

*undertaking
#2010-0289*

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STATE HISTORIC
PRESERVATION OFFICE

PROGRAMMATIC AGREEMENT

between

THE HUMBOLDT-TOIYABE NATIONAL FOREST

AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER,

RECEIVED

Regarding

DEC 22 2010

THE CENTRAL ZONE VEGETATION MANAGEMENT PROGRAM

STATE HISTORIC
PRESERVATION OFFICE

WHEREAS, the Humboldt-Toiyabe National Forest (HTNF), Austin-Tonopah & Ely Ranger Districts, proposes to undertake Central Zone Vegetation Management Projects (Undertaking): and,

WHEREAS, the HTNF has determined that vegetation management projects in the Central Zone (see Appendix B, Central Zone map) may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, The HTNF has consulted with the Nevada SHPO pursuant to 36 CFR part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C§ 470f); and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) has been consulted per 36 CFR part 800 and the Advisory Council has declined to participate in the creation of this Agreement; and

WHEREAS, the Yomba Shoshone, Duckwater Shoshone, Ely Shoshone, Fallon Paiute/Shoshone, Southern Paiute Tribe of Utah/ Indian Peaks Band, and Goshute Native American Tribe(s) have been identified as interested parties for this Agreement and offered an opportunity to participate in the Section 106 process for identifying properties of traditional cultural and religious significance; and

WHEREAS, Central Zone Vegetation Management Projects will be designed and implemented over the course of multiple years using phased approaches; and

WHEREAS, Central Zone Vegetation Management Projects will need to be flexible regarding treatment types and placements; and

WHEREAS, this Agreement is intended to cover all reasonably identifiable aspects of Central Zone Vegetation Management Projects; and

WHEREAS, the Areas of Potential Effect (APE) are not yet determined; and

WHEREAS, effects to historic properties cannot be fully determined and the Parties desire to enter into this Agreement to set forth procedures to be followed in satisfaction of the HTNF Section 106 responsibilities of the National Historic Preservation Act, for the undertaking; and

WHEREAS, unless otherwise specified, duties of the HTNF as defined in this Agreement shall be carried out by the Austin/Tonopah and Ely Ranger Districts; and

NOW, THEREFORE, the HTNF and the SHPO agree that Central Zone Vegetation Management Projects shall be administered in accordance with the following stipulations to satisfy the HTNF's Section 106 responsibility for all individual undertakings of the program.

I. PURPOSE

The purpose of this Agreement is to establish an understanding between the HTNF and SHPO as to how the Section 106 consultation process will be implemented with regard to phased Central Zone Vegetation Management Projects. The Agreement defines general and specific measures that will be undertaken by the parties to ensure that the mutual objectives and individual requirements of the National Historic Preservation Act are fulfilled.

This agreement will also establish guidelines for the use of predictive GIS models for determining survey strategies, as well as establish a survey strategy for tested and accurate GIS models for low, moderate, and high probability areas.

II. PROGRAM DESCRIPTION

The Humboldt-Toiyabe National Forest proposes to use prescribed fire and mechanical treatments to treat various areas of pinyon-juniper woodlands in the Central Zone (Austin/Tonopah & Ely Ranger Districts). Within many areas of the Central Zone, the density of the pinyon-juniper woodland canopy is increasing which has caused a decline in understory shrub and herbaceous vegetation. Removal of the overstory using prescribed fire and mechanical treatments will allow re-establishment of understory herbs, grasses and over time, shrubs. In addition, many areas in the Central Zone are experiencing an expansion of pinyon-juniper woodlands into sagebrush habitat. Prescribed fire and mechanical treatments will assist in pushing back the expanding woodlands and conserving sagebrush habitat for many wildlife species. Vegetation management projects also serve to reduce fuel loading and create fuel breaks, thus reducing the possibility of large scale high severity fires.

