

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

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Santa Fe County
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KATHLEEN VIGIL CLERK OF THE COURT
Gloria Landin

UNION PROTECTIVA DE SANTA FÉ,
Plaintiff,

v.

Case No.: D-101-CV-2021-01373

Mayor ALAN WEBBER, in his official
capacity, and the CITY OF SANTA FE,
Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT OF THE COURT

THIS MATTER came before the Court for trial on September 12, 2024, and September 13, 2024. The Plaintiff, Union Protectiva de Santa Fé, appeared through attorneys Kenneth H. Stalter and Shellie A. Patscheck. The Defendants, Mayor Alan Webber, in his official capacity, and the City of Santa Fe, appeared through attorneys Stan N. Harris, Jamie L. Allen, and Stuart R. Butzier. Having taken evidence and heard argument, THE COURT FINDS, CONCLUDES, AND ORDERS:

FINDINGS OF FACT

1. On December 2, 2021, Plaintiff Union Protectiva de Santa Fé (“Plaintiff”) filed its First Amended Complaint (“FAC”) in this case.
2. In the FAC, Plaintiff asserted that Defendants had violated the New Mexico Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to -8 (1989, as amended through 2004) (“PHSPA”), and related regulations, 4.10.12 NMAC (9/15/89, as amended through 1/1/08). *See* FAC ¶¶ 6, 15-21, 44-45, 60-65, 67-70.
3. In its FAC, Plaintiff asserted that its claims regarding alleged violations of the PHSPA related to three monuments located within the City of Santa Fe: (1) the Soldiers’

Monument Obelisk (“Soldiers’ Monument”); (2) a statue of Don Diego de Vargas (“de Vargas Statue”); and (3) the Kit Carson Obelisk. *See* FAC, ¶¶ 23-25.

4. Located within Santa Fe are two sites that are listed on the National Register of Historic Places (“National Register”): (1) the Santa Fe Plaza (“Plaza”); and, (2) the Santa Fe Historic District (“District”).

5. The Soldiers’ Monument, the de Vargas Statue, and the Kit Carson Obelisk are all located within the District. The Soldiers’ Monument is also situated within the Plaza. The FAC requests that the Court issue an order to “preliminarily and permanently enjoin Defendants from spending any public funds to alter the Santa Fe Plaza or the Santa Fe Historic District except to repair and restore the three monuments.” *See* FAC ¶ 70.

6. In 1966, Congress enacted the National Historic Preservation Act (“NHPA”), Pub. L. No. 89-665, 80 Stat. 915 (1966) (codified as amended at 54 U.S.C. § 300101 *et seq.*), and the NHPA created the National Register.

7. The National Register is a federal listing of properties of such significance to American history, architecture, archaeology, and culture that they have been deemed worthy of preservation.

8. Identifying the significance of a property is required to be listed on the National Register and a listing on the National Register cannot be made without the property being significant.

9. Nominating properties to the National Register requires use of a nomination form created by the National Park Service (“NPS”).

10. All NPS nomination forms contain a section regarding the significance of a property.

11. The Keeper of the National Register (“Keeper”) is a federal official who, after reviewing the nomination form, certifies, approves, and makes the final determination as to exactly what property is listed on the National Register.

12. A completed NPS nomination form describes exactly what the property is that is listed on the National Register.

13. The following facts are established by admissions in the pleadings or by stipulation of counsel:

- A. In a written release issued by the [NPS] on December 19, 1960 (“NPS Release”), the NPS declared numerous sites across the Nation to be eligible for Registered National Historic Landmark status.
- B. In the NPS Release, the NPS listed the various new landmarks under themes and subthemes. Theme “XV” of the Release was entitled “Westward Expansion and Extension of the National Boundaries to the Pacific, 1830-1898.” One of the Subthemes of this Theme was entitled “The Santa Fe Trail.”
- C. Under the “Santa Fe Trail” Subtheme, the NPS Release stated that six sites had been recognized as possessing exceptional value, including “4. Santa Fe (Plaza Area), New Mexico.”
- D. The NPS Release described the “Santa Fe Plaza Area” as follows: “The commercial and social center of the Plaza Area in Santa Fe, in the heart of the capitol of Northern Mexico, may be considered as the end of the Santa Fe Trail. [. . .]”
- E. Through a notice in the Federal Register in 1969, the [NPS] listed the Plaza on the [National Register]. The listing did not identify or describe any particular significance of the Plaza.

