

DRAFT PROGRAMATIC AGREEMENT
BETWEEN
THE SIERRA FRONT FIELD OFFICE OF THE BUREAU OF LAND MANAGEMENT
AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE
FOR
THE PINE NUT LAND HEALTH PROJECT,
DOUGLAS, LYON AND CARSON CITY COUNTIES, NEVADA

WHEREAS, the Sierra Front Field Office of the Bureau of Land Management (BLM) is preparing a plan to conduct vegetation treatments on up to 24,564 acres of public lands in the Pine Nut Mountains, Douglas, Lyon and Carson City Counties, Nevada (hereinafter referred to as the “undertaking” as defined in 36 CFR § 800.16[y]); and

WHEREAS, the BLM proposes to implement the undertaking to comply with the BLM National Sage-Grouse Habitat Conservation Strategy (November 2004), the Greater Sage-Grouse Conservation Plan for Nevada and Eastern California (June 2004), the Bi-State (Sage-Grouse) Action Plan (March 2012) and the Guidance for Implementation of Federal Wildland Fire Management Policy (February 2009); and implementing these policies is subject to the requirements of the National Environmental Policy Act of 1969 (NEPA); the BLM is responsible for completing NEPA analysis and ensuring that it is in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 CFR § 800; and

WHEREAS, the BLM has determined that the undertaking may have an effect upon properties eligible for inclusion in the National Register of Historic Places (NRHP), and has consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA); and

WHEREAS, the BLM has invited the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR §800.14(b), to participate in and execute this Programmatic Agreement (PA) and the ACHP has elected not to formally enter consultation on the development of this PA; and

WHEREAS, effects to historic properties in the Area of Potential Effect (APE) cannot be fully determined and the Parties desire to enter into this Agreement to set forth procedures to be followed in satisfaction of the BLM’s Section 106 responsibilities of the NHPA, for the Project in the APE; and

WHEREAS, the phased undertaking would be implemented over the course of the next 10 to 15 years; and

WHEREAS, this PA covers all aspects of the planning, development, and implementation of the elements of the NEPA documentation and decision for the undertaking including but not limited to fire and vegetation management through hand cutting, hand thinning, mechanical mastication, mechanical thinning and removal, pile burning and seeding; and

WHEREAS, the BLM has consulted with the Washoe Tribe of Nevada and California and the Yerington Paiute Tribe [Tribe(s)] concerning properties of traditional cultural and religious significance and the Tribe(s) have been invited to concur in this PA; and

WHEREAS, the BLM has provided information to the public about the undertaking and has invited public comment under NEPA and NHPA; and

NOW THEREFORE, the signatories agree that implementation of the NEPA decision record shall be administered in accordance with the following stipulations to ensure that historic properties will be treated to avoid or mitigate effects to the extent practicable, regardless of surface ownership and to satisfy the BLM's NHPA Section 106 responsibilities for all aspects of the undertaking.

I. ROLES AND RESPONSIBILITIES

The BLM is responsible for implementing phases of this PA including consultation with the Tribe(s) and SHPO. As necessary, the BLM has the responsibility of consultation with the ACHP.

The signatories agree that the *STATE PROTOCOL AGREEMENT between The Bureau of Land Management, Nevada and The Nevada State Historic Preservation Office for Implementing the National Historic Preservation Act, Revised January 2012* (Protocol), except as amended here, will be used as guidance for this PA. This Protocol is incorporated by reference.

The BLM is responsible for administering this PA. This includes, but is not limited to, ensuring that signatories carry out their responsibilities; overseeing cultural resource work; assembling submissions to the SHPO and Tribe(s) including reports, determinations of eligibility and effect, and treatment plans; and for seeking SHPO concurrence with agency compliance decisions.

