



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

BID PACKET OUTLINE

Long-Term Solar Energy Lease Number ES-0199
Sandoval County, New Mexico

THIS BID PACKET CONTAIS THE FOLLOWING EXHIBITS:

1. BID INFORMATION SHEET
2. NOTICE OF PUBLIC AUCTION
3. SOLAR ENERGY LEASE ES-0199
4. BID APPLICATION AND QUALIFICATION FORM
5. LIST OF ENCUMBRANCES
6. NMSLO RULE 9 (19.2.9 NMAC) BUSINESS LEASING
7. SEALED BID FORM
8. MAP



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

EXHIBIT 1: BID INFORMATION SHEET

Long-Term Solar Energy Lease Number ES-0199
Sandoval County, New Mexico

I. GENERAL INFORMATION.

The New Mexico Commissioner of Public Lands (the “Commissioner”) will accept sealed bids seeking the highest bid for a long-term solar energy lease, ES-0199 (the “Lease”), for a renewable energy (solar power) facility, which must conform to any and all restrictions and reservations in the Lease, and all applicable laws and rules including but not limited to 19.2.9.1- 19.2.9.21 NMAC. ES-0199 is for 80 ± acres of state trust lands located in Sandoval County, New Mexico. The Lease will permit a renewable energy (solar power) facility, subject to all environmental requirements and all other restrictions and reservations of record. This bid information sheet is part of a bid packet, and describes the state trust lands offered for lease under ES-0199 and some of the principal terms of this Lease. It also describes the qualifications required and the process by which qualified persons or entities may bid on the Lease. The entire bid packet should be reviewed before submitting a bid.

II. DESCRIPTION OF THE LAND OFFERED FOR LEASE. The land is offered only as a single parcel of 80 ±, and is described as follows (the “Land”):

Township, Range, Section	Subdivision	Acreage
13N03E16	NE4NW4	40
13N03E16	NW4NW4	40
Total Acreage: 80 acres, more or less		

- A. Location: The property is located approximately 5.66 miles west of Bernalillo, New Mexico.
- B. Known Encumbrances: See Bid Packet, Exhibit 5: List of Encumbrances on State Trust Lands.
- C. Inspection of the Land: Permission from the Commissioner is required to access and inspect the Land. Please contact the New Mexico State Land Office (“NMSLO”), Office of Renewable Energy for information on obtaining a permit at (505) 827-5724 or visit the public website www.nmstatelands.org.
- D. Bidders Responsible for Due Diligence: The Land is offered “AS IS” and will be leased as a single tract only. Bids to lease less than the entire Land will not be considered.

Prospective bidders are encouraged to inspect the records for the Land at the NMSLO and the Sandoval County Clerk's Office, and to apply to the Commissioner for a permit to physically inspect the Land. The Commissioner makes no representation or warranty, express or implied, written or oral, with respect to the condition of the Land, or its fitness, suitability, or availability for any particular use.

- E. Surrounding Area: These tracts occur as high desert grasslands with slopes ranging from 1%-9%. The soils are mainly sandy type soils as well as rock outcrops which consist of Grieta fine sandy loam, Grieta-Sheppard loamy fine sands and Pinavetes-Rock outcrop complex. Predominant plants include Black Grama, Dropseed, Western Wheatgrass, Indian Ricegrass, other shrubs and perennial forbs and Oneseed Juniper as well as a mix of native warm and cool season grasses.

III. LEASE TERMS.

- A. The Lease will require the Lessee to submit a plan to develop, manage and operate a renewable energy (solar power) facility.
- B. See Exhibit 3 for a complete copy of Solar Energy Lease ES-0199

IV. BIDDER QUALIFICATION.

- A. Application: The bidder should submit a complete application including the qualifications of the bidder to develop the Land, to construct the improvements contemplated by the prospective bid Lease, and to provide the NMSLO's trust beneficiaries with sustainable long-term returns from the intended use. The bidder must have been selected by the PRC to participate in New Mexico's Community Solar Project. The bidder qualification criteria are set out more fully in Exhibit 4, Bid Application and Qualification Form.
- B. Deposits: Deposits may be in the form of a certified or cashier's check or bank money order, made payable to the Commissioner of Public Lands. Deposits may also be sent via ACH. Please contact the SLO Accounting Dept. at (505) 827-5785 for ACH instructions. Actions which will result in disqualification of a deposit and the related bid include without limitation: funds being drawn on banks or issuers located outside the United States, payment of deposits being subject to contingencies unrelated to the transaction, or deposit documents which are postdated. The deposits of unsuccessful bidders will be refunded, minus the application fee which is non-refundable. If no person or entity qualifies to bid or submits a bid, the applicant nominating the land to be auctioned and leased will be responsible for payment of all advertising costs. The successful bidder shall pay the total costs of advertising and will be billed for any lease sale costs in excess of the amounts set out in the transaction deposit. The monies to be submitted as part of the bidder qualification prior to bidding on this lease are:

1. Application Fee (non-refundable)	\$ 500.00
2. Transaction Deposit (estimated advertising cost)	\$ 16,500.00
3. First Year Rent Deposit	\$ 12,000.00
Total Qualification Deposit:	<u>\$ 29,000.00</u>

- C. Application and Deposit Submittal: To qualify to bid on lease ES-0199 a completed Bid Application and Qualification Form (Exhibit 4), and total qualification deposit must be received at the New Mexico State Land Office (P.O Box 1148, Santa Fe, NM, 87504; 310 Old Santa Fe Trail, Santa Fe, NM, 87501; or in the drop-box on the front of the State Land Office Building at 310 Old Santa Fe Trail) Attn: Commissioner of Public Lands, **no later than 3:00 p.m. (MST) on Monday, January 5th, 2026.**

V. PUBLIC AUCTION.

- A. Notice: Notice of the auction of the Lease has been published as required by law in *Santa Fe New Mexican*, *Rio Rancho Observer*, and the *Newsline for the Blind*. A copy of the public notice is attached hereto as Exhibit 2: Notice of Public Auction. The public notice is also posted on the NMSLO website, www.nmstatelands.org. Bid packets may be obtained by contacting the Office of Renewable Energy at (505) 827-5724, emailing ORE@nmslo.gov, or online at www.nmstatelands.org.
- B. Sealed Bid Process: The auction will be in the form of a sealed bid. Only bidders who submit a complete Bid Application and Qualification Form (see Exhibit 4) may submit a sealed bid. The minimum bonus bid amount is ten thousand dollars (\$10,000.00) with additional amounts in increments of five thousand dollars (\$5,000.00) each. The bonus bid amount should be indicated on the Sealed Bid Form and sealed in a separate envelope. The envelope containing the Sealed Bid must be plainly marked “**ES-0199 AUCTION-SEALED BID, not to be opened until January 7, 2026 at 10:30 am.**” Sealed bids may be submitted, by mail, express delivery, personal delivery during regular business, or in the drop-box on the front of the State Land Office Building at 310 Old Santa Fe Trail, to the Commissioner of Public Lands and must be received **no later than 3:00 p.m. (MST) on Monday, January 5, 2026.** All bids submitted will be opened at the date, time and place set forth below. The Bonus Bid may be paid in the form of a certified or cashier’s check or bank money order, made payable to the Commissioner of Public Lands. Deposits may also be sent via ACH. Please contact the SLO Accounting Dept. at (505) 827-5785 for ACH instructions.
- C. Sealed Bid Opening:
- | | |
|--------|---|
| Date: | Wednesday, January 7, 2026 |
| Time: | 10:30 am (MST) |
| Place: | New Mexico State Land Office
310 Old Santa Fe Trail,
Santa Fe, NM 87501 |
- D. Deposit of Bonus Bids; Clearing of Deposits: The successful bidder must deliver to the Commissioner any bonus bid within five (5) business days of the auction. The Lease must be executed within thirty (30) days of the sealed bid opening except that the Commissioner may in their sole discretion extend this deadline to a maximum of one-hundred and twenty (120) days after the auction.

VI. RESERVATIONS; ADDITIONAL TERMS AND CONDITIONS.

- A. Reservation of Commissioner’s Right to Authorize Other Land Uses: The successful

Lessee will have exclusive use of the Land for solar energy development purposes for the term of the Lease. The Lease reserves the Commissioner's right to grant additional land uses for the Land, including granting rights-of-way and easements, licenses and permits over, upon, or across the Land for any purposes whatsoever, provided that such uses are compatible with **solar** energy development, including, but not limited to recreation, public highways, railroads, tramways, telephone, telegraph, and power lines, irrigation works, conservation, environmental or remediation studies or work, water or sewer lines, drainage ditches, mining, or logging. The Commissioner shall not permit any other such uses to unreasonably interfere with Lessee's construction of improvements on or under the Land and/or Lessee's business operations on the Land. The Lease also includes provisions regarding assignment and subleasing, leasehold mortgages and protections of lenders, relinquishment, default, insurance, indemnification, and compliance with laws and NMSLO rules, including but not limited to 19.2.9.1-19.2.9.21 NMAC.

- B. Lease Changes: The Commissioner may consider proposed reasonable changes to the Lease, prior to or after execution, but will not reduce the rent or deviate from any provision required under the statutory, constitutional, or other legal obligations of the Commissioner or the Lessee. Among other things, the Commissioner may agree to reasonable changes to the Lease to improve finance ability of the project, or to amend or change the scope of the project. The Commissioner reserves the right to impose reasonable additional rents or fees in consideration for any such amendments.

- C. Disqualification of Bidder; Selection of Alternate Qualified Bidder: The Commissioner may disqualify a bidder and declare the next highest qualified bidder to be the successful bidder, or declare that no bid was successful, if: a) the bidder withdraws its bid within ten (10) days of being selected as the successful bidder; or, b) the bidder fails to submit the consent to dual use within thirty (30) days of the auction; or, c) bidder fails to deposit bid amount within five (5) days of auction d) if the Commissioner and the bidder for any reason do not agree on the final terms of a written Lease and fail to execute such an agreement within thirty (30) days of the auction (unless otherwise extended up to 120 days at the sole discretion of the Commissioner). If the Commissioner disqualifies the initial highest qualified bidder and declares a new successful bidder, the new successful bidder must pay all deposit monies as provided in Paragraph IV(B) and (C) within ten (10) days.

- D. Additional Inquiries: The bid packet (including the proposed Lease) contains detailed information regarding the Lease and the auction, and it should be the primary source of information for prospective bidders and other interested persons. If you would like additional information not clearly addressed by the bid packet, all inquiries must be submitted in writing (by mail, express delivery or email) to the Office of Renewable Energy, ORE@nmslo.gov, 310 Old Santa Fe Trail, Santa Fe, NM, 87501 or P.O. Box 1148, Santa Fe, NM 87504. Inquiries must include the inquirer's name, institutional affiliation (if any), and contact information. All inquiries and official responses thereto will be provided to all persons or entities that have requested bid packets, and will also be posted on the New Mexico State Land Office website, www.nmstatelands.org.



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

**EXHIBIT 2: NOTICE OF PUBLIC AUCTION
Long-Term Solar Energy Lease Number ES-0199
Sandoval County, New Mexico**

The New Mexico Commissioner of Public Lands (the “Commissioner”) will accept sealed bids seeking the highest bid for the following long term solar energy lease (the “Lease”) for renewable energy (solar power) facilities.

This prospective Lease will be offered at auction on January 7, 2026. Additional information is available in the bid packet for this prospective Lease, available at <http://www.nmstatelands.org> or upon request as detailed below. The entire bid packet is incorporated with this notice by reference and should be reviewed before submitting a bid.

Description of the Land: The land for this lease is offered as a single parcel only, located in the State of New Mexico N.M.P.M., and is described in the table below (the “Land”):

Township, Range, Section	Subdivision	Acreage
13N03E16	NE4NW4	40
13N03E16	NW4NW4	40
Total Acreage:		80 acres, more or less

- 1) Summary of Basic Provisions of the Lease: The land identified above for the prospective Lease is offered to be leased pursuant to State Land Office Rule 9 (19.2.9 NMAC) for the purpose of operating renewable energy (solar power) facilities, and is subject to the terms and conditions authorized in the prospective Lease. The term of the prospective Lease is for up to 40 years. Per Section 4 of the prospective Lease, the prospective lessee (“Lessee”) shall pay to the Commissioner (“Lessor”) as rent for the Land and for the rights and privileges granted in the lease:

First Year’s Base Rent is \$150.00 per acre. For the proposed Lease area of 80 acres, first year’s rent amount for lease ES-0199 is \$12,000.00.

Operations Base Rent for the prospective Lease begins when the solar power facility starts generating energy. The rent for operations phase base year, year one (1) will be \$7,000.00 per megawatt (MW) of installed capacity. The Lease contains additional fees, including a ground

disturbance charge in the amount of \$80.00. Ground Disturbance Charge (Section 4.2.1) and a Solar Power Device Installation Charge in the amount of \$2,000.00 per megawatt of Installed Capacity (Section 4.2.2). Additional Operation Base Rent parameters, including Percent Rent, are referenced in Section 4.1.2 of the Lease.

Decommissioning Phase Rent for the prospective Lease: Lessee shall pay Lessor a one-time Decommissioning Phase Rent of \$3.00 per acre, payable upon commencement of decommissioning activities on the leased Land, as described in Section 4.1.5 of the Lease.

- 2) **Requirements and Qualification of Bidders & Required Deposits:** Only qualified bidders may submit a sealed bid. In order to qualify to submit a sealed bid, prospective bidders must first submit the following, for the Lease: a) have been selected by the PRC to participate in New Mexico's Community Solar Project b) a completed application meeting the statement of minimum qualifications- Exhibit 4, c) an application fee of \$500.00; d) an advertising deposit and e) the first year's rent, for a Total Qualification Deposit which is listed in the table below. If no person or entity qualifies to bid or submits a bid, the applicant nominating the land to be auctioned and leased will be responsible for payment of all advertising costs. This Total Qualification Deposit is payable to "Commissioner of Public Lands."

Lease Number	Application Fee	Advertising Deposit	First Year's Rent	Total Qualification Deposit
ES-0199	\$500.00	\$16,500.00	\$12,000.00	\$29,000.00

- 3) **Application and Deposit Submittal:** The application and qualification deposit must be received at the New Mexico State Land Office, P.O Box 1148, Santa Fe, NM, 87504 (USPS postal mail) or 310 Old Santa Fe Trail, Santa Fe, NM, 87501 (courier service or hand delivery), Attn: Commissioner of Public Lands, **no later than 3:00 p.m. (MST) on January 5, 2026.**
- 4) **Sealed Bid Auction:** The auction will be conducted via sealed bid. Only bidders who have submitted a complete application and met the qualification requirements must submit a sealed bid. The minimum bonus bid is \$10,000.00, with additional amounts in increments of \$5,000.00.
- A. The bonus bid amount should be entered on the bid form and sealed in a separate envelope. The envelope containing the sealed bid must be plainly marked with specific lease number and "**AUCTION-SEALED BID, not to be opened until January 7, 2026 at 10:30 am.**" Sealed bids may be submitted by mail, express delivery, or in person to the Commissioner of Public Lands and must be received **no later than 3:00 p.m. (MST) on January 5, 2026.** All bids submitted for the prospective Lease will be opened at the date, time and place of the auction as set forth below. The Bonus Bid may be paid in the form of a certified or cashier's check or bank money order, made payable to the Commissioner of Public Lands. Deposits may also be sent via ACH. Please contact the SLO Accounting Dept. at (505) 827-5785 for ACH instructions.

Date: Wednesday, January 7, 2026
Time: 10:30 am (MST)
Place: New Mexico State Land Office
310 Old Santa Fe Trail, Santa Fe, NM 87501

- 5) Selection of the Winning Bidder: The Lease, if any, will be awarded to the qualified bidder making the highest bid, taking into consideration the bonus bid, total bid value and other factors. If two or more sealed bids by qualified bidders are equal in amount and exceed the amount of any and all other sealed bids by qualified bidders, the Commissioner may exercise her discretion to request oral bids at the bid opening or cancel the lease auction. In the event that the bid opening is cancelled, all qualified bidders will be notified by mail at the address provided in the submitted application. The Commissioner reserves the right to reject all bids or to cancel this auction, and to reinitiate the process of offering the Land for long-term lease, sale or exchange on the same or different terms. The successful bidder must deposit with the Commissioner the bonus bid amount no later than five (5) business days after auction. If the bonus bid is not timely submitted, the Commissioner may disqualify the bidder and declare the next highest qualified bidder to be the successful bidder, or declare that no bid was successful.
- 6) How to Get Additional Information: Additional information is available in the bid packet for the Lease. The bid packet is incorporated in this notice by reference and should be reviewed in detail before attempting to qualify to bid. To obtain more information about this Lease or a copy of the bid packet, please go to <http://www.nmstatelands.org> or contact:

Office of Renewable Energy
Commercial Resources Division
NM State Land Office
310 Old Santa Fe Trail
Santa Fe, NM87501
(505) 827-5724
Email: ORE@nmslo.gov

Disabled individuals who require aid to participate in the Lease auction may call (505) 827-5760; Fax (505) 827-5766 and /or TTY (800) 659-8331.

Stephanie Garcia Richard
Commissioner of Public Lands



**Stephanie Garcia Richard
Commissioner of Public Lands
State of New Mexico**

Exhibit 3: SOLAR ENERGY LEASE

Lease No. ES-0199

**Commissioner of Public Lands
NEW MEXICO STATE LAND OFFICE
310 Old Santa Fe Trail
P.O. Box 1148
Santa Fe, New Mexico 87504-1148**

This Lease (this “**Lease**”) is entered into between the New Mexico Commissioner of Public Lands, the acting trustee for the Enabling Act Trust, established in the Act of June 20, 1910, 36 Statute 557, Ch. 310, (“**Lessor**”) and _____ (“**Lessee**”) (Lessor and Lessee are each a “**Party**” and together they are the “**Parties**”) and is effective as of the ___ **day of** _____, 2026 (the “**Effective Date**”). In consideration of the payments and performance by the Parties of each of the provisions set forth herein, the Parties agree as follows:

1. DEFINITIONS. Definitions set forth in State Land Office Rule 9 (19.2.9.7 NMAC) are incorporated herein by reference, unless otherwise modified or defined below, and should be referred to when reading this Lease. In the event of any conflict between State Land Office Rule 9, as enacted as of the Effective Date and the definitions below, this lease shall control. Certain other terms are defined in context in the body of this Lease. All defined terms include terms in conjugative form (e.g., “Convert” also defines “Converting”, “Converted”, “Conversion”, etc.).

1.1. Affiliate. Affiliate shall mean: (a) any corporation or limited liability company which, directly or indirectly, through one or more intermediaries, is under the Ownership and Control of Lessee; (b) any corporation or limited liability company which, directly or indirectly, through one or more intermediaries, Owns or Controls Lessee; or (c) any corporation or limited liability company which is under common Ownership or Control with Lessee. For purposes of defining Affiliate, “Ownership and Control” means the capacity of an entity to control, directly or indirectly, the decision-making, business and affairs of another entity.

1.2. Approval. Express written consent given by Lessor or an authorized representative, on forms prescribed by Lessor which approval will not be unreasonably withheld, conditioned, or delayed.

1.3. Assignee. Any person or entity to whom a full or partial assignment of this Lease is made.

1.4. Collateral Assignment/Leasehold Mortgage. A collateral assignment, security interest or mortgage of Lessee's interest, in this Lease or Improvements (or any portion thereof), granted to a Lender as security for a debt, as more fully described in Section 8.

1.5. Collector-System Transmission Facilities. Overhead and underground electric transmission, distribution and collection lines (including towers, wires, and cables), roads and interconnection and switching facilities, constructed by Lessee to transport electricity from Solar Power Devices to one or more substations, whether on or off the Land, or provided by the local utility provider for back-feed or substation power.

1.6. Commencement of Construction. The day Lessee begins installation of the first Improvement.

1.7. Convert. The Solar Power Devices' conversion of potential solar energy in the atmosphere from a potential solar resource into electricity.

1.8. Decommissioning Surety. Lessee's bond or other surety for completing the Decommissioning Plan, as more fully described in Section 5.5.1.

1.9. Decommissioning Phase. The portion of the Lease Term during which Lessee will undertake the decommissioning activities described in Section 3.3.2.1.3 and Section 3.3.2.1.4.

1.10. Decommissioning Costs. All costs, solely at Lessee's expense, to implement and complete the Decommissioning Plan, as more fully described in Section 5.5.

1.11. Decommissioning Plan. As more fully described in Section 5.5, a comprehensive plan for the removal of all Improvements and equipment associated with Solar Power Facilities, and for Restoration of the Land, which plan will include a schedule for completion of such decommissioning activities and a performance standard in connection with the Power Production on the Land. Such Plan shall be completed by Lessee at Lessee's sole expense, and shall be approved by the Lessor pursuant to Section 3.2.

1.12. Delivery. The delivery of electricity from the Solar Power Facilities to the transmission grid and end users through Transmission Facilities.

1.13. Environmental Incentives. Any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Project or the electric energy, capacity or other solar energy generation-based products produced therefrom, including: (a) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto; (b) any avoided emissions of methane, carbon dioxide and other "greenhouse gases" that have been determined by the United Nations

Intergovernmental Panel on Climate Change or any other governmental, quasigovernmental or nongovernmental agency or body to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, and any rights related thereto; (c) green pricing programs, green tags, renewable energy credit trading programs; (d) environmental air quality credits, emission credits, greenhouse gas reduction credits, environmental set-offs and similar benefits; and (e) any reporting rights relating to the reduction of "greenhouse gases" under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or "greenhouse gases" or the trading of emissions or emissions credits, including so-called "green tags" or "green certificates."

1.14. Extension Term. That term of five (5) years following the Operations Phase, should Lessee exercise its right to extend this Lease as provided in Section 3.1.1.

1.15. Force Majeure. Fire, earthquake, flood, or other casualty or accident; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or other requirement of any governmental agency or utility that could not be reasonably anticipated as of the Effective Date; or any other act or condition beyond the reasonable control of a Party that renders that Party's performance impossible or impracticable.

1.16. Foreclosure. Any action or proceeding, judicial or non-judicial, to transfer Lessee's interest in this Lease as a result of or in connection with the enforcement, or threatened enforcement, of the rights of a Lender.

1.17. Government Approvals. Any authorization, approval, consent, waiver, exception, license, registration, ruling, permit, tariff, certification, exemption, and any other action or requirement by or with a governmental authority relating to Lessee's activities pursuant to this Lease, including but not limited to, the construction, use, operation, placement, replacement, removal or discontinuance of the Solar Power Facilities and other Improvements or Lessee's execution, delivery, or performance of this Lease.

1.18. Governmental Authority. Any New Mexico county, municipal, state, federal, or other, governmental entity with regulatory authority over the Land or the activities under this Lease.

1.19. Grid Interconnection Transmission Facilities. Substations, electric transmission lines (including towers, wires, and cables), roads, and interconnection and switching facilities that transmit or distribute electricity, which may cross the Land pursuant to a separate agreement and are situated on the "grid side" of any Solar Power Facilities constructed under this Lease, and that interconnect to a utility transmission system.

1.20. Gross Revenues. All revenues actually received by Lessee from the sale of electricity generated by Solar Power Devices installed on the Land, including the sale for cash of Environmental Incentives of any kind to any purchaser, and payments received from any purchaser that are based on curtailed energy rather than energy sold. "Gross Revenues" does not include: (a) the value of any Tax Credits or similar incentives not sold for cash; (b) payments under equipment warranties; and (c) any insurance payments other than that paying for the loss of cash revenue that would have been received for the sale of electricity generated on the Land. If Lessee sells the

production, energy, electricity or capacity from the Solar Power Facilities located on the Land to an Affiliate or other person or entity in any way related to Lessee, then “Gross Revenues” means all consideration paid for said production, energy, electricity or capacity, regardless of time or place of receipt, under the first contract which is an arms’ length bona fide transaction. In the event that electrical energy produced from Solar Power Devices located on the Land is commingled with electrical energy produced from Solar Power Devices located on other lands, then Lessee shall, using such methods, calculations, procedures and/or formulae as Lessee may in good faith adopt, allocate to the Land a portion of the Gross Revenues received from such commingled electrical energy.

1.21. Hazardous Material. Oil, petroleum products, explosives, inflammables, PCBs, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, or contaminated materials, substances, pollutants or wastes, including, without limitation, any substance, waste, or material which is defined or listed as a “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “medical waste,” “regulated substance,” or which is otherwise controlled or regulated because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, under any federal, state, or local statute, regulations, or ordinances relating to landfills, medical waste, industrial hygiene, environmental protection (including the protection of ground or surface water) or the manufacture, use, generation, presence, analysis, transportation, handling, storage, treatment or disposal of any such material, substance, or waste.

1.22. Improvement. Any non-mobile item of tangible property developed, placed, created or constructed on the Land by Lessee, including but not limited to private buildings, structures, roadways, infrastructure, permanent equipment, fixtures, and Solar Power Facilities.

1.23. Initial Phase. The initial portion of the Term, not greater than five (5) years in duration, commencing on the Effective Date and expiring on the Operations Date or earlier Termination. The Initial Phase may be extended for a maximum of two (2) years, to extend the Initial Phase to a maximum of seven (7) years total, upon Lessor’s approval, if Lessee can demonstrate that best efforts have been made to move towards the Operations Phase.

1.24. Installed Capacity. The aggregate Manufacturer’s Nameplate Capacity of the Solar Power Devices installed by Lessee on the Land.

1.25. Land. All that certain real property owned by Lessor and located in Sandoval County, New Mexico, as more particularly described on the attached **Exhibit A** and incorporated herein by this reference. The Land and any portion thereof may also be referred to in this Lease as the “**Leased Premises.**”

1.26. Land Office. The New Mexico State Land Office, which is the state agency, established in NMSA 1978, Section 19-1-1, through which Lessor manages the Trust.

1.27. Land Office Rules. All of Title 19 Chapter 2 NMAC, as amended from time to time; NMSA 1978, Chapter 19; the Enabling Act for New Mexico (Act of June 20, 1910, 36 Stat. 557, Ch. 310); all current and future constitutional provisions, statutes, rules and amendments thereto governing the Land.

1.28. Lease Anniversary. Any anniversary of the Effective Date.

1.29. Lease Term. That period of forty (40) years, commencing on the Effective Date and expiring on the fortieth (40th) anniversary thereof (unless terminated earlier as provided in this Lease or extended by the Extension Term), and which may consist of the Initial Phase, the Operations Phase, the Decommissioning Phase, and if any, the Extension Term.

1.30. Lease Year. Each twelve (12) month period of this Lease, commencing on the Effective Date and every Lease Anniversary thereafter.

1.31. Lender; Affiliate of Lender. Any financial institution or other person or entity that from time to time takes a Collateral Assignment/Leasehold Mortgage. The term “Lender” includes any affiliate of Lender; and an “affiliate of Lender” means an entity that has or acquires control, is or becomes controlled by, or is or comes under control of Lender.

1.32. Lessor-Related Person. Any person or entity: (a) claiming a right to use the Land or any constituent parts of the Land, including minerals, oil and gas, who claims such right by, through or under Lessor; or (b) that is an employee, contractor, representative or invitee of Lessor.

1.33. Manufacturer’s Nameplate Capacity. The direct current (DC) megawatt capacity of any Solar Power Devices, as determined by the manufacturer.

1.34. Minor Deviations. Minor Deviations shall mean (a) relocation of Solar Power Facilities from the locations shown on the Project Plans, so long as such relocation is within the areas designated in the Project Plans as potential sites for such Solar Power Facilities; or (b) a reduction in the Solar Power Devices originally shown on the Project Plans due to topographical, geologic or other factors not known at the time of the preparation of the Project Plans.

1.35. Operations Date. The date on which any Solar Power Facilities installed by Lessee on any portion of the Land, begin Power Production and Deliver and sell electricity to a purchaser. The generation of Test Energy shall not trigger the Operations Date.

1.36. Operations Phase. The portion of the Lease Term commencing on the Operations Date and continuing up until the Decommissioning Phase, and allowing for the activities described in Section 33.3.2.

1.37. Intentionally Left Blank.

1.38. Power Production. The generation of electricity using the Solar Power Facilities.

1.39. Project Plans. Plans that set out the use and development of the Land to construct, operate and decommission the Project, which shall include: (a) a list and general description of proposed Improvements to be installed and constructed on the Land; (b) a proposed site plan; (c) boundary and topographic surveys for the Land; (d) a plan for complying with any land use requirements imposed by Governmental Authority for the construction and operation of the Project; (e) all other required Government Approvals, or a plan for obtaining same; (f) a cultural properties survey; (g) a biological assessment; (h) a Phase I Environmental Assessment; (i) a Hazardous Material storage and handling plan, if one is so required by Governmental Authority;

(j) evidence that a Power Purchase Agreement has been secured or is being negotiated, if applicable; and (k) a Decommissioning Plan, as detailed in Section 5.5.

1.40. Qualified Assignee. An assignee of Lessee that is: (a) any person or entity (i) having a net worth of at least the amount required in the Bid Application and Qualification Form for this Lease, (ii) having at least five (5) consecutive years of experience managing or operating a similar generating facility either through direct experience of it or its Affiliates or through a manager contracted to manage the Project, and (iii) a commitment and the ability to fully comply with all other duties and obligations of Lessee under this Lease; or (b) a Lender who meets the qualification of (a)(i) and (a)(iii) and has engaged a manager meeting the qualifications of (a)(ii).

1.41. Relinquishment. Lessee's voluntary cession of this Lease, pursuant to 19.2.9.19 NMAC and the terms of this Lease, Approval of which shall not be unreasonably withheld by the Lessor.

1.42. Repower. To expand or change a Solar Power Facility in a manner that results in a change in the Installed Capacity.

1.43. Restoration. The process of returning the surface of the Land to as near the same condition as the Land was on the Effective Date as is practicable, damage from reasonable wear and tear and casualty excepted, including: (a) returning the Land to the same grade and casting seed to achieve a similar vegetative state; (b) complying with any remediation of Hazardous Material, as required and directed by any local, state or federal regulatory agency; (c) complying with all Lessor's policies, rules and directives regarding reclamation, remediation, restoration, and removal of improvements; and (d) completing all activities described in the Decommissioning Plan.

1.44. Solar Energy Development. Solar resource evaluation (including any testing, assessments, or surveys to be delivered as part of the Project Plans or as required for Governmental Approvals and as permitted by Section 3.3.1.2); development, operation, use, maintenance, repair, repowering, restoration and removal of Solar Power Facilities; conversion of solar energy into electrical energy; agreements and work to promote the construction of and secure access to Grid Interconnection Transmission Facilities; and collection, distribution, transmission, and Delivery of the electrical energy (whether such electricity is produced on or off the Land) so Converted through the operation of the Solar Energy Project.

1.45. Solar Energy Project or Project. Any and all Improvements (that is, all Solar Power Devices, Collector-System Transmission Facilities, Grid Interconnection Transmission Facilities, Solar Power Facilities, structures, equipment, machinery, wires, conduits, fibers, cables, poles, materials and property of every kind and character constructed, installed and/or placed on, above or below the Land) that are constructed, developed or operated on the Land by Lessee or Lessee's designees, assigns, or sublessees, as an integrated system to generate, via the sun, and collect, transmit deliver electrical power.

1.46. Solar Monitoring Stations. Solar measurement equipment of common industry size and character.

1.47. Solar Power Facilities. Solar Power Devices, Grid Interconnection Transmission Facilities, Collector-System Transmission Facilities, energy storage facilities, telecommunications equipment, overhead transmission line(s), and power generation facilities to be operated in conjunction with large solar power installations, roads, solar measurement, monitoring and recording equipment and facilities, control buildings, maintenance yards, and related facilities and equipment that are necessary for Solar Energy Development on the Land.

1.48. Solar Power Devices. The physical hardware, including but not limited to photovoltaic panels, mirrors, lenses, concentrators, control technology, fluids, tubing, engines, motors, directly related equipment and other hardware installed to utilize the sun's energy to directly or indirectly produce electricity.

1.49. Tax Credits and Incentives. Federal, state and local production tax credits (including credits under Section 45 of the Internal Revenue Code, 26 U.S. Code § 45), production incentive payments and other renewable energy tax credits arising out of the electrical energy generated by the Project and the sale, transportation and distribution of such energy.

1.50. Termination. The cessation of this Lease and the rights granted to Lessee, herein due to the natural expiration of the Term, Lessee's Relinquishment, Lessee's uncured Payment Default, or other termination event as described in this Lease.

1.51. Test Energy. Energy produced by any Solar Power Facilities installed in the Project in order to test the initial performance of the Project.

1.52. Trust. The trust established and confirmed by the Enabling Act, Act of June 20, 1910, 36 Stat. 557, Ch. 310.

2. LEASED PREMISES.

2.1. Land. For and in consideration of and subject to the terms, conditions, covenants and reservations contained herein, Lessor hereby leases the Land to Lessee. The rights to enter, occupy and use the Land for Solar Energy Development are exclusive to Lessee.

2.2. Purpose; Permitted Uses. Lessee agrees and covenants to Lessor that it will enter, occupy and use the Land solely and exclusively for Solar Energy Development, and for transmission of electricity whether such electricity is produced on or off the Land.

2.3. Ingress/Egress. Lessee has rights of vehicular and pedestrian access, ingress to and egress from the Solar Power Facilities on the Land, in and over the Land, at such locations as Lessee shall determine, for purposes related to or associated with the Lease Phases and the Project. In addition, Lessee may use and improve any existing roads and access routes from time to time located on or providing access to the Land pursuant to the Project Plans, provided however that this does not grant any rights to roads and access routes on land that is not under the control of Lessor. Lessee's ingress and egress uses are subject to the rights of any pre-existing leases or other encumbrances as enumerated in **Exhibit B.**

2.4. Soil Testing. Lessee has the non-exclusive right to extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analyses of or on the Land

as Lessee deems necessary, useful, or appropriate. At Lessor's request, Lessee shall share the results of all such tests with Lessor.

2.5. Improvements; Approval and Authorized Improvements. Lessee may install Improvements on the Land in accordance with the terms of this Lease and the Project Plans approved by Lessor, as provided in Section 3.2 and pursuant to 19.2.9.16(B) NMAC. Improvements approved by Lessor will be deemed Authorized Improvements. Lessor hereby preapproves for placement on the Land the "Improvements," as defined in Section 1.22, and such Improvements are hereby deemed "Authorized Improvements" subject only to Lessor's approval of Project Plans in compliance with Section 3.2. Lessee shall clearly designate in its Project Plans any Improvements that Lessee considers to be Grid Interconnection Transmission Facilities. No other Improvements may be placed on the Land without the prior Approval of Lessor. If, during the course of construction, Minor Deviations from the Project Plans are necessary to implement the Project, Lessee shall not be required to seek approval for Minor Deviations, however, in the event Lessee must make changes or additions to the Project Plans that are not Minor Deviations, then Lessee shall seek the approval of such revised deviations by submitting to Lessor an amendment to the Project Plans. Any such proposed amendment shall be submitted to Lessor not fewer than thirty (30) days before commencement of installation of construction of such revised deviation; Lessor shall not unreasonably withhold approval of such amendment. At the conclusion of construction Lessee will submit an as-built drawing showing final placement of Improvements. If Lessee installs or places unauthorized improvements on the Land Lessor may, after reasonable written Notice to Lessee and an opportunity to meet and confer regarding the equipment or improvement, declare title to such improvements in Lessor without payment of compensation to Lessee, order the removal of such improvements and the Restoration at Lessee's expense of the Land to their condition existing prior to the placement of said improvements, or require such other action as the Parties mutually agree.

2.6. Ownership of Improvements. Any Authorized Improvements, on the Leased Premises, are hereby severed by agreement and intention of the parties and shall remain severed from the Leased Premises, and shall be considered with respect to the interests of the Parties hereto as the property of Lessee or a Lender designated by Lessee, subject to Lessor's lien in accordance with Section 19-7-34 NMSA 1978, and, even though attached or affixed to or installed upon the Premises, shall not be considered to be fixtures or a part of the Leased Premises and shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Leased Premises by Lessor. The Solar Power Facility and other Authorized Improvements shall at all times retain the legal status of personal property as defined under New Mexico law and in no way shall Lessor have an ownership interest or any other interest in any part thereof.

3. LEASE TERM, PROJECT PLANS AND PHASES.

3.1. Lease Term. Unless this Lease is Terminated during the Initial Phase, upon the Operations Date this Lease will automatically be extended for the Operations Phase, which shall continue until the earlier of: (a) completion of the Decommissioning Phase; (b) Relinquishment; or (c) any earlier Termination of this Lease, provided that the Lease will not terminate until the Decommissioning Phase activities have been completed by Lessee, except as otherwise provided by the terms of this Lease.

3.1.1. Provided Lessee is not in default hereunder, Lessee shall have the option to apply to renew this Lease upon the end of the Operations Phase for one (1) Extension Term of five (5) years. If either Party desires to exercise such option, it shall give written notice to the other Party not later than ninety (90) days prior to the end of the Operations Phase.

3.2. Project Plans.

3.2.1. Submission of Proposed Preliminary Project Plans. At least six (6) months before the Lessee reasonably anticipates the Commencement of Construction, Lessee shall deliver to Lessor Proposed Preliminary Project Plans, including an outline of the items that are required to be included in Project Plans, about which Lessee and Lessor shall meet and confer on an informal basis. Lessor and Lessee shall discuss the Proposed Preliminary Project Plans with the intention of facilitating Lessee's submission of Project Plans pursuant to Section 3.2.3 which may be approved by the Lessor.

3.2.2. Lessee shall develop Project Plans and locate the Solar Power Facilities in such locations on the Land as are reasonably satisfactory to both Lessor and Lessee, based on both: (a) Lessor's constitutional mandate to facilitate productive use of state trust Land while ensuring that the Land are protected and maintained for future generations; and (b) Lessee's expertise with respect to solar project development and siting. All Improvements will be located to avoid interference with wildlife corridors, environmentally sensitive areas, and cultural properties. Unless Lessee can demonstrate that compliance is impracticable, Lessee's Project Plans shall be drafted in accordance with the New Mexico State Land Office Best Management Practices ("**BMPs**"), attached hereto as **Exhibit C**, or, in the alternative, Lessee shall demonstrate, to Lessor's reasonable satisfaction, why compliance with one or more of the BMPs is impracticable and any applicable mitigation measures that Lessee shall undertake to address such noncompliance. For the avoidance of doubt, Lessor's consideration of the Project Plans shall not involve Lessor's review and/or satisfaction with the Project's economics or profitability.

3.2.3. Delivery of Project Plans. As soon as Lessee has completed the Project Plans, but no later than ninety (90) days before Lessee reasonably anticipates the Commencement of Construction, Lessee shall deliver to Lessor the Project Plans, which shall include all of the elements listed in the definition of Project Plans at Section 1.39. If Lessee elects to develop and construct the Project in phases, the Project Plans must identify a proposed phasing plan and the timeframes estimated for the development of each phase. Lessee may opt to clearly mark any portion of each set of Project Plans that contains bona fide trade secrets or information that is otherwise treated as confidential under New Mexico law as "CONFIDENTIAL" in which case Lessor will treat it as confidential information required to be submitted under this Lease, pursuant to NMSA 1978, Section 19-1-2.1.

3.2.4. Completeness of Project Plans. Project Plans shall be considered administratively complete if such plans include all of the elements listed in the definition of Project Plans at Section 1.39 and are accepted by Lessor. Lessor shall provide Lessee with written notification within sixty (60) days of the submission of the Project Plans either: (a) confirming that the Project Plans are administratively complete; or (b) identifying any deficient element(s) of the Project Plans.

3.2.5. Project Plan Conference. Lessee and Lessor shall confer regarding the Project Plans within thirty (30) days after: (a) issuance of written notification indicating the Project Plans are complete; or Lessee's correction or supplementation of all deficient element(s) of the Project Plans as described in Section 3.2.4. This conference will provide Lessee an opportunity to present its Project Plans to Lessor, explain how the Project Plans comply with Section 3.2.2, and address any Lessor questions related to the Project Plans. If practicable, Lessee and Lessor shall meet in person and conduct a site visit to facilitate Project Plan consultation.

3.2.6. Project Plan Approval. Lessor shall endeavor to provide Lessee with written confirmation of Approval of the Project Plans within thirty (30) days after: (a) the Project Plan conference described in Section 3.2.5; or (b) such time after Lessee has resolved any remaining deficiencies in the Project Plans identified in connection with the Project Plan conference described in Section 3.2.5. Lessor's final Approval of the Project Plans, which shall not be unreasonably withheld, is required prior to Lessee's Commencement of Construction.

3.2.7. Changes to Project Plans. If, at any point following submission of Project Plans but before Commencement of Construction, Lessee makes changes to the Project Plans that result in changes that are not Minor Deviations, Lessee shall re-submit those Project Plans to Lessor. Within thirty (30) days of such re-submission, at Lessor's discretion depending on the nature of the proposed changes: (a) Lessee and Lessor will confer regarding the resubmitted Project Plans, consistent with Section 3.2.4; or (b) Lessor will provide Lessee with updated written confirmation of Approval of the Project Plans.

3.3. Lease Phases; Permitted Uses; Project Plans.

3.3.1. Initial Phase – Duration. The Initial Phase will commence on the Effective Date. If the requirement to deliver Project Plans for Lessor's review and the Parties' conferral, as set forth in Section 3.2 above, is not satisfied by the fifth (5th) Lease Anniversary, the Initial Phase will expire and this Lease may be terminated pursuant to Section 5.4 below. Lessee shall provide summary annual reports to Lessor listing all improvements and activities of the land. If, however, Lessee satisfies the requirement to deliver Project Plans for Lessor's review as set forth in Section 3.2, then the Initial Phase will expire upon the Operations Date.