- F. On May 7, 1975, the City nominated the Plaza for inclusion on the National Register as a National Historic Landmark. The National Register Landmark Nomination Form (“Landmark Nomination”) was completed on an NPS form for nominating properties to the National Register.
- G. At the top of the Landmark Nomination is the statement “National Historic Landmarks: 6d Westward Expansion 1763-1898, Western Trails and Travelers”.
- H. Under section 8, “Significance,” there is a section entitled “Areas of Significance (Check One or More as Appropriate),” followed by twenty-five (25) separate potential areas of significance that a nominator can check.
- I. The Landmark Nomination contains a section entitled “Statement of Significance,” which states that the Plaza is significant because (1) since 1609, it has always been the social and economic center of the City; (2) in 1821, when Mexico gained independence from Spain, the trade route to Santa Fe from the United States was opened, and the Plaza provided the final goal of the Santa Fe Trail; and (3) in 1846, from the Plaza, General [Kearny] proclaimed the annexation of New Mexico to the United States.
- J. The Landmark Nomination contains a section 7, entitled “Description.” In this section, the Soldiers’ Monument [] is described as “a soldiers’ monument erected after the Civil War,” and as “[a] large memorial to New Mexico’s Civil War dead” The Soldiers’ Monument [] is solely mentioned in this “Description” section of the Landmark Nomination, and not in the “Significance” section of the Nomination. The “Description” section also mentions the presence of “flagstone, walks, and benches, as well as cottonwood trees.”

- K. The Keeper [] attested that the Plaza is a National Historic Landmark on the National Register on January 24, 1979.
- L. Also on May 7, 1975, and on an NPS form substantially identical to the Landmark Nomination, the City nominated the Plaza for inclusion on the National Register as a National Historic Property.
- M. Under “Section 8 Significance,” there is a section entitled “Areas of Significance – Check and Justify Below,” followed by twenty-nine (29) separate potential areas of significance that a nominator can check.
- N. In text identical to the Landmark Nomination, the Property Nomination contains a section entitled “Statement of Significance,” which states that the Plaza is significant because (1) since 1609, it has always been the social and economic center of the City; (2) in 1821, when Mexico gained independence from Spain, the trade route to Santa Fe from the United States was opened, and the Plaza provided the final goal of the Santa Fe Trail; and (3) in 1846, from the Plaza, General [Kearny] proclaimed the annexation of New Mexico to the United States.
- O. In text identical to the Landmark Nomination, the Property Nomination contains a section 7, entitled “Description.” In this section, the Soldiers’ Monument [] is again described as “a soldiers’ monument erected after the Civil War,” and as “[a] large memorial to New Mexico’s Civil War dead” The Soldiers’ Monument [] is solely mentioned in the “Description” section of the Property Nomination, and not in the “Significance” section of the Nomination. The “Description” section also mentions the presence of “flagstone, walks, and benches, as well as cottonwood trees.”

- P. The Keeper [] certified the Plaza as a historic property included in the National Register on September 20, 1983. On March 7, 1973, the City nominated the Santa Fe Historic District (“District”) for inclusion on the National Register (“District Nomination”).
- Q. The Plaza was included in the outer boundaries of the District, and the Plaza is mentioned in the District Nomination. The Soldiers’ Monument [] is not mentioned in the District Nomination.
- R. The District was included in the National Register on July 23, 1973.
- S. The New Mexico State Legislature enacted the [PHSPA] in 1989.
- T. The City of Santa Fe directed creation of the Santa Fe Plaza Cultural Landscape Report (“CLR”), and the City governing body approved the report on March 29, 2006.
- U. The CLR identified the Soldiers’ Monument as [the] “oldest historic constructed element still present in the Plaza today.” According to the CLR, the Soldiers’ Monument commemorates “lives lost by Union troops in the Civil War and Indian battles[,]” and that the monument “became a standard reference for property surveys in Santa Fe.” The CLR also states that the “workmanship” of the Soldiers’ Monument reveals a “high” level of historic integrity and is “associated with the NHL period of significance and the Early Plaza Park period.”
- V. The CLR was created in 2005 and 2006.
- W. [The de Vargas Statue] was placed in Cathedral Park, Santa Fe, in 2007.
- X. The District Nomination did not include the de Vargas Statue, which did not exist at the time the District was listed to the National Register.

