

PROGRAMMATIC AGREEMENT

AMONG NAVAL AIR STATION, FALLON, NEVADA, THE NEVADA STATE HISTORIC PRESERVATION OFFICER AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING THE IDENTIFICATION, EVALUATION AND TREATMENT OF HISTORIC PROPERTIES ON LANDS MANAGED BY NAVAL AIR STATION, FALLON

WHEREAS, Naval Air Station Fallon, Nevada (NAS Fallon), provides for the air operations and training programs and related support activities, for the fleet, on lands under the control and jurisdiction of the Department of the Navy in the State of Nevada; and

WHEREAS, NAS Fallon has determined that such undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the Advisory Council on Historic Preservation (Council) and the Nevada State Historic Preservation Officer (SHPO) pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, NAS Fallon has invited the participation of the Fallon Paiute Shoshone Tribe, the Walker River Paiute Tribe, the Lovelock Paiute Tribe, the Pyramid Lake Paiute Tribe, the Yerington Paiute Tribe, the Yomba Shoshone Tribe, the Winnemucca Shoshone Tribe, the Te-Moak Tribe of Western Shoshone, the Bureau of Land Management, the Oregon California Trails Association, the Lincoln Highway Association, and the Churchill County Museum and invited them to review and comment on this agreement with the stipulation of a 30 day response period from date of receipt, at which time the Navy will finalize the Programmatic Agreement (Agreement) with or without such comments; and

WHEREAS, the Bureau of Land Management (BLM) participated in the development of the NAS Fallon Integrated Cultural Resources Management Plan (ICRMP), has agreed that NAS Fallon will assist BLM in cultural resource management activities on Navy withdrawn lands, and has been invited to concur with this agreement; and

WHEREAS, NAS Fallon's obligations under this Agreement are subject to the availability of funds under applicable law. NAS Fallon shall make reasonable and good faith efforts to timely obtain funds necessary for NAS Fallon to comply with such obligations.

NOW THEREFORE, NAS Fallon, the Council, and SHPO agree that NAS Fallon undertakings on Navy-acquired Lands in the State of Nevada shall be administered in accordance with the stipulations and definitions (Appendix 1) of this Agreement to satisfy NAS Fallon's responsibilities for individual undertakings, as defined at 36 CFR Part 800.16(y).

IN ADDITION, NAS Fallon, Nevada BLM, and SHPO agree that NAS Fallon undertakings on lands withdrawn from BLM holdings shall be administered in accordance with the stipulations in the State Protocol Agreement between the Bureau of Land Management, Nevada and the Nevada

State Historic Preservation Office and its Appendices dated October 26, 2009 (2009 State Protocol Agreement) to satisfy NAS Fallon's responsibilities for individual undertakings as defined at 36 CFR Part 800.16(y). Navy-acquired lands and lands withdrawn from BLM are shown in Figure 1.

STIPULATIONS

NAS Fallon undertakings on Navy-administered lands in the State of Nevada will be carried out in accordance with NAS Fallon's ICRMP, the 2009 State Protocol Agreement, and the stipulations of this Agreement. When a conflict exists between the ICRMP and the terms of this Agreement, the latter shall prevail.

I. CULTURAL RESOURCE STAFF

1. In accordance with 36 CFR 800.2, NAS Fallon will ensure that all work pursuant to this PA regarding historic properties will be carried out, reviewed by, or conducted under the supervision of individuals meeting the professional qualifications standards identified in The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 36 CFR 61 (Federal Register Vol. 62, No. 119, 1997).

A. All work pursuant to this PA regarding historic buildings and structures will be carried out, reviewed by, or conducted under the supervision of a person or persons meeting the professional qualifications for Architectural Historian or Historic Architect, as defined under 36 CFR 61.

B. All work pursuant to this PA regarding prehistoric and historic archaeological resources, and any historic properties to which federally recognized Native American groups may attach religious and cultural significance, will be carried out, reviewed by, or conducted under the supervision of a person or persons meeting the professional qualifications for Archeologist, as defined under 36 CFR 61.

C. Individuals meeting the above professional qualifications are hereinafter referred to as the "NAS Fallon Cultural Resources Staff (CRS)."

D. NAS Fallon will ensure that all reviews to determine if an undertaking requires further review will be carried out by qualified personnel.

E. Where contractors are employed to work on eligible or potentially eligible properties, NAS Fallon will ensure that experience in relevant aspects of historic preservation will be an evaluation factor in the contractor selection process, as appropriate.

II. COORDINATION AND INFORMATION EXCHANGE

A. NAS Fallon will ensure that the results of identification and evaluation efforts in connection with NAS Fallon undertakings are provided to the SHPO for integration into the Statewide Comprehensive Inventory, except where an Indian Tribe specifically requests in writing that information on a particular cultural resource be excluded from the inventory. The SHPO will be provided with a copy of the tribe's written request.

B. As requested by the SHPO and to the extent feasible, NAS Fallon will participate in programs undertaken or coordinated by the SHPO under the authority of Section 101(b)(3) of National Historic Preservation Act (NHPA).

C. The current edition of NAS Fallon's ICRMP is dated March 2007. This ICRMP was developed in consultation with the SHPO and the BLM, who have concurred in the implementation of its Management considerations (Chapter 3.0). Any revision of these guidelines should be done in consultation with the SHPO and will not be implemented without the SHPO's concurrence.

D. Consultation and coordination among the SHPO, the Council, the BLM, and other interested persons pursuant to this Agreement shall be the responsibility of NAS Fallon.

E. For all NAS Fallon undertakings on Federal lands in the State of Nevada not under the control or jurisdiction of the Navy, NAS Fallon will carry out its responsibilities pursuant to Section 106 of NHPA in accordance with the policies and procedures of the Federal agency with control and jurisdiction over the affected lands.

