

TITLE 31

SOUTHERN UTE INDIAN TRIBAL CODE

TRIBAL ENVIRONMENTAL REVIEW POLICY CODE

TABLE OF CONTENTS

ARTICLE 1. POLICY, PURPOSES, AND SCOPE.....1

 31-1-101. STATEMENT OF ENVIRONMENTAL POLICY AND PURPOSES.....1

ARTICLE 2. SCOPE.....1

 31-2-102. SCOPE1

ARTICLE 3. DEFINITIONS.....2

 31-3-101. DEFINITIONS2

ARTICLE 4. TRIBAL ENVIRONMENTAL REVIEW POLICY CODE COMMITTEE.....5

 31-4-101. TERP CODE COMMITTEE ESTABLISHED.5

 31-4-102. TERP CODE COMMITTEE MEMBERSHIP.....5

ARTICLE 5. ENVIRONMENTAL REVIEW PROCESS.....6

 31-5-101. SCOPING.....6

 31-5-102. CATEGORICAL EXCLUSION DETERMINATION.....6

 31-5-103. DETERMINATIONS OF ENVIRONMENTAL IMPACT OF PROPOSED PROJECTS.7

 31-5-104. REQUIREMENTS FOR PROJECTS DETERMINED TO HAVE SIGNIFICANT IMPACT.....8

 31-5-105. OTHER POLICY GUIDANCE.....10

ARTICLE 6. CULTURAL RESOURCE PROTECTION.....10

 31-6-101. INTEGRATION OF CULTURAL RESOURCE PROTECTION PROCESS.....10

 31-6-102. SCOPING, AREA OF POTENTIAL EFFECTS, IDENTIFICATION OF CULTURAL RESOURCES.11

 31-6-103. ASSESSMENT OF EFFECTS AND CONSULTATION WITH OTHER TRIBES.....11

 31-6-104. NO POTENTIAL TO CAUSE EFFECTS.....12

 31-6-105. MITIGATION.....12

 31-6-106. DOCUMENTATION OF HISTORIC PROPERTIES.....12

 31-6-107. CONFIDENTIALITY.....12

ARTICLE 7. COORDINATION WITH OTHER POLICIES AND PROCEDURES12

 31-7-101. COORDINATION.....12

ARTICLE 8. CONSISTENCY WITH HEARTH ACT AND TERA LAW13

 31-8-101. CONSISTENCY WITH HEARTH ACT AND TERA LAW13

ARTICLE 9. WAIVER [RESERVED].....13

ARTICLE 10. AMENDMENTS.....13

 31-10-101. AMENDMENTS13

ARTICLE 11. RIGHT OF REVIEW.....13

31-11-101.	ADMINISTRATIVE APPEALS AND HEARINGS OFFICE REVIEW	13
31-11-102.	JUDICIAL REVIEW	14
ARTICLE 12. SOVEREIGN IMMUNITY		14
31-12-101.	SOVEREIGN IMMUNITY	14
APPENDIX A		A1
A	CATEGORICAL EXCLUSIONS APPLICABLE TO ENERGY AND REAL ESTATE ACTIVITIES.....	A1
E	CATEGORICAL EXCLUSIONS APPLICABLE TO ENERGY ACTIVITIES	A2
R	CATEGORICAL EXCLUSIONS APPLICABLE TO REAL ESTATE ACTIVITIES	A4
APPENDIX B.....		B1

TITLE 31

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TRIBAL ENVIRONMENTAL REVIEW POLICY CODE

Article 1. POLICY, PURPOSES, AND SCOPE

31-1-101. Statement of Environmental Policy and Purposes. The Southern Ute Indian Tribal Council has created this code to identify and consider the impacts of proposed projects on the human environment, through a process that is fair, expeditious, and thorough. Toward that end, the purposes of this code are:

- (a) to ensure the Tribe reviews and considers effects of proposed projects on the human environment before tribal approval of those projects;
- (b) to establish procedures, timelines, and guidelines the tribal organization will follow for identifying and evaluating environmental effects of proposed projects;
- (c) to establish public (as defined herein) review and comment procedures; and
- (d) to establish a Tribal Environmental Review Policy Code committee to annually review implementation of this code.

Article 2. SCOPE

31-2-102. Scope. This Code applies to any activity on tribal trust land requiring tribal approval in lieu of federal approval under either a tribal energy resources agreement (under 25 U.S.C. § 3504; 25 C.F.R. § 224.63 ("TERA")) or tribal surface leasing regulations approved by the Secretary of the Interior under the HEARTH Act (25 U.S.C. § 415(h)), such as:

Non-energy related activities:

- Residential, business, and agricultural leases
- Gravel leases
- Hard rock mining leases
- Rights-of-way (new and renewals) (e.g., power lines, utilities, and roads)

Energy related activities:

- Oil and gas leases (aka minerals agreements)
- Development of renewable energy resource projects (e.g., solar and wind)
- Coal leases

- Assignments of oil and gas leasehold interests
- Rights-of-way (new and renewals) (e.g., pipelines, access roads, power lines, temporary use areas)
- Surface leases (new, renewals, and assignments)
- Communitization agreements (new and assignments).

Except for tribal approvals in lieu of federal approvals under a TERA or tribal surface leasing regulations approved by the Secretary of the Interior under the HEARTH Act (25 U.S.C. § 415(h)), this code does not apply to tribal approvals or actions for which no federal approval is required. For example, this code does not apply to tribal revocable permits for the use of tribal trust land, leases by a federally chartered tribal corporation under Section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. § 5124), and contracts or agreements that encumber tribal trust lands for a period of less than seven years or which for another reason require no federal approval under 25 U.S.C. § 81.

When a proposed project requires a tribal approval and a federal approval (triggering compliance with the National Environmental Policy Act and National Historic Preservation Act), the lead tribal agency should make every effort to complete one environmental review that meets the needs of all parties. This will maximize efficiency, allow the Tribe to view the project in its entirety, and allow the federal agency to adopt the tribal analysis. For example, natural gas development projects usually entail approval of a well (requiring Bureau of Land Management approval), and associated pipeline and access road rights-of-way (requiring tribal approval). Ideally, the lead tribal agency will complete one tribal environmental review, in the form of a categorical exclusion, environmental assessment, or environmental impact statement, for all elements of the proposed project, plus a corresponding cultural resources review and consultation process, and the Bureau of Land Management will adopt the Tribe's environmental review to comply with the National Environmental Policy Act and approve the well.

