

**MEMORANDUM OF AGREEMENT (MOA)**  
**DE-GM58-23NA25559**  
**BETWEEN THE**  
**U.S. DEPARTMENT OF ENERGY (DOE)**  
**AND THE**  
**NEVADA STATE HISTORIC PRESERVATION OFFICER (SHPO)**  
**REGARDING**  
**THE SIGNALS EXPLORATION TESTBED (SET) PROJECT**  
**IN AREA 26 OF THE NEVADA NATIONAL SECURITY SITE (NNSS)**  
**NYE COUNTY**

*WHEREAS*, DOE plans to modify Building 26-2205 (Compressor Building, SHPO Resource B11558) as part of the SET Project located in Area 26 of the NNSS in Nye County, Nevada (the undertaking); and

*WHEREAS*, DOE considers the SET Project to be an undertaking subject to review under Title 54 United States Code (USC), Section 306108, commonly known as Section 106 of the National Historic Preservation Act and its implementing regulations at Title 36 Code of Federal Regulations (CFR), Part 800; and

*WHEREAS*, DOE in consultation with the Nevada SHPO has determined that Building 26-2205 is individually eligible for listing in the National Register of Historic Places (NRHP) under Secretary of the Interior's Significance Criterion A (36 CFR 60.4); and

*WHEREAS*, DOE in consultation with SHPO has determined that Building 26-2205 is also NRHP-eligible as a contributing element to the unrecorded Pluto Test Bunker Facility (SHPO Resource D434) which DOE is treating as an eligible historic district for the purposes of the undertaking (see Appendix A, Figures 1-3); and

*WHEREAS*, DOE in consultation with SHPO has determined that the undertaking will result in an adverse effect to historic properties; and

*WHEREAS*, DOE has notified the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.6(a)(1) of its determination of adverse effect and provided the ACHP with the documentation specified in 36 CFR 800.11(e) to facilitate its review (transmitted electronically on November 22, 2022), and the ACHP has not advised DOE whether they will participate, pursuant to 36 CFR 800.6(a)(1)(iii); and

*WHEREAS*, DOE is consulting with the Benton Paiute Tribe, Big Pine Paiute Tribe of the Owens Valley, Bishop Paiute Tribe, Chemehuevi Indian Tribe, Colorado River Indian Tribes, Duckwater Shoshone Tribe, Ely Shoshone Tribe, Fort Independence Indian Reservation, Kaibab Band of Paiutes, Las Vegas Paiute Tribe, Lone Pine Paiute-Shoshone Reservation, Moapa Band of Paiutes, Pahrump Paiute Tribe, Paiute Indian Tribe of Utah, Timbisha Shoshone Tribe, and the Yomba Shoshone Tribe (collectively referred to as the Tribes), and has notified the Tribes of the undertaking's adverse effect and development of an MOA with no response indicating interest; and

*WHEREAS*, DOE has notified the Nevada Test Site Historical Foundation, which does business as the National Atomic Testing Museum, of the undertaking's adverse effect and development of an MOA with no response indicating interest; and

*WHEREAS*, DOE has notified the County Commissioners of Nye and Clark Counties in Nevada of the undertaking's adverse effect and development of an MOA with no response indicating interest; and

*NOW THEREFORE*, DOE and SHPO agree that the undertaking will be implemented in accordance with the following stipulations to resolve the adverse effect of the undertaking on historic properties and to satisfy the Section 106 responsibilities of the DOE for all aspects of the undertaking.

## **STIPULATIONS**

DOE shall ensure that the following measures are carried out:

### **I. Roles and Responsibilities**

DOE will be responsible for administering and implementing this MOA. This includes, but is not limited to, overseeing all cultural resources work; assembling all submissions to the SHPO including reports and supplementary documentation; and consulting with SHPO regarding all agency compliance decisions. DOE must consult with the Tribes whose aboriginal territories include portions of the undertaking or who have previously expressed interest in undertakings located on the NNSS, and with other stakeholders who have an interest in the history of the NNSS.

### **II. Area of Potential Effects (APE)**

To account for all potential direct, indirect, and cumulative effects, DOE in consultation with SHPO has determined that the APE for the undertaking corresponds to the boundary of the unrecorded Pluto Test Bunker Facility as depicted on Figures 1 and 2 in Appendix A. The area of direct impact from modifications to Building 26-2205, associated utilities work, and construction staging includes the graded, bladed areas adjacent to the building as depicted on Figure 3 in Appendix A.

