this analysis concluded that transferring lands to Los Alamos County is an adverse effect to cultural resources, which requires further tribal consultation in an attempt to resolve, avoid or mitigate the adverse effect before the transfers can occur.
- Through consultation with tribal governments, Los Alamos County, and the SHPO, a phased approach has been developed in order to implement the decision to convey the parcels in a step-by-step process. A programmatic agreement (PA) describes this approach (DEIS/FEIS Appendix B). This agreement allows for survey and further consultation for resolution of effects to occur after this decision, but requires consultation for resolution of effects to be completed before each phase of the land transfer can occur.

Endangered Species Act

I find that the project is consistent with the Endangered Species Act and its implementing regulations (50 CFR 402) based on the following factors:

- All federally listed species potentially occurring, or with habitat occurring in the analysis area, were identified and effects to them are described in the DEIS/FEIS (pp. 40-42).
- The biological assessment/evaluation (BA/E) was completed. The only species that had potential to be affected is the Mexican spotted owl. One of the parcels to be transferred to Los Alamos County includes lands in a protected activity center (PAC). Expected change in use includes additional recreation at the Los Alamos Reservoir. However, given the loss of suitable habitat caused by the Cerro Grande Fire, this change in use resulting in transfer was expected to be characterized as "may affect is not likely to adversely affect the Mexican spotted owl." Informal consultation resulted in concurrence from the U.S. Fish and Wildlife Service (DEIS/FEIS p. 42).

Migratory Bird Treaty Act/Bald and Golden Eagle Protection Act

The project is consistent with the requirements of these acts because no changes in habitat are anticipated (DEIS/FEIS pp. 42-46) and because no eagle activity occurs in the lands to be transferred.

Clean Water Act

I find that the project is consistent with the requirements of the Clean Water Act and its implementing regulations (40 CFR 130), as well as New Mexico State Water Quality Standards, based on the following factors:

- Impacts of land transfer are beneficial or neutral (FEIS pp. 19, 36-40).

- Potential impacts of road construction are mitigated through specific best management practices (DEIS/FEIS p. 13).

Environmental Justice, Executive Order 12898

Executive Order 12898 (February 11, 1994) directs Federal agencies to focus attention on the human health and environmental conditions in minority communities and low-income communities. The purpose of the Executive order is to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. The Executive order states that populations should not be disproportionately impacted due to ethnicity or income level. Based on the anticipated beneficial and adverse social/economic effects (DEIS/FEIS pp. 47-48), I find that the selected alternative will not disproportionately impact minority or low-income populations.

Forest Service Administrative Review or Appeal Opportunities

The decision related to National Forest System lands is subject to administrative review (appeal) in accordance with 36 CFR 215 (June 2003). A written notice of appeal—clearly stating it is a notice of appeal being filed pursuant to 36 CFR 215.14—must be filed within 45 days from the date of publication of legal notice of this decision in the Albuquerque Journal. The publication date is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source.

Individuals or organizations that participated in the planning may appeal this decision. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14. An appeal must be filed (regular mail, fax, e-mail, hand delivery, or express delivery) with the appeal deciding officer.

Written appeals must be submitted to:

Deputy Regional Forester, Southwestern Region
Appeal Deciding Officer
333 Broadway Blvd., SE
Albuquerque, NM 87102
FAX: (505) 842-3173
E-mail: appeals-southwestern@fs.fed.us

The office business hours for those submitting hand delivered appeals are: 8 a.m. to 4:30 p.m. Monday through Friday, excluding holidays. Electronic comments must be submitted in a format such as an e-mail message, plain text (.txt), rich text format (.rtf), Adobe (.pdf) and Word (.doc) to appeals-southwestern@fs.fed.us. The appeal must have an identifiable name attached or verification of identity will be required. A scanned signature may serve as verification on electronic appeals.

Forest Service Information Contact

For additional information concerning this decision or the Forest Service appeal process, contact:

Sandy Hurlocker
Española Ranger District
1710 North Riverside Dr.
Española, NM 87505
(505) 753-7331



DANIEL J. JIRON
Forest Supervisor
Santa Fe National Forest
USDA Forest Service

August 4, 2008
Date

FEIS Appendix A: Response to Comments

Background

The DEIS was made available for public comment in January 2008 (FR notice date etc.). In response to the DEIS, the following comments were received:

1	Wally Murphy	U.S. Fish and Wildlife Service	February 7, 2008
2	Michael P. Jansky	Environmental Protection Agency	February 29, 2008
3	Stephen Spencer	U.S. Dept. of the Interior	February 29, 2008
4	Richard Holms		March 2, 2008
5	Tony Joe	The Navajo Nation	March 12, 2008

USDI Fish and Wildlife Service, Wally Murphy

The U.S. Fish and Wildlife provided a letter with recommendations, February 7, 2008, Cons. No. 22420-2008-FA-0026:

Comment 1: Concerning presence/absence surveys for the PAC identified near FR416v prior to road [re]construction. The PAC is considered occupied. It was occupied the season after the Cerro Grande Fire and had confirmed reproduction in 2002.

Response: Road reconstruction will not occur within or adjacent to the PAC and so the recommended survey is not necessary to protect the integrity of the PAC.

Comment 2: Continue to support the New Mexico Endemic Salamander Team.

Response: The forest continues to support the New Mexico Endemic Salamander Team and implement the Jemez Salamander Management Plan. The forest is actively engaged on the team and is working to update the conservation agreement.

Comment 3: Conduct salamander surveys before road reconstruction on FR 416v.

Response: This recommendation is not applicable because this road is outside of salamander habitat. The DEIS/FEIS (p. 44) notes that the only salamander habitat is located in Parcel F.

Environmental Protection Agency, Michael Jansky

The EPA rated the DEIS as “LO,” which means the EPA has “lack of objections” to the proposed action described in the DEIS.

DOI Office of Environmental Policy and Compliance, Stephen Spencer

Comment 1: The following statements would be more helpful if the source of the statements was more clearly documented:

- Statement: “The MU [management unit] was based on one [owl] response to one survey. No nest was ever located. Two years of subsequent survey...were negative (page 43 2nd paragraph).”

- Source: Personal communication to M. Orr, district biologist, from D. Stahlecker surveys results for Public Service Co. of NM for the Ojo Line Extension.
- Statement: “The canyon has been occupied by great horned owls (GHO) at least 1 year since...Juvenile GHO were seen and reported in a burned snag close to the reservoir.”
- Source: Personal communication to M. Orr, district biologist from Greg Kuyumjian, BAER Plan coordinator and hydrologist, 2002.
- Statement: “Jemez Mountain salamander (JMS) is present above ground only during the late summer monsoon rains when rainfall is sufficient (page 45, 2nd full paragraph).”
- Source: NMDGF 2000 Cooperative Management Plan for the Jemez Mountain Salamander.

Comment 2: The following underlined statement is contradictory: “Currently the habitat is not considered suitable for MSO and will not be for decades, therefore, this project may affect, is not likely to adversely affect the Mexican spotted owl.”

Response: This statement is the determination of finding in the biological assessment for the Mexican spotted owl for the San Ildefonso Land Transfer Project. The U.S. Fish and Wildlife Service concurred with this finding.

The habitat is not considered suitable due to being burned from the Cerro Grande Fire and is in the slow process of recovery. The protected activity center (PAC) still exists. A portion of the land within the lower end of the PAC will be transferred to Los Alamos County and will no longer be under the control of the U.S. Forest Service. Therefore, the Fish and Wildlife Service considers actions that may have an effect such as Los Alamos County’s restoring the recreational activities to pre-Cerro Grande Fire. Thus, the action may effect the Mexican spotted owl because it is entirely possible that an owl could use the canyon for foraging activity in the future. Any effect such as loud music, the presence of people, motor vehicles, etc., which cause an owl to change its behavior is considered an effect. But because of the low likelihood of owl presence, this is not likely to adversely affect the MSO.

Richard Holms

The comments on the DEIS repeated previous concerns with the lack of meaningful alternatives, and the lack of response to several of the points made during the scoping phase.

Comment 1: There was a lack of meaningful alternatives. Consider an alternative that changes the shape of the parcels to be transferred as the Townsite parcels in order to reduce the impact to the community. Not all of the land in these parcels is needed to meet the intent of the act.