Nothing in this code is intended to excuse or exempt compliance with applicable federal laws or obviate other legal requirements for obtaining separate permits for operating specific equipment or conducting activities (other than surface disturbance) in compliance with the Clean Air Act, the Clean Water Act, or other applicable laws.

Article 3. DEFINITIONS

- 31-3-101. Definitions.** Any term in this code not defined below will have the meaning given to it in the Council on Environmental Quality's regulations for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. §§ 4321 - 4370h) found at 40 C.F.R. Parts 1500- 1508 or in the Advisory Council on Historic Preservation's regulations for implementing the National Historic Preservation Act (54 U.S.C. §§ 300101 - 307108) found at 36 C.F.R. Part 800, as the same may be amended. Attached as Appendix B is a

Glossary containing key terms with their Code of Federal Regulation definitions current as of the date of May 20, 2022.

- (1) **Categorical exclusions** are categories of projects that the Tribal Council has determined, by resolution, do not have a significant effect on the quality of the human environment (individually or cumulatively) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required under this code. Categorical exclusions are set forth in the Categorical Exclusions List adopted by the Tribal Council, in Appendix A.
- (2) **Cultural resources**, as used herein (and consistent with how the term is defined in the *Southern Ute Indian Tribe Non-Disturbing Cultural Resource Inventory and Monitoring Permit Policy* (1998)), means materials, locations, landscapes and natural features, or objects designated by the Tribe as having cultural, religious, traditional, or historic value to the Tribe, plus "burial sites," "human remains," "funerary objects," and "traditional cultural properties (i.e., an area or object designated as such by the Tribal Council which has cultural, religious, traditional, or historic value to the Tribe)," as those terms are defined in the *Southern Ute Indian Tribe Policy for the Protection of Burial Sites, Human Remains and Funerary Objects* (2000).
- (3) **Extraordinary circumstances** means the circumstances in which a normally excluded action may have a significant environmental effect and require additional analysis under this code. Extraordinary circumstances exist for individual proposed projects within categorical exclusions that may meet any of the criteria listed in 43 C.F.R. § 46.215.
- (4) **Ground disturbance** means all surface disturbing activities to include vegetative removal, substantial vegetative damage, earthwork of any kind, and re-disturbance of previously reclaimed locations.
- (5) **Lead agency** means, for non-energy projects, the Tribe's Department of Natural Resources, and, for energy-related projects, the Tribe's Department of Energy.
- (6) **Long term** means an action or activity that lasts more than one year.
- (7) **Permission to survey** means the lead agency's written consent for access to survey tribal trust land.
- (8) **Proposed project** means activity on tribal trust land requiring tribal approval in lieu of federal approval under either a TERA or tribal surface leasing regulations approved by the Secretary of the Interior under the HEARTH Act (25 U.S.C. § 415(h)).

- (9) **Public** means:
- (a) for purposes of the environmental review required for a TERA, one or more natural or legal persons, and their associations, organizations, or groups; or Federal, State, Tribal and local government agencies; or private industry and their associations, organizations, or groups.
 - (b) for purposes of the environmental review required for a surface lease under the Tribe's HEARTH Act leasing regulations, *Residential, Business, Agricultural, and Renewable Energy Resource Leasing Code*, means any person or entity who can demonstrate that they will be directly and substantially affected by the Lease or Lease activity.
- (10) **Proposed project notification (PPN) process** means an aspect of the Tribe's scoping process for proposed projects. This procedure is administered by the Tribe's Department of Natural Resources, which is entrusted with promoting the beneficial use, protection, conservation, preservation, and enhancement of the Tribe's natural resources. The procedure begins when a project proponent submits a PPN to the Tribe's Department of Natural Resources describing a proposed project along with a map depicting the project location. The PPN is then distributed to tribal departments for comment. The comment period lasts 10 days. These comments are compiled, and the Tribe's Department of Natural Resources drafts a report, which highlights potential issues and concerns regarding the proposed project. The report is returned to the project coordinator, who along with tribal staff organizes an onsite visit.
- (11) **Reservation** means the Southern Ute Indian Reservation.
- (12) **Scoping** means the process for identifying environmental and cultural resources issues, establishing the scope of analysis needed, including making an initial determination of whether a categorical exclusion applies or an environmental assessment or an environmental impact statement is needed. Scoping includes the permission to survey and PPN processes and an onsite review.¹
- (13) **Short term** means an action or activity that lasts one year or less.
- (14) **Tribal Council** means the Southern Ute Indian Tribal Council.
- (15) **Tribal Environmental Review Policy Code Committee or TERP Code Committee** means the Tribal Environmental Review Policy Code Committee.

¹ Flowchart 1 - Tribal Scoping for TERP Code Projects - depicts the scoping process.

- (16) **Tribal Environmental Review Policy Code, or TERP Code** means this code.
- (17) **Tribal trust land** means Reservation land falling within the definition of "tribal land" found in 25 C.F.R. § 162.003 (i.e., any tract, or interest therein, in which the surface estate is owned by one or more tribes in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477)) and land falling within the definition of "tribal land" found in 25 C.F.R. §224.30 (i.e., any land or interests in land owned by a Tribe or Tribes, title to which is held in trust by the United States, or is subject to a restriction against alienation under the laws of the United States. For the purposes of this part, Tribal land includes land taken into trust or subject to restrictions on alienation under the laws of the United States after the effective date of the agreement).
- (18) **Tribe** means the Southern Ute Indian Tribe.

Article 4. TRIBAL ENVIRONMENTAL REVIEW POLICY CODE COMMITTEE

- 31-4-101. TERP Code Committee Established.** The Tribal Environmental Review Policy Code Committee (TERP Code Committee) is established to annually review implementation of this code, discuss whether amendments are advisable, discuss other issues related to this code, and report on the same to the Tribal Council.
- 31-4-102. TERP Code Committee Membership.** The TERP Code Committee membership will be composed of the following, or their delegates:
- (1) The manager of the Tribe's Department of Energy.
 - (2) The Tribe's Executive Officer.
 - (3) The director of the Tribe's Department of Natural Resources.
 - (4) The director of the Tribe's Culture Preservation Department.
 - (5) The division head of the Tribe's Environmental Programs Division.
 - (6) The director of the Tribe's Legal Department.
 - (7) The manager of the Tribe's Safety & Environmental Compliance Management Group.

