



STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

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BILL RICHARDSON
Governor

April 26, 2004

Matthew Blevins
Project Manager
Environmental and Low-Level Waste Section
U.S. Nuclear Regulatory Commission
Mail Stop T7J8
Washington D.C. 20555

Re: National Enrichment Facility Near Eunice, Lea County, New Mexico

Dear Mr. Blevins:

I am writing to follow-up the meeting held between our office, you, Melanie Wong and Paul Nickens, and David Eck from the NM State Land Office in Albuquerque on April 7, 2004. At our meeting we discussed the process for consultation under Section 106 of the National Historic Preservation Act and the archaeological survey report submitted by WCRM for archaeological survey of the National Enrichment Facility near Eunice, New Mexico.

WCRM discovered and recorded seven prehistoric archaeological sites within the project area and recommended that four of the sites (LA 140704, LA 140705, LA 140706, and LA 140707) are eligible for listing to the National Register of Historic Places. WCRM recommended that three sites (LA 140701, LA 140702, and LA 140703) are not eligible for listing to the Register. We do not concur with these recommendations of eligibility. In our opinion, all seven sites are similar site types and may contain buried cultural resources; therefore, archaeological sites LA 140701, LA 140702, and LA 140703 are of undetermined eligibility to be listed to the Register.

It appears from the site location map (Figure 4) of the survey report that three of the archeological sites (LA 140702, LA 140701, and LA 140705) are within the proposed construction footprint for the enrichment facility. Since these sites will be impacted by construction we have determined that the National Enrichment Facility will have an adverse effect on cultural resources.

In order to resolve adverse effects to cultural resources we suggest that our office and the NRC enter into a Memorandum of Agreement (MOA) that outlines agreed-upon measures that NRC will take to mitigate the adverse effects. An example of an MOA is enclosed for your reference.

NRC will need to notify the Advisory Council on Historic Preservation (ACHP) that there will be adverse effects to cultural resources and invite them to be a signatory to the MOA. The ACHP may decline to participate. The NRC must also re-contact Native American tribes, forward copies of the archaeological survey report for their review, and ask if they wish to be concurring parties to the MOA.

It is our understanding that the current land status is the NM State Land Office and that they have entered into a long-term lease agreement with Louisiana Energy Services for the project area, but that the land may be traded after the license from NRC is obtained. This trade will need to be discussed in the MOA and the Commissioner of Public Lands will also be a signatory to the MOA. An exchange from state land to private is considered an adverse effect, thus all seven sites, not just the three within the project area will have to be considered for mitigation.

As we discussed during our meeting, there are several options for mitigating the adverse effects to the archaeological sites. One option is to treat all seven sites as eligible for listing to the Register and considering them as a population of sites. A data recovery plan will be designed to treat all seven sites as a population, meaning that each site will not need full data recovery. This alternative may be the least costly since it eliminates the need for testing to determine eligibility.

A second option would be for Louisiana Energy Services to avoid and protect the sites outside of the project (LA 140703, LA 140704, LA 140706, and LA 140707) by nominating them for listing to the State Register of Cultural Properties. Enclosed are copies of the New Mexico Cultural Properties Act and Cultural Properties Protection Act. In these statutes you will find information concerning the responsibilities of state agencies (in this case the State Land Office) and the State Register of Cultural Properties.

Sincerely,



Michelle M. Ensey
Staff Archaeologist

Log: 70747

Enc. Sample MOA, Cultural Properties Act, Cultural Properties Protection Act

Cc: R.M. Krich, Vice President, licensing, Safety, and Nuclear Engineering, Louisiana Energy Services, One Sun Plaza, 100 Sun Lane NE, Suite 204, Albuquerque, NM 87109

Tim Leftwich, Principal, GL Environmental, Inc., 4200 Meadowlark Lane, Suite 1A. Rio Rancho, NM 87124

David C. Eck, Cultural Resource Specialist, NM State Land Office

Thomas J. Lennon, Principal Investigator, WCRM, 2603 West Main St., Suite B, Farmington, NM 87401

MEMORANDUM OF AGREEMENT

AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,
THE NEW MEXICO STATE HIGHWAY AND TRANSPORTATION DEPARTMENT,
AND
THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICE,

