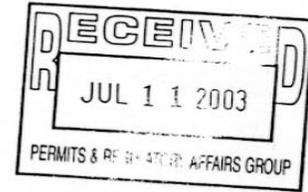


**G.4 FINAL PROGRAMMATIC AGREEMENT REGARDING OPERATION OF LAWRENCE
LIVERMORE NATIONAL LABORATORY**

Department of Energy
National Nuclear Security Administration
Livermore Site Office
PO Box 808, L-293
7000 East Avenue
Livermore, California 94551-0808



JUN 30 2003

Mr. Hans Kreutzberg
Chief, Project Review Unit
Office of Historic Protection
Department of Parks and Recreation
PO Box 942896
Sacramento, CA 94296-0001

Subject: National Historic Preservation Act Programmatic Agreement Regarding Operation of
Lawrence Livermore National Laboratory

Dear Mr. Kreutzberg:

The Department of Energy, National Nuclear Security Administration (NNSA) is pleased to provide a Programmatic Agreement implementing the National Historic Preservation Act (NHPA) Section 106 responsibilities at Lawrence Livermore National Laboratory (LLNL). The enclosed Programmatic Agreement has been signed by both the University of California and NNSA. We have worked informally with you to reach consensus on the content of this agreement. Based on these recent efforts, we believe that this agreement is ready for signature by Dr. Mellon as the California State Historic Preservation Officer. We request that you endorse the agreement and send it to him for execution.

The agreement documents both the intent of NNSA and LLNL to follow the protocols described in the agreement and provides an interim standard for meeting NHPA Section 106 requirements. It also establishes a timetable for development of the LLNL cultural resource management plans and for their implementation by a future agreement.

Thank you for your assistance with this agreement. You can contact me at (925) 423-7061 if you require additional information. Mr. Paul McGuff of LLNL at (925) 422-9547 can also assist. After July 31, 2003, Karin King will be the acting Historic Preservation Officer for the NNSA – Livermore Site Office and can be reached at (925) 422-0756.

Sincerely,


Michael Brown, Deputy Director
Environmental Stewardship Division

Enclosure

cc: K. Folks, LLNL
~~E. Kato, LLNL~~
P. McGuff, LLNL
A. Galvan, Ohlone/Costanoan
H. Soto, Ohlone/Costanoan

Interim PA for LLNL Operation

**PROGRAMMATIC AGREEMENT
AMONG
THE DEPARTMENT OF ENERGY—NATIONAL NUCLEAR SECURITY
ADMINISTRATION—,
THE UNIVERSITY OF CALIFORNIA,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING OPERATION OF
LAWRENCE LIVERMORE NATIONAL LABORATORY**

WHEREAS, the United States Department of Energy, National Nuclear Security Administration (NNSA), owns Lawrence Livermore National Laboratory (LLNL) in Alameda and San Joaquin Counties, California (Attachment 1), whose facilities have been used in highly technical and scientific research since the 1950s; and

WHEREAS, the University of California (UC) operates LLNL for NNSA under a contract that requires UC to assist NNSA's compliance with federal historic preservation laws and regulations; and

WHEREAS, NNSA has determined that the operation of LLNL (Undertaking) involves routine management activities suitable for programmatic treatments and other actions that may result in effects to properties included in and eligible for inclusion in the National Register of Historic Places (NRHP) (historic properties); and

WHEREAS, pursuant to 36 CFR 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (16 USC 470f), NNSA has consulted with the California State Historic Preservation Officer (SHPO) regarding the Undertaking in accordance with 36 CFR § 800.6(a), notified the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR § 800.6(a)(1)(i)(C), and intends to execute this Programmatic Agreement (PA) pursuant to 36 CFR § 800.6(b)(1) because the ACHP has declined to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii-iv); and

WHEREAS, NNSA seeks through execution of this PA to permit UC to carry out, on NNSA's behalf, certain responsibilities as specified herein; and

WHEREAS, UC has participated in the consultation and has been invited by NNSA and the SHPO to become a signatory to this PA;

NOW, THEREFORE, NNSA, SHPO, and UC agree that NNSA and UC shall implement the Undertaking in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties at LLNL, and that these stipulations shall govern NNSA compliance with Section 106 of the NHPA for this Undertaking until this PA expires or is terminated.

