

**APPENDIX C: NATIONAL HISTORIC PRESERVATION ACT SECTION 106  
PROGRAMMATIC AGREEMENT**

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**Programmatic Agreement**  
**Among**  
**The Bureau of Land Management,**  
**Socorro Field Office, New Mexico,**  
**The New Mexico State Historic Preservation Officer,**  
**The New Mexico State Land Office,**  
**The New Mexico Department of Transportation,**  
**Catron County,**  
**and**  
**Borderlands Wind, LLC**  
**Regarding the**  
**The Borderlands Wind Project**

1. **Whereas**, Borderlands Wind, LLC (Applicant), intends to construct, operate and maintain the Borderlands Wind Project (Undertaking) in Catron County, New Mexico (Attachment 1) according to general parameters contained in the project Plan of Development (POD) and summarized in the Undertaking Description (Attachment 2), which encompasses the construction, operation, and maintenance phases of the proposed Undertaking and includes associated facilities as well as reclamation of areas used during construction but not necessary for operation and maintenance of the Undertaking; and
2. **Whereas**, the Socorro Field Office of the Bureau of Land Management (BLM) intends to issue a right-of-way (ROW) grant to the Applicant for the construction, operation and maintenance of the Undertaking, and the ROW grant will reference this Programmatic Agreement (PA), and the area included in the ROW grant will be the authorized ROW for the Undertaking; and
3. **Whereas**, the Socorro Field Office of the BLM is the lead federal agency for the Undertaking pursuant to Section 800.6 of the regulations (36 CFR part 800) implementing Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) as revised in 2004; and
4. **Whereas**, the BLM has defined the Undertaking's area of potential effects (APE) as the area within which the Undertaking may have effects on historic properties, as described in Stipulation II of this PA; and
5. **Whereas**, the APE has been subject to Class III cultural resource inventory—*A Class III Cultural Resources Survey for the Borderlands Wind Project, Catron County, New Mexico* (Walth et al. 2018)—and these studies identified 129 cultural resources within and around the APE; and
6. **Whereas**, the BLM has determined that 41 properties identified during the Class I and Class III studies are eligible for inclusion in the National Register of Historic Places (NRHP) (see Attachment 3) in consultation with the New Mexico State Historic Preservation Officer (SHPO) and Indian tribes; and

7. **Whereas**, the BLM, in consultation with consulting parties, has determined that the Undertaking will have an adverse effect on one or more NRHP-eligible properties, as defined in 36 CFR 800.16(l)(1) identified within the APE, and may have an adverse effect on properties not yet identified within the APE; and
8. **Whereas**, this PA has been developed pursuant 36 CFR 800.14(b), and this PA and the Historic Properties Treatment Plan (HPTP) that will be developed pursuant to this PA to resolve adverse effects on historic properties, will be incorporated into the POD; and
9. **Whereas**, the BLM has consulted with the SHPO pursuant to Section 800.6 of the regulations (36 CFR part 800) implementing Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108 ) as revised in 2004 and the SHPO is a Signatory to this PA; and
10. **Whereas**, the BLM has notified the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR § 800.6(a)(1)(i)(C) that the Undertaking will have adverse effects on historic properties that will be resolved through a PA and the ACHP has declined to participate in this PA (letter dated October 8, 2019); and
11. **Whereas**, the Applicant has participated in consultations with the BLM and has been invited to be an Invited Signatory to this PA; and
12. **Whereas**, the Undertaking includes lands under the jurisdiction of the New Mexico State Land Office (NMSLO) and the BLM has consulted with this agency about the effects of the Undertaking on historic properties and the NMSLO has been invited to be an Invited Signatory to this PA; and
13. **Whereas**, the BLM has consulted with the New Mexico Department of Transportation (NMDOT), which may issue rights-of-ways to the Applicant for access to and construction of certain components of the Undertaking, about the effects of the Undertaking on historic properties and NMDOT has been invited to be an Invited Signatory to this PA; and
14. **Whereas**, the Undertaking includes lands under the jurisdiction of Catron County and the BLM has consulted with them about the effects of the Undertaking on historic properties and Catron County has been invited to be an Invited Signatory to this PA; and
15. **Whereas**, the BLM is responsible for government-to-government consultation with Indian tribes pursuant to Section 101(d)(6)(B) of the NHPA, 36 CFR § 800.2(c)(2)(ii), the American Indian Religious Freedom Act (42 § U.S.C. 1996) (AIRFA), Executive Order 13175, and Section 3(c) of the Native American Graves Protection and Repatriation Act (25 USC §§ 3001-13) (NAGPRA), and has formally invited the 9 Indian tribes listed below to participate in consultations regarding the potential effects of the Undertaking on properties to which they ascribe traditional religious and cultural significance; and
16. **Whereas**, the area where the Undertaking shall be constructed is within a part of the Zuni cultural landscape which is comprised of interconnected places of traditional religious, cultural and historical values including the Zuni Salt Lake, a Congressionally recognized

traditional cultural property, proximal to the APE and as such the Pueblo of Zuni has participated in consultations for this Undertaking and the development of this PA and have been invited to be a Invited signatory Party to this PA; and

17. **Whereas**, the Fort Sill Apache Tribe, Hopi Tribe, Mescalero Apache Tribe, Navajo Nation, Pueblo of Acoma, Pueblo of Isleta, Pueblo of Laguna, and White Mountain Apache Tribe, and have been contacted and invited to engage in consultations; and
18. **Whereas**, the following have been identified as Consulting Parties and have been consulted in accordance with 36 CFR § 800.2(c) and 800.3(f): the SHPO, the Applicant, NMSLO, NMDOT, Catron County, Fort Sill Apache Tribe, Hopi Tribe, Mescalero Apache Tribe, Navajo Nation, Pueblo of Acoma, Pueblo of Isleta, Pueblo of Laguna, Pueblo of Zuni, and White Mountain Apache Tribe; and
19. **Whereas**, the BLM has consulted with the above Indian tribes whose aboriginal territories included portions of the Undertaking’s APE or who have previously expressed interest in undertakings within the area and the BLM shall continue to consult with these Indian tribes regarding properties of traditional religious and cultural importance to them that might be affected by the Undertaking and shall provide opportunities for review and comment on draft and final versions of all reports; and
20. **Whereas**, the BLM has provided the public with opportunities to comment on the Undertaking in coordination with the National Environmental Policy Act (NEPA) process through a Notice of Intent to Prepare an Environmental Impact Statement (EIS) published in the Federal Register on November 9, 2018 for the development of the EIS; one public scoping meeting held in Quemado, New Mexico on November 14, 2018; the Draft EIS published on August 9, 2019 and one public meeting held in Quemado, New Mexico on September 18, 2019, and scoping meeting materials included information about the NHPA and the Section 106 process and BLM considered comments received through the NEPA and NHPA processes concerning cultural resources in the development of this PA; and
21. **Whereas**, NMSLO may use provisions of this PA to address the applicable requirements of the Cultural Properties Act (§§ 18-6-1 et seq. NMSA 1978) and the Cultural Properties Protection Act (§§ 18-6A-1 et seq. NMSA 1978); and
22. **Whereas**, Human Remains, Associated/Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony recovered within or on federal land will be treated in accordance with NAGPRA pursuant to 25 U.S.C. §3001–13, and with the American Indian Religious Freedom Act (AIRFA) pursuant to 42 U.S.C. §1996; and
23. **Whereas**, Human Remains and Funerary Objects discovered on state and private land in New Mexico will be treated in accordance with § 18-6-11.2 NMSA 1978; and
24. **Whereas**, the BLM is using the provisions of this PA to address applicable requirements of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. §470aa), the American Indian Religious Freedom Act (AIRFA) (42 U.S.C. §1996), and the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001–13); and

25. **Whereas**, the definitions given in Attachment 4 are applicable throughout this PA; and

**Now, therefore**, the Signatory parties to this PA agree that the Undertaking shall be completed in accordance with the stipulations established in this PA in order to take into account the effects of the Undertaking on historic properties.