### **III. Mitigation of Adverse Effects**

#### **A. Boundary and Landscape Documentation of the Pluto Test Bunker Facility.**

1. DOE will complete a reconnaissance architectural survey of the potential Pluto Test Bunker Facility historic district. Photographs and notes will be taken as part of the survey.
2. DOE will electronically submit a draft letter report (hereinafter the boundary report) with a map showing the draft Pluto Test Bunker Facility historic district boundary to the SHPO for review and comment. This boundary report will include, but not be limited to:

- a. A discussion of how the boundary was defined based on archival research and the preliminary results of the architectural field survey;
  - b. Draft digital color photographs of the landscape surrounding and within the potential historic district;
  - c. A photo log of the landscape photographs describing each view with the file name, direction of view, and description of view; and
  - d. Additional digital color photographs of the potential contributing resources in the potential district showing context, setting, exterior elevations, interior views of character-defining spaces, features, and finishes, and relationships to other contributing elements. The photographs will be sufficient for later use in Architectural Resource Assessment (ARA) forms.
    - 1 The intensive survey and written portions of the ARA forms will not be fully completed as part of the boundary report. These will be completed as part of Stipulation III.B.2, below.
3. SHPO will review the draft boundary report within 15 calendar days of receipt. If SHPO does not respond within 15 calendar days of receipt, DOE will finalize the boundary report.
  4. DOE shall address all SHPO comments on the draft boundary report and will electronically submit a revised draft final boundary report to SHPO for review and comment. SHPO will review the draft final boundary report within 15 calendar days of receipt. If SHPO does not respond within 15 calendar days of receipt, DOE will finalize the boundary report.
  5. DOE may initiate the undertaking upon finalization of the boundary report in Stipulation III.A.1-4 above.

#### B. Pluto Test Bunker Facility Architectural Survey

1. DOE will complete an intensive architectural survey of the Pluto Test Bunker Facility and prepare a report that describes its origin, history, layout, and functions during the Pluto Program. The report will contain an NRHP evaluation for the potential district as a whole and will also provide the results of the architectural survey with contributing and non-contributing resources identified and documented.
2. DOE will record all additional architectural or archaeological resources discovered within the boundary of the Pluto Test Bunker Facility on ARA forms or NNSS site forms as appropriate.
3. DOE will submit a draft version of the architectural survey report to SHPO for review and comment within 180 days of receipt of concurrence on the boundary report in Stipulation III.A.1-3 above.

4. SHPO will review the draft report within 30 calendar days of receipt. If SHPO does not respond within 30 calendar days of receipt, then DOE will finalize the architectural survey report.
5. DOE will address any changes requested by SHPO, and then submit the revised final draft documents to SHPO for review. SHPO will review the revised final draft documents within 15 calendar days of receipt. If SHPO does not respond within 15 calendar days of receipt, DOE will finalize the documents.

**C. Information, Preservation, Publication, and Public Outreach**

1. DOE will archive copies of all the ARA forms, photographs, image files, databases, and reports produced to fulfill the terms of this MOA with the Nuclear Testing Archive in Las Vegas, Nevada.
2. DOE will publish the final architectural survey report to the DOE Office of Scientific and Technical Information for access by the public at the following website:  
[www.osti.gov](http://www.osti.gov).

**IV. Qualifications**

DOE will ensure that all actions prescribed by this MOA that involve the identification, evaluation, analysis, recordation, treatment, monitoring, and disposition of historic properties and the reporting and documentation of such activities in the form of reports, forms, or other records are carried out by or under the supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards for archaeology, history, architectural history, or historic architecture as appropriate (48 FR 44738-44739).

**V. Post-review Discoveries**

If historic properties are discovered or if unanticipated effects on historic properties occur within the APE after the undertaking activities have been initiated, then DOE personnel will implement the following procedure:

- A. DOE and its contractors will immediately cease all operations for that portion of the activity that has the potential to affect an historic property or a new discovery (with a buffer of ten feet surrounding the discovery).
- B. DOE will ensure that a Cultural Resource Management (CRM) Subject Matter Expert (SME) assesses the NRHP eligibility of the property and the potential for the activity to affect its qualifying characteristics. The CRM SME will report the findings to DOE and develop a treatment plan to avoid or mitigate the effect(s) as appropriate.
- C. DOE will consult with SHPO on the discovery and the treatment plan within five working days of the discovery. SHPO will have five working days to provide any comments on the discovery, DOE's determination of NRHP eligibility, and the

treatment plan as necessary. If SHPO does not respond within five working days of receipt, DOE will proceed with the proposed treatment plan developed in accord with Stipulation V.B.

