



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

December 14, 2020

Mr. Mark Wolfe  
State Historic Preservation Officer  
Texas Historical Commission  
P.O. Box 12276  
Austin, TX 78711

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT SECTION 106  
CONSULTATION – DETERMINATION OF EFFECTS REGARDING INTERIM  
STORAGE PARTNERS LLC'S PROPOSED CONSOLIDATED INTERIM  
STORAGE FACILITY FOR SPENT NUCLEAR FUEL, IN ANDREWS COUNTY,  
TEXAS (DOCKET NUMBER: 72-1050; THC TRACKING NUMBER: 201908232)

Dear Mr. Wolfe:

The U.S. Nuclear Regulatory Commission (NRC) received a revised license application from Interim Storage Partners LLC (ISP), on June 8, and July 19, 2018 (Agencywide Documents Access and Management System [ADAMS] Accession Package No. ML18221A397), to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF), in Andrews County, Texas (the undertaking). The purpose of this letter is to provide the NRC staff's determination of effects to historic properties from the undertaking.

Background

By letter dated May 6, 2019 (ADAMS Accession No. ML18334A008), the NRC staff notified you of ISP's 2018 revised license application and initiated consultation under the National Historic Preservation Act (NHPA) Section 106 process. By the same letter, the NRC requested that your office provide information, comments or concerns that you considered appropriate regarding cultural, historic or archaeological resources of interest that may be affected by the undertaking. By letter dated May 30, 2019 (ADAMS Accession No. ML19231A076), you responded, stating that (1) no cultural materials had been found within an Area of Potential Effect (APE) as defined in a 2015 intensive archaeological survey, (2) the APE appeared to have expanded beyond the bounds of the 2015 survey, and (3) an additional archaeological survey was warranted for portions of the current APE that did not overlap with previously surveyed areas.

By letter dated March 5, 2020 (ADAMS Accession No. ML20071F153), ISP submitted to NRC a supplemental intensive archaeological survey report for areas of the current APE that were not covered in the 2015 survey. The NRC staff has reviewed this new report and has confirmed that the areas surveyed, together with the areas surveyed in the 2015 report, do cover the current APE. The NRC has enclosed a copy of ISP's supplemental survey report with this letter and also an NRC staff-generated figure depicting the surficial extents of the 2015 survey with that of the supplemental survey (Enclosures 1 and 2, respectively).

The following information is provided in support of the NRC staff's determination of the effects to historic properties in accordance with the NHPA Section 106 process:

- A description of the federal undertaking, which is subject to the NHPA Section 106 process;
- Identification of the defined and documented APE for the federal undertaking;
- A summary of tribal consultations with tribes having ancestral ties to this area of the state;
- Results of the efforts to identify historic properties within the APE; and
- A finding of effect.

### Undertaking

By its application, ISP is seeking an NRC license to construct and operate the CISF on an approximately 130-hectare [ha] (320-acre [ac]) site located within the approximately 5,666-ha [14,000-ac] Waste Control Specialists (WCS) site in Andrews County, Texas. ISP proposes initially to store approximately 5,000 metric tons uranium (MTUs) (5,500 short tons) of SNF in the CISF, and subsequently to request approval to expand the CISF to store approximately 40,000 MTUs of SNF.

Once the SNF arrives by train at the CISF site, it will be routed onto a rail sidetrack to enter a Cask Handling Building. Inside the Cask Handling Building, ISP would offload the SNF casks from the railcars and then transport the casks to the CISF's engineered concrete pads, where they would be stored either vertically on concrete pads or horizontally in storage modules.

### Area of Potential Effect

The APE for this undertaking is the CISF site and a limited area outside the site. ISP's proposed construction activities would include ground-clearing and ground-disturbing activities throughout the CISF site, to first level and then grade the site, followed by construction of the concrete pads and approach aprons, the Cask Handling Building, a Security and Administrative Building, and two fences: one to surround the more immediate area where the SNF would be stored and the other installed around the boundary of the 130-ha (320-ac) site. A conceptual drawing of the initial phase and ISP's planned expansion phases of the CISF is provided as Enclosure 3. Disturbance outside the CISF site would include (1) 0.6 ha (1.5 ac) associated with construction of the rail sidetrack; (2) 1.2 ha (3 ac) for construction of the 1.6 kilometer [km] (1 mile [mi]) long site access road; and (3) 1.6 ha (4 ac) for a construction lay down area south of the CISF.