## STIPULATIONS

This PA stipulates the process necessary to comply with Section 106 obligations for construction and reclamation as well as operation and maintenance of the proposed Undertaking and associated facilities. The BLM shall ensure that the Undertaking is carried out in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties:

### I. Qualifications and Standards

- A. The Applicant shall ensure that all work carried out pursuant to this PA shall be done by or under the direct supervision of archaeological professionals who meet the *Secretary of the Interior's Professional Qualifications Standards*. The BLM and the Applicant shall ensure that consultants retained for services pursuant to the PA meet these standards.
- B. The Applicant has obtained the services of a Cultural Resources Consultant/Contractor (CRC) that is a qualified and permitted professional consultant in cultural resources (archaeologist, historian, ethnographer, historic architect, architectural historian, or anthropologist) who is responsible for implementing cultural resource inventories and who prepares cultural resource documents, reports, analysis, records, and professional literature. The CRC meets the Secretary of the Interior's Professional Qualification Standards and holds appropriate permits from land managing agencies.
- C. The BLM shall ensure that all work and reporting performed under this PA meets, at a minimum, the *Secretary of the Interior's Standards and Guidelines for Archaeological and Historic Preservation* (48 CFR 44716-44742, September 23, 1983) (the Secretary's Standards) and takes into consideration the ACHP's handbook, Section 106 Archaeology Guidance (<http://www.achp.gov/archguide>); *Procedures For Performing Cultural Resource Fieldwork On Public Lands in the Area of New Mexico State BLM Responsibilities* BLM Manual Supplement H-8100-1; *Guidelines for Identifying Cultural Resources* BLM Manual H-8110 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, National Register *Bulletin 38*, 1989. All activities and documentation on BLM lands shall be conducted under appropriate permits (FLPMA Cultural Use Permit for general survey and recordation; ARPA permit for excavation or removal/collection).
- D. BLM shall ensure that all activities and documentation conducted or prepared for the Undertaking on state lands shall be consistent with the standards in Title 4, Chapter 10 of the New Mexico Administrative Code (NMAC). All activities and documentation conducted or prepared for the Undertaking on state land shall be consistent with the appropriate state standards found in rules 4.10.8 NMAC, Permits

to Conduct Archaeological Investigations on State Land; 4.10.15 NMAC, Standards for Survey and Inventory; 4.10.16 NMAC, Standards for Excavation and Test Excavation or the current rule for testing and excavation; and 4.10.17 NMAC, Standards for Monitoring.

The Applicant shall ensure that its CRC obtains a project-specific excavation permit or other appropriate permit from the New Mexico Cultural Properties Review Committee prior to excavating historic properties on state lands owned, operated or controlled by the State of New Mexico pursuant to § 18-6-5 NMSA 1978 of the Cultural Properties Act. For NMSLO lands, the Applicant shall obtain the appropriate rights-of-entry from the NMSLO concurrently with the permit application. The Applicant shall also ensure that its CRC obtains a permit prior to excavating unmarked human burials on state or private land pursuant to § 18-6-11.2 NMSA 1978 of the Cultural Properties Act (4.10.11 NMAC) and obtains a permit prior to conducting mechanical excavation of archaeological sites on private land in the State of New Mexico pursuant to § 18-6-11 NMSA 1978 of the Cultural Properties Act (4.10.14 NMAC).

The rules are available at through the New Mexico Commission of Public Records, State Records Center and Archives at <http://www.srca.nm.gov/nmac-home/> or its successor website.

## II. Area of Potential Effects

### A. The Area of Potential Effects (APE) is defined as:

1. **Construction effects:** The APE for effects during construction includes all areas likely to be affected by construction activities.
  - a. The construction APE consists of a 500-foot-radius surrounding turbine locations, plus areas of disturbance or surface modification (such as erosion control feature or fill slopes) extending beyond 500 feet of the turbine footprint.
  - b. The construction APE for new access roads or existing access roads where improvements are planned is 300 feet from each side of the centerline of the road, plus areas of disturbance or surface modification (such as erosion control feature or fill slopes) extending beyond 300 feet of the centerline of the roadway; and 100 feet from each side of the centerline of access roads where no modifications or improvements are planned.
  - c. The construction APE for electrical collection lines is 200 feet from each side of the centerline of the collector trench unless placed within the area previously surveyed for access roads. Collector trenches placed on the perimeter of the area surveyed for an access road have an additional 100-foot extending beyond the perimeter.
  - d. The construction APE for associated facilities, switchyards, substations, operation and maintenance buildings, borrow areas, and construction laydown yards and areas is a 200-foot-buffer from the largest extent of each facility's planned footprint. This width will allow for minor adjustments in facility placement to avoid when possible historic properties that are located within the construction APE.

- e. The construction APE for additional identified facilities and infrastructure sites that fall outside the authorized ROW will be the footprint of the facility or site plus a 200-foot buffer from the edge of the footprint radius around these points.
  - f. The construction APE for geotechnical borings will be a 100-foot radius around the bore hole.
  - g. The construction APE for additional identified new or existing access roads and electrical collection lines will follow outlined construction APEs in Stipulations section III.A.1 for roads and collection lines.
2. **Operations and Maintenance effects:** The APE for operation and maintenance activities will be confined to the authorized ROW.
  3. **Visual effects:** The APE for visual effects shall be areas visible and within 5 miles of any component of the Undertaking or to the visual horizon, whichever is closer, except the APE for visual effects may be expanded where consultation identifies properties of traditional religious and cultural importance beyond the 5-mile range that are visible from any component of the Undertaking.
    - a. BLM will use a Geographic Information System (GIS) viewshed analysis to identify areas in the visual effects APE from which the Undertaking may be visible.
    - b. In certain locations, the visual effects APE may extend beyond the 5-mile convention to encompass specific properties of traditional religious and cultural importance, including traditional cultural properties (TCPs), that have been identified by the Indian tribes through consultation with the BLM, and that BLM, in consultation with the Indian tribes, has determined that potential effects on these properties extends beyond the 5-mile convention.
  4. **Cumulative effects:** The APE for cumulative effects shall be the same as that for construction and visual effects combined and includes the specific areas defined above for each component of the Undertaking and areas visible and within 5 miles of any component of the Undertaking or to the visual horizon, whichever is closer, or where consultation identifies a need to expand the visual effects APE in certain locations as stated in 3.b. above.

#### B. **Additional Identification, Evaluation, and Assessment of Effects**

The APE has been subject to Class III cultural resource inventory as described in Recital No. 3 above; however, there is the potential that the Undertaking may require redesign **prior to** construction, resulting in changes to the APE that require additional inventory.

1. As soon as a change to the APE that requires additional cultural resources inventory is determined to be necessary, the BLM shall notify consulting parties of the change and shall ensure that the Applicant conducts cultural resources inventory surveys of additional rights-of-way, temporary construction easements, any added staging or use areas, or design revisions that modify the APE are completed to identify cultural resources, and all inventories will include recommendations of NRHP eligibility for all



identified cultural resources that are made in accordance with 36 CFR §800.4 to identify historic properties.

2. The BLM, in consultation with consulting parties, shall make an assessment of effect for each historic property identified through additional inventories.
3. The BLM shall consult with consulting parties regarding the NRHP eligibility determinations and assessment of effects for all additional identified historic properties pursuant to BLM's standard protocol. The BLM shall provide the preferred version (either a hardcopy (print) version or an electronic (pdf) version) of the draft inventory report to consulting parties who will have 30 calendar days to review and comment. If no comments by a consulting party are received by the BLM within the 30-calendar-day review period, the BLM will assume the consulting party concurs with the NRHP-eligibility recommendations and assessment of effects.
4. The BLM shall consolidate the comments from consulting parties and ensure that the Applicant prepares a revised final inventory report that considers the comments received on the draft inventory report. The BLM shall review the revised inventory report and ensure that the final report is distributed to all consulting parties, as either a hardcopy (print) version or an electronic (pdf) version.
5. If the BLM and the SHPO disagree on NRHP eligibility, BLM shall request a formal determination from the Secretary of the Interior, pursuant to 36 CFR §800.4(c)(2).
6. The BLM shall ensure that any additional inventory necessary **during** construction, operation, and maintenance shall be conducted in accordance with Stipulation VII and XIII below.

### **III. Avoiding and Minimizing Adverse Effects of the Undertaking on Historic Properties**

- A. The BLM shall, if possible, avoid adverse effects on historic properties, with input from consulting parties.
  1. Avoidance measures for historic properties may include (but are not limited to) realignment of transmission lines, relocation of other associated facilities, protective fencing around historic property boundaries during construction, monitoring of construction near historic property boundaries, or placing turbines, maintenance roads and associated facilities outside of historic property boundaries.
  2. The BLM shall consult with the Pueblo of Zuni and other Indian tribes who ascribe traditional religious and cultural importance to any properties identified in the APE in order to develop avoidance measures, if feasible.
  3. The BLM shall identify measures to avoid adverse effects from operation and maintenance activities on those historic properties located within the authorized ROW, and shall incorporate these measures in the HPTP in accordance with Stipulation IV.A.

- B. Where avoidance is not possible, the BLM shall minimize or mitigate adverse effects on historic properties to the degree possible with input from consulting parties.
- C. If any Indian tribe expresses concerns about effects on properties to which they ascribe traditional religious and cultural importance, the BLM shall consult with them and the SHPO about possible measures to avoid, minimize, or resolve the adverse effects and ensure that those measures are properly considered in the development of the HPTP.
- D. For state and private land, if the adverse effect is on a property listed in the State Register of Cultural Properties or NRHP, the agency or political subdivision with jurisdiction over said state or private land shall determine whether § 18-8-7 NMSA 1978 of the Prehistoric and Historic Sites Preservation Act or § 18-6-8.1-17 (as amended 2005) of the New Mexico Cultural Properties Act applies. The BLM shall advise the agency or political subdivision to contact the New Mexico SHPO for assistance in making this determination and satisfying the requirements of 4.10.7 and 4.10.12 New Mexico Administrative Code (NMAC).

