

APPENDIX G

NATIONAL HISTORIC PRESERVATION ACT AND ENDANGERED SPECIES ACT CONSULTATIONS

G1.0 BACKGROUND

The National Historic Preservation Act requires federal agencies to consider the effects of actions licensed by Federal agencies on properties included in or eligible for the *National Register of Historic Places*. The reclamation of a mill could impact historic properties directly (e.g., destruction or alteration of the integrity of a property) or indirectly (e.g., prohibiting access or increasing the potential for vandalism). Similarly, the Endangered Species Act requires that federal agencies consult with the U.S. Fish and Wildlife Service on any Federal action that could impact endangered species or their habitats. This appendix presents guidance to the U.S. Nuclear Regulatory Commission (NRC) staff on how to fulfill the NRC obligations under the National Historic Preservation and Endangered Species Acts.

G2.0 NATIONAL HISTORIC PRESERVATION ACT

G2.1 Review Procedures

The reviewer should ensure that those historic and cultural resources that could be impacted by proposed mill reclamation have been identified, located, and described in sufficient detail to serve as the basis for subsequent analysis and assessment of these impacts. Historic and cultural resources include districts, sites, buildings, structures, or objects of historical, archaeological, architectural, or cultural significance. The staff should review the results of any surveys conducted by the applicant, the location and significance of any properties that are listed in or eligible for inclusion in the *National Register of Historic Places (National Register)* as a historic place, and any additional information pertaining to the identification and description of historic properties that could be impacted by reclamation of the proposed mill. The descriptions to be examined by this review should be of sufficient detail to permit staff assessment and evaluation of specific impacts to historic and cultural resources from reclamation of the mill.

Regulatory criteria for the review of the historic properties that could be impacted by proposed reclamation of mills are based on the relevant requirements of the following:

- 36 CFR Part 800 defines the process by which a Federal agency conforms to the requirements under Sections 106 and 110 of the National Historic Preservation Act to ensure that agency-licensed undertakings consider the effects of the undertaking on historic properties included in or eligible for the *National Register*. Under this regulation, the Federal agency is required to identify and evaluate all historic properties in the project areas and take measures to mitigate adverse affects.
- 36 CFR Part 63 contains guidance by which historic properties are evaluated and determined eligible for listing on the *National Register*.

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The reviewer should take the following steps to obtain the necessary information:

- (1) Contact the appropriate State historic preservation officer to determine if there are any historic or cultural properties near the proposed mill site. In areas of Indian tribal land, the Indian tribal agencies may act as the State historic preservation officer. State historic preservation officer and tribal historic preservation officer lists are found on the Advisory Council on Historic Preservation Internet Home Page (<http://www.achp.gov>).
 - (a) NRC can authorize the applicant to initiate consultation with the State historic preservation officer or tribal historic preservation officer, but remains legally responsible for all findings. Notify the State historic preservation officer/tribal historic preservation officer when an applicant is so authorized.
 - (b) Make initial contact by phone and invite the State historic preservation officer to participate in the site visit. Then request information from the State historic preservation officer by letter.
 - (c) If the State historic preservation officer has comments or information that add to or amplify information given to the applicant, request that the State historic preservation officer forward, by letter to the staff, these additional comments.
- (2) Contact the Archeology and Ethnography Program of the National Park Service, U.S. Department of Interior (<http://www.cr.nps.gov/aad/>). This office has expertise in the area of historic and cultural preservation and is staffed with professionals who can assist in the environmental review and in analyzing the results of applicant surveys and investigations.
- (3) In consultation with the State historic preservation officer, apply the *National Register* criteria outlined by the U.S. Department of the Interior (National Park Service, 1990, 1991) to all identified historic properties that are on the facility site or that will be directly affected by facility construction. If a property appears to meet the criteria, or if it is questionable whether the criteria are met, the staff should request, in writing, an opinion from the U.S. Department of the Interior about the property eligibility for inclusion in the *National Register*. The request for determination of eligibility should be sent directly to the Keeper of the National Register of Historic Places, National Park Service, U.S. Department of the Interior, Washington, DC, 20013-7127.
- (4) Have the National Park Service–Archeology and Ethnography Program staff assist in defining the requirements of additional surveys and investigations that the staff decides should be completed by the applicant and in reviewing the results of these surveys.
- (5) Consult the *National Register* to verify the list of *National Register* properties presented by the licensee. Since a proposed facility can have a visual or audible effect on historic and cultural resources that are located some distance from the proposed facility site, all *National Register* properties within the area of potential effects of the proposed facility or off-site areas should be identified.