Article 5. ENVIRONMENTAL REVIEW PROCESS

31-5-101. Scoping. As soon as practicable after proposal of a proposed project (i.e., after approval of an application for permission to survey and the project proponent's submittal of the survey plat for the project area), the lead agency will initiate scoping, including the PPN process and an onsite review. The onsite is attended by personnel representing various tribal entities, and federal agencies depending on jurisdiction. The onsite process also includes an archaeological survey, which must be conducted by a tribal-approved contractor and, if determined necessary by the Tribe's Division of Wildlife Resource Management, a biological assessment for threatened and endangered species. After the onsite, the Tribe's Department of Natural Resources develops a site-specific report with the requirements (input is received from entities who attended the onsite or provided comments through the PPN process) that the project proponent must comply with to minimize adverse impacts to the human environment.²

31-5-102. Categorical Exclusion Determination.

- (1) For every proposed project, the lead agency will make a determination of whether the proposed project qualifies for a categorical exclusion. Categorical exclusions will be adopted by the Tribal Council. The TERP Categorical Exclusion List (CE List) is reviewed by the TERP Code Committee on an annual basis and may be revised periodically based on the Committee's recommendations.
- (2) The lead agency will consider if there are any extraordinary circumstances or resources that need additional analysis, and may create conditions of approval (COAs) for the proposed project, as documented in the TERP Categorical Exclusion Form (CE Form). The CE List and CE Form are included in this Tribal Environmental Review Policy Code as Appendix A. The lead agency will post the CE Form on the lead agency website for concurrent review and comment by the public and interested internal tribal divisions (e.g., internal tribal divisions with expertise in environmental protection, cultural resources protection, and natural resources) for no more than ten days.
- (3) The lead agency will prepare a response to public comments document. The response to public comments will be posted on the lead agency website.
- (4) After considering the comments and its responses, the lead agency will either:

² Flowchart 2 - Environmental Review Process Flowchart - depicts the environmental review process.

- (a) Finalize the CE Form documenting its determination that the proposed project qualifies for a categorical exclusion; or
 - (b) Require that an environmental assessment be prepared.
- (5) If the lead agency finalizes the CE Form documenting its determination that the proposed project qualifies for a categorical exclusion, it will present the Final CE Form to the Tribal Council or other decision maker along with other project documentation when the Tribal Council or other decision maker is considering the proposed project. The Final CE Form will document the lead agency's compliance with this section, and the Final CE Form will document any COAs designed to mitigate impacts. The lead agency will incorporate all COAs into the final project approval.
- (6) If no CE applies, the lead agency will initiate an environmental assessment.

31-5-103. Determinations of Environmental Impact of Proposed Projects.

- (1) If the lead agency determines that a proposed project is not categorically excluded, the lead agency (either through its own or other tribal entity staff or through an approved third-party contractor funded through the project proponent) must prepare an environmental assessment. The format and content of an environmental assessment should be consistent with the requirements for an environmental assessment as that term is defined in 40 C.F.R. § 1508.9. If at any time, the lead agency determines there will be a significant impact, the lead agency can advance to preparing an environmental impact statement.
- (2) The environmental assessment must include the lead agency's recommended determination that the proposed project will or will not significantly impact the quality of the human environment.
- (3) If the environmental assessment indicates the proposed project will not significantly impact the quality of the human environment, the lead agency will give notice to the public of the proposed project and draft environmental assessment. This will be accomplished by the lead agency posting a notice and the draft environmental assessment on the lead agency's website. The public will have a 30-day period within which to submit written comments.
- (4) The lead agency must prepare responses to comments and provide its responses to commenters before the Tribal Council considers the proposed project. This will be accomplished by the lead agency

posting the comments received, its response to comments, and the final environmental assessment on the lead agency's website and giving commenters electronic notice of the posting. Upon request, the lead agency will mail a physical copy of the final environmental assessment to a member of the public.

- (5) After considering the comments and its responses, the lead agency will finalize the environmental assessment and either:
 - (a) Issue a Finding of No Significant Impact; or
 - (b) Require that an environmental impact statement be prepared.
- (6) If the lead agency issues a Finding of No Significant Impact, no further action will be required under this code with respect to the proposed project other than the lead agency presenting its final environmental assessment to the Tribal Council when the Tribal Council considers the proposed project. The environmental assessment will document any COAs designed to mitigate impacts. The lead agency will incorporate all COAs into the final project approval.

31-5-104. Requirements for Projects Determined to Have Significant Impact.

- (1) If the environmental assessment indicates the proposed project will significantly impact the quality of the human environment, or if the Tribal Council otherwise directs, the lead agency (either through its own or other tribal entity staff or through an approved third party contractor funded through the project proponent) will prepare a draft environmental impact statement concerning the proposed project. The format and contents of an environmental impact statement should be consistent with the requirements for an environmental impact statement as recommended in 40 C.F.R. § 1502.10.
- (2) While preparing the draft environmental impact statement, the lead agency staff will make a reasonable and good faith effort to consult with and solicit comments from the public. At a minimum, "reasonable and good faith effort" will include mailing a letter, emailing, a telephone call, posting a request for consultation and solicitation for comments on the lead agency's website, publishing notice (at a minimum in *The Southern Ute Drum*), or a public meeting, to invite review and comment on the proposed project. Consultation may include a site visit. At a minimum, the lead agency must solicit comments from tribal members via a posting on the internet, an announcement on KSUT Tribal Radio, and publishing a notice in *The Southern Ute Drum*. Generally, the lead agency's request for consultation with and solicitation of comments should include

sufficient information to enable meaningful and timely review and comment from the public (e.g., a description of the proposed project including when the project proponent proposes to construct the project; where the proposed project will be located (e.g., a map showing the proposed location of the proposed project); a summary of significant issues that will be analyzed and be the subject of decision-making; the timetable in which a decision will be reached; the issues under consideration; any alternative courses of action or tentative determinations which the lead agency has made; the location where additional information or relevant documents may be reviewed or obtained; identification of any associated public participation opportunities such as meetings; the name of an individual to contact for additional information; how comments may be submitted; and any other appropriate information).

- (3) The lead agency will give notice of the availability of the draft environmental impact statement to the public. The lead agency will provide a full copy of the draft environmental impact statement to members of the public. This may be accomplished by the lead agency posting a notice and the draft environmental impact statement on the lead agency's website and publishing a notice in *The Southern Ute Drum*. The public will have a 60-day period, from the date notice is published, within which to submit written comments.
- (4) After receipt of written comments, the lead agency will prepare a final environmental impact statement which takes into account, assesses, and responds to all comments received from the public.
- (5) Upon completion of the final environmental impact statement, the lead agency will give notice of its availability to the public together with notice of the availability of a summary of comments received and the lead agency's responses to comments. This will be accomplished by the lead agency posting the comments received, its response to comments, and the final environmental impact statement on the lead agency's website, giving commenters electronic notice of the posting, and publishing a notice in *The Southern Ute Drum*. Upon request, the lead agency will mail a physical copy of the final environmental impact statement to a member of the public. The lead agency must give this notice before the Tribal Council considers the proposed project. The environmental impact statement will document any COAs designed to mitigate impacts. The lead agency will incorporate all COAs into the final project approval.
- (6) The lead agency will present the final environmental impact statement to the Tribal Council along with all written comments from the public and the lead agency's responses to comments. The lead agency will

also present a recommended Record of Decision. The Tribal Council will thoroughly consider the effects on the human environment, alternatives, and mitigation measures discussed in the final environmental impact statement and supporting documentation before issuing a Record of Decision and approving the proposed project.