REGARDING

DATA RECOVERY AT LA 740 AND LA 750
ALONG US 84/285,
SANTA FE COUNTY, NEW MEXICO

WHEREAS, the Federal Highway Administration (FHWA), in cooperation with the New Mexico State Highway and Transportation Department (NMSHTD) proposes to construct an interchange and associated local access road near Cuyamungue on US 84/285 between Santa Fe and Pojoaque, on highway right of way acquired from private sources, (NMSHTD project AC-HPP-MIP-084-6(59)177, CN 2155); and

WHEREAS, the FHWA, acting as lead agency, has determined that the Project adversely affects LA 740 and LA 750, archaeological sites eligible for inclusion in the National Register of Historic Places under criterion "d", and has consulted with the Advisory Council on Historic Preservation (Council) and the New Mexico State Preservation Officer (SHPO), pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act; and has determined that data recovery is the most appropriate form of treatment to mitigate adverse effects of the Project on this site; and

WHEREAS, the Advisory Council has declined to be a signatory to this Agreement; and

WHEREAS, the Data Recovery Plan, provided in Appendix A, has been developed and prepared in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37) and the Council's handbook, *Treatment of Archaeological Properties*;

NOW THEREFORE, the FHWA, NMSHTD, and the SHPO agree that the project shall be administered in accordance with the following stipulations in order to take into account the effect of the Project on historic properties and to satisfy responsibilities under Section 106 for the Project.

STIPULATIONS

I. To the extent of its legal authority and in coordination with the SHPO, the FHWA and the NMSHTD will ensure that the measures and procedures specified in the data recovery plan by the consultant are implemented; this Agreement addresses all aspects of the data recovery plan developed by the consultant.

II. The consultant will prepare a final report discussing the findings resulting from the data recovery efforts. The report will be reviewed by the NMSHTD and the SHPO and any necessary revisions will be completed by the consultant. The NMSHTD will have 30 days for review; following this time period the SHPO will have 30 days to review the report.

III. Data recovery on state lands (highway right of way acquired from private sources) will be done by a cultural resource consultant via a permit issued by the Cultural Properties Review Committee (CPRC).

IV. DISCOVERY SITUATIONS

A. In the event that unrecorded or unanticipated properties that may be eligible for inclusion on the National Register are located during data recovery, or it is recognized that such actions may effect a known historic property in an unanticipated manner, the FHWA/NMSHTD will terminate data recovery in the vicinity of the property and will take all reasonable measures to avoid or minimize harm to the property until consultation with the SHPO regarding significance and effect can be concluded. The FHWA/NMSHTD will notify the SHPO at the earliest possible time and consult to develop actions that will take the effects of the undertaking into account. The FHWA/NMSHTD will notify the SHPO of any time constraints, and the FHWA/NMSHTD and the SHPO will mutually agree upon time frames for the consultation. These procedures will be addressed in the Monitoring and Discovery Plan included as part of the data recovery plan.

V. TREATMENT OF HUMAN REMAINS

B. Since the site is on state lands, the treatment and disposition for any burial or "human remains and associated funerary object, material objects or artifacts" will be in accordance with Section 18-6-11.2 of the State's Cultural Properties Act and 4 NMAC 10.11 regulations, including consultation through HPD and the Office of Indian Affairs with the appropriate Indian tribes. All of these sensitive objects will be treated with dignity and respect and consideration for the specific cultural and religious traditions applicable until their analysis is complete and their disposition has occurred. The limited analysis of human remains and associated funeral objects will be non-destructive unless otherwise agreed to by the culturally affiliated tribe(s).

VI. CURATION

A. The FHWA/NMSHTD shall ensure that the consultant provides for all records and materials resulting from data recovery efforts to be curated in accordance with standards and guidelines generated by 36 CFR Part 79.
B. Artifacts will be curated at the Museum of New Mexico/MIAC.