- (6) Discuss with the State historic preservation officer and, where appropriate, the State archaeologist and State historian, the information presented to the applicant by the State historic preservation officer. The State historic preservation officer can alert the staff to relevant State and local laws, orders, ordinances, or regulations aimed at the preservation of cultural resources within the licensee State. Discuss with the State historic preservation officer any organizations or individuals that might be able to assist in identifying and locating archaeological and historic resources (e.g., university, Indian tribal archaeological and historical staffs, and regional U.S. Bureau of Land Management archaeologists).
- (7) To discourage property vandalism and scavenging, it is necessary to present information on location of artifacts to the State historic preservation officer in a confidential manner. Summary information, which does not include site-specific information, could be included in the licensee and NRC staff documentation.
- (8) Contact the Advisory Council on Historic Preservation if guidance is needed, if there are substantial impacts on important properties, in the event of a disagreement, or if there are issues of concern to Indian tribes.

For license renewals and amendment applications, Appendix A to this standard review plan provides guidance for examining facility operations and the approach that should be used in evaluating amendments and renewal applications.

G2.2 Acceptance Criteria

The kinds of data and information needed will be affected by site- and facility-specific factors and the degree of detail should be modified according to the anticipated magnitude of the potential impact. Guidance can be found on the National Park Service Internet Home Page at <http://www.cr.nps.gov/nr/nrpubs.html> and in NUREG-1748 (NRC, 2001). The licensee should present the following data or information:

- (1) A detailed description of any archaeological or historical surveys of the proposed site, including the following:
 - (a) The physical extent of the survey: If the entire site was not surveyed, the basis for selecting the area to be surveyed.
 - (b) A brief description of the survey techniques used and the reason for the selection of the survey techniques used.
 - (c) The qualifications of the surveyors.
 - (d) The findings of the survey in sufficient detail to permit a subsequent independent assessment of the impact of the proposed project on archaeological and historic resources.
- (2) The results of consultation with Federal, State, local, and affected Indian tribal agencies.

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- (3) The comments of any organizations contacted by the licensee to locate and assess archaeological and historic resources located on or near the proposed mill site.
- (4) A description of any historic property within the area of potential effects of the mill that are in or have been determined eligible for inclusion in the *National Register* or that are included in state or local registers or inventories of historic and cultural resources.
- (5) A map indicating the location of all identified historic landmarks and historic places with respect to the location of facilities such as buildings, new roads, well fields, pipelines, surface impoundments, and utilities (not to be made public).
- (6) A license condition prohibiting work if cultural artifacts are found in locations other than those already identified.
- (7) The likely impact of the presence of new roads, pipelines, or other utilities on historic and cultural resources.
- (8) A rating of the aesthetic and scenic quality of the site in accordance with the U.S. Bureau of Land Management Visual Resource Management System (U.S. Bureau of Land Management, 1984, 1986a,b).
- (9) The following information should usually be briefly described in the environmental assessment:
 - (a) Historic properties listed in or eligible for inclusion in the *National Register*. Any resource considered to be eligible for the *National Register* should have concurrence from the appropriate state historic preservation officer.
 - (b) Historic properties included in state or local registers or inventories.
 - (c) Any additional important historic or cultural properties.
 - (d) The efforts to locate and identify previously recorded archaeological and historic sites.
 - (e) The overall results and adequacy of any surveys (archival or field) that were conducted by the applicant.
 - (f) A list of organizations and individuals contacted by the applicant or the NRC staff who provided significant information concerning the location of historic and cultural properties.

G2.3 Evaluation Findings

If the staff review results in the acceptance of the characterization of the historic and cultural resources, the following conclusions may be presented in the environmental assessment.