The indirect APE for the proposed CISF project would include the extent of visual effects and noise sources arising from the project. Given the low profile of the proposed project (i.e., no structures taller than 22.9 meters [75 feet]), minor increases to existing noise levels from CISF construction and operation, and the existence of other buildings, roads, and structures of the existing WCS waste management facilities, the NRC staff considers the extent of the indirect APE to include areas within a 1.6 km (1 mi) radius extending from the proposed project boundary.

### Tribal Consultation

In letters dated February 1, 2017 and March 24, 2017, the NRC staff invited five Federally-recognized Indian Tribes to participate in the Section 106 process (ADAMS Accession Nos ML17067A370, ML17067A379, ML17067A383, ML17067A389, and ML16344A076). These Tribes were identified as having past religious or cultural ties to the project area in West Texas and southeast New Mexico. In its letters, the NRC staff, initiated consultation under the Section 106 process and requested assistance of the Tribes in identifying and evaluating historic properties that may be affected by the undertaking. The Indian Tribes contacted were:

- Mescalero Apache Tribe
- Apache Tribe of Oklahoma
- Comanche Nation
- Kiowa Tribe of Oklahoma
- Ysleta del Sur Pueblo

In a letter dated March 13, 2017, Mr. Javier Loera, Ysleta Del Sur Pueblo Tribal Historic Preservation Officer, stated that the Tribe had no comments on the proposed CISF project (ADAMS Accession No. ML17075A228). The Tribe believed that the project would not adversely affect traditional, religious, or culturally significant sites of the Pueblo and had no opposition to the proposed project. However, the Tribe requested consultation should any human remains, or artifacts unearthed during the project be determined to fall under the National American Graves Protection and Repatriation Act guidelines.

In a letter dated June 29, 2017, Mr. Theodore E. Villicana, Comanche Nation Historic Preservation Office, stated that the location of the proposed CISF project had been cross-referenced with Comanche Nation site files (ADAMS Accession No. ML17192A330). Mr. Villicana indicated that “No Properties” that may potentially contain prehistoric or historic archaeological materials significant to the Comanche Nation have been identified.

Responses from the other three Indian Tribes were not received by the NRC staff.

Subsequently, in letters dated May 6, May 7, and May 28, 2019, the NRC staff requested assistance from seven Federally-recognized Indian Tribes in identifying and evaluating historic properties that may be affected by the undertaking, as described in ISP’s revised license application. The Indian Tribes contacted included the five Tribes contacted in 2017 and two additional Tribes: the Tonkawa Tribe of Oklahoma, and the Wichita and Affiliated Tribes (ADAMS Accession Nos. ML18345A029, ML18345A030, ML18345A031, ML18345A072, ML18345A102, ML18347A566, and ML18347A568).

On October 7, 2019, the Comanche Nation noted that it did not have a comment or concern at this time but did request to be updated on the project (ADAMS Accession No. ML19310E719). To date, the NRC staff have not received responses from the other Indian Tribes contacted in May 2019.

In addition, by letters dated May 6, 2019 (ADAMS Accession Nos. ML19113A262 and ML19113A263), the NRC staff notified the Lipan Apache Tribe of Texas and the Texas Band of Yaqui Indians of ISP's revised license application. These Tribes are not Federally-recognized Indian Tribes but have been honored or acknowledged by the State of Texas Senate or House of Representatives for their history and contributions within the State. In contacting these two Tribes, the NRC staff requested that the Tribes indicate whether they had a demonstrated interest in the undertaking and wished to participate as a consulting party, pursuant to Title 36 of the *Code of Federal Regulations* (36 CFR) Section 800.2(c)(5).

The Texas Band of Yaqui Indians responded on June 11, 2019, to indicate their interest to consult on the CISF project (ADAMS Accession No. ML19203A307). By email dated August 16, 2019, the NRC staff sought additional information regarding the Texas Band of Yaqui Indian's interest in consulting (ADAMS Accession No. ML19234A223). To date, the NRC staff has not received a response to this email.

By separate correspondence, the NRC staff is notifying the seven Federally-recognized Tribes and the two tribes recognized by the State of Texas of the staff's determination of effects, consistent with 36 CFR Section 800.4(d)(1).

#### Efforts to Identify Historic Properties

Searches of the Texas Historic Sites Atlas, Texas Archaeological Sites Atlas, and the New Mexico Cultural Resources Information System were conducted to identify any previously recorded cultural resources. No previously identified resources have been recorded in the APEs for either direct or indirect effects. The closest known archaeological resources to the proposed CISF project are located immediately outside the 1.6 km [1 mi] buffer (i.e., the indirect APE) in New Mexico and consist of five prehistoric sites excavated in 2003 prior to the construction of a nearby uranium enrichment facility (the URENCO National Enrichment Facility located in Eunice, New Mexico). According to the search of the New Mexico Cultural Resources Information System in 2015, the sites were all surface or near-surface scatters of fire-cracked rock, flaking debris, and ground stone within a dune field.