Response: The DEIS/FEIS (p. 11) describes which other alternatives were considered but not studied in detail. Section 3 of the act incorporates the Los Alamos Settlement, which includes the parcels as outlined. According to the act, the parties are authorized to make minor changes, but large changes in mapped areas would not be authorized under the act. As noted in the DEIS/FEIS, the agreements ratified by the act make no provision for additional restrictions or reservations other than those already in the agreements or the act.

Comment 2: The DEIS fails to respond to previous comments. Two points were not addressed in the DEIS. The main concerns left unanswered were the precedent this project would set by

allowing development on Forest Service lands by transferring lands under a special use permit, and the second point left unanswered was the accumulation of impacts to the Townsite lands and surrounding lands due to Federal actions. The assessment of precedent and of accumulation of impacts are required by NEPA and these points require a response in the EIS. Both precedent and accumulation should be carefully considered when defining alternatives.

Response: First and most important, the Congress enacted a law authorizing this land transfer, as well as most of the conditions of the transfer. Congress has the authority to do so when it chooses and so the concept of precedent is irrelevant in that context. Second, the determination of precedent as used in the environmental analysis context is generally used as a factor in assessing the context and intensity of a Federal action, which in turn informs a decision maker regarding the significance of effects caused by a proposal. If a decision maker determines effects are significant—including the question of whether a project sets a precedent—then an environmental impact statement must be prepared. An EIS has been prepared, rendering this factor irrelevant to the decision. In addition, no precedent has been set for future similar actions, which are reviewed on their own merits, appropriate to the laws authorizing such an action.

Regarding cumulative affects, the DEIS/FEIS discloses those anticipated cumulative impacts resulting in the transfer of the lands (DEIS/FEIS pp. 22, 26, 30, 36, 39). No effects are anticipated to wildlife, scenery, air quality, noise, social economic or public health/safety. Therefore, cumulative impacts cannot result. As noted, the continued management for the Townsite lands would remain the same as currently occur, so that no cumulative effects of this change in ownership could occur. Development of recreation at the reservoir is the most likely change and the impacts have been described (DEIS/FEIS pp. 26-30).

The Navajo Nation, Mr. Tony Joe

Comment: The Historic Preservation Department of the Navajo Nation has concluded the proposed undertaking will not impact any Navajo traditional cultural properties or historical properties. The Nation requests that if there are any inadvertent discoveries made during the undertaking, the Agency shall cease all operations within the project area and notify the Navajo Historic Preservation office.

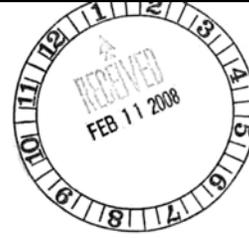
Response: The agreement pursued with the SHPO has a clause for tribal notification if such discoveries are found.

FEIS Appendix B: Comment Letters



United States Department of the Interior

FISH AND WILDLIFE SERVICE
New Mexico Ecological Services Field Office
2105 Osuna NE
Albuquerque, New Mexico 87113
Phone: (505) 346-2525 Fax: (505) 346-2542



February 7, 2008

Cons. # 22420-2008-FA-0026

Mr. Sanford Hurlocker
District Ranger
Espanola Ranger District
P.O. Box 3307
Espanola, New Mexico 87533

Dear Mr. Hurlocker:

This is in response to your letter dated January 3, 2008, requesting review and comments for the Draft Environmental Impact Statement (DEIS) for the Settlement Land Transfer: Pueblo de San Ildefonso, Pueblo of Santa Clara, and Los Alamos County, New Mexico. The San Ildefonso Land Claims Act requires transfer of National Forest System lands to the Pueblo de San Ildefonso, Pueblo of Santa Clara, and Los Alamos County, New Mexico. The analysis area lies in the vicinity of Los Alamos, New Mexico. The U. S. Fish and Wildlife Service (Service) offers the following comments and recommendations on the proposed project.

The Santa Fe National Forest (Forest Service) is proposing to convey approximately 8,785 acres of National Forest System lands to the Pueblo of San Ildefonso, the Pueblo of Santa Clara, and Los Alamos County. The proposed action would reconstruct Forest Road (FR) 416v to a high-clearance, level 2 standard. The U.S. Department of Agriculture (USDA) would acquire legal access on the Puye, Sawyer Canyon Roads and Tract B of the Townsite Lands. The USDA would grant legal access on the Northern Tier Lands to Department of Energy, private landowners, and the Pueblo de San Ildefonso.

Aquatic and terrestrial resources and threatened and endangered species would not be affected if the land conveyance were implemented. On lands conveyed into Tribal Trust, land management activities would still be subject to major Federal laws designed to protect biological resources, such as the Endangered Species Act. Forest Service restriction for management indicator species (MIS) would not remain in force. Negative effects to sensitive species, MIS, and migratory birds would not occur with the implementation of the land transfer.

There is a designated Mexican spotted owl (owl) (*Strix occidentalis lucida*) protected activity center (PAC) in Parcel F. Past presence/absence surveys (conducted in 1995 and 1996) did not detect owls in the PAC. However, owls may be present and not detected because surveys have not been conducted recently. Suitable nesting habitat would not be impacted by the land

Mr. Sanford Hurlocker

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transfer. Minimal disturbance to the PAC may occur due the plan by Los Alamos to reopen the area to day-use recreation post-transfer.

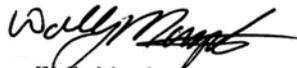
The State endangered Jemez Mountains salamander (*Plethodon neomexicanus*) is also listed as a species of concern for the Forest Service. Protection for the salamander would continue under State law. Roads and other development (residential, recreational, or commercial) would have negative effects on the Jemez Mountains salamander, if constructed in their habitat, via direct take, habitat and population fragmentation and loss, and soil compaction. The proposal to develop FS 416v into a high-clearance, level 2 standard road could cause population fragmentation and direct take of salamanders.

The Service recommends the following:

1. The Forest Service should conduct presence/absence surveys according to owl survey protocol in the identified PAC prior to road construction of FR 416v.
2. The Forest Service should continue to provide support for the New Mexico Endemic Salamander Team and the implementation of the Jemez Mountains Salamander Management Plan.
3. The Forest Service should conduct salamander surveys prior to road construction on FR 416v.

Thank you for your concern for endangered species and New Mexico's wildlife habitats. We appreciate the analyses provided in the DEIS and your efforts to protect fish and wildlife species. In future communications regarding this project please refer to Consultation #22420-2008-FA-0026. If you have any questions, please contact Santiago Gonzales of my staff at the letterhead address or at (505) 761-4720.

Sincerely,



Wally Murphy
Field Supervisor

cc:

Director, New Mexico Department of Game and Fish, Santa Fe, New Mexico
Director, New Mexico Energy, Minerals, and Natural Resources Department, Forestry
Division, Santa Fe, New Mexico



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733



February 29, 2008

Sanford Hurlocker
District Ranger
Santa Fe National Forest
US Department of Agriculture
Forest Service
P.O. Box 3307
1710 N. Riverside Dr.
Española, NM 87533

Dear Mr. Hurlocker:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Environmental Impact Statement (DEIS) for the proposed Settlement Land Transfer: Pueblo de San Ildefonso, Pueblo of Santa Clara, and Los Alamos County.

EPA rates the DEIS as "LO," i.e., EPA has "**Lack of Objections**" to the proposed action as described in the DEIS. Our classification will be published in the Federal Register according to our responsibility under Section 309 of the Clean Air Act to inform the public of our views on proposed Federal actions. If you have any questions, please contact me at 214-665-7451 or by e-mail at jansky.michael@epa.gov.