The staff has completed its review of the site characterization information concerned with historic and cultural resources near the _____ uranium mill facility. This review included an evaluation using the review procedures and the acceptance criteria outlined in Sections 2.1 and 2.2 of Appendix G of NUREG-1620. The licensee has acceptably described the historic and cultural resources near the site. A listing of all nearby areas and properties included or eligible for inclusion in the *National Register of Historic Places* is provided. A map indicates where all historic and cultural resources are located with respect to facilities. A record of the investigation of places and properties with historic and cultural significance, which follows guidance equivalent to that of the National Park Service, is provided. Contact with local tribal authorities is acceptably documented. A letter from the State historic preservation officer addressing any issues related to the properties that might be affected by the reclamation is included. The licensee has acceptably demonstrated that the State historic preservation officer and tribal authorities agree with the planned protection from, or determination of lack of conflict with, facilities and activities and with any places of importance to the State, Federal, or tribal authorities. The licensee has acceptably rated the aesthetic and scenic quality of the site in accordance with the U.S. Bureau of Land Management Visual Resource Inventory and Evaluation System.

On the basis of the information presented in the application, and the detailed review conducted of the characterization of historic and cultural resources near the _____ uranium mill facility, the staff concludes that the information is acceptable and is in compliance with 10 CFR 51.45, which requires a description of the affected environment containing sufficient data to aid the Commission in its conduct of an independent analysis.

G2.4 References

10 CFR 51.45, "Environmental report."

36 CFR Part 63, "Determination of Eligibility for Inclusion in the National Register of Historic Places."

36 CFR Part 800, "Protection of Historic and Cultural Properties."

National Historic Preservation Act, as amended. 16 USC 470 *et seq.*

National Park Service. "How to Apply the National Register Criteria for Evaluation." *National Register*. Bulletin No. 15. Washington, DC: U.S. Department of the Interior. 1991.

_____. "Guidelines for Evaluating and Documenting Traditional Cultural Properties." *National Register*. Bulletin No. 38. Washington, DC: U.S. Department of the Interior. 1990.

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———. “Guidelines for Local Surveys: A Basis for Preservation Planning.” *National Register*. Bulletin No. 24. Washington, DC: U.S. Department of the Interior. 1985.

NRC. NUREG-1748, “Environmental Review Guidance for Licensing Actions Associated with NMSS Programs.” Draft. Washington, DC: NRC. 2001.

U.S. Bureau of Land Management. “Visual Resource Inventory.” BLM Report H-8410-1. 1986a.

———. “Visual Resource Contrast Rating.” BLM Report H-8431-1. 1986b.

———. “Visual Resource Management.” BLM Report 8500. 1984.

U.S. Department of the Interior. “Archeology and Historic Preservation; Secretary of the Interior’s Standards and Guidelines.” 48 FR 44716. pp. 44,716-44,742. 1983.

G3.0 ENDANGERED SPECIES ACT

G3.1 Review Procedures

Federal agencies must determine if any proposed actions could impact endangered species or their habitats. For uranium mills, the NRC staff should take into consideration impacts resulting from excavation of clay used in constructing radon barriers or procurement of rocks used in riprap. Other surface reclamation work, such as the cleanup of windblown tailings, has the potential to impact endangered animals or plants. Also, the staff should review the processing of any alternate concentration limit application if the proposed site is located on or near surface water that contains endangered animal or plant species.

Procedures for conducting consultations with the U.S. Fish and Wildlife Service are contained in the endangered species consultation handbook (U.S. Fish and Wildlife Service/National Marine Fisheries Service, 1998). The reviewer analysis should consist of the following steps:

- (1) Contact the U.S. Fish and Wildlife Service regional office or field office to obtain the list of threatened or endangered plant and animal species that may be present near the site. The attached table indicates the States in each U.S. Fish and Wildlife Service regional office and provides contact information.
- (2) The licensee may request the species list; however, the NRC must formally designate the licensee in writing (U.S. Fish and Wildlife Service/National Marine Fisheries Service, 1998, pp. 2-13).
- (3) If there may be endangered or threatened animal or plant species on or near the site, the reviewer should discuss the proposed action with the U.S. Fish and Wildlife Service and may need to ask the licensee to perform a survey and a biological assessment

(50 CFR 402.12) to evaluate the potential effects of the action on threatened and endangered species. Either the NRC or the licensee can prepare the biological assessment (U.S. Fish and Wildlife Service/National Marine Fisheries Service, 1998, pp. 3–11).