#### **IV. Resolution of Adverse Effects: Development of the HPTP**

- A. Prior to construction, the BLM shall ensure that the Applicant prepares an HPTP that will address the resolution of adverse effects of the proposed Undertaking on historic properties, including any properties of traditional and religious cultural importance, which include TCPs as discussed in National Register Bulletin No. 38. The HPTP shall address potential effects from construction and reclamation as well as from operation and maintenance of the proposed Undertaking and associated facilities. The HPTP will be incorporated into the POD as an appendix and will:
  - 1. Identify the nature of the effects to historic properties and describe the strategies proposed to avoid, minimize, or mitigate those effects.
  - 2. Identify cultural resources that will be affected by the Undertaking for which NRHP eligibility determinations could not be made, and will specify the strategy for evaluating eligibility of these cultural resources. It will further specify the strategy that will be used in the event that these cultural resources are determined eligible for inclusion in the NRHP.
  - 3. Include provisions for the treatment of all discoveries of human remains, funerary objects, sacred objects, and objects of cultural patrimony and ensure that treatments are consistent with Stipulation V.
  - 4. Include a stand-alone Monitoring and Discovery Plan, which will be an appendix to the HPTP. The Monitoring and Discovery Plan will contain:
    - a. An archaeological and tribal monitoring plan to be used during construction and reclamation.
    - b. A discovery plan consistent with Stipulation IX to be used during the entire Undertaking and include active tribal participation and commensurate consideration of tribal values.

- c. If appropriate, a monitoring plan to be used during operations and maintenance will be developed in accordance with Stipulation IV.A.4 in consultation with consulting parties and added to the HPTP after treatment activities are concluded. Any reports resulting from post-construction monitoring will be submitted to the consulting parties in accordance with the monitoring plan.
  - d. Clearly stated objectives, and methodologies for achieving those objectives, such as to ensure impact avoidance or minimization during construction and reclamation; to measure the effectiveness of avoidance, minimization and mitigation measures; to assess the effects of operations and maintenance activities; or to help define treatments for historic properties with long-term concerns.
5. Include a stand-alone Project Termination and Reclamation Plan with measures to be implemented in the event that the Undertaking is terminated for any reason, which will be an appendix to the HPTP. The Project Termination and Reclamation Plan will include:
- a. The steps to be taken in order to complete any archaeological data recovery fieldwork or other treatment measures that are in progress at the time of project termination; and
  - b. The steps to be taken to complete analysis, interpretation, reporting, and curation associated with archaeological data recovery fieldwork or other treatment measures completed in accordance with the Project Termination and Reclamation Plan.

#### **B. Process for Developing the Historic Property Treatment Plan**

1. Prior to construction, the Applicant shall submit the draft HPTP to the BLM for initial review and comments. The BLM shall ensure that the draft HPTP is distributed to all consulting parties, as either a hardcopy (print) version or an electronic (pdf) version, for review and will request consulting party comments on the adequacy of the proposed treatment measures. The BLM shall notify consulting parties of the review period either by letter or via electronic mail, which will be accompanied by the preferred version of the draft HPTP, and will have 45 calendar days to review and comment on the draft HPTP. If no comments by a consulting party are received by the BLM within the 45-calendar-day review period, the BLM will contact consulting parties by phone to ensure the consulting party concurs with the draft HPTP.
2. The BLM shall consolidate the comments from consulting parties and ensure that the Applicant prepares a revised HPTP that considers the comments received on the draft HPTP. The BLM shall review the revised HPTP and ensure that the revised HPTP is distributed to all consulting parties, as either a hardcopy (print) version or an electronic (pdf) version, for a 30-calendar-day review period. The BLM will notify consulting parties of the review period for the revised HPTP either by letter or via electronic mail, which will be accompanied by the preferred version of the revised HPTP. If no comments by consulting parties are received by the BLM within the 30-calendar-day

review period, the BLM will contact consulting parties by phone to ensure the consulting parties concur with the revised HPTP and the revised HPTP shall be the final HPTP.

3. In consultation with interested tribes, the BLM will provide the opportunity to visit all the historic properties that may be subject to treatment, and conduct field inspections at those historic properties prior to final approval of the HPTP to ensure tribal concerns are addressed.
4. The BLM, in consultation with consulting parties, shall approve the final HPTP. The BLM will notify the Applicant and the consulting parties when the final HPTP has been approved.

### **C. Implementation of HPTP**

1. The BLM shall ensure that the Applicant implements treatment in accordance with the approved final HPTP.
2. During the Treatment phase, if deviations to the approved final HPTP are warranted, the Applicant shall submit proposed deviations from the approved final HPTP to the BLM for initial review and comment prior to implementation. The BLM shall review each proposed deviation and shall ensure that a copy of the proposed deviation is distributed to all consulting parties, either a hardcopy (print) version or an electronic (pdf) version, for a 15-calendar-day review and will request consulting party comments and concurrence with the proposed deviation. The BLM shall notify consulting parties of the review period for the proposed deviation either by letter or via electronic mail, which will be accompanied by the preferred version of the proposed deviation. The BLM shall consider comments submitted during the review period and shall consult with the appropriate reviewer(s) to resolve differences and/or disagreements. If no comments by a consulting party are received by the BLM within the 15-calendar-day review period, the BLM will assume the consulting party concurs with the adequacy of the proposed deviation. The BLM will notify the Applicant when the BLM has approved the proposed deviation.
3. In consultation with interested tribes, the BLM will provide the opportunity to visit all of the historic properties that were subject to mitigation for adverse effects, and conduct field inspections at those historic properties during treatment or immediately after treatment, to ensure adequate implementation of the HPTP for those historic properties. Interested tribal members will be invited to attend these field inspections.

### **D. HPTP Reporting and Consultation**

1. **Preliminary End-of-Fieldwork Reports**
  - a. Within 15-calendar days following the completion of fieldwork treatments to resolve adverse effects on a historic property, the Applicant shall provide the BLM with preliminary property-specific End-of-Fieldwork (EOF) Reports of the completed treatment. Each of the property-specific EOF Reports shall include:

- i. A brief characterization of the results of treatment.
  - ii. The types of analyses yet to be completed.
  - iii. A brief description of how the provisions of the HPTP were implemented, any deviations from the HPTP that were implemented, and the reasons for such deviations.
  - iv. A recommendation for whether post-construction monitoring would be appropriate, and the reasons for this (e.g., proximity to Undertaking components with the potential for damage from operation and maintenance activities, the percentage of the historic property remaining in the authorized ROW, the sensitivity of the historic property, a property identified as being of particular importance to a tribe[s], etc.).
- b. The Applicant shall submit the preliminary property-specific EOF Reports to the BLM for initial review and comments. The BLM shall review each property-specific EOF Report of the completed treatment and shall ensure that a copy of each property-specific EOF Report is distributed to all consulting parties, as either a hardcopy (print) version or an electronic (pdf) version, for a 15-calendar-day review period, and will request consulting party comments and concurrence with the results of treatment and any recommendations. The BLM shall notify consulting parties of the review period for the property-specific EOF Reports either by letter or via electronic mail, which will be accompanied by the preferred version of the property-specific EOF Reports. The BLM shall consider comments submitted during the review period and shall consult with the appropriate reviewer(s) to resolve differences and/or disagreements. If no comments by a consulting party are received by the BLM within the 15-calendar-day review period, the BLM will assume the consulting party concurs with the adequacy of the treatment described in the property-specific EOF Reports.

## 2. Treatment Report

- a. Within 12 months of the completion of fieldwork, the BLM shall ensure that the Applicant prepares a draft Treatment Report that incorporates the results of all the property-specific EOF reports into a comprehensive single document with a regional overview. The Final Treatment Report also will include:
  - i. A re-evaluation of NRHP-eligibility of all historic properties based upon the results of the implemented treatment measures.
  - ii. A listing of historic properties for which post-construction monitoring was recommended in the EOF Reports, and the reasons for this (i.e., proximity to Undertaking, components with the potential for damage from operation and maintenance, percentage of property remaining in the authorized ROW, sensitivity of the property, a property identified as being of particular importance to a tribe[s], etc.).
  - iii. The objectives that monitoring could achieve as part of the effort to avoid, minimize and/or mitigate adverse effects on those properties.