II. AREA OF POTENTIAL EFFECT

The area of potential effect (APE) for cultural resources is defined as the boundary of the 24,564 acres considered for vegetation treatments in the Pine Nut Land Health Environmental Assessment and figures. Appendix A contains two maps showing the APE. Figure 1 is a map of the Project vicinity, and Figure 2 shows the APE, which are referred to on the map as the "Proposed Treatment Units."

The APE shall be defined to include potential direct and indirect effects to cultural resources and properties of traditional religious and cultural importance from any activities associated with the undertaking without regard for land ownership.

Based on current data, there are no known historic properties outside of the direct APE that would have the characteristics that qualify them for listing in the NRHP adversely affected by visual impacts from the proposed action. However, the APE for assessing indirect effects on known historic properties will be the area plus one mile outward in all directions from the perimeter of each area, which would include some areas outside the Pine Nut Land Health undertaking area.

The BLM may amend the APE as needed, or as requested by the SHPO or the Tribe(s), without amending the PA. All consulting parties will receive formal notification of the amended APE.

III. STIPULATIONS

The BLM shall ensure that its contractors, subcontractors, or other personnel involved with this undertaking carry out the stipulations of this PA

The BLM shall ensure that ethnographic, historic, architectural, or archaeological work conducted pursuant to this PA is carried out by, or under the direct supervision of, persons meeting qualifications set forth in the *Secretary of the Interior's Professional Qualifications Standards* (currently available at http://www.nps.gov/history/local-law/arch_stnds_9.htm) and who have been permitted for such work, as necessary, by the BLM Nevada.

A. Identification

1. The BLM, in consultation with the SHPO, shall ensure that appropriate cultural resource identification activities, including records research; informant interviews; context development; and archaeological, historic, or ethnographic inventory for the APE are conducted in a manner consistent with the Protocol.
2. Required identification activities shall be completed for the APE regardless of the ownership (public or private) of the lands involved and BLM shall be responsible for gaining access to privately held lands.
3. The BLM shall make a good faith effort to consult with the Tribes to identify properties of traditional religious or cultural importance. Tribal consultation procedures are specified in Appendix B.

B. Eligibility

1. For each phase of undertaking within the APE, the BLM shall evaluate cultural resources for eligibility to the NRHP. The BLM will determine NRHP eligibility prior to the initiation of activities that may affect cultural resources, using the Protocol as guidance.
2. The BLM shall consult with the Tribe(s) or designated tribal members to evaluate the NRHP-eligibility of properties of traditional religious and cultural importance. Based on information shared with the BLM, the BLM would determine the NRHP eligibility of identified properties, and consult on these determinations with SHPO and the Tribe(s).
3. The BLM shall ensure the completion of appropriate cultural resource inventories that identify and evaluate cultural resources and preparation of reports in accordance with the

Protocol and with the BLM Nevada's *Guidelines and Standards for Archaeological Inventory, 5th edition* (January 2012), or any subsequent edition issued by the BLM (Guidelines).

C. Treatment

1. To the extent practicable, the BLM shall ensure that project activities avoid adverse effects to historic properties through project design or redesign, relocation of activities, or by other means in a manner consistent with the Protocol.
2. In avoiding or mitigating effects, the BLM, in consultation with the SHPO, shall determine the precise nature of effects to historic properties identified in the APE, using the Protocol as guidance. The BLM shall consult with SHPO and the Tribe(s) for any portion of the undertaking resulting in an adverse effect determination, using the Protocol as guidance.
3. The BLM shall consult with the Tribe(s) to evaluate effects to properties of traditional religious and cultural importance. Based on information shared with the BLM, the BLM shall determine the appropriate treatment to avoid or minimize to the extent practicable adverse effects, and consult on these determinations with SHPO and the Tribe(s).
4. For properties eligible under NRHP criteria (a) through (c), mitigation other than data recovery may be considered in the treatment plan (e.g., Historic American Buildings Survey/Historic American Engineering Record recording, oral history, historic markers, exhibits, interpretive brochures or publications). Where appropriate, treatment plans shall include provisions (content and number of copies) for a publication for the general public.
5. The BLM shall, in consultation with the SHPO, ensure that the fieldwork portions of any treatment plan (using BLM staff or contractors and subcontractors) are completed prior to initiating any activities that may affect historic properties located within the area covered by the plan.
6. The BLM shall ensure that all records and materials resulting from identification and treatment efforts are maintained until the final treatment report is complete and then curated in accordance with 36 CFR § 79 or 43 CFR § 10.

