



Department of Energy
Office of Civilian Radioactive Waste Management
Office of Repository Development
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QA: N/A
Project No. WM-00011

JAN 25 2005

OVERNIGHT MAIL

ATTN: Document Control Desk
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DRAFT YUCCA MOUNTAIN PROJECT (YMP) PROGRAMMATIC AGREEMENT (PA)

As requested by Melanie C. Wong of your staff, enclosed for your information is a courtesy copy of the draft YMP PA between the U.S. Department of Energy, the State Historic Preservation Office/Nevada (SHPO), and the Advisory Council on Historic Preservation (ACHP). The PA will establish the process for management of the historic properties and cultural resources that may be affected by YMP activities.

We have distributed this draft PA to chairpersons and representatives of Native American Tribes with cultural or historic ties to the Yucca Mountain area for review and requested their comments by March 31, 2005. The draft PA will be revised, as appropriate, based on their comments and on previously submitted comments from the SHPO and the ACHP. The final PA will then be distributed for party signature.

There are no new regulatory commitments in the body or the enclosure to this letter. If you have questions regarding the PA, please contact M. Lee Bishop, our Cultural Resources Manager in the Office of Facility Operations at (702) 794-5558 or e-mail lee_bishop@ymp.gov, or Timothy C. Gunter of my staff at (702) 794-1343 or e-mail timothy_gunter@ymp.gov.


Joseph D. Ziegler, Director
Office of License Application and Strategy

OLA&S:TCG-0563

Enclosure:
Draft Programmatic Agreement,
dated March 24, 2004

NMSSD7

JAN 25 2005

cc w/encl:

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**PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF ENERGY'S
OFFICE OF CIVILIAN RADIOLOGICAL WASTE MANAGEMENT,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE
NEVADA STATE OFFICE OF HISTORIC PRESERVATION
FOR DEVELOPMENT OF A
NUCLEAR WASTE DEEP GEOLOGIC REPOSITORY
AT YUCCA MOUNTAIN, NEVADA
*DRAFT - 3/24/04***

WHEREAS, Congress made the United States Department of Energy (DOE) responsible for locating, building, and operating an underground facility for the disposal of spent nuclear fuel and high-level radioactive waste; and

WHEREAS, on July 23, 2002, the President signed into law (Pub. L. 107-200) a joint resolution of the U.S. House of Representatives and the U.S. Senate designating the Yucca Mountain site in Nye County, Nevada, for development as a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste; and

WHEREAS, the DOE is now preparing a license application for submittal to the Nuclear Regulatory Commission (NRC) to construct a repository at Yucca Mountain, Nye County, Nevada; and

WHEREAS, the DOE will continue certain studies related to the license application and performance confirmation, as well as conduct environmental monitoring activities during the preparation of the license application and after submittal of the license application to the NRC; and

WHEREAS, since 1978 the DOE and its contractors have maintained an ongoing cultural resources management program as part of field studies and environmental monitoring activities at Yucca Mountain, and, since 1988, have managed cultural resources in keeping with a Programmatic Agreement with the Advisory Council on Historic Preservation (ACHP); and

WHEREAS, the DOE recognizes that, during the development of the repository, its activities and those of its contractors potentially could have effects upon historic properties including, but not limited to, those historic properties identified in historic and archaeological surveys conducted to date (Appendix A); and

WHEREAS, pursuant to 36 CFR 800.14 of the ACHP's regulations, the DOE has requested the development of a Programmatic Agreement to fulfill the DOE's responsibilities under Sections 106 and 110 of 16 U.S.C. 470, the National Historic Preservation Act (NHPA), Archeological Resources Protection Act (ARPA), ACHP regulations, the Secretary of the Interior's "Standards and Guidelines for Federal Agency

Initial Draft for Comment

Historic Preservation Programs Pursuant to the National Historic Preservation Act" (63 FR 20495), and Executive Orders; and

WHEREAS, the DOE has consulted with the ACHP, with the Nevada State Historic Preservation Office (SHPO), and with Native American tribes and organizations that have traditional ties to the Yucca Mountain area, and will continue to consult and to review the undertaking to consider feasible and prudent alternatives to avoid, minimize, or satisfactorily mitigate adverse effects to historic properties;

NOW, THEREFORE, it is mutually agreed between the DOE, the ACHP, and the SHPO that implementation of the undertaking, as defined below, in accordance with the following stipulations will avoid or satisfactorily mitigate adverse effects of the undertaking on historic properties and will, therefore, satisfy all of the DOE's responsibilities under Sections 106 and 110 of the NHPA, the ACHP's regulations, and Executive Orders.

STIPULATION 1: UNDERTAKING

1.A. Description

The undertaking covered by this agreement includes all planning, study, siting, construction, operations, maintenance, and reclamation activities that are conducted by the DOE, its contractors and cooperating organizations, pursuant to the development of Yucca Mountain as a repository for monitored geologic disposal of nuclear waste, that have the potential to affect historic properties, and that are within the time limits and spatial constraints imposed by Stipulations 1(B) and 1(C), respectively.

1.B. Time Frame

The time period of the undertaking begins with the execution of this document and terminates when the NRC formally authorizes the repository to operate, i.e., to accept shipments of high-level nuclear waste to be placed in long-term geologic storage.

1.C. Area of Undertaking and Areas of Potential Effect

- a. The area of the undertaking includes the proposed Yucca Mountain Withdrawal Area (Figure 1) as identified by the *Final Environmental Impact Statement(EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE, 1999). The area of undertaking also includes the designated rights-of way zones issued to the DOE by the Bureau of Land Management. This area is hereinafter called the Yucca Mountain Archaeological Management Area (YMAMA).

The YMAMA is further divided into two management zones (Figure 1). The first management zone contains the main facility area where development of the

Initial Draft for Comment

repository will be concentrated and where probable direct effects are most expected, here called the Facility Area of Direct Effect (FADE). The second zone constitutes the remaining lands enclosed within the YMAMA. Management of historic properties in the FADE is described in Stipulation 6, while management of historic properties outside of the FADE is described in Stipulation 7.

Areas of Potential Effect (APE) are those areas which include potential direct and indirect effects to cultural resources and properties of religious and cultural significance from any specific activities associated with the undertaking, as defined above. These activity-specific APEs will be identified as activities are proposed and developed.

b. The area of the undertaking also includes APEs located outside of the YMAMA, where data monitoring, collection, and reclamation activities that support repository development at Yucca Mountain are conducted. DOE's responsibilities pursuant to Section 106 of the NHPA at those APEs located on public lands outside the YMAMA will be conducted in accordance with the policies and procedures of the Federal Agency with control and jurisdiction over the affected lands. For any work to be conducted on State or private land, the DOE will consult with the SHPO and appropriate State agency, as necessary, regarding compliance with State and federal laws and regulations.