- b. The Applicant shall submit the draft Treatment Report to the BLM for initial review and comments. The BLM shall ensure that the draft Treatment Report is distributed to all consulting parties, as either a hardcopy (print) version or an electronic (pdf) version, for a 30-calendar-day review and comment period, and will request consulting party comments and concurrence with the adequacy of the Treatment Report. The BLM will notify the consulting parties of the review period either by letter or via electronic mail, which will be accompanied by the preferred version of the draft Treatment Report. The BLM shall consider comments received during the review period and shall consult with the appropriate reviewer(s) to resolve differences and/or disagreements. If no comments by a consulting party are received by the BLM within the 30-calendar-day review period, the BLM will contact consulting parties by phone to ensure the consulting parties concur with the adequacy of the draft treatment report.
- c. The BLM shall consolidate the comments from consulting parties and ensure that the Applicant prepares a revised Treatment Report that considers the comments received on the draft Treatment Report. The BLM shall review the revised Treatment Report and provide copies to consulting parties, as either a hardcopy (print) version or an electronic (pdf) version, for a 30-calendar-day review period. The BLM will notify the consulting parties of the review period either by letter or via electronic mail, which will be accompanied by the preferred version of the revised Treatment Report. The BLM shall consider comments submitted during the review period and shall consult with the appropriate reviewer(s) to resolve differences and/or disagreements. If no comments by consulting parties are received by the BLM within the 30-calendar-day review period, the BLM will contact consulting parties by phone to ensure the consulting parties concur with the adequacy of the revised Treatment Report and the revised Treatment Report shall be considered the final Treatment Report following received concurrence from consulting parties.
- d. The BLM, in consultation with consulting parties, shall approve the final Treatment Report. The BLM will notify the Applicant when the final Treatment Report has been accepted and will distribute it to the consulting parties, if necessary.

**V. Treatment and Disposition of Human Remains and Funerary Objects**

The following methods and procedures shall be implemented for the discovery and/or treatment of human remains, associated/unassociated funerary objects, sacred objects, or objects of cultural patrimony that reflect any concerns and/or conditions identified as a result of consultations between the BLM and the appropriate Tribes.

- A. The BLM shall ensure that human remains, associated/unassociated funerary objects, sacred objects, and objects of cultural patrimony recovered within or on federal land will be treated in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) pursuant to 25 U.S.C. §3001–13, and



with the American Indian Religious Freedom Act (AIRFA) pursuant to 42 U.S.C. §1996.

- a. The BLM, in consultation with the appropriate tribes, shall develop a NAGPRA Plan of Action (POA), which will be consistent with 36 CFR § 800.13, NAGPRA (43 CFR Part 10) and ensure that the POA is implemented as appropriate.
- B. BLM in coordination with appropriate agencies shall ensure that all discoveries on state and private land, unmarked human burial grounds, including human remains and associated funerary objects shall receive appropriate and respectful treatment and disposition in accordance with § 18-6-11.2 NMSA 1978 and in accordance with the methods and procedures in 4.10.11 NMAC.

## **VI. Cultural Sensitivity and Public Outreach**

- A. The Applicant, in consultation with the BLM, will develop a program for cultural resource law and sensitivity training for all Undertaking personnel (including new, added, and replaced personnel) and contractors involved in Undertaking construction and reclamation activities, and operation and maintenance of the wind farm following construction. Training will be to a degree commensurate with the personnel's involvement in the Undertaking and will include information on the statutes protecting cultural resources and historic properties, cultural resources sensitivity, requirements to avoid damage to historic properties, and requirements to report discoveries of cultural resources in accordance with the Monitoring and Discovery Plan. Through BLM consultation in coordination with the Applicant, Indian tribes will be provided opportunities to participate in the training program, which could be offered by a variety of means including training sessions, field visits, video programs, or printed materials.
- B. The Applicant and the BLM will develop a strategy for a public outreach program to disseminate information about the results of the cultural resources investigations and treatments to the general public. This program may include, but is not limited to, the following: a short report written specifically for the public; a brochure; exhibits for use at public outreach venues such as archaeology awareness fairs; digital graphic or PowerPoint presentations; presentations to local historical and archaeological societies; lesson plans and educational materials for use in schools; podcasts; website and/or social media content; or a traveling museum exhibit.
- C. The Applicant, the BLM, and consulting Indian tribes will develop an outreach program for focus on documents, programs, exhibits, etc. that are beneficial to descendant tribal communities.

## **VII. Construction, Operation, and Maintenance Variance Review Process**

- A. All construction, operation, and maintenance needs cannot be anticipated in advance and areas required for additional work space, access roads, associated facilities, reroutes, etc. may be identified at any time following the acceptance of the inventory report(s) by the SHPO and land managing agencies.
- B. If any newly identified construction, operation, or maintenance needs would result in ground disturbing activities outside of the surveyed areas identified in the inventory report(s), the Applicant will request a variance review from the BLM.
  1. The BLM will ensure that the APEs of all variance areas will be defined consistent with those defined in Stipulation III.A.
  2. The BLM will ensure that a Class I Existing Data Inventory review and/or a Class III Intensive Field Inventory will be conducted on all variance areas. The BLM will consult with Tribes regarding the presence of properties of traditional cultural or religious importance, including TCPs, on all variance areas.
- C. The BLM will ensure that the following process for review and approval of construction variances will be used.
  3. If no historic properties or properties of traditional cultural or religious importance to tribes are present within the variance APE, the BLM will ensure that the results of the Class I and Class III inventories with ethnographic research are reported on the NMCRIS Investigation Abstract Form (NIAF) prior to any access or use. The BLM will provide an expedited review of the variance request, not to exceed 5 working days following receipt, and will provide the Applicant with written approval/disapproval of the variance via electronic mail. Final copies of the NIAF shall be provided to consulting parties for informational purposes. If any consulting party objects to the finding, the BLM will consult to resolve the objection if construction has not commenced. If construction has started, the BLM will take objection into consideration on future variances.
  4. If historic properties or properties of traditional cultural or religious importance to tribes are present within the variance APE, the Applicant's CRC will prepare an inventory report, following BLM standards, and submit it via electronic mail to the BLM, the SHPO, and consulting parties for review. SHPO shall also be provided a hardcopy of the inventory report. Because variance requests may be necessary in the midst of construction activities, the agencies and tribes will provide an expedited review within 5 business days or less. If no objections to the variance are received by BLM at the end of the 5-day period, BLM shall provide the Applicant with written approval of the variance via electronic mail. If objections are received, the BLM will conduct additional consultation regarding the variance in accordance with Stipulation XII of this PA.



- a. If historic properties exist in the variance APE and they cannot be avoided, the Applicant shall develop a Supplemental Treatment Plan for those properties that shall be consistent with the HPTP developed pursuant to Stipulation IV.A of this PA.
- b. Review procedures for the Supplemental Treatment Plan shall follow Stipulation IV.B.
- c. After the completion of the treatment measures, the Applicant will prepare a preliminary EOF Report and the BLM will ensure that the preliminary EOF Report is distributed and reviewed in accordance with Stipulation IIV.D.1.bC.1.
- d. The BLM shall ensure that the Applicant reports on the results of such treatment efforts in the final Treatment Report for the Undertaking in Accordance with Stipulation IV.D.
- e. Once the BLM determines that the approved treatment has been completed, the BLM shall provide the Applicant with written approval of the variance via electronic mail.

### VIII. Authorization of Construction

Requests for authorizations of construction will be approved by BLM only if such authorizations will not restrict subsequent measures to avoid, minimize, or mitigate adverse effects on historic properties through realignment of transmission lines or relocation of other associated facilities.

- A. The BLM, at its discretion and pending compliance with all other applicable laws and regulations, may authorize the Applicant to begin construction on lands under any ownership or jurisdiction, subject to the appropriate jurisdiction's right-of-entry and authorized ROW requirements, **where there are no historic properties present.**
- B. Upon the BLM's acceptance of the final HPTP, the BLM, at its discretion and pending compliance with all other applicable laws and regulations, may authorize the Applicant to begin construction on lands under any ownership or jurisdiction, subject to the appropriate jurisdiction's right-of-entry and authorized ROW requirements, **where all effects on historic properties and unevaluated cultural resources will be avoided** (as described in the approved HPTP).
- C. Upon the BLM's acceptance of the EOF Report of treatment that has occurred at each historic property described in Stipulation IV.C.1, the BLM, at its discretion and pending compliance with all other applicable laws and regulations, may authorize the Applicant to begin construction on lands under any ownership or jurisdiction, subject to the appropriate jurisdiction's right-of-entry and authorized ROW requirements **where provisions of the HPTP have been implemented.**

## **IX. Discoveries during the Undertaking**

- A. If potential historic properties are discovered, or unanticipated effects occur to known historic properties, the BLM will implement the Monitoring and Discovery Plan that will be included as a standalone appendix to the HPTP (see Stipulation IV.A.4) and will incorporate the following:
1. The Applicant shall ensure that all surface-disturbing activities within 100 feet of the discovery immediately cease and that measures are taken to protect the cultural resources. The Applicant shall notify the BLM of the discovery within 24 hours. The BLM shall immediately notify the SHPO, Indian tribes, and any other agency having jurisdiction over the land involved and provide information regarding the discovery for review and comment.
  2. If after review of the information, the discovered cultural resource is subsequently identified by an Indian tribe as a property of traditional religious and cultural importance, the BLM shall consult with the appropriate tribe(s).
  3. On New Mexico State and private land, the BLM shall ensure that Discoveries follow the process in 4.10.8 NMAC.
- B. The BLM shall ensure that the treatment of the discovered cultural resources shall be consistent with the HPTP developed pursuant to Stipulation IV.A of this PA, and the BLM shall assume that all discoveries are eligible for inclusion in the NRHP.
1. The Applicant will prepare a preliminary EOF Report after treatment with updated NRHP-eligibility recommendations(s) and the BLM will distribute the in accordance with Stipulation IIV.D.1.bD.1. The BLM shall ensure that the results of such treatment efforts are reported in the final Treatment Report, or Addendum to the final Treatment Report, for the Undertaking in accordance to Stipulation IV.D.
  2. Once the BLM determines that the approved treatment has been completed, the Applicant may resume construction upon receiving written authorization from the BLM.
- C. The BLM shall ensure that all discoveries of human remains, funerary objects, sacred objects or objects of cultural patrimony shall be treated in accordance with Stipulation V.