VII. DISPUTE RESOLUTION

A. Should any Signatory to this Agreement object within 30 calendar days to any action(s) provided for review pursuant to this Agreement, the FHWA/NMSHTD shall consult with the objecting party to resolve the objection. The objection must be specifically identified, and the reasons for objection documented. If the FHWA/NMSHTD determines that the objection cannot be resolved, the FHWA/NMSHTD shall forward all documentation relevant to the dispute to the Council, pursuant to 36 CFR 800.7(b), and notify SHPO as to the nature of the dispute. Within 45 calendar days of receipt of all pertinent documentation, the Council shall provide the FHWA/NMSHTD with recommendations in accordance with 36 CFR 800.7(C)(2).

B. Any Council comment provided in response to such a request will be taken into account by the FHWA/NMSHTD in accordance with 36 CFR 800.7(b)(4) with reference to the subject of the dispute. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the FHWA/NMSHTD and the consultant responsibilities to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

VIII. OBJECTIONS

A. At any time during the implementation of the measures stipulated in this Agreement, should an objection be raised by a consulting party or a member of the public, the FHWA/NMSHTD shall take the objection into account, notify the SHPO of the objection, and consult as needed with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall forward all documentation relevant to the dispute to the Council and request that the Council comment.

B. After receipt of the pertinent documentation, the Council shall either:

1. Provide the FHWA with recommendations to take into account in reaching a final decision regarding the dispute; or
2. Notify the FHWA that the Council will comment in accordance with 36 CFR Section 800.6(b)(2) and proceed to comment.

C. Any Council comment provided in response to such a request shall be taken into account by the FHWA in accordance with 36 CFR Section 800.6(c)(2) with reference only to the subject of the dispute. The FHWA responsibility to carry out all other actions and activities under this MOA that are not the subject of the dispute remain unchanged.

IX. DURATION OF AGREEMENT/TERMINATION

A. Should the proposed project be approved by the FHWA/NMSHTD and the SHPO, this MOA shall remain in effect until all construction associated with the interchange has been completed, and when all requirements of the treatment and data recovery plans and stipulations of the MOA have been met. If implementation is delayed for more than two years after the date of execution of this MOA, the FHWA/NMSHTD shall review this MOA to determine whether revisions are needed. If revisions are needed, the FHWA/NMSHTD will consult in accordance with 36 CFR Part 800 to make such revisions.

B. Any signatory to this agreement may terminate it by providing 30 days notice to the other parties, providing that the parties will consult during the period prior to the termination to seek agreements or amendments or other actions that would avoid termination. In the event of termination, the FHWA/NMSHTD will comply with 36 CFR 800.3 through 800.6.

X. AMENDMENT

A) Any Signatory to this Agreement pursuant to 36 CFR 800.6(c)(1) may request that it be amended, whereupon the Signatories will consult in accordance with 36 CFR Part 800.6(c)(7) to consider such amendment.

XI. FAILURE TO CARRY OUT THE TERMS OF THE AGREEMENT

In the event that the terms of this Agreement are not completed, the FHWA/NMSHTD shall comply with 36 CFR 800.3 through 800.6 with regard to individual actions covered by this Agreement.

XII. SCOPE OF AGREEMENT

A. This Agreement is limited in scope to the construction of the Cuyamungue interchange and the associated local access road adjacent to US 84/285, CN 2155, and is entered into solely for that purpose, should the proposed project be approved by the FHWA/NMSHTD.

B. Execution of this MOA, its subsequent filing with the Council, and implementation of its terms, evidences that the FHWA/NMSHTD has afforded the Council an opportunity to comment on the US 84/285 Cuyamungue interchange project (CN 2155) and its effects on historic properties, and has, therefore, taken into account the effects of the project, if it is approved, on historic properties and has satisfied its Section 106 responsibilities for all individual actions of this undertaking.

Memorandum of Agreement: Signatories

DATA RECOVERY PLAN FOR PORTIONS OF LA 391 ALONG U.S. 84/285, SANTA FE COUNTY, NEW MEXICO

Federal Highway Administration

By: _____ Date: _____

J. Don Martinez
Division Administrator

New Mexico State Historic Preservation Officer

By: _____ Date: _____

Katherine Slick
State Historic Preservation Officer

New Mexico State Highway and Transportation Department

By: _____ Date: _____

R. Blake Roxlau
Cultural Resources Coordinator