1.D. Limitations

The undertaking does not include design, study, selection, construction, operation, or maintenance activities related to transportation corridors in Nevada outside of the YMAMA. Compliance with the requirements of the NHPA and other cultural resources regulations for that undertaking will be conducted in accordance with agreements separate from this present Programmatic Agreement.

STIPULATION 2: AGENCY RESPONSIBILITIES

2.A. Consultation and coordination among the SHPO, the ACHP, other federal agencies, and other interested parties pursuant to this Agreement shall be the responsibility of the DOE's Office of Civilian Radioactive Waste Management (OCRWM) as lead federal agency. Representatives of the DOE shall ensure that the stipulations in this Programmatic Agreement are satisfied in a complete and timely fashion.

2.B. The DOE will ensure that data, materials and reports from its contractors will be made available in a timely manner to the SHPO, the ACHP, the Bureau of Land Management, and (upon written request) other Federal or State agencies during the course of ongoing work relevant to this Programmatic Agreement.

2.C. The DOE will ensure that all DOE employees; all contractors and subcontractors; all organizations performing work under DOE acquisitions and financial assistance

Initial Draft for Comment

agreements supporting the Yucca Mountain Project; the U.S. Geological Survey; and Office of Civilian Radioactive Waste Management direct support contractors performing work related to Yucca Mountain will comply with the terms of this Programmatic Agreement.

2.D. The ACHP and SHPO may monitor activities carried out under this Agreement, and the ACHP will review such activities if so requested. The DOE will provide the ACHP and/or SHPO the opportunity to inspect project areas to ensure adherence to the stipulations of the Programmatic Agreement, if requested.

2.E. The DOE will prepare an annual report on implementation of this Agreement, which will describe cultural resources management efforts conducted under its stipulations. This report will cover the calendar year and will include a list of inventory, surveys conducted and their results, cultural resources identified and evaluated (including a table of isolated artifact finds), resources that were subject to periodic assessment, summaries of negative surveys conducted, summaries of situations involving treatment plans (if any), summaries of consultations, and other actions pertaining to the implementation of this Agreement. The annual report will also include a schedule of activities and programs planned for the upcoming year.

STIPULATION 3: PARTICIPATION OF INTERESTED PARTIES

The DOE recognizes the importance of public interest and participation in the decision-making process for the protection and management of cultural resources, and has long promoted and supported public education and outreach activities in association with cultural resources at Yucca Mountain. Likewise, the DOE has long supported the involvement of Native American groups with traditional ties to Yucca Mountain and has sought information regarding properties of religious and cultural significance in the region. The DOE will continue to solicit participation and information from interested parties in the development and implementation of its cultural resources management program in the YMAMA.

3.A. The parties to this Agreement recognize that the DOE has solicited and received public participation and input into the nature of cultural resources in the YMAMA and potential effects of repository development as part of the public comment process for the Yucca Mountain Final EIS, consistent with and meeting the requirements of 36 CFR part 800.2(d)2 and 36 CFR part 800.8.

3.B. The DOE will, upon written request, make available reports and publications pertaining to cultural resources at Yucca Mountain, except where such dissemination violates confidentiality, security, or sensitivity concerns in accordance with the NHPA and ARPA.

STIPULATION 4: CULTURAL RESOURCES MANAGEMENT PLAN

In keeping with DOE Directive 141.5 and "Environmental Guidelines for Development of Cultural Resource Management Plans" (DOE/EH-0501), the DOE will develop and implement a cultural resources management plan (CRMP) that outlines strategies for management of cultural resources within the YMAMA during all activities. This management plan will:

1. be based on existing archaeological and historic data for Yucca Mountain and vicinity, and will provide a detailed consideration of archaeological and historic contexts and research issues important to the region. These contexts will provide a basis for evaluation of the importance of cultural resources identified in the region and data necessary to address research issues.
2. describe specific management strategies and treatment methods to be used in different parts of the YMAMA, as specified in Stipulations 5-7, below.
3. describe the process whereby cultural resources are identified prior to potential land-disturbing activities associated with the undertaking, including definition of the APE of the activity and the appropriate methods of literature and records review, cultural resources survey, and recording of cultural resources.
4. describe the process for evaluating cultural resources for inclusion in the NHPA, using eligibility criteria as set forth in 36 CFR 60.4, the historic contexts appropriate to the YMAMA, and other pertinent information as available. This process will include provisions for limited testing or other investigations (e.g., literature review, oral history, consultation with knowledgeable individuals) to better characterize certain cultural resources where such testing is necessary for proper evaluation of historic, cultural, or scientific significance.
5. describe the process for determination of effect on historic properties (36 CFR 800.5), using criteria established in 36 CFR 800.9.
6. describe the process for developing treatment plans for historic properties subject to adverse effect. This process will include provisions for in-situ avoidance of historic properties where feasible and justifiable, and will describe strategies and procedures for the mitigative treatment of adverse effects to historic properties, where such effects cannot otherwise be avoided.
7. describe the process for periodic assessment of the condition of cultural resources in the YMAMA, to determine whether these resources are maintaining their integrity and historic value, or are subject to effects, or require re-evaluation of their eligibility to the NRHP.
8. describe the process for treatment of discovery situations in which previously undetected cultural resources are encountered during conduct of an activity. This

Initial Draft for Comment

process will include a consideration of the treatment of human remains, funerary objects, or other objects considered to have sacred or cultural patrimony values as defined in the Native American Graves Protection and Repatriation Act (NAGPRA).

9. identify and address significant issues of cultural and religious concern to Native American groups with traditional ties to the YMAMA.
10. describe processes of consultation with the SHPO, ACHP, other governmental agencies, Native Americans, and other concerned professional and public groups, pertaining to inventory results, determinations of eligibility of cultural resources, evaluations of effects, treatment plans for effects, and the results of investigations.

STIPULATION 5: DETERMINATIONS OF ELIGIBILITY

The DOE shall ensure that cultural resources in the YMAMA that may be affected by the undertaking are evaluated, in consultation with the SHPO, to determine their eligibility for inclusion in the National Register of Historic Places (NRHP), consistent with the Secretary of Interior's Criteria for Eligibility (36 CFR 60.4) and the CRMP. The DOE may determine a cultural resource, or group of resources, eligible for the NRHP without requesting a formal determination of eligibility from the Secretary of the Interior and without developing the documentation necessary to make such a request. Properties the DOE and the SHPO agree are eligible for the NRHP will be treated as if they are listed in the NRHP. Properties that the DOE and the SHPO agree are not eligible need not be considered further under Sections 106 and 110 of the NHPA and this Agreement.