3.3.1.1. Initial Phase - Permitted Uses and Delivery of Project Plans.

3.3.1.2. Permitted Uses. The Initial Phase includes both due diligence and construction of the Project. During the Initial Phase, Lessee may use and occupy the Land to determine the feasibility of Conversion and other power generation on the Land by: (a) installing, operating, maintaining, repairing and removing Solar Monitoring Stations; (b) undertaking geotechnical reviews, environmental, biological and cultural assessments, surveying, title examination, site engineering, soil sampling and other activities for determining the suitability of the Land for a Solar Energy Project and in further evaluating the site to ensure it is viable for moving into construction and other activity necessary for generating the Project Plans; (c) obtaining all required Government Approvals for the present and any subsequent phases of the Project; (d) working with and seeking access and other types of agreements with third parties for the development and construction of Grid Interconnection Transmission Facilities; and (e) construction of Solar Power Facilities on the Land.

3.3.2. Operations Phase. The Operations Phase will commence on the Operations Date (Lessee will notify Lessor of the Operations Date in writing) and shall continue for the remainder of the Lease Term, which shall include any unused portion of the Initial Phase and the Extension Term, if applicable. During the Operations Phase, Lessee may complete construction of Solar Power Facilities on any portion of the Land, if not completed during the Initial Phase; begin Power Production; and Convert and Deliver through the operation of Solar Power Facilities constructed on the Land and in connection with Solar Power Facilities on adjacent property or elsewhere. Lessee shall provide summary annual reports to Lessor listing all improvements and activities of the land. Lessee may also maintain, repair, operate, replace, relocate, or remove the Solar Power Facilities and may repower pursuant to the terms of this Lease.

3.3.2.1. Decommissioning Phase.

3.3.2.1.1. Commencement and Duration of the Decommissioning Phase. The Decommissioning Phase will commence, in accordance with a Decommissioning Plan approved by Lessor and consistent with Section 5.5, upon the earlier to occur of: (a) fifteen percent (15%) or more of Lessee's Installed Capacity has not been in operation for a continuous period of at least six (6) months; or (b) no fewer than eighteen (18) months before the natural expiration of this Lease. The Decommissioning Phase will continue until the earlier of: (a) completion of the activities in the Decommissioning Plan; or (b) Termination. Decommissioning must be completed within eighteen (18) months of the commencement of activities in the Decommissioning Plan approved by Lessor but not later than the natural expiration of this Lease; provided, however, this eighteen (18) month period may be reasonably extended in the event of Force Majeure.

3.3.2.1.2. Decommissioning Phase; Permitted Activities. During the Decommissioning Phase, Lessee shall undertake activities, whether accomplished by Lessee or a third party authorized by Lessee to act on its behalf, for the Restoration of the Land as required by the terms of this Lease pursuant to the Decommissioning Plan.

3.3.2.1.3. Decommissioning Activities. During the Decommissioning Phase, Lessee shall remove all above-ground Solar Power Facilities from the Land to a depth of thirty-six (36) inches below grade, exclusive of any continuing right established pursuant to this Lease to survive the Term, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Solar Power Facilities as of the date this Lease expires, Lessor may sue for specific performance, and/or call upon Lessee's Reclamation and Restoration Bond to complete decommissioning.

3.3.2.1.4. Decommissioning Activities Will Include Grid Interconnection Transmission Facilities by Future Agreement. Lessor and Lessee hereby expressly agree that, if there are Solar Power Devices and Collector-System Transmission Facilities on the Land that are integral to or part of Grid Interconnection Transmission Facilities, Lessee's Decommissioning obligations will not automatically extend to those facilities, and Lessor and Lessee shall negotiate in good faith to agree on Decommissioning obligations with respect to those facilities. This does not relieve Lessee of the obligation to seek a separate agreement with Lessor for any Grid Interconnection Transmission Facilities to be constructed on the Land.

3.4. Holding Over. Nothing herein grants Lessee the right to hold over or otherwise enter the Land for any purpose after Termination without the prior written Approval of Lessor. In the event Lessee holds over after the Termination, without the express written consent of Lessor, such tenancy will be month-to-month only, and will not constitute a renewal hereof or an extension for any further term, and in such case the applicable Rent, on a monthly basis, will be two hundred percent (200%) of the highest Rent paid during the most recent phase prorated for each month thereof. Such Rent will be prorated and payable monthly and such month-to-month tenancy will be subject to every other applicable term, covenant and agreement contained herein.

4. CONSIDERATION FOR LEASE.

4.1. Rent. Throughout the Term, in consideration of the rights granted hereunder, Lessee shall pay Lessor the Rental Payments provided herein without notice or demand.

4.1.1. Initial Phase Rent. Lessee shall pay Lessor rent during the Initial Phase annually in advance beginning within thirty (30) days of the Effective Date and continuing up to and including the Lease Year during which the Operations Date occurs, as follows (the “**Initial Phase Rent**”):

Initial Phase Year	Price Per Acre	Rent For 80 Acres
1	\$150	\$12,000
2	\$200	\$16,000
3	\$250	\$20,000
4	\$450	\$36,000
5	\$700	\$56,000
6 (With Lessor Approval)	\$1,000	\$80,000
7 (With Lessor Approval)	\$1,500	\$120,000

4.1.2. Operations Phase Rent. Operations Phase Rent shall include Operations Phase Base Rent.

4.1.3. Operations Phase Base Rent. Within thirty (30) days after the Operations Date, and on or before the first of each Lease Year thereafter, preceding the Decommissioning Phase, Lessee shall pay annually in advance an “**Operations Phase Base Rent Payment**” for the forthcoming twelve (12) month period. Operations Phase Base Rent shall consist of (1) \$7,000.00 per year and (2) \$7,000.00/megawatt alternating current Installed Capacity. A three percent (3%) annual increase will commence on the second Operations Phase Base Rent payment and continue annually through the remainder of the Operations Phase. Operations Phase Base Rent Payments for partial 12-month-periods shall be prorated. In no event shall the Operations Phase Base Rent be less than highest Initial Phase Rent paid by Lessee, regardless of how many acres of land are under lease after any relinquishment of leased acres.

4.1.4. Intentionally Left Blank.

4.1.5. Decommissioning Phase Rent. Lessee shall pay Lessor Decommissioning Phase Rent of three dollars (\$3.00) per acre payable upon commencement of the Decommissioning Phase as described in Section 3.3.2.1 of this Lease. Any Operations Phase Base Rent Payment made for any period in which the Decommissioning Phase begins will be prorated.

4.1.6. Rental Interest and Late Fee. Interest on delinquent Rental Payments due will accrue at the rate of 1.0 percent (1.0 %) per calendar month or any fraction thereof, from thirty (30) days past due and after all applicable notice and cure periods, until received by Lessor in full (the “**Lease Interest Rate**”). In addition, Lessee shall pay a late payment processing fee equal to five hundred dollars (\$500.00). All interest and late fees that become due under this Lease shall be considered additional Rent under this Lease.

4.2. Installation Charges.

4.2.1. Ground Disturbance Charge. Lessee shall pay a one-time ground disturbance fee of one dollar (\$1.00) per acre of Land (the “**Ground Disturbance Charge**”). The Ground Disturbance Charge must be paid to Lessor prior to the Commencement of Construction of the Project.

4.2.2. Solar Power Device Installation Charge. In addition to the Ground Disturbance Charge described in Section 4.2.1 above, Lessee shall pay a one-time installation charge of two thousand dollars (\$2,000.00) per megawatt of Installed Capacity constructed on the Land in any lease phase, including upon Repowering of any existing Solar Power Devices. Lessee shall pay the Solar Power Device Installation Charge prior to the Commencement of Construction on such Solar Power Devices.

4.3. Intentionally Left Blank.

4.4. No Representation. Notwithstanding Lessee’s Rent obligations, this Lease will not be construed as imposing upon Lessee a good faith obligation to commence or continue generating electricity or derive receipts therefrom at any time. Other than those representations and warranties set forth in Section 5 below, Lessee has neither made, nor makes, any representations or warranties, verbally, in any written estimates of production, in this Lease or otherwise, concerning the likelihood that Lessee will install Solar Power Facilities on the Land or that any Solar Power Facilities installed on the Land will generate electricity during any period of time. Lessor acknowledges that the operation of any Solar Power Facilities installed on the Land is subject to adverse weather, equipment failures and other events beyond the control of Lessee which may interrupt or prevent electricity generation.

4.5. Credits. Lessee shall be exclusively entitled to apply for, collect, receive, and obtain the benefit of all Tax Credits and Environmental Incentives arising out of the electrical energy generated by the Project and the sale, transportation and distribution of such energy (collectively, “**Credits**”). Lessor shall reasonably assist Lessee in applying for and receiving such Credits.

5. COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS.

5.1. Lessee Relinquishment. Pursuant to 19.2.9.19 NMAC, the Lessor preapproves relinquishment without penalty to Lessee at any time during the Initial Phase, but subject to Lessee's Land Restoration and Decommissioning Plan obligations (if any) as to any land so Relinquished. If Lessee wishes to relinquish all or any part of the Lease during the Operations Phase, Lessee may obtain Lessor's Approval in good faith providing that the Lease is in good standing, the land is returned in compliance with Section 1.43 within a reasonable time. Any Relinquishment during the Operations Phase shall not impair the value, utility, beneficial value, use or merchantability of any relinquished property. Lessor's Approval shall not be unreasonably withheld. At any time, Lessee may fully or partially relinquish this Lease upon three (3) months' advance written notice ("Notice of Termination") to Lessor and delivery of the relinquishment form. Lessee shall not be entitled to any refund of rent already paid nor any reduction in the scheduled Initial Phase Rent. The portion of the Land remaining after any partial relinquishment of this Lease shall thereafter be the "Land" for purposes of this Lease and all payment amounts based on acreage shall be adjusted accordingly.

5.2. Requested Relinquishments. Following the Initial Phase, Lessor may deliver to Lessee a written request that Lessee Relinquish any portions of the Land not needed by Lessee to realize Installed Capacity, to host the Solar Power Facilities and properly operate, protect and maintain the Project as it exists on those phases already in operation or under active construction or to construct and operate future phases of the Project consistent with Lessee's submitted Project Plans ("**Required Areas**"). Within forty-five (45) days after any such written request, (a) if Lessee agrees with such Relinquishment request, Lessee will deliver to Lessor all documents required by Lessor to affect such Relinquishment; or (b) Lessee will deliver to Lessor written evidence that such portions of the Land constitute Required Areas. If Lessee Relinquishes any portion of the Land as requested by Lessor under this Section 5.2, such Relinquishment will be without fee or penalty, and Lessee's rent shall be reduced in proportion to the percent of Land relinquished.

5.3. Delivery of Land Upon Relinquishment. At the Relinquishment of all or any portion of the Land, Lessee shall immediately deliver possession of the relinquished portions of Land to Lessor, subject to Lessee's Land Restoration and Decommissioning Plan obligations.

5.4. Lessor's Right to Terminate Prior to Commencement of Construction. Lessor may, in Lessor's sole discretion, terminate this Lease without penalty or further obligation to Lessee if: (a) Lessee fails to timely comply with all requirements of Section 3.2 or Lessor has not approved the Project Plans in accordance with Section 3.2.6. Lessee will not be entitled to any refunds, damages or compensation of any type that may result, directly or indirectly, from such cancellation. Lessor will send Lessee notice of Lessee's failure to submit Project Plans, and Lessee will have thirty (30) days to cure such failure.

5.5. Decommissioning and Restoration. The Decommissioning Plan shall include the removal of all Project Improvements to a depth of thirty-six (36) inches and Restoration of the surface of the land, and shall include an estimate of cost to complete the Decommissioning Plan. The Decommissioning Plan shall be prepared by, and bear the seal and signature of, a licensed New Mexico professional engineer pursuant to and prepared in compliance with the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 through 61-23-33, and the rules promulgated under that authority, or another similarly qualified New Mexico professional approved in advance by Lessor. The Decommissioning Plan will be based upon such information

as is known to Lessee at the time and upon such assumptions as are reasonable at the time. Every tenth Lease Anniversary following the Effective Date, Lessee shall update the Decommissioning Plan (including the cost estimate for Decommissioning Costs), and shall re-submit the plan and costs to Lessor for Lessor's Approval, not to be unreasonably withheld.

5.5.1. Decommissioning Bond or Surety. Lessee shall file the Decommissioning Bond or Surety (in the initial amount described below) with Lessor prior to beginning construction of the Solar Power Facilities. The amount of the Decommissioning Bond or Surety shall be based upon the findings of an independent engineer engaged in the business of decommissioning wind power facilities (the "**Independent Engineer**"), such Independent Engineer to be selected by the Lessee with the reasonable Approval of the Lessor. The Independent Engineer shall consider, among other things, the cost to remove the Improvements, the cost to perform reclamation and restoration activities, and the disposal costs and scrap or reuse value of the Improvements (the "**IE Determined Decommissioning Costs**"). Lessor shall have the right to review the findings of the Independent Engineer to confirm the calculation of the amount of the IE Determined Decommissioning Costs. The Lessee's Decommissioning Bond or Surety shall remain in force until the completion of the Decommissioning Phase and all aspects of the Decommissioning Plan. Upon written request, Lessor may request Lessee provide Lessor with information and documentation to confirm the existence and maintenance of such Decommissioning Bond or Surety in favor of Lessor. Lessor shall not release the Decommissioning Bond or Surety until Lessor has approved completion of all elements of the Decommissioning Plan. The Lessee shall be required to obtain the Decommissioning Bond or Surety in the amount of twenty (20) percent of the IE Determined Decommissioning Costs prior to performing any surface disturbance or construction. Lessee shall increase the amount of the Decommissioning Bond or Surety every five (5) years in the amount of twenty (20) percent of the IE Determined Decommissioning Costs as set forth below:

Years One through Five. Lessee shall obtain and maintain a Decommissioning Bond or Surety in the amount of twenty percent (20.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer.

Years Five through Ten. Lessee shall increase and maintain the Decommissioning Bond or Surety by an additional twenty percent (20.0%) of the IE Determined Decommissioning Costs, so that the Decommissioning Bond or Surety shall equal forty percent (40.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer.

Years Ten through Fifteen. Lessee shall increase and maintain the Decommissioning Bond or Surety by an additional twenty percent (20.0%) of the IE Determined Decommissioning Costs so that the Decommissioning Bond or Surety shall equal sixty percent (60.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer.

Years Fifteen through Twenty. Lessee shall increase and maintain the Decommissioning Bond or Surety by an additional twenty percent (20.0%) of the IE Determined Decommissioning Costs so that the Decommissioning Bond or

Surety shall equal eighty percent (80.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer.

Years Twenty through End of Term. Lessee shall increase and maintain the Decommissioning Bond or Surety by an additional twenty percent (20.0%) of the IE Determined Decommissioning Costs so that the Decommissioning Bond or Surety shall equal one hundred percent (100.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer, and shall maintain said Decommissioning Surety until the Lease term has expired.

Every tenth (10th) Lease Year, Lessee shall submit a redetermination of the IE Determined Decommissioning Cost by the Independent Engineer, and upon such re-determination by the Independent Engineer, the amount of the Decommissioning Bond or Surety will be adjusted accordingly (and if within the first twenty (20) years, in accordance with the applicable percentages set forth above).

5.6. Condition of Land. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, LESSEE IS LEASING THE LAND "AS IS" BASED ON LESSEE'S OWN INSPECTION AND INVESTIGATION OF AND JUDGMENT REGARDING THE LAND. LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WITH REGARD TO THE LAND OR WITH REGARD TO THIS TRANSACTION. Lessee acknowledges that Lessee is responsible for performing its own due diligence and for becoming fully familiar with the condition of the Land and any applicable restrictions, uses, or other conditions that might affect its development or use for a particular purpose.

5.7. Hazardous Material. Lessee agrees it will not use, store, dispose of or release any Hazardous Material on the Land and Lessor will not cause or permit to exist or be used, stored, disposed of or released on the Land any Hazardous Material, except in such quantities as may be required in agricultural use of the Land and only if such use is not harmful to Lessee or its employees, contractors, guests, invitees, licensees, permittees, agents, and assigns, and is in full compliance with all applicable Laws. Lessee shall have no liability for any violation (past, present or future) by Lessor or Lessor's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Land. Lessee covenants and agrees that: (a) Lessee shall not use, store, dispose of or release on the Land; and (b) Lessee will not cause or permit to exist or be used, stored, disposed of or released on the Land as a result of Lessee's operations, any Hazardous Material, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor or its employees, or other lessees of the Land, and is in full compliance with all applicable laws.

5.8. Fire Prevention and Emergency Response. Upon Lessee becoming aware of any needed repair to any Improvement, Lessee shall follow prudent utility and industry practice to promptly repair such Improvement; provided, however, if such repair is of a downed wire or other condition which poses an immediate threat of harm to persons, livestock, or wildlife or a

threat of fire (each, an “Emergency”) on the Land, Lessee will respond as soon as safely possible to remedy such condition, and notify Lessor in writing immediately of such Emergency. Lessee shall indemnify, protect and hold harmless Lessor against any claim of liability or loss from personal injury or property damage in connection with such needed repair or downed wire or other condition constituting a risk of an Emergency caused by such condition, to the extent such loss was caused by Lessee or its contractors, agents, employees, or representatives. All brush and undergrowth near, under or adjacent to any power generation, transmission equipment or any other improvement shall be removed before and during construction and installation and regularly during the Lease term.

5.9. Responsible Use of the Land. All uses of the Land will be planned with due diligence to accomplish the Project in accordance with this Lease, and all other reasonable requirements of the Governmental Authority which are reasonably required by Lessor to protect the Trust. Lessor, as a State of New Mexico government entity, is not subject to Governmental Authority ordinances. Lessee shall nevertheless conform its Project Plans and amendments to applicable reasonable Governmental Authority requirements as if the Project were occurring on private land unless otherwise required by Lessor.

5.10. Cooperation with Existing Lessees. Lessee shall obtain consent from the holder of any agricultural lease of the Land before this Lease goes into full effect, if such consent has not already been granted by the terms of the agricultural lease. Lessor shall provide information as may be reasonably necessary to assist Lessee in communicating with the holder of any agricultural lease regarding the potential impact of this Lease and any consent that may be required.

5.11. Sewage; Disposal of Waste. Disposal of sewage, liquid or solid waste on the Land by Lessee, unless approved by Lessor in the Project Plans or otherwise during the Term, is strictly prohibited.

5.12. No Unreasonable Interference. Neither Lessor nor any Lessor Related Person shall unreasonably interfere with or impair: (a) the free, unobstructed capture of solar light or energy (whether by constructing buildings or other structures, or otherwise); or (b) the lateral or subjacent support for the Improvements. This restriction will extend to any improvements or obstructions that may reduce, reflect or divert solar light or energy in any location within the boundaries of the Land; provided, however, that trees, structures and improvements located on the Land as of the Effective Date shall remain, and they may be maintained, repaired or replaced so long as they do not exceed the size or materially deviate from their location as of the Effective Date. Notwithstanding the foregoing, and consistent with the BMPs attached hereto as **Exhibit C**, Lessee may, as reasonably necessary, trim, prune, top or otherwise control the growth of any shrub, plant or other vegetation; dismantle, demolish, and remove any improvement, structure, embankment, impediment, berm, wall, fence or other object, on or that intrudes (or could intrude) into the Land that could obstruct, interfere with or impair the Solar Power Facilities, the unobstructed flow of solar energy or the use of the Land by Lessee hereunder. For purposes of this Section 5.12, Lessor or any Lessor Related Person shall be deemed to have unreasonably interfered or impaired the foregoing if any such interference or impairment reduces or restricts the Solar Power Facilities’ ability to generate electricity.

5.13. Emergency Exception. In case of explosion, fire, flood or other emergency, whether of the same or different nature, Lessee or Lessor may enter the Land and may take such steps and incur such expenses as in its reasonable opinion are required to deal with the emergency to safeguard life and property. In the event the emergency is discovered by Lessee first, the Lessee, as promptly as possible, shall report the emergency to the Lessor.

5.14. Existing Encumbrances. This Lease is subject to all valid and existing leases, easements, restrictions, reservations, and other encumbrances. Lessee has conducted its own due diligence search of Land Office, County and other pertinent records to determine all existing encumbrances on the Land. Without warranting accuracy, an informal search of Land Office records reveals the existence of the easements, rights of way, reservations, and encumbrances in the attached **Exhibit B**. Lessee may seek to obtain non-disturbance, subordination and other title curative agreements from any person with an encumbrance, lease or other exception to Lessor's fee title to the Land to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Lease.

5.15. Reservations. To facilitate the purposes of this Lease, Lessor will provide Lessee with reasonable notice and opportunity for input before Lessor issues new leases for Mineral Interests (defined in Section 5.15.1), explores or utilizes the Pore Space Rights (defined in Section 5.15.3), explores or utilizes the geothermal rights or other rights described in this Section 5.15, or issues a new grant to a third party of such rights (collectively "Reserved Land Development Rights"). Lessee and Lessor shall work together to ensure any Reserved Land Development Rights are exercised in a manner that does not adversely affect the rights granted in this Lease. Any Reserved Land Development Rights utilized by Lessor or granted by Lessor during the Lease Term will be located to avoid unreasonable interference with Lessee's use of the Land as provided for in this Lease, including any uses depicted in any preliminary versions or drafts of the Project Plans, to the extent that Lessee has made such known and available to Lessor prior to the granting or utilization of any such Reserved Land Development Rights. For purposes of this Section 5.15, the term "unreasonable interference" shall be deemed to include any interference that reduces or restricts the Solar Power Facilities' ability to generate electricity.

5.15.1. Subject to Section 5.15, all minerals of whatsoever kind in, under or upon the Land, including but not limited to (and all of which shall be collectively referred to as "**Mineral Interests**"): oil and natural gas, helium, carbon dioxide, coal and lignite, uranium, brine, salt, copper, iron, lead, talc, barite, gold and silver, precious and semi-precious stones and jewels, caliche, building stones, shale, clay, sand, gravel, and all commercially valuable rock; all of the foregoing whether or not now known to exist or to have value, of whatever form or type, at whatever depth, in whatever nature of deposit, whether solid, semi-solid, liquid, or gaseous, whether similar or dissimilar to any of those minerals enumerated, and regardless of the method of extraction, whether by wells (including input wells), mining (including by subterranean, open-pit, or strip mines), surface or subsurface leaching or dissolution, or any other means now or hereafter known or employed;

5.15.2. Subject to Section 5.15, all geothermal resources in, under or upon the Land;

5.15.3. Subject to Section 5.15 above, all rights to use present and future underground spaces in all strata under the Land, whether in caverns, fissures, pores, on the surface of formation rocks or otherwise, for any commercially valuable purpose whatever, including but not limited to storage and/or permanent sequestration of fluids and gases and/or injecting fluids and gases to explore for and produce reserved geothermal resources and minerals (hereinafter, “**Pore Space Rights**”); Subject to Section 5.15 above: (a) all rights of access and surface use necessary for or reasonably incident to exploration for and extraction, injection, and removal of the reserved geothermal resources and minerals or the development and use of reserved Pore Space Rights; (b) the right to execute leases, permits and other agreements for geothermal resource and mineral exploration, development, and operation, and the use of reserved Pore Space Rights; (c) the right to sell or dispose of the geothermal resources, minerals or reserved Pore Space Rights; (d) the right to grant rights-of-way or entry and easements for geothermal, mineral and reserved Pore Space Rights purposes; (e) the right to prospect for, mine, produce, and remove geothermal resources and minerals, the right to prospect for and use reserved Pore Space Rights; and (f) the right to perform any and all acts necessary in connection with the foregoing reserved minerals, geothermal resources, and reserved Pore Space Rights;

5.15.4. Subject to Section 5.15 above, the right to grant rights-of-way and easements, licenses and permits over, upon, or across the Land for any purposes whatsoever, provided that such uses are compatible with Solar Energy Development, including, but not limited to recreation, public highways, railroads, tramways, telephone, telegraph, and power lines, irrigation works, conservation, environmental or remediation studies or work, water or sewer lines, drainage ditches, mining, or logging, but excluding easements to third parties for Solar Energy Development. To facilitate the purposes of this Lease, Lessor will provide Lessee with reasonable notice and opportunity for input before making such grant, except for easements or permits relating to hunting and fishing or recreational access. Rights-of-way and easements granted by Lessor during the Lease Term will be located to avoid unreasonable interference with Lessee’s use of the Land as provided for in this Lease, including any uses depicted in any preliminary versions or drafts of the Project Plans, to the extent that Lessee has made such known and available to Lessor prior to the granting of any right-of-way or easement. Lessee agrees to consider in good faith any request by Lessor that Lessee: (a) allow collection of transmission lines on Lessee Developed Solar Power Devices, Collector-System Transmission Facilities; and (b) allow usage of any excess capacity within Lessee Developed Solar Power Devices and Collector-System Transmission Facilities by other of Lessor’s lessees pursuant to reasonable terms negotiated under separate agreement, but whether Lessee agrees to allow such collection or usage of excess capacity will be in Lessee’s sole determination. Upon final review of Project Plans by the Lessor and the Governmental Authority, any rights-of-way and easements granted thereafter by Lessor shall be located to avoid unreasonable interference with the Solar Energy Project as described in the approved Project Plans. Lessor shall retain the right to access to the Land for administrative and field inspection purposes. When practical, Lessor shall give prior notice to Lessee’s onsite Project manager; provided, however, on active construction sites Lessor shall give at least forty-eight (48) hours prior notice of such entry (or as much advance notice as possible in the case of an emergency), and Lessee’s representative shall have the right to accompany such persons and be present for any inspections on construction sites. Lessee shall limit its construction, operation, and maintenance activities to include only those portions of the Land and those time periods necessary for actual construction, operation, and maintenance and

any associated staging for the Project or for individual phases. Lessee shall post notices of an appropriate size, number and location to give the public adequate notice of and to warn against trespass;

5.15.5. This Lease does not affect any rights that any surface lessees who are not parties to this Lease may otherwise have under applicable statutes and regulations. Lessor shall act in compliance with 19.2.8 NMAC with respect to all surface lessees. Lessee hereby agrees to carefully avoid destruction or injury to wildlife, natural resources, improvements or livestock lawfully upon the Land described herein, to close all gates immediately upon passing through same, and to pay promptly the reasonable and just damages for any injury or destruction arising from activities that are authorized by this Lease.

5.15.6. Lessor reserves all right, title and interest in or to the Land not expressly leased to Lessee under this Lease; and

5.15.7. Lessee may request a land use restriction agreement and/or a negative mineral easement to restrict the reserved rights identified in Section 5.15. Lessor may but is not required to issue such land use restriction agreement and/or negative mineral easement.

5.16. Water Wells; Water Rights. Lessee will not use, place, or develop water rights, and will not drill, complete, rework, re-drill, or recomplete any water wells on the Land without the express, written consent of Lessor, and without obtaining a water easement from Lessor, if required by Lessor. All water appropriated must be pursuant to applicable state law and regulations. Any water rights developed or placed on the Land are herein and hereby deemed to belong to Lessor, and all such rights must be developed in the name of Lessor. Lessee agrees to execute any documents necessary to effectuate the intent of this provision.

5.17. Tribal Access. Lessee will not install Solar Power Devices on the portion of the Land, described as being the portion of the Land 950 feet west of the north-south quarter section line of Section 16, T13N, R3E, N.M.P.M. and as Tribal Access Area in Exhibit E hereto. Lessee further agrees to provide access to this portion of the Land, with reasonable notice, to the Pueblo of Santa Ana in exercising ceremonial and medicinal gathering practices, sacred pilgrimage and other cultural activities.

6. ASSIGNMENTS.

6.1. Assignments made in violation of this Section 6 or 19.2.9.14 NMAC will be null and void as to Lessor, will be deemed a breach of this Lease by Lessee, and will entitle Lessor to seek any remedies at law or in equity for third-party trespass or such other actual damages as may derive from such acts.

6.2. Pursuant to and subject to the requirements of 19.2.9.14(A) NMAC and 19.2.9.15(A) NMAC, Lessor hereby pre-approves any partial or complete assignment to an entity bound by the terms of this Lease provided that the assignment is made on the forms approved in advance by Lessor attached hereto as Exhibit D, and:

6.2.1. The assignment is to a Qualified Assignee; or the assignment is integral to an industrial revenue bond transaction; or,

6.2.2. The assignment of this Lease in whole or in part is to a tax equity investor, a subsidiary or Affiliate of Lessee; or,

6.2.3. The assignment is a Collateral Assignment/Leasehold Mortgage to a Lender or investor, as more particularly set forth in Section 8 below; or

6.2.4. The Assignee is a public utility regulated by the New Mexico Public Regulation Commission or its successor entity with such regulatory authority.

6.3. The assignee of an assignment made in conformity with the requirements of 19.2.9.14 NMAC and this Section 6 will, to the extent of the assignment, assume the subsequent rights and obligations of Lessee upon such assignment, and Lessee will be relieved from liabilities occurring subsequent to the date of assignment, but Lessee shall remain liable for all liabilities and unfilled obligations existing at the time of the assignment.

7. SUBLEASING.

7.1. Pursuant to and subject to the requirements of 19.2.9.14 NMAC, Lessee may sublease the Land with the prior written Approval of Lessor, which may be based on whether the proposed sublease will have an adverse effect on the utility of the Land and will not be unreasonably withheld. Approval or denial will be provided within 30 days.

7.2. All sub-lessees will be bound by the terms of this Lease, including but not limited to, all rent provisions, and no sublease shall extend beyond the Term of this Lease. Lessee will provide exact copies of all subleases to Lessor.

7.3. Lessee shall remain primarily liable, and any sub-lessee will be secondarily liable, for all sub-lessee performance under this Lease as well as for all acts or omissions of any sub-lessee. Lessee hereby agrees to indemnify Lessor for all claims or damages arising from or in connection with a sub-lessee's presence or activities on the Land.

8. COLLATERAL ASSIGNMENTS/LEASEHOLD MORTGAGES; PROTECTION OF LENDERS.

8.1. **Collateral Assignments/Leasehold Mortgages.** Lessee may not, at any time during the Term, mortgage, assign, pledge or encumber, to any Lender or investor, including a tax equity investor, all or any portion of Lessee or Lessee's rights and interests under this Lease, without first obtaining Lessor's Approval as to the form of any Collateral Assignment/Leasehold Mortgage, which Approval shall not be unreasonably withheld, conditioned, or delayed. Any such Collateral Assignment/Leasehold Mortgage shall be in compliance with the requirements of 19.2.9.15 NMAC. This Section 8.1 is prior approval as contemplated under 19.2.9.15 NMAC. Such a Lender, collateral assignee, or mortgagee, shall have a lien on Lessee's interest in this Lease, as well as any Improvements covered by the Collateral Assignment/Leasehold Mortgage,

but will not have a lien on Lessor's interest in (i) the Land, (ii) this Lease, (iii) Improvements, if any, or (iv) in Lessor's reversionary interest in the real and personal property subject to this Lease. Any attempt to collaterally assign or mortgage Lessor's interest in this Lease, the Land, or any Improvements, not in accordance with the terms of this Section 8.1 is void and will not vest the purported Lender with any right, title, interest, claim or privilege with respect to Lessor's interest in this Lease, the Land, or Improvements. Lessor shall withhold enforcement of the lien arising under NMSA 1978, Section 19-7-34, or any successor statute (as permitted by 19.2.9.12E(3) NMAC) until the expiration or earlier termination of this Lease, if at any time during the Lease Term Lessee or an approved collateral assignee or mortgagee deposits in an account in the name of Lessor as security, an amount reasonably estimated to equal the sum that would be paid by Lessee in that year under this Lease and maintains such amount promptly upon Lessor drawing on such amount for payment of rent hereunder. Lessor's Approval of a Collateral Assignment/Leasehold Mortgage of Improvements does not change the status of any Improvements as authorized, unauthorized, removable or permanent, unless otherwise agreed by Lessor in writing.

8.2. Terms and Conditions of Collateral Assignments/Leasehold Mortgages. A Lender shall take its interest subject to the following terms and conditions, and Lessee is required to give notice of such terms and conditions to its Lender upon making a Collateral Assignment/Leasehold Mortgage:

8.2.1. Parties stipulate and agree that any and all proceedings, judicial or non-judicial, to enforce or foreclose an Approved Collateral Assignment/Leasehold Mortgage shall be governed by the laws of the State of New Mexico and be filed exclusively in New Mexico state district court, First Judicial District in Santa Fe, New Mexico. Parties shall provide one another with prompt notice of any such action.

8.2.2. Lender shall provide notice to Lessor of any release or satisfaction by Lessee of a Collateral Assignment/Leasehold Mortgage within thirty (30) days after such release or satisfaction, which notice can be in the form of a copy of a release recorded in the real property records of the county where the Land is located.

8.2.3. Any successor in interest to Lessee's interest in this Lease, or in any Improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a Collateral Assignment/Leasehold Mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, will be deemed to be an Assignee under Section 19.2.9.14 NMAC, and will be subject to the Approval of Lessor; provided that if the assignee is a Qualified Assignee, the assignment is deemed approved upon providing notice to Lessor of meeting the qualifications of a Qualified Assignee. If the successor would not qualify as a Qualified Assignee, then such successor shall thereafter either sell or convey the Land to a Qualified Assignee or engage a management company satisfying the requirements set forth in the definition of "**Qualified Assignee**" to manage and operate the Land. Except as specifically set forth in Section 8.3, no successor in interest will be approved by Lessor unless all sums due under the terms of this Lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to Lessor are made to fully pay such sums or discharge such duties.

8.3. Lender Protections.

8.3.1. If Lessor gives written notice to Lessee of a default under this Lease by Lessee, Lessor shall also give written notice of the Default to any Lenders. Such notice will be sent by certified mail to the most current name and address of the Lender provided to Lessor and no proof of receipt of such notice by the Lender will be required. A Lender will have the right to cure Lessee's breach within the time periods provided to Lessee under this Lease plus forty-five (45) days, except to the extent Lender is prevented from curing a nonmonetary breach because Lender does not have possession of the Land, in which case Lender will have a reasonable amount of time to cure, so long as Lender is using commercially reasonable efforts to gain possession of the Land.

8.3.2. A Lender may succeed to the rights and duties of Lessee under such conditions as are provided in the agreement between Lessee and the Lender and the terms of this Lease.

8.3.3. Lenders will be permitted to go upon the Land, from time to time at the discretion of Lessee and under Lessee's supervision.

8.3.4. So long as an approved Collateral Assignment or Leasehold Mortgage is in force, no relinquishment, assignment, modification or amendment of this Lease, or portions thereof embraced under such Collateral Assignment/ Leasehold Mortgage, will be accepted or approved by Lessor without approval by Lender or release by Lender of its Collateral Assignment/Leasehold Mortgage. Lessor and Lessee will not terminate, suspend, amend or modify or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification if this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without Lender's consent. Notwithstanding the provisions of this Section 8.3.4, Lessor retains all rights to terminate this Lease for default pursuant to Section 10.

8.3.5. So long as any Collateral Assignment/Leasehold Mortgage is in existence, unless this Lease has otherwise been terminated in accordance with its terms, the title to the Land and the leasehold estate of Lessee, therein created by this Lease, will not merge but must remain separate and distinct, notwithstanding the acquisition of said title and said leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.

8.3.6. Lessor shall, at Lessee's or a Lender's reasonable request, provide to Lessee and such Lender: (a) confirmation that such Lender is a "Lender" for purposes of this Lease; and (b) a memorandum of lease, which Lessee or a collateral assignee may record at their own expense, acknowledging the Lender's mortgage or other lien or encumbrance, and confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder. Lessor shall duly execute and return same to Lessee and/or Lender within 30 business days of Lessee's or Lender's request therefore.

8.3.7. Lessor acknowledges that Lessee's right to grant Collateral Assignments/Leasehold Mortgages, as permitted pursuant to Section 8.1 hereinabove, is a valuable and important right to Lessee. Lessor further acknowledges that Collateral

Assignment/Leasehold Mortgages may require reasonable and customary amendments to certain terms and provisions of this Lease, certain additional customary terms and provisions required to protect the Lender's interests, and/or Lessor's execution of one or more additional customary documents or agreements, and Approval of such will not be unreasonably withheld provided such documents or agreements are prepared in accordance with New Mexico laws and Land Offices Rules.

8.3.8. Lender will not be liable for any duties, obligations, actions or inactions of Lessee under this Lease prior to the date on which Lender takes possession of the Leased Premises. Upon taking possession, Lender shall be liable for all obligations of the Lessee under the Lease, subject to the provisions of Section 8.3.1, and in any event the Lender's liability under this Lease is limited to its interest in the Leased Premises.

9. ADDITIONAL LESSOR/LESSEE CONTRACTUAL RIGHTS AND OBLIGATIONS.

9.1. Indemnification. Lessee shall hold harmless, indemnify and defend the State of New Mexico, Lessor and Lessor's employees, agents, and contractors, in both their official and individual capacities, from any and all liabilities, claims, losses, damages, suit or expenses, including but not limited to reasonable attorneys' fees, penalties, and other costs for, Lessee's or Lessee's employees, agents, contractors, or invitees negligent acts or omissions or willful misconduct in connection with construction, operation or removal of improvements on the Land. Lessee shall not be required to indemnify Lessor for the negligence or willful misconduct of Lessor's own agents, employees, representatives, invitees, licensees or permittees. In the event that any action, suit or proceeding is brought against Lessee or Lessor relating to the Land or this Lease Agreement, Lessee shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of Lessor and the Risk Management Division of the New Mexico General Services Department by certified mail. This Section 9.1 shall survive the termination, cancellation or relinquishment of this Lease as to claims which accrued during the Lease Term.

9.2. Insurance. Lessee shall, at Lessee's cost and expense, obtain and maintain the following forms of insurance coverage with limits not less than those set forth below at all times during the Lease Term. All policies shall be issued by insurers authorized to do business in the State of New Mexico and name the Lessor ("New Mexico State Land Office") as the insured or as an additional insured. All policies of insurance required to be maintained by Lessee pursuant to this Section 9.2 shall be reasonably satisfactory to Lessor and shall: (a) provide for the benefit of Lessor that thirty (30) days prior written notice of suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage shall be given to all insured parties and that such insurance shall not be invalidated by any act or neglect of Lessor, nor by any foreclosure or other proceedings or notices thereof relating to the Land, leasehold or improvements, nor by occupation of the Land for purposes more hazardous than are permitted by such policy; (b) not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Land, leasehold or improvements against the peril involved, whether collectable or not; and (c) include a contractual liability endorsement evidencing coverage of Lessee's obligation to indemnify Lessor pursuant to Section 9.1. Lessee shall provide a copy of the insurance policy. Lessor shall have no liability

for premiums charged for such coverage, and inclusion of Lessor as an insured party is not intended to and shall not make Lessor a partner or joint ventures with Lessee in its operations.

9.2.1. Commercial General Liability insurance in the broadest form then available in New Mexico with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) aggregate, and two million dollars (\$2,000,000.00) excess liability or umbrella coverage, protecting Lessee and Lessor, their employees and agents against all claims for bodily injury, personal injury, death and property damage. Higher coverage may be reasonably required by the Lessor from time to time, including but not limited to increases needed to provide complete coverage for Lessor's maximum liability under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et seq. Insofar as the above-described insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, Lessor shall be included as an additional insured, provided such liability insurance coverage shall also extend to damage, destruction and injury to Lessor-owned or Lessor-leased property and Lessor personnel, and caused by or resulting from work, acts operations or omissions of Lessee.

9.2.2. Property Insurance covering all insurable improvements on the Land in an amount not less than necessary to cover the full replacement cost of such improvements.

9.2.3. Worker's Compensation coverage meeting all statutory requirements.

9.2.4. Within ten (10) days after the execution of this Lease by Lessor and delivery to Lessee and annually thereafter, Lessee shall deliver to Lessor original or duplicate certificates of insurance evidencing all the insurance which is required to be maintained under this Lease by Lessee certifying that all requirements set forth herein have been complied with, and within ten (10) days prior to the expiration of any such insurance, other original or duplicate certificates evidencing the renewal of such insurance. Upon Lessor's request, Lessee shall promptly deliver to Lessor all insurance policy documents, including declarations, endorsements, and exclusions. A certificate, policy, endorsement or rider which states that failure to give Lessor notice imposes no liability or obligation on the insurer shall not be in compliance with this Lease. For example, certificates or policies stating that the insurer shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurer are unacceptable to Lessor. Failure to comply with the insurance specifications in this Lease is a material breach of the Lease. Different types of required insurance may be written in one or more policies.

9.3. Lessee Duty to Report. During the Term, Lessee shall deliver to Lessor an annual report regarding the status of the Project or at such other intervals as Lessor may reasonably require from time to time, but in no event more often than annually. Each report shall include: (a) a short description of the status of the Project including as applicable status of Project interconnection to the electricity grid, and status of obtaining agreements to sell power; (b) satisfactory proof of the continuation of insurance coverage or any material changes thereto; (c) during the Initial Phase, progress toward construction and operations since the prior report; (d) during the Operations Phase, a Power Production statement including verification of Installed Capacity; and (e) during the Decommissioning Phase, the reclamation and decommissioning efforts Lessee is undertaking on the Land. In addition, Lessee shall immediately inform Lessor

of any upcoming meetings of any applicable local Governmental Authority regarding the Project or events of significance to the Project, as Lessee becomes aware of such meetings or events. Lessee shall provide Lessor with written notice of any notice of violation, warning letter, or consent order issued by any governmental entity against Lessee or any related entity, or with respect to Lessee's or any related entity's operations on New Mexico state trust land; or any lawsuit, settlement, or judgment concerning Lessee's or any related entity's operations on New Mexico state trust land within 30 days of such event, and upon Lessor's request, shall promptly provide a copy of the operative notice, letter, order, lawsuit, or other document. The lessee agrees to provide the SLO with copies of reports submitted to other regulatory agencies including a report verifying the megawatts alternative current of installed capacity upon request.