- Y. The Kit Carson Obelisk stands in front of the Santiago E. Campos United States Courthouse in Santa Fe.
- Z. One slab of the Soldiers' Monument [] was originally engraved with the words "To the heroes who have fallen in the various battles with the savage Indians of the Territory of New Mexico."
- AA. The sites of the Soldier[s'] Monument [], the de Vargas statue, and the Kit Carson Obelisk are all within the Santa Fe Historic District. The site of the Soldier[s'] Monument [] is also within the Santa Fe Plaza.
- BB. All three monuments are or were located within the City of Santa Fe, County of Santa Fe, State of New Mexico.
- CC. On June 18, 2020, Mayor Webber issued a proclamation of emergency under the City's Emergency Declaration Ordinance ("Proclamation").
- DD. The Proclamation stated, among other things, that "certain monuments are displayed in the City of Santa Fe that depict historic figures and events that involve or depict events causing historic trauma and have led to present-day civil unrest," and that "continued prominent and public exhibition of these monuments, without ongoing community discussion regarding their appropriate treatment and context, perpetuates systemic racism, civil unrest, and may lead to violence."
- EE. As a result, the Proclamation ordered, among other things, that the City Attorney and City Manager shall work with City staff to begin the legal processes for removal of the Soldiers' Monument [] from the Plaza, that the de Vargas Statue was to be removed and placed in a safe location, and that the proper officials with

jurisdiction over the Kit Carson Obelisk be contacted to determine a course of action for removal of that monument.

FF. The Proclamation further called for “[t]he formation of a Truth and Reconciliation Commission to make recommendations to the City regarding the future of the City’s historic statues and monuments”

GG. The Proclamation further called “on all members of the community in Santa Fe to maintain the peace in our city” and to “reject expressions of anger that involve violence or hatred”.

HH. Mayor Webber did not consult or notify the State Historic Preservation Office [(“SHPO”)] and did not consider state laws governing historic preservation prior to issuing the June 18, 2020, Proclamation, nor did he instruct his staff to do so.

II. Defendants did not make any submissions to the [SHPO] in connection with the Mayor’s June 18, 2020, Proclamation.

JJ. The Proclamation expired by law three [] days after it was issued.

KK. In June 2020, the City built a plywood box around the base of the Soldiers’ Monument, using public funds to do so. That October, the City covered the box with cement board, again using public funds. The box remains there today.

LL. Defendants did not make any submissions to the [SHPO] in connection with the placement of the box.

MM. On October 12, 2020, vandals wrapped chains and straps around the [Soldiers’ Monument] and pulled it to the ground. Police arrested and charged several individuals with criminal damage to property.

- NN. Plaintiff's proffered expert, David Rasch, worked in the City Historic Preservation Division from 2003 to 2018. Mr. Rasch has been familiar with the Plaza since he started working at the Division.
- OO. In November 2020 and June 2021, the City placed trees and shrubs in pots and burlap bags around the base of the Soldiers' Monument, using public funds.
- PP. Defendants did not make any submissions to the [SHPO] in connection with the placement of the trees and shrubs.
- QQ. In June 2021, the City placed a sign and a structure to hold the sign on the base of the Soldiers' Monument, using public funds.
- RR. Defendants did not make any submissions to the [SHPO] in connection with the placement of the sign.
- SS. On January 13, 2021, the City's Governing Body unanimously passed Resolution No. 2021-6 ("Resolution") for "Hosting Community Conversations on Santa Fe's Cultures, Histories, Art Reconciliation, and Truth", or "CHART."
- TT. In July 2021, the City's Governing Body contracted with "Artful Life" to lead the CHART process. Artful Life engaged in a year-long process, and in August 2022 produced a final CHART report to the Governing Body. [. . .]
- UU. On March 8, 2023, the City's Governing Body considered at a noticed public meeting a proposed resolution entitled "A Resolution Directing the City Manager to Take Next Steps Based on Some of the Recommendations of the CHART Report [("Proposed Resolution")]." [. . .] Numerous members of the Santa Fe community – including the Plaintiff's President, Virgil Vigil – gave comments relating to the Proposed Resolution. On March 15, 2023, at a noticed special

meeting of the Governing Body, the sponsors of the Proposed Resolution withdrew the Proposed Resolution.

VV. Mayor Webber testified that in the last four [] years people from different parts of City Government have explored options for resolving the conflict around the Soldiers' Monument [], and that to date "nothing has been resolved by anybody."

WW. On or about September 1, 2023, the Kit Carson Obelisk was vandalized by unknown persons.