5.A. Most cultural resources presently known in the YMAMA have already been formally evaluated by the DOE, with concurrence by the SHPO. The parties to this Agreement assume that these determinations, as specified in Appendix A, are valid for the purposes of this Agreement and treated as such under Sections 106 and 110 of the NHPA.

5.B. Certain cultural resources in the YMAMA have not yet been formally evaluated for eligibility by the DOE or reviewed by the SHPO (Appendix A). For these resources, and for resources identified subsequent to the initiation of this Agreement, the DOE will endeavor to determine their eligibility in accordance with 36 CFR 800.4(c), prioritizing those resources subject to potential effect of Project activities. The DOE may employ limited artifact collection and analysis, and limited subsurface probing or testing, to evaluate the eligibility of certain properties, in accordance with the procedures documented in the CRMP.

5.C. The DOE will afford the SHPO the opportunity to review the DOE's determinations of eligibility when cultural resources are discovered. The SHPO will have the opportunity to comment on the DOE's eligibility determinations within 30 calendar days. If within 30 calendar days the SHPO does not respond to the DOE, the DOE will assume SHPO's concurrence. In accordance with 36 CFR part 800.4(c)(2) and 36 CFR 63, the

Initial Draft for Comment

DOE will attempt to resolve questions or disagreements over eligibility of properties with the SHPO. If the DOE and SHPO still fail to agree, the DOE will provide documentation and request a determination of eligibility from the Keeper of the National Register, who will make the binding determination.

5.D. Isolated cultural resources and simple artifact scatters (as defined in Appendix C) are considered to be ineligible for inclusion in the NRHP and not considered further in the Section 106 process. Simple artifact scatters will be recorded on IMACS forms and submitted to the Nevada SHPO for incorporation in the NVCRIS database as described in Stipulation 10. Isolates will be recorded and listed in the annual report of implementation of this Agreement, to be submitted to the SHPO as described in Stipulation 2E.

STIPULATION 6: THE FACILITY AREA OF DIRECT EFFECT (FADE)

The FADE contains the main area of repository facility development, within which historic properties are highly likely to sustain direct effects of development.

6.A. The DOE will ensure that the FADE has been subject to intensive complete pedestrian archaeological survey coverage as defined in Appendix C and the CRMP, and that all cultural resources identified within the FADE have been evaluated for eligibility to the NRHP.

6.B. The DOE will consult with Native American groups having traditional ties to the FADE to assess whether the area contains historic properties sites of religious or cultural significance and measures to mitigate effects of development, if necessary.

6.C. The DOE will consider the joint contributions of historic properties to the cultural, historic, and scientific values represented in the FADE, and will develop and implement a treatment plan to mitigate adverse effects to the historic properties in the FADE. For properties eligible under Criterion D (36 CFR 60.4), the DOE will design a program of archaeological data recovery to gather information from the FADE that will encompass its cultural, historic, and scientific values in a reasonable and representative manner. For properties eligible for inclusion to the National Register under Criteria A-C (36 CFR 60.4) or properties with religious or cultural significance, mitigative measures other than archaeological data recovery may be considered in the treatment plan (e.g., HABS/HAER recordation, oral history, markers, exhibits, interpretive brochures or publications, ceremonies, etc.). The DOE will consult with the SHPO and the ACHP on the development of this treatment plan, in accordance with 36 CFR part 800.6.

6.D. Once the treatment plan specified in Stipulation 6.B. has been developed, project activities may proceed in areas of the FADE not scheduled for field data recovery investigations, so long as those activities will not affect historic properties subject to data recovery under the treatment plan, and subject to the discovery clause in Stipulation 8.

Initial Draft for Comment

6.E. The DOE will submit reports of fieldwork progress to the SHPO as fieldwork at specific historic properties is completed. The SHPO shall have 10 working days from the receipt of the fieldwork progress report to raise any objections or provide additional guidance to the status of the field investigations. In the absence of any written comments or objections, or upon resolution of those comments or objections by the DOE, project activities may proceed in the areas of specific historic properties where fieldwork has been completed, subject to the discovery clause in Stipulation 8.

6.F. The DOE will submit a report of implementation of the treatment plan to the SHPO for review upon completion of analysis and report preparation. The SHPO shall have 30 days to comment on the report. The DOE will revise the report as necessary to address these comments, and issue the final report to the SHPO, ACHP, and other agencies as appropriate. Implementation of the treatment plan and issuance of the final report will be assumed by the parties of this Agreement to fulfill DOE's obligations with respect to management of historic properties or other cultural resources in the FADE.

6.G. The DOE may amend the definition of the FADE as development requirements warrant. However, the values of historic properties located in any areas added to the FADE subsequent to development of the data recovery plan must be considered separately for mitigative actions, in the context of the overall values of the FADE. If the DOE plans to amend the definition of the FADE, it will document its plan and seek the comments of the SHPO and the ACHP regarding the need for further mitigative actions, if any, before finalizing its decision.

STIPULATION 7: TREATMENT OF HISTORIC PROPERTIES ELSEWHERE IN THE YMAMA

Outside of the FADE, and during the time period of this PA, the DOE will strive to protect and preserve historic properties in the YMAMA through a combination of (a) periodic monitoring and assessment of known historic properties to determine their condition and the potential for direct and indirect effects related to this undertaking, (b) additional surveys to identify and evaluate cultural resources that are not known, (c) avoidance of adverse effects to historic properties through modification or cessation of potentially disruptive activities related to this undertaking, and (d) site-specific mitigation in situations where adverse effects to historic properties cannot be feasibly avoided.

7.A. Periodic Assessment of Condition of Historic Properties

To minimize damage to historic properties from unanticipated impacts, the DOE will regularly assess the condition of eligible historic properties within the YMAMA, and per CRMP monitoring procedures. This assessment program will include periodic visits to eligible historic properties, an assessment of its existing condition and potential effects, and comparison of the condition of the property with previous assessments.

Initial Draft for Comment

- a. An assessment plan detailing the schedule, recording activities, and provisions to alert the DOE to risks or damage to properties, will be submitted by the DOE to the SHPO for review as part of the CRMP (see Stipulation B 4).
- b. Should assessment reveal that significant adverse impacts are occurring or are likely to occur to particular eligible historic properties as a result of this undertaking, the DOE will consult with the SHPO and ACHP to mitigate existing and impending impacts to such properties, in keeping with Stipulation 7D, below.
- c. Results of these periodic assessments will be included in the annual report of implementation of this Agreement and submitted to the ACHP and SHPO.

7.B. Additional Inventories

Before development projects or other activities that could affect historic properties outside the FADE is conducted in connection with this undertaking, the DOE will ensure that historic properties in the area of potential effect are identified, evaluated, and any effects are assessed and avoided or mitigated. A large portion of the YMAMA has already been subject to intensive inventory surveys (Figure 2).