9.4. Lessee Duty to Comply with Laws; Duty to Protect against Waste and Trespass. Lessee shall fully comply with all applicable laws, whether statutory or court-made, regulations, rules, ordinances, and requirements, including but not limited to, the Cultural Properties Act, NMSA 1978, Sections 18-6-1 et seq., those addressed to environmental and species protection, and all Land Office Rules. Lessee's compliance will be at its own expense and will not be an offset against the Rent. Lessee will not discriminate against any independent contractor, agent, employee, sub lessee or applicant because of race, color, religion, sex, sexual orientation, pregnancy, gender, gender identity, national origin, age, ancestry, disability, physical or mental impairment, genetic information, marital status, spousal affiliation, status with regard to public assistance, veteran status, or any other legally-protected status. Lessee shall protect the Land and Improvements from waste and trespass.

9.5. Taxes. The Parties acknowledge that Lessor is a governmental agency and the Land is not subject to the requirement to pay property taxes. In the event Lessor sells or exchanges the Land and therefore ownership of the Land, subject to this Lease vests in a private party, Lessee shall pay any personal property taxes on its Improvements, and Lessor's successor in interest would then pay all other ad valorem or real property taxes and assessments levied against the Land. However, Lessee shall pay for any increase in the ad valorem taxes levied against the Land that are assessed for the period from and after the date of this Lease until the end of the Lease Term to the extent that such increase is caused solely by Lessee's operations; provided, however, such obligation will not include any recaptured taxes attributable to any period prior to the date of this Lease or any interest or penalties thereon or to any increases in taxes due to reassessment upon a transfer of the fee interest in the Land by Lessor, and Lessee shall have the right, at its own expense, to appeal or contest any such increases and to compromise and settle the same and Lessor shall execute such petitions and agreements and otherwise cooperate with Lessee to the extent reasonably necessary for Lessee to do so.

9.6. Timeframe for Lessor Approvals. For all Approvals under the terms of this Lease or related to Lessee's operations under this Lease, whether by State Land Office rule or specifically provided for in this Lease, upon Lessee providing all information requested by Lessor, Lessor shall provide a decision on such Approval within forty-five (45) days after request, unless otherwise specified by another term of this Lease.

10. DEFAULT

10.1. Default Definition. Any of the following shall constitute a Default for purposes of this Lease: any violation by either Party of any term of this Lease, including but not limited to, any failure to pay sums when due or any violation of any condition or covenant, any failure by Lessee to observe or comply with the Project Plans as approved by Lessor, or the failure to observe any other obligation under this Lease or of any applicable law.

10.2. Cure. In the event of any alleged Default or failure to perform any obligation under this Lease, the non-defaulting Party shall give the alleged defaulting Party written notice thereof, which notice will include the acts required to cure the same with reasonable specificity. Subject to the terms of Section 8, if Lessee fails to make any monetary payment when due, Lessee will have a period of thirty (30) days after such notice is given within which to cure such default. Subject to the terms of Section 8, in the event of any other Default, the defaulting Party will have a period of sixty (60) days within which to cure such Default, which period will be extended to the extent reasonably necessary, to complete such cure so long as the cure was commenced within sixty (60) days after such notice is given and thereafter prosecuted with due diligence.

10.3. Remedies; Limitation on Consequential Damages. Each Party shall have the right to recover its damages as a result of any default under this Lease which is not cured within the applicable cure period. Each Party waives its right to recover consequential damages as a result of any default under this Lease. Actual damages shall be stipulated and deemed to include lost rents and revenues from the sale of power production and any reclamation or remediation costs. Lessee for purposes of adjudication and enforcement of all remedies claimed pursuant to this Lease agrees to subject itself to the law of New Mexico and jurisdiction of the courts of the State of New Mexico and to the venue of the First Judicial District Court of the State of New Mexico. Lessee shall at all times during the Lease Term have an agent for service of process physically located within the State of New Mexico and shall at all times during the Lease Term keep Lessor apprised of said agent for service of process' name and physical address. Upon any Default and failure to cure by Lessee or by Lender, Lessor has all the remedies available at law or in equity in New Mexico, and as provided in this Lease, including, without limitation, terminating the lease, retaking possession of the Land with or without termination of this Lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of Lessee. Without waiving any defenses or immunity of Lessor, upon any Default and failure to cure by Lessor, Lessee has all the remedies available at law or in equity in New Mexico, and as provided in this Lease, including without limitation, the right to seek specific performance of the terms of this Lease, terminating the lease, and proceeding to recover any damages. Lessee's remedies are subject to Section 11.14 requiring the exhaustion of administrative remedies. Notwithstanding the other provisions of this Lease that may be to the contrary, but without waiving or modifying either party's right to seek direct damage for any breach of this Lease, each party agrees that in no event shall either party be liable under this Lease for exemplary or punitive damages, except for reckless conduct, willful misconduct or malicious wrongdoing.

11. GENERAL PROVISIONS.

The following General Provisions apply to this Lease:

11.1. Condemnation. The Land is not normally subject to condemnation, but in the event of a condemnation the following provisions will apply.

11.2. Complete Taking. If title to the whole or substantially all of the Land is taken or condemned by any competent authority for any public or quasi-public use, this Lease shall cease and terminate, all Rent and other obligations payable or to be performed by Lessee as provided in this Lease will be prorated as of the date of vesting title in the condemning authority. As damages, Lessor shall be entitled to claim the full market value of the Land, the value of Lessor's rights under this Lease, and any rights reserved to Lessor under this Lease that are taken or condemned; and Lessee shall be entitled to claim the value of this Lease and its interest hereunder, including the value of its Improvements. Lessor and Lessee shall pursue and protect their various claims separately and solely against the condemning authority.

11.3. Partial Taking. If title to less than the whole or substantially all of the Land is taken or condemned by any competent authority for any public or quasi-public use, this Lease will not terminate, and the Rent and the other obligations payable and performable by Lessee as provided in this Lease for the remainder of the Lease Term will be reasonably and proportionately reduced by Lessor as of the next Lease Anniversary. Notwithstanding the foregoing, if the Partial Taking prevents the continued business of Lessee in the remainder of the Land in such a manner that Lessee, in Lessee's reasonable opinion, cannot earn a fair and reasonable proportionate net return from the continued business, Lessee will have the option to surrender and terminate this Lease by giving written notice of the election to Lessor within fifteen (15) days after the date of vesting of title in the condemnation action. If Lessee exercises the option of Lessee to surrender and terminate this Lease in accordance with this Section 11.3, the Parties will estimate the balance of Rent and other obligations payable or to be performed by Lessee to facilitate the calculation of the condemnation award. As damages for a partial taking, Lessor shall be entitled to claim the full market value of the taken portion of the Land, the value of Lessor's rights under this Lease, and any rights reserved to Lessor under this Lease that are taken or condemned; and Lessee shall be entitled to claim damages equal to the injury caused to the leasehold estate by the partial taking. Lessor and Lessee shall pursue their various claims separately and solely against the condemning authority.

11.4. No Waiver. No employee or agent of Lessor or Lessee has the power, right, or authority to orally waive any conditions, covenants or agreements of this Lease, and no waiver of them will be effective unless in writing and executed. Any waiver of a breach or default of any condition, covenant or agreement hereof will not constitute or be construed as a waiver of any other or subsequent breach or default. The failure of either Party to enforce at any time any condition, covenant, or agreement of this Lease, or to exercise any option herein provided, or to require at any time performance of any condition, covenant, or agreement of this Lease will not constitute or construed to be a waiver of such condition, covenant, or agreements, nor will it affect the validity of this Lease or any part thereof, or the right to thereafter enforce each and every such condition, covenant or agreement. Lessor's Approval of any Assignment, Collateral Assignment/Leasehold Mortgage or sublease will not be construed as a waiver of its right, in its sole discretion, to refuse to give Approval to any other Assignment, Collateral Assignment/Leasehold Mortgage or sublease.

11.5. Scope of Agreement. This Lease incorporates all of the agreements, covenants and understandings between Lessor and Lessee concerning the subject matter hereof and such agreements, covenants, and understandings are merged into this Lease. No prior agreement or understanding between Lessor and Lessee is valid or enforceable unless expressly embodied in this Lease.

11.6. Amendment. This Lease will not be altered, changed or amended except by written instrument executed by both Lessor and Lessee.

11.7. Applicable Law and Venue. The laws of the State of New Mexico govern this Lease and any assignments or indebtedness placed thereon, without giving effect to the conflict of law provisions of the State of New Mexico. Lessee consents to venue and jurisdiction in the First Judicial District Court in and for the County of Santa Fe, and to service of process under the laws of New Mexico, in any action relating to this Lease, assignments thereof, any indebtedness or their subject matter.

11.8. Successors in Interest. All terms, conditions and covenants of this Lease and all amendments thereto will extend to and bind the permitted heirs, successors and assigns of Lessee and Lessor.

11.9. Memorandum; Documents Affecting Title and Interest. Lessor and Lessee have signed, acknowledged and delivered contemporaneously with the signing of this Lease, or may sign, acknowledge and deliver at any time in the future, a Memorandum of this Lease in such form as Lessor may approve which either Lessor or Lessee may record in the records of the Governmental Authority and the Land Office. Lessee will make no Collateral Assignment or allow any lien that may encumber the interest or title of Lessor in and to the Land, except in accordance with the provisions of this Lease.

11.10. Severability. In the event that any provision of this Lease is held invalid or unenforceable under applicable law, such provision will be deemed severed from this Lease, and this Lease will remain in full force and effect unless its essential purpose is frustrated by such severance.

11.11. No Joint Venture. Lessor is not and will not be construed or held to be a partner, joint ventures, or associate of Lessee in the conduct of the business of Lessee. Lessor will not be liable for any debts incurred by Lessee in the conduct of Lessee's business. The relationship between Lessor and Lessee is, and remains, solely that of Lessor and Lessee.

11.12. Counterparts. This Lease may be executed by the Parties in multiple counterparts, each of which will constitute an original, but all of which together will constitute a single binding agreement between the Parties. Digital signatures shall have the same force and effect as manual signatures.

11.13. No Lessor Personal Liability. In the event of a court action, Lessee shall not seek damages from Lessor or any employee of the Land Office or the State of New Mexico in their individual capacity.

11.14. Exhaustion of Administrative Remedies. In the event Lessee is aggrieved by a decision of Lessor to terminate this Lease, or any other agency determination, as defined in Land Office Rule 15 (19.2.15 NMAC), Lessee may file a contest pursuant to NMSA 1978, Section 19-7-64 and Land Office Rule 15 (19.2.15 NMAC). Lessee agrees that no declaratory judgment action shall be initiated by court action. Lessee shall initiate no court action regarding an agency determination, except to appeal a final decision of the Commissioner of Public Land rendered pursuant to such a contest proceeding, and as provided by NMSA 1978, Section 19-7-64.

11.15. Notices. Notice requirements, unless otherwise stated, will refer to written notice by registered or certified U.S. Postal Service, return receipt requested, or delivered by reputable overnight courier, return receipt of tracking system, to the addresses of the Party hereunder will constitute sufficient notice to comply with the terms of this Lease. Notice will be deemed effective upon delivery. Either Lessor or Lessee may change its respective address as provided in this Section 11.15 effective three (3) business days after giving written notice of the change to the other as provided in this Lease. The Addresses for notice are:

Notice to Lessor:

Attn: Office of Renewable Energy
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, NM 87501

and

Attn: Office of the General Counsel
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, NM 87501

The addresses listed above indicate the physical location of the State Land Office for use in personal or courier deliveries. For United States Postal Service deliveries use: Post Office Box 1148, Santa Fe, NM 87504-1148.

Notice to Lessee:

[Insert Lessee's contact information]

11.16. Calculation of Time. Any time period herein calculated by reference to "days" means calendar days unless expressly otherwise stated; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act will be first day following that is not a Saturday, Sunday, or such observed holiday.

11.17. Authority. If either Party is other than a natural person, the individual(s) signing this Lease on behalf of such Party represents and warrants that he or she has the power and

authority to bind such Party, and that no further action, resolution, or approval from such Party is necessary to enter into a binding contract.

11.18. Status of Parties. Lessor is a state governmental entity who holds and manages the Land pursuant to the terms and obligations of the Trust. Lessee is a private entity with authority to conduct business in New Mexico that is, and shall at all times remain, in good standing with the New Mexico Secretary of State.

11.19. Incorporated Law and Regulations. The Enabling Act (Act of June 20, 1910, 36 Stat. 557, Ch. 310), all current and future constitutional provisions, statutes, regulations and rules governing or pertaining to the Land, including those set out at 19.2 NMAC, are incorporated into, and made a part of, this Lease by this reference. In the event of a conflict between this Lease and 19.2.9.7 NMAC (as it exists on the Effective Date), the lease provision controls.

11.20. Lessee Due Diligence. Lessee is responsible for performing its own due diligence, including verifying all or any valid rights or reservations of record affecting the Land.

11.21. Survival of Terms, Conditions, Restrictions, Reservations, and Covenants. Any term, condition, restriction, reservation or covenant that gives rise to any rights or claims of Lessor against Lessee, including but not limited to any payment requirement and completion of the decommissioning activities set forth in the Decommissioning Plan, will survive the Termination, Relinquishment, or abandonment of this Lease.

11.22. Joint Signatories or Multiple Lessees. If more than one person or entity is a signatory denominated as Lessee, all such persons or entities will be jointly and severally liable under this Lease.

11.23. Force Majeure. In the event that Lessor or Lessee are delayed or prevented from performing any of their respective obligations under this Lease because of Force Majeure, then the period of such delays will be deemed added to the time herein provided for the performance of any such obligation and the defaulting Party shall not be liable for losses or damages caused by such delays. Lessee must provide notice of intent to invoke this provision as a basis for relieving or forbearing enforcement on a contract within 30 days of the event purported to be the force majeure or said right is waived. Rent shall still be due but construction timelines and revenue sharing may be extended as Lessor's discretion, which agreement shall not be unreasonably withheld. The time for completion of construction may be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of Lessee as specified herein. Upon completion of the event of Force Majeure the Party affected must as soon as reasonably practicable, recommence the performance of its obligations under this Lease.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date set forth above.

LESSOR:

New Mexico Commissioner of Public Lands

Stephanie Garcia Richard

LESSEE:

By: _____

Printed Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date set forth above.

LESSOR:

New Mexico Commissioner of Public Lands

Stephanie Garcia Richard

LESSEE:

By: _____

Printed Name: _____

Title: _____

Exhibit A
LEGAL DESCRIPTION OF THE LAND

- I. DESCRIPTION OF THE LAND OFFERED FOR LEASE. The land is offered only as a single parcel of 80 ±, and is described as follows (the “Land”):

Township, Range, Section	Subdivision	Acreage
13N03E16	NE4NW4	40
13N03E16	NW4NW4	40
Total Acreage: 80 acres, more or less		

- A. Location: The subject property is located approximately 5.66 miles west of Bernalillo, New Mexico.

**Exhibit B
LIST OF ENCUMBRANCES**

**Long-Term Renewable Energy Business Lease Number ES-0199
Sandoval County, New Mexico**

NOTE: INTERESTED PERSONS ARE RESPONSIBLE FOR PERFORMING THEIR OWN DUE DILIGENCE. The State Land Office provides this list of encumbrances for informational purposes only. Interested persons are responsible for verifying encumbrances in the records of the New Mexico State Land Office and the effect thereof on the Land. No search has been made of any records other than those of the State Land Office. Interested persons are responsible for searching other records which might contain relevant information, including those relating to real property, personal property, tax records, Uniform Commercial Code filings, etc., in any relevant city, county, state, and federal agency's files.

LAND DESCRIPTION:

TRS	Subdivision	State Acreage	County	Beneficiary Group Name
13N03E16	NE4NW4, NW4NW4	80	Sandoval	01 - Common Schools

Legend:
 Λ = Partial
 / = Full

13N03E16 NE4NW4, NW4NW4

SURFACE ENCUMBRANCES:

						NE				NW				SW				SE					
Purpose	Number	Assign #	Issued Date	Name	Address	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Acres	Expiration Date
Public Highway	RWD879		12/16/1937	State Highway Commission	Santa Fe, NM	Λ	Λ	Λ	Λ	Λ												17.87	12/31/9999
Public Highway	R16934		12/05/1967	NM STATE HIGHWAY DEPT	SANTA FE, NM	Λ	Λ		Λ	Λ												13.31	12/31/9999
Providing telecommunication services to the area 3-4 miles west of Bernalillo	R19987		02/27/1979	MOUNTAIN STATES TEL & TEL CO	ALBUQUERQUE, NM	Λ	Λ		Λ	Λ												3.02	12/31/9999
12.47KV three phase overhead powerline & gas line	R24716		10/07/1992	NEW MEXICO GAS COMPANY	ALBUQUERQUE, NM	Λ	Λ		Λ	Λ												2.212	10/07/2027
Water transmission line	R29457		11/03/2005	CITY OF RIO RANCHO	RIO RANCHO, NM						Λ	Λ		Λ	Λ	Λ	Λ					2.91	12/31/9999
Buried fiber optic cable	R31365		02/05/2009	QWEST CORPORATION	ALBUQUERQUE, NM						Λ	Λ		Λ	Λ		Λ					1.78	02/04/2044

Two buried fiber optic conduits	R36623		06/21/2018	Jemez Zia Tribal Consortium	Jemez Pueblo, NM	λ	λ		λ	λ											0.951	06/20/2053
Exploratory short-term renewable energy lease	ES0193		09/16/2024	AFFORDABLE SOLAR GROUP	ALBUQUERQUE, NM					/	/										80.00	09/15/2027
Fiber optic aerial cabal line	R42760		07/10/2025	Comcast of New Mexico, LLC	Albuquerque, NM	λ	λ		λ	λ											0.951	07/09/2060

MINERAL ENCUMBRANCES:

NONE

OIL & GAS ENCUMBRANCES:

NONE

Notes:

- Reservation to the U.S. for right-of-way for ditches or canals constructed by the authority of the United States

**NEW MEXICO STATE LAND OFFICE
NATURAL RESOURCE PROTECTION STANDARDS
SOLAR AND WIND LEASES
ES-0199 Exhibit C**



March 2025

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PURPOSE STATEMENT

The Natural Resource Protection Standards for Solar and Wind Leases (Protection Standards) are intended to provide detailed guidance regarding the biological and environmental requirements set forth in New Mexico State Land Office (NMSLO) renewable energy leases. The purpose of this document is to set clear expectations regarding the project planning process, support an efficient and timely environmental review and approval process, and ensure natural resources are adequately protected. **Please Note:** This document does not include guidance for cultural resource compliance on state trust land. The NMSLO Cultural Resources Office must be consulted independently for that process and requirements.

1 INTRODUCTION

This document establishes the Natural Resource Protection Standards, requirements established by the NMSLO to avoid, minimize or mitigate impact to protected resources. The Protection Standards provide a roadmap for lessees to follow in the development of environmental assessment documents and the design of their Project Plans. Adherence to all NMSLO Protection Standards is mandatory unless otherwise specified by the lease agreement or the Commissioner of Public Lands (Commissioner). These Protection Standards establish NMSLO's minimum mandatory biological and environmental requirements for solar and wind projects and are not intended to be exhaustive. Lessees are required to comply with applicable federal and state laws and regulations, and are also encouraged to review, and adopt as appropriate, NMSLO's voluntary best management practices (BMPs). The Protection Standards are mandatory requirements while the BMPs are voluntary. See Definitions.

New Mexico State Land Office (NMSLO) solar and wind leases require a biological assessment (BA) to be submitted with Project Plans (See, Sample Lease: Definitions, Appendix E)¹. In addition, the leases require that improvements avoid interference with wildlife corridors and environmentally sensitive areas, and to mitigate harm to migratory birds. Also, Project Plans shall be drafted in accordance with NMSLO Protection Standards (See, Sample Lease: Lease Term, Project Plans and Phases, Appendix E). Demonstration of compliance may require submission of supplemental documentation or revisions to Project Plans.

NMSLO seeks to maintain a collaborative relationship with lessees in developing Project Plans and biological and environmental safeguards. This commitment entails actively working with lessees on any challenges that may arise during the review process to find mutually acceptable solutions.

1.1 GUIDING PRINCIPLES

The mission of the NMSLO is to generate revenue to support public schools, universities, hospitals and other public institutions while managing state trust lands in a sustainable manner

¹ Please note: the NMSLO biological assessment is distinct from the biological assessment that may be required by the United States Fish and Wildlife Service (USFWS) for compliance with the Endangered Species Act. The NMSLO biological assessment addresses not only federally listed species but also state listed species, wildlife corridors and environmentally sensitive areas. The USFWS biological assessment may be used to inform the NMSLO biological assessment, but please note that by itself the USFWS biological assessment may not address all the requirements of the lease or of these Protection Standards.

for current and future generations. Sustainability includes supporting and maintaining clean water, clean air, healthy soils, grasslands and forests, and abundant diversity of plant-life and wildlife. Toward this end, NMSLO strongly encourages lessees to adopt the following principles to the extent practicable:

- Minimize new surface disturbance.
- Minimize impact to local waters and water flows.
- Minimize the removal of soil and vegetation.
- Minimize and control the introduction and spread of invasive species.
- Minimize the use of hard structures and impervious designs.
- Minimize harm to wildlife and the construction of new obstacles to wildlife movement.
- Minimize the use and unplanned release of hazardous substances.
- Dispose of all trash and waste off-site and in appropriate permitted locations.
- Meet highest industry standards for remediation, reclamation, and restoration.
- Use only native and certified weed free seed, clean water and clean soils in remediation, reclamation or restoration.
- Consider impacts to neighboring communities and engage culturally affiliated Nations, Tribes, Pueblos, and other descendant communities.
- Consider the collection and incorporation of Traditional Ecological Knowledge through community engagement and ethnographic studies.
- Consider upstream, downstream and cumulative environmental impacts.
- Adopt best management practices and incorporate practices into project contracts/subcontracts.
- Engage an inspection officer to monitor quality control and adherence to NMSLO Protection Standards and best management practices.

1.2 PROCESS OVERVIEW

- A. The Protection Standards are formulated around two types of protected resources: listed and protected species (both federal and state), and environmentally sensitive areas including wildlife corridors and wetlands. The evaluation process for each protected resource is essentially the same:
1. **Conduct Desktop Review** – Lessee performs a desktop review to determine whether the protected resource is *Known to Occur*, has *Potential to Occur*, or is *Unlikely to Occur*. See Definitions for Occurrence.
 2. **Perform Field-based Survey** – If the protected resource is *Known to Occur* or has *Potential to Occur*, the lessee will conduct a field-based survey to determine presence or absence of the protected resource.
 3. **Propose Avoidance Measure(s)** – If the field-based survey determines that the protected resource is present, then the lessee must avoid impact to that resource by incorporating the NMSLO Avoidance Measures in the Project Plan.
 4. **Propose Mitigation Measure(s)** – If the Avoidance Measures are impossible to implement in accordance with the prescribed standard of care, the lessee must adopt Mitigation Measures and must meet with the NMSLO to explain why the Avoidance

Measure is impracticable and what Mitigation Measures will be adopted instead (See, Sample Lease: Lease Term, Project Plans and Phases, Appendix E).

5. **Documentation** – The results of the process will be presented in the Biological Assessment attached to the Project Plan. See Definitions. For each protected resource, documentation should include the findings of the desktop review and field surveys and recommendations for avoidance, minimization or mitigation. In particular, the BA will analyze and make an explicit determination of how the proposed action may affect each protected resource and shall provide a description of any Avoidance or Mitigation Measures necessary to protect biological resources from adverse effect.
6. **Reporting** – If resource-specific surveys or other data result in positive findings of protected resources, the lessee will present this information at the Initial Planning Meeting and will be prepared to discuss how the Project will comply with NMSLO Protection Standards.

Additional reporting may be required during the construction, operation or maintenance, or remediation, reclamation and restoration phases of a project, or where mitigation measures include monitoring and adaptive management. See Appendix C.

A simple Rule of Thumb: If the protected resource is present, use the Avoidance Measure(s).

Example: If desktop review and survey determine that a state-listed plant species is present within the lease boundary, the Avoidance Measure requires that the lessee establish a 200-meter (m) buffer around any occupied habitat and prohibits any surface disturbance within that buffer area. The lessee will be required to incorporate that Avoidance Measure into the Project Plan, and will describe the findings, analyze the potential impact, and address the need for Avoidance or Mitigation Measures in the BA. Any difficulties implementing these Standards in Project Plans may be discussed and resolved through the Project Plan Review process.

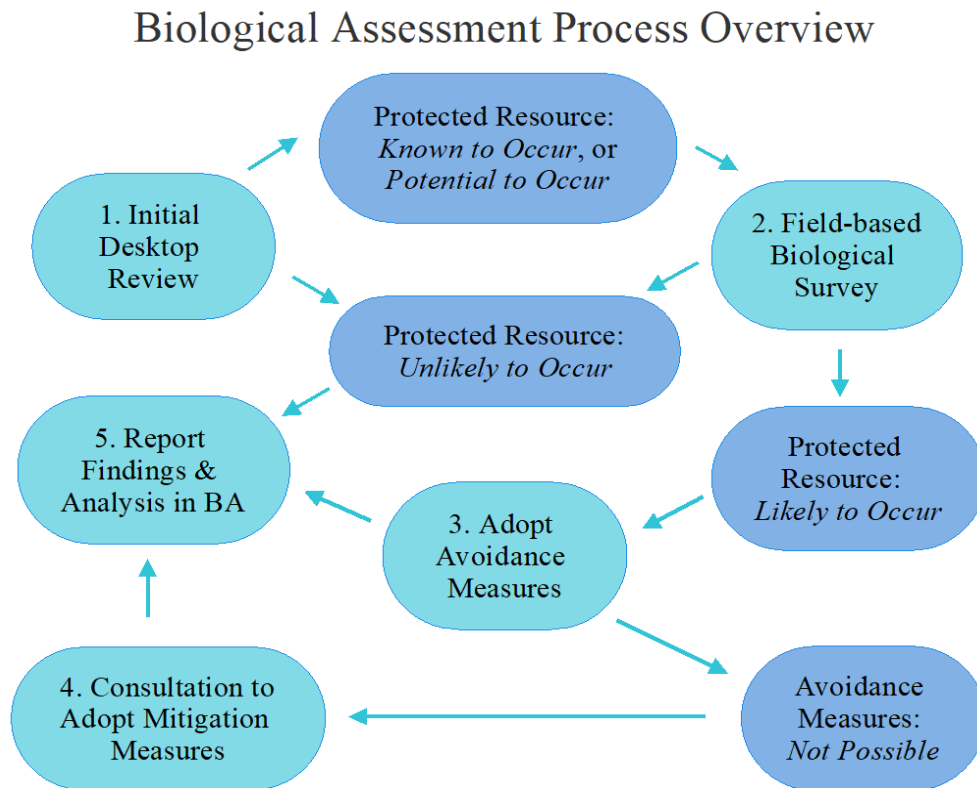


Figure 1. Biological Assessment Process Overview

1.3 TIMELINE

- A. **Preparation.** Advance planning conducted substantially ahead of the start of construction will facilitate the approval process. Many protected species require surveys that can only be conducted during limited seasons. As such, the framework of the Biological Assessment (BA), and most of the substance, including all necessary desktop review, and most field surveys and basic analysis, should be completed at least 180 days before the commencement of construction. Some surveys may be necessary closer to the time of construction (e.g., Migratory Bird Treaty Act compliance), but these should be planned well in advance and any contingency actions related to survey results should be addressed at least 180 days prior to the start of construction.
- B. **Project Plan Outline/Initial Planning Meeting.** No later than 180 days before the commencement of construction, the lessee shall present a preliminary Project Plan including a draft BA, and shall confer with NMSLO staff within 45 days of submission to discuss the final stages of design and the incorporation of any necessary Avoidance or Mitigation Measures (See, Sample Lease: Lease Term, Project Plans and Phases, Appendix E). The purpose of this preliminary Project Plan conference is to prevent any impediments to the timely completion of the Project Plan.

- C. **Final Project Plan.** No later than 90 days before the commencement of construction, the lessee shall submit the Final Project Plan with Final BA to the NMSLO for review (See, Sample Lease: Lease Term, Project Plans and Phases, Appendix E).
- D. **Planning Conference.** Within 30 days of submission of the Final Project Plan (at least 60 days before the commencement of construction), the lessee and the NMSLO shall confer to discuss the Project Plans (See, Sample Lease: Lease Term, Project Plans and Phases, Appendix E). The purpose of this conference is to provide the lessee with an opportunity to present its Project Plans and to explain how the Plans comply with Lease terms and with these Protection Standards.
- E. **NMSLO Approval.** Within 30 days after the Project Plan conference or after the lessee has resolved all deficiencies identified during the conference (at least 30 days before the commencement of construction), the NMSLO will provide written confirmation of approval of the Project Plans. NMSLO approval, which shall not be unreasonably withheld, is required prior to the commencement of construction (See, Sample Lease: Lease Term, Project Plans and Phases, Appendix E).

Project Plan and Biological Assessment Timeline

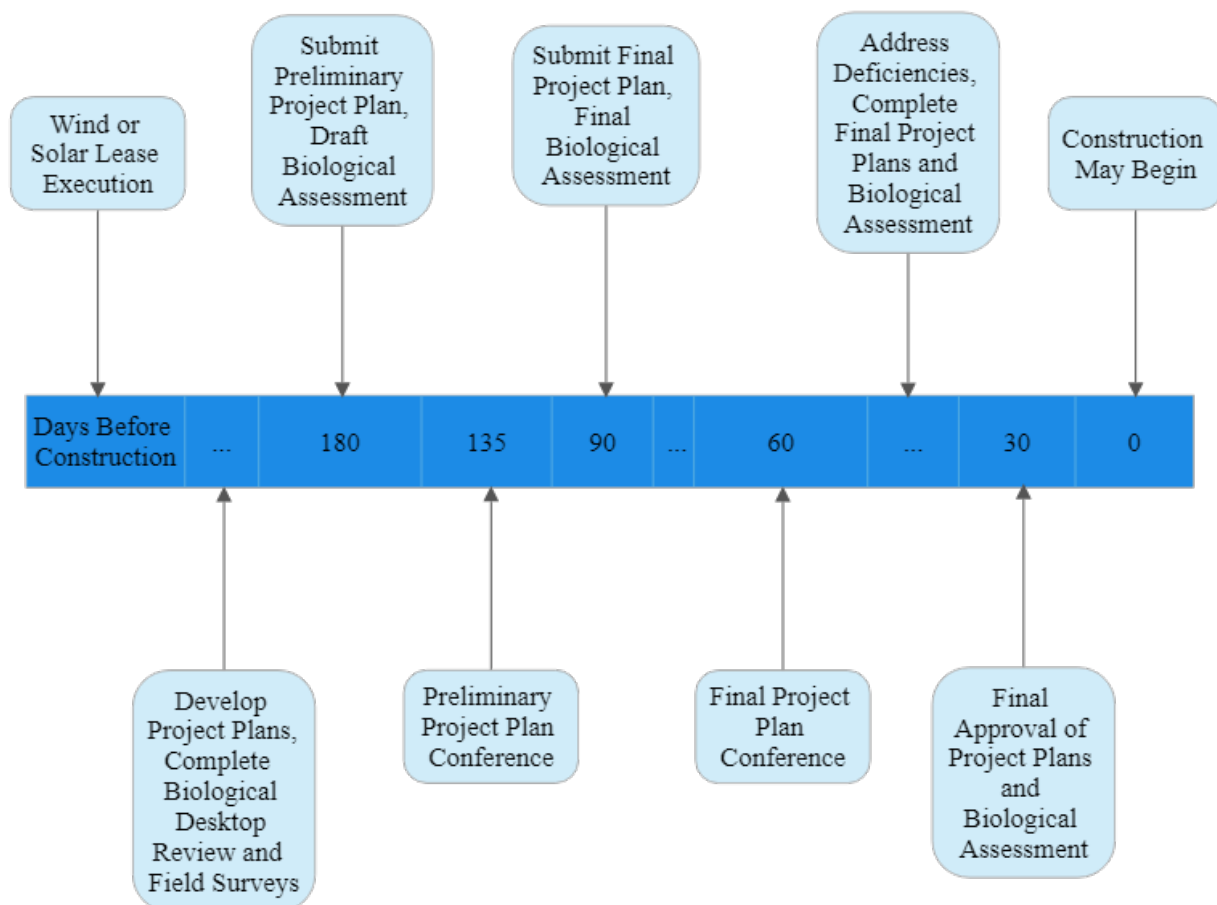


Figure 2. New Mexico State Land Office Solar and Wind Energy Project planning timeline

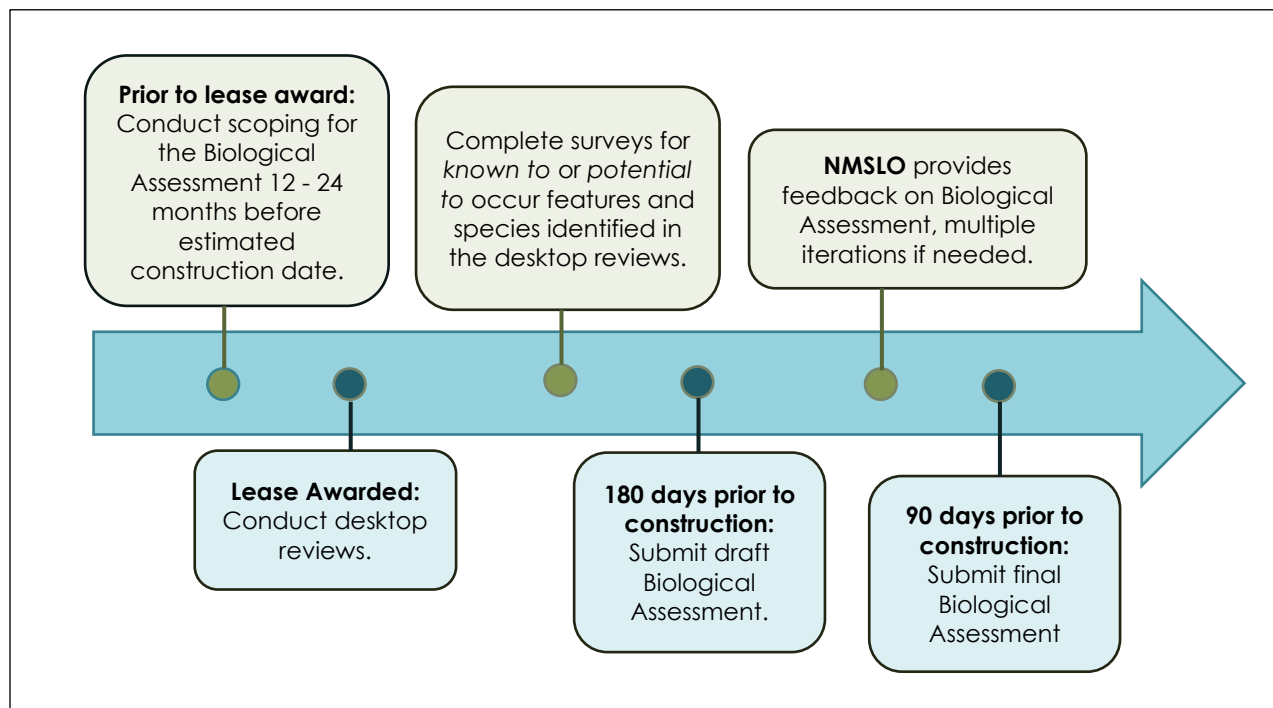


Figure 3. NMSLO Biological Assessment timeline detail

1.4 DEFINITIONS

Action Area means all areas on state trust land that may be affected directly or indirectly by the proposed action.

Avoid, Minimize and Mitigate is the basic three-tiered approach that the NMSLO asks of its lease holders to reduce impact to natural resources. Complete avoidance of impact is the highest and best standard. Where total avoidance is not possible, impact should be minimized and mitigated. Minimizing impact may include adjustments to design, construction, timing or operational activities depending on the situation. Minimizing often includes monitoring to assess ongoing impact. Mitigation may include on-site reclamation, remediation, or restoration as well as monitoring and data collection, and may include off-site activities such as translocation or conservation.

Best Management Practice (BMP) means a management practice impacting design, construction, operation, maintenance and reclamation, for a project on state trust land, that should be applied by a lessee and its agents to the extent practicable, unless otherwise stated. NMSLO BMPs should be considered as guidelines. They are not mandatory, and not all BMPs will apply to every project. However, lessees are strongly encouraged to consider the range of issues raised by the BMPs and to adopt, throughout the course of a project, as many relevant BMPs as possible. The implementation of BMPs will increase the likelihood of project success and reduce the risk of harm to natural resources. The BMPs are contained in a separate document.

Big Game includes Barbary sheep, bear, bighorn sheep, cougar, deer, elk, javelina, oryx, Persian ibex and pronghorn.

Biological Assessment refers to both the report and the due diligence process undertaken by an applicant to evaluate potential impacts to protected natural resources. The analysis will include a desktop review and may require on-the-ground surveys and will result in a written document or report to be submitted with Project Plans. The purpose of a biological assessment (BA) is to evaluate the effect of proposed actions on protected biological resources, to determine the likelihood of adverse effect, and to establish Avoidance and Mitigation Measures where necessary. See Section 2.

Cave means a naturally occurring passage or cavity formed underground or in the face of a cliff or hillside.

Conservation Measures refer to the specific required actions, practices or designs that will be adopted by the lessee to avoid, minimize or mitigate fragmentation or negative impacts to the function of wildlife corridors and habitat connectivity values. Specific Conservation Measures may be drawn from NMSLO or other agency BMPs or adapted from NMSLO Avoidance Measures, or may be new measures proposed by the lessee. In concert, the proposed Conservation Measures must be sufficient to significantly minimize or mitigate fragmentation or negative impacts to the function of wildlife corridors and habitat connectivity values.

Critical Life Cycle Requirement refers to nesting or denning, breeding, rearing young, migrating, foraging, resting, stopping, or moving between habitats to accommodate climate or seasonal changes.

Designated or Mapped Wildlife Corridors are wildlife corridors that have been identified, mapped and made publicly available through planning efforts initiated by the New Mexico Department of Transportation (NMDOT), New Mexico Department of Game and Fish (NMDGF), Energy, Minerals,

and Natural Resources Department (EMNRD), NMSLO, or other state, federal or tribal agencies. An agency designated wildlife corridor may have a set of management rules, requirements or conservation measures for the protection of the corridor. A mapped wildlife corridor is a less formal description of wildlife movement areas based on scientifically collected data. Note: As of this writing there are few if any officially designated wildlife corridors in New Mexico. NMDGF in particular is primarily concerned with functional wildlife corridors. Mapped wildlife corridors are more likely to exist in New Mexico than designated wildlife corridors. However, in the future to the extent that designated wildlife corridors are created in New Mexico, they should be considered in the analysis. See also definitions for Habitat Connectivity, WCAP Hotspot Area and Wildlife Corridor.

Environmentally Sensitive Areas means any surface water resource, cave or karst feature, sensitive soil, or special status land.

Ephemeral Surface Water flows or pools only in direct response to normal precipitation (~1"/24 hours).

Focal Species are species selected in the analysis of wildlife corridor impacts to represent the diversity of habitat requirements and movement needs within a given area. The goal is to evaluate the habitat uses of a small suite of species that will effectively represent the needs of as many species as possible. For these standards, the five categories of focal species include:

Area-sensitive species: species with large home ranges or requiring long-distance dispersal for metapopulation persistence (often large mammals, usually species that pass through a corridor).

Barrier-sensitive species: species most reluctant to traverse roads, fences, canals, urban areas, and other barriers (e.g., often reptiles, amphibians or fish, usually corridor dwellers).

Dispersal limited species: species whose mobility is limited due to extreme habitat specialization, small home range, or short dispersal movements (often smaller animals, usually corridor dwellers).

Habitat specialists: species strongly associated with major vegetation types or topographic elements in the planning area (often amphibians, fish, insects, birds, some mammals, may be passage species or corridor dwellers).

Ecological indicators, keystone or umbrella: species tied to an important ecological process, such as predator-prey relations, pollination, disturbance regime, or which may be indicators of ecosystem health or stand as proxy for large groups of other species (often mammals, amphibians, insects, or birds, may be passage species or corridor dwellers).

Habitat Connectivity refers to how and to what degree distinct resources including food, water and shelter for wildlife populations are distributed and interconnected, both spatially and temporally. Habitat connectivity quality ranking (high, medium, low) is based on an estimate by a qualified professional wildlife biologist of measurable obstacles to access or movement for wildlife species within and across a given habitat. The ranking should account for both potential and actual habitat connectivity. High quality habitat connectivity describes a location that allows free unobstructed movement of wildlife species to and from important

use areas and that shows evidence of actual use. High quality habitat connectivity areas are included in the wildlife corridor analysis.

Important Habitat is a location that contains the physical and biological features necessary to provide a majority of the documented habitat requirements (such as climate, soil type, water resources, vegetation, forage, prey, nesting material, etc.) for the selected wildlife species and which is determined to be of significant value by a qualified professional wildlife biologist. Significant value should be based on site specific biological values and may be based on such considerations as the presence of large contiguous natural areas (unfragmented landscape), rareness of the resource, isolation of the resource, critical importance of the resource to population dynamics, centrality of the resource to significant populations (core habitat), connectivity of the resource (between core habitats or across significant pinch points to movement) or other biologically relevant characteristic of resource value. The determination of significant value shall be made by a qualified professional wildlife biologist and must be based on data or scientifically supported rationale.

