

Hon. Sara C. Bronin
Chair

Jordan E. Tannenbaum
Vice Chairman

Reid J. Nelson
Executive Director



October 17, 2024

Ms. Tracy Stone-Manning
Director
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Ref: *Lava Ridge Wind Project*
Jerome, Lincoln, and Minidoka Counties, Idaho
ACHP Project Number: 016353

Dear Director Stone-Manning:

In accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) (NHPA) and its implementing regulations, “Protection of Historic Properties” (36 CFR Part 800), I am writing to convey to you the final comments of the Advisory Council on Historic Preservation (ACHP) regarding the Lava Ridge Wind Project. On September 6, 2024, the ACHP terminated consultation under 36 CFR § 800.7(a), having determined that further consultation would not be productive. In accordance with 36 CFR § 800.7(c), the ACHP is providing these comments, which must be considered and responded to before a final decision is made regarding the undertaking.

Undertaking Description

The undertaking subject to review and consultation under Section 106 in this case is the Lava Ridge Wind Project, a large-scale renewable energy project proposed by Magic Valley Energy, LLC (MVE), involving the construction and operation of up to 241 wind turbines across approximately 104,000 acres of land managed by the Bureau of Land Management (BLM) in Jerome, Lincoln, and Minidoka counties, Idaho. In addition to the construction of the wind turbines, a 500-kilovolt generation intertie transmission line, access roads, substations, and a battery energy storage system would also be constructed as part of the project. The transmission line would interconnect with a substation within the right-of-way (ROW) corridor of the northern part of the Southwest Intertie Project. The project footprint includes BLM-managed lands characterized by open, rural landscapes, with the wind turbines designed to reach heights of up to 660 feet. The ROW for the project would traverse a mix of federal, state, and private lands. The undertaking spans the life of the wind project, which includes the construction, operation, decommissioning, and final reclamation of the site, and will last approximately 36 years. Because the undertaking will occur on lands managed by BLM, compliance with Section 106 is required.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

Historic Properties and Effects

BLM conducted an initial effort to identify properties potentially eligible for listing on the National Register of Historic Places (NRHP) and evaluate the potential effects of the undertaking on these properties. The Area of Potential Effects (APE) was divided into two components to account for the different types of impacts: the Physical APE to account for the undertaking's physical disturbances, and the Non-Physical APE, to consider the undertaking's visual effects on properties of historic significance.

The Physical APE captures the potential physical effects associated with the construction, operation, and decommissioning of the project infrastructure, such as wind turbines, access roads, substations, and transmission lines. It consists of an approximately 84,375-acre area within which 9,111 acres of physical project disturbances could occur. Surveys conducted to date within the Physical APE identified 147 cultural resources, including archaeological sites, historic districts, and Traditional Cultural Places (TCPs), 56 of which were determined to be eligible for listing in the NRHP.

The Non-Physical APE accounts for the undertaking's visual effects. It consists of a 20-mile-wide corridor through which the undertaking's turbines and transmission lines run, covering approximately 1,809,080 acres. The Physical APE and its cultural resources are fully encompassed within the boundaries of the Non-Physical APE. The Non-Physical APE includes the properties within the Physical APE resulting in 1,599 identified cultural resources, including 106 NRHP-listed properties, 291 NRHP-eligible properties, and hundreds more properties contributing to historic districts or awaiting evaluation.

Of the many historic properties within the APE, BLM determined there would be adverse effects to the Minidoka National Historic Site and Wilson Butte Cave early in consultation. BLM also acknowledged other historic properties could be potentially affected, but the historic significance of such properties was not fully evaluated and the effects to such properties could not be fully assessed prior to the approval of the undertaking due to the size of the APE.

The Minidoka National Historic Site, listed on the NRHP and managed by the National Park Service (NPS), commemorates the forced incarceration of more than 13,000 Japanese Americans during World War II. The site's historical significance is closely tied to its surrounding landscape, and its integrity of setting, feeling, and association provides visitors with an immersive, reflective experience essential to understanding the profound injustice that took place there. Through consultation, BLM determined the undertaking would diminish the site's integrity of setting, feeling, and association with the surrounding landscape.

Human activity in and around the Wilson Butte Cave, also listed on the NRHP, dates back more than 12,000 years, and the cave and its surroundings are considered a historic property of religious and cultural significance for numerous Indian Tribes, including the Northwestern Band of the Shoshone Nation, Shoshone Bannock Tribe of Fort Hall, and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation. These Tribes expressed concern about the undertaking's effects both on the landscape associated with the historic property and on other sites within the APE, including sacred sites that are integral to their cultural and spiritual practices.