Many of the Central Zone Vegetation Management Projects will be multiple-year, large scale projects encompassing thousands of acres. An Area of Potential Effect (APE) will be determined for each project; however, not all of the acres within the APE will be affected by treatments. These project APEs will be divided into smaller units for phased project implementation. Several staging areas for equipment parking and material storage will be necessary for project implementation. Both prescribed fire and mechanical treatment may be used to manage vegetation within the APE. Aerial and hand ignition will be used to implement prescribed burns. Constructing fire lines and black lines may also be utilized to

control prescribed fire and protect important resources. Not all of the treatment locations, types of fuel reduction activities, or access roads, have been determined; therefore, these activities will require flexibility with regard to their placements.

III. DEFINITIONS

Cultural Resources: An object or definite location of human activity, occupation, or use identifiable through field survey, historical documentation, or oral evidence and are at least 50 years of age. Cultural resources are prehistoric, historic, archaeological, or architectural sites, structures, places, or objects and traditional cultural properties.

Historic Properties: 36 CFR800.16 defines historic properties as “any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in, the National Register of Historic Places. ~~This term includes artifacts, records, and remains that are related~~ to and located within such properties. This term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria.

Qualified Archaeologist: A Forest Service archaeologist or an archaeologist hired by the forest that meets the Secretary of Interior's Historic Preservation Professional Qualification Standards (36CFR61, Appendix A [1983]).

Fire Sensitive Historic Properties: Historic properties that have the potential for being adversely affected by fire. These include properties that contain combustible features, and/or contain dense natural combustibles that would create an intense heat sufficient to damage non-combustible features/artifacts.

IV. STIPULATIONS

The HTNF shall ensure that the following stipulations are implemented during the course of Central Zone Fuels Reduction Projects:

A. Area of Potential Effect

1. The area of potential effect (APE) for Central Zone Vegetation Management Projects will be determined by topography, vegetation, access, and treatment needs, and will be developed by a qualified archaeologist in consultation with the SHPO and other interested parties.
2. The APE for each Central Zone Vegetation Management Project will be divided into units by considering topography, vegetation, access, and treatment needs.

B. Identification of Cultural Resources

1. A literature search for each area of potential effect will include but is not limited to a review of: previous field survey and site records; NVCRIS and INFRA databases; cultural resource overviews; local environmental, archaeological, and historical

information (i.e., BLM GLO maps and county and state records); landscape sensitivity-predictive models; information from American Indian tribes; and information from persons familiar with the area of potential effect.

2. The HTNF shall ensure that appropriate Native American representatives are consulted to identify Native American concerns and traditional cultural properties that may be within the APE.
3. A GIS predictive model (i.e. one based upon water, slope, elevation, and aspect) may be used to predict site probability (low, moderate, and high probability areas) to facilitate the creation of a survey strategy for each APE.
 - a. The model will be tested for accuracy within each APE in a systematic way (i.e. Intensive survey of a 1000x1000 meter grid [or multiple grids adding up to the equivalent of a 1000x1000 meter grid] of somewhat equal proportions of low, moderate, and high probability areas).
 - a.1) The SHPO will be consulted regarding the model and adequacy of testing.
 - b. If the model appears to be accurate based upon the qualified archaeologist's professional judgment of the field test, then the following survey strategy will be employed without further consultation with the SHPO:
 - b.1) High probability areas will be surveyed with a General Survey (30 meter wide transects).
 - b.2) Moderate probability areas will receive either a general or cursory level of inventory depending on topography (30-60 meter wide transects).
 - b.3) Low probability areas will be subject to a cursory survey utilizing intuition based upon the qualified archaeologist's professional judgment (i.e. visual scan for historic sites, single transects up drainages and on ridges/saddles, and single transects along cliff faces for rockshelters/rock art) of up to 20% of the total low probability acreage.
 - c. If the model needs to be refined based upon the professional judgment of the qualified archaeologist and field tests, then the model may be refined until field testing indicates that the model is accurate.
 - d. If after field tests and refinement, the model still does not appear to be accurate to the qualified archaeologist, or if the qualified archaeologist determines that a model is not appropriate for use in the APE and/or unit, then the SHPO will be consulted for the determination of an appropriate survey strategy for the APE or unit.