III. STANDARD PROCEDURES

A. Identifying Cultural Resources

The NAS Fallon CRS will ensure the cultural resources within the Area of Potential Effect (APE) for any undertaking are identified and evaluated in a manner consistent with 36 CFR 800.4, National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties, applicable SHPO guidance, the current edition of NAS Fallon's ICRMP, and the following stipulations:

1. Information Needs

The NAS Fallon CRS will, during the earliest feasible planning stage of any undertaking, determine the information needed to identify and evaluate cultural resources within the area of potential effect (APE). In defining the APE, Fallon will consider potential direct, indirect, and cumulative impacts to cultural resources and their historic context.

NAS Fallon will also identify Indian tribes and other potentially interested persons and seek information from them relating to the undertaking's effects on historic properties, with special emphasis on traditional cultural properties for any undertaking with the potential for adverse effects on historic properties, including those undertakings requiring an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), where

a public scoping meeting initiates the evaluation of resources and impact. NAS Fallon will provide documentation per 36 CFR 800.11(e) and invite such interested persons to consult regarding the effects of the undertaking on historic properties, and will document contacts with interested persons in the case file and include such documentation in SHPO and Council submissions.

2. Locating Cultural Resources

The NAS Fallon CRS will determine the level and type of investigation needed to identify cultural properties according to the procedures in the current edition of NAS Fallon's ICRMP. Traditional lifeway values will be identified in a manner consistent with National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties and the ACHP's Public Participation in Section 106 Review: A Guide for Agency Officials.

SHPO consultation is not required prior to an inventory when the NAS Fallon CRS perform an intensive inventory of all lands, regardless of ownership, subject to potential effect by an undertaking.

When the NAS Fallon CRS proposes an inventory that is less than intensive, or does not examine all lands within an APE, NAS Fallon shall confer with the SHPO regarding the proposed identification effort before NAS Fallon initiates the inventory or authorizes the proposed undertaking.

When an inventory indicates that no cultural resources are located within the APE (negative inventory), the NAS Fallon CRS will document this finding in the case file and can proceed with the undertaking without SHPO consultation. When there are severe time constraints and urgency for project completion, the NAS Fallon CRS may prepare negative inventory reports for those portions of projects where no cultural resources occur and allow construction to proceed in those areas while technical reports and SHPO review are still in progress for other areas.

Summary reports of negative inventories, filled out on NAS Fallon Cultural Resources Negative Reports form (Appendix 2), will be submitted to the SHPO annually by June 1st of the year following the reportable Federal fiscal year and include:

- a) a project description and map showing the area of effect and the area inventoried;
- b) a description of inventory methods used;
- c) previous inventory results will be described by identifying the project name and individuals involved, the inventory date and results; and
- d) a brief discussion of the significance of the lack of cultural resources in the area inventoried relative to current models of past human behavior in Nevada.

When cultural resources are located during an inventory, NAS Fallon, the SHPO, and the Council will proceed according to the terms of this Agreement.

Independent of any specific undertaking, NAS Fallon and the SHPO may jointly determine that sufficient inventory has been completed in a specified area, so that no additional inventory or consultation is required in that area. Once this determination has been made, undertakings within the area will be documented like negative inventories.

B. Evaluating Historic Significance

NAS Fallon shall ensure the cultural resources that may be affected by an undertaking are evaluated, in consultation with the SHPO, to determine their eligibility for inclusion in the NRHP. The evaluation will be consistent with the Secretary of Interior's "Criteria for Evaluation" (36 CFR 60) and the following stipulations:

NAS Fallon with the SHPO's concurrence, may determine a cultural resource, or group of resources, eligible for the NRHP without requesting a formal determination of eligibility from the Keeper of the NRHP and without developing the documentation necessary to make such a request.

Properties that NAS Fallon and the SHPO agree are eligible for the NRHP will be treated as if they are listed in the NRHP. Properties that NAS Fallon and the SHPO agree are not eligible need not be considered further under Sections 106 and 110 of the NHPA.

Isolated artifacts not associated with a site or historic property, are considered to be ineligible for inclusion in the NRHP and need not be considered further in the Section 106 and Section 110 processes. Isolated or Unassociated Features not associated with other features or artifacts scatters that are undateable are considered ineligible for inclusion to the NRHP and need not be considered further in the Section 106 and 110 processes. However, if otherwise-isolated features may be elements of a historic district, such features will not be treated as isolated or unassociated. In addition, if an otherwise-isolated feature is unique because of its construction or distinctive qualities, the feature must be evaluated for eligibility. Isolated features that have potential data (e.g., a fire hearth) need to be evaluated for eligibility. Isolated artifacts and features will be recorded in table form within NAS Fallon Negative Inventory Reports (NIR) as specified in the current edition of NAS Fallon's ICRMP. However, if isolates are located during a project that identifies other cultural resources which require SHPO review, they shall be recorded and submitted along with the cultural resources Technical Report for review by the SHPO.

NAS Fallon will resolve disagreements, among the parties to this agreement, over eligibility by requesting a formal determination of eligibility from the Keeper of the National Register.

If NAS Fallon with the SHPO's concurrence, determines that no eligible properties are located within the APE for a given undertaking, NAS Fallon may conclude the Section 106 process and

proceed with the undertaking. NAS Fallon will document its determination, SHPO concurrence, and the completion of the Section 106 process in the case file.

C. Assessing Effects

Based on identification efforts carried out pursuant to Stipulation III.A and evaluation efforts pursuant to Stipulation III.B, and prior to a decision regarding the undertaking, NAS Fallon shall determine the potential effect of the undertaking according to the following stipulations:

1. No Effect Situations

When NAS Fallon finds that an undertaking will have no effect on historic properties the procedures set forth at 36 CFR 800.4(d)(1) will be implemented.