- a. The DOE will define an area of potential effect (APE) of the activity as part of a preactivity survey request package developed in accordance with its established land access and environmental compliance procedures. This APE will include the area of proposed disturbance plus a surrounding buffer zone to ensure adjacent historic properties are considered in planning the activity. This APE may be subsequently revised subject to on-the-ground investigations and evaluations of potential effects.
- b. The DOE will conduct a literature review and records search to determine whether the APE contains known historic or cultural resources and properties of cultural or religious significance, or whether the area has been previously subject to surveys or consultation to identify such resources.
- c. If all or parts of the APE have not been previously subject to inventory survey by qualified investigators, the DOE will implement inventory surveys of the unsurveyed part. Such surveys will be conducted to (i) identify and evaluate cultural resources as historic properties on the basis of the criteria of the National Register of Historic Places (36 CFR Part 60), and to (ii) identify actual or potential effects to properties as determined with reference to 36 CFR Part 800.
- d. When one or more cultural resources are located within an APE, they will be evaluated for eligibility in accordance with Stipulation 5, above. Prior to a formal determination, for management purposes the DOE will consider the resource to be potentially eligible.
- e. The DOE and SHPO may jointly determine that certain areas of the YMAMA have had sufficient inventory and/or demonstrated sufficiently low potential for

Initial Draft for Comment

important resources so that additional inventory or consultation is no longer worth the effort or expense. The DOE may evaluate whether an area contains low potential for the occurrence of significant historic properties, or for properties that provide new historic and scientific information, or for properties of religious and cultural significance, and provide documentation to the SHPO and ACHP making the case for such a determination. The SHPO and ACHP will review the documentation and respond to the DOE's case within 30 days. If after 30 days the SHPO or ACHP do not respond, the DOE will assume the non-responding party concurs with the DOE. If the SHPO or ACHP concur with the DOE, any activities conducted within the area will be documented as negative inventories, not requiring additional inventory.

f. In keeping with the intent of Section 110 of the NHPA and ARPA, the DOE may, at its discretion and subject to availability of resources, undertake inventory or reconnaissance of lands within the YMAMA that are not part of activity-specific APEs for the purpose of inventory and evaluation. Results of these investigations will be reported as part of the annual report on PA implementation.

7.C. Results of Inventories and Assessment of Effects

Results of inventories will fall into three management categories: negative inventory (no cultural resources in the APE), no effect (effects to eligible resources are avoided), and adverse effect (Figure 3).

a. Negative Inventory. If no cultural properties are identified within an APE of an activity following inventory survey, the DOE will document this finding in a case file and proceed with the activity without requiring additional SHPO consultation. Summaries of negative inventories will be included as part of the annual report on implementation of this Agreement, which will make the results available for the statewide NVCRIS archaeological database.

b. No Effect. If eligible or potentially eligible properties, or properties of religious or cultural significance, are identified in the APE, the DOE will assess potential effects to those properties following the criteria of effect in 36 CFR 800.9. Avoidance is the preferred strategy for minimizing potential effects to cultural properties. The DOE will attempt to avoid adverse effects to historic properties by modifying the APE via altering, relocating, or stopping the proposed activity that could cause effects to historic properties. The DOE may require that barriers or buffer zones be established, and/or qualified cultural resources specialists may monitor the activity to ensure that historic properties are not affected.

The activity will be considered to have "no effect," in accordance with 36 CFR part 800.4(d)(1), if one of the following situations applies: (1) the APE is modified to no longer affect cultural properties, or (2) cultural properties in the APE are determined to be not eligible for the NRHP (per Stipulation 5) or to be properties of religious or cultural significance. In these cases, the DOE will inform the SHPO of its determination and include documentation forming the basis of that determination in

Initial Draft for Comment

accordance with 36 CFR part 800.5(b). The SHPO shall have 10 days from receipt of this documentation to raise objections, seek further information, or provide guidance, before DOE can proceed with the activity. Documentation will be included in a case file available for public inspection. A report of the survey and assessment will be submitted to the SHPO for review and incorporation of results into its archaeological database.

c. **Adverse Effect.** If one or more historic properties, including properties of religious or cultural significance, is located within the APE, and adverse effects to the property cannot be avoided by relocation, modification or cessation of the activity, the DOE will consult with the SHPO and with Native American groups having traditional affiliations with the property, to document its findings and to develop and implement appropriate measures to avoid or mitigate potential adverse effects of the activity, as described under Stipulation 7D and in the CRMP.

7.D. Development of Treatment Plans and Site-Specific Mitigation Measures

If adverse effects to historic properties in an APE cannot be avoided, the DOE will develop a treatment plan to reduce or negate the effects. Specific treatments may include, but are not limited to, (a) adaptive use of a property, (b) incorporation of a property into the design of an activity in a manner sensitive to its significant characteristics, (c) recovery of archaeological data, including analysis and dissemination of results, (d) rehabilitation or stabilization of properties.

a. The DOE will afford the SHPO, ACHP, and affiliated Native American groups the opportunity to consult on the draft treatment plan and will give those parties 30 days to review such plans. If no comment is received in the 30 day period it will be assumed that the party concurs with the treatment plan. The DOE will take into consideration the parties' comments in preparing a final treatment plan.

b. The DOE will ensure that the fieldwork portions of any treatment plan are implemented. The DOE will submit a progress report of field investigations to the SHPO upon completion of fieldwork, for their review and comment. The SHPO shall have 10 working days to comment, provide additional guidance, or raise objections to the DOE regarding field implementation of the treatment plan. Following completion of fieldwork and acceptance of the field implementation effort by the SHPO, the DOE may initiate project activities at the property.

c. The DOE will ensure that post-field analysis and report preparation are implemented in a timely manner. The DOE will submit a final report of investigations to the SHPO for review and comment when analysis and writeup is completed. The SHPO shall have 30 days to provide comments on the draft document, which the DOE will consider in finalizing the document. The DOE will ensure that final reports and publications resulting from data recovery activities will be submitted to the SHPO, the ACHP, and concerned Native American groups with ties to the area in which data recovery has occurred. The DOE will ensure that copies

Initial Draft for Comment

of these reports and publications are made available to other agencies, organizations, and interested parties upon written request.

7.E. The parties to this Agreement define certain classes of activities, listed in Appendix B, as having categorical determination of no effect, in accordance with the criteria of 36 CFR part 800.14(c)(1). When a specific activity falls within such a class, the DOE does not need to enter into an activity-specific consultation and may proceed with the activity. A summary report of the activity will be submitted as part of its annual report on implementation of this Agreement.