Important Use Areas are locations where use by a wildlife species for a critical life cycle requirement is determined to be of significant value by a qualified professional wildlife biologist. Important use areas may include roosting sites, breeding areas, hibernation locations, maternity or nursery colonies, fawning or calving areas, critical forage areas, resting or stopover areas, migration or feeding corridors or pathways, wetlands, wintering areas, summering areas, and important seasonal ranges for any wildlife species. Significant value should be based on actual use by focal species or protected species and may be based on such considerations as concentration, density or frequency of use. The determination shall be made by a qualified professional wildlife biologist and must be based on data or scientifically supported rationale.

Intermittent Surface Water flows or pools continuously during certain times of the year, but more than in direct response to precipitation.

Karst Feature includes but is not limited to swallets, springs, solution enlarged fractures, solution tubes, cover-collapse and cap-rock collapse sinkholes or other suffosion sinkholes or depressions.

Karst Professional is an expert in the field of cave and karst identification and assessment, as defined by ASTM International Phase I for Karst Assessment Standards. See Appendix B for detail.

Large Natural Area refers to land in a natural or semi-natural condition that is relatively unimpacted by ground disturbance or other human activity. For the purposes of these Protection Standards a large natural area is defined as any quarter-quarter section of land (40 acres) that contains less than 15% (6 acres) of un-reclaimed ground disturbance, such as land converted to irrigated farmland, structures, pads, yards or pavement, and which contains no paved roads. Large natural areas are a proxy for habitat connectivity with potential to provide quality wildlife corridor services.

Materiality of Impact/Level of Care requires that where protected resources occur within the project area, the level of care expected of the lessee increases. Protection Standards should be applied to the maximum extent feasible to avoid, minimize or mitigate impact to protected resources. For all other natural resources, the lease holder should use Best Management Practices to avoid, minimize or mitigate impact to the extent practicable, unless otherwise directed by the Commissioner of Public Lands.

Occupied Habitat is any habitat known to be used by a protected species. The boundaries of occupied habitat for wildlife should be defined by a qualified professional wildlife biologist on a case-by-case basis depending on species type, life history requirements and the availability of essential physical or biological attributes of the habitat. The boundaries of occupied habitat for plants are defined by a 20 m (66 foot) buffer surrounding a plant location or the location of a population of plants.

Occurrence is divided into three types – Known to Occur, Potential to Occur, or Unlikely to Occur. Each type includes the characteristics described below. Additional characteristics may be specified for an individual category of review.

- *Known to Occur* – the species itself, or species use of the habitat, including infrequent use, or occupied habitat have been documented within the boundary of the lease by an observer familiar with the protected resource, and/or whose recorded observations have been reviewed, verified, or published by a subject matter expert (e.g., state or federal wildlife agency). Temporal limitations related to the viability of a recorded observation should be based on current industry standards and may require consultation with the NMSLO, EMNRD, NMDGF or USFWS. For example, a 30-year-old record siting of a yellow-billed cuckoo may no longer be a reliable record for determining occurrence.
- *Potential to Occur* – the boundary of the lease is within the species' current known range or suitable habitat is present, but records of the species presence or use have not been verified. Potential infrequent or irregular use or presence still constitute potential to occur.
- *Unlikely to Occur* – the boundary of the lease is outside of the species' current known range and does not contain suitable habitat.

Perennial Surface Water flows or pools continuously year-round in a normal year.

Protected Resource includes protected plant and wildlife species and environmentally sensitive areas.

Protected Species

Protected Plant Species include plants listed under the Endangered Species Act (ESA) or the New Mexico Endangered Plant Species Conservation Act. Protected Plant Species also include Critically Imperiled Plants as defined by the New Mexico Rare Plant Conservation Strategy Species List (EMNRD).

Protected Wildlife Species include wildlife listed under the Endangered Species Act (ESA), or the New Mexico Wildlife Conservation Act (NMWCA), or wildlife species protected under the Bald and Golden Eagle Protection Act (BGEPA), or Migratory Bird Treaty Act (MBTA). Protected Wildlife Species also include Species of Greatest Conservation Need (SGCN) as defined by the New Mexico State Wildlife Action Plan (SWAP) and big game protected by the New Mexico State Game Commission.

Protection Standard refers to a requirement established by the NMSLO to avoid, minimize or mitigate impact to protected resources. The Protection Standards create a roadmap for lessees to

identify protected resources, to avoid impact wherever possible, and to minimize and mitigate impact where avoidance is not possible. Protection Standards may be required at different project phases, including design, construction, operation, maintenance or reclamation and must be implemented by solar and wind lessees and their agents to the maximum extent feasible, unless otherwise directed by the Commissioner of Public Lands.

Qualified Professionals for each specialty science addressed in these standards, including wildlife biologists, botanists, soil scientists and cave and karst specialists, are generally defined by their own standards of practice. To date, unlike professional engineers or permitted cultural resource professionals, there is no state regulatory or certifying board for professionals working in the natural sciences. Until a more formal certifying process is established by state or federal regulation, these Protection Standards will define qualified professionals by specialty with input from practitioners. Appendix B contains current NMSLO definitions for each specialty.

Sensitive Soils are defined in Section 2.3.4.

Setbacks establish a buffer zone between protected resources and permitted lease activities. Unless otherwise noted, the setback creates a *permanent* ban on surface disturbing activity, including the construction or operation of infrastructure, within the buffered area. In some cases, temporary setbacks or suspensions of activity are required to avoid seasonal impacts.

Significant Cave is any cave developed in evaporite and/or carbonate karst, or sediments or igneous rocks in pseudokarst zones that has passages or cavities greater than 50 feet in length.

Small Collapse Feature is any collapse feature or suffosion sinkhole less than 2 m in diameter and or 2 m in depth.

Special Status Land refers to land designated for a conservation purpose by the NMSLO or another state or federal agency, and which designation may include specific conservation measures or recommendations. Special Status Lands include, but are not limited to, NMSLO designated Land Use Restrictions or Conditions (LURC), NMSLO priority planning areas, National Parks, National Monuments, Wilderness Areas, BLM areas of critical environmental concern (ACECs), BLM wilderness study areas (WSAs), land covered by USFWS habitat conservation plans (HCPs), land designated by USFWS as Critical Habitat, Important Plant Areas as designated by EMNRD, Important Bird Areas as designated by Audubon, Conservation Opportunity Areas (COAs) as designated by NMDGF (SWAP), and land covered by Candidate Conservation Agreements with Assurances (CCAAs). This includes areas designated for cultural resource protection such as cultural properties listed on or identified as potentially eligible for the National Register of Historic Places or the NM State Register of Cultural Properties, as well as Traditional Cultural Places identified by culturally affiliated groups such as Tribes, Nations, Pueblos, and other descendant communities.

Suitable Habitat means any area within the current range of a protected species that also contains the physical and biological features necessary to provide a majority of the documented habitat requirements (such as climate, soil type, water resources, vegetation, forage, prey, nesting material, etc.) for the protected species for at least one critical life cycle

requirement or one important period of their annual life cycle. Suitable habitat may be occupied or unoccupied.

Surface Water Resources are defined as any perennial, intermittent or ephemeral surface water, including the riparian zone and the 100-year flood plain. Surface water resources may include, but are not limited to springs, seeps, lakes, playas, streams, wetlands, floodplains, riparian areas, washes and arroyos. The boundary of a surface water resource is defined as the outer edge of the 100-year flood plain, or if there is no discernable or designated flood plain, the outer edge of the ordinary high-water mark.

Suspensions are *temporary* buffer zones or setbacks between protected resources and permitted lease activities established to avoid seasonal impacts. A *temporary* setback or a *suspension* of activity will be noted in the specific Protection Standard and will establish a ban of surface disturbing activity within the buffer zone for a limited period-of-time, usually breeding or nesting season, or summering or wintering season.

To the extent practicable means to the extent feasible or capable of being done or carried out with reasonable effort, taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, benefits to the environment, and other societal and socioeconomic considerations. To the extent practicable is meant to be a reasonable balance between economic costs and social and environmental concerns.

To the maximum extent feasible means to the extent possible or capable of being carried out when every effort is made to comply with the requirement. Constraints may include physical limitations of the site, technological or engineering design, and environmental impact. Economic factors may be considered but shall not be the overriding factor in determining maximum extent feasible.

WCAP Hot Spot Areas are regions identified in the Wildlife Corridor Action Plan (WCAP) as locations of high incidence of animal-vehicle collisions and which have been prioritized for wildlife-vehicle collision mitigation projects. See, WCAP Figure ES-1: Hotspot Analysis Results, and Table ES-4: Top 10 WVC hotspots in New Mexico based on the number of crashes per mile.

Wildlife Corridors are areas used by wildlife as through-ways or pathways to areas with important resources for the completion of critical life cycle requirements. These include, but are not limited to seasonal migration routes. Wildlife corridors may include designated or mapped wildlife corridors, WCAP Hot Spot Areas, high value habitat connectivity areas, and other wildlife through-ways or pathways that have been identified using movement data or other scientifically based method, by any agency, tribe, university or non-governmental organization. In addition, large natural areas and perennial or intermittent surface water resources are assumed to have high potential for providing quality wildlife corridor services.

Wildlife Corridor Functionality should be based on the best available scientific data and is the relative capacity of a region to act as a connection for wildlife between seasonal ranges, Important Habitat and Important Use Areas, and to allow animal movement necessary to meet critical life cycle requirements.

2 BIOLOGICAL ASSESSMENT

The purpose of a biological assessment (BA) is to evaluate the effect of proposed actions on biological resources, to determine the likelihood of adverse effect, and to establish Avoidance and Mitigation Measures where necessary. The NMSLO will review the BA in conjunction with review of the Project Plan. The BA must include the elements listed below:

1. A project description.
2. A description of the “action area” (all areas that may be affected directly or indirectly by the proposed action).
3. A description of the physical and biological attributes of the action area, including a map.
4. A list of any state- or federal- listed species or any protected species that may be present within the action area (publicly available data may be used to create this list).
5. A description of any wildlife corridor or environmentally sensitive area that may be present within the action area.
6. An analysis and explicit determination of how the proposed action may affect each protected resource (“no effect” “may affect, but unlikely to adversely affect” “may affect and likely to adversely affect”).
7. When necessary to support the conclusions of the analysis, a biological field survey shall be required.
8. A description of any avoidance or mitigation measures necessary to protect biological resources from adverse effect.

2.1 SCOPING

To identify the presence of protected resources, the lessee should consult early in the process with NMSLO staff (for large projects NMSLO recommends meeting at least two years before construction is set to begin). NMSLO recommends that lessees initiate the desktop review process by identifying the project’s ecoregion and core habitat types, water resources, soil types, cave and karst potential and any special land status. Subsequently, lessees should compile a comprehensive species list for both flora and fauna. NMSLO recommends that lessees acquire a report from NMDGF using the New Mexico Environmental Review Tool (NMERT) to identify potential wildlife species issues including the presence of protected species and wildlife corridors. NMSLO also recommends that lessees consult with EMNRD to identify critical plant areas and protected plant species. Appendix A contains many additional public resources for developing a baseline dataset for the assessment of potential project impacts. In addition, survey protocols and field investigation strategies should be defined at least two years before construction begins. Early consultation with the NMSLO is recommended. See Appendix B for multiple available survey protocols.

2.2 LISTED AND PROTECTED SPECIES

Section 2.2 of the NMSLO Protection Standards pertains to both listed and Protected Species and is divided into two parts: Section 2.2.1 for Wildlife, and Section 2.2.2 for Plants. These

Protection Standards relate to both federally and state protected species. Federally protected species and habitats fall under the Endangered Species Act (ESA), Bald and Golden Eagle Protection Act (BGEPA), and Migratory Bird Treaty Act (MBTA). New Mexico also protects species and habitats by state statute or rule. State-listed threatened or endangered wildlife are protected by the New Mexico Wildlife Conservation Act (Section 17-2-40.1 NMSA 1978); state-listed endangered plants fall under the New Mexico Endangered Plant Species Conservation Act (Section 75-6-1 NMSA 1978). New Mexico also identifies Species of Greatest Conservation Need as defined by the State Wildlife Action Plan (SWAP), and Critically Imperiled Plants, as defined by the New Mexico Rare Plant Conservation Strategy Species List (EMNRD). Links to these resources may be found in Appendix A.²

The basic process involves a desktop review to identify the potential presence of protected species, followed by a field survey when indicated, and the application of Avoidance or Mitigation Measures as necessary. Please note: where federally-listed species are impacted, consultation with the USFWS may be required by federal law. Where state-listed species are impacted consultation with the NMDGF (wildlife) or EMNRD (plants) is encouraged. It is the lessee's responsibility to determine whether or not outside consultation is required. All Avoidance or Mitigation Measures determined to be sufficient and approved by the USFWS, NMDGF or EMNRD, if any, that conflict with or vary from NMSLO requirements should be documented. The NMSLO will defer to all lead agency decisions and requirements only if they are more stringent than NMSLO Protection Standards.

2.2.1 Wildlife

All solar and wind projects will adhere to the following Protection Standards to avoid or minimize impacts to listed and protected wildlife species and associated habitats occurring within lease boundaries.

2.2.1.1 DESKTOP REVIEW

- A. The lessee will evaluate the potential presence of protected wildlife species and/or suitable habitat within the lease boundary by conducting a desktop review as described below.
- B. The product of this evaluation will be a list (to be reported in the BA) of protected wildlife species or suitable habitat within the boundary of the lease, that are *Known to Occur* or have *Potential to Occur* based on the following definitions:
 - *Known to Occur* – the species or occupied habitat have been documented within the boundary of the lease by an observer familiar with local fauna, and/or whose recorded observations have been reviewed, verified, or published by a subject matter expert (e.g., state or federal wildlife agency).

² This list has been defined specifically for the purposes of establishing NMSLO-specific survey, Avoidance, and Mitigation requirements for a subset of species that are afforded protection or special-status conservation listing by the State of New Mexico. The NMSLO recognizes there may be other species that hold other cultural or biological importance (e.g., species listed by tribal entities, species endemic to the state, "rare" species, etc.). The NMSLO encourages Lessees to identify any species that may require additional Project-specific attention outside this list.

- *Potential to Occur* – the boundary of the lease is within the species’ known range and suitable habitat is present, but records of the species have not been verified.
 - *Unlikely to Occur* – the boundary of the lease is outside of the species’ known range and does not contain suitable habitat.
- C. In creating this list, the lessee’s desktop review should include publicly available data and, if possible, peer-reviewed research publications. These data and publications should include reports generated by the NMERT and Information for Planning and Consultation Tool (IPaC) and may relate to species range, life history requirements, status surveys and reports, USFWS 5-year reviews, soils data, aquatic resources, and any lease-specific information provided by the NMSLO. A lack of published information does not necessarily imply the absence of suitable or occupied habitat for protected species. Some current sources of data may be found in Appendix A.

2.2.1.2 SURVEY REQUIREMENTS

- A. Where potential presence is indicated by a *Known to Occur* or *Potential to Occur* designation, the lessee will conduct a field-based biological survey. The lessee will provide documentation of survey methodology and results in the BA. NMSLO survey protocols are described in Appendix B.
- B. If the survey determines that protected wildlife species or suitable habitat are present within the lease boundaries, the lessee will notify the NMSLO and the USFWS or NMDGF, and will implement USFWS or NMDGF requirements, if any, and the NMSLO Avoidance and Mitigation Measures as described below, unless requirements from USFWS or NMDGF are more stringent.
- C. If the desktop review and/or surveys determine that presence is unlikely to occur because the lease boundary is outside the protected species’ known range and does not contain suitable habitat, the lessee should report those findings in the BA and may continue without adjustment to their Project Plans.

2.2.1.3 AVOIDANCE MEASURES

In cases where protected wildlife species or suitable habitat are present within the lease area, the NMSLO has designed the following baseline Avoidance Measures to ensure that impacts are appropriately minimized or avoided to the maximum extent feasible. The NMSLO will defer to lead agency decisions and requirements if they are more stringent than NMSLO Protection Standards. The Avoidance Measures are organized by species groups. If a protected species or suitable habitat is determined to be present, but there are no specific relevant Avoidance Measures listed below, the lessee shall design and propose their own reasonable measures to avoid impact.

A. *General:*

1. The lessee must not apply rodenticides, pesticides, insecticides, herbicides or chemical dust palliatives within 100 m (328 feet) of known occupied habitat

of protected wildlife species. A case-by-case variance, which must be in writing, may be granted by NMSLO after consultation.

B. *Mammals:*

1. The lessee will apply a 100 m (328 foot) setback for surface-disturbing activities from den or burrow locations or the outer extent of colonies belonging to protected mammal species that are either presently occupied or show signs of occupancy by a protected species within the past two years at the time of survey.
2. The lessee will apply a 100 m (328 foot) setback for surface-disturbing activities from the outer extent of colonies of unprotected small mammals that provide burrow habitat for other protected species as determined by a qualified wildlife biologist.
3. Important use areas for big game: The lessee will apply a 400 m (1,312 foot) setback for all new surface disturbance and all project infrastructure from any important use area, including fawning areas.
4. For wind turbines, the lessee will apply an 800 m (2,625 foot) setback for surface disturbing activities and infrastructure from important use areas of protected bat species. The lessee will also develop a curtailment plan (change of cut-in speed to higher wind speed values), and a plan for the use of blade feathering during periods of low wind speed when important use areas for protected bat species occur within 1000 m (3,281 foot) of a wind turbine. For all other surface disturbing activities, the lessee will apply a 400 m (1,312 foot) setback from important use areas of protected bat species.

C. *Birds:*

Federal- or state-listed birds, and Bald and Golden Eagles, are protected year-round (ESA and BGEPA). Important use areas should be avoided and buffered by *permanent setbacks*. Occupied or active nests of birds protected under the NMWCA, ESA or BGEPA must be buffered, and all activities within the buffered area shall be *suspended* during nesting season until the nest is inactive and the young have fledged.

Native birds are protected during the breeding and nesting seasons (MBTA). Occupied or active nests of birds protected under the MBTA must be avoided during nesting season until the nest is inactive and the young have fledged. For compliance with the MBTA, all activities within the buffered areas described below shall be *suspended* during the breeding and nesting season. The timing of nesting season is specific to the species, and depends on the ecosystem and climate, but in the Southwest, this generally occurs from March 1 – August 31. For raptors, nesting season in the Southwest is from February 1 – August 31. Timing should be determined by a qualified professional biologist on a case-by-case basis.

1. The lessee will perform field-based clearance surveys if tree or shrub removal or ground-disturbing activities are anticipated to occur during nesting and breeding season. A qualified biologist should survey breeding and nesting habitat within the potential area of effect no more than two weeks before construction or site preparation. If more than two weeks lapses between construction actions, the area of effect should be resurveyed. If breeding or nesting birds are detected, the lessee will apply the Avoidance Measures below and will monitor nests until the nests are no longer active or occupied.
2. The lessee will suspend ground disturbing activities within 100 m (328 feet) of active or occupied nests for any protected bird species, unless more stringent setbacks are indicated elsewhere in this or other guidance documents.
3. The lessee will suspend ground disturbing activities within 200 m (656 feet) of active or occupied burrowing owl nests.
4. The lessee will apply a setback equal to 400 m (1,312 feet) for all Project infrastructure (except wind turbines) from steep slope landscape features that attract foraging, migrating, roosting, or nesting raptors. For wind turbines, the setback will be equal to 800 m (2,624 feet). Such features include, but are not limited to, ridges, cliffs, canyons, ravines and escarpments. The setback will be measured from the top of the highest slope-break.
5. The lessee will apply a 300 m (984 foot) setback for all Project infrastructure from any important use area, roosting site, or forage area for any listed (federal or state) bird species unless more stringent distances are indicated elsewhere in this or other guidance documents.
6. The lessee will suspend ground disturbing activities within 300 m (984 feet) of active or occupied nests of listed (federal or state) bird species unless more stringent distances are indicated elsewhere in this or other guidance documents.
7. The lessee will suspend ground disturbing activities within 400 m (1,312 feet) of occupied raptor nests unless more stringent distances are indicated elsewhere in this or other guidance documents. For occupied nests of Ferruginous Hawk, Peregrine Falcon or Prairie Falcon, the lessee will suspend ground disturbing activities within 800 m (2,624 feet).
8. For all activities except for wind turbines, the lessee will apply a 400 m (1,312 foot) setback for all Project infrastructure from active eagle roosting sites or important use areas. For wind turbines the lessee will apply an 800 m (2,624 foot) setback from active eagle roosting sites or important use areas.
9. The lessee will suspend ground disturbing activities within 3219 m (2 miles) of active or occupied eagle nests. This USFWS recommended buffer may be adjusted if site-specific data are available providing adequate evidence to suggest the buffer should be larger/smaller/non-circular.

10. The lessee will apply a 1-mile setback for all Project infrastructure from any Lesser Prairie-Chicken lek that has been active within the last five years. Also, within two miles of any Lesser Prairie-Chicken lek that has been active within the last five years, or on any NMSLO lands enrolled in the Lesser Prairie-Chicken CCAA, all construction activities are subject to timing restrictions:
 - i. no activity is allowed between 3:00 AM and 9:00 AM between March 1 and June 15; and
 - ii. industrial noise, such as that caused by compressors and diesel engines, will be muffled or otherwise reduced to a level below 75 dB at 30 ft from the source of the noise.
11. If active or occupied bird nests are located, the lessee will erect temporary signage and/or temporary protective wildlife friendly fencing a minimum of 200 m (656 feet) from the nest location(s) and will not disturb the area until the nest is inactive and the young have fledged, are no longer being fed by parents, and have left the area.
12. The lessee will promptly remove and properly dispose of all attractive nuisances such as large animal carcasses (e.g., livestock, big game, other wildlife) that may serve as attractants to eagles. (Contact NMDGF for removal of big game or wildlife).

Table 1. Summary Avoidance Measures for Birds

Species/Feature	Buffer Type/ Protection Standard	Distance (m)	
		Wind Turbines	All Other
Active Nest—all	Suspend Activity		100
Active Nest—all	Temporary Signage/Fencing		200
Burrowing Owl: Active Nest	Suspend Activity		200
Raptors: landscape features—ridges, cliffs, canyons, ravines, escarpments	Setback	800	400
Listed species (federal or state): landscape features—important use areas, roosting sites, foraging areas	Setback		300
Listed species (federal or state)—Active Nests	Suspend Activity		300
Raptors: Active Nests—All species	Suspend Activity		400
Raptors: Active Nests—Ferruginous Hawk, Peregrine Falcon, Prairie Falcon	Suspend Activity		800
Eagles: Active Roosting Sites, Important Use Areas	Setback	800	400
Eagles: Active Nests	Suspend Activity		2-mile
Lesser Prairie-Chicken: Active Lek	Setback		1-mile, seasonal

			noise restrictions
Eagles: Attractive Nuisance	Removal		

D. *Aquatic Species (including fish, macroinvertebrates and snails):*

1. The lessee will adhere to applicable surface water resource Protection Standards and will avoid, minimize and mitigate any activity such as damming, diverting, blocking, channeling, paving, deepening or widening within 100 m (328 feet) of any surface water resource that may increase or decrease the velocity, quality or quantity of water or increase erosion or sediment deposition into protected aquatic species' critical, occupied or suitable habitat.
2. Roads, culverts, and other infrastructure crossings constructed within critical, occupied, or suitable habitat shall utilize design features that protect natural hydrologic flows and enhance protected species' movement, ability to forage and to reproduce.
3. Other than necessary crossings of riparian habitat, the lessee will apply a minimum 100 m (328 foot) setback, or wider where needed to avoid the full width of the local riparian zone or corridor for all new ground disturbing activities from known occupied habitat for protected aquatic species unless more stringent distances are indicated elsewhere in this or other guidance documents.

E. *Amphibians and Reptiles:*

1. The lessee will apply a 100 m (328 foot) setback from known or discovered occupied den, breeding or nesting sites for protected amphibians or reptiles, including snakes, turtles or lizards.

F. *Suitable Habitat:*

1. Where unoccupied but suitable habitat for a protected species is identified within the action area, the lessee will monitor impacts and is encouraged to minimize and mitigate such habitat impacts by adopting appropriate BMPs to the maximum extent feasible. See Appendix C.

2.2.1.4 MINIMIZATION AND MITIGATION MEASURES

- A. In cases where protected wildlife species are present within the action area, and where Avoidance Measures are impossible to implement, even after the lessee has made every effort to the maximum extent feasible, the lessee will propose Minimization and Mitigation Measures (to be included in the BA) no later than 90 days before the commencement of construction. Proposed Mitigation Measures should include:

1. An analysis of the potential direct and indirect impacts of lease activities to the species' critical life history requirements, such as breeding, nesting, foraging, access to water, migration and seasonal activity periods.
 2. An evaluation of the potential impact of lease activities to the long-term regional or population-level survival of the species.
 3. A detailed description of the design, construction, operation and other project features that will minimize or mitigate impact to the protected species or habitat. Some appropriate minimization or mitigation measures may be found in the NMSLO BMPs and the NMDGF Project Guidelines and may include constructing escape ramps, monitoring trenches and excavations, wildlife friendly fencing, raptor protectors, flagging, etc.
 4. A detailed description of any off-site habitat creation, restoration, or enhancement projects that will be implemented as compensatory mitigation to offset any residual unavoidable adverse impacts that remain after design, construction, operation and other on-site impact minimization and mitigation features have been implemented.
 5. A long-term monitoring plan to assess impacts of ongoing lease activities, including proposed measures of success for impact minimization and mitigation measures. The term of the monitoring plan should be tied to the species impacted. See Appendix C.
 6. An adaptive management plan to be implemented in the event monitoring indicates that new threats are identified, impacts are greater than anticipated, or the protected population within the action area declines by more than 20% in any three-year period. See Appendix C.
- B. Where avoidance of impact to protected wildlife species is impossible, even after the lessee has made every effort to the maximum extent feasible, consultation with the USFWS or NMDGF may be required.

2.2.1.5 AGENCY COORDINATION

- A. The lessee shall adhere to all federal and state wildlife regulations and permitting requirements while operating on state trust land.
- B. The lessee's BA must provide the NMSLO with written evidence of coordination with the USFWS or NMDGF, as necessary, and copies of all authorizations and/or permits related to federally or state protected wildlife species.
- C. The lessee must notify the NMSLO in writing upon discovery of a listed species (federal or state) on state trust land. The lessee should notify the NMSLO and nearest USFWS and NMDGF office within 24 hours if a dead or injured federal- or state-listed species is discovered on-site or adjacent to the lease area. Carcasses should not be handled without proper permits.

2.2.2 Plants

All solar and wind projects must adhere to the following Protection Standards to avoid or minimize impacts to protected plant species and associated habitats occurring on state trust land within or adjacent to the lease boundary.

2.2.2.1 DESKTOP REVIEW

- A. The lessee will evaluate the potential presence of protected plant species and/or suitable habitat within the lease boundary by conducting a desktop review as described below.
- B. The product of this evaluation will be a list (to be reported in the BA) of state or federally protected plant species or suitable habitat within the boundary of the lease, that are Known to Occur or have Potential to Occur based on the following definitions:
 1. *Known to Occur* – the species or occupied habitat have been documented within the boundary of the lease by an observer familiar with local flora, and/or whose recorded observations have been reviewed, verified, or published by a subject matter expert (e.g., USFWS, BLM or EMNRD).
 2. *Potential to Occur* – the boundary of the lease is within the species' known range and suitable habitat is present, but records of the species have not been verified.
 3. *Unlikely to Occur* – the boundary of the lease is outside of the species' known range and does not contain suitable habitat.
- C. In creating this list, the lessee's desktop review should include publicly available data and peer-reviewed research publications. These data and publications may relate to species range, life history requirements, status surveys and reports, USFWS 5-year reviews, soils data, climate data, and any lease-specific information provided by the NMSLO. A lack of published information does not necessarily imply the absence of suitable or occupied habitat for protected plant species. Some current sources of data may be found in Appendix A.

2.2.2.2 SURVEY REQUIREMENTS

- A. Where potential presence is indicated by a *Known to Occur* or *Potential to Occur* designation, the lessee will conduct a field-based biological survey by a qualified botanist during the appropriate time of year. The lessee will provide documentation of survey methodology and results in the BA. NMSLO Survey protocols are described in Appendix B.
- B. If the survey determines that protected plant species or suitable habitat are present within the lease boundaries, the lessee will notify the NMSLO and the USFWS and EMNRD, and will implement USFWS or EMNRD requirements, if any, and the NMSLO Avoidance and Mitigation Measures as described below, unless USFWS or EMNRD requirements are more stringent.

- C. If the desktop review and/or surveys determine that presence is unlikely to occur because the lease boundary is outside the protected plant species' known range and does not contain suitable habitat, the lessee should report those findings in the BA and may continue without adjustment to their Project Plans.

2.2.2.3 AVOIDANCE MEASURES

In cases where protected plant species or suitable habitat are present within the lease area, the NMSLO has designed the following baseline Avoidance Measures to ensure that impacts are appropriately minimized or avoided to the maximum extent feasible. If the NMSLO Avoidance Measures are in conflict with USFWS or NMDGF decisions and requirements, the lessee will document this conflict. The NMSLO will defer to lead agency decisions and requirements if they are more stringent than NMSLO Protection Standards.

A. *General:*

1. Surface disturbance is prohibited within 200 m (656 foot) of any protected plant species' occupied habitat. Occupied habitat is defined by a 20 m (66 foot) buffer area surrounding a plant location or the location of a population of protected plants.
2. A spill prevention and leak detection plan is required for all facilities or infrastructure within 300 m (984 foot) of known protected plant species' occupied habitat.
3. The lessee will not apply rodenticides, pesticides, insecticides, herbicides or chemical dust palliatives within 200 m (656 foot) of occupied habitat for protected plant species. A case-by-case variance, which must be in writing, may be granted by NMSLO after consultation.
4. Collection or transplantation of federal- or state- protected plant species is strictly prohibited without the explicit permission of the NMSLO and USFWS and/or EMNRD.

B. *Suitable Habitat:*

1. Where unoccupied but suitable habitat for a protected plant species is identified within the action area, the lessee will monitor impacts and is encouraged to minimize and mitigate such habitat impacts by adopting appropriate BMPs to the maximum extent feasible. See Appendix C.

2.2.2.4 MINIMIZATION AND MITIGATION MEASURES

- A. In cases where protected plant species are present within the action area, and where Avoidance Measures are impossible to implement, even after the lessee has made every effort to the maximum extent feasible, the lessee will propose Minimization and Mitigation Measures no later than 90 days before the commencement of construction. Proposed Mitigation Measures should include:
 1. An analysis of the potential direct and indirect impacts of lease activities to the protected plant species' critical life history requirements, such as

- pollination, regeneration, abundance and distribution, soil type, access to water and light, and disturbance regime.
2. An evaluation of the potential impact of lease activities to the long-term regional or population-level survival of the species.
 3. A detailed description of the design, construction, operation and other project features that will minimize or mitigate impact to the protected species or habitat. Some appropriate minimization or mitigation measures may be found in the NMSLO BMPs but may include protective fencing, signs or other deterrents, microsite avoidance, engaging a biological monitor during construction activities, dust suppression (using fresh water, not produced water or chemicals), or other measures as directed by USFWS or EMNRD.
 4. A detailed description of any off-site habitat creation, restoration, or enhancement projects that will be implemented as compensatory mitigation to offset any residual unavoidable adverse impacts that remain after design, construction, operation and other on-site impact minimization and mitigation features have been implemented.
 5. A long-term monitoring plan to assess impacts of ongoing lease activities, including proposed measures of success for impact minimization and mitigation measures. The term of the monitoring plan should be tied to the species impacted. See Appendix C.
 6. An adaptive management plan to be implemented in the event monitoring indicates that new threats are identified, impacts are greater than anticipated or the protected population within the action area decreases by more than 20% in any three-year period. See Appendix C.
- B. Where avoidance of impact to protected plant species is impossible, even after the lessee has made every effort to the maximum extent feasible, consultation with the USFWS and/or EMNRD may be required. If the NMSLO Avoidance Measures are in conflict with USFWS and/or EMNRD decisions and requirements, the lessee will document this conflict. The NMSLO will defer to lead agency decisions and requirements if they are more stringent than NMSLO Protection Standards.

2.2.2.5 AGENCY COORDINATION

- A. The lessee should adhere to all federal or state plant regulations and permitting requirements while operating on state trust land.
- B. The lessee's BA should provide the NMSLO with written evidence of coordination with the USFWS or EMNRD, if any, and copies of all authorizations and/or permits related to federally or state protected plant species.
- C. The lessee should notify the NMSLO in writing upon discovery of a listed or protected species on state trust land. The lessee will notify the NMSLO, EMNRD

and nearest USFWS office within 48 hours if a mortality or removal of a listed plant species is discovered on-site or adjacent to the lease area.

2.3 WILDLIFE CORRIDORS AND HABITAT CONNECTIVITY

This section identifies Protection Standards for wildlife corridors and habitat connectivity.

2.3.1 Wildlife Corridors

The lessee will evaluate potential impact to wildlife corridors and habitat connectivity. Projects should be designed to avoid, minimize, and mitigate fragmentation and other impacts to wildlife corridors, large natural areas, important habitat, and important use areas. Consideration will be given to the presence of existing protected areas, if any (designated or mapped corridors, WCAP hot spot areas, or special status lands) and areas known to provide high-value habitat connectivity.

All solar and wind projects will adhere to the following Protection Standards to avoid or minimize fragmentation of wildlife corridors and habitat connectivity values occurring on state trust land.

2.3.1.1 INITIAL DESKTOP REVIEW

- A. The lessee will evaluate the potential presence of wildlife corridors and habitat connectivity within the action area by conducting a desktop review as described below. For detailed guidelines see also Appendix B: Survey and Review Protocols.
- B. The product of this evaluation will be a description (to be reported in the BA) of wildlife corridors and habitat connectivity values within the action area that are *Known to Occur* or have *Potential to Occur* based on the following definitions:
 - *Known to Occur* – (i) a designated or mapped wildlife corridor occurs within the action area, or (ii) the action area is within two miles of a WCAP hot spot, or (iii) the action area contains special status lands designated for species or habitat protection.
 - *Potential to Occur* – (i) a perennial or intermittent surface water resource is located within the action area, (ii) a large natural area is located within the action area, or (iii) big game are known to occur within the action area.
 - *Unlikely to Occur* – none of the above are likely to occur within the action area.
- C. In creating this list, the lessee's desktop review should refer to any publicly available data and peer-reviewed research publications including reports generated by NMDGF or the NMERT or the Information for Planning and Consultation Tool (IPaC). Some current sources of data may be found in Appendix A.

2.3.1.2 SUPPLEMENTAL DESKTOP REVIEW, ANALYSIS AND SURVEY REQUIREMENTS

- A. Where presence is indicated by a Known to Occur or Potential to Occur designation, the lessee will conduct a supplemental desktop review and analysis, followed by a field-based biological survey.
- B. The supplemental desktop review shall include:
 - 1. A Focal Species analysis. See Focal Species Guidelines, Appendix B.
 - 2. A habitat connectivity analysis. See Habitat Connectivity Guidelines, Appendix B.
 - 3. An adjacent lands analysis. See Adjacent Lands Guidelines, Appendix B.
- C. The field-based biological survey shall verify the quality and quantity of habitat and actual use by selected focal species for any designated or mapped corridor, WCAP hotspot, special status land, important habitat, important use area, perennial or intermittent surface water resource, or large natural area within the action area, as applicable.
- D. Taking the results of the focal species, habitat connectivity, adjacent lands analyses, and the field-based biological survey, the lessee will evaluate the potential impacts to wildlife corridors and habitat connectivity values, develop recommendations for avoiding, minimizing, or mitigating impact, and provide documentation of desktop review and survey methodology in the BA. See Appendix B.
- D. If the desktop review analysis or field-based survey confirms that project activities could fragment or negatively impact the function of any wildlife corridor or habitat connectivity value, the lessee will notify the NMSLO, and will implement the appropriate NMSLO Avoidance and Mitigation Measures as described below.
- E. If the desktop reviews and/or surveys determine that project activities are unlikely to fragment or negatively impact wildlife corridors or habitat connectivity values within the lease boundary, the lessee should report those findings in the BA and may continue without adjustment to their Project Plans.

2.3.1.3 AVOIDANCE MEASURES

In cases where the desktop review analysis or field-based survey confirms that project activities could fragment or negatively impact the function of any wildlife corridor or habitat connectivity value, the NMSLO has designed the following baseline Avoidance Measures to ensure that impacts are appropriately avoided, minimized or mitigated to the maximum extent feasible. If the NMSLO Avoidance Measures are in conflict with NMDGF or other designating agency decisions and requirements, the lessee will document this conflict. The NMSLO will defer to lead agency decisions and requirements only if they are more stringent than NMSLO Protection Standards.

A. General:

1. Conservation Measures: In consultation with the NMSLO, and to the maximum extent feasible, the lessee shall adopt Conservation Measures to avoid, minimize or mitigate fragmentation or negative impacts to the function of wildlife corridors and habitat connectivity values. Specific Conservation Measures may be drawn from NMSLO or other agency BMPs or adapted from NMSLO Avoidance Measures, or may be new measures proposed by the lessee. In concert, the proposed Conservation Measures must be sufficient to significantly minimize or mitigate fragmentation or negative impacts to the function of wildlife corridors and habitat connectivity values.
2. Designated wildlife corridors: To the maximum extent feasible, if a designated or mapped wildlife corridor occurs within the action area, the lessee shall adhere to any formal management requirement contained within the wildlife corridor designation and shall adopt Conservation Measures to avoid, minimize and mitigate impacts to the designated corridor.
3. Proximity to a WCAP hot spot: If ground disturbance is planned within two miles of a WCAP hotspot, to the maximum extent feasible the lessee shall design the project and shall adopt Conservation Measures to ensure that project activities do not contribute to or exacerbate wildlife-vehicle collisions in the region.
4. Special Status Lands: The lessee shall request consultation with the NMSLO to address the purposes of the special status land designation and any formal management requirement contained within the special status land designation, to identify any current best practices or guidelines, and to the maximum extent feasible shall adopt Conservation Measures to avoid, minimize and mitigate impacts to special status lands.
5. Important use areas: The lessee will apply a 400 m (1,312 foot) setback for all new surface disturbance and all project infrastructure from any important use area.
6. Important habitat: The lessee may proceed with project development within important habitat but shall minimize and mitigate adverse effects by:
 - a. ensuring that high quality habitat connectivity persists between important habitat areas and/or important use areas; wildlife must be able to access important resources such as water;
 - b. adopting a set of appropriate Conservation Measures to address potential adverse effects to important habitat areas or functional wildlife corridors (high quality habitat connectivity); and
 - c. designing the project to maintain or improve existing habitat quality, to the extent practicable, i.e., considering the landscape as a whole, maintain low levels of structure density, ground disturbance and road impact in

important habitat areas, minimize total area fenced, and use pollinator friendly plants in reclamation.

7. The lessee will not apply rodenticides, pesticides, insecticides, herbicides or chemical dust palliatives within 100 m (328 feet) of a designated wildlife corridor, special status land, or important use area. A case-by-case variance, which must be in writing, may be granted by NMSLO after consultation.

2.3.1.4 MINIMIZATION AND MITIGATION MEASURES

- A. In cases where a designated or mapped wildlife corridor, WCAP hotspot (within two miles), special status land, important habitat area, important use area, perennial or intermittent surface water, or high-quality habitat connectivity area is present within the action area, and where Avoidance Measures are impossible to implement, even after the lessee has made every effort to the maximum extent feasible, the lessee will propose Minimization and Mitigation Measures no later than 90 days before the commencement of construction. Proposed Mitigation Measures should include:
 1. An evaluation of the potential direct and indirect impacts of lease activities to the value and long-term functionality of the wildlife corridor, important habitat, important use area, perennial or intermittent surface water, or high-quality habitat connectivity area, including impacts to wildlife movement, safety, or ability to access or use important habitat.
 2. A detailed description of the Mitigation Measures that will minimize impact to the wildlife corridor, important habitat area, perennial or intermittent surface water, important use area or other protected habitat. Some appropriate Mitigation Measures may be found in the NMSLO BMPs but may include species specific seasonal restrictions on construction or operation, reduction of visual or auditory impacts to wildlife, construction of crossing structures or wildlife friendly fencing, minimizing total area fenced, minimizing waste disposal, restoring habitat, wetlands or vegetated buffers, avoiding riparian areas, protecting large natural or roadless areas, following trenching guidelines, collocating ground disturbance with already existing disturbance, or other measures that maintain wildlife corridor functionality as directed by the NMSLO, USFWS or NMDGF.
 3. A detailed description of any off-site habitat creation, restoration, or enhancement projects that will be implemented as compensatory mitigation to offset any residual unavoidable adverse impacts that remain after design, construction, operation and other on-site impact minimization and mitigation features have been implemented.
 4. A long-term monitoring plan, for the life of the lease, to assess impacts of ongoing lease activities, including proposed measures of success for impact minimization and mitigation measures. The focus of the monitoring plan should be tied to the particular environmental features of the corridor or

protected habitat and the wildlife that use the corridor or habitat. See Appendix C.

5. An adaptive management plan to be implemented in the event monitoring indicates that new threats are identified, impacts are greater than anticipated, or the use of the corridor or protected habitat by wildlife decreases by more than 20% within any three-year period. See Appendix C.

- B. Where avoidance of impact to designated wildlife corridors is impossible, even after the lessee has made every effort to the maximum extent feasible, consultation with the lead agency establishing the corridor will be required. The NMSLO will defer to all lead agency decisions and requirements if they are more stringent than NMSLO Protection Standards.