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STIPULATIONS

NNSA, in cooperation with UC, shall ensure that the following stipulations are carried out:

- I. Inventory and Assessment for Historic Properties.
 - a. Not later than the end of February 2005, NNSA and UC will complete the following inventory and assessment tasks:
 - i. Develop an historic context for the period between 1942 and the present. The standards for the historic context include conformity with *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (effective September 29, 1983), a publication of the National Park Service, as amended and annotated—specifically standards and guidelines for preservation planning, identification, and evaluation. The standards also include conformity with guidance in the following National Register Bulletins: 15 (*How to Apply National Register Criteria for Evaluation*), 18 (*How to Evaluate and Nominate Designed Historic Landscapes*), 21 (*How to Establish Boundaries for National Register Properties*), 22 (*Guidelines for Evaluating and Nominating Properties That Have Achieved Significance within the Last Fifty Years*), 32 (*Guidelines for Evaluating and Documenting Properties Associated with Significant Persons*), and 39 (*Researching a Historic Property*).
 - ii. Use the historic context as a decision framework and complete NRHP determinations on the inventory of buildings, structures, districts, and objects at LLNL.
 - iii. Although NNSA and UC have an archeological survey of all LLNL land surfaces with the potential for archeological discovery, the archeological-site forms documenting that effort are not adequate for a current evaluation of site integrity and significance. Therefore, NNSA and UC will visit previously recorded archeological sites at LLNL and update site information on the California DPR 523 form to revise the current baseline information on the archeological resources.
 - iv. Consider updated archeological site information to make NRHP determinations on recorded archeological sites.
 - b. NNSA will submit the context, site form updates, and NRHP determinations to the SHPO pursuant to 36 CFR § 800.4(c)(1) and (2). If NNSA and the SHPO are unable to resolve any disagreement on NRHP eligibility determinations, NNSA shall obtain a determination of eligibility pursuant to 36 CFR § 800.4(c)(2) and 36 CFR 63.
- II. Review Process for Activities Proposed Prior to Implementation of Cultural Resource Management Planning Decisions under Subsequent Agreement.

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- a. UC may apply the screening criteria in Attachment 2 so long as this PA is in effect. These screening criteria will be used to determine what activities covered by this PA have no reasonably foreseeable potential to affect historic properties (36 CFR § 800.3[a][1]) and are, therefore, exempt from further review under this PA, and what activities have that potential and, therefore, require further consultation.
- b. The following activities are exempt from further review under this PA:
 - i. Ground-disturbing activities in areas sensitive for archeological discoveries when a qualified professional monitors these activities as defined in Stipulation IV.a. of this PA.
 - ii. Ground-disturbing activities located 300 feet or more away from the known exterior boundaries of archeological sites that either have been determined eligible for inclusion in the NRHP, or that have not been evaluated for NRHP eligibility pursuant to Stipulations I.a.iv. and I.b of this PA.
 - iii. Ground-disturbing activities that affect archeological sites determined ineligible for inclusion in the NRHP pursuant to Stipulation I.b of this PA.
 - iv. Demolition of post-1960 buildings or trailers that, according to appropriately conducted research, functioned only in administrative or facilities-operations/maintenance roles.
- c. NNSA will consult with the SHPO pursuant to 36 CFR 800 for all individual activities covered by this PA when such activities both have the potential to affect historic properties and are identified for Part 800 consultation by application of the screening criteria in Attachment 2.

III. Consultation Following Completion of Inventory and Assessment for Historic Properties.

No later than the end of August 2005, NNSA and UC will consult with the SHPO and the ACHP pursuant to 36 CFR § 800.14(b) to develop a new PA for LLNL operations. Such consultation shall take into account the results obtained from the implementation of Stipulation I of the present PA and address cultural resource management approaches suitable to those results. A suitable response depends upon the revealed individual character and the total complexity of the significant resource base and upon the concerns and comments that arise from the consultation. It may end in implementation of a cultural resource management plan by agreement, or, if requirements are relatively straightforward, in an agreement that itself embodies management commitments.