STIPULATION 8: INADVERTENT DISCOVERY

8.A. If historic or archeological resources are discovered after project activities have commenced, project related activities within 30 meters of the discovery will cease immediately, and the supervisor of the activity shall notify the DOE. The DOE will notify the SHPO and ensure that the find is investigated by a qualified cultural resources specialist within two working days of the discovery. Based upon these investigations, the DOE shall consult with the SHPO and other interested parties concerning measures needed to avoid the resources and whether mitigative action is required.

8.B. If, in consultation with the SHPO, the DOE determines that mitigation is necessary, the DOE shall consult with the SHPO and other interested parties, as appropriate, to develop mitigation measures. The SHPO and other interested parties shall be allowed two working days to provide the DOE with comments. The DOE will determine the mitigative measures required within seven working days of the discovery, consult with the SHPO and interested parties of its mitigation plan, and ensure that such mitigative actions are implemented. Any disputes or objection arising during a discovery situation shall be handled per Stipulation 14.

8.C. The DOE will submit a progress report of mitigative activities to the SHPO when fieldwork has been completed in the discovery area. The SHPO shall have two working days from the receipt of the fieldwork report to raise any objections or provide additional guidance to the status of the field mitigation investigations. In the absence of any comments or objections, or upon resolution of those comments or objections by the DOE, the DOE shall assume that the level of mitigative action has been sufficient. The DOE shall ensure that final draft reports of mitigation efforts for discovery situations are completed in a timely manner and submitted to the SHPO for a thirty calendar day review. Final reports shall be submitted to the SHPO and interested parties for informational purposes.

8.D. Activities in the area of the discovery shall be halted until the applicant is notified by the DOE that mitigation is complete and activities can resume.

STIPULATION 9: HUMAN REMAINS

Human remains and associated artifacts may be discovered during project activities. If human remains are discovered under any circumstances, activities will cease within 30 meters of the discovery, but may continue on the remainder of the site or activity area. The discoverer will immediately avoid damaging the remains and notify DOE. The DOE will then initiate avoidance, security, and preservation measures to protect the remains until they can be treated properly.

Human remains shall be treated under the provisions of Nevada Revised Statutes 383 and other applicable state statutes. The DOE will notify the SHPO immediately, along with the Nye County coroner and a qualified cultural resources specialist. The age, affiliation, and circumstances of the burial will be assessed, if possible. If the human remains are Native American, the DOE will consult with tribes to determine affiliation and schedule the repatriation to the appropriate tribe or family in accordance with 43 CFR 10.

STIPULATION 10: RECORDS AND CURATION

10.A. The DOE will ensure that records from archaeological survey, data recovery and monitoring activities conducted as a result of Yucca Mountain Project activities, are maintained by a qualified local institution in accordance with 36 CFR Part 79. Electronic records and databases will be maintained in a geographic-based regional scale information retrieval and analysis system. The DOE will provide these records to the State of Nevada for inclusion in the Nevada Cultural Resources Inventory System (NVCRIS).

10.B. The DOE will ensure that artifacts resulting from these activities are curated by the same institution in accordance with 36 CFR Part 79, provided that Native American cultural items as defined by 25 U.S.C. 3001-3013, the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) as implemented by 43 CFR Part 10, shall be repatriated in accordance with the plan of action developed by the DOE pursuant to 43 CFR Part 10.5(e).

STIPULATION 11: NATIVE AMERICAN INTERACTIONS

The DOE will continue to consult with Native American tribes and organizations having traditional ties to the lands subject to effects of the undertaking.

11.A. The DOE will conduct regular meetings with tribal representatives to discuss issues related to the study, licensing, and potential use of Yucca Mountain as a repository for high-level nuclear waste, including treatment of properties of cultural or religious significance located in the YMAMA. The DOE will support Native American monitors to participate in mitigative data recovery programs, as appropriate.

Initial Draft for Comment

11.B. The DOE will ensure that reports from its contractors are available in a timely manner during the course of ongoing work relevant to this Programmatic Agreement to those tribes and organizations with current or historic ties to the land which provides written requests for such information.

11.C. The DOE will ensure that any Native American human remains, grave goods, items of cultural patrimony, and sacred objects, encountered during the undertaking are treated with the respect due such materials. Human remains and associated grave goods found on public land will be handled according to the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR 10). Native American human remains and associated grave goods found on state and private land will be handled according to the provisions of state law (NRS 383).

STIPULATION 12: EDUCATION

12.A. The DOE will continue to implement a worker education program for archaeological, historic, and cultural resources. The program will distribute information to project workers informing them of the laws and regulations governing historic preservation, cultural resources protection, and Native American cultural resources issues relevant to this Programmatic Agreement.

12.B. The DOE recognizes that development of a repository will result in long-term controlled access to the YMAMA, which may affect the potential of historic properties to provide information on regional history and prehistory (both positive and negative effects). The DOE will support and encourage archaeological, historic, and cultural investigations to characterize the history and prehistory of the YMAMA using data obtained prior to the termination of this Agreement, and the appropriate distribution of their results to public and professional audiences through publications, exhibits, technical reports, presentations, displays, video/film/internet, and other media as feasible and reasonable.

STIPULATION 13: PROFESSIONAL QUALIFICATIONS

Work conducted under this agreement will be carried out by, or under the direct supervision of, professional archaeologists, anthropologists, historians, or architectural historians who meet the requirements of the Secretary of the Interior's "Professional Qualifications Standards."

STIPULATION 14: DISPUTE RESOLUTION

14.A. Should any party to this agreement object in writing to the DOE regarding any action carried out or proposed with respect to the undertaking, or regarding interpretation or implementation of this agreement, the DOE shall consult with the SHPO to resolve the

Initial Draft for Comment

objection. If after initiating such consultation the DOE determines that the objection cannot be resolved through consultation, the DOE shall forward to the ACHP all documentation and information relevant to the objection, including the DOE's proposed response to the objection, that will allow the ACHP to comment pursuant to its responsibilities under 36 CFR Part 800.9. Within calendar 30 days after receipt of all pertinent information, the ACHP shall exercise one of the following options: either (1) Advise the DOE that the ACHP concurs in the DOE's proposed response to the objection, whereupon the DOE will respond to the objection accordingly; or (2) provide the DOE with recommendations, which the DOE shall take into account in reaching a final decision regarding its response to the objection; or (3) Notify the DOE that the objection will be referred for review and comment by the full ACHP or a panel, and proceed to refer the objection and comment.

14.B. Should the ACHP not exercise one of the above options within 30 calendar days after receipt of all pertinent documentation, The DOE may assume the ACHP's concurrence in its proposed response to the objection.

14.C. DOE shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the DOE's responsibility to carry out all actions under this agreement that are not the subjects of this objection shall remain unchanged.