The Section 106 Process

The Section 106 consultation process for the Lava Ridge Wind Project was initiated in February 2020, following MVE's ROW application to BLM. Due to the scale of the project and the timeline for completing the Record of Decision under the National Environmental Policy Act (NEPA) and making a decision on the ROW authorization, BLM determined that a Programmatic Agreement (PA) was necessary to fulfill its Section 106 responsibility for the Project and take into account the potential effects

on historic properties. BLM notified the ACHP of the proposed PA in December 2020. The ACHP elected to participate in the consultation on January 25, 2021.

BLM had a consultation meeting in early 2021, which included the Idaho State Historic Preservation Officer (SHPO), the ACHP, NPS, MVE, Tribal Nations, and other consulting parties, including community organizations. Initial discussions focused on strategies for assessing visual and physical effects on historic properties. In May and June 2021, BLM hosted workshops on establishing the APE, which included a site visit to Wilson Butte Cave and Minidoka National Historic Site to evaluate the potential visual impacts the undertaking might have. The parties reached a consensus on a 20-mile Non-Physical APE. During this time, BLM, the SHPO, and the ACHP discussed what level of identification effort would constitute a reasonable and good faith effort to identify historic properties.

Throughout 2021 and 2022, BLM hosted multiple consultation meetings to discuss the identification results, effects assessments, and scheduling development of relevant components in the Draft Environmental Impact Statement (DEIS) being prepared under NEPA. In mid-2022, disagreements between BLM and the SHPO arose regarding how the SHPO would participate in the review of the Historic Property Management Plans (HPMPs) and Historic Property Treatment Plans (HPTPs) that were proposed in the drafting of the PA. The ACHP provided extensive comments on the draft PA, including sections on dispute resolution and termination procedures, in an effort to resolve the disagreements. Through subsequent consultation and in response to public comments, BLM modified its Preferred Alternative in the Final Environmental Impact Statement (FEIS) to reduce resource impacts, including effects to historic properties, through relocating proposed wind turbines to 9.5 miles away from the Minidoka National Historic Site, reducing the total number of turbines by 40 percent, and reducing the height of turbines by 80 feet.

Concurrent with the modified Preferred Alternative in the FEIS, BLM also proposed the inclusion of processes within the draft PA to minimize effects to historic properties; however, consulting parties continued to raise concerns regarding the effects of the undertaking. Consulting parties also questioned the adequacy of proposed mitigation strategies, emphasizing the cultural and spiritual significance of the affected sites, which they asserted could not be fully addressed through deferred identification efforts or phased mitigation planning as was proposed in the draft PA.

In 2024, NPS and the SHPO requested that BLM revise the draft PA to require concurrence from NPS and the SHPO on the development of the HPMP and the HPTPs before BLM could issue notices to proceed to MVE to begin various portions of the undertaking. BLM revised the PA in response to the requests and provided it to the Signatories for execution on June 7, 2024.

On August 9, 2024, the SHPO terminated its participation in the Section 106 consultation process, citing overwhelming public opposition to the undertaking. In communicating its decision, the SHPO acknowledged the undertaking's broad impact on cultural and historic resources and noted that its termination was not due to procedural errors by BLM in the Section 106 process. In accordance with section 800.7(a)(2) of the Section 106 implementing regulations, BLM asked the ACHP to execute the PA as a two-party agreement. On September 6, 2024, the ACHP declined to execute a two-party agreement and terminated consultation, citing the inability of the ACHP to appropriately resolve the undertaking's adverse effects to historic properties. The ACHP could not replace the role of the SHPO to provide localized expertise that would be needed to implement the draft PA over the span of several decades.

To inform the development of these comments to you, the ACHP solicited input from consulting parties and the public. The ACHP received more than 200 comments regarding the proposed undertaking and its potential effects to historic properties from consulting parties and members of the public. The ACHP

submits the following findings and recommendations to you for your consideration in making your final decision on this undertaking.

Findings

The ACHP acknowledges BLM's determination that the undertaking's purpose and need—to create a renewable energy source that addresses the climate crisis—is valid.

BLM has stated that the Federal Land Policy and Management Act requires the agency to manage public lands for multiple uses and authorizes BLM to issue ROW grants on public lands for systems for generation, transmission, and distribution of electric energy. BLM has also stated that the undertaking is consistent with the Administration's goals of addressing the climate crisis more directly, and the need to utilize renewable energy.

The Minidoka National Historic Site and Wilson Butte Cave are significant historic properties that would be adversely affected by the undertaking.