31-5-105. Other Policy Guidance.

- (1) The environmental review process should be completed expeditiously. The lead agency's target times and page limits for completing the environmental review process are:

	Time frame	Page limit
<i>Categorical exclusion determination</i>	1 month goal, not more than 60 days from date of last onsite	No more than 20 pages
<i>Environmental assessment</i>	4 month goal, not more than 1 year from date of last onsite	No more than 50 pages, excluding appendices
<i>Environmental impact statement</i>	1 year goal, not more than 2 years from date of last onsite	No more than 150 pages or 300 pages for unusually complex projects, excluding appendices

- (2) The only alternatives that must be considered when the Tribe is the project proponent are the tribal supported action and the no action alternative. When the Tribe is not the project proponent, the Tribe may add a tribally preferred alternative along with the no action alternative.
- (3) For projects involving a TERA to comply with this TERP Code, the TERA must establish a process for consultation with any affected States, prior to approval of proposed action under the TERA, regarding any significant off-reservation environmental impacts that have been identified in the environmental review process.

Article 6. CULTURAL RESOURCE PROTECTION

31-6-101. Integration of Cultural Resource Protection Process. The lead agency must ensure the environmental review process includes consideration of the proposed project's likely effects on cultural resources. This means the lead agency must ensure that the environmental review process includes

appropriate scoping, determination of area of potential effects, identification of cultural resources, assessment of potential effects upon cultural resources, and measures to avoid, minimize, or mitigate any adverse effects upon cultural resources.

- 31-6-102. Scoping, Area of Potential Effects, Identification of Cultural Resources.** The Tribe's Department of Natural Resources, in consultation with the Tribe's Culture Preservation Department, must determine and document the area of potential effect. As part of scoping, the Tribe's Department of Natural Resources, in consultation with the Tribe's Culture Preservation Department, must ensure there is a reasonable and good faith effort to identify (through surveying and reviewing information) cultural resources and historic properties in the area of potential effect. A reasonable and good faith effort includes, but may not necessarily be limited to, researching (in the Tribe and Colorado State Historic Preservation Office databases) known historic properties, reviewing previous cultural resource surveys, and reviewing the area of potential effect for known traditional cultural properties. As required under this section, unless the lead agency determines a previous cultural resources survey is sufficient, the lead agency's scoping process must include an inventory conducted by, and a corresponding report prepared by, a tribally-approved contractor in accordance with the Tribe's *Non-Disturbing Cultural Resource Inventory and Monitoring Permit Policy* (1998), as the same may be amended.
- 31-6-103. Assessment of Effects and Consultation with Other Tribes.** The Tribe's Department of Natural Resources, in consultation with the Tribe's Culture Preservation Department, reviews the inventory report (i.e., the inventory report required under the Tribe's *Non-Disturbing Cultural Resource Inventory and Monitoring Permit Policy* (1998), as the same may be amended). If needed to determine potential effects to traditional cultural properties, the Tribe's Department of Natural Resources and the Tribe's Culture Preservation Department may give notice of the proposed project to the public and solicit public comment. The Tribe's Department of Natural Resources and the Tribe's Culture Preservation Department prepare a joint clearance letter to the lead agency, with a traditional cultural properties addendum (containing any new information regarding traditional cultural properties or other cultural resources important to the Tribe or other tribes) (1) accepting the report's findings and recommendations without modification, (2) accepting the report's findings and recommendations with modifications, or (3) rejecting the report's findings and recommendations. If the Tribe's Department of Natural Resources and the Tribe's Culture Preservation Department reject a report's findings and recommendations, the lead agency will either direct conduct of a new inventory and preparation of a new report or adopt modifications, in which the Tribe's Department of Natural Resources and the Tribe's Culture Preservation Department concur, which modifications address the reasons for the initial rejection.

- 31-6-104. No Potential to Cause Effects.** If the proposed project does not have the potential to cause effects on cultural resources, the lead agency has no further obligation under this section.
- 31-6-105. Mitigation.** The lead agency must ensure that any accepted alternatives or modifications to the proposed project that could avoid, minimize, or mitigate adverse effects on cultural resources are integrated into the categorical exclusion, environmental assessment, or environmental impact statement. If necessary to avoid, minimize, or mitigate adverse effects on cultural resources, the lead agency may recommend proposed project modifications including changing the proposed project's location or design.
- 31-6-106. Documentation of Historic Properties.** The lead agency must ensure that previously unknown and undocumented historic properties are submitted for documentation in the Tribe and Colorado State Historic Preservation Office databases and for determinations of eligibility for listing in the National Register for Historic Places. Absent the private landowner's consent to disclosure, however, the lead agency shall not submit for documentation to the Colorado State Historic Preservation Office database and for determinations of eligibility for listing in the National Register for Historic Places, previously unknown and undocumented historic properties located on the non-tribal land segments of linear proposed projects.
- 31-6-107. Confidentiality.** All information concerning cultural resources and historic properties located on the Reservation is confidential. Except for the disclosure authorized in Section 31-6-106 above, the Tribe will not disclose to the public (as that term is commonly defined as opposed to its definition in Article 3) information concerning the nature and location of any cultural resources and historic properties identified through implementation of this code or otherwise unless the Tribal Council determines that such disclosure would be in the Tribe's best interest. In evaluating possible disclosure, the Tribal Council may consider, among other factors, the risk that disclosure may cause a significant invasion of privacy, risk of harm to cultural resources and historic properties or to the site at which such resources are located, or impede the use of traditional religious sites by practitioners.

Article 7. COORDINATION WITH OTHER POLICIES AND PROCEDURES

- 31-7-101. Coordination.** The lead agency should coordinate implementation of this code with implementation of the *Southern Ute Indian Tribe Non-Disturbing Cultural Resource Inventory and Monitoring Permit Policy* (1998), the *Southern Ute Indian Tribe Policy for the Protection of Burial Sites, Human Remains and Funerary Objects* (2000), and the *Southern Ute Indian Tribe's Natural Resources Management Plan: Planning Period 2012 to 2032* (2012), as the same may be amended, and any other tribal environmental or cultural resource protection policies or plans. Also, the lead agency should coordinate with the Tribe's Tribal

Information Services Department and the Tribal Council Communications Specialist in giving notices required or permitted under this code.