2.3.1.5 AGENCY COORDINATION

The lessee will coordinate with the NMSLO at the initial planning meeting to discuss how the wildlife corridor Protection Standards will be addressed in the Project Plan.

3 ENVIRONMENTALLY SENSITIVE AREAS

This section identifies Protection Standards for environmentally sensitive areas, including surface water resources, cave and karst features, and sensitive soils.

3.1 SURFACE WATER RESOURCES

The NMSLO administers land that contains a variety of surface water resources, including springs, seeps, lakes, playas, streams, wetlands, floodplains, riparian areas, washes and arroyos (collectively referred to as surface water resources). These resources provide drinking water to New Mexico communities, suitable habitat for wildlife and plants, recreation opportunities, aquifer recharge, and scenic value to natural landscapes.

To protect surface water resources on state trust lands, all solar and wind projects will adhere to the following Protection Standards:

3.1.1 Desktop Review

- A. The lessee will evaluate the potential presence of surface water resources within the lease boundary by conducting a desktop review as described below.
- B. The product of this evaluation will be a list (to be reported in the BA) of surface water resources within the boundary of the lease, that are *Known to Occur* or have *Potential to Occur* based on the following definitions:
 - *Known to Occur* – a surface water resource has been named or mapped by some state or federal agency or documented within the boundary of the lease by an observer familiar with local ecology, and whose recorded observations have been reviewed, verified, or published by a subject matter expert (e.g., USGS, USACE, USFWS, NRCS, BLM, or Natural Heritage New Mexico).

- *Potential to Occur* – the boundary of the lease contains surface water resource attributes, but designations or mapping of surface waters do not exist or have not been verified.
 - *Unlikely to Occur* – the boundary of the lease does not contain surface water resource attributes.
- C. In creating this list, the lessee’s desktop review should include publicly available data, maps or peer-reviewed research publications. These data, maps or publications may relate to surface water resource characteristics such as hydrology, recharge, load carrying capacity, water quality or chemistry, sinuosity, connectivity, flow rate and quantity, seasonality, or biology. These data may derive from any professional or peer-reviewed report or from any lease-specific information provided by the NMSLO. A lack of published information does not necessarily imply the absence of surface water resources. Some current sources of data may be found in Appendix A.

3.1.2 Survey Requirements

- A. Where potential presence is indicated by a *Known to Occur* or *Potential to Occur* designation, the lessee shall conduct a field-based survey to verify and characterize the surface water resource and to identify boundaries of riparian edges, high-water marks and floodplains. The lessee will provide documentation of survey methodology and results in the BA. NMSLO Survey protocols are described in Appendix B.
- B. If the survey verifies that surface water resources are present within the lease boundaries, the lessee will notify the NMSLO, and will implement the appropriate NMSLO Avoidance and Mitigation Measures as described below.
- C. If the desktop review and/or surveys determine that surface water resources are unlikely to occur within the lease boundary, the lessee should report those findings in the BA and may continue without adjustment to their Project Plans.

3.1.3 Avoidance Measures

In cases where surface water resources are present within the lease area, the NMSLO has designed the following baseline Avoidance Measures to ensure that impacts are appropriately minimized or avoided to the maximum extent feasible.

A. **General:**

1. No new surface disturbance will be permitted within the boundaries of a surface water resource³ except crossings covered under a CWA Nationwide Permit.
2. The lessee will establish a setback for all new surface disturbance based on the 100-year flood plain of lakes, perennial and intermittent waterways,

³ New surface disturbance includes blading, grading, or digging; installation of new permanent structures or new permanent roads; introduction of outside material (i.e., gravel, caliche, base course), and mechanical compaction.

wetlands, and playas in the lessee's Project Plan (as that term is defined in the sample renewable energy Lease). The setback will be whichever of the following is greater: at least 1.5 x the height of the Project (as that term is defined in the Lease) infrastructure, or 15 m (50 feet) from the outer edge of the 100-year flood plain, or if the surface water resource does not have a discernable or designated 100-year flood plain, then the setback will be 100 m (328 feet) from the outer edge of the ordinary high-water mark.

3. The lessee will establish a minimum setback equal to either 0.45 x the height of the Project infrastructure or 30 m (100 foot) for all new surface disturbance from the ordinary high-water mark of springs and seeps in the Project Plan.
4. Project infrastructure must be set back at least 0.225 x the height of the infrastructure from ephemeral drainages. No new surface disturbance will be permitted within 30 m (100 feet) of the ordinary high-water mark of ephemeral drainages, floodways, washes, arroyos, or other short-duration flow channels, except when crossing these channels and drainages. Drainage crossings will be perpendicular to flow and will be built to accommodate flood events and control erosion.
5. A spill prevention, control and countermeasure (SPCC) plan will be required for all facilities or infrastructure where hazardous materials will be used and the facilities or infrastructure are located within 200 m (656 feet) of a surface water resource. See Appendix C.
6. The lessee will not apply rodenticides, pesticides, insecticides, herbicides or chemical dust palliatives within 200 m (656 feet) of a surface water resource. A case-by-case variance, which must be in writing, may be granted by NMSLO after consultation.

3.1.4 Minimization and Mitigation Measures

- A. In cases where surface water resources are present within the action area, and where Avoidance Measures are impossible to implement, even after the lessee has made every effort to the maximum extent feasible, the lessee will propose Minimization and Mitigation Measures no later than 90 days before the commencement of construction. Proposed Mitigation Measures should include:
 1. An analysis of the potential impacts of lease activities to the surface water resource, including impacts to the condition and quality of the resource, as well as impacts to biological resources dependent on that resource including wildlife movement, safety, ability to forage, migrate or access water, etc.
 2. An evaluation of the potential impact of lease activities to the long-term functionality of the surface water resource.
 3. A detailed description of the design, construction, operation and other mitigation features that will minimize impact to the surface water resource. Some appropriate Mitigation Measures may be found in the NMSLO BMPs but may also include requirements established by other state or federal water

regulatory agencies, erosion control structures, drainage control structures, flow structures or regulators, flood control structures, directional drilling, waste disposal, restoration of habitat, wetlands or vegetated buffers, protections for wildlife or other measures as directed by the NMSLO, USACE, NMED or other water regulatory agency.

4. A detailed description of any off-site habitat creation, restoration, or enhancement projects that will be implemented as compensatory mitigation to offset any residual unavoidable adverse impacts that remain after design, construction, operation and other on-site impact minimization and mitigation features have been implemented.
 5. A long-term monitoring plan to assess impacts of ongoing lease activities, including proposed measures of success for impact minimization and mitigation measures. The term of the monitoring plan should be tied to the particular environmental characteristics of the surface water resource and the wildlife or human communities that use the resource. See Appendix C.
 6. An adaptive management plan to be implemented in the event monitoring indicates that new threats are identified, impacts are greater than anticipated or any water quality or quantity attribute declines by 20% in any three-year period. See Appendix C.
- B. Where avoidance of impact to surface water resources is impossible, even after the lessee has made every effort to the maximum extent feasible, consultation with the lead state and federal regulatory agencies for surface water resources may be required. These agencies may include the USACE, EPA, USFWS, ISC, OSE, or NMED. The NMSLO will defer to all lead agency decisions and requirements if they are more stringent than NMSLO Protection Standards.

3.1.5 Agency Coordination

The lessee will coordinate with the NMSLO at the initial planning meeting to discuss how the surface water resources Protection Standards will be addressed in the Project Plan. Depending on the surface water resource status and the activity proposed, the lessee may also be required to consult with the appropriate regulating agency, i.e., the USACE, EPA, FEMA, USFWS, ISC, OSE, or NMED.

3.2 CAVE AND KARST FEATURES

State trust lands include a wide variety of natural geologic resources, including some that are environmentally unique and require special protection. In particular, cave and karst features provide important points of recharge to groundwater aquifers and also provide habitat for many species of plants and wildlife, including many species of invertebrates, birds and bats.

To protect cave and karst features on state trust lands, all solar and wind Projects will adhere to the following Protection Standards.

3.2.1 Desktop Review

- A. The lessee will evaluate the potential presence of cave and karst features within the lease boundary by conducting a desktop review as described below.
- B. The product of this evaluation will be a list (to be reported in the BA) of cave and karst features within the boundary of the lease, that are *Known to Occur* or have *Potential to Occur* based on the following definitions:
 - *Known to Occur* – a cave or karst feature has been named or mapped by some state or federal agency or documented within the boundary of the lease by an observer familiar with local geology, and whose recorded observations have been reviewed, verified, or published by a subject matter expert (e.g., USGS, USACE, USFWS, NRCS, BLM or the New Mexico Cave Database). See Appendix B for detail.
 - *Potential to Occur* – the boundary of the lease contains a high likelihood of cave and karst attributes, as determined by some state or federal land management agency or by some agency-recognized authority in cave and karst occurrence, but specific karst features have not been surveyed or mapped within the lease area. For example, the lease falls within the High Karst Occurrence Zone as designated by the Carlsbad BLM, but specific features have not been surveyed. See Carlsbad Field Office Karst Public “Updated Cave Potential” map from the BLM-CFO:
https://www.nm.blm.gov/shapeFiles/cfo/carlsbad_spatial_data.html. See also, [USGS Open-File Report 2014–1156: Karst in the United States: A Digital Map Compilation and Database](https://pubs.usgs.gov/of/2014/1156/) (<https://pubs.usgs.gov/of/2014/1156/>).
 - *Unlikely to Occur* – the boundary of the lease does not contain cave or karst attributes; the lease falls within low or medium Karst Occurrence Zones.
- C. In creating this list, the lessee’s desktop review should include publicly available data, maps or peer-reviewed research publications. These data, maps or publications may relate to geologic maps or studies, soils, hydrology or other cave or karst related research. These data may derive from any professional or peer-reviewed report or from any lease-specific information provided by the NMSLO. A lack of published information does not necessarily imply the absence of cave or karst features. Some current sources of data may be found in Appendix A.

3.2.2 Survey Requirements

- A. Where potential presence is indicated by a *Known to Occur* or *Potential to Occur* designation, the lessee will conduct a field-based survey by a qualified karst professional to verify and characterize the cave or karst feature and to identify boundaries of feature edges, and to assess depth and stability of the feature. The lessee will provide documentation of survey methodology and results in the BA. NMSLO Survey protocols are described in Appendix B.

- B. If the survey verifies that cave or karst features are present within the lease boundaries, the lessee will notify the NMSLO, and will implement the appropriate NMSLO Avoidance and Mitigation Measures as described below. The lessee will also consult with a qualified professional wildlife biologist to determine whether wildlife surveys for bats or other species are necessary to protect important cave or karst habitat or use areas within or in the vicinity of the action area.
- C. If the desktop review and/or surveys determine that cave or karst attributes are unlikely to occur within the lease boundary, the lessee should report those findings in the BA and may continue without adjustment to their Project Plans.

3.2.3 Avoidance Measures

In cases where cave or karst features are present within the lease area, the NMSLO has designed the following baseline Avoidance Measures to ensure that impacts are appropriately minimized or avoided to the maximum extent feasible.

A. *General:*

1. The lessee will apply a minimum 200 m (656 foot) setback from any significant cave entrance, passage, or aspect, as determined by a karst professional. If the cave or karst features are found to support bat populations, the setback should be at least 400 m (1,312 foot). This setback applies to all surface disturbance and infrastructure.
2. The lessee will apply a 100 m (328 foot) setback for all other cave entrances, passages or aspects, as determined by a qualified karst professional.
3. The lessee will apply a 50 m (164 foot) setback for all non-cave karst features with the exception of small collapse features.
4. The lessee will apply a 10 m (33 foot) setback from all small collapse features.
5. The lessee will not construct ditches and drainage leadoffs in such a manner as to alter the natural flow of water into or out of cave or karst features.
6. A spill prevention, control and countermeasure (SPCC) plan will be required for all facilities in high karst potential occurrence zones. See Appendix C.
7. The lessee will immediately notify the NMSLO in writing if any subsurface drainage channels, cave passages, or voids are penetrated during construction or operation. Upon notification, the lessee will conduct an on-site field inspection by a karst professional for karst features and will provide recommendations for avoiding further impact and mitigating any damages caused. If the cave or karst feature is penetrated during construction, construction will not proceed until clearance has been issued by the NMSLO.

3.2.4 Minimization and Mitigation Measures

- A. In cases where cave or karst features are present within the action area, and where Avoidance Measures are impossible to implement, even after the lessee has made every effort to the maximum extent feasible, the lessee will propose Minimization and Mitigation Measures no later than 90 days before the commencement of construction. Proposed Mitigation Measures should include:
1. An analysis of the potential direct and indirect impacts of lease activities to the cave or karst feature, including impacts to the condition and quality of the resource, as well as impacts to biological resources dependent on that cave or karst feature.
 2. An evaluation of the potential impact of lease activities to the long-term functionality of the cave or karst feature, including the impact to the conduction of surface water to the subsurface, or the capacity to shelter wildlife.
 3. A detailed description of the design, construction, operation and other mitigation features that will minimize impact to the cave or karst feature. Some appropriate Mitigation Measures may be found in the NMSLO BMPs but may include requirements established by other state or federal water regulatory agencies, special safety or stability measures, erosion control structures, drainage control structures, flow structures or regulators, flood control structures, or other measures as directed by the NMSLO, USACE, NMED, BLM or other regulatory agency.
 4. A detailed description of any off-site habitat creation, restoration, or enhancement projects that will be implemented as compensatory mitigation to offset any residual unavoidable adverse impacts that remain after design, construction, operation and other on-site impact minimization and mitigation features have been implemented.
 5. A long-term monitoring plan, including pre- and post- construction and operation surveys to assess impacts of ongoing lease activities, including proposed measures of success for impact minimization and mitigation measures. The term of the monitoring plan should be tied to the particular environmental and biological characteristics of the cave or karst feature and the wildlife or human communities that may be impacted by the leasing activity. See Appendix C.
 6. An adaptive management plan to be implemented in the event monitoring indicates that new threats are identified, impacts are greater than anticipated, or the condition or functioning of the cave or karst feature deteriorates by 20% or more in any three-year period. See Appendix C.
- B. Where avoidance of impact to a cave or karst feature is impossible, even after the lessee has made every effort to the maximum extent feasible, consultation with the NMSLO will be required.

3.2.5 Agency Coordination

The lessee will coordinate with the NMSLO at the initial planning meeting to discuss how the cave and karst features Protection Standards will be addressed in the Project Plan.

3.3 SENSITIVE SOILS

In arid landscapes, soils provide many critical ecosystem services. Healthy soils increase water holding capacity and water quality, nutrient holding capacity and availability, and plant and wildlife richness and abundance. Healthy soils sequester soil carbon, increase and/or maintain ecosystem productivity, stability and resilience. However, fragmentation and unmanaged disturbance negatively impact soil health, and increase fragility and erodibility. Sensitive soils are especially susceptible to disturbance because they take longer to recover and often support endemic or rare biodiversity. The NMSLO defines Sensitive Soils to include:

- Soils classified as fragile (USDA fragile soil interpretive class fragility rating >0.409)
- Soils classified with high erodibility values (susceptibility to wind, sheet or rill erosion; NRCS K-factor rating >0.37).
- Badland soils (soft, easily erodible sedimentary rock, including badland and badland-rock outcrop Persayo complex soils, NRCS 2021).
- Gypsum soils (including eroded exposures of gypsiferous rock or willow loams over gypsiferous materials).
- Steep slope soils (slopes >25%).
- Shallow soils (>0" and <10" to bedrock)
- Soil that experienced a severe wildland burn in the recent past
- Biological soil crusts⁴

See Appendix B for detailed information related to sensitive soil desktop review and survey requirements. All solar and wind projects will comply with the following Protection Standards to avoid, minimize and mitigate impacts to sensitive soils.

3.3.1 Desktop Review

- A. The lessee will evaluate the potential presence of sensitive soils within the lease boundary by conducting a desktop review as described below.
- B. The product of this evaluation will be a list (to be reported in the BA) of sensitive soils within the boundary of the lease, that are *Known to Occur* or have *Potential to Occur* based on the following definitions:

⁴ As of this writing, biological soil crusts are not well characterized or mapped in New Mexico and may not be discoverable by desktop review (See e.g., [Remote Sensing of Biological Soil Crusts | U.S. Geological Survey](https://www.usgs.gov/centers/western-geographic-science-center/science/remote-sensing-biological-soil-crusts) <https://www.usgs.gov/centers/western-geographic-science-center/science/remote-sensing-biological-soil-crusts>.) The NMSLO will not require a soil survey solely to determine presence of biological soil crust; however, if significant biological soil crusts are discovered in the course of a soil survey for other sensitive soil attributes, the Lessee should report those findings and should avoid, minimize or mitigate impact as appropriate.

- *Known to Occur* – a sensitive soil has been named or mapped by some state or federal agency or documented within the boundary of the lease by an observer familiar with local soils, and whose recorded observations have been reviewed, verified, or published by a subject matter expert (e.g., USGS, NRCS, BLM or NMDA).
 - *Potential to Occur* – the boundary of the lease contains sensitive soil attributes, but designations or mapping of sensitive soils do not exist or have not been verified.
 - *Unlikely to Occur* – the boundary of the lease does not contain sensitive soil attributes.
- C. In creating this list, the lessee’s desktop review should include publicly available data, maps, reports or peer-reviewed research publications. These data, maps, reports or publications may relate to soils, geology, hydrology or other sensitive soil related research. These data may derive from any professional or peer-reviewed report or from any lease-specific information provided by the NMSLO. A lack of published information does not necessarily imply the absence of sensitive soils. Some current sources of data may be found in Appendix A.

3.3.2 Survey Requirements

- A. Where potential presence is indicated by a *Known to Occur* or *Potential to Occur* designation, the lessee will conduct a field-based survey to verify and characterize the sensitive soils and to identify boundaries of soil type edges, stability and potential associations with rare or endemic plants. The lessee will provide documentation of survey methodology and results in the BA. NMSLO Survey protocols are described in Appendix B.
- B. If the survey verifies that sensitive soils are present within the lease boundaries, the lessee will notify the NMSLO, and will implement the appropriate NMSLO Avoidance and Mitigation Measures as described below.
- C. If the desktop review and/or surveys determine that sensitive soil attributes are unlikely to occur within the lease boundary, the lessee should report those findings in the BA and may continue without adjustment to their Project Plans.

3.3.3 Avoidance Measures

In cases where sensitive soils are present within the lease area, the NMSLO has designed the following baseline Avoidance Measures to ensure that impacts are appropriately minimized or avoided to the maximum extent feasible.

A. **General:**

1. The lessee will apply a 50 m (164 foot) setback from the outer edge of any sensitive soil. This setback applies to all surface disturbance, including access roads, and infrastructure.

2. The lessee will not construct ditches and drainage leadoffs in such a manner as to alter the natural flow of water into or out of sensitive soil areas.
3. A spill prevention and leak detection plan is required for all facilities within 200 m (656 feet) of sensitive soils.

3.3.4 Minimization and Mitigation Measures

- A. In cases where sensitive soils are present within the action area, and where avoidance measures are impossible to implement, even after the lessee has made every effort to the maximum extent feasible, the lessee will propose Minimization and Mitigation measures no later than 90 days before the commencement of construction. Proposed mitigation measures should include:
 1. An analysis of the potential direct and indirect impacts of lease activities to the sensitive soils, including impacts to the condition and quality of the resource, as well as impacts to biological resources dependent on that resource.
 2. An evaluation of the potential impact of lease activities to the long-term functionality of the sensitive soil.
 3. A detailed description of the design, construction, operation and other mitigation features that will minimize impact to the sensitive soil. Some appropriate Mitigation Measures may be found in the NMSLO BMPs but may include collocation of all roads and infrastructure with currently existing disturbance areas, minimizing all new surface disturbance and reducing vegetation removal, developing a stormwater pollution prevention plan (SWPPP) and an erosion control and maintenance plan specifically designed to protect sensitive soils, or investments in remediation and revegetation.
 4. A detailed description of any off-site habitat creation, restoration, or enhancement projects that will be implemented as compensatory mitigation to offset any residual unavoidable adverse impacts that remain after design, construction, operation and other on-site impact minimization and mitigation features have been implemented.
 5. A long-term monitoring plan to assess impacts of ongoing lease activities, including proposed measures of success for impact minimization and mitigation measures. The term of the monitoring plan should be tied to the particular environmental characteristics of the sensitive soil feature and the plant communities that may be impacted by the leasing activity.
 6. An adaptive management plan to be implemented in the event monitoring indicates that new threats are identified, impacts are greater than anticipated or the condition and functioning of sensitive soils deteriorates by 20% or more in any three-year period.

- A. Where avoidance of impact to sensitive soils is impossible, even after the lessee has made every effort to the maximum extent feasible, consultation with the NMSLO will be required.

3.3.5 Agency Coordination

The lessee will coordinate with the NMSLO at the initial planning meeting to discuss how the sensitive soils Protection Standards will be addressed in the Project Plan.

3.4 SPECIAL-STATUS LAND

The NMSLO may establish land use restrictions or conditions that limit types of activity in certain areas, as well as issue leases for particular conservation purposes. The NMSLO also participates in a wide variety of landscape scale planning and restoration projects across the state. In addition, the NMSLO manages land that is sometimes included within, or lies adjacent to, special status areas designated by other state or federal agencies. The lessee should consult with the NMSLO to adopt avoidance, minimization or mitigation measures to reduce impacts to protected resources. This section identifies and explains Protection Standards for special-status land, including but not limited to NMSLO Land Use Restrictions or Conditions (LURCs), NMSLO priority planning areas, National Parks, National Monuments, Wilderness Areas, BLM areas of critical environmental concern (ACECs), BLM wilderness study areas (WSAs), land covered by habitat conservation plans (HCPs), land designated by USFWS as Critical Habitat, Important Plant Areas as designated by EMNRD (IPAs), Important Bird Areas as designated by Audubon (IBAs), Conservation Opportunity Areas (COAs) as designated by NMDGF (SWAP), and land covered by Candidate Conservation Agreements with Assurances (CCAAs). Lessees should consult with the NMSLO to determine whether or not additional special status land designations should be included in this analysis. All solar and wind Projects will comply with the following Protection Standards related to special status land.

3.4.1 Desktop Review and Consultation

- A. The lessee will evaluate the potential presence of special status land within the lease boundary by conducting a desktop review and consultation as described below.
- B. The product of this evaluation will be a list (to be reported in the BA) of special status lands within the boundary of the lease, or adjacent to the lease, that are *Known to Occur* based on the following definitions:
 - *Known to Occur* – a special status land has been formally named or mapped by some state or federal agency (e.g., NMSLO, USFWS, BLM, NMDGF, etc.).
 - *Unlikely to Occur* – the boundary of the lease does not contain special status land.
- C. In creating this list, the lessee should perform a desktop review of publicly available data, maps, reports or official public designations. These data, maps,

reports or publications should derive from the special status designating agency. Some current sources of data may be found in Appendix A. In addition, the lessee should consult with the NMSLO Surface Resource Division and the Leasing Division to determine whether or not there are any NMSLO special status lands within the project area.

3.4.2 Research Requirements

- A. Where potential presence is indicated by a *Known to Occur* designation, the lessee will verify inclusion of state trust land within, or adjacent to the designated area and will note the purposes of the designation and any requirements or conservation measures established by the designating agency or the NMSLO.
- B. If research verifies that special status lands are present within or adjacent to the lease boundaries and that conservation measures have been created by the designating agency, the lessee will consult with the NMSLO as described below.
- C. If the desktop review and/or research determine that special status lands are unlikely to occur within the lease boundary, the lessee should report those findings in the BA and may continue without adjustment to their Project Plans.

3.4.3 Special Status Land Conservation Measures

In cases where special status lands are present within the lease area, the lessee will address potential project impacts to the values and resources protected by the special status designation and in consultation with the NMSLO will propose and adopt avoidance, minimization or mitigation measures as appropriate to reduce impacts to protected resources. The lessee should raise potential concerns at the Initial Planning Meeting at least 180 days prior to the commencement of construction.

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Acronyms and Abbreviations

ACEC	Area of Critical Environmental Concern
BA	Biological Assessment
BGEPA	Bald and Golden Eagle Protection Act
BISON-M	Biota Information System of New Mexico
BLM	Bureau of Land Management
BMP	best management practice
CCAA	Candidate Conservation Agreement with Assurances
CEHMM	Center of Excellence for Hazardous Materials Management
CFR	Code of Federal Regulations
COA	Conservation Opportunity Area
CWA	Clean Water Act
ECOS	Environmental Conservation Online System
EIS	Environmental Impact Statement
EMNRD	New Mexico Energy, Minerals, and Natural Resources Department
EO	element occurrence
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
HCP	Habitat Conservation Plan
NMAC	New Mexico Administrative Code
NMDGF	New Mexico Department of Game and Fish
NMDOT	New Mexico Department of Transportation
NMED	New Mexico Environment Department
NMPRC	New Mexico Public Regulations Commission
NMRPTC	New Mexico Rare Plant Technical Council
NMSLO	New Mexico State Land Office
PL	Public Law
RMP	Resource Management Plan
RMPA	Resource Management Plan Amendment
SPCC	Spill Prevention, Control and Countermeasure Plan
SSPS	Special-Status Plant Species

SWPPP	Stormwater Pollution Prevention Plan
USFWS	U.S. Fish and Wildlife Service
WAFWA	Western Association of Fish and Wildlife Agencies
WSA	Wilderness Study Area

APPENDIX A: RESOURCES

General Environmental Resources

- USFWS Environmental Conservation Online System (ECOS): Information about Threatened and Endangered Species across the United States (USFWS 2021a), <https://ecos.fws.gov/ecp/report/species-with-recovery-plans>.
- USFWS Information for Planning and Consultation (IPaC): A project planning tool for streamlining the environmental review process, <https://ipac.ecosphere.fws.gov>.
- USDA Ecosystem Dynamics Interpretive Tool: Framework for ecological information from a land use and management perspective (USDA 2021), <https://edit.jornada.nmsu.edu/>.
- Natural Heritage New Mexico Program: Biodiversity and conservation science in NM (NHNM 2021), <https://nhnm.unm.edu/>.
- NatureServe: Information about species, distributions, and biodiversity (NatureServe 2021), <https://www.natureserve.org/>.
- NMDGF Environmental Review Tool: Interactive tool for conservation planning in NM (NMDGF 2021), <https://nmert.org/content/map>.
- NMDGF Project Guidelines: Guidelines and Links for minimizing impacts of specific land use impacts on wildlife and wildlife habitat, <https://www.wildlife.state.nm.us/conservation/habitat-handbook/>.

Wildlife-Specific Resources

- eBird: Information about the spatial and temporal occurrence of birds (eBird 2021), <https://ebird.org/home>.
- National Audubon Society Important Bird Areas: Areas identified as important for the conservation of one or more bird species (NAS 2021), <https://www.audubon.org/important-bird-areas>.
- Partners in Flight: Network of organizations contributing to planning, research, education and outreach for birds across North America (PIF 2021), <https://partnersinflight.org/>.
- USGS Breeding Bird Survey: Effort to monitor status and trends of bird populations in North America (Pardieck et al. 2020), <https://www.pwrc.usgs.gov/bbs/>.
- New Mexico Avian Conservation Partners (NMACP): Network of conservation partners focusing on birds in NM (NMACP 2021), <http://avianconservationpartners-nm.org/>.
- NMDGF Biota Information System of New Mexico (BISON-M): Species accounts for vertebrate and invertebrate species occurring in NM (BISON-M 2021), <https://bison-m.org/>.
- NMDGF Crucial Habitat Assessment Tool (NMCHAT): Conservation information for planning and decision-making (NMDGF 2013), <http://nmchat.org/>.

- NMDGF Lesser Prairie Chicken Survey Protocol for Project Clearance (2022): <https://www.wildlife.state.nm.us/download/conservation/habitat-handbook/project-guidelines/Lesser-Prairie-chicken-Survey-Protocols-2022.pdf>.
- NMDGF Threatened and Endangered Species: Recovery plans, reports, and reviews pursuant to the New Mexico Wildlife Conservation Act (WCA; NMDGF 2018), <https://www.wildlife.state.nm.us/conservation/wildlife-species-information/threatened-and-endangered-species/>.
- NMDGF State Wildlife Action Plan (SWAP): Defines and categorizes Species of Greatest Conservation Need (SGCN) in NM (NMDGF 2016), <https://www.wildlife.state.nm.us/download/conservation/swap/New-Mexico-State-Wildlife-Action-Plan-SWAP-Final-2019.pdf>.

Plant-Specific Resources

- New Mexico Rare Plant Technical Council New Mexico Rare Plants: List of special status plants occurring in NM (NMRPTC 1999), <https://nmrareplants.unm.edu/>.
- NM Rare Plant Conservation Strategy: Document to assist with planning and management decisions (EMNRD 2017), https://www.emnrd.nm.gov/sfd/wp-content/uploads/sites/4/NMRarePlantConsStrategy_Final_reduced.pdf.
- NM Plant Conservation Strategy Species List: Current list of plant species designated as special status or endangered (EMNRD 2017), https://nhnm.unm.edu/sites/default/files/nonsensitive/NMRarePlantConsStrategy_Species%20List%20Appendix%20A.pdf.
- NM Plant Conservation Strategy Important Plant Areas: Map of important plant areas based on biodiversity rank (EMNRD 2017), https://nhnm.unm.edu/sites/default/files/nonsensitive/images/IPAs_Figure4.jpg.
- SEINet Portal Network Home (swbiodiversity.org): Southwest herbarium records, <https://swbiodiversity.org/seinet/index.php>.

Water Resources

- National Wetlands Inventory: Decision tool providing information about wetlands in the US for planning, conservation, and restoration of wetlands (USFWS 2021c), <https://www.fws.gov/wetlands/>.
- United States Army Corps of Engineers:
 - A guide to Ordinary High Water Mark (OHWM) delineation for non-perennial streams in the western mountains, valleys, and coast region of the United States - Technical Reports - USACE Digital Library (oclc.org), <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/3691/>.
 - Philadelphia District & Marine Design Center > Missions > Regulatory > Definitions (army.mil), <https://www.nap.usace.army.mil/Missions/Regulatory/Definitions/#Eph%20Stream>.
- USGS National Hydrography Dataset: Tool representing surface waters in the US (USGS 2021), <https://www.usgs.gov/core-science-systems/ngp/national-hydrography>.

- Federal Emergency Management Agency (FEMA) Floodplains: Tool for planning and understanding flood risk in the US (FEMA 2021), <https://msc.fema.gov/portal/home>.
- Playa Lakes Joint Venture Interactive Playa Map: Tool for conservation planning (PLJV 2021), <https://pljv.org/for-habitat-partners/maps-and-data/interactive-playa-map/>.
- New Mexico Riparian Habitat Map, Natural Heritage New Mexico, NM RipMap: A publicly available resource to support the conservation and management of NM's riparian and wetland habitats (Muldavin et al. 2020), <https://nhnm.unm.edu/riparian/nmripmap>.

Geological Resources

- USGS Karst in the United States: Updated database and report on karst in the US (Weary and Doctor 2014), <https://pubs.usgs.gov/of/2014/1156/pdf/of2014-1156.pdf>.
- BLM Carlsbad Field Office and Roswell Field Office Cave and Karst Potential Zones: spatial data with cave and karst zones in SE NM (BLM 2021b), https://www.nm.blm.gov/shapeFiles/cfo/carlsbad_spatial_data.html.

Soil Resources

- NRCS Web Soil Survey: Soil data information such as types, fragile soil index ratings, soil K-factor values, gypsum soils and limestone soils (USDA 2019), <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.
- EMNRD Mining and Minerals Division Mining Act Reclamation Program Guidelines: Technical and regulatory guidelines for soils, reclamation, and revegetation (EMNRD 2021), <https://www.emnrd.nm.gov/mmd/mining-act-reclamation-program/guidelines/>.

Special Status Lands Resources

- BLM Areas of Critical Environmental Concern <https://www.blm.gov/programs/planning-and-nepa/planning-101/special-planning-designations/acec>): List of current ACECs in the US, including spatial data for ACECs in the US (BLM 2021a, DOI 2021), <https://data.doi.gov/dataset/blm-national-designated-areas-of-critical-environmental-concern-polygons>.
- BLM Resource Management Plans (RMP): Tool for land use planning and understanding the relevant and important values protected by ACECs. Lessee should review the appropriate RMP for the BLM Field Office in which the ACEC is located (BLM 2021c), <https://eplanning.blm.gov/eplanning-ui/home>.
- ECOS Conservation Plans by Type and Region: List of Conservation Plans, including Habitat Conservation Plans (HCP), Safe Harbor Agreements (SHA), Candidate Conservation Agreements (CCA), and Candidate Conservation Agreements with Assurances (CCAA) (USFWS 2021b). See also IPaC. <https://ecos.fws.gov/ecp/report/conservation-plans-type-region>.

- USFWS National Wildlife Refuge System: List of National Wildlife Refuges in the US (USFWS 2021d), <https://www.fws.gov/refuges/>.
- NMDGF State Wildlife Action Plan (SWAP): Defines and categorizes Species of Greatest Conservation Need (SGCN) in NM (NMDGF 2016); also contains Conservation Opportunity Area (COA) designations, see <https://www.wildlife.state.nm.us/download/conservation/swap/New-Mexico-State-Wildlife-Action-Plan-SWAP-Final-2019.pdf>.

APPENDIX B: SURVEY AND REVIEW PROTOCOLS

Survey protocols are various and ever-evolving. When developing protocols, the lessee should rely on the latest best professional standards and practices and should consult with qualified professional experts in the relevant fields. It is recommended that survey protocols be approved by the NMSLO in advance. In addition, the NMSLO may develop protocols for particular habitats or life-forms. The lessee should always consult first with the NMSLO to discover whether preferred practices have been adopted. Also, many land management agencies maintain survey protocols of their own. If the NMSLO has not adopted protocols, the BLM, USFWS and NMDGF often have standards that will be acceptable. The following guidelines should be incorporated into lessee survey protocols:

Wildlife, Wildlife Corridors and Habitat Connectivity

1. *Survey Protocols (applicable to wildlife and habitat surveys for protected species and for wildlife corridor and habitat connectivity evaluations):*
 - a. When Required: A field-based biological survey is required whenever desktop review indicates that a protected wildlife species or wildlife corridor, perennial or intermittent surface water, or large natural area is Known to Occur or has Potential to Occur within the boundaries of the lease.
 - b. Surveyor Qualifications:
 - i. Surveys must be supervised by a qualified wildlife biologist (MS in wildlife biology with two years of experience in field survey and identification; or BS in wildlife biology or equivalent with four years of field experience. Documentation of the supervising surveyor's qualifications, education and experience must be available upon request. All crew personnel conducting inventories for wildlife corridor or habitat connectivity analysis are not required to be wildlife biologists but should have a strong background in wildlife biology field surveys and identification. The lead supervising surveyor need not be present for the entirety of the survey but must be able to attest to the quality of the work. Surveys for federally listed species will likely require permitting of surveyors by USFWS, and training in species-specific survey protocols provided by USFWS.
 - ii. Surveyors, whether proponent biologist or third-party, must also demonstrate strong digital data collection skills and be capable of reliably recording, uploading and downloading Global Positioning System (GPS) files with mobile digital devices.
2. *Verifying Quality and Quantity of Habitat and Habitat Suitability (applicable to surveys for protected species and for wildlife corridor and habitat connectivity analysis):*
 - a. When Required: The surveyor should verify quality and quantity of wildlife habitat whenever a field-based survey is required.
 - b. Steps for Analysis:

- i. The surveyor should perform a desktop review to identify ecological site descriptions, site characteristics and potentials, potential flora and fauna and habitat requirements for potential fauna.
 - ii. In the field, the surveyor should compare potential with actual conditions and should characterize actual habitat quality and quantity as a measure of potential conditions. (e.g., a piñon juniper forestland ecological site with grass dominated understory may actually exhibit little or degraded understory and could be dominated by juniper or even mixed ponderosa depending on historic grazing and fire regime; or high-density fencing could increase the ability of predators to capture species of interest; actual habitat quality and quantity will often vary from site potentials).
 - iii. The surveyor should also characterize specifically whether resources exist for any critical life cycle requirements for any focal species and should note the proximity of those resources to areas of known use.
 - iv. The determination of habitat suitability, quality and quantity, should be made by a qualified professional wildlife biologist and should be consistent with peer-reviewed literature on the subject. Habitat suitability evaluations should take into account abiotic factors such as topography, temperature and precipitation regime, disturbance regime, parent geologic material and hydrologic conditions. In addition, biotic conditions including soil health, vegetative cover, and species abundance and diversity should be evaluated in the field and characterized.
- 3. *Assessing Actual and Important Use (applicable to surveys for protected species and for wildlife corridor and habitat connectivity analysis):*
 - a. When Required: The surveyor should evaluate actual and important use whenever important use areas are Known to Occur or have Potential to Occur for protected species or for wildlife corridor or habitat connectivity analysis.
 - b. Steps for Analysis:
 - i. The surveyor should identify actual and potential protected species, and for wildlife corridor analysis should select a group of focal species as described below. The surveyor should perform a desktop review to identify potential flora and fauna within the lease area. The surveyor should identify likely habitat criteria for critical life cycle requirements for actual and potential protected species and focal species.
 - ii. The desktop review may consider:
 - 1. NMDGF, USFWS, or any other agency corridor designation or corridor or habitat model, or functional corridor identified through movement data, or any designation of an important use area such as Important Bird Areas or Important Plant Areas.
(<https://www.wildlife.state.nm.us/conservation/habitat-handbook/>;

https://nhnm.unm.edu/sites/default/files/nonsensitive/images/IPAs_Figure4.jpg; <https://www.audubon.org/important-bird-areas>)

2. Proximity to a Wildlife Corridor Action Plan (WCAP) hot spot area or functional wildlife corridor. (<https://nmert.org/content/map>).
 3. Animal location data (e.g., Very High Frequency [VHF] or Global Positioning System [GPS] tracking) collected by any state, federal or tribal agency. (May require a data sharing agreement with the collecting agency).
 4. Any peer-reviewed wildlife corridor study or dispersal model.
 5. Any other reliable, publicly available information or study showing the existence or location of wildlife corridors, dispersal patterns, general movement or use for a critical life cycle requirement.
- iii. Surveys must be conducted at the time of year protected species or focal species are most likely to be present in accordance with professional survey standards or in consultation with species experts.
 - iv. In the field, the surveyor should compare potential habitat characteristics for actual or potential protected species or focal species' critical life cycle requirements with actual conditions and should characterize habitat quality and quantity in light of critical life cycle requirements.
 - v. Actual use should be determined through a combination of direct species observations, (e.g., visual or photographic evidence), evidence of nests, burrows, dens, or hibernacula, evidence of roosting, resting, grazing, or scavenging, evidence of tracks, scat, or carcasses, or evidence of calls, cries or songs, or any other professionally verified evidence of species presence.
 - vi. Determination of important use for critical life cycle requirements should be made by a qualified professional wildlife biologist and should be consistent with peer-reviewed literature on the subject. Important use evaluations should take into account concentration and timing of use, historic use patterns, availability of alternative habitat, access to alternative habitat and potential impact to species populations if the use area were to be diminished or removed.
 - vii. If important use areas for critical life cycle requirements are located, a qualified professional wildlife biologist should map the location, with a biologically justified buffer zone and include these details in the survey report.

4. *Species-Specific Survey Guidelines*

a. Mammals:

- i. Bat surveys should be designed to determine the presence of suitable bat hibernacula such as karst features, caves, abandoned mine portals, or other openings within 1000 m (3,281 feet) of the Project footprint that may realistically harbor bats. Bat surveys should search for the presence of

colonies (including hibernation, breeding and maternity/nursery colonies), migration corridors, and feeding areas.

b. Raptor Species:

- i. Raptor nest surveys will be conducted to prior to development to determine the presence and occupancy of raptor nest structures within the boundary of the lease. Raptor nest surveys will be conducted for at least one breeding season prior to the initiation of construction. For large landscape scale projects, NMSLO recommends that surveys begin at least two years prior to construction. Surveys should ideally be timed to begin in February and be conducted at least once per month through June to capture different species' nesting behavior. NMSLO recommends that surveys be conducted within two miles of the proposed Project site footprint. The lessee will provide the NMSLO the locations of all raptor nests identified as a result of the survey or otherwise.

c. Eagles:

- i. The lessee must systematically survey for eagle nest structures within two miles (3,219 m, 10,560 feet) of the Project boundary to determine occupancy status during the nesting season. Eagle nest surveys will be conducted for at least one breeding season prior to the initiation of construction. For large landscape scale projects, surveys should begin at least two years prior to construction. Surveys should ideally be timed to begin in February and be conducted at least once per month through June to capture different species' nesting behavior. The lessee shall provide the NMSLO the locations of all eagle nests identified as a result of the survey or otherwise.

d. Migratory Bird Treaty Act:

- i. Occupied or active nests of birds protected under the MBTA must be avoided during nesting season until the nest is inactive and the young have fledged. For compliance with the MBTA, all activities within the buffered areas described in the Protection Standards must be suspended during the breeding and nesting season. The timing of nesting season is specific to the species, and depends on the ecosystem and climate, but in the Southwest, this generally occurs from March 1 – August 31. Timing of surveys should be determined by a qualified professional biologist on a case-by-case basis.
- ii. The lessee shall perform field-based clearance surveys if tree or shrub removal or ground-disturbing activities are anticipated to occur during nesting and breeding season. A qualified biologist should survey breeding and nesting habitat within and adjacent to the potential area of effect no more than two weeks before construction or site preparation. If more than two weeks lapses between construction actions, the area of effect should be resurveyed. If breeding or nesting birds are detected, the lessee must suspend activities within the setback area and a permitted biologist will monitor nests until the nests are no longer active or occupied.

e. Burrowing Species:

- i. The lessee shall perform field-based presence/absence surveys for protected burrowing species within 200 m (656 feet) of any new ground disturbance. Burrowing Owl surveys should follow the NMDGF Guidelines and Recommendations for Burrowing Owl Surveys and Mitigation (<https://www.wildlife.state.nm.us/download/conservation/habitat-handbook/project-guidelines/Burrowing-Owl-Surveys-and-Mitigation-2007.pdf>). Prairie dog colonies within the range of the black-tailed prairie dog can be surveyed by a qualified biologist diurnally, year-round using binoculars. Colonies within the range of the Gunnison's prairie dog can be surveyed by a qualified biologist diurnally, using binoculars during the warmer months from April through October and by searching for fresh scat and lack of cobwebs or debris at the mouths of burrows during cold months (November through March).

f. Lesser Prairie-Chicken:

- i. The lessee shall perform Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*) lek clearance surveys according to the Western Association of Fish and Wildlife Agencies' (WAFWA's) Clearance Survey Protocol (WAFWA 2021, https://wafwa.org/wp-content/uploads/2021/03/WAFWA_LPC_Survey_Protocol_2021.pdf), and NMDGF guidelines, (NMDGF 2022). Survey training and permitting from USFWS will be required. If the lease boundary overlaps the species' range as defined by the Southern Great Plains Crucial Habitat Assessment Tool (<https://www.sgpchat.org/>), consultation with NMSLO will be required.

g. State or Federally Listed Species with Prescribed Survey Protocols:

- i. Survey protocols may be prescribed by the USFWS, NMDGF, or EMNRD for certain state or federally listed species. As of this writing, this list includes, but is not limited to the Yellow-billed Cuckoo, Southwestern Willow Flycatcher, Mexican Spotted Owl and the Rio Grande Silvery Minnow. For these species, survey training and permitting by the appropriate agency is required. The Lessee should consult with the NMSLO, NMDGF and EMNRD to make sure they have the latest listings and survey requirements.