- D. DOE will address any changes requested by SHPO, and then submit the revised draft final documents to SHPO for review. SHPO will review the revised final draft documents within five working days of receipt. If SHPO does not respond within five working days of receipt, DOE will finalize the documents.
- E. DOE will notify the Tribes of discoveries that have the potential to adversely affect properties of religious or cultural significance or cultural items as defined in the Native American Graves Protection and Repatriation Act. After reviewing such discoveries, the Tribes can request further consultation on the undertaking by notifying DOE and SHPO in writing.
- F. The CRM SME will submit a summary of the fieldwork activities to DOE once the fieldwork portion of the treatment plan is completed.
- G. DOE will submit this fieldwork summary to SHPO.
- H. SHPO will have five working days to provide comment on the fieldwork summary. If SHPO concurs with this determination or does not respond within five working days of receipt, DOE will advise the Project Manager to resume the activities that were halted to address the discovery situation.
- I. If SHPO has comments regarding the fieldwork summary, then DOE will have the CRM SME complete any additional activities to address these comments and resubmit the revised fieldwork summary to SHPO.
- J. DOE will then advise its contractor to resume the activities that were halted to address the discovery situation.

## **VI. Dispute Resolution**

Should any Signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, then DOE and SHPO must consult to resolve the objection. If DOE determines that such objection cannot be resolved, then DOE must:

- A. Forward all documentation relevant to the dispute to the ACHP, including DOE's proposed resolution. The ACHP will advise DOE on how to resolve the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, DOE must prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and SHPO and provide them with a copy of this written response. DOE may then proceed according to its final decision.
- B. If the ACHP does not provide advice regarding the dispute within the 30-calendar day period, then DOE may make a final decision on the dispute and proceed accordingly.

Prior to reaching such a final decision, DOE must prepare a written response that takes into account any timely comments regarding the dispute from SHPO and provide SHPO and the ACHP with a copy of the written response.

- C. DOE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

## **VII. Amendments**

This MOA may be amended at any time when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all the Signatories is filed with the ACHP.

## **VIII. Legal Effect**

This MOA shall not be construed to provide a private right or cause of action for or by any person or entity who is not a party to this MOA. This MOA in no way restricts either of the parties from participating in any activity with other public or private agencies, organizations, or individuals.

## **IX. Funding**

This MOA is neither a fiscal nor a funds-obligation document. Nothing in this MOA authorizes or is intended to obligate the parties to expend, exchange, or reimburse funds, services, or supplies or transfer or receive anything of value. The details of the level of support to be furnished to one party by the other with respect to funding will be developed in specific interagency agreements or other agreements, subject to the availability of funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act (31 USC 1341). If compliance with the Antideficiency Act alters or impairs DOE's ability to implement the stipulations of this MOA, DOE will consult with SHPO in accordance with the amendment and termination procedures found at Stipulations VII and XII of this MOA.

## **X. Freedom of Information Act**

Subject to the Freedom of Information Act (5 USC 552), decisions on disclosure of DOE information to the public regarding projects or programs referenced in this MOA will be made by the DOE National Nuclear Security Administration.

## **XI. Compliance with Applicable Laws and Regulations**

All understandings herein are subject to and will be carried out in accordance with all applicable laws, regulations, and other legal requirements.

## **XII. Termination**

If any Signatory to this MOA determines that its terms will not or cannot be carried out, then that party will immediately consult with the other parties to attempt to develop an

amendment per Stipulation VII. If within 30 calendar days, or other time period agreed to by all Signatories, an amendment cannot be negotiated, then any Signatory may terminate the MOA upon written notification to the other Signatories.

Once this MOA is terminated, prior to any work continuing on the undertaking, DOE must either (a) execute an MOA pursuant to 36 CFR 800.6 or (b) request comment from the ACHP, take these comments into account, and provide a response to the ACHP pursuant to 36 CFR 800.7. DOE must also notify SHPO and any other consulting parties of the course of action it will pursue.

### **XIII. Duration of the Agreement**

This MOA will expire if its stipulations are not carried out within five years from the date of its execution. Prior to such time, DOE may consult with SHPO to reconsider the terms of the MOA and amend them in accordance with Stipulation VII above.