Article 8. CONSISTENCY WITH HEARTH ACT AND TERA LAW

- 31-8-101. Consistency with HEARTH Act and TERA Law.** It is the Tribe's intent that the processes required under this code be consistent with the environmental review process required by 25 U.S.C. § 415(h)(3)(B)(ii) ("HEARTH Act environmental review process") and 25 U.S.C. § 3504(e)(2)(C)(i) ("TERA law environmental review process"). To the extent there is any inconsistency, the terms of the HEARTH Act and TERA law environmental review processes will govern.

Article 9. WAIVER

[Reserved]

Article 10. AMENDMENTS

- 31-10-101. Amendments.** The Tribal Council may make minor, technical amendments to this code without submitting the amendments to the Secretary of the Interior. Substantive amendments to this code must be submitted to the Secretary of the Interior or her authorized representative for approval. Substantive amendments to any tribal law or policy incorporated by reference in this code, and which tribal law or policy is subject to approval by the Secretary of the Interior, must be independently submitted to the Secretary of the Interior or her authorized representative for approval. Amendments to such incorporated law or policy will not require re-approval of this code, so long as the Tribe's request for approval of the incorporated law or policy includes notice to the Secretary that her approval of such law or policy may affect this code.

Article 11. RIGHT OF REVIEW

- 31-11-101. Administrative Appeals and Hearings Office Review.** Any member of the public (as that term is defined in this code) who has demonstrated that an interest of the member has sustained, or will sustain, an adverse impact on the human environment as a result of the failure of the Tribe to comply with this code, and who was involved in the public comment process under this code through submission of written or oral comments or by otherwise notifying the lead agency of their interest in the proposed project, may commence an action petitioning for administrative review thereof by the Administrative Appeals and Hearings Office. Such a petition for administrative review may name as respondents the Tribe, applicable subdivisions thereof, or tribal officials (in their official capacities), and the Tribe expressly consents to those respondents being named in such a petition and being subject to the relief

described in this section. Should the Administrative Appeals and Hearing Office conclude that the Tribe has failed to comply with this code and that such failure has caused or, will cause adverse environment impacts to the complaining party's interest, it may enter an injunction suspending the subject action and remand the matter to the Tribe and its applicable subdivisions with direction that such action remain suspended until compliance with policy is obtained.

- 31-11-102. Judicial Review.** The decision of the administrative hearing officer is a final administrative decision. The complainant or the Tribe may seek judicial review of such order by filing a written petition for review with the Tribal Court within 30 calendar days of the decision.

Article 12. SOVEREIGN IMMUNITY

- 31-12-101. Sovereign Immunity.** Except to the extent expressly stated and authorized in this code, nothing in this code is or will be interpreted to be a waiver of the sovereign immunity of the Southern Ute Indian Tribe, its departments, or enterprises.

Appendix A
Tribal Environmental Review Policy Code (TERP)
Categorical Exclusion (CE) List and CE Form

Key: A= All (Energy & Real Estate) Activities
 E = Energy Activities
 R = Real Estate Activities

A Categorical Exclusions Applicable to Energy and Real Estate Activities

A1 Additional water supply wells

Siting, construction, and operation of additional water supply wells (or replacement wells) associated with an existing well, or modification of an existing water supply well to restore production, provided that there would be no drawdown other than in the immediate vicinity of the pumping well, and the covered actions would not have the potential to cause significant long-term decline of the water table, and would not have the potential to cause significant degradation of the aquifer from the new or replacement well.

A2 Administrative Actions

Projects with no new ground disturbance, including but not limited to administrative actions such as: land acquisition or sale, change of operator, record title or operating rights.

A3 Data collection

Inventories, research activities, and studies, such as resource inventories, meteorological and air quality sampling sites, and routine data collection when such actions are clearly limited in context and intensity.

A4 Existing Rights-of-Way

Similar type projects entirely within an existing right-of-way (ROW) that was approved in the last ten years and is less than 5 acres in size.

A5 Limited Cross-country Travel

Temporary cross-country travel when such travel is clearly limited in context and intensity.

A6 Noise abatement

Noise abatement measures including, but not limited to, construction of noise barriers and installation of noise control materials.

- A7 **Rights-of-Way Actions**
Renewals, amendments, acquisitions, assignments and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.
- A8 **Stormwater runoff control**
Design, construction, and operation of control practices to reduce stormwater runoff and maintain natural hydrology. Activities include, but are not limited to, those that reduce impervious surfaces (such as vegetative practices and use of porous pavements), best management practices (such as silt fences, straw wattles, and fiber rolls), and use of green infrastructure or other low impact development practices (such as cisterns and green roofs).
- A9 **Temporary pipeline**
Temporary placement of a pipeline above ground that would not lead to environmental degradation.
- A10 **Temporary rights-of-way**
Issuance of temporary rights-of-way or land use authorizations for such uses as storage sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition.
- E **Categorical Exclusions Applicable to Energy Activities**
- E1 **Agreements**
Approval of unitization agreements, communitization agreements, drainage agreements, underground storage agreements, development contracts, or geothermal unit or participating area agreements.
- E2 **Co-located wells**
Drilling an oil and gas well at a location or well pad site at which drilling has occurred within five years prior to the date of spudding the well, with less than one acre of new disturbance that will not lead to environmental degradation.
- E3 **Electric vehicle charging stations**
Installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as SUIT cultural and T&E clearance) in the proposed project area and would incorporate appropriate control technologies and best management practices.
- E4 **Geophysical exploration**
Non-ground disturbing geophysical exploration of oil and gas or geothermal when such actions are clearly limited in context and intensity.