2. Effect Situations

NAS Fallon will ensure, where feasible, that beneficial effects on historic properties are maximized and adverse effects minimized in all undertakings. NAS Fallon will determine effects by applying the Criteria of Effect set forth at 36 CFR 800.5. Once NAS Fallon determines that an undertaking has an effect, it will determine the adversity of the effect by applying the Criteria of Adverse Effect set forth at 36 CFR 800.5(a).

a) Adverse Effect

When NAS Fallon and the SHPO concur that an undertaking will have an adverse effect on historic properties, the procedures in 36 CFR 800.6 will be implemented with the following provisos:

1. For traditional/cultural properties NAS Fallon shall send a letter and follow up with at least two telephone calls inviting affected Indian Tribes and other interested persons as identified in Stipulation III.A.1 to participate in resolving adverse effects and in developing a Treatment Plan for the affected properties. NAS Fallon will allow 15 days for a written or telephone response to their invitation.

2. Upon request, NAS Fallon shall meet with Indian Tribes and other interested persons to resolve adverse effects on traditional/cultural properties and will provide them with copies of the proposed treatment plans for review at the same time as they are sent to SHPO.

3. When NAS Fallon and the SHPO determine that the adverse effects of an undertaking can be mitigated by administrative or physical protection measures, NAS Fallon will develop the treatment plan to be consistent with Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines (48 FR 44716-42, September 29, 1983); and

applicable Council guidelines. Specific treatment to mitigate adverse effects may include, but is not limited to:

- a) Preservation of a property in place and unchanged;
- b) Adaptive use of a property;
- c) Incorporation of a property into the design of an undertaking in a manner sensitive to its significant characteristics;
- d) Recovery of archeological data, including analysis and dissemination of results;
- e) Rehabilitation or stabilization of historic structures.

4. NAS Fallon will afford affected Indian tribes, other interested persons as identified in II.A.1 or subsequently through archaeological surveys or other surveys, and the SHPO the opportunity to participate in developing a treatment plan and 30 days to review such plans; and shall also provide the SHPO with a final report on the implementation of the treatment plan. If no comment is received in the 30 day period it will be assumed that the party concurs or agrees with the treatment plan. At its discretion, pursuant to Stipulation III.E., the Council may become involved in any consultation.

If the SHPO, or the Council, objects to NAS Fallon's finding of adverse effect for an undertaking, the dispute resolution procedures described in Stipulation VI will be followed.

b) No Adverse Effect

NAS Fallon in consultation with the SHPO, will find that an undertaking will have no adverse effect on historic properties when either (1) the undertaking's effects will not diminish the historic integrity of the property or (2) the undertaking is modified by mitigating measures or conditions imposed to avoid adverse effects. No adverse effect determinations are most often related to building rehabilitation standards that meet the Secretary of Interior's Standards for the Treatment of Historic Properties (36 CFR 68).

NAS Fallon, will solicit the views of affected Indian Tribes and other interested persons as identified in Stipulation III.A.1 when making no adverse effect determinations on traditional/cultural properties.

If the SHPO, or the Council, objects to NAS Fallon's finding of no adverse effect for an undertaking, the dispute resolution procedures described in Stipulation VI will be followed.

3. Special Considerations

NAS Fallon, with SHPO concurrence, has defined classes of undertakings that have no effect on historic properties (refer to Appendix 3, Categorical Determinations of No Effect). When a specific undertaking falls within such a class, NAS Fallon does not need to enter into a project specific consultation with the SHPO and may proceed with the undertaking. Eligibility assessment of avoided properties can be deferred.

- a). Summary reports of these undertakings will be submitted to the SHPO annually and include:
 1. a project description and map showing the area of effect and the area inventoried;
 2. a description of inventory methods used;
 3. complete records as specified in the current edition of NAS Fallon's ICRMP and for traditional lifeway values the documentation suggested in National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties;
 4. a justification for the decision to defer an eligibility determination; and
 5. a description of how historic properties were avoided.
- b). Undertakings appropriate for a Categorical Determination of No Effect are listed in Appendix 3, subject to the following:
 1. Any party to this Agreement may elect to subject a categorical determination of no effect to standard review under this Agreement.
 2. Should a dispute or objection arise about a categorical determination of no effect, NAS Fallon will either subject the undertaking to standard review under this Agreement, or implement Stipulation VI to resolve the dispute.
 3. Any party to this Agreement can object to any of the classes of undertakings in Appendix 3. Upon written notification by the objecting party, NAS Fallon shall exclude the class of undertaking from Appendix 3 and subject such undertakings to standard review under this Agreement. The objection will be resolved pursuant to Stipulation VI.
 4. Upon recommendation by any party to this Agreement, other classes of undertakings may be added to Appendix 3 if NAS Fallon, the Council and the SHPO agree that such undertakings qualify.

5. NAS Fallon will report the number of undertakings categorically excluded, by specific exemption, to the SHPO in its annual report.

D. SHPO Consultation

1. Time Limits

Unless otherwise agreed, the SHPO shall be afforded 30 calendar days from receipt of appropriate documents to respond to any NAS Fallon communication regarding identification, effect determination, and evaluation or treatment of effects. Should the SHPO not respond within this time limit, NAS Fallon may assume the SHPO's concurrence with that particular finding or determination or treatment, consistent with 36 CFR 800.3(c). Non-response by the SHPO will be documented in the case file.

In no effect situations, NAS Fallon will consult with SHPO following the procedure outlined in 36 CFR 800.4(d)(1) and the SHPO will have 15 calendar days to respond for properties where eligibility has already been determined. Should the SHPO not respond within 15 calendar days, NAS Fallon may assume SHPO's concurrence with the proposed action and can proceed with the undertaking. If the SHPO objects to NAS Fallon's finding of no effect within 15 calendar days, NAS Fallon will proceed to apply the Criteria of Effect (Section 800.5) to determine whether the effect should be considered adverse.

E. Council Consultation

The Council will be consulted in adverse effect situations according to Stipulation III.C.2.a.

In addition, NAS Fallon will consult with the Council in instances where the undertaking is of substantial magnitude, or complexity, involves unusual issues, or public controversy related to cultural resources, or that otherwise would be considered suitable for a Programmatic Agreement pursuant to 36 CFR 800.14(b). NAS Fallon, the SHPO, or other interested parties may request the Council's involvement at any time during the consideration of program or project review.