C. Eligibility of Cultural Resources

1. The HTNF shall ensure that cultural resources are evaluated by a qualified archaeologist pursuant to 36CFR800.4(b)(1)(c), in consultation with SHPO and other interested parties, to determine their eligibility for inclusion in the NRHP. The HTNF may request SHPO review of eligibility determinations separately or in conjunction with an assessment of effect.
 2. If a cultural resource cannot be evaluated, then it will be treated as if it were eligible for the NRHP.
 3. If the SHPO or any of the interested parties disagrees regarding eligibility, and the dispute cannot be resolved, then the HTNF shall seek a formal determination of eligibility from the Keeper of the National Register. The Keeper's determination will be considered final.
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D. Treatment of Historic Properties

1. The HTNF shall consult with the SHPO and other interested parties to determine the effect of the undertaking to historic properties identified within the APE.
2. The HTNF shall avoid effects to historic properties to the extent feasible through project design or redesign.
3. The HTNF will treat fire sensitive historic properties within the APE prior to project implementation to reduce the potential of adverse effects (See Appendix A).
4. Historic property boundaries will be flagged prior to project implementation.
5. In the case that a fire sensitive historic property cannot be treated to eliminate an adverse effect, or a historic property cannot be avoided by project activities, then the property will be mitigated in consultation with the SHPO (pursuant to 36CFR Part 800) and other interested parties.

E. Reporting

1. Report formatting and site documentation shall be consistent with the Humboldt-Toiyabe Heritage Resource Guidelines, 1995 and the Intermountain Antiquities Computer System (IMACS) instructions.
2. In addition to IMACS forms, the HTNF will record standing historic structures on an Historic Resources Inventory Form (HRIF).
3. All reports resulting from model creation and testing, identification, evaluation, and treatment will be submitted to the SHPO for comment prior to implementation of treatment in each separate unit(s).

4. The SHPO shall respond in 30 days of receipt with comments on report contexts, site eligibility, and project effect.
5. Documentation will be on file at either the Austin/Tonopah or Ely Ranger District offices and made available, within the limitations of site confidentiality, to other interested parties and interested members of the public.

F. Unanticipated discovery situations.

Previously unidentified and unanticipated cultural resources discovered while conducting project activities shall be subject to the terms of this agreement.

1. If a previously unidentified cultural resource is discovered, all surface disturbing activities within 200 feet of that resource shall cease. Within five (5) days of discovery, the HTNF shall notify the SHPO that a discovery situation exists.

Available information regarding the resource, including an eligibility determination, shall be provided to the SHPO as part of that notification. The SHPO may offer comments within ten (10) days of the notification by the HTNF, if they choose.
2. At the conclusion of the ten day comment period, the HTNF shall consider the SHPO's comments and determine that:
 - a. The discovered cultural resource is not eligible to the NRHP; or
 - b. the discovered cultural resource is, or is likely to be eligible to the NRHP. In such cases, the HTNF also shall determine whether or not the cultural resource:
 - b.1) was impacted by project activities prior to the resources identification, and that the impact was of such a nature or magnitude to require mitigation; or
 - b.2) the cultural resource would be impacted if the approved activity was allowed to proceed.
3. If the cultural resource is not eligible to the NRHP, or is eligible but will not be impacted, the HTNF shall notify the SHPO and any other interested parties immediately of its decision and the HTNF shall allow the activity to proceed.
4. If the HTNF determines that project impacts have caused a need for mitigation, or if the historic property would be impacted by the approved activity, the HTNF would not allow the activity to proceed within 200 feet of the historic property until such time as appropriate mitigation actions have been conducted.
5. The HTNF shall ensure that the discovery of Native American remains will be managed in accordance with Native American Graves Protection and Repatriation Act of 1990.