IV. DURATION

This PA shall remain in effect for 15 years from the date of its execution. If proposed actions in the APE are not completed prior to such time, the BLM may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Section X of this PA. The BLM shall notify the signatories as to the course of action it will pursue.

V. POST-REVIEW DISCOVERY SITUATIONS

Stipulations of this PA and the Protocol are intended to identify and treat cultural resources that are eligible for inclusion in the NRHP. Unplanned discoveries of buried cultural resources are

not anticipated. In the case of an unplanned discovery, the BLM will ensure that provisions in section VI.B of the Protocol and Appendix C of this PA are met.

Prior to initiating any ground disturbing activities within the APE, all BLM employees, contractors, and subcontractors empowered to halt activities in a discovery situation shall be informed about who to contact and under what time frame. At least one of these individuals will be present during any project field activities.

Activities in the area of the discovery will be halted until the BLM Authorized Officer provides written authorization that mitigation is complete and activities can resume.

VI. NOTICES TO PROCEED

When appropriate, and in consultation with the other signatories and in compliance with the PA stipulations, the BLM may issue Notices to Proceed (NTP) for individual project phases, under the following conditions:

- A. The BLM, in consultation with the SHPO and the Tribe(s), have determined that there are
 - 1. no historic properties within the APE affected by the current phase of the undertaking; and
 - 2. no properties of traditional religious or cultural importance within the APE affected by the current phase of the undertaking; or
- B. The BLM, after consultation with the SHPO and the Tribe(s), have implemented an adequate treatment plan for the current phase of the undertaking, and
 - 1. the fieldwork phase of the treatment option has been completed; and
 - 2. the BLM has prepared or accepted a summary description of the fieldwork performed and a schedule for reporting that work; and
 - 3. the BLM shall provide a copy of the summary to SHPO; and
 - 4. the SHPO shall review the summary and if the SHPO concurs or does not respond within two working days of receipt, BLM shall assume concurrence and issue the NTP; and
 - 5. the BLM shall not begin any ground disturbing activities within the boundaries of any historic property until a NTP is issued for the property; and
 - 6. a partial NTP may be issued for portions of the APE that are outside of the area that may affect historic properties.

VII. MONITORING AND REPORTING

- A. Any signatory may monitor actions carried out pursuant to this PA. To the extent practicable, monitoring activities should minimize the number of monitors involved in the undertaking.

B. Reporting

1. A draft final report of the identification, evaluation, treatment or other mitigative activities will be due to the BLM from any contractor within nine (9) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.
2. BLM should review and comment on any report submitted by contractors within 60 calendar days of receipt.
2. Prior to SHPO consultation, the BLM shall submit the results of identification, evaluation, and treatment efforts, including discovery situations, and treatment plans to the Tribe, and other identified interested persons, for a 30-calendar-day review and comment period.
3. After review by the Tribe(s), and interested parties, the BLM shall submit the results of identification, evaluation, and treatment efforts, including discovery situations, and treatment plans to the SHPO for a 30-calendar-day review and comment period.
4. If the Tribe(s), SHPO, or other interested party fails to respond to the BLM within 30 calendar days of the receipt of a submission, the BLM shall presume concurrence with the findings and recommendations as detailed in the submission and proceed accordingly.
5. The BLM shall ensure that all final archaeological reports resulting from actions pursuant to this PA will be provided to the SHPO and the Tribe. All such reports shall be consistent with contemporary professional standards and the *Department of Interior's Formal Standards for Final Reports of Data Recovery Programs* (48 Federal Register 44716-44740).