The Council may at its discretion become involved in any phase of the consultation process. When disagreements between NAS Fallon and the SHPO cannot be resolved through further consultation, they will be resolved by consulting the Council under Stipulation VI of this Agreement.

F. Other Agreements

Implementation of this Agreement will be in accordance with the ICRMP, the MOU on Native American Skeletal Remains and Associated Artifacts, the 2009 State Protocol Agreement (for lands withdrawn from BLM), and other existing or future NAS Fallon agreements, memoranda, and land use plans. Should conflicts develop among these authorities, NAS Fallon, the SHPO, and the Council will consult to resolve them.

To the extent that the stipulations of previous project-specific Memoranda of Agreement (MOA) conflict with this Agreement, the stipulations of the Agreement will apply.

IV. SPECIAL PROCEDURES

A. Emergency undertakings

Should NAS Fallon find it necessary to implement an emergency undertaking, as defined at 36 CFR 800.12, NAS Fallon will notify the SHPO in writing or by telephone that it is commencing the undertaking or will commence it at a specified time. If the SHPO is notified by telephone, NAS Fallon shall provide the SHPO with written notice within 48 hours. NAS Fallon will comply with the provisions of 36 CFR 800.12 in such emergency undertakings.

B. Exempt undertakings

Undertakings falling into classes in Appendix 4 are not subject to review under this Agreement except as follows:

1. Any party to this Agreement may elect to subject an exempted undertaking to standard review under this Agreement.
2. Should a dispute or objection arise about a specific exempted undertaking, NAS Fallon will either subject the undertaking to standard review under the Agreement, or implement Stipulation VI to resolve the dispute.
3. Any party to this Agreement can object to any of the classes of undertaking in Appendix 4 by written notification. After review by all parties of this PA, NAS Fallon shall exclude the class of undertaking from Appendix 4 and subject such undertakings to standard review under this Agreement. The objection will be resolved pursuant to Stipulation VI
4. Upon recommendation by any party to this Agreement, other classes of undertakings may be added to Appendix 4 if NAS Fallon, the Council and the SHPO agree that such undertakings qualify.
5. NAS Fallon will report the number of undertakings categorically excluded by specific exemption to the SHPO in its annual report.

C. Native American Burials

1. NAS Fallon will consult with the identified Indian Tribes prior to intentional excavation and removal of Native American human remains from NAS Fallon lands.
2. Should human remains be inadvertently discovered, NAS Fallon shall protect the remains in place, halt ground disturbing activities in the immediate vicinity for up to 30 days and shall immediately provide written notice to the affected tribe or tribes.

3. Disposition of human remains identified as being most closely related to a local federally recognized tribe shall be determined in consultation with the tribe or in accordance with any MOU entered into with the tribe regarding this matter.

V. PUBLIC PARTICIPATION

During the early planning stages for a project that will require an EA or an EIS and where a public scoping meeting initiates the evaluation of resources and impact, or where subsequent survey or other studies have identified sites of archaeological or traditional cultural value, NAS Fallon will afford Indian tribes and other interested persons, as identified in Stipulation III.A.1, an opportunity to review, comment on, or object to eligibility and effect determinations and to participate in developing treatment plans.

At least once each year, or whenever projects arise that might have the potential to affect properties of religious and cultural significance, NAS Fallon will meet with affected Indian Tribes to present proposed undertakings and solicit their concerns regarding traditional/cultural sites. NAS Fallon will ensure that identified Indian tribes and other interested persons are informed of their option to object to the Council regarding any effect determination and will not authorize the undertaking until such objections have been considered.

In situations in which a proposed undertaking is assessed in a document prepared pursuant to the National Environmental Policy Act (NEPA), public participation under this Agreement will be included in the public participation process for the NEPA document. In such instance, NAS Fallon will ensure that the NEPA process is tailored to satisfy public participation requirements set forth in 36 CFR 800.

In other situations, Indian tribes and other interested persons will be contacted at the same time as the SHPO and will be afforded the same time frame as the SHPO is allowed for comment.

When the SHPO or the Council is notified of public interest, concerns, or objections about an undertaking, they will contact NAS Fallon to initiate action. If NAS Fallon fails to resolve the concern or objection, then the situation will be resolved in accordance with Stipulation VI-of this Agreement.

VI. DISPUTE RESOLUTION

Should a dispute arise regarding an undertaking subject to review under this Agreement, NAS Fallon will consult with the disputing party, the SHPO, and interested persons identified pursuant to Stipulation III.A.1 to resolve the objection.

If initial objections cannot be resolved, the SHPO or NAS Fallon may request a hearing to investigate the objection. The hearing will involve, at a minimum, representatives of the SHPO and NAS Fallon.

a) Based on the hearing, the SHPO and NAS Fallon shall consult to resolve the objection.

b) If such consultation fails to resolve the dispute or objection, NAS Fallon shall submit all pertinent documentation to the Council, together with NAS Fallon's proposal for its resolution. Within 30 calendar days of receipt, by certified mail, of the documentation, the Council shall either:

1. Notify NAS Fallon that it will consider the undertaking pursuant to the applicable provisions of 36 CFR 800; or
2. Provide recommendations, which NAS Fallon will take into account in reaching a final decision.

Failure of the Council to respond within 30 calendar days shall be taken as evidence of the Council's concurrence in NAS Fallon's proposal for resolving the dispute or objection.

VII. NON-PROFESSIONAL STAFF

NAS Fallon, in consultation with SHPO, may develop and implement a program to train non-professional archaeological staff to carry out archeological inventory under the direction of the NAS Fallon CRS or other Navy professional archaeological staff.

VIII. REPORTS AND MONITORING

Any party to this Agreement may monitor actions carried out pursuant to this Agreement, and the Council shall review such actions, pursuant to 36 CFR 800.9, when so requested.