The NRC staff also has reviewed the 2015 and 2019 cultural resource survey reports submitted by ISP. In both reports, an ISP contractor conducted an archaeological survey to identify and document any cultural resources within the direct APE. Due to high ground surface visibility (50-90 percent), extensive previous mechanical clearing (i.e., prior use in oil and gas exploration and cattle grazing), and thin soils over the local caliche layer, no locations for productive shovel testing were found. The surveys consisted of surface examinations via pedestrian transects. A no-collection policy (i.e., field documentation only) was implemented; however, no historic or prehistoric artifacts or cultural features were identified during the surveys of the direct APE.

#### Preparation of an Environmental Impact Statement

The NRC staff is preparing an Environmental Impact Statement (EIS) to document its independent assessment of the potential impacts from the construction and operation of the proposed CISF, including analyses of potential impacts to historic properties. In accordance with 36 CFR Section 800.8, "Coordination with the National Environmental Policy Act," the NRC staff is using the National Environmental Policy Act of 1969 (NEPA) process to comply with its obligations under Section 106 of the NHPA.

During the scoping process for the EIS, conducted from November 2016 to April 2017 and again from September 2018 to November 2018, the NRC received only one general comment regarding the treatment of historical and cultural resources as the result of the undertaking. Specifically, the commenter was concerned with the violation of the 1848 Treaty of Guadalupe Hidalgo, the availability of sacred natural resources used for religious practices, and increased radiation exposure pathways for indigenous peoples. In its scoping summary report (ADAMS Accession No. ML19161A150), the NRC staff responded to these comments, noting that the scope of the EIS, as discussed above, includes an assessment of potential impacts to historic and cultural resources and coordination and consultation with Indian Tribes.

On May 8, 2020, the NRC staff published a draft EIS (ADAMS Accession No. ML20122A220) for public review and comment. The NRC notified the Federally-recognized and the State-honored Tribes of the draft EIS' availability (ADAMS Accession Package No. ML20160A150), providing instructions on how to access the document in ADAMS and how to comment on the document. The comment period closed on November 3, 2020, and the NRC staff is in the process of evaluating the comments received.

#### Determination of Effects

Based on review of the 2015 and 2019 cultural resource survey reports, searches of Texas and New Mexico archaeological databases, and the information provided by the seven Federally-recognized tribes identified as having past religious or cultural ties to the project area, the NRC staff considers that there is a low potential for intact archaeological deposits within the area to be disturbed during excavation. Accordingly, consistent with 36 CFR Section 800.4(d)(1), the NRC staff has determined that no historic properties are present and, therefore, no historic properties would be affected by the undertaking.

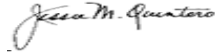
In support of the NEPA environmental and NHPA Section 106 reviews, the NRC staff is requesting your concurrence on the determination that no historic properties are present within the APE for this licensing action (undertaking) and therefore, no historic properties would be affected.

Additional information on the ISP license application is available on the NRC's project webpage at <https://www.nrc.gov/waste/spent-fuel-storage/cis/waste-control-specialist.html>. Documents are also publicly available from the NRC's ADAMS, which can be accessed online at: <http://www.nrc.gov/reading-rm/adams.html>.

In accordance with 10 CFR Section 2.390, "Public inspections, exemptions, requests for withholding," of the NRC's "Agency Rules of Practice and Procedure," a copy of this communication will be available electronically for public inspection in the NRC Public Document Room, or from the NRC's ADAMS.

If you have any questions or need any additional information, please contact the Environmental Project Manager, Mr. James Park, by telephone at 301-415-6954, or via email at [James.Park@nrc.gov](mailto:James.Park@nrc.gov).

Sincerely,



Signed by Quintero, Jessie  
on 12/14/20

Jessie M. Quintero, Chief  
Environmental Review Materials Branch  
Division of Rulemaking, Environmental Review  
and Financial Support  
Office of Nuclear Material Safety  
and Safeguards

Docket No.: 72-1050

Enclosures:

1. ISP's May 5, 2020 Supplemental Survey Report (non-public)
2. Figure showing extent of 2015 and 2020 Surveys
3. Drawing of Proposed CISF Layout

cc: J. Fowler, ACHP  
J. Pappas, NM SHPO

M. Wolfe

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Letter to M. Wolfe, Texas State Historic Preservation Officer re: NHPA Section 106 Determination of Effects for Proposed ISP CISF DATE December 14, 2020

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**ADAMS Accession No.: Ltr ML20307A258**

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