



**NEW MEXICO ARCHEOLOGICAL COUNCIL**  
P.O. Box 25691, Albuquerque, NM 87125

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**RE: Scoping Comments on the Notice of Intent to Prepare A Draft Environmental Impact Statement for Roca Honda Resource's Plan of Operations**

Dear Ms. Tafoya,

Thank you for extending the comment period for the scoping phase of the Environmental Impact Statement (EIS) for Roca Honda's proposal to develop an underground uranium mine, with associated surface facilities, on Mount Taylor. The project area is located within the Mount Taylor Traditional Cultural Property (TCP). This property is eligible for listing to the National Register of Historic Places (National Register) under criteria A, B, and D.<sup>1</sup> The State of New Mexico also listed the Mount Taylor TCP (with slightly larger boundaries) in the State Register of Cultural Properties. The New Mexico Archeological Council (NMAC) is pleased to be a part of this process, and we welcome the opportunity to express our concerns and offer suggestions regarding the proposed Plan of Operations for the Roca Honda mine.

NMAC is a nonprofit organization whose purpose is to maintain and promote the goals of professional archaeology in the State of New Mexico. These goals include promoting awareness of New Mexico's cultural resources among public agencies, corporations, and members of the public. The majority of our membership consists of professional archaeologists who are permitted to conduct archaeological studies on state lands and on federal lands subject to the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). Our members have extensive knowledge related to the archaeology of the proposed project area as well as expertise in agency compliance with NEPA and NHPA. NMAC and its members have an interest in ensuring that the Forest Service complies with Section 106 of the NHPA as a means of protecting Mount Taylor and other historic properties from potential adverse effects from uranium mining on Forest Service land.

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<sup>1</sup> See Mt. Taylor TCP Determination of Eligibility for the National Register of Historic Places, available at <http://www.nmhistoricpreservation.org/documents/cprc/MtTaylorAttachment5.pdf>.

At this early stage of project planning, NMAC strongly urges the Forest Service to initiate the Section 106 process immediately because the proposed Roca Honda mine has the potential to adversely affect the Mount Taylor TCP (see 36 C.F.R. § 800.1(c)). Pursuant to the NHPA implementing regulations, 36 C.F.R. §§ 800.2(c)(5), 800.3(f), NMAC requests consulting party status in the Section 106 process for the Roca Honda mine.

The Forest Service also must comply with the applicable provisions of the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA). NMAC's specific concerns are as follows.

**I. THE FOREST SERVICE MUST ADEQUATELY IDENTIFY HISTORIC PROPERTIES IMPACTED BY THE PROPOSED PROJECT AND EVALUATE DIRECT, INDIRECT, AND CUMULATIVE IMPACTS ON THOSE PROPERTIES.**

**A. The Forest Service Must Define an Area of Potential Effects for the Project That Extends Beyond the Project Footprint.**

The Forest Service must document an “area of potential effect” (APE) for the Roca Honda Project and make a “reasonable and good faith effort” to identify historic properties. 36 C.F.R. § 800.4(a)(1), (b)(1). The APE must include all of the areas where the project may directly or indirectly affect historic properties. *Id.* § 800.16(d). Furthermore, the Forest Service must develop the APE in consultation with the tribes, as well as with the New Mexico State Historic Preservation Officer (SHPO). 36 C.F.R. § 800.4(b).

The Forest Service must define the APE broadly to account for the areas within the TCP where the project may directly and indirectly affect resources that contribute to the property's eligibility for the National Register. The Forest Service must also identify any areas within the TCP where traditional cultural activities, such as plant gathering or religious pilgrimages, may be affected by the project and also include those areas in the APE. Taking this broad-scale approach to the APE does not mean that the Forest Service must necessarily intensively survey the entire APE. At this early stage in the planning process, a broad-scale APE will allow the Forest Service to identify the areas inside and outside of the project area where the project may directly or indirectly affect shrines, springs and other resources that contribute to the TCP's eligibility.