## **X. Confidentiality of Records**

- A. The BLM will maintain confidentiality of sensitive information regarding historic properties to which a tribe attaches religious or cultural significance to the maximum extent allowed by federal and state law. However, any documents or records the BLM has in its possession are subject to the Freedom of Information Act (FOIA) (5 USC § 552 et seq.) and its exemptions, as applicable. In the event that a FOIA request is received for records or documents that relate to a historic property to which an Indian tribe attaches religious or cultural significance and that contain information that BLM is authorized to withhold from disclosure by other statutes including Section 304 of the NHPA and Section 7 the Archaeological Resources Protection Act, then, the BLM

- will consult with such tribe prior to making a determination in response to such a FOIA request not to withhold particular records and/or documents from disclosure.
- B. All Parties to this PA agree that, to the extent consistent with Section 304 of the NHPA, and 27 Section 9(a) of ARPA, cultural resource description and locational data from this Undertaking will be treated as confidential by all consulting parties and is not to be released to any person, organization, or agency not a consulting party to this PA.

## **XI. Curation**

- A. The Applicant shall arrange curation agreements with repositories approved by the BLM. The BLM shall ensure that all artifacts and records resulting from the inventory and treatment program are curated in accordance with 36 CFR Part 79, except as determined through consultations with Indian tribes carried out in accordance with federal and state laws pertaining to the ownership of artifacts and treatment and the disposition of Native American human remains and funerary objects.
3. All artifacts recovered from state land in New Mexico, including associated records and documentation, shall be curated at the Museum of New Mexico, Museum of Indian Arts and Culture.
  4. Artifacts recovered from private lands that are not associated with human remains are the property of the private landowner. The BLM will encourage the private landowner to donate the artifacts to an approved repository.

## **XII. Undertaking Monitoring, Annual Reporting and Evaluation**

- A. The BLM will be responsible for monitoring activities associated with this Undertaking on lands under all jurisdictions during construction and reclamation activities.
1. During the construction phase of the undertaking, the BLM shall prepare and distribute an annual letter report of cultural resources activities pertaining to this Undertaking for all consulting parties by December 31. The annual letter report will include an update on project schedule, status, and any ongoing relevant cultural resources monitoring or mitigation activities, discovery situations, or outstanding tasks to be completed under this PA or the HPTP.
  2. Following the completion of construction, the consulting parties shall review and evaluate the implementation and operation of this PA every five years and comment on the implementation and operation of this PA in a letter report within 30 days of receipt. This evaluation, to be conducted after the receipt of the BLM letter report, may include in-person meetings or conference calls among the consulting parties, and may include suggestions for possible modifications or amendments to this PA.
  3. The BLM shall monitor activities pursuant to this PA. Should the Applicant fail to comply with any provision of this PA, the BLM may, at its discretion, counsel the Applicant regarding performance requirements or suspend the

permit under which this PA is executed. Such suspension would result in the issuance of a “stop work” order for the entire Undertaking.

4. The BLM will remain responsible to inspect the Undertaking for compliance with the terms and conditions of the BLM’s ROW grant pertaining to historic properties for the life of the grant, and will ensure that the appropriate BLM cultural resources specialist participates in these compliance reviews.

### **XIII. Operation and Maintenance of the Undertaking and Facilities**

- A. After construction of the Undertaking, the Applicant (ROW grant holder) will be required to follow all of the terms, conditions and stipulations concerning the operation and maintenance of the lines which are included in the Plan of Development (POD) and the ROW grants. These terms, conditions and stipulations will include any provisions identified in the HPTP that resolve potential adverse effects on historic properties identified within the authorized ROW.
  3. The BLM will be responsible for ensuring that the stipulations in the BLM ROW grant are enforced.
  4. The NMSLO will be responsible for ensuring that the stipulations in their ROW grant are enforced on NMSLO administered lands.
- B. Post-construction evaluation and management of historic properties are described in Stipulation IV.A.4.c.
- C. Should any variance to the ROW grant (and as such the APE) be necessary during operation and maintenance, the Applicant will follow the variance procedure as outlined within Stipulation VII, and a BLM cultural resource specialist will review the action and make recommendations regarding potential effects and appropriate actions to avoid, minimize, or mitigate any adverse impacts (e.g., using hand tools if mechanical vegetation treatments are proposed in sensitive areas).

### **XIV. Decommissioning**

Should decommissioning of the Undertaking and associated facilities be deemed necessary at any point, the ROW grant shall stipulate and the BLM shall ensure that it will be considered a new action for Section 106 review, and that historic properties potentially affected by decommissioning will be considered in the BLM-approved Termination and Reclamation Plan in accordance with the pertinent laws, regulations, and policies extant at the time.

### **XV. Dispute Resolution**

- A. Should any consulting party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the BLM shall consult with such party to resolve the objection. If the BLM determines that such objection cannot be resolved, the BLM will:
  3. Forward all documentation relevant to the dispute, including the BLM’s proposed resolution, to the ACHP. The ACHP shall provide the BLM with its

advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and consulting parties, and provide them with a copy of this written response. BLM will then proceed according to its final decision.

4. If the ACHP does not provide its advice regarding the dispute within the 30-day time period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the consulting parties, and provide them and the ACHP with a copy of such written response.
5. The BLM will be responsible for carrying out all other actions subject to the terms of this PA that are not the subject of the dispute.

## **XVI. Amendments and Termination**

- A. Any Signatory or Invited Signatory to this PA may request that it be amended by informing BLM in writing of the reason for the request and the proposed amendment language, whereupon BLM shall inform the other parties and request their views concerning the proposed amendment. The amendment will be effective on the date a copy signed by all parties is filed with ACHP.
- B. If any Signatory or Invited Signatory to this PA determines that the terms of the PA will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment pursuant to Stipulation XVI.A above. If within 30 days (or another time period agreed upon by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- C. In the event that this PA is terminated, and prior to work continuing on the Undertaking, the BLM must either (a) execute a PA or MOA pursuant to 36 CFR § 800.6 (c) (8) or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. BLM will notify all signatories to this PA as to the course of action it will pursue.

## **XVII. Term of the PA**

This PA will expire if the Undertaking has not been initiated within 5 years of execution, or the BLM ROW grant expires (30 years) or is withdrawn. Otherwise, this PA shall take effect from the date of execution and will remain in effect for 10 years.

## **XVIII. Non-Endorsement Clause**

Nothing in this PA should be interpreted to imply that any party endorses the Undertaking. The parties will not take any action or make any statement that suggests or implies such an endorsement based on signing this PA.

**XIX. Anti-Deficiency Act**

The BLM's obligations under this PA are subject to the availability of appropriate funds, and the stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. The BLM shall make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the BLM's ability to implement the stipulations of this agreement, the BLM shall consult in accordance with the amendment and termination procedures found at Stipulation XVI of this PA.

The Execution and Implementation of this PA evidences that the BLM, as lead federal agency, has taken into account the effects of this Undertaking on Historic Properties with regard to the construction, operation, and maintenance of the Undertaking, and afforded the ACHP an opportunity to comment.