- E5 **Methane Capture Systems**
Installation, modification, operation, and removal of vent wells or methane recovery systems capturing methane gas from the Fruitland coal outcrop, that would not lead to environmental degradation.
- E6 **Minor repair or replacement of pipelines**
A minor repair, replacement, upgrading, rebuilding, or relocation of pipelines within existing rights-of-way, provided that the actions are in accordance with applicable requirements (such as Army Corps of Engineers permits under section 404 of the Clean Water Act). Pipelines may convey materials including, but not limited to, air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water.
- E7 **Modification or abandonment of wells**
Modification (but not expansion) or plugging and abandonment of wells, provided that site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with best practices, including those that protect against uncontrolled releases of harmful materials. Such wells may include, but are not limited to, storage and injection wells for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Covered modifications would not be part of site closure.
- E8 **Modifications of an Existing Mineral Agreement**
Approval of mineral lease adjustments, amendments, renewals and transfers, including assignments and subleases.
- E9 **Modifications to pumps and piping**
Modifications to existing pump and piping configurations (including, but not limited to, manifolds, metering systems, and other instrumentation on such configurations conveying materials such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water). Covered modifications would not have the potential to cause significant changes to design process flow rates or increases in air emissions.
- E10 **Small-scale renewable energy research and development and pilot projects**
Small-scale renewable energy research and development projects and small-scale pilot projects, provided that the projects are located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

E11 Solar photovoltaic systems

The installation, modification, operation, and removal of commercially available solar photovoltaic systems located on a building or other structure (such as rooftop, parking lot or facility, and mounted to signage, lighting, gates, or fences), or if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements in the proposed project area and would incorporate appropriate control technologies and best management practices.

E12 Spill cleanup

Removal of oil and contaminated materials recovered in spill cleanup operations and disposal of these materials in accordance with applicable requirements (such as the Clean Water Act and the National Oil and Hazardous Substances Pollution Contingency Plan), including SUI cultural and T&E clearance.

R Categorical Exclusions Applicable to Real Estate Activities

RI Access Roads

Grant of rights-of-way for terminal access roads to an individual residence, outbuilding, or water well.

R2 Homesites

Approvals of leases, easements or funds for single family homesites and associated improvements, including, but not limited to, construction of homes, outbuildings, access roads, and utility lines, which encompass five acres or less of contiguous lands, provided that such sites and associated improvements do not adversely affect any tribal cultural resources or historic properties and are in compliance with applicable federal and tribal laws. Home construction may include up to four dwelling units, whether in a single building or up to four separate buildings.

R3 Service Lines

Service line agreements to an individual residence or facility, such as utility lines, including water, gas, internet, cable, fiber optic, and electric.

SUIT TRIBAL ENVIRONMENTAL REVIEW POLICY CODE CATEGORICAL EXCLUSION FORM

A. Project Information

Project Name:		Project#:
Project Description:		
Planned Date of implementation:		
Lat:	Long:	Twtnshp, Range, Sect:
Project Lead:	Phone:	Email:
Prepared by:	Phone:	Email:
Project Type:		

B. Evaluation of Extraordinary Circumstances (43 CFR 46.215) - Please answer No or Yes

1. This action would have significant impacts on public health or safety.	NO	YES
2. This action would have significant impacts on: natural resources & unique geographical features as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild & scenic rivers; national natural landmarks; sole or prime drinking water aquifers; prime farmlands, wetlands; floodplains; national monuments; migratory birds; and other ecologically significant areas.	NO	YES
3. This action would have highly controversial environmental effects or unresolved conflicts concerning alternate uses of available resources.	NO	YES
4. This action would have highly uncertain environmental effects or involve unique or unknown environmental effects.	NO	YES
5. This action will establish a precedent for future actions.	NO	YES
6. This action is related to other actions with individually insignificant but cumulatively significant environmental effects.	NO	YES
7. This action will have significant impacts on properties listed or eligible for listing in the National Register of Historic Places.	NO	YES
8. This action will have significant impacts on a species listed or proposed to be listed as endangered or threatened, or Critical Habitat of these.	NO	YES
9. This action violates federal or tribal law or requirements imposed for protection of the environment	NO	YES
10. This action will have disproportionately high and adverse effect on low income or minority populations.	NO	YES
11. This action will limit access to, and ceremonial use of, Indian sacred sites on federal lands, by Indian religious practitioners, and/or adversely affect the physical integrity of such sites.	NO	YES

A "YES" to any of the above exceptions will require that an environmental assessment be prepared

C. Additional Analysis

1. Does this project require a stormwater plan?	NO	YES
2. Does this project require an Air Quality permit from the Tribe?	NO	YES
3. Does this project require a §401, §404, or other water permits?	NO	YES
4. Does this project have a Noxious Weed Management Plan?	NO	YES
5. Does this project require SUIT Cultural clearances?	NO	YES
6. Does this project require SUIT THE clearances?	NO	YES
7. Does this project require additional analysis beyond what is listed above? If so, for which resources?	NO	YES
8. Does this project require public scoping?	NO	YES
A. Please list any other agencies, organizations or people contacted for this project.		

B. Please summarize any comments received, who provided comments and how comments were considered in the decision process.

9. Have all requested additional analysis been satisfied?

NO YES

D. Conditions of Approval

E. TERP Specialist Comments

F. This project qualifies for the following CE(s):

G. Please attach (if applicable) the following documents

1. PPN
- 2 T&E Clearance
- 3 Cultural Clearance

Lead Agency Representative

Date

Appendix B
Tribal Environmental Review Policy Code (TERP)
Glossary

Area of potential effects

Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Consultation

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

Effects

Effects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:

- (1) Direct Effects, which are caused by the action and occur at the same time and place.
- (2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
- (3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.
- (4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic or health effects. Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Environmental assessment

Environmental assessment means a concise public document prepared by a Federal agency to aid an agency's compliance with the Act and support its determination of whether to prepare an environmental impact statement or a finding of no significant impact, as provided in [40 C.F.R.] § 1501.6 of this chapter.

Environmental impact statement

Environmental impact statement means a detailed written statement as required by section 102(2)(C) of NEPA.

Finding of no significant impact

Finding of no significant impact means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded ([40 C.F.R.] § 1501.4 of this chapter), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.

Human environment

Human environment means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment. (*See also* the definition of "effects" in paragraph (g) of this section [i.e., 40 C.F.R. §1508.l(g)].)

Mitigation

Mitigation means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (5) Compensating for the impact by replacing or providing substitute resources or environments.