NAS Fallon shall prepare an Annual Report for the SHPO and the Council at least every 12 months. This report will assist them in monitoring actions carried out under this Agreement and provide a basis for review under Stipulation IX. The reporting year shall conform to the Federal fiscal year and the report will be submitted to the SHPO and the Council by March 1st of the year following the fiscal year under review. At a minimum the Annual Report shall include:

- a. a list of all undertakings by proponent;
- b. a list of all survey and identification activities;
- c. a list of all Categorical Determinations of No Effect under Appendix 3 and undertakings excluded as exempt undertakings listed in Appendix 4;
- d. a list of the historic properties affected by NAS Fallon undertakings;
- e. a list of the measures NAS Fallon implemented to avoid, minimize, or mitigate the adverse effects under 7.d. above;
- f. NAS Fallon's assessment of how well the Agreement is working; and

g. Any other facts NAS Fallon considers pertinent to evaluation of the activities covered by this Agreement and any reasonably available information that the SHPO or the Council may have requested that NAS Fallon incorporate into the Annual Report.

IX. REVIEW

The parties to this Agreement shall be convened by the Navy to review its terms annually no later than July 1, of each fiscal year beginning with the first full fiscal year that it is in effect to determine whether continuation, amendment, or termination is appropriate. Interim review may be initiated by any party to this Agreement.

X. AMENDMENT

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

XI. SUSPENSION

Any party to this Agreement may suspend it with notification to the other parties including the reasons for the suspension and the specific steps to be taken for the suspension to be lifted. Upon issuance of a suspension, the parties will consult to rectify the problem. Pending removal of the suspension, NAS Fallon will comply with 36 CFR 800.4 through 800.7 with regard to individual undertakings covered by this Agreement.

XII. TERMINATION

A. Any party to this Agreement may terminate it by providing 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. Termination of this Agreement, or failure to abide by its terms, shall require NAS Fallon to comply with 36 CFR 800 with respect to undertakings that otherwise would be reviewed under this Agreement.

B. This PA shall expire ten years after the date of execution. Six months prior to the expiration date, NAS Fallon shall initiate consultation with the signatories to review the PA for renewal and/or possible amendment and extension.

XIII. EXECUTION

Execution and implementation of this Agreement evidences that NAS Fallon has satisfied its Section 106 responsibilities with respect to its undertakings on Navy-administered lands in the State of Nevada.

XIV. IMPLEMENTATION

This Agreement becomes effective on the date of the last signature below and will be implemented immediately upon signature by all parties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Charlene Duin Vaughn, AHP Date: 8/9/11

for JOHN M. FOWLER, EXECUTIVE DIRECTOR
(Print Name and Title of signer)

NAVAL AIR STATION, FALLON, NEVADA

By: [Signature] Date: 19 July 2011

Renehart M. Wilke, Commanding Officer
(Print Name and Title of signer)

NEVADA STATE HISTORIC PRESERVATION OFFICER

By: [Signature] Date: 19 July 2011

Ronald M. James, SHPO
(Print Name and Title of signer)

Concur:

NEVADA STATE OFFICE, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

By: _____ Date: _____

(Print Name and Title of signer)

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

(Print Name and Title of signer)

NAVAL AIR STATION, FALLON, NEVADA

By: _____ Date: _____

(Print Name and Title of signer)

NEVADA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

(Print Name and Title of signer)

Concur:

NEVADA STATE OFFICE, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

By:  _____ Date: July 13, 2011
Amy L. Lueders, BLM Acting State Director, Nevada

Appendix 1

DEFINITIONS

The definitions in NAS Fallon's ICRMP, 36 CFR 60, and 36 CFR 800, apply throughout this Agreement, except as clarified in the following.

Area of Potential Effects (APE): The geographic area or area within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. Although treatment of properties may vary with land status, the APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. The APE will be determined without regard for land status and should include both federal and non-federal lands. In defining the APE, the NAS Fallon CRS should consider direct impacts, indirect impacts such as visual intrusions or other alterations of setting, and cumulative impacts.

Effect: Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places.

Intensive Survey: A professionally conducted pedestrian survey of the entire APE with transects spaced no more than 30 meters apart. The goal of an intensive inventory is to locate and record all cultural resources having exposed indications in the APE.

Cultural Resource: (1) Cultural Property: Any definite location of past human activity, occupation, or use. Cultural resources are identifiable through inventory, historical documentation, or oral evidence. Cultural resources include archeological, historic, or architectural sites, structures, places, objects, or artifacts and all records, and the remains related to or located within such resources. (2) Traditional Cultural Property: a property that is eligible for inclusion in the NRHP because of its association with cultural practices or beliefs of a living community that are (a) rooted in the community's history, and (b) are important in maintaining the continuing cultural identity of the community. For the purposes of this Agreement, a traditional cultural property must be associated with a definite location.

Cultural Resources Staff (CRS): Individuals meeting the relevant professional qualifications standards identified in The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 36 CFR 61 (Federal Register Vol. 62, No. 119, 1997).

Definite Location: Having discernable, mappable, more or less exact limits or boundaries, on a scale that can be established by a survey crew using conventional sensing and recording equipment, by an informant's direct on-the-ground indication, or by precise placement in a documentary source.

Eligible for Inclusion in the NRHP: Includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet the National Register listing criteria as defined in 36 CFR 60.

Historic Property: Any prehistoric or historic district, site, building, structure, or object, included in, or eligible for, inclusion in the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains related to or located within such properties. This term also includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization when such properties meet the criteria for inclusion in the NRHP.

Interested Persons: Means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

Isolate: A single artifact or pieces from a single artifact, e.g., 10 pieces of glass from a single bottle. An isolate artifact is considered single and unassociated when separated by 30 meters or more from any other artifact.

Isolated or Unassociated Feature: A single feature unassociated with other features or artifact scatters that are undateable; e.g. a prospect pit, a claim marker, an adit, or a shaft. An isolated or unassociated feature is considered single and unassociated when separated by 30 meters or more from any other feature or artifact unless it is part of a historic district.

Site: A site is the location of a significant event, a historic or prehistoric occupation or activity, or building or structure, whether standing, ruined, or vanished, where the location itself possesses significance independent of the value of any existing structure in the location.