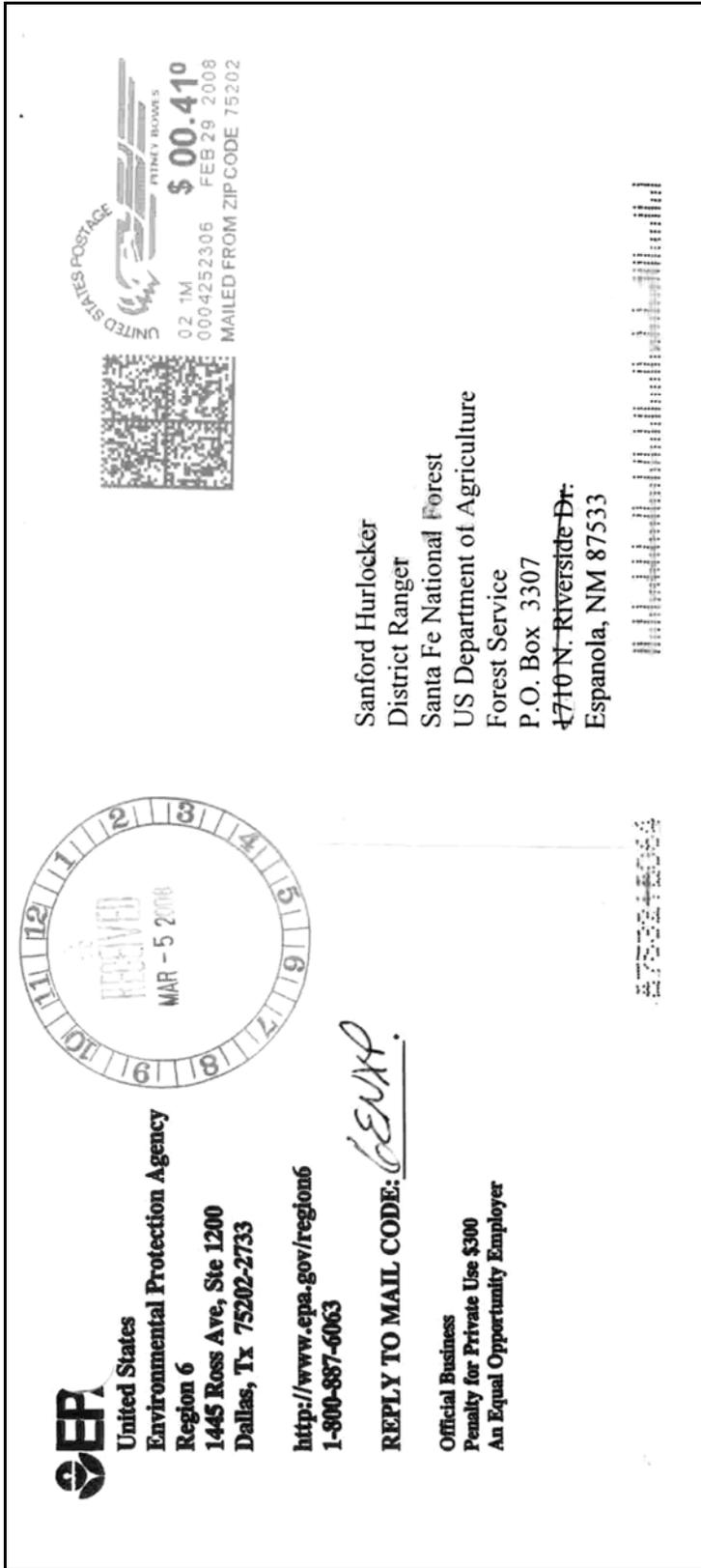
EPA appreciates the opportunity to review the DEIS. Please send our office two copies of the FEIS when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20460.

Sincerely yours,

Michael P. Jansky, P.E.
Regional EIS Coordinator

Internet Address (URL) • <http://www.epa.gov>

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United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
P.O. Box 26567 (MC-9)
Albuquerque, New Mexico 87125-6567



IN REPLY REFER TO:

ER 08/88
File 9043.1

February 29, 2008



Sanford Hurlocker, District Ranger
U.S. Forest Service
Espanola Ranger District
PO Box 3307
Espanola, New Mexico 87533

Subject: Review of the Draft Environmental Impact Statement (DEIS) for the Settlement Land Transfers: Pueblo de San Ildefonso, Pueblo of Santa Clara, and Los Alamos County, Santa Fe National Forest, Santa Fe, Los Alamos and Rio Arriba Counties, New Mexico

Dear Mr. Hurlocker:

The U.S. Department of the Interior has reviewed the subject DEIS and offers the following comments provided by the U.S. Geological Survey.

Specific Comments

Chapter 3, Wildlife Resources, pages 40 – 48 - It will benefit the public for the final EIS to include references for species-specific statements of fact and for the field surveys, the results of which were used in the analysis, and include these citations in the References Cited section. These include, but are not limited to the following:

- "The MU [management unit] was based on one response to a survey. No nest was ever located. Two years of subsequent survey...were negative." (page 43, 2nd paragraph)
- "The canyon has been occupied by great horned owls (GHO) at least 1 year since...Juvenile GHO were seen and reported in a burned snag close to the reservoir." (page 43, 3rd paragraph)
- "Jemez Mountains salamander (JMS) is present above ground only during the late summer monsoon rains when rainfall is sufficient." (page 45, 2nd full paragraph)

The following underlined statement as written, is contradictory, and should be clarified (page 43, next to last paragraph): "Currently the habitat is not considered suitable for MSO and will not be for decades, therefore this project may affect, is not likely to adversely affect the Mexican spotted owl."

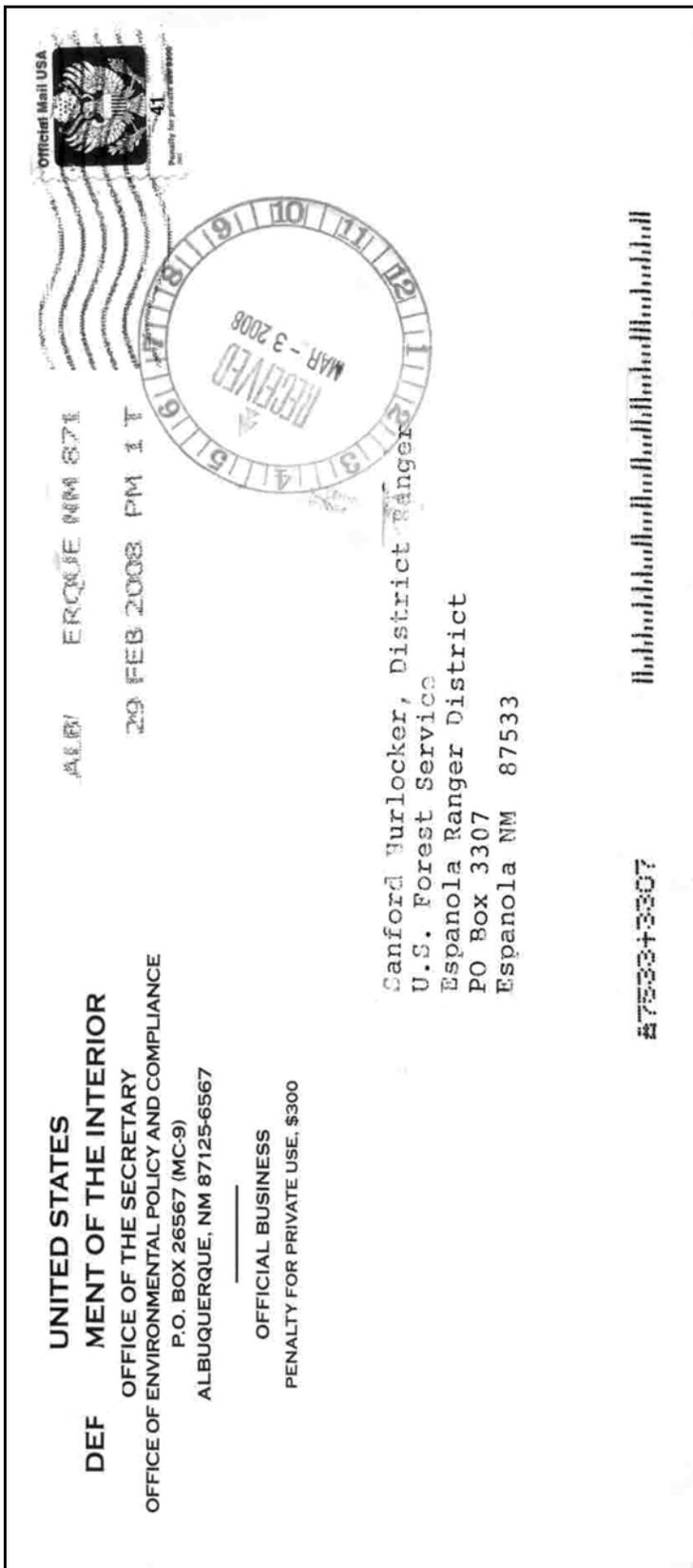
References Cited, page 59 - The citation for the USGS National Water Information System contains an invalid Internet link. The correct link for surface-water data in New Mexico is <http://waterdata.usgs.gov/nm/nwis/sw>

Thank you for the opportunity to review and comment on this DEIS. If you have any questions concerning our comments, please contact Lloyd Woosley, Chief of the USGS Environmental Affairs Program, at (703) 648-5028 or at lwoosley@usgs.gov.