With respect to surveys, the Forest Service must ensure that Roca Honda surveys all of the areas proposed for surface disturbance by mining and mine-related activities. To date, Roca Honda has conducted a very limited archaeological survey of the project area, and found that only one site eligible for the National Register would be directly impacted by the mine construction.<sup>2</sup> The Forest Service, in consultation with the tribes and SHPO, should identify additional areas outside of the project area where resources may be affected by the mine.

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<sup>2</sup> See

[http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/MK025RN\\_20091120\\_Roca\\_Honda\\_Baseline\\_Data\\_Section11\\_Historic\\_Places\\_and\\_Cultural\\_Properties.pdf](http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/MK025RN_20091120_Roca_Honda_Baseline_Data_Section11_Historic_Places_and_Cultural_Properties.pdf)

B. The Forest Service Must Make Every Effort to Identify Cultural Properties within the APE Early in the NEPA/NHPA Process.

NMAC encourages the Forest Service to begin tribal consultation sufficiently early in the planning process so that tribes can assist the agency in identifying historic properties in the APE. When a federal agency proposes an undertaking, the NHPA requires the agency to “take into account the effect of the undertaking on any [property] that is included in or eligible for inclusion in the National Register [of Historic Places]” (16 U.S.C. § 470f). This statutory obligation requires the federal agency, in consultation with the SHPO, to identify whether any listed or eligible historic properties are present in the proposed activity area. Section 106 provides several means for identifying historic properties, including the requirement that the agency “[g]ather information from any Indian tribe. . . identified pursuant to § 800.3(f)<sup>3</sup> to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and be eligible for the National Register” (36 C.F.R. § 800.4[a][4]). Thus, consultation with Native American tribes to identify historic properties *must* be performed prior to agency action. Failure to do so could result in the agency not identifying all possible historic properties affected by the undertaking, resulting in subsequent destruction of those properties.

For the Mount Taylor TCP, the Forest Service must identify the areas inside and outside of the project area where the project may directly or indirectly affect shrines, springs and other resources that contribute to the TCP’s eligibility, and do so in consultation with the tribes and SHPO. That some of these resources are located outside of the project area (or even well outside of the project area) does not negate or limit the Forest Service’s legal duty to take them into account during the Section 106 process. Consultation with the tribes is critical at this step in the Section 106 process, since the location of certain contributing resources is known only to the tribes (or certain tribal members)

Using a landscape-level APE will allow the Forest Service to identify other potential landscape-level historic properties that may be adversely affected by the project. First, the bust and boom nature of uranium mining is an historic preservation theme such that uranium mining sites, buildings, structures and objects now have significance in their own right and should be analyzed for inclusion in an historic Uranium Mining District or multiple properties nomination. The regulation of uranium mining in the 20<sup>th</sup> Century is linked to the significance of the uranium mining-related historic properties in the region and an historic context needs to be developed to assess the National Register eligibility of these properties in the area of indirect effects in the region.

Furthermore, de-watering of the proposed mine could have impacts on both water quality and quantity in the landscape. If surface water supplies outside the project area are adversely affected, this would also be an adverse effect on historic properties because it would limit ability to understand relationships of historic properties to water quantity and quality in the past. The Forest Service needs to analyze and assess indirect effects of dewatering on the setting of eligible historic properties.

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<sup>3</sup> 36 C.F.R. § 800.3(f) states that “the agency official *shall* identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process” (emphasis added). This section applies to undertakings that are not located on tribal lands.

C. The Forest Service Must Evaluate Direct, Indirect, and Cumulative Impacts on Historic Properties in the APE as Required by NEPA.

All NEPA analyses—EISs and EAs—must analyze alternatives to the proposed action as well as the direct, indirect, and cumulative impacts associated with the proposed action. *See* 42 U.S.C. § 4332(2), 40 C.F.R. § 1508.9. The NEPA regulations define cumulative impacts as:

the impacts on the environment which results from the incremental impact of the action 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. Even if the impacts of Roca Honda’s mining activities appear minimal, they may be significant when added to existing and future mining and other energy development activities. *See Utah Env’tl Congress v. Richmond*, 483 F.3d 1127, 1140-41 (10th Cir. 2007) (NEPA recognizes that significant environmental impacts “can result from individually minor but collectively significant actions taking place over a period of time”).