*EXECUTION* of this MOA by DOE and SHPO and the implementation of its terms constitute evidence that DOE has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

This MOA may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

**SIGNATORIES:**

U.S. Department of Energy, National Nuclear Security Administration Nevada Field Office

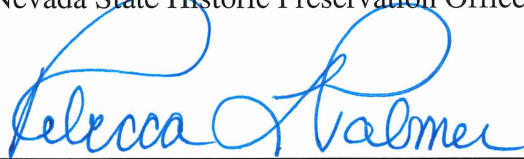
**David R.  
Bowman**

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David R. Bowman  
Date: 2023.03.15  
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David R. Bowman, Ph.D., Manager  
National Nuclear Security Administration  
Nevada Field Office

Nevada State Historic Preservation Officer



Date: March 16, 2023

Rebecca Lynn Palmer  
State Historic Preservation Officer

cc:

A. Colarusso, NFO

L. Minor, NFO

MSTS Correspondence Management

AMMI-PLG-MOA-FY23-0001

ADM 16.1.5.A



**APPENDIX A**  
**MAPS FOR THE UNDERTAKING**

Figure 1: Location of the undertaking on the NNSS at Building 26-2205 in the unrecorded Pluto Test Bunker Facility district.

Figure 2: Map of the unrecorded Pluto Test Bunker Facility district and APE for the undertaking.

Figure 3: Boundary of direct effects area at Building 26-2205.