G. Other Considerations

1. The HTNF shall ensure that all stipulations of this PA are carried out by its contractors, subcontractors, or other personnel involved with this undertaking.
 2. The HTNF shall ensure that ethnographic, historic, architectural, and archaeological work conducted pursuant to this PA is carried out by or under the direct supervision of persons meeting qualifications set forth in the Draft Secretary of the Interior's Professional Qualification Standards dated June 20, 1997 (62FR33707-33723) and who have been permitted for such work by the signatories.
 3. The HTNF shall ensure that all its personnel and all the personnel of its contractors and subcontractors are directed not to engage in the illegal collection of historic and prehistoric materials. All parties shall cooperate with the HTNF to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470).
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H. Notices to Proceed

When appropriate, after compliance with Stipulations A-C, the HTNF in consultation with the SHPO, may issue Notices to Proceed for individual plan elements under any of the following conditions:

1. The HTNF and SHPO have determined that there are no cultural resources within the APE for the plan element; or
2. The HTNF and SHPO have determined that there are no historic properties within the APE for the plan element; or
3. The HTNF after consultation with the SHPO and interested persons has implemented an adequate Treatment Plan for the plan element, and
 - a. The fieldwork phase of the treatment option has been completed; and
 - b. The HTNF has prepared and/or accepted a summary description of the fieldwork performed and a reporting schedule for that work and the SHPO has reviewed and concurred that the work performed was adequate.

I. Dispute resolution

1. If the SHPO or other interested parties issues an objection regarding a matter submitted by the HTNF for review, the HTNF shall consult with the objecting party and SHPO to resolve the issue. If the HTNF determines that the objection cannot be resolved, the HTNF shall request the comments of the Advisory Council on Historic Preservation. The HTNF will take the advice of the Council into consideration when making their final decision.

2. The HTNF may continue all actions under this PA that are not in dispute.

J. Amendments

1. Any party to this agreement may request amendments of the agreement, whereupon the parties will consult in accordance with 36 CFR Part 800.13 to consider such amendment.
2. While amendment is under consideration, the HTNF shall ensure that no action is taken that would affect eligible properties or that would foreclose the consideration of modifications or alternatives until the consultation process concerning the proposed amendment has been concluded.

K. Termination

1. Any party to this agreement may terminate the agreement by providing thirty (30) days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.
2. In the event of termination, the HTNF will comply with 36 CFR 800.4 through 36 CFR 800.6 with regard to individual actions covered by this agreement.

L. Execution

1. This agreement becomes effective on the date of the last signature below.
2. The HTNF shall bear expenses relating to the identification and evaluation of all Historic Properties affected by the undertaking, to the extent that such properties are situated on land owned or controlled by the HTNF. Such costs shall include, but not be limited to, pre-field planning, field work, post-fieldwork analysis, and report preparation.

M. Duration of Agreement

1. This agreement shall remain in effect for five (5) years from the effective date.

N. USFS Conditions of Agreement

1. Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552) except where such disclosure would risk harm to historic properties or impede the use of traditional religious site by practitioners (Section 304 of the National Historic Preservation Act of 1966, as amended and 36 CFR800.11).

2. This instrument in no way restricts the Forest Service or SHPO from participating in similar activities with other public or private agencies, organizations, and individuals.
3. This agreement takes effect upon the signature of the Forest Service and the Nevada State Historic Preservation Officer and shall remain in effect not to exceed five years from the date of execution. This agreement may be extended or amended upon written request of either the Forest Service or the Nevada State Historic Preservation Officer. Either the Forest Service or the Nevada State Historic Preservation Officer may terminate this agreement with a 30-day written notice to the other, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of a termination, HTNF will comply with 36 CFR 800.4 through 36 CFR 800.6 with regard to individual actions covered by this agreement.

4. The Forest Service and the Nevada State Historic Preservation Officer and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

5. The principal contacts for this instrument are:

Forest Service Project Contact	NV SHPO Contact
Fred Frampton, Forest Archaeologist	Rebecca Palmer
Humboldt-Toiyabe National Forest 1200 Franklin Way Sparks, NV 89431	Department of Cultural Affairs 100 N. Stewart Street Carson City, NV 89701
Phone: 775-352-1253	Phone: 775-684-3443
FAX: 775-355-5399	FAX: 775-684-3442
E-Mail: fframpton@fs.fed.us	E-Mail: rebecca.palmer@nevadaculture.org

6. Nothing in this agreement shall obligate either the Forest Service or the Nevada State Historic Preservation Officer to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the Nevada State Historic Preservation Officer will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This agreement does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