Parties' Joint Submitted Form of Pretrial Order, Ex. B, filed Aug. 5, 2024 (bracketed text reflecting alterations to original); *see also* Pretrial Order ¶ 4, filed Aug. 6, 2024 (recognizing uncontroverted facts submitted by parties).

14. The Court adopts the uncontroverted facts set forth in Paragraph 13, A-WW.

15. Virgil Vigil is the president of Union Protectiva de Santa Fé. Mr. Vigil grew up in Santa Fe and his family has resided in the area since the 17th century. His family has a tradition of military service, and Mr. Vigil himself was a military aviator with 30 years of service.

16. Union Protectiva was founded in 1915 to aid the Spanish population of Santa Fe. The organization is currently composed of about 350 members. Most of the members have served in the military and have ancestors who served.

17. Among other things, the Union Protectiva is devoted to protecting Spanish history, culture, tradition, and faith. The organization and its members have used the Santa Fe Plaza for related activities, such as rosaries, vespers, and other celebrations. Individual members of the Union have used the Plaza as a gathering place for socializing and for viewing dances or celebrations. Members of the Union Protectiva sit on the banco that surrounds the Soldiers' Monument to partake in the celebrations.

18. In 1867, the New Mexico territorial legislature appropriated funds to build a monument to honor soldiers who fought and died for the United States against the Confederate States in New Mexico during the Civil War. The monument was built and is known as the Soldiers' Monument.

19. Members of the Union Protectiva have ancestors who are among those soldiers who are honored by the Soldiers' Monument. As a military aviator, Mr. Vigil was responsible for transporting wounded soldiers to field hospitals, and this experience impressed upon him personally the importance of honoring fallen soldiers.

20. Historic preservation involves evaluating the aesthetic, cultural, and historic qualities of something to determine its importance to the community.

21. The Santa Fe Plaza originated under the laws of the Indies from King Philip of Spain, which required that all Spanish colonial towns throughout the world have a Plaza at the center. The Santa Fe Plaza was first established in 1609 and has always been the central activity site for the City. Historically, the Plaza was a center of commerce as the end of the Santa Fe Trail and more recently has been the social center of Santa Fe, both for residents and tourists alike. Many groups utilize the Plaza for multiple reasons. Aesthetically, the Plaza is the heart of Santa Fe. The Plaza is a landscape where you can appreciate everything about the City, enjoying its environment and the architecture around it and the activities that go on. All radiating walkways point to the central focus of the Plaza, which is the Soldiers' Monument.

22. The City of Santa Fe directed the creation of the CLR and the City governing body approved the report on March 29, 2006. Cultural landscape reports are commonly used in historic preservation. These reports can be seen as the association of multiple documents into one major document and become "the bible" for the sites they pertain to. The reports are used and relied on

in the field of historic preservation. The reports generally provide all the background information from research about the aesthetic, cultural, and historic information that surround the item of concern.

23. The CLR followed the tenets of historic preservation. The CLR was meant to inform all participants in any projects about the value of all the items on the Plaza. The CLR discusses the historic value, aesthetic value, and cultural value of the Plaza and discusses the connections of those values to particular structures, including the Soldiers' Monument.

24. The Soldiers' Monument is a stone obelisk placed on a stone base in the neoclassical style, with four panels on the base, and is depicted in Exhibit P-10. The top photograph in P-10 depicts the Soldiers' Monument before 2020, and the bottom photograph depicts the Soldiers' Monument after the vandalism of 2020 and activities by the City. The Soldiers' Monument is surrounded by a historic green painted iron fence and a banco. On the south side of the monument is a small wedge-shaped platform which also holds a bronze plaque explaining unrest that occurred in 1973. Aesthetically, the Soldiers' Monument anchors the entire Plaza. The monument's neoclassical style is representative of a nationwide architectural movement in the late 19th century.

25. The Soldiers' Monument was erected in 1867 and the four panels were installed in 1869. The south, east, and west panels on the base of the monument are about the Civil War battles to resist slavery in New Mexico. The north panel was added later and refers to soldiers who "helped the Pueblos remove the marauding nomadic tribes from the region." *See* [9-12-24 Tr. 90]. In 1974, somebody chiseled off the word "savage" which had previously appeared on the north panel.

26. The historic value of the Soldiers' Monument includes the fact that it is the oldest historic structure on the Plaza, and the fact that based on the 1901 patent from the federal

government to the City of Santa Fe, the monument was used as a reference point for the original boundary markers for all properties in Santa Fe.