**SIGNATORIES:**

Bureau of Land Management

By Date 6/1/2020Title FIELD MANAGER SFO

NEW MEXICO STATE HISTORIC PRESERVATION OFFICER

By Date 5/20/2020Title State Historic Preservation Officer

**INVITED SIGNATORIES:**

BORDERLANDS WIND, LLC

By Anthony Pedroni  
Anthony Pedroni  
Vice President  
Title \_\_\_\_\_

Date 6/10/2020

CATRON COUNTY

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

NEW MEXICO STATE LAND OFFICE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

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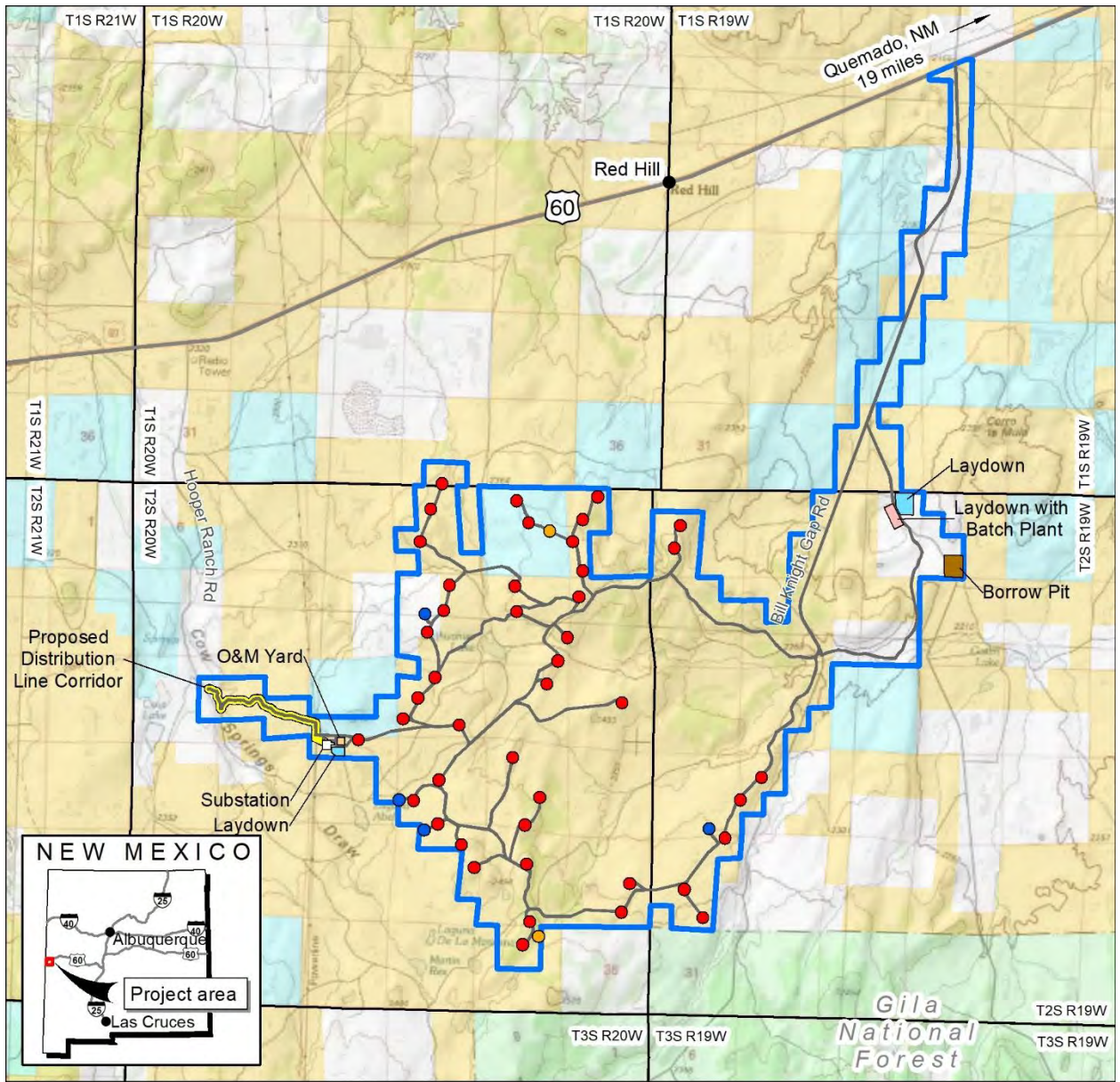
By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_



### ATTACHMENT 1: LOCATION OF UNDERTAKING



<b>Legend</b>		No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data, or for purposes not intended by BLM. Spatial information may not meet National Map Accuracy Standards. This information may be updated without notification.	
Alternatives 1 and 2 Area	Turbine	NATIONAL SYSTEM OF PUBLIC LANDS U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT	NORTH
Proposed Distribution Line Corridor	Met Tower		
Borrow Pit	Radar Location	Scale: 1:125,000 0 2.5 mi 0 4 km	
Laydown	<b>Surface Management</b>		
Laydown with Batch Plant	Private		
O&M Yard	State Trust		
Substation	BLM		
Access Road	USFS		

## ATTACHMENT 2: UNDERTAKING DESCRIPTION

Borderlands Wind, LLC (Borderlands Wind), is proposing to develop the Borderlands Wind Project (Undertaking), a commercial wind energy project in Catron County, New Mexico, within lands managed by the Bureau of Land Management (BLM), the New Mexico State Land Office (NMSLO), and private landowners. Borderlands Wind has identified 44 turbine locations in case turbine locations are not suitable during construction. The Undertaking would consist of 34 constructed wind turbine generators (WTGs), with a combination of four 2.5-megawatt (MW) General Electric (GE) WTGs and thirty 3.03-MW GE WTGs. The GE 3.03 MW turbines have a maximum overall height of 630 feet and the GE 2.5 MW turbines have a maximum overall height of 499 feet. The Undertaking would deliver up to 100 MW of electricity to the electrical transmission grid in the southwestern United States. The Point of Interconnect would be located adjacent to the existing Tucson Electric Power (TEP) Springerville to Greenlee 345-kilovolt (kV) transmission line that currently traverses the APE.

The Undertaking encompasses the construction, operation, and decommissioning phases of the proposed wind farm project that takes place after the BLM Right-of Way (ROW) grant is issued. The Undertaking encompasses those activities necessary for construction of the proposed wind farm project and includes associated facilities as well as reclamation of areas used during construction but not necessary for operation and maintenance of the facilities. The Undertaking may include surveys, geotechnical testing, engineering, mitigation planning and design, or other activities initiated prior to construction or decommissioning of project facilities.

The Undertaking also encompasses those activities necessary to operate and maintain the wind farm facilities over the life of the Undertaking. Operation and maintenance activities will be approved in the ROW grant and confined to the authorized ROW. Changes to approved operations and maintenance activities, including new actions outside of the approved BLM ROW grant, will require BLM approval and may be authorized under this PA.

Permanently constructed Undertaking features include:

- Wind turbines; the areas identified for the WTG tower foundations would be cleared and graded. The areas would then be excavated with a backhoe in order to prepare each area for a concrete foundation. The topsoil element for the turbine excavation would be spread evenly around the base of the turbine to blend with present grades. If the subsurface is too hard to excavate, blasting would be conducted. The Blasting Plan would be in place from the general contractor before any blasting takes place. Once excavated, a seal slab is poured at the bottom of the foundation hole prior to rebar placement. An aluminum tube and bolt cage would be installed and concrete would be placed into the hole. The supporting foundations are usually octagonal and up to 62 feet in diameter at the base.

- New and improved access roads; Borderlands Wind would use existing roads in the project area to the extent feasible to minimize ground disturbance. However, existing roads would still require upgrading to a minimum between 100 and 150 feet in width during construction and filling the surface to allow access for all vehicles in severe weather. Following construction and during operation, these roads would be reclaimed and maintained to a 16 foot width. If existing roads are located on unstable soils or are in unsafe locations (too close to cliffs), new roads would be constructed.
- Underground electrical collection system; Underground collection lines would be installed as part of this Undertaking, which would consist of a buried cable in trenches that are approximately 3 feet deep by 4 feet wide and would follow access roads as much as possible. Excavation of the trenches would be completed by trencher and backhoe. Junction boxes would be required throughout the proposed project as part of this system.
- Electrical interconnection switchyard and substation; Construction for the switchyard and substation would consist of site clearing and grading, concrete equipment foundation forming and pouring, crane-placed electrical and structural equipment, ground grid trenching, underground and overhead cabling and cable termination, erection of equipment enclosure, and installation of all the equipment for the associated systems. For the substation facility, a fence would be constructed around the perimeter that would consist of a 8-foot-tall chain-link structure with three-strand barbed wire on top (1 foot), resulting in a total height of 9 feet.
- Operations and maintenance (O&M) facility; The O&M facilities building would be approximately 2,500 square feet and would be a pre-manufactured building (0.8–0.9 acre) on a 5-acre site. Construction of the O&M building would consist of clearing and grading the site, constructing the associated septic tank, pouring the concrete slab foundation, delivering the O&M building via a semi-truck, and placing the pre-manufactured building on the concrete slab. The facility would be enclosed by a 6-foot-tall chain-link fence with 1 foot of barbed wire on top, for a total height of 7 feet.
- Up to two permanent meteorological towers; the met towers would be no more than 361 feet (110 meters) with side guy wires spanning 300 feet from the tower on four sides. The met towers would be installed on gently sloping sites (less than 5 degree slope), with the tower laid out downwind of the baseplate. Any low-lying brush around the baseplate, guy wire areas, and anchors sites would need to be cleared to allow for safe installation of the tower(s).
- Distribution line from the existing TEP line to the substation; Distribution line would be an approximately 12-kV, single-phase line that would be made of wooden poles that are 45 feet high. The poles would span approximately 250 feet. Construction activities include site clearing and grading, excavating structure foundations, assembling and erecting structures, wire stringing, and site reclamation

Additional temporary features that will be necessary for construction include:

- three construction laydown/staging areas; total of 61 acres of temporary disturbance
- one concrete batch plant; within the disturbance of Laydown/staging areas
- high density polyethylene (HDPE) water lines; 1.5 miles of linear line within the disturbance area of access road construction.