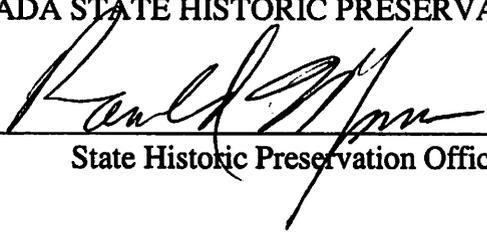
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7. This agreement is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
8. By signature below, the cooperator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

THE PARTIES HERERTO have executed this instrument:

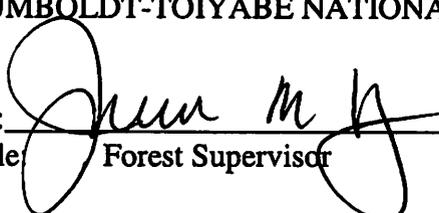
Consulting Parties:

NEVADA STATE HISTORIC PRESERVATION OFFICER

By: 
Title: State Historic Preservation Officer

Date: 12-9-10

HUMBOLDT-TOIYABE NATIONAL FOREST

By: 
Title: Forest Supervisor

Date: 12/14/10

Appendix A: Standard Protection Measures and Avoidance Procedures

Standard Protection Measures and Avoidance Procedures

The following protection measures shall be implemented as appropriate for Central Zone Vegetation Management Projects managed under this PA. When these protection measures are effectively applied, the Forest will have taken into account the effect of this project on historic properties.

Standard protective measures require that Historic Properties be excluded from any ground disturbance activity within their boundary. Proposed ground disturbing activities (hand lines, staging areas, skid trails, burn piles, landings, and access roads) shall avoid Historic Properties or shall be excluded from the project. Additionally, such activities shall not pedestal or in other ways isolate a site from its surroundings.

Fire sensitive properties that cannot be avoided by project activities will be treated prior to implementation to eliminate the risk of adverse effect.

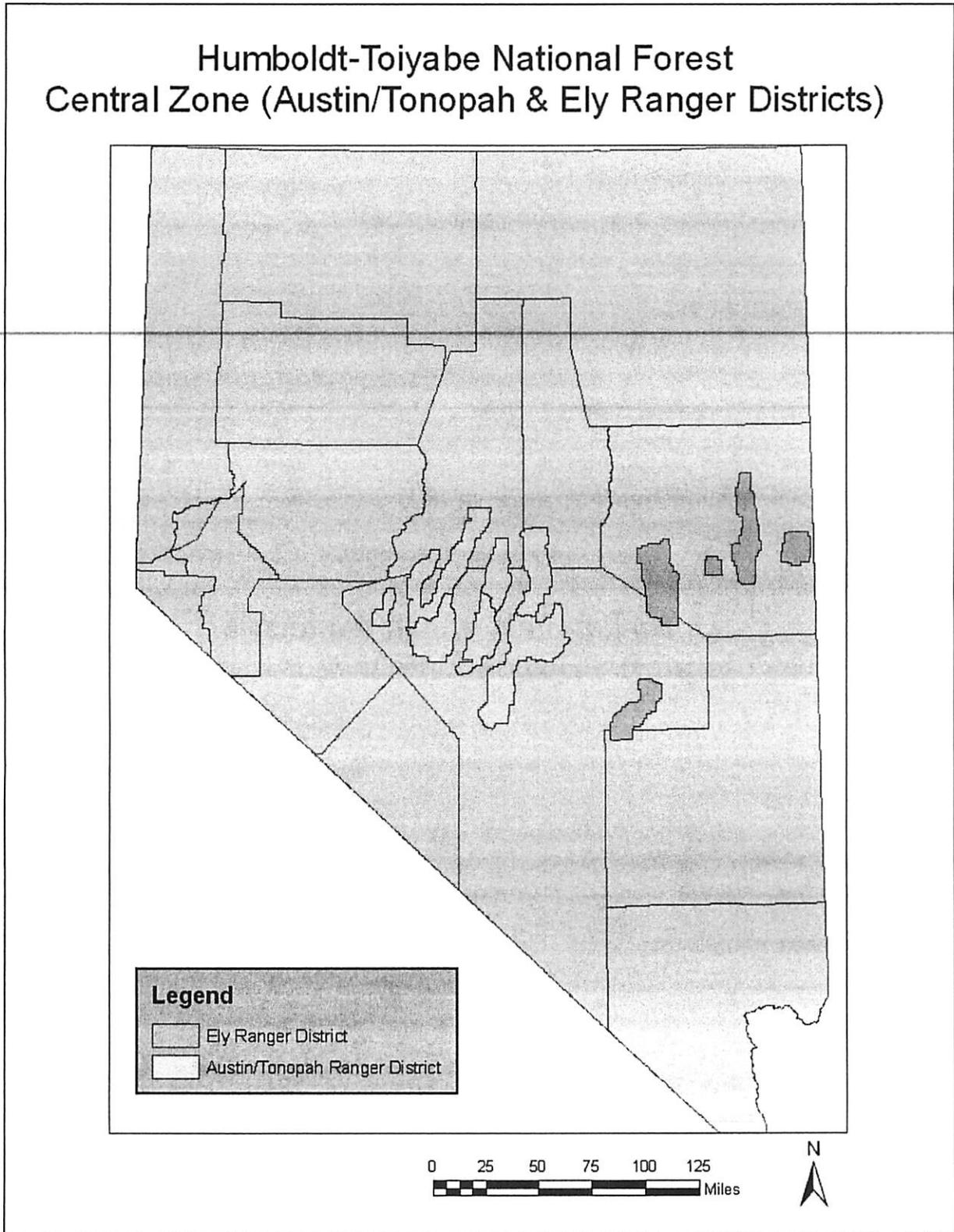
A. Fuel reduction (prescribed burns and mechanical treatments)