27. In 1969, the Federal Register listed the Plaza on the National Register following enactment of the NHPA of 1966.

28. The Soldiers' Monument is not mentioned in the nomination form's statement of significance. However, the Soldiers' Monument is mentioned in the description section of the nomination form.

29. The Soldiers' Monument relates to the cultural value of the Plaza in that the panels provide educational information about the Civil War and the Indian Wars. The chiseling off of language from the north panel, having occurred in 1974, is now itself a historic feature.

30. The Soldiers' Monument is significant because of its central location and its use as a landmark for residents and tourists alike. The Soldiers' Monument relates to the broader built environment of the Plaza because the Plaza is open space providing relief from the dense urban setting, and the monument anchors all visual activity around the Plaza towards its center.

31. The CLR demonstrates how the Soldiers' Monument has been the central focus of the Plaza continuously since the monument's construction. This shows that the Soldiers' Monument has had a long period of integrity.

32. Removal of the Soldiers' Monument would impact the historic and aesthetic character of the Plaza by removing the central focus and landmark in the Plaza, impairing the Plaza's integrity. Because the Soldiers' Monument commemorates lost soldiers, removal of the Soldiers' Monument would cause the Plaza to lose that context.

33. On June 18, 2020, Mayor Alan Webber issued the Proclamation of emergency under the City's Emergency Declaration Ordinance.

34. The Proclamation stated, among other things, that “certain monuments are displayed in the City of Santa Fe that depict historic figures and events that involve or depict events causing historic trauma and have led to present-day civil unrest,” and that “continued prominent and public exhibition of these monuments, without ongoing community discussion regarding their appropriate treatment and context, perpetuates systemic racism, civil unrest, and may lead to violence.” *See supra* Paragraph 13, DD.

35. As a result, the Proclamation ordered, among other things, that the City Attorney and City Manager shall work with City staff to begin the legal processes for removal of the Soldiers’ Monument from the Plaza; that the de Vargas Statue be removed from Cathedral Park and placed in a safe location; and that the City Manager and City Attorney contact proper officials with jurisdiction over the Kit Carson Obelisk to determine a course of action for removal of that monument. *See supra* Paragraph 13, EE.

36. The Proclamation expired by operation of law three days after it was issued.

37. In June 2020, the City encased the base of the Soldiers’ Monument, which remained on site, in a protective box. The City used public funds for the construction of the box.

38. Several months after the expiration of the Proclamation, in October 2020, a riot occurred on the Plaza in which vandals wrapped chains and straps around the Soldiers’ Monument and the top portion of the Soldiers’ Monument was toppled.

39. Immediately after the riot on the Plaza in October 2020, the City collected the broken pieces of the Soldiers’ Monument and protected them. After the vandalism, the City built a new box, using city funds. The City did not notify or consult with the SHPO regarding the box.

40. In 2021, the City placed a large educational panel on the south side of the box. The City used public funds in the placement of the sign. The City did not consult with or notify the SHPO prior to the placement of the sign.

41. The City removed the bronze plaque from the banco. Because the plaque was installed in 1973, it had become a historic element of the Plaza.

42. In 2020 and 2021, the City placed shrubs around the base of the monument. This was done using public funds. The City did not consult with or notify the SHPO prior to the placement of the shrubs.

43. Taken together, these changes have had a substantial negative impact on the history, culture, and aesthetics of the Santa Fe Plaza. The changes interfere with the appreciation of the history that the Soldiers' Monument represents, impair the visibility of the oldest structure on the Plaza, and overall, fail to support the preservation of one of the Plaza's significant features, the Soldiers' Monument.

44. Mayor Webber has testified that in the last four years, people from different parts of City government have explored options for resolving the conflict around the Soldiers' Monument, and that to date, nothing has been resolved by anybody.

45. In 2024, the City adopted a resolution regarding the de Vargas Statue, the outcome of which is that the Statue has been placed outside the New Mexico History Museum, between it and the Palace of the Governors, with historical documentation and free access to anyone who wants to see it.

46. The de Vargas Statue was placed in Cathedral Park in Santa Fe in 2007. Cathedral Park is within the exterior boundaries of the District. The de Vargas Statue is not a part of the

District because it did not exist at the time of the listing of the District to the National Register and the de Vargas Statue had not become a historic element of the Plaza.