The wind energy generating facility would encompass 18,907 acres of lands, with 15,837 acres being public lands administered by the BLM Socorro Field Office. The remaining are managed by NMSLO (1,168 acres) or by private landowners (1,902 acres).

**APE Location: Township, Range, Section**

<b>Township/ Range</b>	<b>Sections</b>
T1S, R19W	W1/2 of Sec. 10, W1/2 Sec. 15, E1/2 NE1/4, E1/2 SE1/4, SW1/4 SE1/4 of Sec. 21, W1/2 NW1/4, NE1/4 NW1/4, NW1/4 SW1/4 of Sec. 22, NE1/4, W1/2 SE1/4, E1/2 SW1/4 of Sec. 28, S1/2, S1/2 NW1/4, NE1/4 NW1/4, W1/2 NE1/4 of Sec. 33
T1S, R20W	SE1/4 SW1/4, SW1/4 SE1/4 of Sec. 34
T2S, R19W	SW1/4 NW1/4, SW1/4 of Sec. 3, Sec. 4, E1/2, S1/2 SW1/4 of Sec. 5, W1/2, S1/2 SE1/4 of Sec. 6, Sec. 7, 8, 9, 17, 18, 19, NW1/4, NW1/4 SW1/4 of Sec. 20, W1/2, NE1/4, W1/2 SE1/4 of Sec. 30
T2S, R20W	Sec. 1, 2, 3, 10, 11, 12, 13, 14, 15, E1/2 SE1/4, SW1/4 SE1/4, S1/2 SW1/4 of Sec. 16, SE1/4, S1/2 NW1/4, E1/2 SW1/4, NW1/4 SW1/4 of Sec. 17, SE1/4 NE1/4, NE1/4 SE1/4 of Sec. 18, NE1/4 NE1/4 of Sec. 20, N1/2, NE1/4 SE1/4 of Sec. 21, Sec. 22, 23, 24, 25, 26, NE1/4, N1/2 SE1/4, NE1/4 NW1/4 of Sec. 27, NE1/4, E1/2 NW1/4 of Sec. 35, NW1/4, NW1/4 NE1/4 of Sec. 36

*Table Abbreviations:* E = east; N = north; NE = northeast; NW = northwest; R = range; S = south; SE = southeast; Sec. = section; SW = southwest; T = township; W = west

*Note:* Cadastral locations are relative to the New Mexico Principal Meridian, NM



### ATTACHMENT 3: PROPERTIES IDENTIFIED IN THE APE

Site Number	Eligibility Determination	Land Status	Site Number	Eligibility Determination	Land Status	Site Number	Eligibility Determination	Land Status
LA55990	Eligible	BLM	LA192166	Not eligible	BLM	LA192209	Unevaluated	BLM
LA66745	Eligible	BLM	LA192167	Eligible	BLM	LA192210	Not eligible	BLM
LA66746	Eligible	BLM	LA192168	Eligible	BLM	LA192211	Unevaluated	BLM
LA66747	Eligible	BLM	LA192169	Not eligible	BLM	LA192212	Not eligible	BLM
LA66748	Eligible	BLM	LA192170	Unevaluated	BLM	LA192213	Unevaluated	State
LA66750	Eligible	BLM	LA192171	Not eligible	BLM	LA192214	Unevaluated	State
LA66751	Eligible	BLM	LA192172	Unevaluated	BLM	LA192215	Eligible	BLM
LA66752	Eligible	BLM	LA192173	Eligible	BLM	LA192216	Not eligible	BLM
LA68042	Eligible	Private	LA192174	Not eligible	Private	LA192217	Not eligible	BLM
LA68079	Eligible	Private	LA192175	Not eligible	BLM	LA192218	Unevaluated	BLM
LA69822	Not eligible	BLM	LA192176	Unevaluated	BLM	LA192219	Not eligible	BLM
LA71685	Eligible	BLM	LA192177	Not eligible	BLM	LA192220	Unevaluated	BLM
LA89082	Eligible	BLM	LA192178	Eligible	BLM	LA192221	Not eligible	BLM
LA112759	Unevaluated	Private	LA192179	Not eligible	BLM	LA192222	Unevaluated	BLM
LA117586	Not eligible	Private	LA192180	Unevaluated	BLM	LA192223	Eligible	BLM, Private
LA30639	Eligible	BLM	LA192181	Eligible	BLM	LA192224	Not eligible	BLM
LA130640	Eligible	BLM	LA192182	Not eligible	BLM	LA192225	Not eligible	BLM
LA161584	Eligible	BLM	LA192183	Not eligible	BLM	LA192226	Eligible	BLM
LA161586	Eligible	BLM	LA192184	Not eligible	BLM	LA192227	Unevaluated	BLM
LA161589	Eligible	BLM	LA192185	Not eligible	BLM	LA192228	Eligible	BLM
LA179807	Not eligible	BLM	LA192186	Unevaluated	BLM	LA192229	Unevaluated	BLM
LA179855	Eligible	BLM	LA192187	Unevaluated	BLM	LA192230	Not eligible	BLM
LA192145	Unevaluated	State	LA192188	Not eligible	BLM	LA192231	Unevaluated	BLM
LA192146	Not eligible	BLM	LA192189	Not eligible	BLM	LA192232	Not eligible	BLM
LA192147	Not eligible	BLM	LA192190	Not eligible	BLM	LA192233	Not eligible	BLM
LA192148	Eligible	BLM	LA192191	Eligible	BLM	LA192234	Unevaluated	BLM
LA192149	Not eligible	BLM	LA192192	Unevaluated	BLM	LA192235	Unevaluated	Private
LA192150	Not eligible	BLM	LA192193	Unevaluated	BLM	LA192236	Eligible	Private
LA192151	Eligible	BLM, Private	LA192194	Not eligible	BLM	LA192238	Unevaluated	Private
LA192152	Not eligible	BLM	LA192195	Not eligible	BLM	LA192239	Unevaluated	Private
LA192153	Unevaluated	Private	LA192196	Eligible	Private	LA192240	Eligible	BLM
LA192154	Not eligible	BLM	LA192197	Not eligible	Private	LA192241	Eligible	BLM
LA192155	Not eligible	BLM	LA192198	Not eligible	Private	LA192242	Not eligible	BLM
LA192156	Not eligible	BLM	LA192199	Not eligible	Private	LA192243	Unevaluated	BLM
LA192157	Not eligible	BLM	LA192200	Eligible	BLM, P	LA192244	Unevaluated	BLM
LA192158	Not eligible	BLM	LA192201	Unevaluated	State	LA192245	Unevaluated	BLM
LA192159	Not eligible	BLM	LA192202	Eligible	BLM	LA192246	Unevaluated	BLM
LA192160	Eligible	BLM	LA192203	Eligible	BLM	LA192314	Unevaluated	BLM
LA192161	Unevaluated	BLM	LA192204	Unevaluated	BLM	LA192315	Unevaluated	BLM
LA192162	Not eligible	BLM	LA192205	Eligible	BLM	HCPI 45511	Unevaluated	BLM, State, Private
LA192163	Not eligible	State	LA192206	Eligible	BLM	HCPI 45512	Unevaluated	BLM, Private
LA192164	Eligible	BLM	LA192207	Unevaluated	BLM	HCPI 45513	Not eligible	BLM, Private
LA192165	Not eligible	BLM	LA192208	Unevaluated	BLM	HCPI 45514	Unevaluated	Private

#### **ATTACHMENT 4: DEFINITIONS FOR TERMS USED IN THIS PA**

**Adverse Effect** – Alteration of the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places (36 CFR §800.5(a)(1-2)).

**Area of Potential Effects (APE)** – The geographic area or areas within which an undertaking may cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR §800.16(d)).

**Consultation** – The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matter that arise in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

**Consulting Party** – Any party that has participated in the development of this PA and has indicated intent to participate in consultations during its implementation either by signing in concurrence or by written notification to the Agency Official. The refusal of any party invited to sign the PA, other than the Signatories, does not invalidate the PA. Consulting Parties include: Signatories, Invited Signatories, Concurring Parties, and tribes who have indicated to the BLM that they have interest in the APE.