- (4) Each State should be consulted about its own procedures for considering impacts to state-listed species.

G3.2 Acceptance Criteria

Consultations on identifying threatened and endangered species under the Endangered Species Act of 1973, as amended, are acceptable if the following criteria are met:

- (1) The environmental impact assessment provides sufficient information to ensure that the licensing action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of the habitat of such species. The demonstration of compliance with this objective requires consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service. The U.S. Fish and Wildlife Service will coordinate with the National Marine Fisheries Service.
- (2) The licensee provides adequate discussion of the status of compliance with applicable permits, licenses and other environmental requirements that have been imposed by Federal agencies.
- (3) There is adequate information on interagency cooperation and consultations with Federal, State, and local agencies with regard to the Endangered Species Act.

G3.3 Evaluation Findings

If staff review results in acceptance of compliance with the Endangered Species Act, the following conclusions may be presented in the environmental assessment:

The staff has completed its review of the site characterization information concerned with the threatened and endangered species near the _____ uranium mill facility. This review included an evaluation using review procedures and acceptance criteria outlined in Sections 3.1 and 3.2 of Appendix G of NUREG–1620. The licensee has acceptably described the presence of threatened and endangered species near the site. Consultations with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service on threatened and endangered species were conducted and are documented in an acceptable manner. Any impacts on these species and their habitats have been identified, and mitigation measures necessary to avoid adverse impacts have been described.

On the basis of the information presented in the application, and the detailed review conducted of the characterization of threatened and endangered species near the _____ uranium mill facility, the staff concludes that the information is acceptable and

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is in compliance with 10 CFR 51.45, which requires a description of the affected environment containing sufficient data to aid the Commission in its conduct of an independent analysis.

G3.4 References

10 CFR 51.45, "Environmental Report."

40 CFR 1502.25, "Environmental Review and Consultation Requirements."

50 CFR Part 402, "Interagency Cooperation-Endangered Species Act of 1973, as Amended."

Endangered Species Act of 1973, as amended, 16 USC 1531 *et seq.*

U.S. Fish and Wildlife Service/National Marine Fisheries Service. "Endangered Species Consultation Handbook, Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act." Washington, DC: U.S. Fish and Wildlife Service/National Marine Fisheries Service. 1998.

U.S. Fish and Wildlife Service Endangered Species Program Contacts

Washington, DC Office

U.S. Fish and Wildlife Service
Division of Endangered Species
Mail Stop 420ARLSQ
1849 C St., N.W., Washington, DC 20240
<http://www.fws.gov>

Region One (CA, HI, ID, NV, OR, WA)

Chief, Division of Endangered Species
Eastside Federal Complex, 911 NE 11th Ave, Portland, OR 97232
<http://pacific.fws.gov>
Contact: Call field office

Region Two (AZ, NM, OK, TX)

Chief, Division of Endangered Species
P.O. Box 1306, Albuquerque, NM 87103
<http://southwest.fws.gov>
Contact: Species list on Internet for each county
Call field supervisor if there are questions

Region Three (IA, IL, IN, MI, MN, MO, OH, WI)

Chief, Ecological Services Operations
Federal Building, Ft. Snelling, Twin Cities, MN 55111
<http://midwest.fws.gov>
Contact: Species list on Internet by county, (except Missouri)
Call field supervisor if there are questions or if the site is in Missouri

Region Four (AL, AR, FL, GA, KY, LA, MS, NC, PR, SC, TN, U.S. VI)

Programmatic Assistant
Regional Director for Ecological Services
1875 Century Blvd., Suite 200, Atlanta, GA 30345
<http://southeast.fws.gov>
Contact: Letter to Programmatic Assistant

Region Five (CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV)

Chief, Division of Endangered Species
300 Westgate Center Drive, Hadley, MA 01035
<http://northeast.fws.gov>
Contact: Call field office

Region Six (CO, KS, MT, NE, ND, SD, UT, WY)

Division of Endangered Species
P.O. Box 25486, Denver Federal Center, Denver, CO 80225
<http://mountain-prairie.fws.gov>
Contact: Call field office

Region Seven (AK)

Division of Endangered Species
1011 E. Tudor Rd., Anchorage, AK 99503
<http://alaska.fws.gov>
Contact: Letter to Division of Endangered Species