IV. Administrative Stipulations.

- a. Professional Qualifications. All actions prescribed by this PA that involve the identification, evaluation, analysis, recordation, and monitoring of historic properties shall be carried out by, or under the direct supervision of, a person or persons meeting at a

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minimum, the *Secretary of the Interior's Professional Qualifications Standards* for archeology, history, or architectural history, as appropriate (48 FR 44739).

b. Resolution of Objections.

- i. Should the SHPO object in writing to NNSA or UC regarding the manner in which the terms of this PA are carried out, NNSA and UC would immediately consult with the SHPO to resolve the objection. NNSA shall establish a reasonable timeframe for such consultation.
- ii. If the objection is resolved through consultation, NNSA and UC may proceed with the action subject to objection in accordance with the terms of such resolution.
- iii. If, after initiating such consultation, NNSA determines that the objection cannot be resolved through consultation, it shall forward all documentation relevant to the objection to the ACHP, including NNSA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 1. Advise NNSA that the ACHP concurs in NNSA's proposed response to the objection; whereupon NNSA will respond to the objection accordingly; or
 2. Provide NNSA with recommendations, which NNSA shall take into account in reaching a final decision regarding its response to the objection; or
 3. Notify NNSA that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4) and proceed to refer the objection and comment. In this event, NNSA shall ensure that the Agency Official is prepared to take the resulting comment into account in accordance with 36 CFR §800.7(c)(4).
- iv. Should the ACHP not exercise one of the above options within 30 days after receipt of the pertinent documentation, NNSA may assume the ACHP's concurrence in its proposed response to the objection.
- v. NNSA shall take into account any ACHP recommendation or comment and any comment from the other signatories to this PA in reaching a final decision regarding the objection. NNSA's responsibility to carry out all actions under this PA that are not the subjects of the objection shall remain unchanged.
- vi. NNSA shall provide all other signatories to this PA with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation IV.b.
- vii. NNSA may authorize any action subject to objection under Items i through vi, inclusive of this Stipulation IV.b, to proceed, provided the objection has been resolved in accordance with the terms of Items i through vi, inclusive of this Stipulation IV.b.

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- viii. Should a member of the public raise an objection to the manner in which the terms of this PA are implemented, NNSA and UC shall advise the SHPO of the objection and consult with the objecting party to consider the objection. NNSA will render a decision regarding the objection and respond in writing to the objecting party, also advising the SHPO of the result. NNSA's decision regarding the objection will be final unless the SHPO has joined the objection at the initial notification. Following issuance of its final decision, NNSA may authorize the action subject to objection to proceed in accordance with the terms of that decision.
- c. Standard for Subsequent Agreements. Execution of this PA does not prohibit NNSA from developing other agreement documents to govern the management of historic properties at LLNL; that is, provided that subsequent agreements meet the intent of this PA and that any subsequent PA clearly states whether or not it supersedes this PA in whole or specific part.
- d. Amendment.
 - i. Any signatory may at any time propose amendment of this PA, whereupon all signatories shall consult to consider such amendment pursuant to 36 CFR §§ 800.6(c)(7) and 800.6(c)(8). This PA may be amended only upon written concurrence of the signatories.
 - ii. NNSA and UC may add sensitive areas or archeological sites to lists and maps that are historic compliance screening tools. Such additions shall not require consultation with the SHPO. Following consultation with the SHPO, NNSA and UC may delete sensitive areas or archeological sites from lists and maps that are historic compliance screening tools without amending the PA.
- e. Discoveries and Unanticipated Effects. UC will notify NNSA and the SHPO at the earliest possible time if it appears that an activity covered by this PA will affect a previously unidentified property that may be eligible for the NRHP, or affect a known historic property in an unanticipated manner. NNSA may assume for purposes of this PA that the affected property is eligible for inclusion in the NRHP. NNSA and UC will consult with the SHPO to develop actions that take the effects of the activity into account. Any consultation carried out hereunder shall not exceed ten days. NNSA will provide the SHPO with written recommendations reflecting the consultation and will modify the scope of work as necessary to implement these recommendations.
- f. Termination.
 - i. NNSA or SHPO may terminate this PA. If this PA is not amended as provided for in paragraph d above of this stipulation, or if any NNSA or SHPO proposes termination of this PA for other reasons, the signatory proposing termination shall notify the other signatories in writing, explain the reasons for proposing termination, and consult with the other signatories for no more than a 30-day period to seek alternatives to termination. If the objection is resolved through such consultation,