Sincerely,



Stephen R. Spencer
Regional Environmental Officer



[email comment dated 3/3/2008]

March 2, 2008

Sandy Hurlocker
District Ranger
U.S. Forest Service, Espanola Ranger District
PO Box 3307
Espanola, NM 87533

Re: Comments on draft EIS for San Ildefonso Settlement Land Transfers

Mr. Hurlocker,

I am writing to comment on the Draft Environmental Impact Statement for the Settlement Land Transfers: Pueblo de San Ildefonso, Pueblo of Santa Clara, and Los Alamos County.

My comments fall into two categories: the lack of meaningful alternatives, and the lack of response to several of the points I made during the scoping phase. Though my concerns are directed at only a part of the proposed action, this is a critical part and will have significant impact on the residents of Los Alamos and on the nearby lands.

Alternatives:

Two alternatives are presented, the No Action alternative and the Proposed Action alternative. The No Action alternative is not a true alternative since it is, as clearly stated, illegal. Similar arguments are made in discarding the two alternatives not considered in detail. However, the purpose the EIS is to guide decisionmakers, and this EIS fails to do so due to its lack of meaningful alternatives.

Finding meaningful alternatives will be difficult, but this difficulty does not absolve the Forest Service of its duty find such alternatives. In my earlier comments, included below, I gave examples of flexibility available in enacting the San Ildefonso Land Claims Act, such as negotiating a reduced transfer of Los Alamos Townsite lands—the current boundaries include areas beyond those necessary to carry out their intended uses.

Failure to respond to previous comments:

In my comments in the scoping phases, I made several valid points that were not addressed in the draft EIS. I am particularly concerned about points (2), the dangerous precedent set by allowing development on FS lands through a special use permit and then transferring those lands, and (4), the tremendous accumulation of impacts to the Townsite and surrounding lands due to Federal actions. The assessment of precedent and of accumulation of impacts are required by NEPA and these points require a response in the EIS. Both precedent and accumulation should be carefully considered when defining alternatives.

Thank you for this opportunity to comment on the draft EIS.

Sincerely,

Richard L. Holmes
4214 Arizona Avenue
Los Alamos, NM 87544
505 661-6418
holmes@holmz.com

Previous comments during scoping phase of EIS:

July 22, 2007

Sandy Hurlocker
District Ranger
U.S. Forest Service, Espanola Ranger District
PO Box 3307
Espanola, NM 87533

Re: Comments on EIS for San Ildefonso Settlement Land Transfers

Mr. Hurlocker,

I am responding to the notice of intent to prepare an EIS on the San Ildefonso Settlement Land Transfers, published in the Federal Register on June 22, 2007.

The scope of my comments is limited to the proposed conveyance of the Los Alamos Townsite lands. My comments are as follows:

1) Analysis of proposed actions should be sufficiently separated to allow proper flexibility in reporting impacts and potential alternatives. In particular, the impact of transferring the Los Alamos Townsite lands should be separated from the rest of the proposed actions due to significant differences in environmental issues and potential alternative actions.

2) The EIS should consider the precedent set by the sale of the Los Alamos Townsite lands. One tract, the site of the Arizona Avenue water tank, is attractive to Los Alamos County only because of the recent decision by the Forest Service to grant a special use permit allowing the construction of a large water tank on that land. The dates of the Los Alamos Agreement (first revealed in late 2003) and the construction of the water tank (spring/summer 2003) suggest a direct relationship between these events.

The timing of events also raises the issue of whether land transfers were contemplated or discussed during the environmental analysis for that project and, if so, why the possibility of such transfers was not disclosed in the Environmental Assessment for that project or during the 2002-2003 lawsuit challenging the FONSI for this action.

3) The EIS should consider the indirect impact of removing lands from Forest Service protections. While the notice of intent states that the use of the lands is not expected to change, this is not assured nor does the Forest Service have any influence over future use if unrestricted transfers are made.

4) The EIS should give special consideration to the accumulation of impacts from recent federal actions. The transfer of lands and loss of Forest Service protection is one impact. Another very significant, though unplanned, set of impacts are due to the destruction of forests and homes by the Cerro Grande Fire. The Townsite lands are all adjacent to burned areas and some lands are adjacent to the sites of destroyed homes.

Among the other federal actions to be considered for cumulative impact is the granting of the special use permit for the Arizona Avenue water tank. The area near this tank has been particularly hard-hit by federal actions since all nearby homes were destroyed by the Cerro Grande Fire.

5) When considering the scope of the beneficial impacts to Los Alamos County, the existence of a special use permits for all of these lands should be taken into account as mitigating some of the potential benefits.

6) The Pueblo de San Ildefonso Claims Settlement Act of 2005 states that parties to the Los Alamos Agreement are authorized to make modifications to the Agreement. This gives the Forest Service flexibility in mitigating environmental impacts or in proposing alternative actions. The list of

alternatives should include a reduction in the scope of the lands to be sold to include only those lands absolutely required for their current use as County water facilities. Also included as an alternative is restriction on future use of the lands to include water facility use only, as well as restrictions on subsequent resale and development. With the flexibility given in the Act, other meaningful alternatives should be possible.

I appreciate the opportunity to comment on the proposed EIS. I would like to request a copy of the draft EIS when it is available for comment, and I would also like to request confirmation of receipt of this e-mail.

Most sincerely,
Richard L. Holmes

4214 Arizona Avenue
Los Alamos, NM 87544
505 661-6418
holmes@holmz.com



**THE
NAVAJO
NATION**



JOE SHIRLEY, JR.
PRESIDENT

March 05, 2008

BEN SHELLY
VICE-PRESIDENT

Mr. Sanford Hurlocker, District Ranger
P.O. Box 3307, Fairview Station
1710 N. Riverside Drive
Española, New Mexico 87533

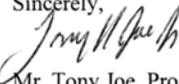
Subject: Tribal Consultation Request. Proposing to transfer settlement lands: Pueblo de San Ildefonso, Pueblo of Santa Clara, and Los Alamos County, located in Santa Fe, Los Alamos and Santa Fe Counties, NM.

Dear Mr. Hurlocker:

Our apology for an oversight and missing the deadline date of our response to your request, please note that in reference to your letter of December 28, 2007, the Historic Preservation Department – Traditional Culture Program (HPD-TCP) received a request for consultation regarding the above undertaking and/or project. After reviewing your consultation documents, HPD-TCP has concluded the proposed undertaking/project area **will not impact** any Navajo traditional cultural properties or historical properties.

However, if there are any inadvertent discoveries made during the course of the undertaking, your agency shall cease all operations within the project area. HPD-TCP shall be notified by telephone within 24 hours and a formal letter be sent within 72 hours. All work shall be suspended until mitigation measures/procedures have been developed in consultation with the Navajo Nation.