STIPULATION 15: PRIORITY OF SHPO/ACHP COMMENT

If the DOE is unable to carry out the terms of the Programmatic Agreement, the DOE will not take or sanction any action or make any irreversible commitment that would result in an adverse effect on National Register or eligible properties within the scope of this Programmatic Agreement or would foreclose the SHPO's or ACHP's consideration of avoidance or mitigation alternatives until it has obtained the SHPO's or ACHP's comments, pursuant to the ACHP's regulations, for each individual action carried out as part of the undertaking.

STIPULATION 16: MODIFICATION

Any party to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.14 to consider such amendment.

STIPULATION 17: EFFECTIVE DATE AND TERM OF PROGRAMMATIC AGREEMENT

15.A. This agreement will become effective upon the latest date of execution by the DOE, SHPO, and ACHP signatories, and will remain in effect until either (i) the NRC authorizes shipment of nuclear materials and operation of the repository at Yucca

Initial Draft for Comment

Mountain, or (ii) the agreement is terminated by the DOE, SHPO, or ACHP, by 30 calendar days prior written notice to the other parties.

15.B. If the agreement is terminated, the DOE will comply with 36 CFR 800 with regard to individual activities associated with the undertaking.

STIPULATION 18: REPOSITORY OPERATION

Prior to operation of the repository site, the DOE will meet with the ACHP and the SHPO to ensure that this programmatic agreement continues to adequately comply with DOE's Section 106 and 110 responsibilities under NHPA, the ACHP's regulations, and standards and guidelines for Federal agency historic preservation programs.

Attachments

Figure 1. Location of the Yucca Mountain Archaeological Management Area as defined herein, showing the location of the YMP Withdrawal Area, Designated Rights-of-Way, and the Facility Area of Direct Effect (FADE).

Figure 2. Area currently subject to intensive inventory survey in the YMAMA.

Figure 3. Flow chart of Preactivity Archaeological Review, Inventory, and Evaluation Described in Stipulation 7.C.

Appendix A. List of Known Archaeological Resources and Historic Properties within the bounds of the YMAMA and the FADE.

Appendix B. Categorical Determinations of Activities Having No Effect.

Appendix C. Terms and Acronyms.

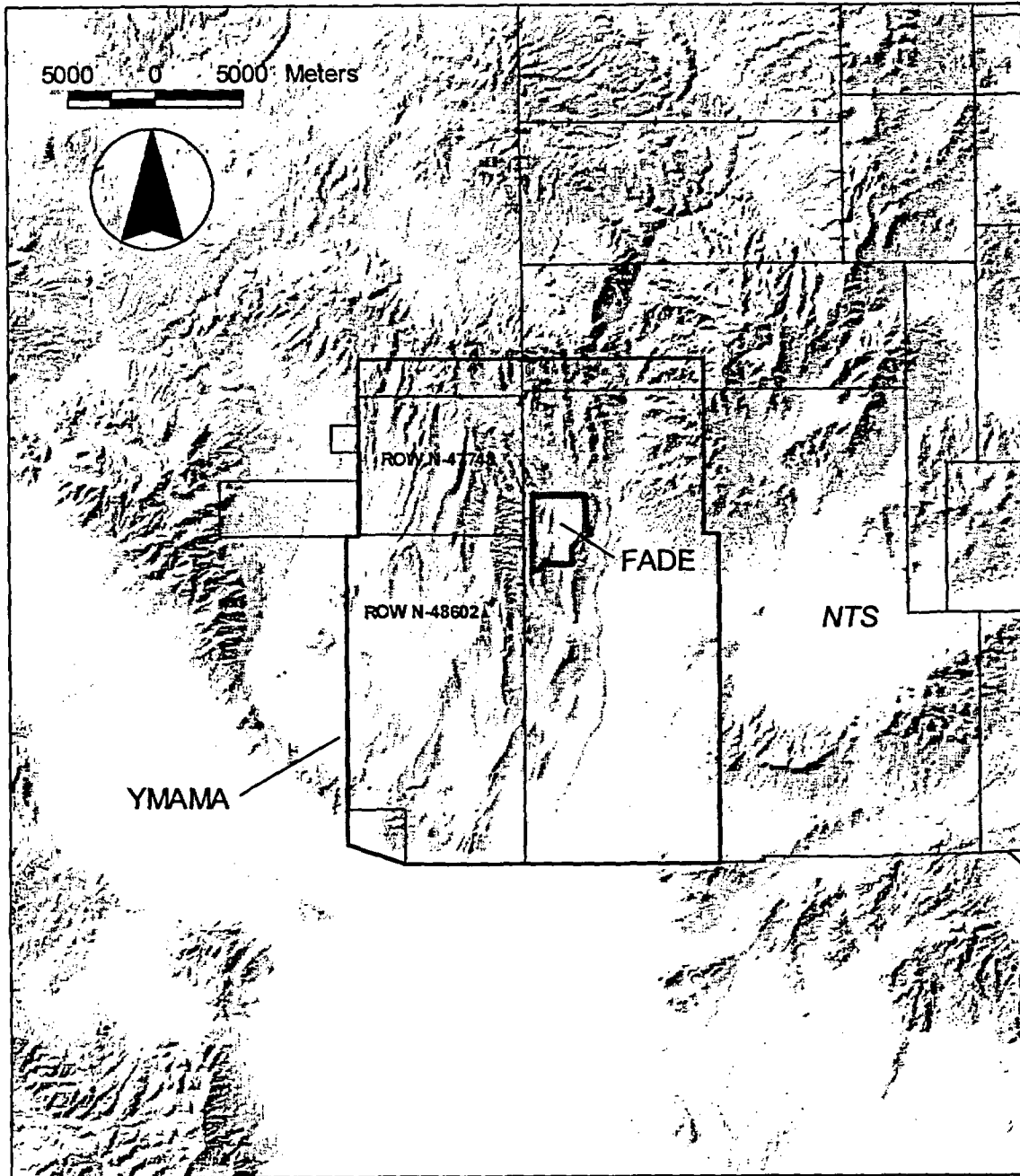


Figure 1. Location of the Yucca Mountain Archaeological Management Area.