47. On or about September 1, 2023, unknown persons vandalized the Kit Carson Obelisk.

48. The City has no program or project regarding the Kit Carson Obelisk.

49. The Kit Carson Obelisk stands in front of the Santiago E. Campos United States Courthouse in Santa Fe. The site of the Kit Carson Obelisk is within the District. However, it is unrefuted that the Kit Carson Obelisk is located on federal land under the jurisdiction of the federal government and is owned by the federal government.

CONCLUSIONS OF LAW

50. Section 18-8-7 of the PHSPA provides that:

No public funds of the state or any of its agencies or political subdivisions shall be spent on any program or project that requires the use of any portion of or any land from a significant prehistoric or historic site unless there is no feasible and prudent alternative to such use, and unless the program or project includes all possible planning to preserve and protect and to minimize harm to the significant prehistoric or historic site resulting from such use. The provisions of this section may be enforced by an action for injunction or other appropriate relief in a court of competent jurisdiction.

NMSA 1978, § 18-8-7 (1989).

51. “As used in the [PHSPA]: . . . (C) ‘significant prehistoric or historic sites’ means properties listed in the state register of cultural properties or national register of historic places.”

NMSA 1978, § 18-8-3 (2004).

52. The PHSPA directs the state historic preservation officer to “issue regulations for the implementation of the [PHSPA].” NMSA 1978, § 18-8-8 (1989). The SHPO has issued regulations at 4.10.12 NMAC (9/15/89, as amended through 1/1/08).

53. The regulations establish a number of definitions at 4.10.12.7 NMAC (1/1/08), including the following:

[. . .]

B. "Stabilization" is the act or process of securing a historic property against natural change, loss or deterioration of the existing fabric.

C. "Restoration" is the act or process of accurately recovering the form and details of a historic property and its setting.

D. "Protection" is the act or process of securing a historic property against change, loss, deterioration, theft, vandalism or other adverse effect caused by a human agent.

E. "Significant prehistoric or historic site" is a historic or prehistoric property, district, site, structure or object listed in the state register of cultural properties or national register of historic places, or property contributing to a historic district, and includes those lands within the boundaries of the property, site or district.

F. "State of New Mexico" is any state agency or political subdivision of the state, including but not limited to cities and counties.

G. "Entity" is any political subdivision of the state.

[. . .]

I. "Division" is the historic preservation division, office of cultural affairs.

[. . .]

O. "Use" is an adverse effect on a significant historic or prehistoric site or lands of that site, including but not limited to partial or complete physical alteration or destruction; isolation of the site from its historic setting; the introduction of physical, audible, visual or atmospheric elements that substantially impair the historic character or significance of the site or substantially diminish the aesthetic value of the site; or the acquisition or taking of a historic or prehistoric site resulting in or designed to result in such alteration, destruction, isolation or introduction of elements that may alter the site. Ordinary maintenance or repair, including code work, which makes no visible alteration to the site and results in no substantial[] loss of the historic fabric; installation or upgrade of services, such as electricity and water, which makes no visible alteration to the site and results in no substantial loss of the historic fabric; or emergency repair or stabilization of a significant site, shall not be considered a use within the scope of this definition.

P. "Program" is a course of action or series of actions supported by public funds.

Q. "Project" is an individual action or segment of a program.

[. . .]

S. A "prudent alternative" is any alternative not rendered impossible by truly unusual factors present in a particular case, or by costs or community disruption likely to reach extraordinary magnitudes, or attended by unique problems.

T. A "feasible alternative" is an alternative that may be built as a matter of sound engineering.

54. The regulations further require that:

Whenever an entity proposes to spend public funds on any program or project that may require the use of or any portion of or any land from a significant prehistoric or historic site, that entity shall, at the earliest practicable stage in planning the program or project, make a determination that there is no prudent and feasible alternative to such use. [. . .] This showing shall be arrived at in the following manner:

A. At an early stage in the development of a proposal to carry out a program or project that may use land from a significant prehistoric or historic site, the entity shall submit an appropriately substantial written and graphic description of the proposed program or project and a map showing the area of impact of the proposed program or project to the division, and shall request the determination of the division as to whether the program or project will use a significant prehistoric or historic site. [. . .]

B. If the SHPO determines that the proposed program or project will use a significant prehistoric or historic site, the entity shall, at an early stage in the planning for that program or project, hold at least one public hearing, advertised not less than thirty days in advance of such hearing. [. . .] The entity shall give direct and timely written notice of such hearing to the SHPO. [. . .]

[. . .]

D. The entity, on the basis of testimony received in the hearing and upon its own initiative and responsibility shall document alternatives to the proposed use. [. . .]

