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To: <mcw@nrc.gov>
Date: 6/2/04 10:29AM
Subject: State Historic Preservation Meeting Summary

Action Required:
Recommendation:

Melanie,

Attached is the subject meeting summary. I apologize for the delay in getting it to you.

Rod Krich

<<GL Cultural Resources Discussion.doc>>

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Cultural Resources Discussion

On May 18, 2003 staff members of the New Mexico State Historic Preservation Office (SHPO) specifically Jan Biella, Deputy State Historic Preservation Officer and Michelle Ensey, Staff Archaeologist, met with Chuck Wheeler, WCRM, David Eck, New Mexico State Land Office Archaeologist and Denise Gallegos, GL Environmental, Inc. to discuss the cultural resource sites identified during the cultural resources survey in Section 32. T.21S, R.38E conducted by WCRM during the fall of 2003. The following are notes from the meeting.

SHPO is mandated by state and federal regulations, specifically Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR 60 and CFR 800, etc.) to preserve and protect cultural resources in the state of New Mexico. In this role the SHPO can act as a consulting agency in the National Environmental Policy Act (NEPA) process when cultural resources are involved in NEPA (Section 106 and NEPA have separate processes that can be tailored to work together). The National Enrichment Facility (NEF) is a federal undertaking and the cultural resources identified are in the state of New Mexico, the SHPO is required by law to consult in the process.

SHPO explained that the cultural resources identified in Section 32 were part of the resources being considered in the NEPA document submitted to the NRC. The NEPA document contains a "No Action" alternative for evaluation purposes. This means that the NEPA document should consider no impact, i.e. mitigation or disturbance of the Section 32 cultural resources as an alternative. The SHPO was concerned that the exchange of these lands into private holding is an adverse effect. If the land exchange is part of the NEPA process, then it cannot occur prior to the evaluation of the No Action and other alternatives. Otherwise, mitigation of the adverse effect to cultural resources serves to commit resources prior to the Record of Decision, an action not permitted under NEPA. However, since the land exchange occurs prior to the NEPA process, in order to create a circumstance involving land ownership that will permit the federal action to be considered and thus involve the NEPA process, then the land transfer is a state, rather than federal issue.

The land exchange process as explained in the meeting was presented in the meeting as follows:

- ◆ Section 32 (where the cultural resources were identified) is a state section.
- ◆ An exchange of private land greater in value than Section 32 is currently being evaluated for exchange purposes.
- ◆ Upon identifying private land that is acceptable as land to exchange, the NMSLO will prepare a land exchange package for Lea County.
- ◆ The land will be exchanged between the SLO and Lea County.
- ◆ Lea County will deed the land to LES for a very short period of time, (to take advantage of county tax revenue bonds).
- ◆ LES will then deed the land back to Lea County.
- ◆ Lea County will then lease the land to LES for a period of thirty or more years.
- ◆ After the lease expires, Lea County will deed the land to LES.

After the land exchange process was presented, it was determined that the land exchange was not part of the NEPA process and would occur in the near future. Therefore the NEPA process was not being circumvented by LES.

Under this scenario, the land exchange would be considered an "adverse affect" to the cultural resources. The SHPO was informed that LES proposes to mitigate all seven sites identified in the survey. The SHPO agreed that mitigation of the seven sites was appropriate since the land would be exchanged, resulting in an "adverse affect" to all of the cultural resource sites.

WCRM will prepare a Treatment/Mitigation Plan. The Treatment/Mitigation Plan will include a provision for unexpected discoveries.

The treatment/mitigation plan will have to be approved by the SHPO and must be submitted to the Tribes expressing interest in cultural resources the relevant portion of New Mexico. The SHPO was of the opinion that perhaps only nomadic tribes would be interested.

The SHPO suggested LES contact Sam Cata, a governor appointed Tribal Liaison to discuss the project and determine which tribes should be contacted to comment on the a treatment/mitigation plan.