5. *Initial Desktop Review (Wildlife Corridors and Habitat Connectivity)*: The following steps should be taken to complete the initial desktop review for wildlife corridors and habitat connectivity:

- a. Identify and map the planning area to include the entire lease area (action area) plus a two-mile buffer surrounding the lease area for adjacent lands analysis.
- b. Determine whether there is a designated or mapped wildlife corridor or functional corridor identified by movement data within the action area or buffered adjacent lands, and if so, consult with NMDGF, the WCAP, and NMSLO.
- c. Determine distance from action area to nearest WCAP hotspot or wildlife corridor: Consult WCAP. (<https://wildlifeactionplan.nmdotprojects.org/wp->

[content/uploads/sites/39/2022/07/Wildlife-Corridors-Action-Plan_June-2022_FINAL-reduced.pdf](#)).

- d. Determine whether any special status lands occur within the boundaries of the action area or buffered adjacent lands: Consult with NMSLO, NMDGF, BLM and USFWS for presence of LURCs, COAs, CCAAs, ACECs, HCPs, etc.
 - e. Identify and map perennial and intermittent surface water resources within the action area and buffered adjacent lands.
 - f. Identify and map large natural areas within the action area and buffered adjacent lands. See Guidelines for Mapping Large Natural Areas below.
 - g. Determine whether any big game are known to occur within the action area.
6. *Supplemental Desktop Review (Wildlife Corridors and Habitat Connectivity)*: If any of the items listed in (5)(b-g) above are found to occur within the action area or buffered adjacent lands, a supplemental desktop review and field survey (within the action area only) will be required. The following steps should be taken to complete the supplemental desktop review for wildlife corridors and habitat connectivity:
- a. Conduct a Focal Species analysis. See Focal Species Guidelines.
 - b. Conduct a habitat connectivity analysis. See Habitat Connectivity Guidelines.
 - c. Conduct an adjacent lands analysis. See Adjacent Lands Guidelines.
 - d. Document findings of the initial and supplemental Desktop Reviews in the BA. Where a designated or mapped wildlife corridor, WCAP hotspot (within two miles), special status lands, important use area, important habitat, perennial or intermittent surface water, large natural area, big game, or likely impact to adjacent lands is found to be present by desktop review, a field-based survey to verify quality and quantity of habitat, and to characterize actual or important use will be required (within the action area only, not adjacent lands).
7. *Guidelines for Mapping Large Natural Areas*:
- a. When Required: Large natural areas should be identified and mapped whenever review for wildlife corridors and habitat connectivity is required. A large natural area is a proxy for connected habitat. This is not intended to be a perfect measure; it is a qualitative estimate intended to provide a rough but meaningful framework for analyzing impacts to wildlife corridors and habitat connectivity.
 - b. Steps for Analysis:
 - i. Create a planning area boundary map that includes the lease area (action area) and a two-mile buffer around the lease area for adjacent lands analysis.
 - ii. The basic unit of measure is the 40-acre quarter-quarter section of the PLSS. Map all quarter-quarter sections within the planning area.

- iii. Map all perennial and intermittent surface water resources within the planning area. Include all quarter-quarter sections that contain any perennial or intermittent surface water resource within the large natural area map, regardless of other road or surface disturbance within the quarter-quarter section. The presence of a perennial or intermittent surface water resource is assumed to be an important use area or a functional wildlife corridor.
- iv. Eliminate all quarter-quarter sections that include any paved road except where a perennial or intermittent surface water resource is present.
- v. Eliminate all quarter-quarter sections that contain more than 6 acres (15%) of disturbed ground or converted lands. Converted lands should include irrigated farmland, buildings or structures (measure structure footprints), large fenced enclosures, pads, yards, paving or any other hard or converted surface area. Fencing for livestock, dirt tanks, stock tanks, and small pens, corrals or feeding areas, or unimproved two-track roads for private agricultural use should **not** be counted as converted land. Large holding pens, dairies, crop land, waste disposal areas, dumps, sand or gravel mines, mine tailings, oil and gas well pads and associated infrastructure, and improved paved or unpaved roads constitute converted lands. Existing wind turbines (measure the footprint) and solar farms constitute converted lands. Transmission lines and associated unimproved access roads should not be counted as converted lands but should be evaluated when assessing connectivity, especially related to flying species. Note: measuring and mapping large natural areas and converted lands should be a desktop review and is not expected to be a perfect measure. A rough estimate of large natural areas will be adequate.
- vi. Map the quarter-quarter sections that contain 34 acres or more (85%) of unconverted land and include the mapped perennial and intermittent surface water resources within the planning area. These quarter-quarter sections constitute the large natural areas.
- vii. Where any large natural area occurs within the action area, there is a presumption that wildlife corridors or habitat connectivity values have potential to occur. Focal Species, Habitat Connectivity and Adjacent Lands analyses plus field-based biological surveys of the large natural area should evaluate the quality and quantity of the habitat, actual use by focal species and determine whether or not project activities are likely to impact corridor function or habitat connectivity values.

8. *Guidelines for Selecting and Analyzing Focal Species:*

- a. When Required: Focal species should be selected whenever initial desktop review indicates that wildlife corridors and habitat connectivity values (i.e. a large natural area) are *Known to Occur* or have *Potential to Occur*.
- b. Steps for Analysis:
 - i. Identify the ecoregion and habitats contained within the large natural area. (State Wildlife Action Plan (nmswap.org) <https://nmswap.org/ecoregions>).

- ii. Obtain a complete wildlife species list for the action area. ([NMDGF Project Guidelines \(https://www.wildlife.state.nm.us/conservation/habitat-handbook/\)](https://www.wildlife.state.nm.us/conservation/habitat-handbook/) BISON-M Report Viewer <https://bison-m.org/BisonReportView.aspx>)
- iii. Select focal species. Choose at least five species to analyze. If possible, select one species from each of the five groups listed below. Some species may fit into multiple categories. Select species that are likely to occur within the ecoregion and habitats included in the large natural area. Identify those species that use the large natural area to move through (passage species) and those that live their entire lives in the large natural area (corridor dwellers). Corridor dwellers may move within the area during their lifetime but are likely to take multiple generations to move out of the area. To the extent possible, make sure that the selected group of focal species includes at least one passage species and one corridor dweller. The list of passage species and corridor dwellers should then be further stratified across taxonomic groups (mammals, birds, reptiles, amphibians, insects, and fish if appropriate) and by use of major habitat types in the action area, to represent the diversity of habitat requirements and movement needs likely to be impacted across the action area. Again, the list does not need to be a perfect representation of all species within the large natural area, but should be adequate to develop a meaningful analysis of the potential impacts of the project to the movements of common or important species within the action area. If there are no obvious species in a category, please consult with the NMSLO biologist for assistance.
 1. *Area-sensitive species*: species with large home ranges or requiring long-distance dispersal for metapopulation persistence (often large mammals, usually passage species).
 2. *Barrier-sensitive species*: species most reluctant to traverse roads, fences, canals, urban areas, and other barriers (e.g., often reptiles, amphibians or fish, usually corridor dwellers).
 3. *Dispersal limited species*: species whose mobility is limited due to extreme habitat specialization, small home range, or short dispersal movements (often smaller animals, usually corridor dwellers).
 4. *Habitat specialists*: species strongly associated with major vegetation types or topographic elements in the planning area (often amphibians, fish, insects, birds, some mammals, may be passage species or corridor dwellers).
 5. *Ecological indicators, keystone or umbrella*: species tied to an important ecological process, such as predator-prey relations, pollination, disturbance regime, or which may be indicators of ecosystem health or stand as proxy for large groups of other species (often mammals, amphibians, insects, birds, may be passage species or corridor dwellers).

- c. The determination of which focal species to select will be left to the professional judgment of a qualified professional wildlife biologist in consultation with the NMSLO.
- d. Focal Species Desktop Review: Identify habitat requirements for each selected focal species; then, based on topographic features, potential vegetation cover, water and forage availability, identify potential important habitat, potential important use areas and potential important connectivity areas for each focal species. The Focal Species desktop review and analysis should be used in conjunction with the habitat connectivity analysis to determine the scope and extent of the field-based biological survey.
- e. Conduct a field-based biological survey to assess actual and important use by selected focal species.
- f. Document findings in the BA.
- g. Examples of species by category and habitat type may be provided when available, upon request.

9. *Guidelines for Habitat Connectivity Analysis (Assessing and Ranking Habitat Connectivity):*

- a. When Required: Habitat connectivity analysis and ranking should be conducted whenever a large natural area is identified within the planning area. The analysis is performed in conjunction with Focal Species and Adjacent Lands analysis.
- b. Purpose: Habitat connectivity analysis and ranking is intended to provide a simple approximation of probable habitat connectivity for selected focal species in order to provide guidance for the NMSLO and lessees in the selection of BMPs and other Avoidance Measures. The purpose is to reduce habitat fragmentation, and to avoid, minimize and mitigate potential negative impacts to functional wildlife corridors and to the normal use by wildlife of important habitat and important use areas.
- c. Steps for Analysis:
 - i. Desktop Review:
 - 1. Consult publicly available literature and review tools such as the Environmental Review Tool (NMERT—NMDGF) to identify:
 - a. The ecoregion of the action area including adjacent lands (State Wildlife Action Plan (nmswap.org) <https://nmswap.org/ecoregions>).
 - b. The primary habitat types within the action area including adjacent lands (State Wildlife Action Plan (nmswap.org) <https://nmswap.org/habitats>).
 - 2. Identify and map topographic features including escarpments, canyons, buttes, ridges, surface water resources or other features that could restrict or attract wildlife movement within the action area or buffered adjacent lands.

3. Using information collected for the Focal Species analysis, identify critical life cycle requirements and map the potential important habitat and important use areas for each selected focal species within the action area and buffered adjacent lands.
 4. Identify primary means of access and movement to and between important habitat and important use areas by each selected focal species. Include timing and seasonal use requirements as well as habitat patch requirements. For example, mule deer may require specific habitat patch configuration (open or closed cover), and particular daylight or seasonal conditions in order to travel certain distances between important use areas.
 5. Identify and map potential obstacles to movement, including natural and human created obstacles for each selected focal species.
- ii. Field-based Survey:
 1. In the field, the surveyor should verify the quality and quantity of habitat connectivity for each focal species. The surveyor should compare potential obstacles to movement as identified in the desktop review with actual observed conditions and probable use by focal species. For example, a 30-foot wide caliche road may appear in aerial imagery as a potential obstacle to the movement of lesser prairie chicken populations, but field observations may demonstrate substantial movement across the road. Surveys should be specific to selected focal species' life cycle and movement requirements.
 - iii. Ranking: Identify and map each quarter-quarter section within a large natural area as either High, Medium or Low Quality for Habitat Connectivity for each selected focal species. (Five separate maps for five separate focal species.)
 1. High Quality Habitat Connectivity: Few to no actual barriers to movement observed and actual use by the focal species is widespread and evident.
 2. Medium Quality Habitat Connectivity: Some actual barriers to movement observed and actual use by focal species appears to be limited in some areas or potentially altered by the presence of known barriers.
 3. Low Quality Habitat Connectivity: Multiple actual barriers to movement observed and actual use by focal species is measurably reduced and altered by the presence of known barriers.
- d. Map ranked habitat quality and document findings in the BA.

- e. Using Focal Species findings of important habitat and important use areas, identify ranked habitat connectivity locations that will be most sensitive to impacts from project activities. Assess potential avoidance, minimization and mitigation measures that could be used to reduce impacts. Develop recommendations and report findings in the BA.

10. *Guidelines for Conducting WCAP Hot Spot Analysis:*

- a. When Required: WCAP hot spot analysis should be conducted whenever a desktop review for wildlife corridors is required.
- b. Purpose: WCAP hot spots represent locations where wildlife use is frequent and where significant road impacts to wildlife have been documented. The purpose of this evaluation is to ensure that lessee actions do not increase road impacts to wildlife as they pass through hot spot areas.
- c. Steps for Analysis: The lessee should consult with NMDOT and NMDGF to ensure that agency requirements are met and to identify current best practices and guidelines. When a WCAP hot spot is within two miles of the action area, the lessee should conduct a habitat connectivity analysis to identify regions that should be protected and to avoid exacerbating existing negative road impacts. To the maximum extent feasible, the lessee should minimize the use of fencing within two miles of a WCAP hotspot area.

11. *Guidelines for Conducting Adjacent Lands Analysis:*

- a. When Required: Adjacent lands analysis should be conducted whenever a desktop review for large natural areas, wildlife corridors or habitat connectivity is required.
- b. Desktop Review Only: No field survey is required to assess potential impacts to adjacent lands.
- c. Steps for analysis: The lessee should:
 - i. Map a two-mile-wide buffer zone around the action area. This buffer zone is the planning area for adjacent lands analysis.
 - ii. If it has not already been done for the large natural area analysis, map the large natural areas within the buffer zone.
 - iii. Determine whether any perennial or intermittent surface water resource exists within the buffer zone.
 - iv. Determine whether any special status land designated for the protection of species or habitat exists within the buffer zone.
 - v. Determine whether any natural topographic feature exists within the buffer zone that could act as a bottleneck between the action area such as a canyon or riparian corridor that might funnel animals between the action area and any water resource, special status land or potential important use area outside the action area.

- vi. Estimate potential for important habitat or important use areas for focal species within the buffer zone. This should be a desktop review only.
- vii. Estimate habitat connectivity rankings for the buffer zone and map. This should be a desktop review only.
- viii. Given the above information, estimate the probability of adverse impact to wildlife uses, especially to focal species within the buffer zone, as a result of project activities within the action area.
- ix. Report findings in the BA.

12. *Guidelines for Reporting Desktop Review and Survey Results for Wildlife Corridor and Habitat Connectivity Analysis:*

- a. Report findings of initial desktop review including explicit statements of presence/absence of designated wildlife corridors, WCAP hotspots within two miles of the action area, special status lands, perennial or intermittent surface waters, and large natural areas. Include maps and brief narrative descriptions.
- b. Report findings of supplemental desktop review including description of important topographic features, selection of focal species and rationale for selection, description of potential important habitat and potential important use areas, adjacent lands analysis, and habitat connectivity analysis and rankings.
- c. Report field survey findings including narrative description of quality and quantity of important habitat, actual and important use areas, and habitat connectivity for each selected focal species. Report habitat connectivity quality rankings.
- d. Identify probable impacts of the proposed activity to important habitat, important use areas and habitat connectivity values for each focal species.
- e. Select avoidance measures and explicitly describe the best management practices that should be used to avoid, minimize and mitigate impacts to important habitat, important use areas and habitat connectivity.

13. *Survey Documentation*

- a. Survey documentation may be reported in brief, but must include, at a minimum, the following information:
 - i. Surveyor(s): First initial and last name of each Surveyor
 - ii. Group: Surveyor organization name
 - iii. Project Name: Official project name, as stated in NMSLO Project Plan.
 - iv. Project Type: Proposed project activities and features
 - v. Date(s) Surveyed: Dates of field survey efforts
 - vi. Species or Features Surveyed For: Scientific names of species searched for
 - vii. Survey Area Extent (Project Buffer): Distance from edge of proposed disturbance surveyed

- viii. Transect Spacing, if applicable: Distance between Surveyors or survey paths walked
- ix. Survey Results Summary: 1) Presence or negative presence of species or features searched for; 2) Count by species of individuals or features identified and found. Raw survey data may be requested to verify survey results.
- b. GIS file of survey tracks
- c. GIS file of any species or feature observations (points or polygons)
- d. Images of individuals or objects observed at each observation GIS feature
- e. Habitat images
- f. Relevant notes: Notes must include known data omissions or deviations from Survey standards; habitat descriptions for each survey area, including dominant associated species, and soil characteristics; assessment of observed species condition; and information about other sensitive resources observed.

14. Digital Data Specifications

- a. GIS Files: Submit GIS data in *.shp, *.kml or .kmz format.
- b. Survey Tracks: a line feature collected by GPS of Surveyors' actual tracks walked while searching for the target species or feature.
 - i. Include date of Survey and Surveyor's names (i.e. J. Doe).
- c. Observation/Occurrence Features:
 - i. Capture observation or occurrence GIS features when species identification is uncertain.
 - 1. Clearly identify uncertain observations as "ID Uncertain." (This information will be used to calibrate the certainty of the findings. If uncertain IDs exceed 20%, additional surveys may be required. Plant collections will only be allowed with permission of the NMSLO and EMNRD; animal collections will only be allowed with permission of the NMDGF)
 - ii. Species or Feature Observations: point features for individuals or small (i.e. $\leq$ five meters in diameter) clusters of individuals or small objects.
 - 1. Points should be captured at the center of the individual or small cluster or object.
 - 2. Include a count or estimation of individuals represented by each feature.
 - iii. Species or Feature Occurrences: polygon features for large (i.e. $>$ five meters in diameter) clusters of individuals or objects.
 - 1. Document GPS position accuracy.
 - 2. Include a count, if practicable, or estimate of individuals represented by each feature.
 - iv. Images Files:

1. All images should be geo-tagged or otherwise associated with coordinates or GIS files for an observation or occurrence location.
 2. Submit image data in .jpg format.
 3. Focus image on the subject of interest, either habitat, plant, or plant feature.
- d. Species or Feature Observation/Occurrence Images:
- i. For each Observation or Occurrence, submit images and key identifying features in sufficient quantity and quality to verify species or feature identification without additional field visits.
- e. Survey Area Habitat Images:
- i. Submit an overview image of the Survey Area, portraying habitat type, for each distinct segment of the Survey area.

Plant Surveys

Special Status Plant Species

The lessee is required to conduct presence/absence surveys according to the NMSLO Standard Special-Status Plant Species (SSPS) Survey Protocol for all protected plant species with potential to occur (known occupied habitat or un-surveyed suitable habitat) within 200 m (656 feet) of proposed Project activities, unless otherwise directed by the NMSLO biologist or designated Project lead.

SSPS Survey Protocols

The lessee is required to conduct SSPS field surveys at a time when target plant species can be detected and accurately identified according to the NMSLO SSPS Survey Protocol:

1. *Survey Intensity*
 - a. Survey intensity will be determined from a combination of search speed and space between transects, or search paths. Surveyors are expected to search at a pace that will enable them to reliably detect the presence of the SSPS being searched for. This pace averages one mile per hour but may be slower in dense vegetation and faster in open areas or during a species' blooming period. Transect spacing varies by habitat type and species (i.e. Occupied Habitat or Potential/Suitable Habitat).
 - b. In SSPS Potential/Suitable Habitat, except for cryptic species, Surveys will be conducted along parallel transects spaced 20 m (66 feet) from one another. For cryptic species parallel transects will be spaced 10 m (33 feet) apart. This survey type is also referred to as a Presence/Absence Survey.
 - c. Adjacent to known SSPS Occurrences and in Occupied Habitat, Surveys will be conducted along parallel transects spaced 10 m (33 feet) from one another. This survey type is also referred to as an Inventory Survey.
 - d. If SSPS are observed during a Presence/Absence Survey, the Surveyor will initiate an Inventory Survey by increasing Survey intensity to 10 m transect spacing within 100 meters of any observed SSPS individual(s).

- i. For Small Teasel Lichen, only a Presence/Absence Survey accompanied by a polygon for the core observed area is needed.

2. *Survey Timing*

- a. Surveys are required to be conducted when plants are conspicuous and detectable. All relevant SSPS must be detectable and possibly blooming during project timing.
- b. Disease, drought, predation, or herbivory may also influence detectability. Such adverse or unforeseen conditions may prevent surveyors from determining presence/absence of SSPS. If detectability is questionable, the status of plants in a local, known occupied area must be referenced to verify detectability and detection requirements. Increasing Survey intensity (i.e. decreasing transect spacing) or decreasing survey speed may compensate for marginal detectability. If plants are undetectable, in consultation with the NMSLO wildlife biologist, survey efforts must be postponed until plants are detectable.

3. *Surveyor Professional Qualification*

- a. Surveys must be supervised by a qualified field botanist (MS in botany with two years of experience in field identification; or BS in botany or plant sciences or equivalent with four years of field experience. Documentation of their qualifications, education and experience must be available upon request. All crew personnel conducting inventories for SSPS are not required to be a botanist but should have a strong background in plant field identification as well as field experience identifying the species being surveyed. The lead supervising surveyor need not be present for the entirety of the survey but must be able to attest to the quality of the work. Surveys for federally listed species will likely require permitting of surveyors by USFWS, and training in species-specific survey protocols provided by USFWS.
- b. Surveyors, whether proponent biologist or third-party, must also demonstrate strong digital data collection skills and be capable of reliably recording, uploading and downloading Global Positioning System (GPS) files with mobile digital devices.

4. *Survey Documentation*

- a. Survey documentation may be reported in brief, but must include, at a minimum, the following information:
 - i. Surveyor(s): First initial and last name of each surveyor
 - ii. Group: Surveyor organization name
 - iii. Project Name: Official project name, as stated in NMSLO Project Plan.
 - iv. Project Type: Proposed project activities and features
 - v. Date(s) Surveyed: Dates of field survey efforts
 - vi. Species Surveyed For: Scientific names of species searched for
 - vii. Survey Area Extent (Project Buffer): Distance from edge of proposed disturbance surveyed
 - viii. Transect Spacing: Distance between surveyors or survey paths walked

- ix. Survey Results Summary: 1) Presence or negative presence of species searched for; 2) Count by species of individuals found. Raw survey data may be requested to verify survey results.
- b. GIS file of survey tracks
- c. GIS file of any SSPS observations (points or polygons)
- d. Images of individuals observed at each observation GIS feature
- e. Habitat images
- f. Relevant notes: Notes must include known data omissions or deviations from Survey standards; habitat descriptions for each survey area, including dominant associated species, and soil characteristics; assessment of observed species condition; and information about other sensitive resources observed.

5. *Digital Data Specifications*

- a. GIS Files: Submit GIS data in *.shp, *.kml or .kmz format.
- b. Survey Tracks: a line feature collected by GPS of surveyors' actual tracks walked while searching for the target species.
 - i. Include date of Survey and surveyor's names (i.e. J. Doe).
- c. Observation/Occurrence Features
 - i. Capture observation or occurrence GIS features when species identification is uncertain.
 - 1. Clearly identify uncertain observations as "ID Uncertain." (This information will be used to calibrate the certainty of the findings. If uncertain IDs exceed 20%, additional surveys may be required. Collections will only be allowed with permission of the NMSLO and EMNRD.)
 - ii. SSPS Observations: point features for individuals or small (i.e. ≤ 5 meters in diameter) clusters of individuals.
 - 1. Points should be captured at the center of the individual or small cluster.
 - 2. Include a count or estimation of individuals represented by each feature. Observations should use the FLORA schema developed by Natural Heritage New Mexico.
 - iii. SSPS Occurrences: polygon features for large (i.e. > 5 meters in diameter) clusters of individuals.
 - 1. Document GPS position accuracy.
 - 2. Include a count, if practicable, or estimate of individuals represented by each feature. Observations should use the FLORA schema developed by Natural Heritage New Mexico.
 - iv. Images Files:

1. All images should be geo-tagged or otherwise associated with coordinates or GIS files for an observation or occurrence location.
 2. Submit image data in .jpg format.
 3. Focus image on the subject of interest, either habitat, plant, or plant feature.
- d. SSPS Observation/Occurrence Images
- i. For each SSPS Observation or Occurrence, submit images of entire SSPS individuals and key identifying features in sufficient quantity and quality to verify species identification without additional field visits.
- e. Survey Area Habitat Images
- i. Submit an overview image of the Survey Area, portraying habitat type, for each distinct segment of the Survey area.

During drought years (below average seasonal precipitation prior to annual detection period), multi-year repeated surveys should be conducted to ensure ephemeral annual species seedbanks and/or populations are not detected within the Project area.

Surface Water Resources

The purpose of a field-based surface water resource survey is to verify and characterize the surface water resource and to identify boundaries of riparian edges, high-water marks and floodplains.

1. *Surface Water Resource Survey Protocols:*
 - a. When Required: A field-based surface water resource survey is required whenever desktop review indicates that a surface water resource is Known to Occur or has Potential to Occur within the boundaries of the lease.
 - b. Surveyor Qualifications:
 - i. Surveys must be led by a qualified surface water resource ecologist (MS in surface water resource ecology with two years of experience in field survey and identification; or BS in surface water resource ecology with four years of experience; or a BS in a field related to natural resources, including at least nine surface water resource-related credits with five years of experience in field survey and identification of wetlands and riparian areas). Documentation of the surveyor's qualifications, education and experience must be available upon request. All crew personnel conducting inventories for surface water resource analysis are not required to be surface water resource specialists but should have a strong background in ecological field surveys and identification.
 - ii. Surveyors, whether proponent biologist or third-party, must also demonstrate strong digital data collection skills and be capable of reliably recording, uploading and downloading Global Positioning System (GPS) files with mobile digital devices.

2. *Verifying Quality and Quantity of Surface Water Resources:*

- a. When Required: The surveyor should verify quality and quantity of surface water resources whenever desktop review indicates that a field-based survey is required.
 - i. Steps for Analysis:
 - ii. The surveyor should perform a desktop review to identify surface water resources using ecological site descriptions, flood plain and drainage maps and other descriptions of site characteristics and potentials for perennial, ephemeral or intermittent wetlands, lakes, playas, springs or streams.
 - iii. In the field, the surveyor should compare potential with actual conditions and should characterize actual surface water resource quality and quantity as a measure of potential conditions.
 - iv. The surveyor should also characterize specifically whether or not the surface water resource is perennial, ephemeral or intermittent, and whether or not it qualifies as a water of the United States under USACE permitting requirements and should assess the quality of surface water resources and should determine boundaries of the riparian edges, high-water marks and floodplains.
 - v. The determination of surface water resource quality, quantity and boundaries should be made by a qualified professional surface water resource ecologist and should be consistent with peer-reviewed literature on the subject.

Cave and Karst Features

The purpose of a Cave and Karst survey is to verify and characterize the presence of cave or karst features within the lease or action area.

1. *Cave and Karst Survey Protocols:*

- a. When Required: A field-based cave and karst survey is required whenever desktop review indicates that a cave or karst resource is Known to Occur or has Potential to Occur within the boundaries of the lease.
- b. Survey Requirements: The cave and karst survey should identify boundaries of feature edges, and assess depth and stability of the feature. Cave and Karst surveys should also identify sensitive cave or karst features and should address the local hydrogeology including areas of groundwater discharge or recharge and the potential relationships of these areas with cave or karst features and surface water bodies.
- c. The surveyor will provide documentation of survey methodology and results. If the survey verifies that cave or karst features are present within the lease boundaries, the lessee will notify the NMSLO, and will implement the appropriate NMSLO Avoidance and Mitigation Measures as described in the Protection Standards. Findings should also be reported to the National Cave and Karst

Research Institute (NCKRI) at info@nckri.org. In addition, the NCKRI website (<https://nckri.org/>) and the Karst Information Portal (<https://digitalcommons.usf.edu/kip/>) may have information related to previous surveys and should be consulted as part of any desktop review prior to survey.

- d. Cave and karst features should be surveyed by a qualified professional as defined below unless this definition is revised by the ASTM International Phase I Karst Assessment Standards or superseded by other state licensing requirements.

2. *Qualified Professional means:*

- a. A person who possesses sufficient specific education, training, and experience necessary to identify and characterize the presence of, or potential presence of, karst conditions on, at, or in a subject property.
- b. Such a person must: (i) hold a current Professional Engineer's or Professional Geologist's license or registration from an appropriate governmental or other agency and have the equivalent of three years of full-time relevant experience; or (ii) have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five years of full-time relevant experience; or (iii) have the equivalent of 10 years of full-time experience.
- c. A qualified professional should remain current in the field through participation in continuing education or other activities.
- d. The definition of a qualified professional provided above does not pre-empt state professional licensing or registration requirements such as those for a professional geologist, engineer, or applicable professional. Before commencing work, a person should determine the applicability of the governmental professional licensing or registration laws to the activities to be undertaken as part of the assessment.
- e. A person who does not meet the requirements of a qualified professional under the foregoing definition may assist in the assessment if such a person is under the supervision or responsible charge of a person meeting the definition of a qualified professional when conducting such activities.

3. *Relevant experience, as used in the definition of a qualified professional in this section, means:*

- a. Participation in the performance of all appropriate inquiries, investigations, karst site assessments or other activities that include analyses and investigations involving the understanding of surface and subsurface karst activities for which professional judgment is used to evaluate karst conditions associated with the subject property.

Sensitive Soils

Soil Surveys should be conducted in accordance with standard best practices for soil surveys. (See e.g. Guidance for Soil and Cover Material Handling and Suitability for Part 5 Existing

Mines, Energy, Minerals & Natural Resources Department, Mining and Minerals Division, August 2021, <https://www.emnrd.nm.gov/mmd/mining-act-reclamation-program/guidelines/>). At a minimum, Soil Surveys should include a Description of Soil Types in and around the action area at an approximate scale of 1:15,000 or larger. The survey and description should define an Area of Interest (“AOI”) and include a soils map from: <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>). The USDA Web Soil Survey can provide desktop review information related to soil fragility, erodibility, including K-factor rating, identification of Badland or gypsum soils, steep slope and shallow soils. <https://websoilsurvey.nrcs.usda.gov/app/>. Recent fire history can be obtained from the NMSLO or from the State Forester at EMNRD.

As an alternative, lessees may download the most recent Soil Survey Geographic Database (“gSSURGO”) data for New Mexico (<https://nrcs.app.box.com/v/soils>). Any submittal should include a map and narrative interpretation of the soils data to NMSLO for a given area of proposed disturbance. Your local United States Department of Agriculture Natural Resources Conservation Services (“USDA/NRCS”) office can also be contacted to provide soils and Ecological Site Description (“ESD”) maps at no charge (<https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/new-mexico>).

Soil sampling should be performed by a qualified soil scientist on any proposed new disturbance areas within the action area and should be reported as baseline data for determining sensitive soil characterization. In general, an Order I Soil Survey should be used to collect enough information to determine soil sensitivity; however, where test pits could impact soil integrity or compromise stability, sampling should be modified to protect soils. A soil sampling plan should be submitted to the NMSLO for approval prior to sampling.

1. *The Soil Survey submittal for sensitive soils should include a narrative with the following information:*
 - a. A brief description of each sensitive soil series, including depth to bedrock, drainage class, parent material characterization, precipitation, general soil characteristics, context (genesis of sensitive soil and relative stability of surrounding soil series), and sensitive soil attribute (i.e. fragility, erodibility, etc.). See NMSLO sensitive soil definitions.
 - b. An evaluation of potential impact to the stability of the sensitive soil if the proposed action is approved and recommendations for avoidance of adverse impact or minimization and mitigation of adverse impact.

APPENDIX C: REPORTING PROTOCOLS AND MITIGATION, MONITORING AND ADAPTIVE MANAGEMENT PLANS

REPORTING PROTOCOLS

Reporting Protocols

1. *When Required:* Various plans, notices and reports may be required by these Protection Standards. See Table C-1, C-2 and C-3.

Table C-1. Monitoring, Adaptive Management and Other Plan Requirements

When Required	Plan Type	What's Required
<i>Present:</i> Unoccupied but Suitable Habitat for Listed Species (wildlife or plants)	Monitoring	- Monitoring for impact to habitat - Adopt BMPs
When Mitigation Measures are required (Avoidance Measures impossible to implement for any protected resource)	Monitoring	Long term monitoring for impact to protected resource
When Mitigation Measures are required (Avoidance Measures impossible to implement for any protected resource)	Adaptive Management	Plans to implement in case monitoring demonstrates impacts greatly exceed expectations
Avoidance Measure for Surface Water Resources when Hazardous Materials used within 200 m of a protected surface water resource	Spill prevention, control and countermeasure (SPCC) plan	A plan to contain and prevent spills of hazardous materials in the near vicinity of a protected resource
<i>Present:</i> High Karst Zone	Spill prevention, control and countermeasure (SPCC) plan	A plan to contain and prevent spills of hazardous materials in the near vicinity of a protected resource
<i>Present:</i> When Hazardous Materials used within 200 m of Sensitive Soils	Spill prevention, control and countermeasure (SPCC) plan	A plan to contain and prevent spills of hazardous materials in the near vicinity of a protected resource
<i>Present:</i> When Mitigation Measures are required for sensitive soils (Avoidance Measures impossible to implement)	Stormwater pollution prevention plan (SWPPP)	A plan to manage stormwater runoff and pollution away from sensitive soils

Table C-2. Notification Requirements

In addition to the Biological Assessment provided to the NMSLO, notice to other agencies or entities may be recommended.

When Recommended	Provide Notice To
<i>Present:</i> Federally Listed Wildlife or Plant Species	USFWS
<i>Present:</i> State Listed Wildlife	NMDGF

<i>Present:</i> State Listed Plants	EMNRD
<i>Present:</i> Cave or Karst Resources	National Cave and Karst Research Institute (NCKRI) at info@nckri.org .

Table C-3. Other Report Requirements

When Required	Report Type	What's Required
As dictated by Monitoring Plans	Monitoring Report	Monitoring results, data, recommendations. See Appendix C: Monitoring Plans.
As dictated by Adaptive Management Plans	Adaptive Management Report	See Appendix C: Adaptive Management Plans.

2. *Minimum Requirements* (for all plans and reports):

- Lessee Name
- Project Name
- NMSLO Lease No.
- Location
- Date
- Plan or Report Title
- NMSLO Project Leads (Lease Analyst, Conservationist Manager, Wildlife Biologist, etc.)
- Summary of conclusion or recommendations
- Purpose Statement
- Description of Methods
- Description of Results
- Analysis
- Conclusion with recommendations
- Maps and shapefiles, where appropriate
- Photos, where appropriate
- Data files, where appropriate

3. *Data Standards:*

The Protection Standards, Best Management Practices, and other documents that result in the submittal of data to the State Land Office, shall follow these conventions. For any questions regarding NMSLO data standards, please reach out to the Surface and GIS Divisions at NMSLO.

In addition, if original data provided by an applicant or lessee requires changes or an update for any reason, in addition to the new data, an accompanying document describing the changes shall be included. These can be narrative if there are many changes, or listed, if there are few changes. All data types (geospatial, documents, CSVs, excel) shall be formatted using the following guidelines:

File Naming Conventions

DATA TYPE	NAMING CONVENTION	EXAMPLE
Documents, Excel, CSV, Spreadsheets	Lease_YearMonthDay2digits_ProjectName	EW0021_221120_SunZia
Geospatial Files (Shp, Feature class, Geodbs)	Lease_YearMonthDay2digits_ProjectName_FileContents	EW0021_221120_SunZia_PotentialHabitat

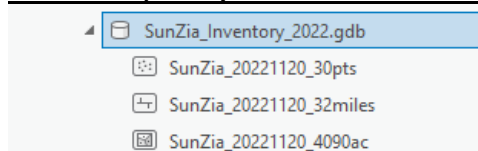
Geospatial files shall be containerized within a geodatabase. The geodatabase shall be separated into different files types: polylines, polygons, and points. Polygons shall be reported by acreage, polylines by miles, and points by number of point attributes.

Required Spatial reference: NAD 1983 UTM Zone 13N

GEOSPATIAL TYPE	NAMING CONVENTION	EXAMPLE
POLYLINE	ProjectName YearMonthDay2digits FileContents	SunZia 221120 Transmission
POLYGON	ProjectName YearMonthDay2digits FileContents	SunZia 221120 NestingGround
POINTS	ProjectName YearMonthDay2digits FileContents	SunZia 221120 SurveyCounts

Note: when a new file is submitted, the DATE should be updated to reflect the most current data version. If multiple types of features exist, define the information in the attribute table under type of feature column (i.e. bird nesting habitat buffer, water feature buffer). It is generally recommended that Development and Biological files be kept separate.

Structure of Geospatial Files Submitted



Each geospatial file type (polyline, polygon, and points) should include the following attributes in their respective table:

Unique_ID	LEASE_NAME	Type of polygon, line, or point (I.e. POLYLINE)	Last_updated_Date YYMMDD	Shape Measurement (acres or miles)	Comments
1	EW00019997	Access_road (polyline)	221209	108	
2	EW00029998	Transmission_line	221209	50	
3	EW00039999	Collection_line_underground	221209	24	

4. *Delivery:*

- a. Plans required under these Protection Standards and to be included with the BA or with the delivery of Project Plans for approval should be delivered to the Lease Analyst as part of the Project Plan package.
- b. Plans or Reports required by Monitoring or Adaptive Management Plans should be delivered to the NMSLO Conservationist Manager, with a copy sent to the Lease Analyst. Plans or Reports under this part may be delivered electronically by email.

Mitigation Plans

Mitigation is required whenever the lessee is unable to comply with specific Avoidance Measures. Mitigation proposals must include a list of integrated actions and/or design changes that will minimize or reduce impacts to protected resources and must include Monitoring and Adaptive Management Plans. Mitigation proposals should be submitted with the Project Plan.

Mitigation proposals should include:

1. An analysis of the potential direct and indirect impacts of lease activities to the protected resource.
2. An evaluation of the potential impact of lease activities to the long-term regional or population-level survival or functional integrity of the protected resource. This may include an assessment of the expected cumulative impacts of this development in conjunction with other developments in the region.
3. A detailed description of the design, construction, operation and other project features that will minimize or mitigate impact to the protected resource. Some appropriate minimization or mitigation measures may be found in the NMSLO, NMDGF, USFWS, BLM or other agency BMPs.
4. A long-term monitoring plan to assess impacts of ongoing lease activities, including proposed measures of success. The term of the monitoring plan should be tied to the impacted resource.
5. An adaptive management plan to be implemented in the event monitoring indicates that new threats are identified, impacts are greater than anticipated or the protected population within the action area decreases by more than 20% in any three-year period. This 20% threshold is a minimum guideline. The lessee should propose specific, measurable indicators relevant to the protected resource that will be used to trigger adaptive management.

Mitigation Plans are experimental and should include a testable hypothesis with a Monitoring Plan to measure impacts to the protected resource or response of the protected resource to the proposed actions. The mitigation strategy must include result thresholds that will trigger a shift into Adaptive Management.

The NMSLO will welcome diverse and creative mitigation strategies derived from tested or experimental theories, from BMPs or from new and developing technologies. In addition to the requirements listed above, the only condition is that lessees commit to monitoring the results and to an adaptive management plan if outcomes result in unexpected adverse impacts to the protected resource.

Monitoring and Adaptive Management Plans should be developed in accordance with the guidelines set forth below.

Monitoring Plans

Monitoring Plans are required in conjunction with Mitigation Plans when Avoidance Measures are impossible to implement. Monitoring Plans should be specifically tailored to the protected resource and should consider either the critical life cycle requirements of the species, if it is a biological resource, or the physical or chemical process or quality attributes if it is a protected abiotic resource such as surface water, cave or karst or sensitive soil. Monitoring Plans should include the collection of pre-development baseline data as well as post-development (i.e. during construction and operation) trend data.

Monitoring Plans should be included with Mitigation Plans and should be provided with Project Plans and discussed at Project Plan Meetings.

1. *Minimum Necessary Requirements for Monitoring Plans:*
 - a. Purpose Statement, including summary description of the testable hypothesis and result thresholds that trigger adaptive management actions (from the mitigation plan)
 - b. Description of Methods
 - i. Data collection protocols, include description of tools
 - ii. Timing of baseline and return sampling
 - iii. Site description (must include reference/control sites)
 - iv. Description of attributes of protected resource to be measured or monitored
 - v. Justification for sampling timing and density
 - c. Description of data management and recording process: all data must be digitally recorded including transect locations, sampling points, survey areas and maps.
 - d. Description of mechanism/media for transferring data to the NMSLO, i.e. shapefiles, excel tables, database, etc.
 - e. Description of methods of analysis
 - f. Description of findings that could trigger implementation of adaptive management plans, or that could indicate satisfactory trends such that monitoring might be discontinued.
 - g. A monitoring or collection schedule
 - h. A reporting schedule

Adaptive Management Plans

Adaptive Management Plans are required in conjunction with Mitigation and Monitoring Plans when Avoidance Measures are impossible to implement. Adaptive Management Plans will be developed in two stages. The first stage will be due upon delivery of the Project Plan in conjunction with Mitigation and Monitoring Plans. The second stage will only be due if monitoring indicates that a change in normal operating practices is necessary to prevent undue adverse impact to the protected resource.