Undertaking: Any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out with Federal financial assistance and those requiring a Federal permit license or approval, that can result in changes in the character or use of historic properties, if such properties are located within the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of NAS Fallon or licensed or assisted by NAS Fallon. Undertakings include new and continuing projects, activities, or programs and any of their elements.

Appendix 2

NAS Fallon Cultural Resources Negative Report Form

UNITED STATES
DEPARTMENT OF DEFENSE
UNITED STATES NAVY
NAVAL AIR STATION FALLON
CULTURAL RESOURCE PROGRAM

CULTURAL RESOURCE REPORT SIGNATURE PAGE

NAS Fallon Report No.:

Project:

Project/Serial No.:

Site/Resource Description:

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Determinations of Eligibility:

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Determination of Effect Recommendations:

No Effect

No Adverse Effect

Adverse Effect

Justify:

Mitigation/Stipulation Recommendations:

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This investigation was conducted with techniques considered adequate to evaluate any cultural properties that might be affected by this project. If, however, cultural resources are subsequently discovered that could be adversely affect by project-related actions, all activities must cease immediately and the Approving Official and Archaeological Resource Specialist must be notified at once.

Authorized by: _____ Date: _____
NAS Fallon Cultural Resource Program Director

Approving Official: _____ Date: _____
NAS Fallon Environmental Program Manager

Appendix 3

CATEGORICAL DETERMINATIONS OF NO EFFECT

A. SAFETY

1. Hazards abatement or cleanup of spills (including eliminating toxic waste sites) where review by the NAS Fallon CRS has determined that cultural resource sites will not be disturbed.

B. TRESPASS ABATEMENT

1. Removal of non-significant structures, machines, or materials that are less than 45 years old;

a. Abandoned vehicles, trash dumps, trespass buildings, ranches, and mines, and other similar items are included in this exemption.

b. The site from which these materials are removed may be reclaimed, without additional SHPO consultation, as long as the reclamation does not expand previous surface disturbance.

c. This exclusion does not apply to cultural resources that may attain significance when they become 50 years old.

2. Posting of trespass signs, repair of exclusionary fencing where no new ground surface disturbance will occur.

C. AGRICULTURAL PRACTICES

1. Continuance of ongoing agricultural practices including leveling, ripping, and discing in areas where these activities have been historically practiced.

2. Continuance of grazing in areas historically grazed where grazing intensity would not change significantly and no new improvements (stock ponds, reservoirs, etc.) would be necessary.

Appendix 4

EXEMPT UNDERTAKINGS

A. GENERAL

1. Maintaining or modifying existing projects, and non-historical facilities, or programs that would not disturb additional surface area or previously identified National Register resources and where authorization of the existing activity was subject to NRHP Section 106 consultation.
2. Projects covering less than 5 square yards (4 sq. m) in areas surfaced with concrete, asphalt, or gravel, where pedestrian surveys are unlikely to identify cultural resources due to previous ground disturbance or where a literature search by the NAS Fallon CRS has shown that the probability of finding resources are low. However, projects that have the potential to affect the integrity of nearby traditional cultural properties, historic buildings/districts, archaeological sites, or historic trails will not be considered an exempt undertaking and will undergo consultation with SHPO and the appropriate tribe or interested party.
3. Installation of devices to protect human or animal life (for example, raptor electrocution prevention devices, repair of fencing, etc.) that do not involve new surface disturbance.

B. REALTY

1. Renewal of agricultural out leases where agricultural practices (farming, grazing, etc.) remain the same and no new improvements are necessary;
2. Renewal of existing easements for utility corridors;

C. ROUTINE MAINTENANCE

1. Routine repair and maintenance of existing facilities, landscaped grounds, equipment and utility lines where no new disturbance of ground surfaces will occur;
2. Re-grading and resurfacing existing roads and parking areas providing that equipment storage areas, spoil piles, and borrow pits are confined to ground surfaces already disturbed;
3. Maintenance of water control and water delivery systems including canals and ditches where no new ground disturbance is required.

D. TRANSPORTATION

1. Vehicle route designations for existing routes and trails.

2. Installing signs, markers or cattle guards on or adjacent to existing roads in previously disturbed areas.

E. RECREATION

1. Dispersed non-permitted recreation activities that do not involve new surface disturbance;
2. Recreation on Navy acquired lands associated with activities permitted by BLM on adjacent or withdrawn lands may be exempt undertakings when in conformance with exemptions described in the 2009 State Protocol Agreement (Appendix C.21 and C.22.)

F. WILDLIFE AND HABITAT IMPROVEMENT

1. Reintroducing endemic or native species into their historic habitat in ways that do not involve surface disturbance.

G. HIGH IMPACT AREAS

1. Continued use of high explosives at designated target areas within the Training Ranges which have been used historically for this purpose and are now disturbed, including all of Bravo-20. These areas are shown in Figure 2.

H. SAFETY

1. Cleanup of unexploded ordnance or potentially dangerous remains of ordnance (outside of exempted high impact areas on bombing ranges) if handled by a Navy Explosive Ordnance Detachment (EOD) and if such EOD determines that contact may comprise a risk to human health or safety.
2. Cleanup of hazardous and toxic chemical spills covering less than 200 sq. ft. (18.6 sq m) that may entail a risk to human health or safety.
 - a. The NAS Fallon CRS will conduct a literature search to determine the likelihood of cultural resources within the affected area. If cultural resources exist or are likely to exist within the affected area, the NAS Fallon CRS will consult with SHPO and/or the BLM to determine the appropriate actions to be taken. In the event that hazard abatement or spill cleanup will affect a property of religious or cultural significance or is on tribal land, the NAS Fallon CRS will notify the SHPO and the affected tribe. Unless the abatement or cleanup is an emergency undertaking, seven days will be given for a response; in the case of an emergency, verbal comments will be requested within the time available in accordance with 36 CFR 800.12(b)2.