BLM has recognized, and the ACHP agrees, that Minidoka National Historic Site and the Wilson Butte Cave are nationally significant historic properties. Organizations like the Friends of Minidoka, Densho, and the Japanese American Citizens League, submitted comments stating that the wind turbines, even with setback measures, would dominate the landscape and minimize the trauma and loss suffered by American citizens based solely on racial discrimination. Comments from the National Association of Tribal Historic Preservation Officers emphasize that the Shoshone-Bannock and Shoshone-Paiute Tribes consider the cave a critical property of religious and cultural significance, and the proposed setback is insufficient to mitigate the visual and auditory impacts on the cave. BLM correctly applied the criteria of adverse effect to these historic properties. At the same time, it is important to note that in developing the PA, BLM recognized that numerous other historic properties, significant within the state and region, could also be adversely affected in addition to the Minidoka National Historic Site and Wilson Butte Cave, and many commenters asserted as much, as well.

BLM consulted in good faith to consider the undertaking's effects on historic properties, and the consultation process helped to lessen the potential adverse effects to historic properties that would result from the proposed project.

As originally proposed by MVE, the undertaking would have covered 197,474 acres and included up to 400 turbines at a maximum height of 740 feet. Through BLM's consultation efforts following the publication of the DEIS, a new alternative was developed that reduced the undertaking to consist of up to 240 turbines with a maximum height of 660 feet, covering 103,864 acres. In addition, the proposed location of the turbines included a setback to approximately 9.5 miles from Minidoka National Historic Site. BLM worked to include considerations to comments made by consulting parties within the PA. Accordingly, the undertaking's potential effects to historic properties were substantially reduced by the proposed selection of the Preferred Alternative. Although the wind turbines would still be visible from Minidoka, the turbines would appear substantially smaller in size than under the previous plan.

Due to the undertaking's large scale of impact to historic properties and high level of public interest, the BLM Field Office would have benefited from additional expertise in managing this consultation.

Complex, large-scale projects such as the Lava Ridge Wind Project benefit from having access to Tribal liaisons, experienced Section 106 practitioners, and those knowledgeable in Tribal consultation in addition to numerous disciplines, such as landscape architecture and cultural anthropology. This undertaking has the potential to cause effects on multiple types of significant historic properties, including

archaeological sites, historic districts, landscapes, TCPs, and numerous other property types.

Undertaking Recommendations

If BLM chooses to proceed with the undertaking as described, it should commit to carrying out mitigation measures as proposed in the draft PA.

If BLM decides to proceed with the undertaking as described, the ACHP recommends that BLM commit to implementing terms proposed in the draft PA as much as practicable, including but not limited to the phased identification process and the development of the HPMP and the HPTs, in cooperation with MVE. BLM should invite those parties that participated in the consultation to participate in these steps. These terms could be incorporated into the final Record of Decision and/or as part of other agreements made with MVE or other parties. Although the SHPO terminated consultation, the ACHP would recommend that BLM share the results of its identification efforts with the SHPO and interested Tribes, so state and Tribal databases could be kept up-to-date and so that there is the possibility of the SHPO and interested Tribes further informing BLM on identified properties. The ACHP further recommends BLM continue to engage with MVE, Tribes, and other parties who participated in the consultation over the life of the project to continue to evaluate and seek ways to minimize adverse effects to historic properties as new wind technologies become available.

BLM should evaluate how its Field Offices could obtain more timely guidance and support for controversial or challenging Section 106 consultations.

BLM should allocate resources to incorporate dedicated staff for identifying and supporting complex Section 106 reviews early in the project planning process. This would strengthen the agency's ability to carry out the review and consultation process, including consultation with Tribes and early coordination with communities that may ascribe significance to historic properties that could be affected. This is particularly salient given that more projects of this size are already in the federal permitting pipeline, and more are likely to be proposed in response to the climate crisis. Such resources could include providing project-specific consultation support, including, but not limited to, additional staffing in other disciplines in addition to archaeology, staff with experience in similar types of cases, facilitation and liaison support, and funding for travel to assist consulting party attendance at meetings. In addition, the early engagement of BLM Headquarters could allow for the conveyance of best practices and lessons learned from other similar consultations within the agency and across the country. BLM should leverage its existing network of heritage professionals to create a mechanism to direct knowledge, support, and resources to individual Field Offices when a controversial or challenging Section 106 consultation is identified.

Conclusion

Section 800.7(c)(4) of the Section 106 regulations requires you, as the head of the agency, to take these comments into account in reaching a final decision on the undertaking. As stated in Section 110(l) of the NHPA (54 U.S.C. § 306114), you may not delegate this responsibility. A summary of your decision regarding the undertaking that contains the rationale for the decision and evidence of consideration of the ACHP's comments must be provided to the ACHP prior to the final decision on the undertaking and shared with the Section 106 consulting parties and the public.

The NHPA requires that the federal government exercise leadership in the preservation of the nation's irreplaceable cultural heritage. In that spirit, I hope you will consider these recommendations as a productive path forward.

I look forward to your response.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Sara C. Bronin', with a stylized, flowing script.

Sara C. Bronin
Chair