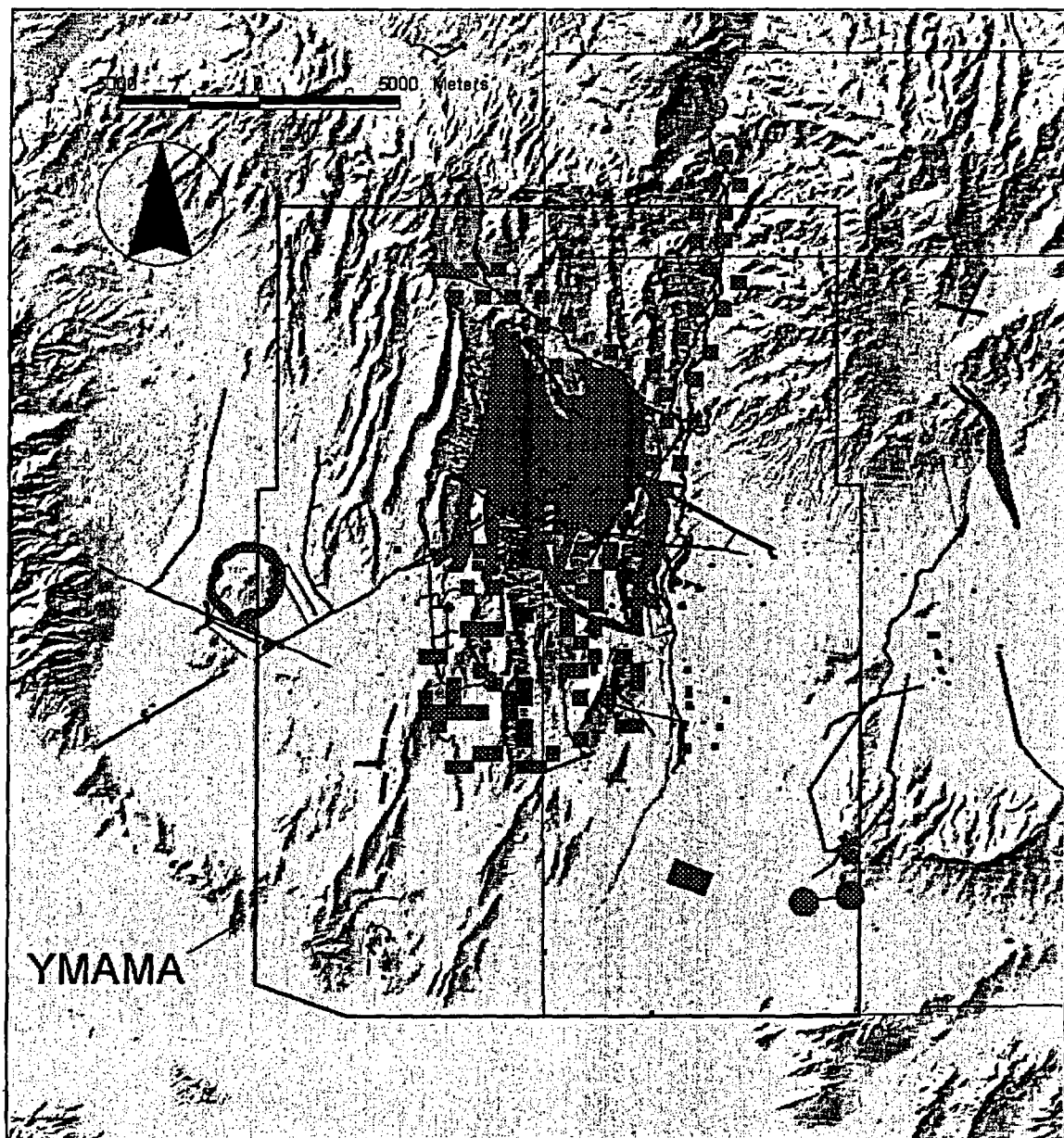
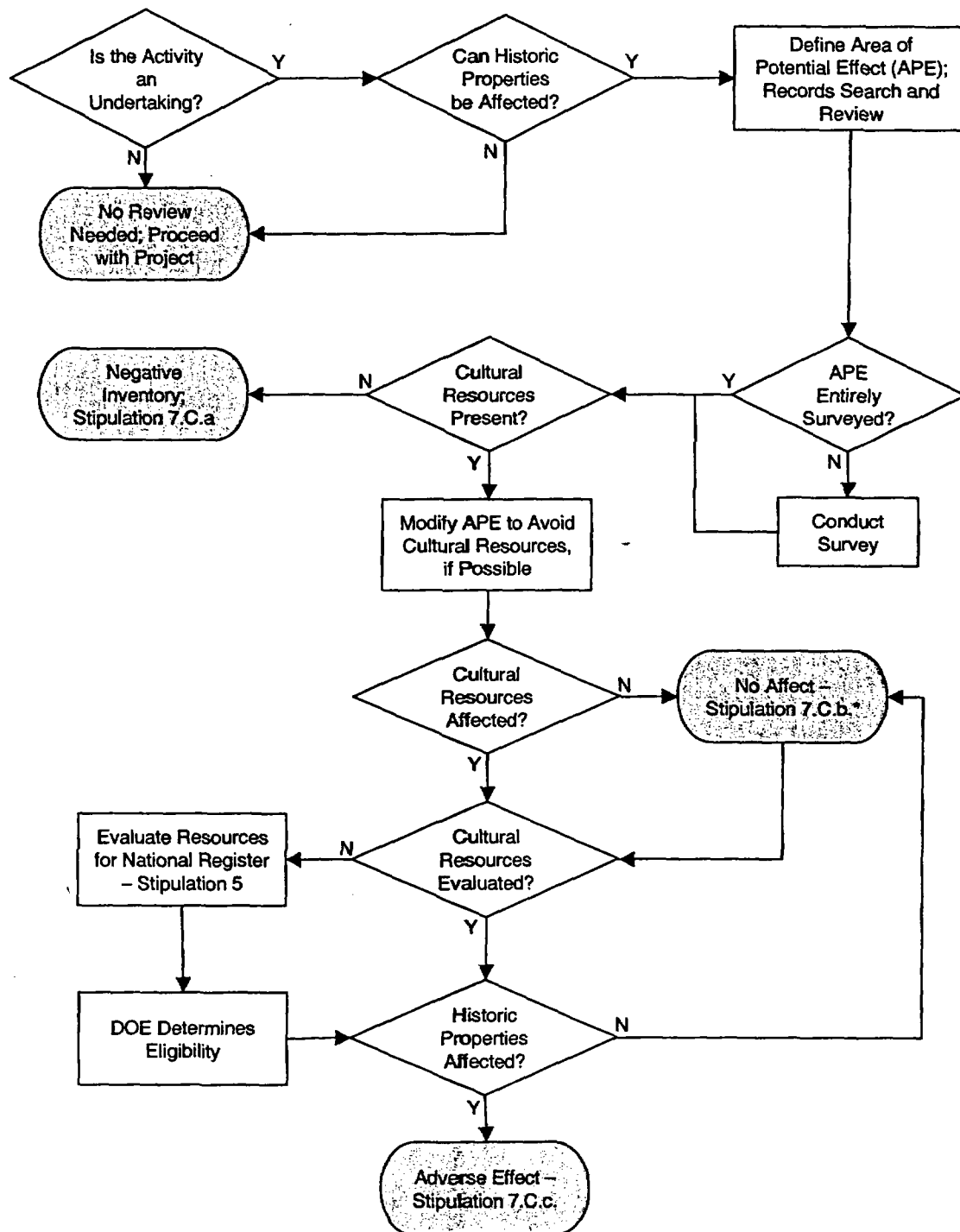


Figure 2. Areas in and around the YMAMA that have been subject to archaeological inventory survey.

