

MEMORANDUM OF AGREEMENT DE-GM58-21NA25535
BETWEEN THE
U.S. DEPARTMENT OF ENERGY
AND THE
NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
DEMOLITION AND REMOVAL OF TEN ARCHITECTURAL RESOURCES
LOCATED IN AREA 12 OF THE NEVADA NATIONAL SECURITY SITE
NYE COUNTY

WHEREAS, the U.S. Department of Energy (DOE) plans to demolish and remove ten architectural resources identified as environmental hazards unsafe for human occupation or reuse located in Area 12 of the Nevada National Security Site (NNSS) in Nye County, Nevada (the undertaking); and

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

WHEREAS, the DOE has determined that none of the ten resources are individually eligible for listing in the National Register of Historic Places (NRHP) under any of the Secretary of the Interior's significance criteria (36 CFR § 60.4). However, the ten resources are likely contributing elements to the unrecorded Area 12 Camp which has not been formally evaluated for NRHP eligibility, but DOE is treating as eligible for the NRHP under multiple criteria at the national level of significance (Appendix A); and

WHEREAS, the DOE, in consultation with the Nevada State Historic Preservation Officer (SHPO), has determined that the undertaking will result in an adverse effect to historic resources contributing to the potential NRHP eligibility of Area 12 Camp District; and

WHEREAS, the 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, and the ACHP has chosen not to participate in the consultation in correspondence dated July 15, 2020 pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the 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 a Memorandum of Agreement (MOA) with no responses indicating interest; and

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

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

NOW THEREFORE, the DOE and the 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

The DOE shall ensure that the following mitigation measures are carried out:

I. Roles and Responsibilities

The 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 treatment plans; and consulting with SHPO regarding all agency compliance decisions. The 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

The Area of Potential Effects (APE) for direct physical effects is discontinuous and consists of the immediate area surrounding the footprint of each resource plus a buffer of 15 feet on all sides for operation of construction equipment. However, the removal of the ten resources will also result in cumulative effects to the Area 12 Camp. Therefore, the APE has been expanded to include the geographic area of direct visual and cumulative effects within which the undertaking may cause alterations in the character of historic properties and corresponds to the boundaries of the Area 12 Camp (Appendix A).

III. Mitigation of Adverse Effects

A. Boundary and Landscape Documentation of the Area 12 Camp.

1. The DOE will electronically submit a draft letter report (hereinafter the boundary report) with a map showing the draft Area 12 Camp 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 archaeological and architectural fieldwork; and

- b. Draft digital color photographs of the landscape surrounding and within the Area 12 Camp; and
 - c. A photo log of the landscape photographs describing each view with the file name, direction of view, and description of view; and
 - d. Draft digital color photographs of the newly discovered contributing district resources, sufficient for later use in Architectural Resource Assessment (ARA) forms (Stipulation III.B.2). The written portions of the ARA forms do not need to be fully completed at this time.
2. The SHPO will review the draft boundary report within fifteen (15) calendar days of receipt. If the SHPO does not respond within fifteen (15) calendar days of receipt, the DOE will finalize the boundary report.
 3. The DOE shall address all SHPO comments on the draft boundary report and will electronically submit a revised draft final boundary report to the SHPO for review and comment. The SHPO will review the draft final boundary report within fifteen (15) calendar days of receipt. If the SHPO does not respond within fifteen (15) calendar days of receipt, the DOE will finalize the boundary report.
 4. The DOE may initiate the undertaking upon finalization of the boundary report in Stipulation III.A.1-3 above.

B. Area 12 Camp Historic District Architectural Survey

1. The DOE will complete an architectural survey of the Area 12 Camp and prepare a report with a historic context that describes the origin, history, and support functions of the historic district as well as its significance to the development of the Nevada Test Site, and its character as a community. The report will also provide the results of the architectural survey with information about resources, architectural styles, functional architectural types, and character-defining features and Area 12 Camp NRHP eligibility recommendations.
2. The DOE will record all additional architectural or archaeological resources discovered within the boundary of the Area 12 Camp on ARA forms or NNSS site forms.
3. The DOE will revise the ARA forms for the resources in the direct physical APE to note the resources' contributing eligibility status to the Area 12 Camp.
4. The DOE will submit a draft version of this architectural survey report to the SHPO for review and comment within one (1) year of the completion of all undertaking activities.
5. The SHPO will review the draft forms within thirty (30) calendar days of receipt. If the SHPO does not respond within thirty (30) calendar days of receipt, then the DOE will finalize the architectural and archaeological documents.

6. The DOE will address any changes requested by the SHPO, and then submit the revised final draft documents to the SHPO for review. The SHPO will review the revised final draft documents within fifteen (15) calendar days of receipt. If the SHPO does not respond within fifteen (15) calendar days of receipt, the DOE will finalize the documents.