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the action in dispute may be carried out in accordance with the terms of such a resolution.

- ii. Should such a consultation fail, the signatory proposing termination may terminate this PA by promptly notifying the other signatories in writing.
 - iii. Should this PA be terminated, then NNSA shall either consult in accordance with 36 CFR § 800.14(b) to develop a new PA or request the comments of the ACHP pursuant to 36 CFR 800.
 - iv. Beginning with the date of termination, NNSA shall ensure that until and unless a new PA is executed for the undertakings covered by this PA, such undertakings shall undergo individual review in accordance with 36 CFR §§ 800.4 through 800.6.
- g. Emergencies
- i. In the event that natural disasters, fires, spill events, or other emergencies occur, UC may take actions that may affect historic properties without consultation. These actions would protect life and safety, or stabilize historic properties, or prevent further property damage. UC will undertake such emergency-response work in a manner that seeks to avoid or minimize effects on historic properties to the extent possible.
 - ii. Should historic properties be discovered during emergency repair or response activity, work in the immediate area of the discovery will cease if UC has determined that a work stoppage at the site will not impede emergency-response activities. As early as possible given the nature of the emergency, UC will provide telephonic or email notification of the discovery to NNSA and the SHPO. Notification will include the steps taken to address the emergency, a description of the discovered property and its apparent significance, and a description of the emergency work and the potential effects on the discovered property. Within 30 calendar days following this notification, UC will provide NNSA and the SHPO with a written report documenting the actions taken to avoid or minimize effects, the present status of the discovered property, and planned treatment of the said property.
- h. Confidentiality. All signatories acknowledge that information about historic properties, prospective historic properties, or properties considered historic for purposes of this PA are or may be subject to the provisions of Section 304 of the NHPA relating to the disclosure of sensitive information, and having so acknowledged, will ensure that all actions and documentation prescribed by this PA are, where necessary, consistent with the requirements of Section 304 of the NHPA.
- i. Anti-Deficiency Act. The Anti-Deficiency Act, 31 USC 1341, prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. Accordingly, all signatories agree that any requirement for the obligation of funds arising from the terms of this PA shall be subject to the availability of appropriated funds for that

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purpose, and that this PA shall not be interpreted to require the obligation or expenditure of funds in violation of the Anti-Deficiency Act.

V. Effective Date and Duration.

- a. This PA is effective on the date that it has been signed by NNSA, UC, and SHPO.
- b. This PA remains in effect until December 1, 2005, if not superseded.

EXECUTION OF THIS PA by NNSA, UC, and SHPO, its transmittal by NNSA to the ACHP in accordance with 36 CFR § 800.6(b)(1)(iv), and subsequent implementation of its terms, shall evidence pursuant to 36 CFR § 800.6(c), that this PA is an agreement with the ACHP for purposes of Section 110(1) of the NHPA, and shall further evidence that the NNSA has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, that NNSA has taken into account the effects of the Undertaking on historic properties, and that NNSA has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations codified at 36 CFR 800.

SIGNATORIES:

U.S. DEPARTMENT OF ENERGY, NATIONAL NUCLEAR SECURITY ADMINISTRATION

Camille Yuan-Lo Ho DATE: 6/30/03

LAWRENCE LIVERMORE NATIONAL LABORATORY, UNIVERSITY OF CALIFORNIA

Dennis K. Fisher DATE: 4/28/03

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

Steph A. Mukerjee DATE: 7-1-03
DS/APo