**Signatory** – Parties who have legal or financial responsibilities for completions of stipulations of the PA. The signatories have sole authority to execute the PA, and together with the invited signatories, to amend or terminate the PA.

**Invited Signatory** – The authorized official may invite additional parties to sign the PA and upon signing, they have the same rights with regard to amendments and termination as the signatories. These parties have legal responsibility in terms of the Undertaking, such as the issuance of a permit, license or ROW, and they have a compliance responsibility under the NHPA or a state cultural resource statute.

**Concurring Party** – A party who signs this PA, and concurs with the measures within but is not legally or financially responsible for completion of stipulations set forth in the PA.

**Construction and Reclamation**– The construction phase begins when BLM has issued a ROW grant to the proponent for the Undertaking. It includes all activities related to construction of the Undertaking, including activities required to be completed in advance of construction, as well as all activities completed in order to reclaim lands disturbed during construction for two years after construction is completed or until cost recovery agreements related to construction expire.

**Cultural Resource** – Any location of human activity, occupation, or use identifiable through field inventory, historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, landscapes, buildings, structures, objects, and places that possess historic and/or cultural significance as well as places with important public and scientific uses, and may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups. Cultural resources may be but are not necessarily eligible for the NRHP; these properties have not been evaluated for NRHP eligibility.

**Cultural Resource Consultant/Contractor (CRC)** – A qualified and permitted professional consultant in cultural resources (archaeologist, historian, ethnographer, historic architect, architectural historian, or anthropologist) who is responsible for implementing cultural resource inventories and who prepares cultural resource documents, reports, analysis, records, and professional literature. CRCs must meet the Secretary of the Interior's Professional Qualification Standards and hold appropriate permits from land managing agencies.

**Cultural Resource Inventory (from H-8100-1):**

**Class I** – Existing data inventory: Large-scale review of known cultural resource data

**Class II** – Sampling field inventory: Sample oriented field inventory

**Class III** – Intensive field survey: A complete surface inventory of a specific area involving a systematic field examination of an area to gather information regarding the number, location, condition, distribution, and significance of cultural resources present, typically requiring a systematic pedestrian review of an area with transect intervals that shall not exceed 50 feet (15 meters).

**Decommissioning** – The action in which the Windfarm and/or related facilities such as substations are taken out of commission (cease to operate) and are physically dismantled

**Discovery** – A previously unknown cultural resource identified in the APE during construction, subsequent to the Class III Inventory.

**Effects** are alterations to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP.

**Construction effects** are caused by the Undertaking during construction and include all areas likely to be affected by the construction activities.

**Visual effects** are also caused by the Undertaking and are effects that are visual for a set distance of the Undertaking that could diminish the integrity of historic properties.

**Cumulative effects** are the impacts on cultural resources which results from the incremental impact of the Undertaking when added to other past, present and reasonably

foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions [per 40.CFR § 1508.7]. Cumulative effects may be construction or visual effects and result from incremental effects related to the Undertaking over time (e.g. increased access because of new roads, or new projects feeding into the Undertaking, etc.). Additional roads and visitors to the area (construction personnel, recreationists, etc.) also increase opportunities for effects from pot hunting, vandalism of historic properties, and disruption of spiritually important sites.

**Eligible** (for Inclusion in the National Register) – Includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria as determined by the Federal Agency in consultation with the SHPO/THPO and other consulting parties.

**End of Fieldwork (EOF) Report** – A document that summarizes results of fieldwork related to treatment activities undertaken on an individual historic property for the purposes of informing the agency and Consulting Parties for the purposes of gaining approval for the Undertaking to go forward prior to the acceptance of the final Treatment Report.

**Historic Property** – Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

**Historic Property(ies) Treatment Plan (HPTP)** – A document that details the procedures and techniques for resolving adverse effects to historic properties through avoidance, minimization, and/or mitigation

**Indian Tribe** – Any Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 USC 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Integrity** – Refers to location, design, setting, materials, workmanship, feeling and association as defined in 36 CFR Part 60.

**Interested tribal members** – Tribal members who have identified themselves either as individuals or a group, through consultations with the BLM or through the THPO or the tribal member designated to participate in consultations concerning this Undertaking, as being interested in attending field inspection visits with the BLM and/or the CRC.



**Inventory Report** – The inventory report documents the results of the cultural resources inventory detailing the areas surveyed, the methodologies used, the cultural framework of the APE and the cultural resources discovered and documented. It also provides recommendations on National Register eligibility of all of the cultural resources within the inventoried area and assessments of effects within the APE of the Undertaking.

**Monitoring and Discovery Plan** – The Monitoring and Discovery Plan is a component of the HPTP and (1) provides a detailed plan to monitor compliance with stipulations of the HPTP to avoid, minimize, or mitigate adverse effects of the Undertaking, (2) may include specific plans where monitoring is necessary to help resolve adverse effects to historic properties, (3) establishes procedures to follow in the event that previously undiscovered cultural resources are encountered during the Undertaking, and (4) includes a Plan of Action (POA) developed specifically to address the handling of human remains pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA) and applicable state laws. All monitoring plans shall explicitly state the objectives of the monitoring and provide a methodology for attaining these objectives.

**Monitoring Report** – A document that summarizes the results of monitoring activities performed as outlined within the HPTP.

**NAGPRA Plan of Action (POA)** – A written document that establishes procedures for ensuring the proper treatment of Native American remains and related grave goods encountered on Federal lands pursuant to 43 CFR Part 10, the Native American Graves Protection and Repatriation Act.

**National Register of Historic Places** – The official list of the Nation's prehistoric and historic places worthy of preservation including districts, cultural resources, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture and is maintained by the Secretary of the Interior.

**National Register Criteria** – The criteria of significance established by the Secretary of the Interior for use in evaluating the eligibility of properties for inclusion in the National Register of Historic Places (36 CFR Part 60).

**Operation and Maintenance** – Activities associated with operation and maintenance of the authorized ROW grant over the life of the Right-of-Way (ROW) grant. This includes all activities related to the functioning of the Undertaking after construction and reclamation are completed and prior to any activities related to decommissioning of the Undertaking, per Stipulation XIV. Activities during this time are generally infrequent, predictable, and routine. Any actions not specifically approved in the ROW grant, such as changes in equipment used or actions outside the authorized ROW require approval of the BLM.

**Plan of Development (POD)** – The Final POD is a BLM approved document that will be an enforceable term and condition as part of the BLM’s ROW grant. Contributors in the development of the Final POD prior to construction will include New Mexico State Land Office. The New Mexico surface managing agencies will be responsible for developing and enforcing their respective stipulations as they deem necessary to mitigate natural and cultural resource impacts on state administered lands. Should New Mexico agencies choose to adopt the terms, conditions, and special stipulations as outlined in the Final POD on authorized rights-of-ways, responsibility to enforce these Final POD terms, conditions, and stipulations is strictly their sole responsibility. Enforcement will be between the state agency and the applicant.

**Programmatic Agreement (PA)**– A document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex project or other situations in accordance with 36 CFR § 800.14(b).

**Reclamation** – The activities necessary to restore lands disturbed by construction to as close to a pre-construction condition as possible. This may include ripping and re-seeding temporary access roads, staging areas and associated facilities.

**Right-of-Way (ROW)** – The public lands BLM authorizes to use or occupy under a grant. The PA and the HPTP are appended to the POD which is an essential component of the ROW grant. The area included in the ROW grant will be the authorized ROW for the Undertaking.

**Section 106** – Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by the ACHP. Revised regulations, "Protection of Historic Properties" (36 CFR Part 800), became effective August 5, 2004.

**State Historic Preservation Officer (SHPO)** – The official appointed or designated pursuant to section 101(b) (1) of the act to administer the State Historic Preservation Program or a representative designated to act for the State Historic Preservation Officer.

**State Lands of New Mexico** - Lands owned, operated or controlled by departments, agencies, institutions or political subdivisions of the state of New Mexico.

**Termination and Reclamation Plan** – A document that addresses the removal of project facilities from permitted areas and addresses reclamation procedures identified by land management agencies in conjunction with project owners, prior to decommissioning.

**Treatment Report** – A document that presents the complete results of the treatment activities performed on all historic properties (and any undetermined cultural resources for which

additional studies were performed to determine eligibility), addresses the research questions developed in the Treatment Plan and synthesizes the results into a regional overview of the APE.

**Tribal Historic Preservation Officer (THPO)** – the tribal official appointed by the tribe’s chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d) (2) of the NHPA.

**Undertaking** – A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval. The Undertaking may include surveys, geotechnical testing, engineering, mitigation planning and design, or other activities initiated prior to construction of project facilities.

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