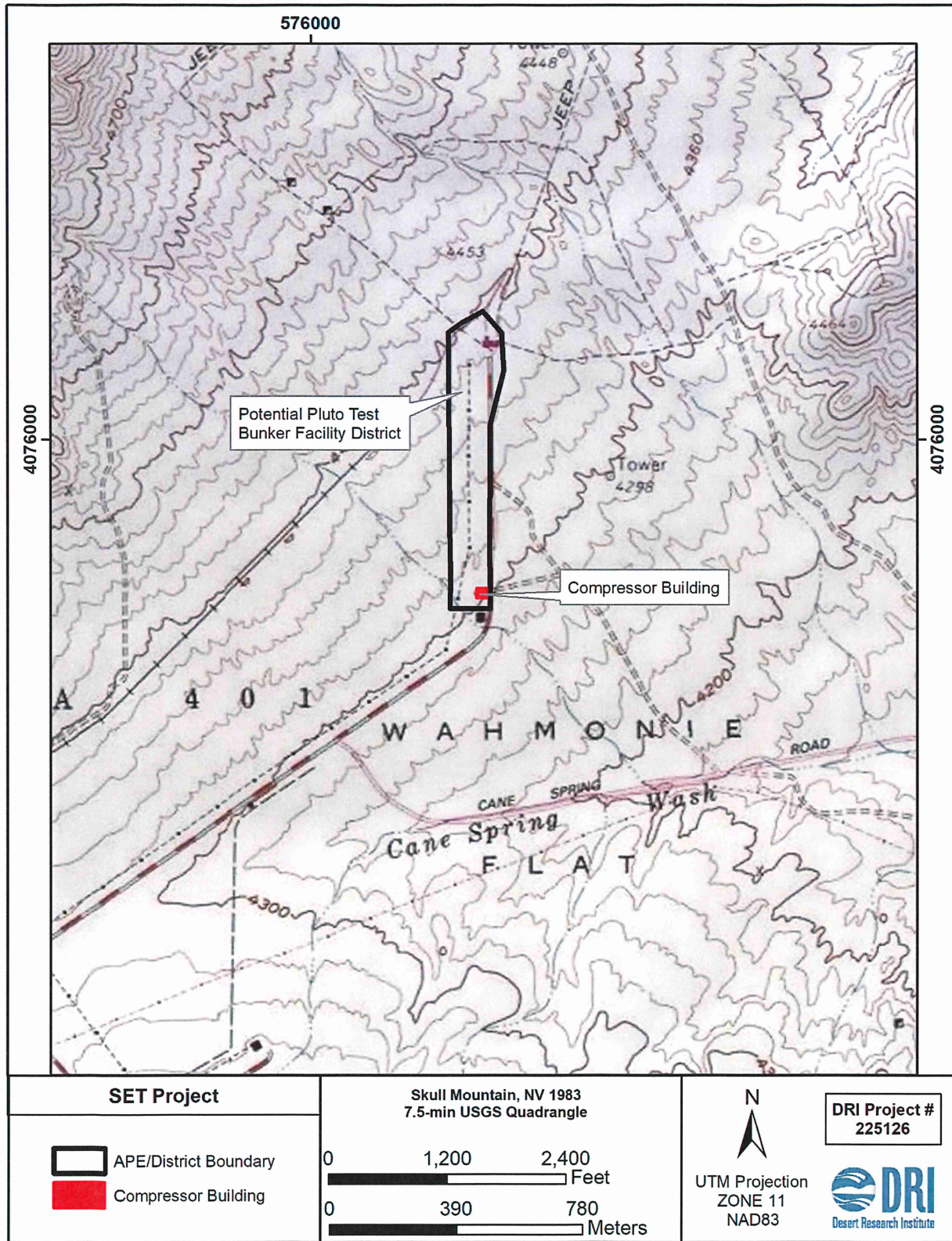


Figure 1: Location of the undertaking on the NNSS at Building 26-2205 (Compressor Building) in the unrecorded Pluto Test Bunker Facility district.



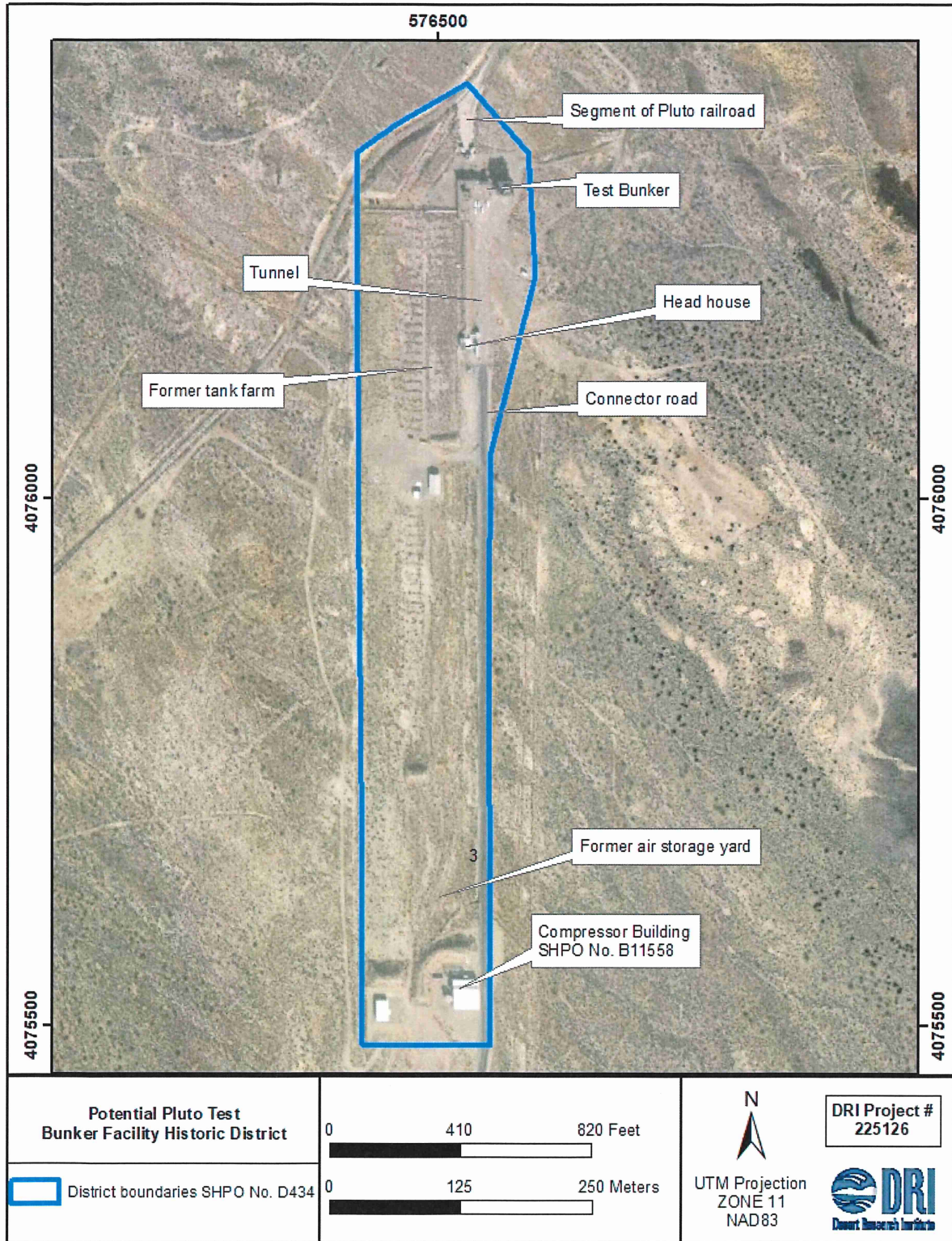


Figure 2: Map of the unrecorded Pluto Test Bunker Facility district. The APE for the undertaking corresponds to the potential district boundary.