TITLE 31
SOUTHERN UTE INDIAN TRIBAL CODE
TRIBAL ENVIRONMENTAL REVIEW POLICY CODE
(TERP CODE)

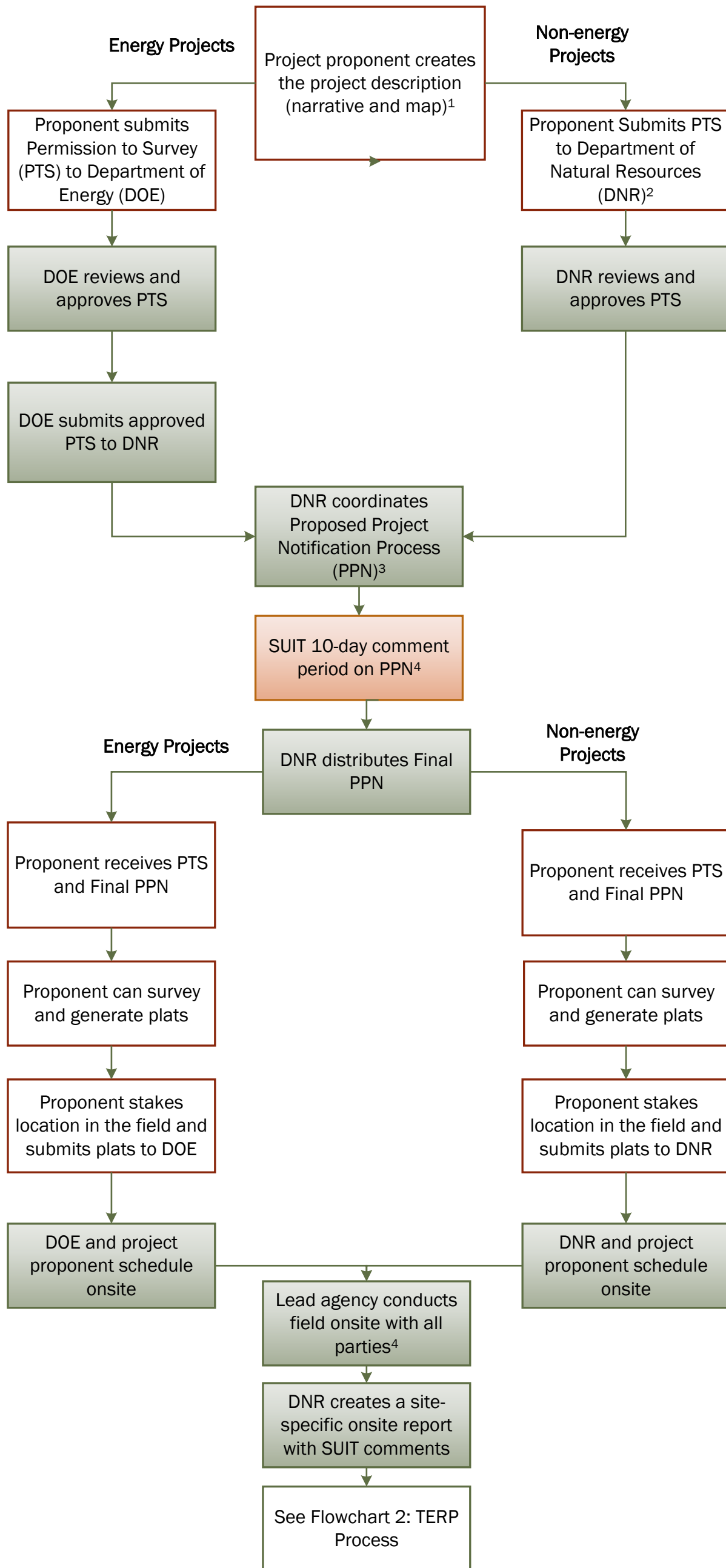
History and Amendments³

Title 31 – *Tribal Environmental Review Policy Code* (TERP Code) adopted by Tribal Resolution No. 2023-005, approved by the Bureau of Indian Affairs on February 28, 2023.

Resolution No. 2023-172 established an effective date of March 1, 2024.

³ This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.

Flowchart 1: Tribal Scoping for TERP Projects



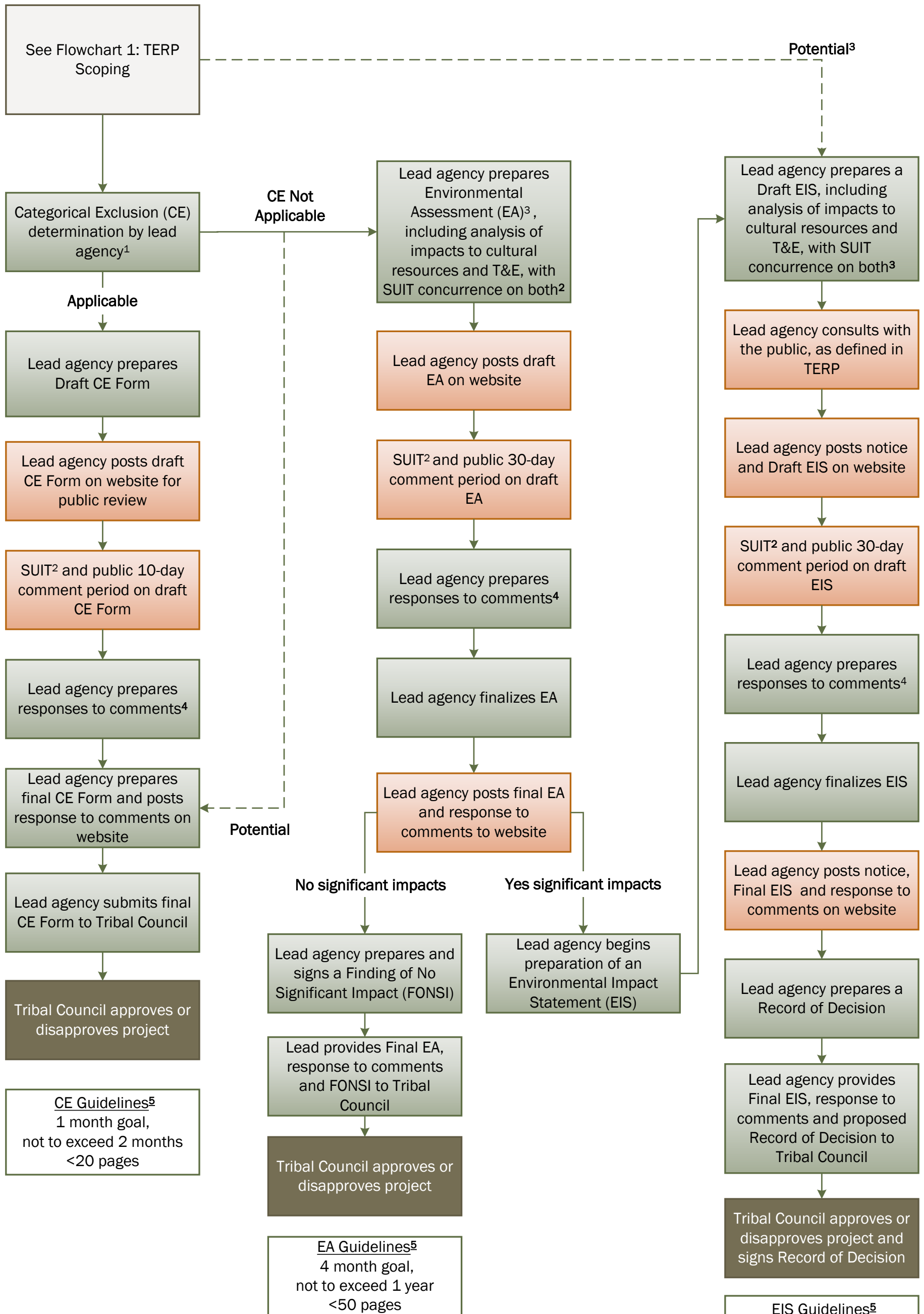
1 Project proponent steps are outlined in red boxes, Southern Ute Indian Tribe (SUIT) steps are in gray boxes, and SUIT or public review steps are in orange boxes.