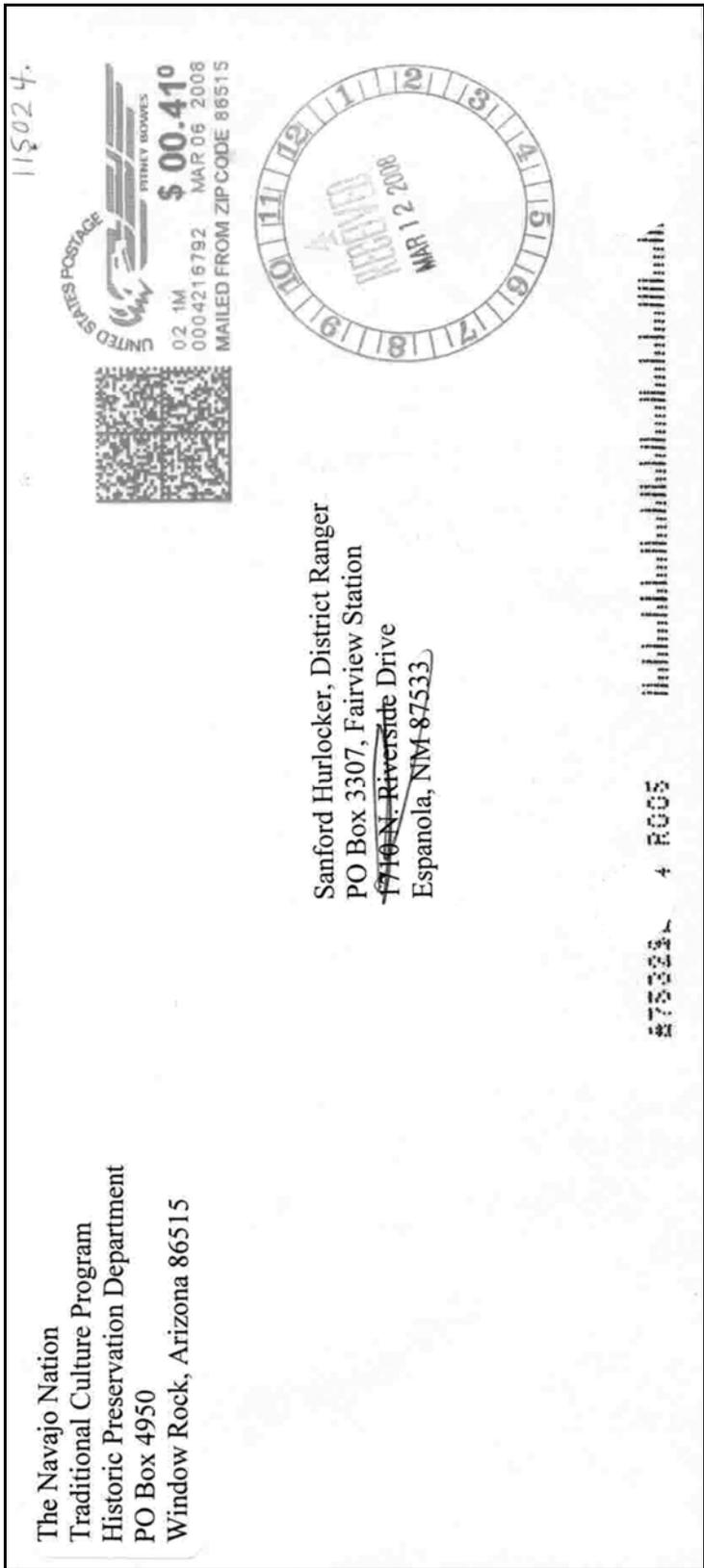
The HPD-TCP appreciates your agency's consultation efforts, pursuant to 36 CFR Pt. 800.1 (c)(2)(iii). Should you have additional concerns and/or questions, do not hesitate to contact me. My contact information is listed below.

Sincerely,


Mr. Tony Joe, Program Manager
Historic Preservation Department – Traditional Culture Program

Tel: 928.871.7688 Fax: 928.871.7886 E-mail: tonyjoe@navajo.org

TCP 08-412
File: Office file/chrono



FEIS Appendix C: Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE,
SANTA FE NATIONAL FOREST
AND
THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICER
REGARDING HISTORIC PROPERTIES AND RESPONSIBILITIES FOR
THE ENVIRONMENTAL IMPACT STATEMENT FOR THE SETTLEMENT LAND
TRANSFERS: PUEBLO DE SAN ILDEFONSO, PUEBLO OF SANTA CLARA, AND
THE INCORPORATED COUNTY OF LOS ALAMOS**

WHEREAS, Public Law (PL) 109-286, dated September 27, 2006, and titled Pueblo de San Ildefonso Claims Settlement Act of 2005 provides for the resolution of claims by the Pueblo of San Ildefonso against the Federal Government; and

WHEREAS, resolution of claims includes transfer of lands as specified in the Act and detailed in the Los Alamos Agreement dated January 4, 2004, and the Settlement Agreement Between the United States of America and the Pueblo de San Ildefonso to Resolve All of the Pueblo's Land Title and Trespass Claims; and

WHEREAS, the lands to be transferred are referred to in PL 109-286 as Los Alamos Townsite Land, Northern Tier Land, Settlement Area Land and Water System Land; and

WHEREAS, the United States Department of Agriculture, Santa Fe National Forest (SFNF) is preparing a comprehensive Environmental Impact Statement (EIS) for the *Settlement Land Transfers: Pueblo de San Ildefonso, Pueblo of Santa Clara and Los Alamos County* involving National Forest System lands on the Española Ranger District; and

WHEREAS, the SFNF has provided the general public, the Pueblos of San Ildefonso and Santa Clara, and local, state and federal agencies the opportunity to participate in the development and comment on the draft EIS; and

WHEREAS, the SFNF has provided the Pueblo de San Ildefonso and Pueblo of Santa Clara, two Federally-recognized Indian Tribes with cultural affinity to historic properties including properties of traditional religious and cultural significance in the SFNF, the opportunity to participate in the development and comment on the Programmatic Agreement for the EIS and invited them to be consulting parties pursuant to 36 CFR § 800.2(c)(3) and 36 CFR § 800.14(f); and

WHEREAS, the SFNF has provided Los Alamos County the opportunity to participate in the development of, and comment on the Programmatic Agreement for the EIS and has invited the County to be a consulting party pursuant to 36 CFR § 800.2(c)(3) and 36 CFR § 800.14(f); and

WHEREAS, the definitions in 36 CFR Part 800, Protection of Historic Properties, are applicable throughout this Agreement and for purposes of this agreement historic properties also include properties of undetermined National Register eligibility;

WHEREAS, the SFNF has responsibility for identification, management and preservation of properties included in or eligible for inclusion in the National Register of Historic Places

San Ildefonso Land Transfer PA

(historic properties) under its jurisdiction pursuant Sections 106 and 110 of the National Historic Preservation Act of 1966, as amended (NHPA); and

WHEREAS, the SFNF has determined that, as an undertaking, transfer of lands to the Bureau of Indian Affairs in trust for the Pueblo de San Ildefonso and the Pueblo of Santa Clara does not have the potential to affect historic properties; and

WHEREAS, the SFNF has determined that land transfer of Water System and Townsite lands to Los Alamos County has the potential to affect historic properties; and

WHEREAS, the SFNF has determined that activities associated with maintenance and reconstruction of roads on Forest Service land and easements held by the Forest Service has the potential to affect historic properties; and

WHEREAS, the SFNF has consulted with the New Mexico State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to § 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (NHPA) and the ACHP has declined to participate in the consultation and be a signatory of this Agreement; and

WHEREAS, the SFNF has determined that it is not feasible to complete the identification, evaluation, and effects consultation for all land transfers identified in the EIS, and activities associated with road maintenance and reconstruction on Forest Service lands and easements held by the Forest Service prior to signing the NEPA decision, and

WHEREAS, the SFNF will implement a timely phased identification and evaluation approach to address the potential effects to historic properties to comply with the National Historic Preservation Act (NHPA) (36 CFR § 800.4 (b) (2)) as the individual undertakings associated with land transfers are be planned and implemented when Los Alamos proposes purchasing them as described in the Los Alamos Agreement; and

NOW, THEREFORE, the Forest Service; the NM SHPO; the Pueblo de San Ildefonso; the Pueblo of Santa Clara and Los Alamos County agree that should the SFNF proceed with the undertaking, the SFNF shall implement the following stipulations to satisfy the Forest's Section 106 responsibilities for all individual actions related to the administrative approval of settlement land transfers and associated activities.

*San Ildefonso Land Transfer PA***STIPULATIONS**

1. SCOPE. This Programmatic Agreement (PA) covers all undertakings within U.S.D.A. Forest Service lands within the Española Ranger District of the SFNF that are specified within Public Law 109-286. Undertakings covered by the PA include but are not limited to: reconstruction of Forest Road 416V and perpetual maintenance or reconstruction associated with the road, transfer of Water System Land, sale of Los Alamos Townsite land, and associated maintenance and reconstruction work that may be conducted along easements to be held by the Forest Service. At this time Section 106 consultation for Forest Road 416V has been completed with the New Mexico State Historic Preservation Office with the understanding that it would be considered the first phase of work conducted under this agreement.