1. *Stage One Adaptive Management Plan:* The stage one Adaptive Management Plan will consist of: i) an outline of the lessee's first-choice available options for the minimization of adverse impacts to the protected resource, and ii) a commitment to engage in adaptive management if monitoring results indicate an unexpectedly adverse impact to the protected resource. Stage One Adaptive Management Plans should be provided with Mitigation and Monitoring Plans and discussed at the Project Plan Meetings.
2. *Stage Two Adaptive Management Plan:* The stage two Adaptive Management Plan will be developed when monitoring indicates a significant impact to a protected resource has resulted from lease activity. The Stage Two Adaptive Management Plan will prescribe specific actions to be taken by the lessee to minimize and mitigate adverse impacts. It should include a schedule and monitoring plan. The Stage Two Adaptive Management Plan will depend upon the protected resource and monitoring results, but should include diverse, integrated action options. The Stage Two Plan should be based on the Stage One first-choice options and may include actions related to operations, infrastructure, or other aspects of lease activity:
 - a. Potential operation actions: shut-off, curtailment or slow-down, or a change in timing or reductions in density or intensity of use, or a change in emissions, or light or noise.
 - b. Potential infrastructure actions: upgrading designs, fixtures, or materials, or adapting new technologies, or construction of mitigation infrastructure such as wildlife friendly fencing or crossing structures, or restoration of habitat.

Other Plans

Where Spill Prevention, Control and Countermeasure (SPCC) Plans are required, the lessee should follow EPA and NMED guidelines. See e.g.

www.epa.gov/sites/default/files/documents/spccbluebroch.pdf

Where a Stormwater Pollution Prevention Plan (SWPPP) is required, the lessee should follow EPA and NMED guidelines. See e.g., www.epa.gov/npdes/developing-stormwater-pollution-prevention-plan-swppp and www.env.nm.gov/surface-water-quality/stormwater/

APPENDIX D: TYPICAL RENEWABLE ENERGY LEASE PROJECT PLAN CONTENTS

1. Site Plans:
 - a. Infrastructure and facilities locations
 - b. Access plan
 - c. Agricultural/Mineral lessee improvement inventory, if applicable
 - d. Transmission plan (identify where new transmission lines are planned and their capacity as well as where existing lines will be used or upgraded, also identify the point of interconnect and the off taker or utility involved)
 - e. Lay down yards / construction phase equipment locations
2. Boundary and Topographic Surveys
3. Determinations of No Hazard, Federal Aviation Administration (for Wind)
4. Local Government Approvals
5. Other Governmental Approvals
 - a. Includes evidence of NM Business License
 - b. Any PRC granted approvals
6. Cultural Properties Survey Cover Sheet
7. Biological Assessment
8. Phase One Environmental Site Assessment
9. Evidence of Commercial Offtake
10. Decommissioning Plan
11. Emergency Response Plan
 - a. Hazardous materials handling
12. Waste Management Plan
13. Spill Prevention, Countermeasure and Containment Plan
14. Stormwater Pollution Protection Plan
15. Agricultural lessee improvement inventory and mineral lessee improvement inventory, if applicable.
16. Any Corporate Best Management Practices
17. Points of Contact
 - a. Corporate
 - b. Rent payments
 - c. GIS
 - d. Field / Construction management

APPENDIX E: SAMPLE RENEWABLE ENERGY LEASE

The Sample Lease with Example Project Plan Provisions is an example only and is subject to change, but will provide an example of the type of language normally included in Renewable Energy Leases related to Project Plan requirements.



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

SAMPLE WIND ENERGY LEASE Example Project Plan Provisions

Lease No. EW-_____

**Commissioner of Public Lands
NEW MEXICO STATE LAND OFFICE
310 Old Santa Fe Trail
Santa Fe, NM 87501**

This Lease (the “Lease”) is entered into between the New Mexico Commissioner of Public Lands, the acting trustee for the Enabling Act Trust, established in the Act of June 20, 1910, 36 Statute 557, Ch. 310, (“Lessor”) and _____ (“Lessee”) (Lessor and Lessee are each a “Party” and together they are the “Parties”), and is effective as of the ___ day of _____, 20__ (the “Effective Date”). In consideration of the payments and performance by the Parties of each of the provisions set forth herein, the Parties agree as follows:

1. **DEFINITIONS.** Definitions set forth in State Land Office Rule 9 (19.2.9.7 NMAC) are incorporated herein by reference, unless otherwise modified or defined below, and should be referred to when reading this Lease. In the event of any conflict between the provisions of this Lease and any State Land Office Rule, this Lease controls. Certain other terms are defined in context in the body of this Lease. All defined terms include terms in conjugative form (e.g., “Convert” also defines “Converting,” “Converted,” “Conversion,” etc.).

1.1...

1.4 **Project Plans.** Plans that set out the use and development of the Land to accomplish the Project, including but not limited to: (a) a list and general description of proposed Improvements to be installed and constructed on the Land; (b) a proposed site and building plan; (c) boundary and topographic surveys for the Land; (d) a plan for complying with

any land use requirements imposed by any applicable Governmental Authority for the construction, operation and decommissioning of the Project; (e) required pre-construction Federal Aviation Administration approvals; (f) all other required Government Approvals, or a plan for obtaining same; (g) a cultural properties survey; (h) a biological assessment; (i) a Phase I Environmental Assessment; (j) a Hazardous Material storage and handling plan, if one is so required by Governmental Authority; (k) evidence that a Power Purchase Agreement or other power marketing plan has been secured or is being negotiated; (l) a Decommissioning Plan, as detailed in Section 5.5; and (m) an emergency response plan.

2. LEASED PREMISES.

3. LEASE TERM, PROJECT PLANS AND PHASES.

3.1 ...

3.2 Project Plans.

3.2.1 Submission of Preliminary Project Plans. At least six (6) months before Lessee reasonably anticipates the Commencement of Construction, Lessee shall deliver to Lessor preliminary Project Plans, including all the elements listed in the definition of Project Plans at Section 1.40. Preliminary Project Plans shall be considered administratively complete if such plans include all of the elements listed in the definition of Project Plans at Section 1.40. Lessee and Lessor will confer on the preliminary Project Plans within 45 days after submitting preliminary Project Plans.

3.2.2 Lessee shall develop final Project Plans and locate the Wind Power Facilities in such locations on the Land as are reasonably satisfactory to both Lessor and Lessee, based on both: (a) Lessor's constitutional mandate to facilitate productive use of state trust land while ensuring that the lands are protected and maintained for future generations; and (b) Lessee's expertise with respect to wind project development and siting. All Improvements will be located to avoid interference with wildlife corridors, environmentally sensitive areas, and cultural properties, and to mitigate harm to migratory birds. Lessee shall include its plans for complying with Lessor's Cultural Properties Protection Rule, 19.2.24 NMAC. Lessee's final Project Plans shall be drafted in accordance with the New Mexico State Land Office Natural Resource Protection Standards ("Protection Standards"), attached hereto as Exhibit C and should demonstrate efforts to incorporate New Mexico State Land Office Best Management Practices ("BMPs"), Exhibit C. For the avoidance of doubt, Lessor's consideration of the Project Plans shall not involve Lessor's review and/or satisfaction with the Project's economics or profitability.

3.2.3 Delivery of Final Project Plans. As soon as Lessee has completed the final Project Plans, but no later than 90 days before Lessee reasonably anticipates the Commencement of Construction, Lessee shall deliver to Lessor the final Project Plans, which shall include all of the elements listed in the definition of Project Plans at Section 1.40. If Lessee elects to develop and construct the Project in phases, the final Project Plans must identify a proposed phasing plan and the timeframes estimated for the development of each phase. Lessee may opt to clearly mark any portion of each set of Project Plans that contains bona fide trade secrets or information that is otherwise treated as confidential under New Mexico law as "CONFIDENTIAL" in which

case Lessor will treat it as confidential information required to be submitted under this Lease, pursuant to NMSA 1978, Section 19-1-2.1.

3.2.4 Project Plan Conference. Lessee and Lessor shall confer regarding the final Project Plans within 30 days after Lessee submits administratively complete final Project Plans for Lessor's review and approval. This conference will provide Lessee an opportunity to present its final Project Plans to Lessor, explain how those plans comply with Section 3.2.2 and the Protection Standards, and address any Lessor questions related to those plans. If practicable, Lessee and Lessor shall meet in person and conduct a site visit to facilitate this consultation.

3.2.5 Final Project Plan Approval. Lessor shall endeavor to provide Lessee with written confirmation of Approval of the final Project Plans within 30 days after: (a) the Project Plan conference described in Section 3.2.4; or (b) such time after Lessee has resolved any remaining deficiencies in the Project Plans identified in connection with Lessor's reviews of Project Plans. Lessor's final Approval of the final Project Plans, which shall not be unreasonably withheld, is required prior to Lessee's Commencement of Construction.

3.2.6 Changes to Project Plans. If, at any point following submission of final Project Plans but before Commencement of Construction, Lessee makes changes to the final Project Plans that result in changes that are not Minor Deviations, Lessee shall re-submit those final Project Plans to Lessor. Within 30 days of such re-submission, at Lessor's discretion depending on the nature of the proposed changes: (a) Lessee and Lessor will confer regarding the resubmitted Project Plans, consistent with Section 3.2.4; or (b) Lessor will provide Lessee with updated written confirmation of Approval of the re-submitted final Project Plans...

4. CONSIDERATION FOR LEASE.
5. COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS.
6. ASSIGNMENTS.
7. SUBLEASING.
8. COLLATERAL ASSIGNMENTS/LEASEHOLD MORTGAGES; PROTECTION OF LENDERS.
9. ADDITIONAL LESSOR/LESSEE CONTRACTUAL RIGHTS AND OBLIGATIONS.
10. DEFAULT.
11. GENERAL PROVISIONS.

[SIGNATURE PAGES FOLLOW]

New Mexico State Land Office Best Management Practices for Surface Users

1. **Design.** To ensure public safety and the protection of trust resources, projects should be designed to minimize new surface disturbance and should be in compliance with New Mexico State Land Office (NMSLO) best management practices for surface users. The Commissioner of Public Lands may review design plans, and may determine whether professional engineering design or construction oversight is necessary. The Commissioner may waive or include any additional specific best management practices as necessary in the best interest of the trust.

a. Design.

- i. No new surface disturbance will be permitted in riparian areas, wetlands, playas or floodplains. There will be a 150-foot setback from the outer wet edges (normal high water mark) of wetlands and playas, and a 50-foot setback from the 100-year flood stage of the floodplain associated with riparian areas. Boring under water features may be allowed if designs are approved.
- ii. All efforts shall be made to minimize new surface disturbance: new construction shall be located in pre-existing disturbed areas, including existing roadbeds, rights-of-way, or in pre-existing or dedicated development areas and corridors.
- iii. No new surface disturbance will be permitted within 50-feet of the normal high water mark of ephemeral drainages, floodways, arroyos or other short duration flow channels, except when crossing these channels and drainages. Drainage crossings will be perpendicular to flow, and will be built to accommodate flood events and to control erosion.
- iv. Design plans shall:
 1. Include a cadastral survey;
 2. Minimize new surface disturbance by locating in pre-existing disturbance areas, or designated development areas or corridors, and designing for minimum necessary area of impact according to expected purpose and use;
 3. Avoid wetlands, known critical habitat and protected areas;
 4. Avoid steep slopes (>12%); grades from 4-10% are preferred for managing drainage; roads and rights-of-way are best placed at the toe of slopes where cross slope is between 5% and 40%;
 5. Preserve as much natural vegetation and living root structure as possible. Use blading only where not to do so would create an unsafe work environment. Mow, or cut and shred vegetation, rather than blading whenever possible. Grubbing is less destructive than blading, and may be used as an alternative where mowing is not possible; in mowing or grubbing, if mesquite or other colonizing non-desirable vegetation is involved, include an herbicide treatment to inhibit spread that may be caused by mowing or

- grubbing;
6. Avoid alteration of natural drainage patterns;
 7. Provide adequate surface drainage; as grade steepens drainage features, such as water bars, must be closer together; drainage features on fine grained soils should be closer together;
 8. Reduce impervious surfaces by limiting area of impact;
 9. Account for specific site topography, soil type, drainage and hydrology, i.e. fit construction to the natural terrain by conforming to the ground, rolling the grade, minimizing cuts and fills, and managing for erosion; medium to coarse textured soils (sand-sized particles and larger) are best suited to low-standard rural roads;
 10. Account for cultural resources at least in accordance with minimum standards set forth in NMSLO policy;
 11. Account for biological resources at least in accordance with minimum standards set forth in NMSLO Policy;
 12. Include a spill containment and prevention plan where hazardous materials are involved, including requirements for berms and lining where necessary;
 13. Include a storm water pollution and prevention plan where hazardous materials are involved and the site falls within a 100-year flood plain of any major drainage;
 14. Include an erosion control plan for drainage crossings, head-cuts, gullies and rills, including soil stabilization structures, ditches, water-bars, and the size and location of culverts and bridges;
 15. Include a reclamation plan detailing the removal of improvements, soil stabilization and the re-vegetation process;
 16. Include an access control plan;
 17. Use only native weed-free certified seed for reclamation;
 18. Use only certified freshwater (<140 ppm chloride, certified safe drinking water) for reclamation;
 19. Use local materials where possible;
 20. Include a noxious weed prevention plan;
 21. Include a dust abatement plan;
 22. Address clearing, grading, and cut and fill processes;
 23. Address crown, inslope, outslope and shoulder design (roads);
 24. Address trenching and boring design, including depth, casing, core sampling, valve location and access management (pipelines);
 25. Include professional engineer plans and specifications for bores, bridges, or other major construction elements that present a potential hazard to the public or environment;
 26. Address span and pole design (powerlines);
 27. Define use, location and size of temporary work space, temporary storage and turnouts;
 28. Address logistics of construction;
 29. Address all pertinent state and federal regulations.

2. **Construction.** Construction involves all aspects of implementation of the design.

a. Construction Practices: During construction the lessee shall:

- i. Control access to the construction site;
- ii. Control unauthorized use of space adjacent to permitted rights-of-way, easements and lease use areas;
- iii. Maintain temporary erosion control structures, such as silt fencing to prevent sediment flow during construction;
- iv. Implement dust abatement plan and use only certified freshwater (<140 ppm chloride, certified safe drinking water) on areas that will be revegetated;
- v. When requested by the Commissioner, engage a compliance inspection officer to monitor quality control and compliance with NMSLO best management practices;
- vi. Sample, test and monitor to ensure construction materials meet design specifications;
- vii. Dispose of unsuitable or excess construction or excavation material in approved locations to minimize adverse impacts to water quality or other resources; construction waste and debris will not be buried on state trust land without express permission from the Commissioner

3. **Maintenance.** Roads should be maintained routinely during active use and after major storm events to ensure that road surfaces are intact and serviceable and drainage structures are functioning properly. Pipeline, transmission line and other exclusive rights-of-way should be monitored routinely and maintained when necessary to ensure that public access is closed, drainage is functioning properly, and that reclamation efforts are successful. Operational equipment, work spaces, facilities, and structures shall be maintained routinely during use to function properly and to minimize adverse impacts to the public or the environment. Reclaimed areas, including temporary work spaces, yards, pads, pits, roads, pipelines, transmission lines or other lease areas, should be monitored for at least two years and retreated where necessary to manage erosion, noxious weeds and seeding success. Lessees sharing a right-of-way will be held jointly and severally responsible for maintenance of the right-of-way. The NMSLO encourages holders of shared rights-of-way to develop maintenance agreements.

a. Maintenance Practices: At all times, lessees must stay within the length and width of the permitted right-of-way. If maintenance requires work outside the boundaries of the right-of-way, the lessee must seek an amendment to the right-of-way or a right-of-entry for reclamation or maintenance:

- i. Grade and shape roadway surfaces to maintain distinct inslope, outslope or crown shape to move water effectively off the road surface;
- ii. Compact graded roadway surfaces to preserve hard driving surface;

- replace surface material when needed; implement dust abatement plans;
- iii. Fill ruts and potholes with gravel or compacted fill or remove ruts through rolling dips and water bars; reshape structures to maintain proper function;
- iv. Clean ditches and reshape when necessary to allow adequate flow capacity;
- v. Remove debris from the entrance of culverts to prevent plugging and overtopping; check for signs of damage;
- vi. Replace or repair rock armor, erosion control structures, or vegetation used for slope protection, scour protection or energy dissipation;
- vii. Inspect and repair fencing, gates, cattle-guards and other access control structures;
- viii. Inspect facilities, structures, equipment and operations for leaks, hazardous material releases, hazardous conditions, and proper functioning condition;
- ix. Inspect reclamation, revegetation and noxious weed treatments and re-treat as necessary to maintain proper functioning of erosion control and establishment of native vegetation.

4. Reclamation. See Attachment A for Sample NMSLO Surface Reclamation Plan.

- a. **Reclamation Objectives:** To reduce and prevent erosion, remove contaminants and contaminated materials, restore clean soils, restore native plant diversity and abundance, restore and maintain hydrological regime, and restore and maintain productive habitat for livestock and wildlife;
- b. **Applicability:** These Reclamation Requirements are applicable to all reclamation activities on state trust lands including: hazardous materials spills/releases, site closure for oil and gas, mineral and business leases, plug and abandon site reclamation, mine site reclamation, pit, pad, or pond reclamation, illegal dump reclamation, road and pipeline reclamation, dairy farm or other agricultural impact reclamation, and any other clean up or reclamation activity on state trust land;
- c. **Access:** If the spill/release or reclamation project extends beyond the lease boundary or permitted right of way, the responsible party shall contact the NMSLO Rights Of Way Division and **obtain a remediation right-of-entry**;
- d. **Compliance:** Before commencing any new ground disturbing activity, the responsible party shall:
 - i. Conduct an archaeological survey of the impacted area, or verify that the area has already been surveyed and that no cultural properties will be impacted by ground disturbing activities;

- ii. **Immediately stop all ground disturbing activities and contact NMSLO for further direction, if cultural properties have been impacted by a spill/release or reclamation project;**
 - iii. Verify compliance with NMSLO biological and cultural resource policies for the area to be reclaimed; conduct surveys where necessary;
 - iv. Verify compliance with all state and federal regulations, including but not limited to storm water pollution and prevention, air quality control, and hazardous materials disposal;
- e. **Hazardous Material Spill/Releases:**
 - i. Oil and Gas Activity:
 - Upon discovery of any oil and gas related hazardous material spill or release, either current or historic, the responsible party shall:
 - immediately notify OCD and NMSLO;
 - File C-141 form with OCD;
 - ii. Other Spill/Releases:
 - Upon discovery of any non-oil and gas related hazardous material release, including mine waste, either current or historic, the responsible party shall:
 - immediately notify NMED and NMSLO;
- f. **Delineation:** Upon discovery of contaminated soils, the responsible party shall delineate the horizontal and vertical extent of the contamination; submit a delineation plan for approval by the NMSLO; for oil and gas related contamination, the NMOCD must also approve the delineation plan; the NMSLO may review NMOCD approved plans for adequacy of sampling related to restoration of surface conditions; for non-oil and gas related contamination, the NMED may require delineation and monitoring related to surface and ground water impacts; the NMSLO may require any necessary sampling or reclamation related to the restoration of surface conditions;
- g. **Reclamation Plan:** A reclamation plan shall be submitted with all lease applications involving surface disturbance. In the event of a spill or hazardous materials release, the responsible party shall submit a reclamation plan for approval by the NMSLO within 30 days of completion of delineation. In all other situations, the responsible party must submit a reclamation plan to the NMSLO within 30 days of receiving a notice to reclaim. The reclamation plan shall address each of the matters cited below; these best management practices shall constitute minimum requirements for reclamation plans submitted under the following rules: leasing for general mining 19.2.2.24, leases and permits for caliche, gypsum, clay, sand, gravel, stone, shale, perlite, volcanic deposits and borrow dirt 19.2.5.9(B); unless otherwise permitted by the NMSLO, the reclamation plan and all earthworks required for reclamation must be approved and completed within 6

months of completion of construction for any right of way lease, or improvement under an agricultural lease, or within 6 months of closure or final use of any business lease, mineral lease, or oil and gas lease;

- h. **Removal/Containment:** The responsible party will remove and replace any contaminated soils, including contaminated caliche or base course. Contaminated soils and caliche shall be disposed of only in state permitted disposal locations such as land farms or hazardous disposal sites, and in accordance with state and federal regulations. Contaminated soils shall be removed at least to the rooting zone. Removal shall be based on site delineation, but in areas of deep saturation and deep soils this depth is typically four feet; removal depth may be less in shallow soils. If any contaminated soil remains at the site the reclamation plan must address containment, including the potential for the contaminant to wick upward into the rooting zone or downward toward groundwater. If complete removal is impossible, the responsible party may apply to the NMSLO for a variance to stabilize and contain the hazardous material that cannot be removed. If the NMSLO agrees, a stabilization and containment plan may replace or supplement the removal and replacement plan. In addition to the removal of contaminated soils, the responsible party will remove all uncontaminated caliche or base course.
- i. **Soil Replacement:** The responsible party will replace contaminated soils, caliche or base course, and uncontaminated caliche or base course, with certified clean top soil; replacement soils should have comparable structure and chemistry to healthy, native undisturbed soils in the vicinity.
- j. **Trash and Debris:** Unless equipment is to be re-used onsite, the responsible party shall remove any trash, debris, garbage, rubbish, junk, scrap, or broken or contaminated equipment, such as pipelines, plastic lining, surface flowlines, tanks, scrap materials of any kind, or other equipment and shall dispose of all such trash and debris in accordance with state and federal regulations within 30 days of final use or completion of construction; no hazardous substances, trash or litter will be buried or placed in pits on state trust land without express written permission of the Commissioner.
- k. **Surface Preparation:** The responsible party will contour the ground surface to blend in with the surrounding topography to allow the natural hydrology of the basin to function without impediment or impact; no major depressions or pits will be left that will trap water or cause ponding except where the project involves a mining pit where there is no possible outlet, slopes will not exceed 3:1 (run to rise).
- l. **Erosion Control:** Where active transportation of sediment through gullying, headcutting, slumping or deep or excessive rills (greater than 3 inches deep)

occurs within the lease area or within the adjacent area of impact, the responsible party will install erosion control structures to repair and control gullies, head-cuts, rills, and other forms of sediment movement;

- i. Erosion control structures shall be designed to restore natural hydrological function and flood regime, and to the extent possible should use local rock or bio-degradable materials and low-energy, minimum-necessary designs;
 - ii. Erosion control structures may include, but are not limited to, one rock dams, rock mulch rundowns, zuni bowls, media lunas, swales, berms, terraces, wattles, rock or log mats, hay mulch, gabions, bales or other stabilizing enhancements to control erosion;
- m. **Drainage Control:** Where ephemeral, intermittent or permanent water flow-ways or drainages cross, intersect or bisect a lease, the responsible party shall install drainage control structures to manage water flow, especially across roads, pipeline rights of way, or other structures that may interfere with natural drainage;
 - i. Drainage control structures shall be designed to mimic natural hydrological function and flood regime as much as possible so as not to increase the erosional impact of hydrologic flows to the structure or to the upstream or downstream landscape; drainage control designs shall be engineered or built in consultation with the NRCS and approved by the NMSLO;
 - ii. Drainage control structures may include but are not limited to road bars, culverts, water bars, parallel and lateral ditches, drains, and low water crossings;
- n. **Seedbed Preparation:** All disturbed soils within the lease area will be revegetated. The responsible party will prepare the seedbed in consultation with the NMSLO to maximize potential for success. This may include, but is not limited to, a combination of watering with certified fresh water (<140 ppm chloride), mechanical packing to consolidate loose soils, disking or ripping to loosen compacted soils (up to 18 inch depth with furrow spacing of 2 feet), crimping hay mulch into the soil (2 tons/acre), furrowing or imprint rolling to create microhabitats, scarifying (minimum 4 inch depth), adding soil amendments, contouring and/or importing top soil. Note: Caliche is not top soil and should not be mixed or flipped into the top soil.
- o. **Revegetation:** The responsible party will seed the prepared seedbed with a drill seeder or hydraulic seeder with different sized seed boxes; unless otherwise authorized by the NMSLO, hydro-seeding will be used on 3:1 slopes or greater; all disturbed areas will be seeded with the seed mixture(s) provided or approved by the NMSLO; the seed mixture will be planted in the amounts specified in pounds of pure live seed per acre; the seed will contain no primary or secondary noxious weeds; commercial seed will be either certified or registered seed; the seed drill will be equipped with a depth regulator, and seed will be planted at the depth prescribed by the NMSLO; the seed mixture will be evenly and uniformly planted over the disturbed area; seed mixes should be provided in bags separating

seed types into size categories, to ensure that the appropriate seed drill box is used for each species; broadcast seeding will only be allowed when no other option is available; where broadcast seeding, the area should be disked with a tandem, double-disk harrow, one day prior to broadcast seeding and the lbs/acre are to be doubled; seeding will be conducted no more than two weeks following completion of final seedbed preparation; seeding should take place at the beginning of the growing season prior to the monsoon season unless otherwise directed; seeding will be repeated until a satisfactory stand is established as determined by the NMSLO; evaluation of growth will not be made before completion of at least one full growing season after seeding; seeding will be repeated until a satisfactory stand is established.

- p. **Noxious Weeds.** The responsible party will prepare a noxious weed plan in consultation with the NMSLO and noxious weeds will be monitored and treated on an annual basis until controlled.
- q. **Access Control.** Unless otherwise authorized by the NMSLO, the responsible party will close all reclamation areas to public access; private access points will be gated, fenced and signed; unauthorized or trespass access points will be permanently closed and signed;
 - i. **Gate and Fencing Specifications:** Unless otherwise directed by the NMSLO, a locked metal gate with 4-inch H-braces and a permanent fence extending at least 100 feet from either side of the gate, or to the next adjacent gate, will be installed to block public access to all closed reclamation sites; fence will be constructed with steel T-posts on 16-foot spacing, with stays every 8 feet and 4 strands of barbed wire; the top wire should be set at 42 inches above the ground surface; inline braces will be used at intervals not to exceed 660 feet; corners will be braced and set in concrete; fence wire will be attached on the outside of the T-posts with wire ties;
 - ii. **Permanent Closure Specifications:** Dirt berms, permanent hard barriers or rock barricades will be installed to block unauthorized access points to reclamation sites; berms and barriers will be at least 3 feet high and will extend the width of the access point; berms will be hard packed; barriers and barricades may be constructed of metal pipe rail, concrete, or rock and may be used in combination with berm work to ensure closure of an access point;
 - iii. **Signage:** Signs should be noticeably visible and should clearly state that public access is not authorized.
- r. **Monitoring.** The responsible party will monitor the reclamation site annually until relinquished by the NMSLO; prior to relinquishment, the NMSLO may require supplemental clean up, maintenance of erosion control structures, additional reseeding efforts, or noxious weed treatments to ensure success of reclamation; the NMSLO may request detailed annual monitoring reports

depending on the severity of the situation.

- s. **Reporting.** The NMSLO may require weekly updates during the course of the initial reclamation work; weekly updates will include a brief narrative statement of work completed with photo documentation; upon completion of the initial reclamation work, the responsible party will notify the NMSLO that the site is ready for inspection; annual monitoring reports may be required depending on the severity of the situation.
- t. **Relinquishment:** The NMSLO will inspect the initial reclamation work upon completion and will provide the responsible party with a statement indicating that the initial work has been completed as required and detailing any follow up work that may be necessary prior to relinquishment; notice of relinquishment will be provided upon complete satisfaction of all NMSLO reclamation requirements.

5. Resources.

Reducing Erosion from Unpaved Rural Roads in New Mexico, A Guide to Road Construction and Maintenance Practices; State of New Mexico Natural Resources Department Soil and Water Conservation Division, November 1983.

The Gold Book, Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development; Bureau of Land Management, Fourth Edition—Revised 2007.

New Mexico Forest Practices Guidelines; Energy, Minerals and Natural Resources Department, Forestry Division.

Low-Volume Roads Engineering BMPs; https://www.fs.fed.us/t-d/programs/forest_mgmt/projects/lowvolroads/ch4.pdf

Water Harvesting from Low-Standard Rural Roads; Bill Zeedyk, A Joint Publication of The Quivira Coalition, Zeedyk Ecological Consulting, LLC, The Rio Puerco Management Committee—Watershed Initiative, and the New Mexico Environment Department—Surface Water Quality bureau, April 2006.
http://altarvalleyconservation.org/wp-content/uploads/pdf/1597-A_Good_Road_Lies_Easy_on_the_Land.pdf

Revegetation Guidelines Handbook for Southeastern New Mexico, New Mexico State Land Office, July 2018.

6. Authorities.

ROW Rule: (19.2.10 NMAC)

A ROW lessee shall file an affidavit of completion within 60 days of completion. 19.2.10.21 NMAC

ROWs may be used only for authorized uses as granted (e.g. a pipeline or powerline ROW may not be used as a public road). 19.2.10.22 NMAC

The CPL may terminate any ROW for failure to comply with any term or condition of the grant. 19.2.10.26 NMAC

Anyone constructing a ROW, in consultation with the CPL, must take all steps necessary to preserve and protect the natural environmental conditions of the land including reclamation and re-vegetation. 19.2.10.28 NMAC.

Road Rule: (19.2.20 NMAC)

All roads constructed on state trust lands shall be constructed in accordance with the minimum requirements described in 19.2.20.10 NMAC and maintained in accordance with the standards described in 19.2.20.11 NMAC. 19.2.20.9(A) NMAC.

Construction and maintenance of these roads will be done in a manner that insures that authorized traffic remains within the right-of-way and erosion damage is mitigated. 19.2.20.9(C) NMAC.

Road Construction Standards: (19.2.20.10 NMAC)

Width. 14' single lane, 20' double lane, maximum grade 10% without engineered design. 19.2.20.10(A) NMAC.

Drainage. Drainage control shall be ensured through the use of dips, turnouts, and culverts etc. Drainages will be constructed in such frequency necessary to prevent headcuts or other forms of accelerated erosion or damage on adjacent areas. 19.2.20.10(A) NMAC.

Culverts. Culverts shall be used on grades in excess of 10% and all major drainages and on roads when dips are not feasible.

Road Surfacing: Roadbeds should be surfaced where all weather access is needed. Roadbeds should be reasonably smooth, free of ruts, chuckholes, rocks, slides, washboards, dust pockets, soft spots or other driving hazards.

Fencing: 4-strand barbed wire, 12-inch spacing.

Road Maintenance Standards: (19.2.20.11 NMAC)

Lessees shall be responsible for preventative and/or corrective road maintenance, including roadbeds, shoulders, ditches, culverts and drainages, fences, gates and cattle guards, ford and low water crossings. 19.2.20.11 NMAC.

Reclamation: (19.2.20.12 NMAC)

The seedbed will be prepared and the roadbed reseeded. 19.2.20.12 NMAC.

Oil and Gas Rule: (19.2.100 NMAC)

Site Development: All access roads shall be built, maintained and reclaimed in accordance with 19.2.20 NMAC.

Review and Inspection: State land office personnel or oil conservation division personnel may, from time to time, recommend actions necessary to comply with reasonable use of the surface and prudent operator standards. (19.2.100.66(D) (1) NMAC).



**Stephanie Garcia Richard
Commissioner of Public Lands
State of New Mexico**

EXHIBIT D: ASSIGNMENT OF STATE BUSINESS LEASE

KNOW ALL PERSONS BY THESE PRESENTS:

That _____, hereinafter called the Assignor for good and valuable consideration of the sum of _____, in hand paid, the receipt of which is hereby acknowledged, do hereby sell, assign, transfer and set over unto _____,

(Name)

_____, _____, _____,

(Address)

(City, State, Zip Code)

(Phone Number) hereinafter

called the Assignee, that certain Business Lease No. BL-_____ made and executed by the State of New Mexico, through its Commissioner of Public Lands as Lessor, unto _____ as Lessee. This Assignment will become effective _____ ("Effective Date"). The same affects the following described lands:

☐ Base Short-Term Lease (\$200.00 Application Fee)

☐ Base Long-Term Lease (\$500.00 Application Fee)

The Assignee agrees to assume all obligations of the Assignor to the State of New Mexico insofar as said described lands are concerned and to pay such rentals and to perform such acts as are required by said lease, to the same extent and in the same manner as if the terms and provisions of said lease were fully set out herein. It is further agreed that the Assignee shall succeed to all rights, benefits and privileges granted the Lessee by the terms of said lease.

The Assignor further states and affirms that the consideration recited about is the true and sole consideration paid or promised for the purchase of the improvements on the lands hereinabove described and for the execution of this assignment. It is further understood and agreed that in case it is found that the consideration recited above is not the true and sole consideration or that a false statement has been made in the procurement and approval of this assignment, the master lease or the portion thereof sought to be assigned, shall be subject to cancellation at the option of the Commissioner

Cultural Resource Protection:

Assignee has reviewed and agrees to comply with the State Land Office's Cultural Properties Protection Rule (19.2.24 NMAC).

Yes No

Digital Files:

Digital information of your project's location is required. Acceptable formats: shapefiles (preferred), gps coordinates, kml/kmz files or georeferenced AutoCAD files.

Yes No

Digital Files Custodian-Name if other than the applicant:

Email:

Phone Number:

IN WITNESS WHEREOF, the Assignor has hereunto executed this assignment this _____ day of _____, 20____.

Assignor

STATE OF _____

COUNTY OF _____ (ss)

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 20____, by
_____.

(SEAL) _____

My Commission Expires: Notary Public

PROVED THIS _____ DAY OF _____, 20____.

Assignee

STATE OF _____)
_____) ss.
COUNTY OF _____)

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 20____, by
_____.

(SEAL) _____
Notary Public

My Commission Expires:

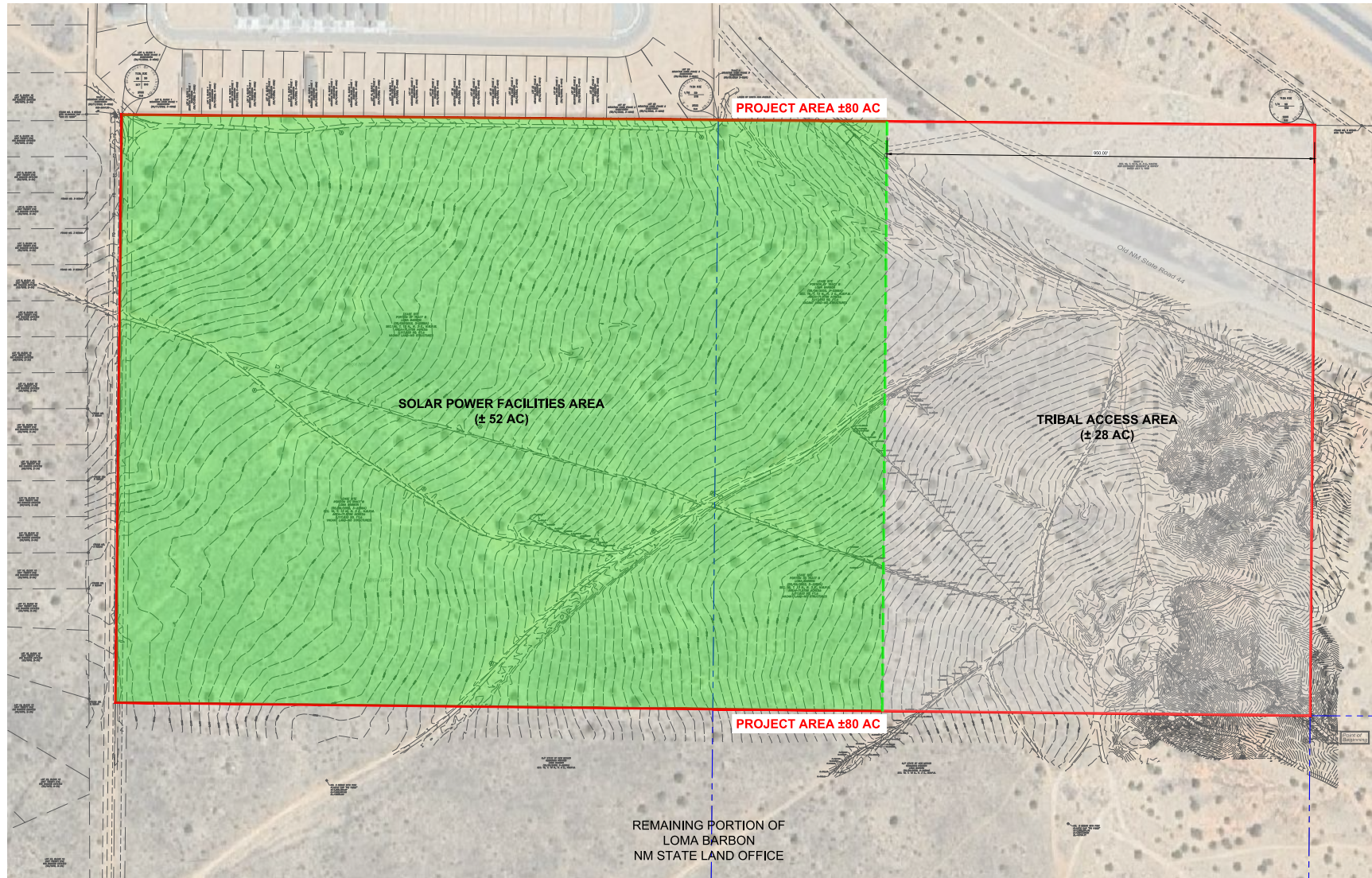
Stephanie Garcia Richard
Commissioner of Public Lands

Date

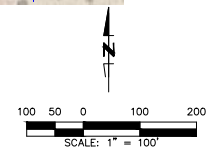
\$200.00 or \$500.00 NON-REFUNDABLE APPLICATION FEE*

* Please make checks payable to "Commissioner of Public Lands". When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

ES-0199 Exhibit E



DRAWN BY AM	REVIEWED BY JW
DRAWN DATE 09/05/2025	REVIEW DATE 09/05/2025
SCALE 1" = 100'	SHEET -



- ## LEGEND
-  PROPERTY LINE
 -  EASEMENT
 -  SETBACK
 -  PROPOSED FENCE
 -  ROAD CENTERLINE
 -  PROPOSED BASE COURSE ROAD
 -  EXISTING TOPO



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

EXHIBIT 4: BID APPLICATION AND QUALIFICATION FORM

Long-Term Solar Energy Lease Number ES-0199
Sandoval County, New Mexico

This completed bid application packet must be received at the address below **no later than 3:00 p.m. (MST) on Monday January 5, 2026.**

To: New Mexico State Land Office
Attn: Office of Renewable Energy
Mail Address: P.O. Box 1148, Santa Fe, NM 87504
Street Address: 310 Old Santa Fe Trail, Santa Fe, NM 87501

Date of submission of this bid application packet: _____.
Attach a separate sheet with the following information, as necessary.

APPLICANT:

Name and Title of the Authorized Signatory*: _____

(or if applying as an individual, the personal name): _____

Company Name (if not an individual): _____

State of Incorporation or Registration (if not an individual): _____

Name of Parent Corporation(s), if any: _____

Project Manager Name: _____

Title: _____

Street Address: _____

Mailing Address: _____

City: _____

State: _____ Zip Code: _____ Phone: _____

Mobile Phone: _____ Email: _____

*NOTE: If this Bid Application and Qualification Form is submitted by other than an individual, it must be signed by an authorized signatory of the entity submitting the Application who is authorized to offer a binding bid at the lease auction and to enter into a binding agreement for the proposed transaction.

PROJECT AND APPLICANT INFORMATION

Applicant may opt to clearly mark any materials that contains bona fide trade secrets or information that is otherwise legitimately treated as confidential under New Mexico law as “CONFIDENTIAL” in which case Lessor will treat it as confidential information required to be submitted under this Bid Application and Qualification Form, pursuant to NMSA 1978, Section 19-1-2.1.

Note: Answers to the questions below will be used to establish the list of qualified bidders. If the parent company will guarantee the “affiliated group” or “single purpose entity” performance of financial and other obligations in the lease, then the State Land Office will allow the “affiliated group” or “single purpose entity” to bid if the parent company meets the minimum qualifications. To be considered a qualified bidder, applicants must submit a complete application.

1. Minimum Qualifications

Do you meet the following applicant qualifications?