E. It shall be the affirmative responsibility of the entity either to determine that there is no prudent and feasible alternative to a proposed program or project or to select the alternative to a proposed program or project which causes the least harm to any significant prehistoric or historic site or sites. The entity shall issue this determination in the form of a written record of decision to all interested parties, including direct notice to the division.

F. It shall be the affirmative responsibility of the SHPO to respond to the record of decision and to concur with or to dissent from its conclusions within forty-five days of receipt of the record. The SHPO shall state in writing his finding that there is or is not a prudent and feasible alternative to the proposed program or project, or that the alternative causing the least harm to any significant prehistoric or historic site or sites has or has not been selected, and that all possible planning to minimize harm to a significant prehistoric or historic site or sites has or has not been carried out as further set forth in 4.10.12.12 NMAC below.

[. . .]

4.10.12.11 NMAC (1/1/08).

55. Regulation 4.10.12.12 NMAC (1/1/08) “applies either when no prudent or feasible alternative is found which will avoid use of a significant prehistoric or historic site or sites, or when more than one alternative which will affect a significant prehistoric or historic site or sites

is found. In either case, a plan to minimize harm to the affected significant prehistoric or historic site or sites shall be incorporated as a separate section of the record of decision described in 4.10.12.11 NMAC[.]”

56. “[W]hen . . . the governing statute is silent regarding who may bring a statutorily recognized action to require a public agency to comply with state law, one who is ‘injured’ by the allegedly unlawful conduct ordinarily may bring suit.” *Nat’l Trust for Historic Pres. v. City of Albuquerque*, 1994-NMCA-057, ¶ 12, 117 N.M. 590. An organization has standing to seek injunctive relief where the organization’s members “use, enjoy, derive benefit from, and have a substantial interest in protecting and preserving the character and integrity of” a historic site. *Id.* ¶ 13 (citation omitted).

57. “[I]f a public agency is expending funds in violation of Section 18-8-7, the remedy is to bring an action in court. In such an action the plaintiff has the burden of persuasion.” *Id.* ¶ 18.

58. “To obtain a preliminary injunction, a plaintiff must show that (1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public’s interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.” *Id.* ¶ 21 (citation omitted).

59. “[W]e follow federal law in paraphrasing the requirements of Section 18-8-7. First, a project may not ‘use’ a protected site at all if there is a ‘feasible and prudent alternative’ which involves no use of the site. Second, if the project surmounts the first hurdle (thereby permitting some use of the site), the agency must plan to minimize the project’s harm to the site.” *Id.* ¶ 24.

60. Here, the Court finds and concludes that Plaintiff has established its members “use, enjoy, derive benefit from, and have a substantial interest in protecting and preserving the character

and integrity of” the Soldiers’ Monument, the Plaza, and the District. *Nat’l Trust for Historic Pres.*, 1994-NMCA-057, ¶ 13 (citation omitted).

61. Further, the Court finds and concludes that Plaintiff has established that the Soldiers’ Monument is an integral part of the aesthetic, character, and history of the Plaza and the District, both of which constitute significant historic sites within the meaning of Section 18-8-3(C) and 4.10.12.7(E) NMAC (1/1/08). In other words, the Soldiers’ Monument is an inextricably interconnected component of both the Plaza and the District. As such, the Court finds and concludes that the Prehistoric and Historic Sites Preservation Act and related regulations apply to the Soldiers’ Monument.

62. Nonetheless, the Court finds and concludes that Plaintiff has failed to establish that the de Vargas Statue and the Kit Carson Obelisk are inextricably interconnected components of or integral to the Plaza or the District. Therefore, the Court does not grant any relief or offer further analysis with respect to either the de Vargas Statue or the Kit Carson Obelisk.

63. With respect to the Soldiers’ Monument, it is unrefuted that Mayor Webber issued the Proclamation without making any submissions to the SHPO. *See supra* Paragraph 13, CC-II. Further, it is unrefuted that—without making any submissions to the SHPO—the City of Santa Fe: (a) constructed and installed a box around the Soldiers’ Monument in June 2020 and October 2020 using public funds; (b) placed trees and shrubs in pots and burlap bags around the base of the Soldiers’ Monument in November 2020 and June 2021 using public funds; and, (c) placed a sign and a structure to hold the sign on the base of the Soldiers’ Monument using public funds. *See supra* Paragraph 13, KK-RR.