1. When any changes in proposed activities are necessary to protect cultural resources (e.g., project modifications, redesign or elimination: or revising maps or changing specifications, etc.) these changes shall be completed prior to initiating any activities.
2. Monitoring by a qualified archaeologist during the prescribed burn may be used to enhance the effectiveness of protection measures.
3. Prescribed burns will be implemented in a controlled fashion under the proper weather conditions.
4. During a prescribed burn, there will be no active ignition either by hand or aerial in or within 20 meters of a historic property.

B. Fuel reduction around historic properties (mechanical thinning)

1. The establishment of a 60 ft (20m) buffer zone around fire sensitive historic properties may be employed as a means to lessen the likelihood that inadvertent effects from project implementation might occur.
2. Trees and brush may be "thinned out" for 20 meters in all directions around each fire sensitive historic property prior to a prescribed burn.
3. Thinning may include removal or delimiting of the tree/brush. Trees will not be felled into the site boundary.

Appendix B: Map depicting the Central Zone (Austin/Tonopah and Ely Ranger Districts).



4. If trees are inadvertently felled so that they intrude into the boundaries of a Historic Property, all portions of the tree within the boundaries shall be left in-place until an evaluation can be made by a qualified archaeologist. If the heritage resource does not appear to be damaged, normal procedures for removing felled trees will include cutting the tree up and carrying out the debris off-site by hand unless such activities could pose an effect to the property.

C. Fuel reduction within historic properties (mechanical thinning)

1. In order to reduce fuel loading within a historic property, trees may be de-limbed and above-ground portions of bush removed, so long as this work is accomplished ~~by hand and the debris is carried off the site manually. Skidding or dragging of the debris shall not take place.~~ Subsurface portions of trees and brush shall not be disturbed.
2. These activities will be monitored by a qualified archaeologist.

D. Flagging of historic properties

1. Historic properties shall be delineated by flagging site boundaries prior to implementing ground disturbing activities within the APE.
2. Linear historic properties shall be flagged as appropriate to protect the resource.
 - 2.a) After consulting with SHPO, linear sites may be crossed in areas where their features or characteristics clearly lack historic integrity, that is, where those portions do not contribute to site eligibility or values.
3. Flagging using a standard color scheme (i.e. white and orange) will be used to demarcate historic properties throughout the project area.
4. Flagging will be removed from site boundaries after project implementation.