Yes No

- | | | |
|--------------------------|--------------------------|--|
| ☐ | ☐ | Selected by the PRC to participate in New Mexico’s Community Solar Project |
| ☐ | ☐ | Experience developing at least 5 megawatts of solar power projects. |
| ☐ | ☐ | Experience applying for federal, state and local permits pertaining to solar power project development. |
| ☐ | ☐ | A net worth of at least two million dollars (\$2,000,000.00). |
| ☐ | ☐ | Commitment and the ability to fully comply with all other duties and obligations of Lessee under this Lease. |
| ☐ | ☐ | Authorization to do business in New Mexico. |

If any of the above five answers are “No”:

- | | | |
|--------------------------|--------------------------|---|
| ☐ | ☐ | A parent company meeting the qualifications above will guarantee the Applicant’s performance of financial and other obligations in the Lease. |
|--------------------------|--------------------------|---|

Additional Question:

- | | | |
|--------------------------|--------------------------|---|
| ☐ | ☐ | Has your company or parent company ever defaulted on a lease agreement? If yes, please explain. |
|--------------------------|--------------------------|---|

2. Statement of Interest and Qualifications (**Please attach exhibits if you need more space.**)
- a. Project Experience with NMSLO – Please list at least two active projects with the NMSLO. *If you do not have any active projects, you may list any past or present renewable energy projects the Applicant constructed or manages.*
 - b. Executive Summary – Outline the major reasons why the Applicant, together with any joint venture parties or parent company, is qualified to carry out the project to be developed on the state trust lands subject to the Lease.
 - c. Organizational Information for Bidding Entity – Identify the bidding entity and provide copies of organizational documents (e.g. Articles of Incorporation and Bylaws, Articles of Organization). *If a parent company is guaranteeing the Applicant's financial and other lease obligations, provide parent company's organizational documents.*
 - d. Financial Resources – Provide the previous two years of audited financial statements of corporation, partnership, or parent company as well as the names, addresses and telephone numbers of at least two (2) credit references for the applicant, together with letters addressed to each credit reference authorizing releases of information to the Commissioner and her agents. *Failure to provide such information or a reasonable substitute for this information, as determined by the Commissioner, may preclude an interested applicant from being deemed a qualified bidder.*

3. Proposed Project

- a. Briefly describe the proposed project.
- b. Attach a list of improvements (all components of the proposed solar power project) and map showing their proposed placement on state trust land.
- c. Estimate the dates (month and year) for the following project milestones.
 - Completion of feasibility studies:
 - Commencement of construction:
 - Commencement of operations date:
- d. Estimate the percentage of your project's total investment or capacity on federal land, state land, and private land:
 - Federal land _____ (%)
 - State land _____ (%)
 - Private land _____ (%)

4. Community Impact and Economic Benefits of the Proposed Project

- a. Explain state/regional benefits, including but not limited to the economic impact on the local community, temporary and permanent jobs created, cooperation providing job training and certification, as well as any partnerships or agreements executed in these areas.

- b. Describe your efforts to utilize local, New Mexico suppliers and contractors in the development of the project.
- c. Please describe your anticipated outreach efforts, including public meetings, to maximize the number of New Mexicans positively impacted by the economic development aspect of this project.
- d. Have you conducted public information meetings? If so, please describe.

If not, would you be willing to participate in such meetings with the NMSLO if requested?

Yes	No	
☐	☐	Town hall public meetings
☐	☐	County government meetings
☐	☐	City government meetings
☐	☐	Adjacent land owner meetings
☐	☐	Tribal Government outreach
☐	☐	Military & FAA meetings
☐	☐	Ribbon-cutting or other public events

ACKNOWLEDGEMENT

I, _____ (“Applicant”) affirm that I am over the age of eighteen years; or, if a business entity, I am the authorized signatory of a corporation or other business entity authorized, and in good standing, to do business in New Mexico, and I have full authority to submit this bid application form.

I hereby apply to bid on business lease ES-0199. I have read or otherwise familiarized myself with the bid packet prepared by the New Mexico State Land Office relating to the Land, the terms of which are incorporated into this Bid Application Form. I understand and agree that:

1. This bid application form, and any transaction that may result are subject to the terms of the bid packet.
2. I am fully and solely responsible for conducting my own due diligence.

3. I am including with this bid application form cash, certified or cashier's checks, or bank money order in the Total Qualification Deposit in the amount of \$29,000.00 made payable to the Commissioner of Public Lands. The Qualification Deposit represents the following:

a. Application Fee (non-refundable)	\$ 500.00
b. Transaction Deposit (estimated advertising cost)	\$ 16,500.00
c. First Year Rent Deposit	<u>\$ 12,000.00</u>
Total Qualification Deposit:	\$ 29,000.00

4. If I do not win the bid at the public auction my deposit, with the exception of the application fee, will be refunded. The application fee will be applied to processing and application review costs and is non-refundable, whether or not the Lease is awarded.
5. If I am the winning bidder, I am responsible for payment of all advertising costs. If the Transaction Deposit is less than actual advertising costs, I will be required to pay the difference within 10 days. If the Transaction Deposit is greater than actual advertising costs, at the Commissioner's discretion the difference may be credited toward the next rent payment due, or a refund will be issued. If no person or entity qualifies to bid or submits a bid, the applicant nominating the land to be auctioned and leased may be responsible for payment of all advertising costs.
6. I represent that:
- (a) I am, or the business entity I represent is, willing and able to comply with the applicable lease auction requirements;
 - (b) I am able to document that I am, or the business entity I represent is, creditworthy, and such documents are attached;
 - (c) I am able to document that I am, or the business entity I represent is, authorized to do business in New Mexico, and documents establishing this are attached; and
 - (d) I am, or the business entity I represent is, willing and able to comply with all lease terms contained in the Business Lease ES-0199

I, _____, the above applicant
(if applicant is an individual) or on behalf of the above applicant (if applicant is an entity),
do solemnly swear or affirm that each and every statement made in this application to
qualify to bid is true and correct to the best of my knowledge and belief.

Signature

Date

Print or Type Name

Title (if acting in a representative capacity)

ACKNOWLEDGMENT
FOR A PERSON SIGNING IN AN INDIVIDUAL CAPACITY

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20__, by _____.

(Name or names of person or persons acknowledging)

Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT
FOR A PERSON SIGNING IN A REPRESENTATIVE CAPACITY

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20__, by _____ (name), _____ (title) as

Authorized Signatory of _____ (name of party on behalf
of whom instrument is executed).

Notary Public

My Commission Expires: _____

Exhibit 5
LIST OF ENCUMBRANCES

Long-Term Renewable Energy Business Lease Number ES-0199
Sandoval County, New Mexico

NOTE: INTERESTED PERSONS ARE RESPONSIBLE FOR PERFORMING THEIR OWN DUE DILIGENCE. The State Land Office provides this list of encumbrances for informational purposes only. Interested persons are responsible for verifying encumbrances in the records of the New Mexico State Land Office and the effect thereof on the Land. No search has been made of any records other than those of the State Land Office. Interested persons are responsible for searching other records which might contain relevant information, including those relating to real property, personal property, tax records, Uniform Commercial Code filings, etc., in any relevant city, county, state, and federal agency's files.

LAND DESCRIPTION:

TRS	Subdivision	State Acreage	County	Beneficiary Group Name
13N03E16	NE4NW4, NW4NW4	80	Sandoval	01 - Common Schools

Legend:
 Λ = Partial
 / = Full

13N03E16 NE4NW4, NW4NW4

SURFACE ENCUMBRANCES:

						NE				NW				SW				SE					
Purpose	Number	Assi gn #	Issued Date	Name	Address	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	S E	Acres	Expiration Date
Public Highway	RWD879		12/16/1937	State Highway Commission	Santa Fe, NM	Λ	Λ	Λ	Λ	Λ												17.87	12/31/9999
Public Highway	R16934		12/05/1967	NM STATE HIGHWAY DEPT	SANTA FE, NM	Λ	Λ		Λ	Λ												13.31	12/31/9999
Providing telecommunication services to the area 3-4 miles west of Bernalillo	R19987		02/27/1979	MOUNTAIN STATES TEL & TEL CO	ALBUQUERQUE, NM	Λ	Λ		Λ	Λ												3.02	12/31/9999
12.47KV three phase overhead powerline & gas line	R24716		10/07/1992	NEW MEXICO GAS COMPANY	ALBUQUERQUE, NM	Λ	Λ		Λ	Λ												2.212	10/07/2027
Water transmission line	R29457		11/03/2005	CITY OF RIO RANCHO	RIO RANCHO, NM						Λ	Λ		Λ	Λ	Λ	Λ					2.91	12/31/9999
Buried fiber optic cable	R31365		02/05/2009	QWEST CORPORATION	ALBUQUERQUE, NM						Λ	Λ		Λ	Λ		Λ					1.78	02/04/2044

Two buried fiber optic conduits	R36623		06/21/2018	Jemez Zia Tribal Consortium	Jemez Pueblo, NM	λ	λ		λ	λ											0.951	06/20/2053
Exploratory short-term renewable energy lease	ES0193		09/16/2024	AFFORDABLE SOLAR GROUP	ALBUQUERQUE, NM					/	/										80.00	09/15/2027
Fiber optic aerial cabal line	R42760		07/10/2025	Comcast of New Mexico, LLC	Albuquerque, NM	λ	λ		λ	λ											0.951	07/09/2060

MINERAL ENCUMBRANCES:

NONE

OIL & GAS ENCUMBRANCES:

NONE

Notes:

- Reservation to the U.S. for right-of-way for ditches or canals constructed by the authority of the United States

EXHIBIT 6: NMSLO RULE 9 (19.2.9 NMAC) - BUSINESS LEASING

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 9 BUSINESS LEASING

19291 ISSUING AGENCY: Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.
 [19.2.9.1 NMAC - N, 5/15/2001]

19292 SCOPE: Pursuant to Article XIII, Section 2, of the New Mexico State Constitution, the commissioner has jurisdiction over all lands and related resources that the United States granted and confirmed to New Mexico under the New Mexico Enabling Act. This rule, 19.2.9 NMAC, governs the granting of business leases for commercial and business leasehold uses, as well as surface uses that are not otherwise provided for under other state land office rules, on those lands within the commissioner's constitutional jurisdiction.
 [19.2.9.2 NMAC - N, 5/15/2001]

19293 STATUTORY AUTHORITY: N.M. Const. Art. XIII; Section 19-1-1 *et seq.* NMSA 1978; Section 19-7-1 *et seq.* NMSA 1978.
 [19.2.9.3 NMAC - N, 5/15/2001]

19294 DURATION: Permanent.
 [19.2.9.4 NMAC - N, 5/15/2001]

19295 EFFECTIVE DATE: May 15, 2001, unless a later date is cited at the end of a section.
 [19.2.9.5 NMAC - N, 5/15/2001; A, 6/30/2016]

19296 OBJECTIVE: The objectives of 19.2.9 NMAC are to obtain revenues from business leasing; to assure protection and maintenance of trust lands; to provide standard lease terms and conditions; and to provide an efficient process for business leasing.
 [19.2.9.6 NMAC - N, 5/15/2001]

19297 DEFINITIONS: As used in 19.2.9 NMAC, the following terms have the meaning set forth in this section. A business lease may add detail to a definition to accommodate lease specific issues.

A. “Approval” means written approval and includes only that which has been expressly approved and nothing further which might be implied.

B. “Assignment” means any direct or indirect transfer of a lessee's interest in a business lease or improvements, including, but not limited to, any conditional transfer or transfer by operation of law.

C. “Authorized improvements” means improvements which have the approval of the commissioner prior to being placed, developed, created, or constructed on, or obtained or developed for the benefit of, or made appurtenant to trust lands, or which have subsequently received that approval.

D. “Bid lease” means a business lease entered into by the commissioner after the public advertisement and public auction required by the Enabling Act.

E. “Business lease” means a written lease of trust lands issued under this rule, 19.2.9 NMAC, for business, commercial, residential, industrial, or real estate planning and development purposes, or for surface uses that are not otherwise provided for under other state land office rules. The commissioner, in the commissioner's discretion, shall resolve any uncertainty about whether a lease is a business lease.

F. “Collateral assignment” means the conditional assignment to a creditor as security for a debt of a lessee's personal property interest in a business lease or improvements.

G. “Commissioner” means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule.

H. “Improvements” means any of the following:

(1) any item of tangible property developed, placed, created or constructed on trust lands including, but not limited to, buildings, roadways, equipment and fixtures;

(2) water rights appurtenant to trust lands, including without limitation any water rights developed or used on trust land for the benefit of the trust land; and,

(3) any tangible or intangible property, rights, approvals or privileges obtained or developed for the benefit of, or made appurtenant to, trust lands that are designated as improvements in a business lease.

I. “Improvement value credit” means a credit granted by the commissioner for permanent improvements which entitles the holder of the credit to certain rights upon the subsequent lease or sale of trust lands as provided in this rule and in a business lease.

J. “Lessee” means the party of record at the state land office, who leases trust land from the commissioner under a business lease.

K. “Mortgage” means the mortgage to a creditor as security for a debt of a lessee’s personal property interest in a business lease or improvements.

L. “Non-bid lease” means a business lease entered into by the commissioner without public advertisement and public auction for a term not to exceed five years, or for a term not to exceed twenty-five years pursuant to Section 19-7-54 or 19-7-55 NMSA 1978.

M. “Permanent improvements” means those authorized improvements that a business lease specifies shall not be removed upon the termination of the lease. “Permanent improvements” shall include water rights appurtenant to trust land and equipment and fixtures necessary for the development of the water.

N. “Removable improvements” means authorized improvements that are not permanent improvements.

O. “Rent” means the total of estimated rent payments, including all periodic rents with applicable rent adjustments, percentage rents, initial or periodic fees, or any other incentive payment due during the lease term, and any other payments identified as rent in a business lease.

P. “Rent adjustment” means a periodic increase of any rent amount.

Q. “Schedule of fees” means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

R. “State land office” means the New Mexico state land office.

S. “Sublease” means a transaction or arrangement whereby a business lessee transfers to another either the use or possession of all or part of leased trust land, or the management and control of all or part of the improvements located on leased trust land.

T. “Termination” means the end of a business lease whether by cancellation, relinquishment or the expiration of the lease term.

U. “Trust” means the land trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust’s assets, which are administered through the state land office by the commissioner.

V. “Trust land” means all land owned by the trust.

W. “Unauthorized improvements” means improvements that have not received the commissioner’s approval.

[19.2.9.7 NMAC - N, 5/15/2001; A, 6/30/2016; A, 6/11/2019]

19298 LEASING STANDARDS:

A. The surface estate of any trust land may be leased under a business lease at the discretion of the commissioner. A business lease may include more than one use, and may encompass more than one parcel of trust land. For lands already under any surface lease, the applicant shall comply with the procedures in 19.2.9.21 NMAC.

B. After receipt of an application as provided in 19.2.9.9 NMAC, the commissioner may request additional information from the applicant, as provided in 19.2.9.10 NMAC, and may enter into negotiations for a non-bid lease.

C. After receipt of an application as provided in 19.2.9.9 NMAC, or on the commissioner’s own initiative, the commissioner may offer to lease trust land under a bid lease as provided in 19.2.9.11 NMAC.

D. Any applicant may withdraw an application for a business lease at any time.

E. Notwithstanding any other provision of 19.2.9 NMAC, and at any time before the execution of a business lease, the commissioner may, at the commissioner's discretion, reject any application or bid submitted under 19.2.9 NMAC and may withhold from business leasing any trust land subject to the commissioner's jurisdiction.

[19.2.9.8 NMAC - N, 5/15/2001; A, 6/11/2019]

19299 APPLICATION TO LEASE: Any person may propose that the commissioner enter into a business lease by submitting an application on forms prescribed by the commissioner.

A. The application shall, at minimum, be made under oath and shall identify the applicant, the trust land proposed for leasing and the proposed uses of the trust land, including any proposed improvements.

B. The application shall include a written appraisal of the trust land proposed for lease made under oath by a disinterested and credible person. All statements contained in such appraisements, except as to the true value of the land appraised, must be based upon personal knowledge and not upon information and belief. No such appraisal shall be conclusive upon the commissioner.

C. The application shall include a nonrefundable application fee in the amount established in the schedule of fees.

[19.2.9.9 NMAC - N, 5/15/2001]

1929.10 SUPPLEMENTAL INFORMATION: After review of an application and before entering into a business lease, the commissioner may require additional information and documentation from an applicant, including, but not limited to, an appraisal of the trust land proposed for lease, a survey of the land, a detailed development plan of the land, environmental analyses of the land, and cultural or biological resource investigations of the land.

[19.2.9.10 NMAC - N, 5/15/2001]

1929.11 BID LEASE: The commissioner may, under the following procedures, offer a bid lease to the highest and best bidder at a public auction held at the county seat of the county where the offered trust land, or the major portion of the offered land, is located.

A. Appraisal. After a preliminary determination that a bid lease might be advantageous to the trust, the commissioner will cause an appraisal to be made. The appraisal will cover the trust land proposed for lease and any permanent improvements on, appurtenant to, or obtained or developed for the benefit of, the land. Thereafter, if the commissioner determines to offer the land for bid lease, a copy of the appraisal will be furnished to the applicant, if any, and to the holder of the improvement value credit as well as to any other interested parties. Prior to the advertisement of the lease sale, the commissioner shall determine that the terms of the bid lease being offered provide a return to the trust over the duration of the bid lease that is a fair rental value based on the appraisal.

B. Advertisement. A notice of the lease sale shall be published once each week for ten (10) consecutive weeks in a newspaper of general circulation published in Santa Fe, and in a newspaper of general circulation published nearest the offered land.

C. Notice. The notice of lease sale shall contain:

- (1) The date, time and place of the auction;
- (2) A description of the trust land offered for lease, and any limitations on the uses of the land including any local land use restrictions, covenants, master plans or any restrictions established by the commissioner;
- (3) A summary of the basic provisions of the bid lease, including the term (and any extension periods), the rent (if fixed and not based on the highest bid) and the allowable uses of the trust land offered for lease;
- (4) Any requirements or qualifications for bidders;
- (5) The amounts that a bidder must deposit to pay the costs of the lease sale, the first rental payment and any improvement value credits;
- (6) A brief description of how the commissioner will determine the highest and best bidder; and
- (7) The name of a person to contact at the state land office for additional information on the auction and the trust land offered for lease.

D. Deposit. To qualify as a bidder, the prospective bidder shall deposit with the commissioner before the auction or at such other time provided in the notice of lease sale, the following amounts which shall be listed in the notice:

(1) The costs of the lease sale. The successful bidder shall pay the reasonable costs and expenses related to the lease sale, whether incurred by the state land office or by another entity at the request of the state land office. Such costs and expenses may include, but are not limited to, the costs of appraisals, surveys, advertising, land use planning and brokerage or other real estate fees;

(2) The first rental payment under the bid lease; and

(3) If the offered trust land includes permanent improvements, either a sum equal to the improvement value credit attributable to the permanent improvements or a bill of sale or a waiver of payment signed by the holder of the improvement value credit or a bond sufficient to cover the value of the improvements if an appeal of the appraised value is to be taken, unless the prospective bidder is the holder of the improvement value credit. The improvement value credit shall be calculated and paid as provided in 19.2.9.18 NMAC. Upon completion of the lease sale, the commissioner shall return any deposits from unsuccessful bidders.

E. Qualification of bidders. The commissioner may establish additional qualifications for bidders based on the nature of the bid lease and the proposed uses of the offered trust land.

F. Due diligence. All bidders must undertake their own due diligence in preparation for the lease sale, including, but not limited to, inspecting the offered trust land and reviewing pertinent records and files of the state land office and other public agencies. A prospective bidder must obtain the approval of the commissioner before entering on trust land. The notice of lease sale may provide that additional information concerning the offered trust land is available at the state land office for viewing by any interested parties. The additional information may include, without limitation, a draft bid lease or a summary of bid lease provisions.

G. Auction. The auction may be conducted by oral auction or by the acceptance of sealed bids or proposals at the time of the auction. If awarded at all, the bid lease shall be awarded to the highest and best bidder.

H. Highest and best bidder. In determining the highest and best bidder, the commissioner shall establish criteria that will be described in the notice of lease sale. The criteria shall enable the commissioner to select the bid that is in the best interests of the trust considering the requirements of the bid lease and the proposed uses of the offered trust land. In addition to any offered bonus or rental amounts, the commissioner may, as appropriate, consider the qualifications of the bidders to develop the land or to construct the improvements contemplated by the proposed bid lease, and to provide the trust with sustainable long-term returns. The commissioner may divide the bid process into stages, and review the qualifications of bidders prior to, or in addition to, reviewing any financial proposals.

I. Execution of bid lease. The successful bidder must deposit with the commissioner all amounts due for the lease sale, including any bonus bid, no later than five business days after the auction, and shall, within thirty days after the auction, enter into the bid lease. The commissioner may extend the period for entering into a bid lease to no greater than one hundred twenty days after the auction. The final bid lease shall not contain any provisions that vary from those described in the notice of lease sale. If the successful bidder does not deposit with the commissioner any amounts due, or enter into the bid lease offered by the commissioner, within the prescribed time periods, the commissioner may reject the bid and either declare another bidder to be the highest and best, or terminate the lease sale.

[19.2.9.11 NMAC - N, 5/15/2001]

1929.12 BUSINESS LEASE:

A. Prerequisites. Before taking possession of the leased trust land, the lessee must provide the commissioner with a legal description and a survey plat showing the exact location of the land.

(1) A legal description must be given in aliquot parts of at least forty (40) acres, or in some other form as may be required by the commissioner such as survey metes and bounds. The description shall include a reference to all encumbrances, easements, or other servitudes burdening or benefiting the trust land.

(2) The commissioner may provide specific instructions on the requirements for a survey plat.

B. Leases. All business leases shall be in a form and contain such provisions as may be prescribed by the commissioner from time to time, which provisions shall be deemed to include all pertinent

statutes and state land office rules in effect at the time of lease issuance.

C. Conditions. The commissioner shall establish conditions in a business lease necessary for providing a secure return to the trust, managing the trust land in a commercially reasonable manner and protecting the trust land and any natural and cultural resources on the trust land from waste. Each lessee under a business lease shall have an affirmative duty to diligently prevent and protect against trespass and waste on trust land.

D. Uses. A business lease shall designate the allowable uses of the leased trust land. A business lease may be issued for any use of the surface estate not otherwise provided for under other state land office rules.

(1) The commissioner may establish restrictions on the uses of the trust land, including restrictions contained in local land use rules, covenants or land use plans.

(2) A business lease may be issued to authorize the planning of trust land or the development of trust land pursuant to an approved plan. The lease may require that the lessee obtain local government approvals of the land use plan prior to development. The lease may provide for development to occur in phases, which phases may require further leases or sales of trust land.

E. Rent. Unless otherwise provided in a lease, rent shall be paid in advance in annual installments.

(1) If a business lease has a term of more than five years, the lease shall provide for a rent adjustment of any fixed periodic rent to occur no less often than every five years.

(2) As provided in Section 19-7-34 NMSA 1978, the commissioner shall have a first lien on any improvements on the leased trust land, prior and superior to any other lien or encumbrance, whether created with or without notice of the lien, for rental due or to become due. When any rental is due and unpaid the commissioner may attach all improvements or a portion of the improvements sufficient to pay the unpaid rental together with all costs incurred in the enforcement of the lien.

(3) The commissioner may, upon request and upon provision of adequate security as determined by the commissioner, agree to withhold enforcement of the rental lien. Adequate security may include prepayment of lease rent or some other acceptable form of financial assurance.

F. Mineral reservation. Each business lease shall reserve the mineral estate of the trust land to the commissioner and shall reserve the right to lease the mineral estate, or any portion of the mineral estate, for exploration, development, conservation and production of the mineral resources, including oil and natural gas. The reservation shall include all rights of access over, through or across trust lands necessary for a mineral lease. The commissioner may, in a business lease, agree, upon payment of an additional annual rent, not to exercise the right to lease the trust's mineral rights during the term of the lease. The additional rent shall be sufficient to compensate the trust based on the commissioner's evaluation of the potential mineral value associated with the leased trust land.

G. Easements and right of way. Each business lease shall reserve to the commissioner the right to grant easements and right of way across trust land for any legal purpose. A business lease may provide that any easements or right of way granted across leased trust land shall be located to avoid unreasonable interference with the uses allowed under the lease. A business lease may require that the lessee acquire from the commissioner easements or right of way necessary for the development of the trust lands and may also require or allow the lessee to assign or dedicate its interest in easements or right of way to a public entity.

[19.2.9.12 NMAC - N, 5/15/2001]

1929.13 LEASE EXTENSION AND NEW LEASE:

A. Bid lease. The term of a bid lease may not be extended except as provided in the notice of lease sale and the original bid lease.

B. Non-bid lease. The term of a non-bid lease may not be extended. If, prior to the expiration of a non-bid lease, the lessee wants a new non-bid lease, for the same trust land and the same use, that will commence at the expiration of the current lease, and if the lessee has complied with all the terms of its lease, the lessee shall submit a sworn application, on such forms as the commissioner may require or provide, for a new lease. The commissioner may establish, in a business lease, additional requirements for applying for a new lease.

C. Discretion. Nothing in this rule shall limit the discretion of the commissioner, at the expiration of a business lease, to determine whether it is in the best interests of the trust to reject all applications to lease, or to offer a new non-bid lease on such terms as the commissioner determines or to sell or lease the trust land through a bid process.

[19.2.9.13 NMAC - N, 5/15/2001]

1929.14 SUBLEASE AND ASSIGNMENT:

A. Any assignment or sublease for use of trust lands is void without the approval of the commissioner. The commissioner's approval may be conditioned upon such terms or requirements as are deemed to be in the best interests of the trust. The commissioner may, in a lease, pre-approve certain assignments or subleases that the commissioner deems to be in the best interests of the trust.

(1) No assignment or sublease of trust lands under a business lease shall be approved unless the lessee is in compliance with the terms of the lease.

(2) The commissioner's approval of a sublease or assignment shall not relieve the lessee from any liability that may have arisen before the sublease or assignment. The commissioner's approval of a sublease shall not release the lessee from its continuing and primary liability for performance of all terms and obligations under the lease.

(3) The commissioner's approval of a sublease or assignment will not constitute approval of any subsequent sublease or assignment.

B. Applications to sublease or assign shall be made by the current lessee under oath, on forms prescribed by the commissioner, and shall be accompanied by the fees shown on the schedule of fees.

C. No assignment or sublease shall extend the term of a business lease and the lessee shall inform its sublessee or assignee of the terms and conditions of the lessee's business lease.

D. The termination of a business lease shall automatically, and without notice, terminate any sublease, unless otherwise agreed to in writing by the commissioner.

E. A lessee or sublessee may not transfer, change the purpose or use, or move the point of diversion of any water rights that are appurtenant to trust land without the prior approval of the commissioner.

[19.2.9.14 NMAC - N, 5/15/2001; A, 6/11/2019]

1929.15 COLLATERAL ASSIGNMENTS AND MORTGAGES:

A. Unless otherwise provided in a business lease, and subject to the prior approval of the commissioner, a lessee's interest in a business lease or improvements may be collaterally assigned or mortgaged by the lessee. An approved collateral assignee or mortgagee shall have a lien on the lessee's interest in the lease, as well as any improvements covered by the collateral assignment or mortgage, but shall not have a lien on the commissioner's interest in the lease and any improvements, or in the commissioner's reversionary interest in the real and personal property subject to the lease. Any attempt to collaterally assign or mortgage a lessee's interest in a business lease, or in any improvements, without the approval of the commissioner, shall be void and shall not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to such lease or improvements.

(1) A lessee shall apply to the commissioner to collaterally assign or mortgage the lessee's interest in a business lease or any improvements in writing, under oath, and on such form as may be prescribed by the commissioner. The lessee shall include a copy of the proposed collateral assignment agreement or mortgage and pay any applicable fees set out in the schedule of fees.

(2) The commissioner may approve the collateral assignment or mortgage subject to such terms and conditions which the commissioner deems to be in the best interests of the trust.

B. If the commissioner gives written notice to a business lessee of a breach of the lease by the lessee, the commissioner shall also give written notice of the breach to an approved collateral assignee or mortgagee of the business lessee. Such notice shall be sent by certified mail to the most current name and address of the collateral assignee or mortgagee provided to the commissioner and no proof of receipt of such notice by the collateral assignee or mortgagee shall be required.

C. An approved collateral assignee or mortgagee shall have the right to cure a lessee's breach within the time periods provided to the lessee under the lease. A business lease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the lessee of the business lease under such conditions as are provided in the lease. The commissioner's approval of a collateral assignment or mortgage of improvements does not change the status of any improvements as authorized, unauthorized, removable or permanent improvements.

D. A collateral assignee or mortgagee shall take its interest subject to the following terms and conditions, and the lessee is required to give notice of such terms and conditions to its collateral assignee or

mortgagee upon making a collateral assignment or mortgage.

(1) The commissioner is entitled to notice of all proceedings, judicial or non-judicial, to enforce or foreclose the collateral assignment or mortgage.

(2) Any successor in interest to a lessee's interest in a business lease, or in any improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a collateral assignment or mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, shall be deemed to be an assignee under section 19.2.9.14 NMAC, and will be subject to the approval of the commissioner. Such approval will not be unreasonably withheld; but no successor in interest will be approved by the commissioner unless all sums due under the terms of the lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to the commissioner are made to fully pay such sums or discharge such duties.

[19.2.9.15 NMAC - N, 5/15/2001; A, 6/11/2019]

1929.16 APPROVAL OF IMPROVEMENTS: No improvements shall be placed, developed, created or constructed on trust land, or obtained or developed for the benefit of trust land, or made appurtenant to trust land without the prior approval of the commissioner. Such approval may be conditioned upon certain requirements imposed by the commissioner which may include, without limitation, the provision of a bond or other adequate security to assure proper removal of improvements from trust land and the restoration of trust land.

A. A request for the commissioner's approval shall be made in writing on such forms and in such manner as may be required by the commissioner, and shall be accompanied by the fee set forth in the schedule of fees. The commissioner shall not be obligated to approve any improvements.

B. A business lease may identify existing and proposed improvements that are approved by the commissioner when the commissioner determines it is in the best interests of the trust.

C. If the commissioner does not grant prior approval for improvements, the commissioner may, in the best interests of the trust, approve improvements after the improvements have been placed, developed, created or constructed on, obtained or developed for the benefit of, or made appurtenant to trust land.

[19.2.9.16 NMAC - N, 5/15/2001; A, 6/11/2019]

1929.17 REMOVAL OF IMPROVEMENTS:

A. Upon the termination of a business lease, all removable or unauthorized improvements shall be removed from the trust land unless otherwise provided in the lease or in writing by the commissioner.

(1) No improvement may be removed without the commissioner's approval if a lessee owes rent or any other sums to the commissioner or if any material duties required under the lease remain unperformed.

(2) The commissioner may require, in writing, that designated unauthorized improvements be left in place. Such improvements shall become the property of the commissioner and no person shall be entitled to any improvement value credit for such improvements.

(3) Any improvements left on trust lands without the commissioner's approval shall remain the property and liability of the lessee and shall constitute a nuisance until removed or abandoned. The commissioner may elect to either take any necessary action to abate such nuisance, with all costs and fees incurred in so doing to be additional rent due from the lessee under the lease, or to declare that the improvements are abandoned and have become the property of the commissioner.

B. In all cases where improvements are removed from trust land, the lessee shall be solely liable for the restoration of the trust land to its condition prior to the placement of such improvements. The lessee's obligation to remove improvements and to restore the trust land shall survive the termination of the lease.

C. All costs, fines and fees incurred by the commissioner as a result of improvements left on trust lands without the commissioner's approval, and all costs, fines and fees incurred as a result of damage or waste to trust lands and their improvements during the term of the lease, or arising from or in connection with the lessee's use and occupancy of the trust lands, shall remain the sole liability of the lessee and shall be deemed additional rent due at the time incurred.

[19.2.9.17 NMAC - N, 5/15/2001]

1929.18 IMPROVEMENT VALUE CREDIT:

A. Personal property. Unless otherwise provided in a business lease or in this rule, improvements shall be the property of the lessee. The interest of a lessee in a business lease and in the improvements is a personal property interest. Unless otherwise provided in a business lease, improvement value credit is only granted for permanent improvements and is not granted for removable or unauthorized improvements. Water rights that are appurtenant to trust land shall be developed and held in the name of the commissioner.

B. When payable. When trust lands are sold or leased to a person other than the holder of any improvement value credit, the successor in interest shall pay to the commissioner the amount of the improvement value credit, if any. The commissioner shall pay to the holder of the improvement value credit the amount paid by the successor in interest, less any rent, costs or damages owed to the commissioner.

(1) In lieu of such payment, a successor in interest may file with the commissioner a bill of sale or waiver of payment signed by the holder of the improvement value credit or, if an appeal of the appraised value is taken, a bond sufficient to cover the value of the improvements as determined by the commissioner.

(2) Except for the transfer of funds for improvement value credit paid by a successor in interest as provided in this subsection, the commissioner shall not be liable for the payment of any improvement value credits. The commissioner may require a release or indemnity from the party receiving payment of the improvement value credit.

(3) The holder of the improvement value credit must be identified in the records of the state land office. Unless otherwise provided in a lease or in an assignment, collateral assignment or mortgage of improvements approved by the commissioner and filed with the state land office, the commissioner shall treat the former lessee as the holder of the improvement value credit and the party entitled to payment of any improvement value credit.

C. Calculation of improvement value credit. Unless otherwise provided in a lease, the holder of the credit is entitled to all of the improvement value credit attributable to the permanent improvement.

(1) A business lease may provide that the commissioner shall receive a specified portion of the improvement value credit attributable to a permanent improvement.

(2) Unless otherwise provided in a lease or in a statute, the improvement value credit will be the amount, if any, which the permanent improvement adds to the value of the trust land. The added value shall be determined, at the expense of the lessee or the holder of the credit, by an appraisal conducted by a certified real estate appraiser. The appraisal shall be submitted to the commissioner for review and approval. The commissioner may obtain further appraisals to ascertain the improvement value. The commissioner may require a successor in interest to reimburse the costs of appraising the improvements.

(3) The commissioner shall determine the value of the improvements and the commissioner's determination shall be final unless the holder of the improvement value credit initiates a contest as provided under Section 19-7-64 NMSA 1978.

(4) A business lease may provide that an improvement value credit may be lost or depreciated if, after termination of the business lease, there is no successor in interest other than the commissioner.

[19.2.9.18 NMAC - N, 5/15/2001; A, 6/11/2019]

1929.19 RELINQUISHMENT:

A. A lessee may, with the approval of the commissioner, relinquish to the commissioner the lessee's interest in a business lease. The commissioner may, in a business lease, establish conditions pursuant to which the lessee may, at prescribed times, relinquish all or portions of the lease.

B. A lessee may request relinquishment of the lease on forms prescribed by the commissioner and upon payment of a relinquishment fee, provided that:

(1) the lessee is in compliance with the terms of the lease; and,

(2) all improvements made pursuant to the lease on, for, or appurtenant to the lands leased have been approved by the commissioner and arrangements satisfactory to the commissioner have been made for either the removal or the retention of the improvements.

C. A lessee shall not, by relinquishment, avoid or be released from any liability for known or unknown waste or damage to trust lands, including but not limited to environmental damage, arising from or connected with lessee's use or occupancy of trust lands.

D. A relinquishment shall not be valid or effective until approved by the commissioner. Any attempted relinquishment of the lease, without the commissioner's approval, shall be a breach of the lease.

E. Upon relinquishment, a lessee shall not be entitled to the refund of any rent previously paid; however, a lessee seeking relinquishment in response to a request by the commissioner shall not be charged a fee, and shall be entitled to a pro-rata refund of prepaid rent to be paid only by the successor lessee, purchaser or other successor in interest, if any.

[19.2.9.19 NMAC - N, 5/15/2001]

192920 DEFAULT; REMEDIES: Unless otherwise provided in a business lease, a lessee shall be in default under a business lease if a breach of the lease is not cured within thirty days after the commissioner gives written notice of the breach to the lessee. A breach of the lease may include, without limitation, a failure to pay any rent or other monetary obligation due under the lease, or a violation of any term, condition, or covenant of the lease, or the failure to perform or observe any other obligation of the lessee under the lease.

A. Notice. Written notice of a breach shall be sent to the lessee, and to the holder of any collateral assignment or mortgage, at their addresses of record at the state land office, by certified mail. The commissioner need only provide proof of mailing to establish satisfactory compliance with this notice requirement.

B. Remedies. On the default of a lessee, the commissioner shall have all the remedies available to the commissioner at law or in equity in New Mexico, and as provided in the business lease, including, without limitation, terminating the lease, retaking possession of the leased trust land with or without termination of the lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee.

[19.2.9.20 NMAC - N, 5/15/2001]

192921 EXISTING LEASES: Except as provided in this section, the commissioner may not lease under a business lease any trust land currently leased under an existing surface lease unless the existing lessee relinquishes the existing lessee's interest in the trust land or the commissioner exercises any right of withdrawal of land which the commissioner may have. Notwithstanding the foregoing, the commissioner may determine that a proposed business lease will not unreasonably interfere with the authorized uses under an existing lease, and may allow a new business lease in compliance with the following requirements.

A. The new business lease shall identify the existing lease, shall state that the new business lessee's rights and privileges are subject to the existing lessee's rights and privileges under the existing lease, unless waived or amended, and shall provide that the new business lessee will not interfere with the uses permitted under the existing lease.

B. The existing lessee must consent in writing to the new business lease.

[19.2.9.21 NMAC - N, 5/15/2001; A, 6/11/2019]

HISTORY of 19.2.9 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the State Records Center and Archives:

CPL 69-5, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 9/2/1969.

CPL 71-2, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 12/16/1971.

CPL 77-1, Rules and Regulations Concerning the Sale, Lease and other Disposition of NM Trust Lands, 1/7/1977.

Rule 9, Relating To Business Leases On State Lands, 3/11/1981

SLO Rule 9, Relating To Business Leases On State Lands, 1/20/1984

SLO Rule 9, Relating To Business Leases On State Lands, 6/24/1985.

History of Repealed Material:

SLO Rule 9, Relating To Business Leases On State Lands - Repealed, 5/15/2001.



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

EXHIBIT 7: SEALED BID FORM

Long-Term Solar Energy Business Lease Number ES-0199
Sandoval County, New Mexico

To: Commissioner of Public Lands
New Mexico State Land Office
310 Old Santa Fe Trail, Santa Fe, NM 87501
P.O. Box 1148, Santa Fe, NM 87504-1148

I/We, _____
(Name of individual, or entity)

whose address is: _____,

is qualified to do business in New Mexico (if an entity), or a citizen or lawful permanent resident of the United States, at least eighteen years old, having made an application to lease and received notice of qualification to bid, hereby submits a sealed bid for a long-term business lease for solar energy development upon the following described land situated in Sandoval County, State of New Mexico:

Township, Range, Section	Subdivision	Acreage
13N03E16	NE4NW4	40
13N03E16	NW4NW4	40
Total Acreage:		80 acres, more or less

Tendered herewith as bonus is the sum of \$_____. (The minimum bid amount is \$10,000.00. Additional amounts may be added in increments of \$5,000.00.)

I/We have previously submitted the required Qualification Deposit in the amount of \$29,000.00.

Signature

Date

Print or Type Name

Title, if acting in a representative capacity

ACKNOWLEDGMENT
FOR A PERSON SIGNING IN AN INDIVIDUAL CAPACITY

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____,
 by _____.

(Name or names of person or persons acknowledging)

 Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT
FOR A PERSON SIGNING IN A REPRESENTATIVE CAPACITY

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____, by
 _____ (name), _____ (title) as Authorized Signatory of
 _____ (name of party on behalf of whom instrument is executed).

 Notary Public

My Commission Expires _____

Layout Map

Exhibit 8

Proposed ES-0199

Sandoval County

NM County Boundaries



NM Trust Lands - By Estate

Surface and Subsurface

Land Use Restrictions

State Boundary

County Boundaries

EW-126

NM - PLSS BLM

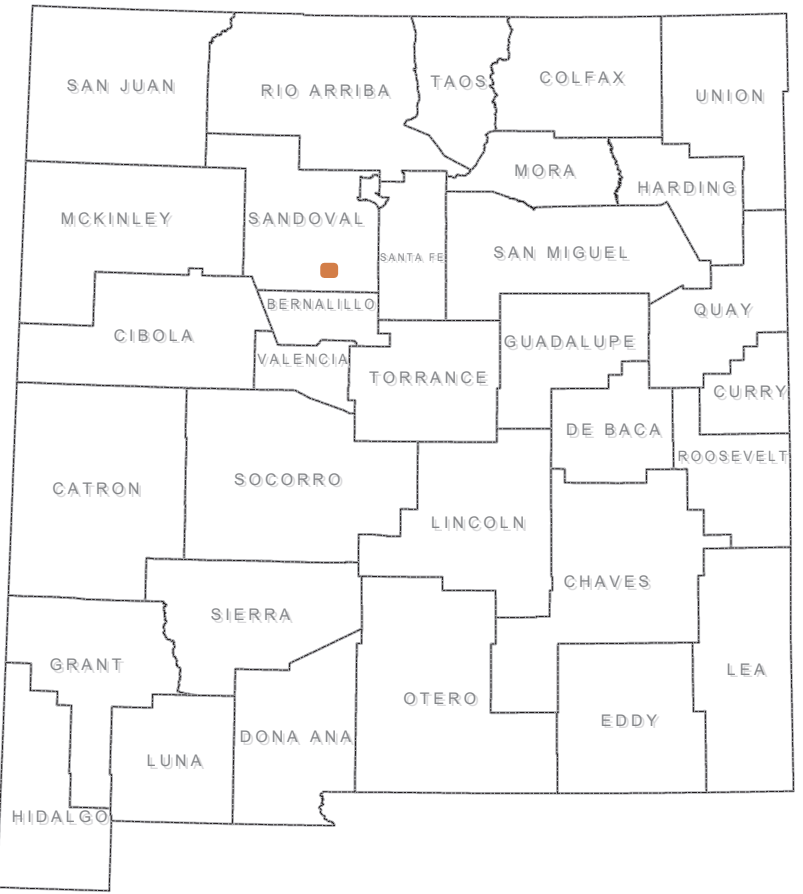
Townships

Sections

Subdivisions

Proposed ES-0199

Total Acreage (80 acres)



Stephanie Garcia Richard
Commissioner of Public Lands
505-827-5761
www.nmstatelands.org

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