C. Information Preservation, Publication, and Public Outreach

1. The DOE will archive copies of all the ARA forms, photographs, image files, databases, and reports produced to fulfill the terms of this Memorandum of Agreement (MOA) with the Nuclear Testing Archive in Las Vegas.
2. The DOE will publish the final Area 12 Camp evaluation report to the DOE Office of Scientific and Technical Information for access by the public at the following website: www.osti.gov.

IV. Qualifications

The 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 must be 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, or architectural history 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. The Project Manager 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 (10) feet surrounding the discovery) and notify the DOE of the discovery or effect.
- B. The DOE will ensure that a culture 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 the DOE and develop a treatment plan to avoid or mitigate the effect(s) as appropriate.
- C. The DOE will consult with the SHPO on the discovery and the treatment plan within five (5) working days of the discovery. The SHPO will have five (5) working days to provide any comments on the discovery, the DOE's determination of NRHP eligibility, and the treatment plan as necessary. If the SHPO does not respond within five (5) working days of receipt, the DOE will proceed with the proposed treatment plan developed in accordance with Stipulation V.B.

- D. The DOE will address any changes requested by the SHPO, and then submit the revised draft final documents to the SHPO for review. The SHPO will review the revised final draft documents within five (5) working days of receipt. If the SHPO does not respond within five (5) working days of receipt, the DOE will finalize the documents.
- E. The 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 the DOE and the SHPO in writing.
- F. The CRM SME will submit a summary of the fieldwork activities to the DOE once the fieldwork portion of the treatment plan is completed.
- G. The DOE will submit this fieldwork summary to the SHPO.
- H. The SHPO will have five (5) working days to provide comment on the fieldwork summary. If the SHPO concurs with this determination or does not respond within five (5) working days of receipt, the DOE will advise the Project Manager to resume the activities that were halted to address the discovery situation.
- I. If the SHPO has comments regarding the fieldwork summary, then the DOE will have the CRM SME complete any additional activities to address these comments and resubmit the revised fieldwork summary to the SHPO.
- J. The DOE will then advise the Program Manager 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 the DOE and the SHPO must consult to resolve the objection. If the DOE determines that such objection cannot be resolved, then the DOE must:

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

takes into account any timely comments regarding the dispute from the SHPO and provide the SHPO and the ACHP with a copy of the written response.

- C. The 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. 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 Anti-Deficiency Act alters or impairs the DOE's ability to implement the stipulations of this MOA, the DOE will consult with the 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/NNSA information to the public regarding projects or programs referenced in this MOA shall be made by the DOE following consultation with the SHPO.

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 thirty (30) days—or another 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, the 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. The DOE must also notify the SHPO and any other consulting parties of the course of action it will pursue.

XIII. Duration

This MOA will expire if its stipulations are not carried out within five (5) years from the date of its execution. Prior to such time, the DOE may consult with the SHPO to reconsider the terms of the MOA and amend them in accordance with Stipulation VII above.

EXECUTION of this MOA by the DOE and the SHPO and the implementation of its terms constitute evidence that the 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.

[Remainder of Page Intentionally Blank]

SIGNATORIES:

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

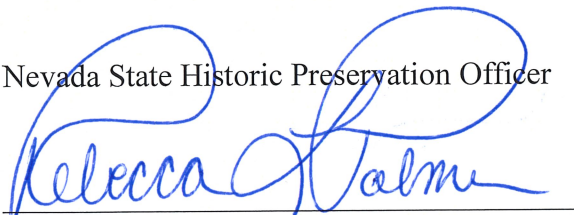
David R.
Bowman

Digitally signed by David
R. Bowman
Date: 2021.01.23
20:39:30 -08'00'

Date: 1/23/2021

David R. Bowman, Ph.D.
Nevada Field Office Manager

Nevada State Historic Preservation Officer



Date: 01/26/2021

Rebecca Lynn Palmer
State Historic Preservation Officer

Appendix A. Location Maps and List of Resources Scheduled for Removal

Figure A-1. Map showing location of the Area 12 Camp and the unrecorded historic district on the NNSS. A-1

Figure A-2. Satellite image showing the location of resources to be removed A-2

Table A-1. List of Resources Scheduled for Demolition with Eligibility Status..... A-3