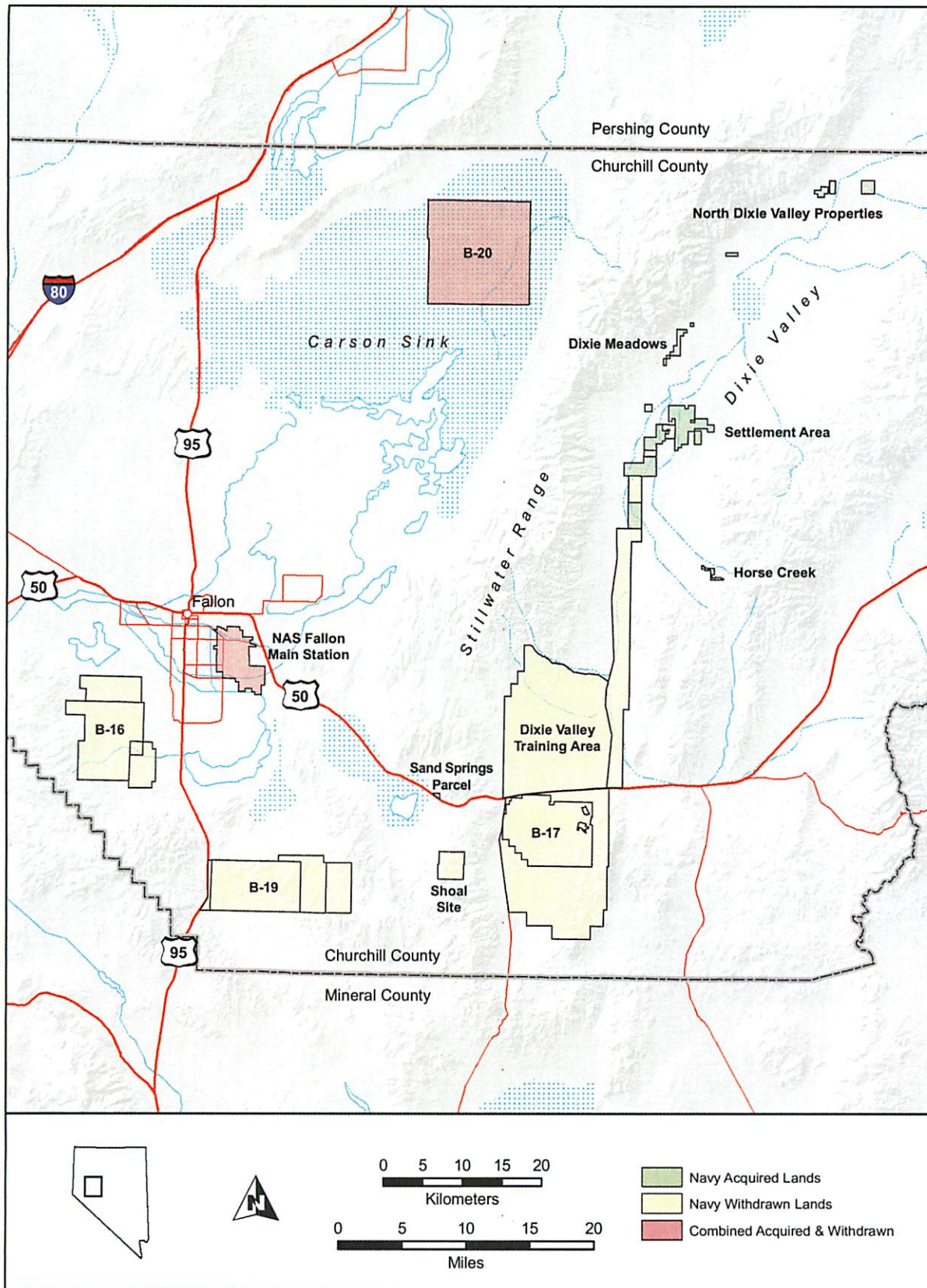
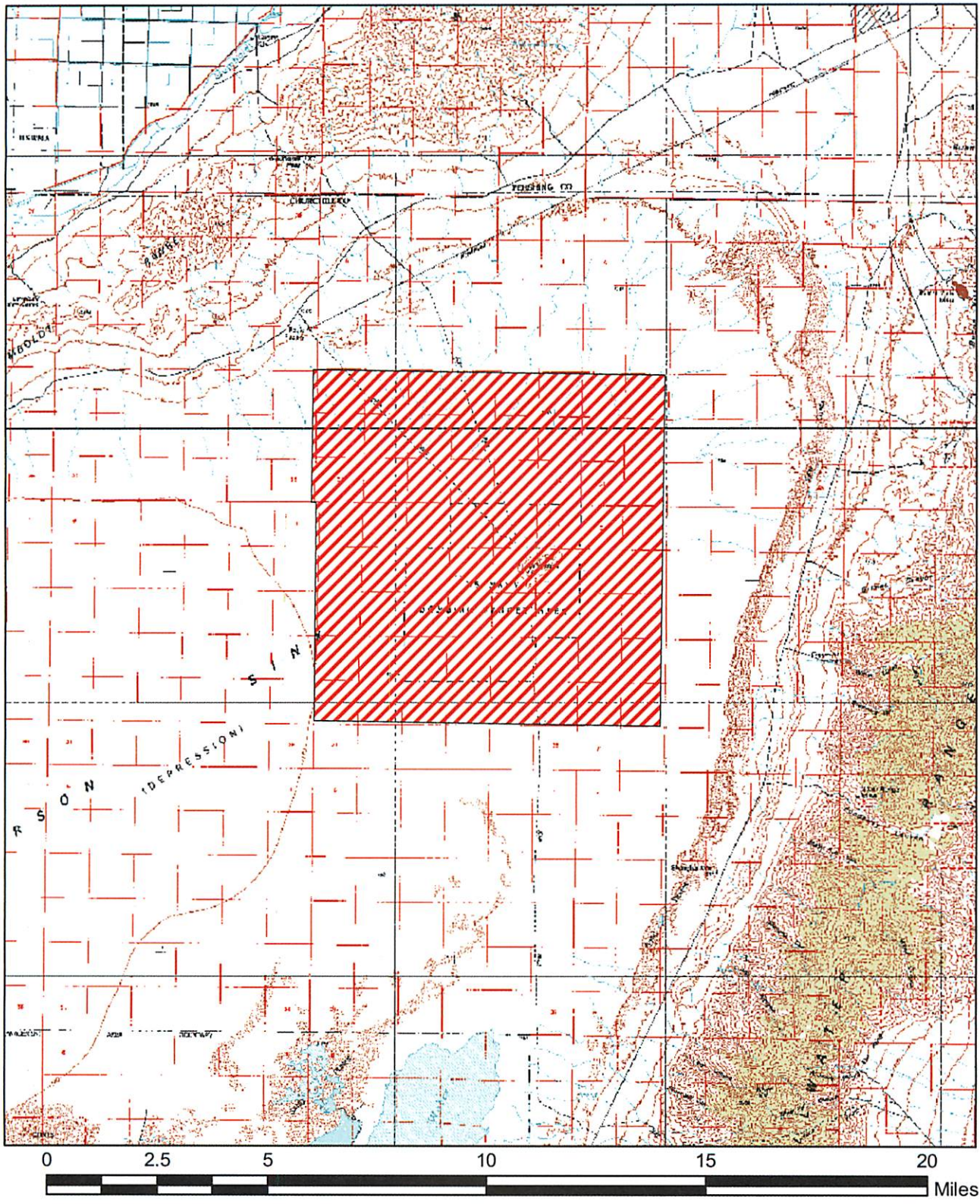