2. PHASED IMPLEMENTATION OF PUBLIC LAW 109-286 ACTIVITIES. Prior to the SFNF authorization to proceed for individual undertakings covered by this PA, the SFNF shall follow the procedures contained in the Region's *First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities* among the Arizona, New Mexico, Texas, and Oklahoma SHPOs (R3-PA), the ACHP, and the FS executed on December 24, 2003, and its associated Protocols, except for procedures concerning Implementation, Tribal Consultation and Determination of Effect. Implementation of these stipulations is expected to shorten review and processing times for individual undertakings and assist the SFNF and parties to the Public Law. In this phased approach, a final NEPA Record of Decision (ROD) may be made prior to completion of the Project-specific identification and evaluation of properties provided that all of the following requirements are met:

- A. **Section 106 Consultation Prior to Implementation:** The EIS and ROD shall clearly state, through incorporation or attachment, that Forest Service's compliance with Section 106 of NHPA and Executive Order 13007 is met through execution of this PA and that Forest Service issuance of conveyance documents for lands included within transfer areas to Los Alamos County, or for other undertakings associated with road maintenance and reconstruction along FR416V and easements held by the Forest Service, shall be contingent upon completion of the identification of historic properties, including traditional cultural properties, consultation to seek ways to avoid minimize or mitigate the adverse effects and implementation of any agreed upon Mitigation Plan, following the process detailed in this PA.
- B. **Tribal Consultation:** In accordance with Section 101 (d)(6)(B) and Section 110 of NHPA, and Executive Order 13007 and 13175 ("Consultation and Coordination with Indian Tribal Governments") the SFNF shall consult with Indian Tribes that attach traditional religious and cultural significance to historic properties that may be affected by undertakings authorized by the ROD and prior to the SFNF issuing conveyance documents transferring parcels of land to Los Alamos County. The following Indian tribes are known to have ancestral ties, historical and/or traditional cultural properties and use areas within the lands specified under the Public Law: Pueblo de San Ildefonso and the Pueblo of Santa Clara.
 1. The SFNF recognizes that Indian Tribe/s may not reveal specific locations of traditional use or sacred places to non-practitioners because of cultural restrictions

San Ildefonso Land Transfer PA

and/or religious beliefs unless that location is clearly identified to be impacted by project activities. The SFNF shall consult Indian Tribe/s with ancestral or cultural ties to places and lands within the lands specified under the Public Law.

2. As early as possible the SFNF shall consult with Indian Tribes to determine if any historic properties of traditional cultural or religious significance are present within an undertaking's Areas of Potential Effect (APE).
 3. When it is determined that an undertaking may affect a historic property or area specifically identified by an Indian Tribe as having traditional cultural or religious significance, the SFNF shall consult further with the Tribe regarding the identification, evaluation, assessment of effects and potential avoidance, mitigation or resolutions of adverse effects, if applicable, with respect to a historic property.
 4. The SFNF shall coordinate tribal consultation under this PA with its consultation responsibilities under other statutes, including the Native American Graves Protection and Repatriation Act (NAGPRA) and Archeological Resources Protection Act (ARPA).
 5. The SFNF shall protect sensitive information to the fullest extent permitted by law, using applicable provisions and exemptions of Section 304 of NHPA, Section 9 of ARPA, and Section (b) of the Freedom of Information Act.
- C. Los Alamos County Participation and Timely Completion of Section 106 Process for Townsite lands
1. The Forest Service recognizes that the work identified in this PA shall be undertaken in a timely manner.
 2. Los Alamos County's agreement to execute the PA is contingent and reliant upon the Forest Service agreeing to act to complete the work under this PA in a timely manner.
- D. Determination of Effect: Following completion of the inventory and the associated evaluations, the SFNF shall determine the effects of the undertaking on historic properties in consultation with the New Mexico State Historic Preservation Office. Determinations of National Register eligibility will be made per the stipulations in the R3-PA. The intent of this agreement is to avoid effects to historic properties or minimize effects to historic properties through application of the historic property treatment measures outlined in Appendices A and B, to the extent those measures are legally available. Other activities associated with implementation of Public Law 109-286 may result in a different determination of effect. The SFNF shall consult with the SHPO on formal excavations. The Forest Archaeologist shall make the determinations of effect using the following:
- (1) **No Properties Present.** When no historic properties are identified within the APE, the Forest Service shall make a determination of "No Historic Properties

San Ildefonso Land Transfer PA

Affected” for the undertaking and the Forest Supervisor may proceed with the undertaking without further consultation with SHPO. The SFNF shall document the inventory by completing a Forest Service Inventory, Standards and Accounting (IS&A) form and associated maps. A copy of this documentation shall be forwarded to the SHPO within 30 days for information purposes only.

- (2) **No Historic Properties Affected.** When historic properties are present within the APE and potential effects historic properties are be avoided, the Forest Service shall make a determination of “No Historic Properties Affected” for the undertaking. The Forest Supervisor may proceed with the undertaking without further consultation with SHPO on the effects. The SFNF shall document the inventory by completing a Forest Service IS&A form, inventory report and associated maps, forms and records. A copy of this documentation shall be forwarded to the SHPO within 30 days.
- (3) **No Adverse Effect:** When historic properties are present within the APE and may be affected by the undertaking, and potential adverse effects on eligible and undetermined properties have been minimized to the extent that they do not meet the criteria of Adverse Effect contained in 36 CFR § 800.5(a)(1), and provided that none of the conditions requiring case-by-case consultation specified in Stipulation 4 apply, the SFNF shall make a “No Adverse Effect” determination. The SFNF shall document the inventory by completing a Forest Service IS&A form, inventory report and associated maps, forms and records. A copy of this documentation shall be forwarded to the SHPO for consultation under the stipulations of the R3-PA governing determinations of No Adverse Effect.
- (4) **Adverse Effect.** If the Forest Archaeologist determines that one or more historic properties may be adversely affected by project activities, the SFNF shall consult with the SHPO, the Pueblo de San Ildefonso, the Pueblo of Santa Clara, Los Alamos County and other interested parties, if appropriate, to develop an agreed-upon Mitigation Plan using the procedures in Appendix B. The SFNF shall implement the agreed upon Plan and shall provide a list of mitigation plans implemented under this PA in an annual report to the SHPO in lieu of separate Memoranda of Agreement for each mitigation plan. If the SFNF, the SHPO or interested Indian Tribe cannot agree on a Mitigation Plan, the SFNF shall request that the ACHP join the consultation in accordance with 36 CFR 800.6 (b)(2). If consultation fails to resolve, avoid, or mitigate an adverse effect, the Forest Supervisor shall follow the procedures identified in 36 CFR § 800.7 to conclude consultation. The Forest Supervisor may proceed with the undertaking once the requirements have been completed. If the adverse effects are resolved through measures other than those proposed in an associated Mitigation Plan meeting, the Forest Supervisor may proceed with the undertaking once the requirements in stipulation V.E.5 of the R3-PA are met.

- E. To the extent permissible under relevant law, including Public Law 109-286, the SFNF shall suspend any undertaking that does not conform to the conditions of this PA and

San Ildefonso Land Transfer PA

shall consult as needed with the SHPO, the ACHP, and others if applicable, to bring the undertaking into conformance.

3. DISCOVERY SITUATIONS. There is some potential for encountering previously unrecorded properties or for affecting properties in an unanticipated manner during the course of activities associated with Public Law 109-286. Previously unrecorded properties that are encountered during the course of an undertaking shall be protected in the same manner as other eligible or undetermined properties. If the SFNF determines that an eligible or undetermined property has been damaged by activities under its jurisdiction, the SFNF shall, to the extent permissible under relevant law, including Public Law 109-286, halt all activities that could result in further damage to the property and shall notify SHPO, THPO's and Indian Tribes that might attach traditional cultural and religious importance to the property concerning proposed actions to resolve adverse effects. The SHPO shall respond within 48 hours of notification. The SFNF shall carry out any agreed-upon actions before authorizing the resumption of activity.

4. MONITORING. For undertakings conducted on Forest Service land and easements held by the Forest Service, the SFNF shall conduct post-project monitoring of historic properties to assess effectiveness of protection measures in accordance with the Forest Service Manual (FSM 2361.28.5) for the life of this agreement. The SFNF shall report any site damage to the SHPO and interested Tribes. The SFNF shall discuss the effectiveness of the PA and any needed improvements at the annual meeting carried out pursuant to the *Region 3 First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities*.

5. PUBLIC PARTICIPATION. The SFNF shall ensure public access to this PA as part of the Final Environmental Impact Statement and the Record of Decision (ROD).

6. CONFIDENTIALITY. The signatories shall meet the requirements of law for all information collected under this PA concerning the nature, character, ownership, or location of cultural and historic properties, and shall withhold such information from disclosure to the public per Section 9 of the ARPA, Sections 101 (D) (6) and 304 of the NHPA, under exemptions 3 and 5 of the Freedom of Information Act (FOIA), and the New Mexico Inspection of Public Records Act (NMSA 1978, Chapter 14, Article 2-Section 14-2-1.A.5-Confidential Materials Act).