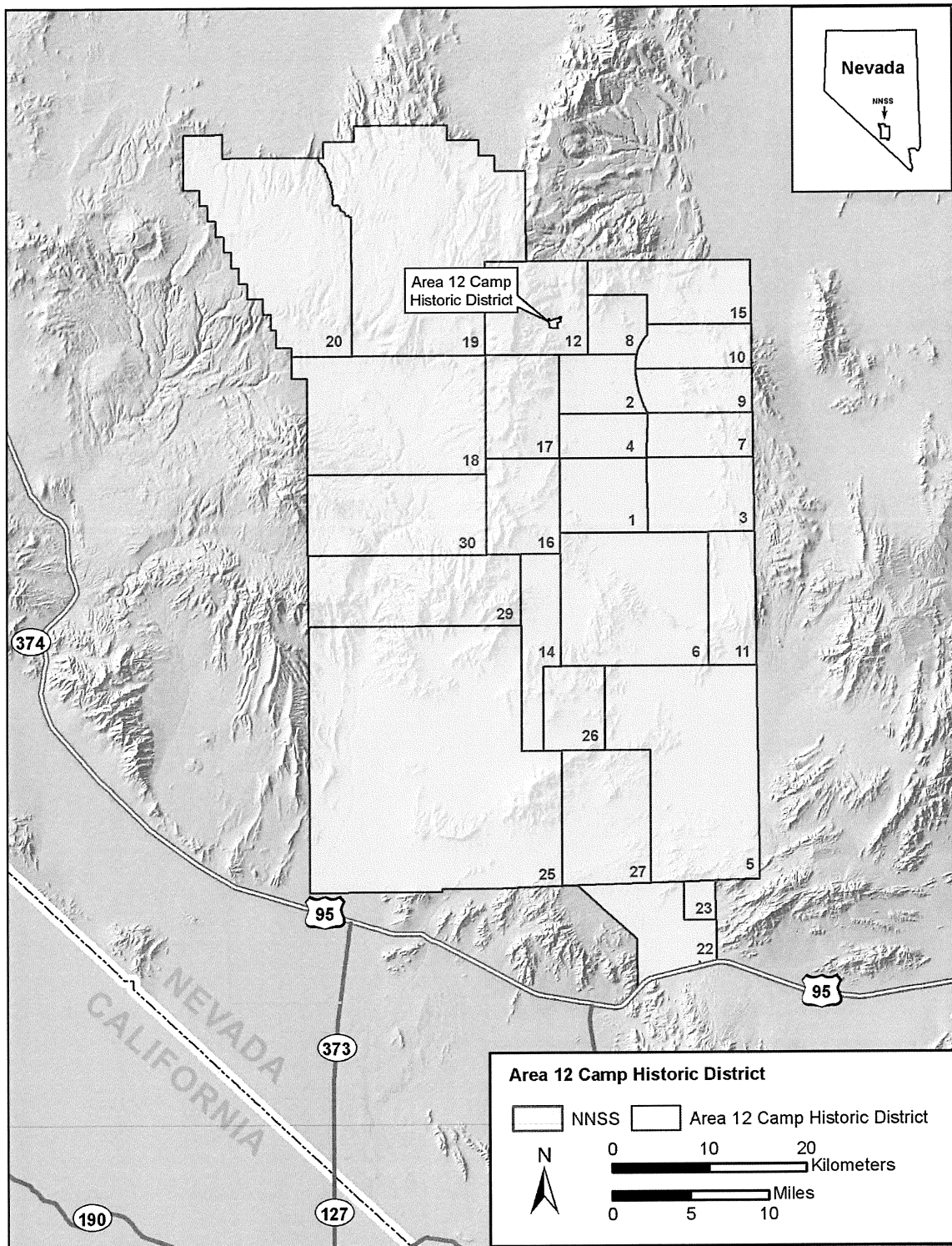


Figure A-1. Map showing the location of the Area 12 Camp and the unrecorded historic district on the NNSS.

This attachment contains information that may be exempt from Freedom of Information Act Requests.

Please consult the appropriate federal agency to obtain this information.

Table A-1. List of Resources Scheduled for Removal with Eligibility Status.

SHPO Resource No.	Resource Type	Eligibility Status†
B17625	Residential Trailer	Not individually eligible, contributing*
B17626	Office Trailer	Not individually eligible, contributing*
B17627	Office Trailer	Not individually eligible, contributing*
B17628	Storage Trailer	Not individually eligible, contributing*
B17629	Office Trailer)	Not eligible (in ruins)
B17630	Linen Supply Brockhouse	Not individually eligible, contributing*
B17631	Storage Brockhouse	Not individually eligible, contributing*
B17632	Storage Brockhouse	Not individually eligible, contributing*
B17633	Storage Brockhouse	Not individually eligible, contributing*
B17634	Icehouse	Not individually eligible, contributing*
S2171	Metal Canopy	Not individually eligible, contributing*

*This resource is a contributing element to the unrecorded Area 12 Camp Historic District.

† Eligibility status determined by the DOE in consultation with the SHPO.