Figure 3. Flow Chart of Stipulation 7.C Review Process



* National Register eligibility determinations will be made on all resources, even if not affected

Initial Draft for Comment

Appendix B. Categorical Determinations of Activities Having No Effect

1. Hazards abatement activities (including eliminating isolated toxic waste sites), where historic properties are not involved.
2. Maintaining, replacing or modifying existing projects, facilities, routes, or programs that does not disturb additional surface area or historic properties; or where the ground has been previously disturbed to the extent that historic properties could not exist; or where the ground surface has been previously disturbed and the potential for buried intact cultural deposits is negligible; or where the facility itself is not a historic property.
3. Removal of structures, constructions, machines or materials less than 40 years old, such as abandoned vehicles, trash dumps, buildings, etc., and that are not likely to become historic properties if they were to become 50 years old.
4. Reclamation of disturbed sites or areas such as bladed areas, trenches, roadways, drill pads, etc., may be conducted without additional SHPO consultation as long as the reclamation activities (including movement of reclamation vehicles and equipment to and around the reclamation site) are restricted to areas of previous surface disturbance and if the disturbed site does not border or is not within an historic property. All reclamation areas and access routes must be flagged to identify the boundaries of disturbed area. Areas not previously disturbed that may be subject to potential effects by reclamation activities (e.g., access routes) must be considered as areas of potential effect, and treated accordingly.
5. Installing facilities such as signs, cattle guards, gates, road improvements, fences, or portable sanitation devices that are placed on previously disturbed areas outside of known historic properties and that will not result in alterations to undisturbed areas nearby.
6. Routine maintenance of roads, structures, wells, and pipelines that does not involve additional land disturbance and if the site does not border or is not within an historic property.
7. Geophysical exploration activities that have minimal land disturbance potential, such as vibroseis and conventional truck-mounted shothole drill routes and operations located on constructed roads, well-defined existing roads and trails, or existing drill pads; or pedestrian routes and placement sites for hand-carried geophone, cables, or similar equipment; or routine surveying and mapping where vehicles are restricted to well-defined roads and trails and any equipment is hand-carried off-road.
8. Issuing permits, regulations, orders, notices, field rules, or other authorizations where no surface disturbance is involved.
9. Any other activity determined to have no effect on historic properties with written agreement between the DOE and SHPO.

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Appendix C. Acronyms, Laws and Regulations, and Definitions of Technical Terms

ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effect
DOE	U.S. Department of Energy
FADE	Facility Area of Direct Effect
NRHP	National Register of Historic Places
NVCRIS	Nevada Cultural Resources Inventory System
OCRMW	Office of Civilian Radioactive Waste Management
SHPO	State Historic Preservation Office
YMAMA	Yucca Mountain Archaeological Management Area
NAGPRA	Native American Graves Protection and Repatriation Act of 1990
43 CFR 10	Regulations Promulgating NAGPRA
NHPA	National Historic Preservation Act of 1966, as amended
36 CFR 800	Regulations promulgating NHPA
ARPA	Archeological Resources Protection Act of 1979
36 CFR 79	Regulations for Curation of Federally Owned and Administered Archaeological Collections
36 CFR 60	Regulations for the National Register of Historic Places
36 CFR 63	Regulations for Determination of Eligibility to the NRHP

Adverse Effect: Alteration of the characteristics or qualities which make a cultural resource eligible for the NRHP to such a degree as to disqualify the property from eligibility.

Criteria of eligibility for inclusion in the NRHP: attributes of a cultural resources that permit an agency to determine the resource belongs on the NRHP. These criteria include integrity of historic qualities, and one or more of the following: (a) association with historic events or activities; (b) association with important persons; (c) distinctive design or physical characteristics, or (d) potential to provide important information about prehistory or history. In general, only resources older than 50 years are considered eligible.

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Cultural property: A cultural resource that is eligible or potentially eligible for inclusion in the NRHP or is a property of religious and cultural significance to Native American groups having traditional ties to the property.

Data Recovery: the professional application of scientific techniques of controlled observation, contextual measurement, controlled collection, excavation or removal of physical remains, including the analysis, interpretation, explanation, and curatorial safeguarding of recovered remains and associated records in an appropriate repository.

Effect: A process or action that alters, modifies, or influences one or more attributes of a cultural resource that contribute to the determination of eligibility of that resource to belong to the NRHP.

Integrity: a condition of a cultural resource required for eligibility to the NRHP that incorporates historic qualities including location, design, setting, materials, workmanship, feeling, and association. Cultural resources that have been subject to heavy disturbance often (but not always) lack sufficient integrity of setting, design, feeling and association to warrant a determination of eligibility.

Inventory Survey: a professionally conducted pedestrian survey of the entire area of potential effect (APE), with survey transects spaced no more than 30 meters apart. The goal of an inventory survey is to locate and record all cultural resources having exposed artifacts or features in the APE. It describes the distribution of properties in an area, determines the number, location, and condition of properties, determines the types of properties in an area, and records the physical extent of specific properties in an area.

Isolated Artifact: an artifact or feature, or recognizable fragments of a single artifact or feature, which is not demonstrably spatially associated with other cultural resources. An isolated artifact is not usually considered a cultural property.

Reconnaissance Survey: a professionally conducted investigation of an area that does not meet the completeness or intensity of coverage of inventory survey. The goal of reconnaissance survey is to identify and make observations about cultural resources in an area, partly to formulate estimates of the need, type, and cost of further identification efforts. Reconnaissance survey may be a systematic sample survey (equivalent to a BLM Class II survey) that seeks to produce a representative sample of cultural resources in an area, or a less systematic and more intuitive survey effort; and it may be conducted with survey transect spaced more than 30 meters apart or not cover certain areas where cultural resources are anticipated not to occur (e.g., steep slopes). In some cases reconnaissance survey may show that further survey work is unnecessary or focused on particular areas or types of properties.

Simple Artifact Scatter: a cultural resource composed of less than approximately 50 artifacts and lacking subsurface cultural deposits, for which standard site recording and evaluation procedures can adequately and sufficiently describe the salient information content of the site, without involving more detailed data recovery or analysis. A simple

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artifact scatter typically is a small surface site without diagnostic time marker artifacts or other formal tools or architectural features and minimal spatial complexity. It is considered not eligible for nomination to the NRHP.