7. FEDERAL RESPONSIBILITIES REGARDING THE DISCOVERY OF HUMAN REMAINS FOR UNDERTAKINGS ON FOREST SERVICE LAND OR ON EASEMENTS HELD BY THE FOREST SERVICE. The SFNF shall comply with Sections Section 101 (d)(6) and 106 of the NHPA and the NAGPRA in applicable circumstances. SFNF shall take steps to identify whether human remains and other types of items meeting the definitions outlined in NAGPRA are associated with a property that may meet the National Register Criteria. Any employee or agent of the SFNF who encounters or discovers human skeletal remains or what is believed may be human skeletal remains including any associated funerary objects or associated materials in or on the ground shall immediately cease any activity which may disturb those remains, and shall report the presence or discovery of those remains immediately to the Forest Archaeologist or the Forest Supervisor and/or their Acting delegates. The Forest Archaeologist or the District Archaeologist shall notify the appropriate law enforcement officer, SHPO and all culturally affiliated groups within 48 hours, or as soon as possible per NAGPRA.

San Ildefonso Land Transfer PA

8. SECRETARY'S STANDARDS. The SFNF shall ensure that work under this PA is carried out under the supervision of a person or persons meeting the Secretary of the Interior's Historic Preservation Professional Qualifications Standards or 36 CFR § 296.8. Archaeological survey and recording may be carried out by qualified individuals per the specifications in the Stipulation X.B of the *Region's First Amended Programmatic Agreement Regarding Historic Property Protection*. Any treatment within sites shall be conducted by or directly supervised by a professional cultural heritage specialist who meets the standards established for archaeologist in the OPM X-118 professional (GS-0193) or technician (GS-0102 series).

9. REVIEW. The SHPO shall review results of work conducted under this PA for discussion at the annual meeting held pursuant to the *Region 3 First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities*. If, at any point, the SHPO identifies a concern about how the stipulations of this PA are being applied, the SHPO may submit comments to the SFNF for consideration in future undertakings. If the SHPO or the ACHP has a substantial concern that historic properties may be adversely affected by a specific undertaking, the SHPO or ACHP may contact the Forest Archaeologist or Forest Supervisor to resolve those concerns. The SFNF shall take into account the SHPO/ACHP comments for those actions not yet completed.

San Ildefonso Land Transfer PA

ADMINISTRATIVE STIPULATIONS

AMENDMENTS

Any signatory to this PA may request that it be amended, whereupon the signatories shall consult to consider the amendment. Amendments shall become effective when signed by all signatories.

DISPUTE RESOLUTION

Should any signatory to this PA object to any finding, proposed action or determination made pursuant to this PA, the SFNF shall consult with the objecting party to resolve the objection. The SFNF shall notify the other signatories of any such objection to the extent allowable under confidentiality laws. The SFNF shall offer a reasonable opportunity for the other signatories to comment or consult with the SFNF on the objection. If the SFNF or the objecting party determines that the objection cannot be resolved, the SFNF shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:

- a. provide the SFNF with recommendations, which the SFNF shall take into account in reaching a final decision; or
- b. notify the SFNF that it shall comment pursuant to 36 CFR Part § 800.6(b), and proceed to comment. Any ACHP comment provided in response to such a request shall be taken into account by the SFNF in accordance with 36 CFR Part § 800.6 (c)(2) with reference only to the subject of the dispute. If consultation fails to resolve the adverse effect, the SFNF shall follow the procedures identified in 36 CFR 800.7 to conclude consultation. The Forest Supervisor may proceed with the undertaking once the dispute resolution requirements have been completed. The SFNF shall notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The SFNF's decision shall be final.
- c. The SFNF's responsibility and authority to carry out all actions subject to the terms of this PA that are not the subjects of the dispute, shall remain unchanged.

AVAILABILITY OF FUNDS

The Anti-Deficiency Act applies to this PA and must be followed by the SFNF as it accomplishes the tasks it has agreed to perform in this PA. This means no action, plan, study, task or the like shall be construed to require the SFNF to obligate or expend funds in excess or in advance of an appropriation authorized by law.

TERMINATION

The SHPO or SFNF may terminate this PA by providing sixty (60) days notice to the other parties. Any other party may withdraw by providing sixty (60) days notice to the other parties. The signatories shall consult during the period prior to termination/withdrawal to seek agreement on amendments or other actions that would avoid termination or withdrawal. In the event of termination, the SFNF shall comply with the Region's *First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities* among the Arizona, New Mexico, Texas, and Oklahoma SHPOs, the ACHP, and the FS executed on December 24, 2003.

San Ildefonso Land Transfer PA

EXPIRATION

This PA expires upon the sooner of: 1.) completion of the federal undertakings covered by the PA including but not limited to: reconstruction of Forest Road 416V, maintenance and reconstruction of roads and easements held by the Forest Service, transfer of Water System Land and sale of Los Alamos Townsite land, including expiration of any appeal period or associated litigation or 2.) 10 years from the effective date, at which time it is subject to review, renewal, or expiration. If the SFNF wishes to extend the life of the PA past the 10-year period, the SFNF shall contact the SHPO, the other Signatories to this PA and the ACHP at least 90 days prior to expiration with its recommendation to either amend the PA or extend its terms without revision. Based on comments received from the SHPO or ACHP, the Forest Service shall make any needed changes to the PA and circulate the new document for review and signature.

EXECUTION

Execution and implementation of this PA satisfies the Forest Service's Section 106 responsibilities for all undertakings associated with Public Law 109-286 on the Española Ranger District of the Santa Fe National Forest that are treated in conformance with the stipulations herein.

FAILURE TO CARRY OUT TERMS

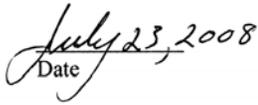
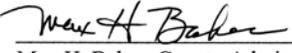
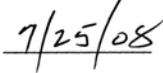
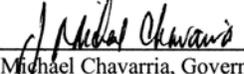
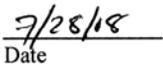
In the event that the SFNF does not carry out the terms of this PA, the SFNF shall comply with the *Region 3 First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities* among the Arizona, New Mexico, Texas, and Oklahoma SHPOs, the ACHP, and the FS executed on December 24, 2003 with regard to individual undertakings covered under this Agreement.

IMPLEMENTATION

This Agreement becomes effective on the date of receipt of signature from the last signatory below and shall be implemented immediately.

San Ildefonso Land Transfer PA

SIGNATORIES

 for _____ Corbin Newman, Regional Forester, U.S.D.A. Forest Service, Southwest Region	 Date
 _____	 Date
 _____	 Date
 _____	 Date
 _____	 Date

San Ildefonso Land Transfer PA

**APPENDIX A
HISTORIC PROPERTY PROTECTION MEASURES**

1. SITE PROTECTION MEASURES: The SFNF shall avoid effects to historic properties (archaeological sites and Traditional Cultural Properties) whenever possible on Forest Service lands and easements held by the Forest Service. If avoidance is not possible the SFNF shall apply the following standard practices, singly or in combination. The Forest Archaeologist will apply the standard practices and additional non-ground disturbing measures to further protect sites to the extent permissible under relevant law, including Public Law 109-286, prior to transfer of lands out of the National Forest System.

The following protection measures may be implemented to reduce effects to eligible historic properties:

- Restricting vehicular traffic to the existing right of way or road prism within a site boundary to protect intact site deposits that lie outside the right of way or road prism using appropriate fencing or signing.
- Temporary fencing to keep equipment out of site boundaries.
- Installation of permanent fencing to keep equipment out of site boundaries (i.e. pipe fencing, boulders, earthen berm)
- Closing or gating roads to limit access and/or protect sites.
- Project redesign.
- Archaeological monitor.
- No staging of supplies or parking equipment on sites.

San Ildefonso Land Transfer PA

**APPENDIX B
HISTORIC PROPERTY TREATMENT MEASURES**

1. PLATING

Plating or intentional burial of sites as mitigation of effects is often an irreversible action. Detailed documentation may be required if the action is irreversible. The plating system must be designed to prevent compaction, moisture retention, or other potential impacts to sites and artifacts. The effectiveness of the plating should be assessed and sites may need to be periodically monitored to ensure the plating is working. The plating is a form of mitigation and the SHPO will be consulted on all plating proposals in determining the level of effect.