2 Non-energy SUIT project proponents, like SUIT Utilities Division, do not need Permission to Survey (PTS) on tribal land from DNR. At this step they provide a project description memo with a narrative and map, and go through the Proposed Project Notification (PPN) process with DNR.

3 DNR notifies tribal assignees of the project.

4 Different SUIT departments may be included to comment on the PPN. At a minimum, the Department of Natural Resources, the Culture Department, and the Environmental Programs Division review all PPNs. This is an internal scoping mechanism for the project, to recognize potential issues. All the same parties are invited to participate in the field onsite.

Flowchart 2: Process for TERP Projects



1 Southern Ute Indian Tribe (SUIT) steps are in gray boxes, SUIT and or public review steps are in orange boxes, and Tribal Council's steps are in dark green boxes.

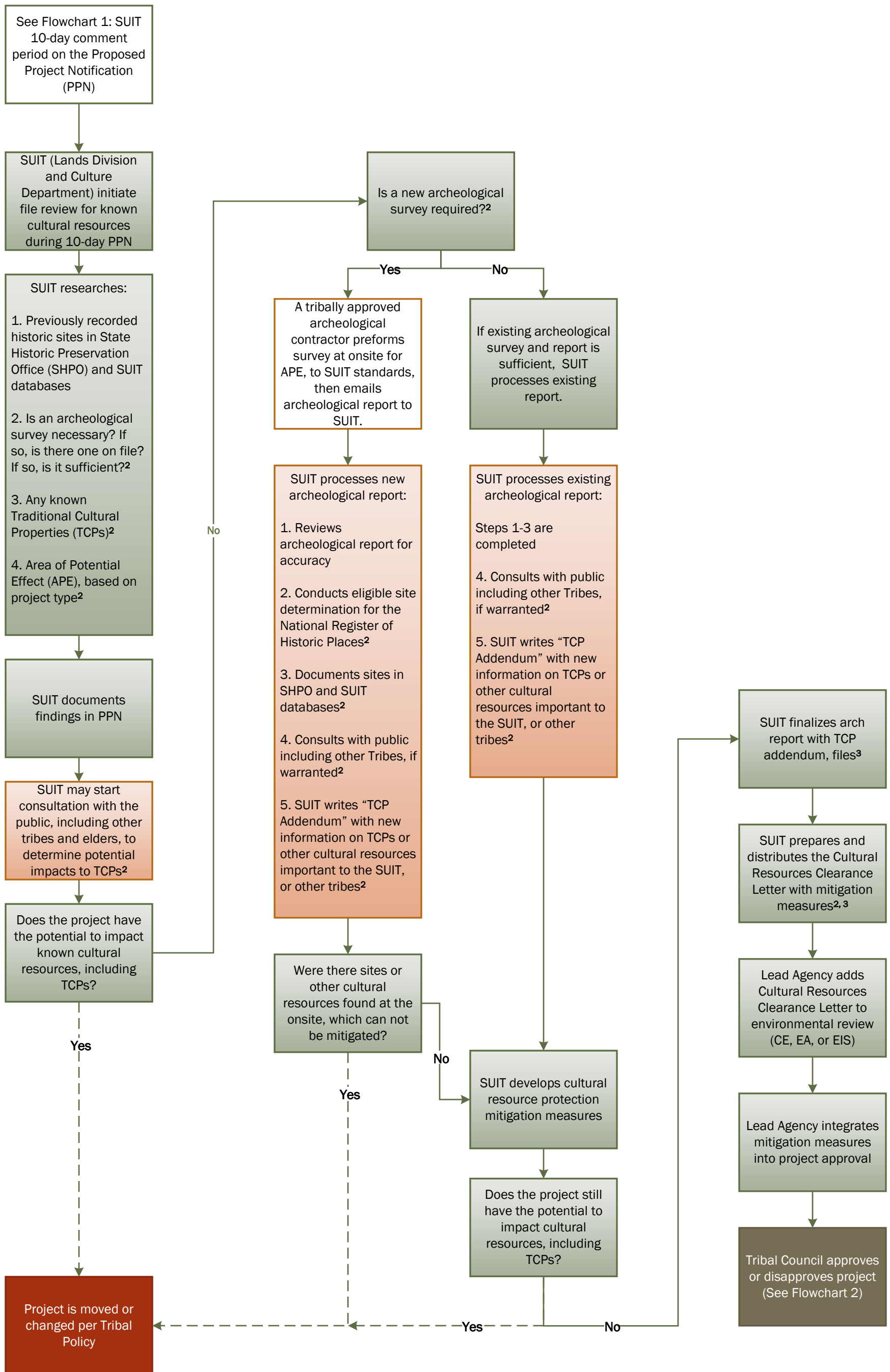
2 Environmental review will consider potential impacts to cultural resources, with concurrence from SUIT Lands Division and Culture Department, and impacts to threatened and endangered (T&E) species, with concurrence from SUIT Department of Natural Resources.

3 The lead agency may skip straight to an EIS level of analysis.

4 The lead agency will coordinate with tribal departments to ensure all comments are incorporated and addressed.

5 Timeframes and page limits are guidelines, and may change depending on the complexity of the project.

Flowchart 3: Cultural Resource Protection for TERP Projects



1 Southern Ute Indian Tribe (SUI) steps are in gray boxes, archeological contractor step is in a clear box with an orange outline, SUI and or public review steps are in orange boxes, and Tribal Council's steps are in dark green boxes.
 2 These are new steps for the Tribe under TERP, and used to be the responsibility of the lead federal agency under the National Historic Preservation Act.
 3 Time goal for processing archeological report and adding TCP addendum: one to two months, depending on complexity of project and cultural resources.