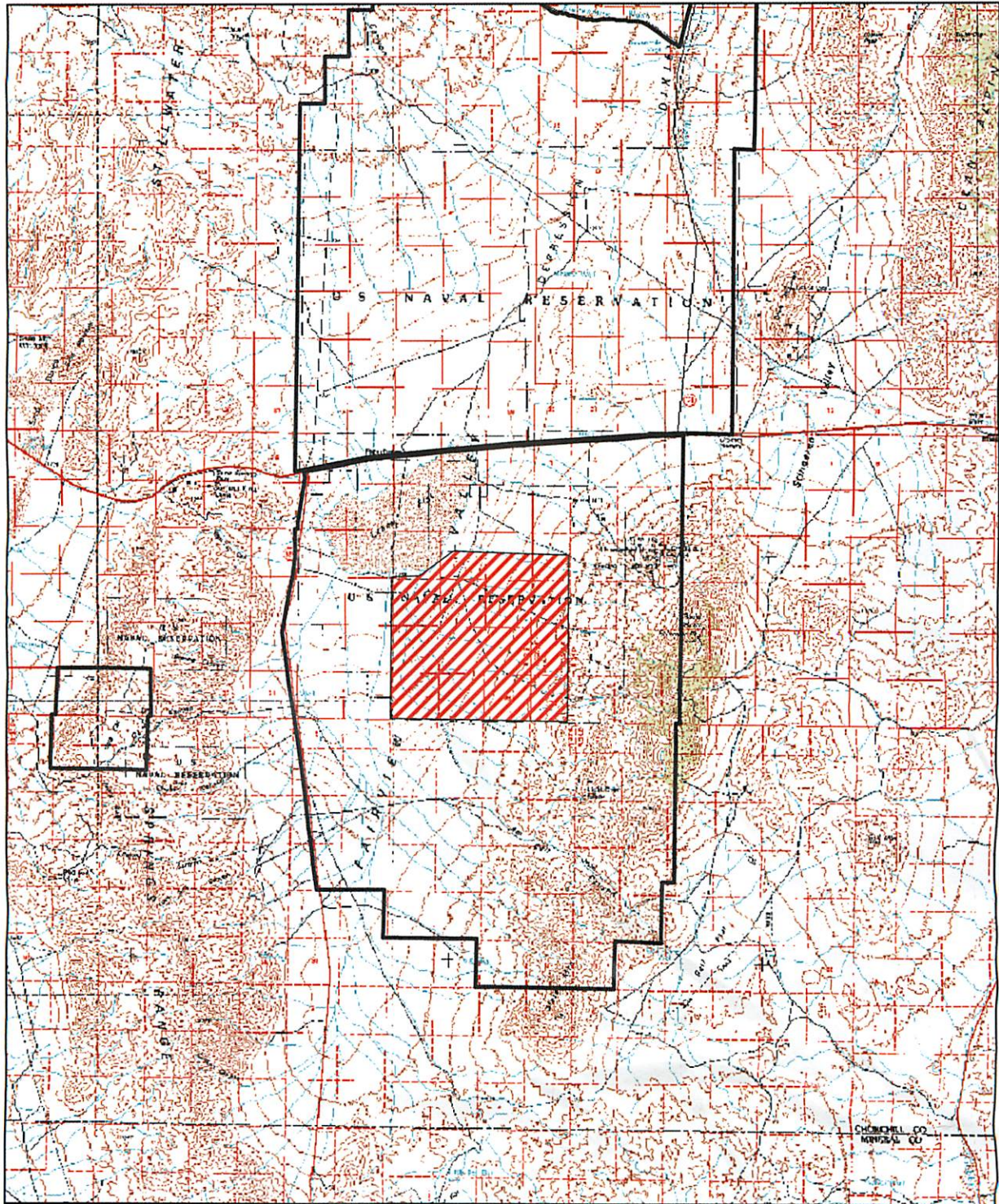
Figure 1. NAS Fallon-Administered Lands.



2011 NAS Fallon Programmatic Agreement Between the Nevada State
 Historic Preservation Office and the Advisory Council on Historic Preservation

Figure 2. Bombing Range Bravo 20 High Impact Area
 Exempt from Cultural Resource Review





0 2.5 5 10 15 20 Miles

2011 NAS Fallon Programmatic Agreement Between the Nevada State Historic Preservation Office and the Advisory Council on Historic Preservation



Figure 3. Bombing Range Bravo 17 High Impact Area Exempt from Cultural Resource Review