2. TESTING

(a) Limited testing

Limited testing, defined as limited auguring, trowel testing and shovel testing may be conducted to assist in making a determination of National Register eligibility or to verify the absence or presence of cultural deposits and will be designed to meet these objectives without substantially damaging or diminishing the integrity of the cultural deposits and features. Limited tests will not serve as mitigation. If intact cultural deposits, features, etc. are encountered, testing will stop in the area of the discovery.

(b) Testing for research potential and/or eligibility

Formal testing is defined as any excavation beyond limited testing. Formal testing generally involves controlled excavation in levels within a formal grid or other excavation unit, maintaining horizontal and vertical provenience on all artifacts. When limited testing has demonstrated the absence of intact deposits but the presence of charcoal or hearth fill(?), the SFNF may remove small samples of charcoal or other materials from disturbed hearths within existing right of ways and road prisms. Once samples have been removed, the samples will be submitted for analysis in a timely manner. The SFNF may conduct formal test excavations if it is determined necessary to evaluate the research potential and integrity of the site to contribute significant information on the heritage of the state or nation, and/or to determine whether the site is eligible to be listed on the state or National Register of Historic Places as opposed to testing to determine the nature and extent of a site leading to data recovery. Formal test excavations to determine site or feature integrity, or site eligibility to the National Register may be performed without case-by-case consultation with SHPO or interested Indian Tribes if they are conducted in accordance with the following specifications and performed by FS cultural preservation specialists or by an archaeologist authorized and/or permitted by the SFNF. However, the SFNF may choose to consult with SHPO and interested Indian Tribes regarding any test excavations and field methods used if the SFNF feels that assistance or additional perspectives would be helpful. If formal test excavations result in a SFNF determination that the site would be ineligible for listing on the National Register, the SFNF will provide the test excavation report to the SHPO and culturally affiliated Indian Tribes and consult with the Indian Tribe/s to reach a consensus on the determination prior to approving the undertaking. If the SFNF, the SHPO and/or Indian Tribe cannot reach a consensus, the disagreement will be processed in accordance with the dispute resolution stipulation of this Agreement.

Proposals for formal test excavations will be documented in a test excavation plan included in the final report for each phase of work conducted in the project area. The SFNF shall consult SHPO, THPOs and interested Indian Tribes on a case-by-case basis for all test excavations that will be used to determine a data recovery plan for a site.

San Ildefonso Land Transfer PA

1. Test excavation shall be conducted in a manner that the total surface disturbance resulting from the tests shall not exceed five percent (5%) of the total surface area of the site or five percent (5%) of the portion of the site that may be affected by the undertaking, whichever is less. Test excavation that proposes to excavate more than 5% of a site constitutes data recovery excavation and shall follow the standards in Appendix B under Data Recovery.
2. Site maps shall be produced using a high-quality optical transit, total station or alidade, or through Global Position System (GPS) technology (with sub-meter accuracy). Prepare a scaled map for each site and depict the grid layout, the datum, the location and shape of all features, artifact concentrations, test excavation units, auger tests, shovel tests, point-provenienced artifacts, site boundaries and the relationship of the site to nearby physiographic and man-made features. Each map shall contain the Forest Service site number and LA site number, north arrow, numbered metric scale, legend for symbols used on the map, name(s) of the recorder(s) and date of recording.
3. Controlled surface collections of testing units shall be accomplished using a grid system or by point provenience. The standard is 1-by-1 meter grid units for spatial control. Use of larger grid units is allowable when explicitly justified and supported in the testing plan.
4. For systematic auger holes and similar tests, explain the placement, interval, minimum number of units and size of the area tested in square meters.
5. Test excavation of features is discouraged for features including but not limited to hearths, rock alignments, pit depressions, dispersed fire cracked rock scatters, soil discolorations and other potential feature areas. Tests of features may be conducted only when essential to determine the research potential of the feature and fill shall be collected for laboratory analysis. All tests shall use hand tools and shall adopt the least destructive method to obtain the necessary information. Core the edge of a feature to determine depth, integrity and content. Complete excavation of features is not authorized.
6. Excavation of testing units shall be conducted by natural stratigraphy or arbitrary levels until natural strata are defined unless intact features or human remains are encountered. Tests shall use 10-centimeter control or less for arbitrary levels and the SFNF will consider maintaining 10-centimeter control within natural strata. Proposals to use levels thicker than the 10-centimeter control shall be clearly justified and supported in the test excavation plan and may be conducted only after the controlled excavation demonstrates the fill as non-cultural or highly disturbed.
7. Sediments removed from all hand-excavation units shall be passed through a screen of no greater than one-quarter inch (6.35mm) and use of a smaller screen size will be considered when deemed appropriate. Sediments from thermal features will be collected for laboratory analysis and not screened. Additionally, sediments from a minimum of one hand-excavation unit comparably placed and of the same size as a unit that produced moderate to high artifact yields shall be passed through a screen of no greater than one-eighth inch (3.175 mm). Proposals to exclude overburden or disturbed contexts shall only be considered after controlled tests and fill screened to the standards have demonstrated that the fill is non-cultural or highly disturbed. Screening all fill through one-eighth inch mesh is encouraged as standard practice.
8. Stratigraphic profiles shall be recorded by scale diagram, photographs and narrative descriptions. All strata and soil horizons shall be described using standard scientific terms. Describe the color using Munsell terminology or equivalent.

San Ildefonso Land Transfer PA

9. Mechanical excavation units may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden during testing. Trenches excavated with mechanical earth-moving equipment shall conform to the following standards:

- (a) systematically collect surface artifacts prior to excavation of trenches or stripping areas with mechanical earthmoving equipment;
- (b) depths for mechanical excavation trenches shall conform to OSHA standards for excavation safety (29 CFR Part 1926, Subpart P);
- (c) document the location, depth, soil profile, artifact yield and other pertinent information;
- (d) clean at least one profile with a shovel or trowel and inspect the profile for cultural features and material remains;
- (e) document the trench profile in narrative, profile drawing and photographs; all strata and soil horizons shall be described using standard scientific terminology; deposit descriptions include but are not limited to:
sediment color, texture, moisture, content, nature of inclusions, organic content and an inventory of cultural materials; describe the color using Munsell terminology;
- (f) examine the excavated area after the removal of each extracted bucket load;
- (g) examine backdirt for the presence of artifacts; and
- (h) if cultural materials extend deeper than the bottom of the trench, systematically auger the bottom of the trench to determine approximate depth of materials.

J. The bottom of the excavation units and trenches shall be lined with landscape cloth or shall be marked in some other fashion to indicate depth of disturbance.

K. Photographs may be in black-and-white print, color print, color transparency or digitally captured images. At a minimum, photograph features and profiles.

L. Human remains. Excavation of human remains is prohibited under test excavation.

M. Backfill. After completion of test excavation, backfill and restore the site as nearly as possible to the pre-excavation condition, unless other provisions have been made in the test excavation plan.

*San Ildefonso Land Transfer PA***3. MITIGATION**

- (a) All mitigation, whether through data recovery or other types of treatment, is subject to case-by-case consultation with SHPO, THPOs and interested consulting parties including Indian Tribes that attach traditional cultural or religious significance to the property. Where sites of a similar nature are adversely affected, a programmatic mitigation or treatment approach may be developed. For example, developing a data recovery plan for a population of sites in which a sample of sites is excavated instead of all sites is often appropriate and should be considered.
- (b) When data recovery is selected as the appropriate form of treatment, a data recovery plan shall be developed and submitted to the SHPO, THPOs and interested consulting parties including Indian Tribes that attach traditional cultural or religious significance to the affected historic properties. Any objection to the data recovery plan will be subject to the dispute resolution process of the PA. The data recovery plan shall be based on research design that explains the purpose of the project, the scope of work proposed and how the fieldwork and analysis of the properties contributes to a greater understanding of the cultural heritage of the state and follow the excavation standards found in the State's excavation standards found in New Mexico Administrative Code (4.10.16 NMAC).
- (c) Alternative forms of mitigation leading to preservation of historic properties in-place will be considered on a case-by-case basis, to the extent permissible under relevant law, including Public Law 109-286 and could include nomination to the New Mexico State Register of Cultural Properties or issuance of a preservation or conservation easement to a third party for the affected historic properties.