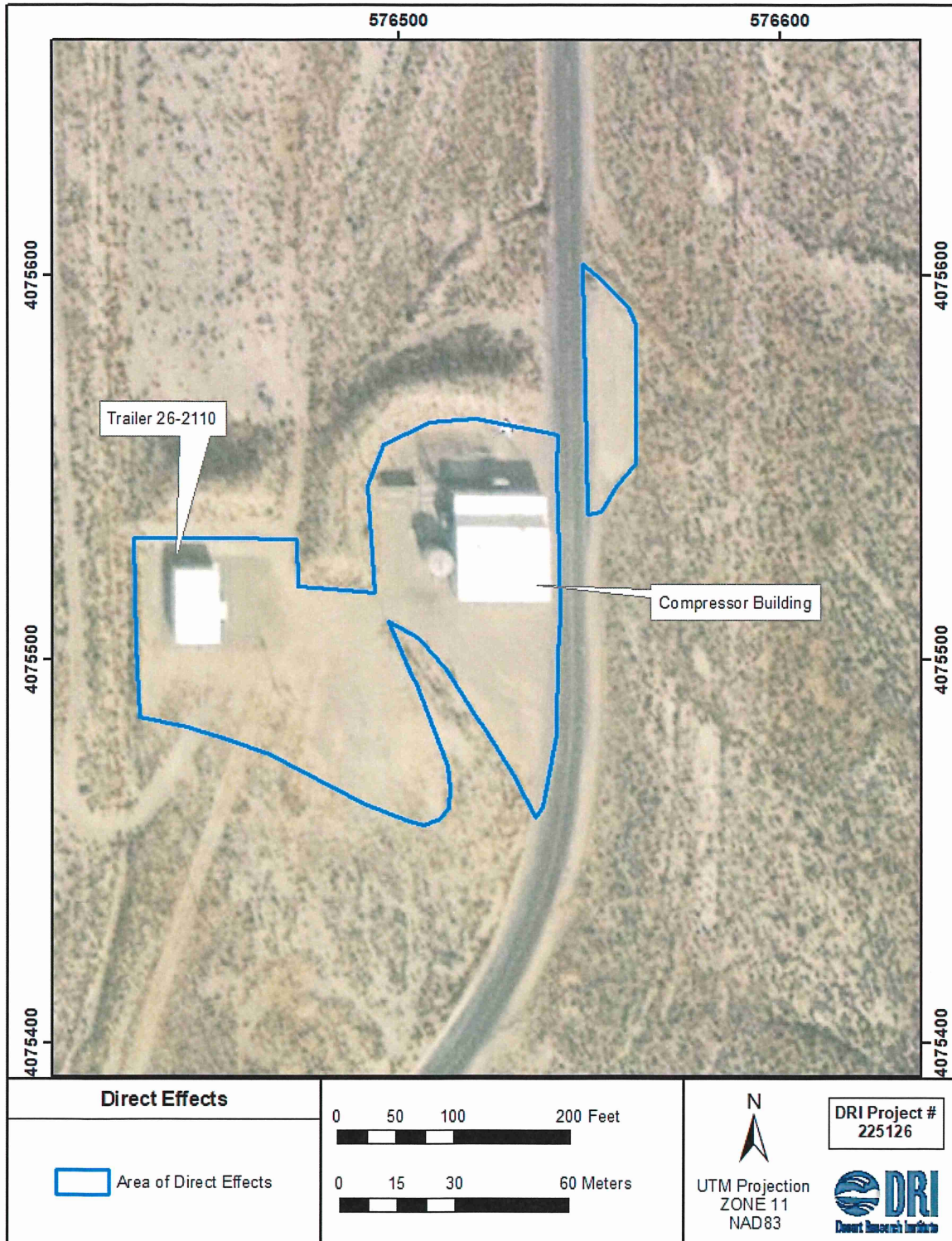


Figure 3: Boundary of direct effects area at Building 26-2205 (Compressor Building). Note that Building 26-2110 is a noncontributing Accessory Resource that postdates the period of significance as determined in consultation with SHPO as part of the identification and evaluation phases.