64. The Court finds and concludes that the identified actions of Mayor Webber and the City of Santa Fe vis-à-vis the Soldiers’ Monument constitute a “program” and “project” entailing

the “use” of the significant historic sites of the Plaza and the District within the meaning of Section 18-8-7 and 4.10.12.7(O)-(Q) NMAC (1/1/08). Further, the Court finds and concludes that these actions—supported by public funds—brought about an adverse effect on those sites by way of: (a) partially physically altering the sites; and, (b) introducing physical and visual elements that substantially impair the historic character or significance of the sites and substantially diminish the aesthetic value of the sites. *See* 4.10.12.7(O) NMAC (1/1/08). Moreover, the Court finds and concludes that the identified actions of Mayor Webber and the City of Santa Fe do not constitute “[o]rdinary maintenance or repair,” “installation or upgrade of services,” or “emergency repair or stabilization” of the Soldiers’ Monument, the Plaza, or the District. *See id.*

65. Additionally, the Court finds and concludes that Mayor Webber and the City of Santa Fe violated Section 18-8-7 and 4.10.12.11 NMAC (1/1/08) by engaging in the identified actions constituting use of the Soldiers’ Monument, the Plaza, and the District. The Proclamation concerning, and alterations to, these sites were not submitted to the SHPO for review. [9-12-24 Tr. 111]; *supra* Paragraph 13, II, LL, PP, RR. The City of Santa Fe did not consider any alternatives to the actions ordered in the Proclamation. The City of Santa Fe did not engage in any historic preservation planning or analysis related to these actions, and did not create any documents in any attempt to comply with the PHSPA or related regulations with respect to the Soldiers’ Monument, the Plaza, or the District.

ENTRY OF DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

66. Therefore, the Court enters declaratory judgment and adjudges that Mayor Webber violated Section 18-8-7 and 4.10.12.11 NMAC (1/1/08) by issuing the Proclamation. The Court further enters declaratory judgment and adjudges that the City of Santa Fe violated Section 18-8-7 and 4.10.12.11 NMAC (1/1/08) by: (a) constructing and installing the box around the Soldiers’

Monument; (b) removing plaques or panels connected to the Soldiers' Monument; (c) placing shrubs, trees, pots, and bags around the base of the Soldier's Monument; and, (d) placing a sign in front of the Soldiers' Monument.

67. Further, the Court enters the following injunctive relief to effectuate the Court's judgment. The City of Santa Fe shall, within thirty (30) days from entry of this order: (a) deconstruct and remove the box, and every element thereof, that currently covers and obscures nearly every component of the Soldiers' Monument; (b) remove the sign in front of the Soldiers' Monument; and, (c) remove any shrub, tree, pot, bag, or any other purposefully obscuring item or feature from or near the base of the Soldiers' Monument.

68. Thereafter, the City of Santa Fe shall either:

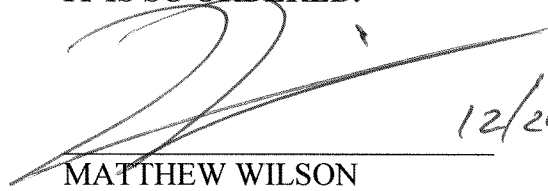
A. Within one hundred eighty (180) days from entry of this order, restore the Soldiers' Monument to a like or similar condition to that depicted in the "pre-2020 conditions" photograph set forth in Plaintiff's Exhibit 10, thereby constituting permissible maintenance, repair, or stabilization pursuant to 4.10.12.7(O) NMAC (1/1/08); or,

B. Take no further action with respect to the Soldiers' Monument unless: (a) such action does not constitute a "use" within the scope of 4.10.12.7(O) NMAC (1/1/08); or, (b) the City of Santa Fe is acting in accordance with the Prehistoric and Historic Sites Preservation Act and its related regulations 4.10.12 NMAC (9/15/89, as amended through 1/1/08).

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that declaratory judgment and injunctive relief is hereby entered in favor of Plaintiff Union Protectoría de Santa Fé.

IT IS SO ORDERED.


12/20/24
MATTHEW WILSON
DISTRICT COURT JUDGE
DIVISION IX
4DPL

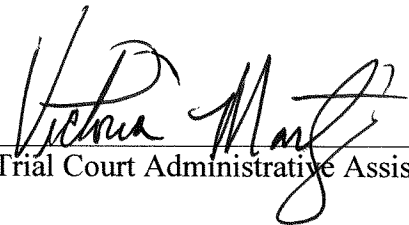
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

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