A legally adequate discussion of the cumulative effects of uranium mining and other projects requires the Forest Service to disclose, analyze, and consider:

- a detailed catalog of past present and future projects;
- the time, type, place, and scale of past projects;
- how these projects, and differences between the projects, are thought to have impacted historic properties and explain in sufficient detail how different project plans and methods affected historic properties; and,
- analyze the impact of the Roca Honda project in light of that project’s interaction with the effects of past, current, and reasonably foreseeable future projects on historic properties.

Therefore, the Forest Service cannot consider Roca Honda’ proposal in isolation. The agency is required to “give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum.” *Grand Canyon Trust v. FAA*, 290 F.3d 339, 342 (D.C. Cir. 2002).

**II. THE DRAFT EIS MUST CONTAIN A REASONABLE RANGE OF ALTERNATIVES, INCLUDING A “NO ACTION” ALTERNATIVE.**

The discussion of “alternatives to the proposed action” is the heart of the NEPA process. 42 U.S.C. § 4332(C)(iii) & (E) and 40 C.F.R. § 1502.14. This discussion includes consideration of a “no action” alternative. 40 C.F.R. § 1502.14(d). Consideration of alternatives is intended to provide “a clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14. Federal agencies are “required to rigorously explore all reasonable alternatives to the

proposed action in comparative form, and give each alternative substantial treatment” in the NEPA analysis. *Colorado Env'tl. Coalition v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999).

The Forest Service is considering three “possible alternatives” in the Draft EIS: (1) a “no action” alternative; (2) the proposed action; and (3) the proposed action as modified by “stipulations necessary to protect non-mineral resources of the area.” NMAC fully supports the Forest Service’s decision to consider a “no action” alternative in the Draft EIS. Not only is such an alternative required by NEPA, but it is also fully consistent with the Forest Service’s duty to reject “unreasonable” plans of operation. NMAC looks forward to helping the Forest Service develop for the Draft EIS additional alternatives to the proposed action once all eligible historic properties have been identified and their impacts assessed.

### **III. THE PROJECT MUST BE CONSISTENT WITH THE CIBOLA NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLAN.**

The National Forest Management Act (NFMA) directs the Forest Service to prepare and implement comprehensive land management plans for each national forest. 16 U.S.C. § 1604(b). NFMA prohibits the Forest Service from taking action inconsistent with these plans. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.8(e) (“Projects and activities must be consistent with the applicable plan”). *See also, Utah Env'tl. Congress v. Richmond*, 483 F.3d 1127, 1135 (10th Cir. 2007) (“To be sure, the Forest Service is required to comply with existing forest plans.”). The Cibola National Forest’s land management plan contains several standards and guidelines that require the Forest Service to identify and protect cultural resources. The Forest Service must use these standards and guidelines in its analysis of impacts to historic properties and to develop alternatives that will be protective of historic properties in the the even the No Action alternative is not selected.

#### Conclusion

We urgently recommend that the Forest Service should conduct landscape-level identification and analysis of historic properties within the greater Mount Taylor TCP. Reliance on archaeological surveys of the mine footprint will not provide adequate information about historic properties present in unsurveyed areas within the boundaries of the Mount Taylor TCP nor will such surveys constitute adequate analysis of impacts to the Mount Taylor TCP from mining activities. Furthermore, the proposed project could result in adverse impacts to other eligible historic properties on the greater landscape that cannot be mitigated after the fact. NMAC strongly urges the Forest Service to initiate the Section 106 process immediately and begin consultation with tribes, SHPOs, local communities, and other interested parties in order to identify the area of potential effect for the project and the level of investigatory effort necessary to ensure that historic properties are identified within the project area so that these data can guide the Forest Service in development and analysis of alternatives.

Please include the following persons from NMAC in your distribution list for public notices of any meetings and for circulation of any documents for public comment. All correspondence should be sent to:

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Thank you,

/s/ Doug Dykeman  
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