VIII. OTHER CONSIDERATIONS

- A. The BLM shall ensure that all its personnel and all the personnel of its contractors and subcontractors are directed not to engage in the illegal collection of historic and prehistoric materials. All parties shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470), as amended, on public lands and with Nevada Revised Statute (NRS) 383 for private lands.
- B. The BLM shall ensure that any human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the undertaking are treated with respect. In coordination with this PA, human remains and associated grave goods found on public land will be handled according to the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., and its implementing regulations (43 CFR § 10). Human remains and associated grave goods on private land will be handled according to the provisions of NRS 383.
- C. The BLM shall bear the expense of identification, evaluation, and treatment of historic properties directly or indirectly affected by project-related activity. Such costs shall include, but not be limited to, pre-field planning, fieldwork, post-fieldwork analysis, research and report preparation, interim and summary report preparation, publications for the general public, and the cost of curating project documentation and artifact collections.

D. Information on the location and nature of cultural resources, and information considered proprietary by the Tribe(s), will be held confidential to the extent provided by Federal and state law.

IX. DISPUTE RESOLUTION

If any signatory to this PA, or an interested person, objects to any activities proposed pursuant to the terms of this PA, the BLM shall consult with the objecting party and the SHPO to resolve the issue. If the BLM determines that the objection cannot be resolved, it shall request the assistance of the BLM Nevada Deputy Preservation Officer to resolve the objection. The BLM Nevada Deputy Preservation Officer's decision will be considered final.

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

X. AMENDMENT

Any signatory to this PA may request that this PA be amended, whereupon the signatories will consult to consider such amendment. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

XI. TERMINATION

Any signatory to this PA may terminate the PA by providing thirty (30) days advance written notice with cause to the other signatories, provided that the signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

EXECUTION of this PA and implementation of its terms demonstrate that the BLM has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

Leon Thomas, Sierra Front Field Office Manager

Date

NEVADA STATE HISTORIC PRESERVATION OFFICER

Rebecca L. Palmer, SHPO

Date

Invited Signatories (may or may not elect to sign):

WASHOE TRIBE OF NEVADA AND CALIFORNIA

YERINGTON PAIUTE TRIBE

APPENDIX A: AREA OF POTENTIAL EFFECT

Figure 1 is a map of the Project vicinity, and Figure 2 shows the APE, which is referred to on the map as the “Proposed Treatment Units.”

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APPENDIX B: TRIBAL CONSULTATION PROCEDURES

I. Identification of Parties for Consultation

Consultation on the proposed action was initiated in May 2013, following the procedures described below. Parties for consultation were identified by a cultural resources specialist from the BLM Sierra Front Field Office of the Carson City District who has experience with tribal consultation in the area. BLM sent consultation initiation letters to the Washoe Tribe of Nevada and California and the Yerington Paiute Tribe in May, and gave presentations to the two tribal councils in June and July. Both are federally recognized Tribes with cultural and natural resource interests in the Pine Nut Mountains. Consultation will be ongoing during the life of the project with both Tribes.

Additional consultation will be initiated for implementation of each phase of action over the life of the project and this PA.

II. Consultation Methods

The methods of the BLM contacting, communicating, and coordinating with the Tribe(s) will include letters, telephone calls, emails, and/or face-to-face meetings, as appropriate and necessary to afford the Tribes the opportunity for input.

A. Email and Letter Contact

The BLM Authorized Officer or designated party will send an email to the Tribes as early as possible in the process explaining the proposed project or phase of activity. The email will ensure that the Tribes are part of the initial contact and scoping process. The proposed activity will be explained in sufficient detail to allow for each Tribe to determine its level of interest, if any. The scope of work, a proposed schedule, and any significant activities, such as planned field visits or a decision date, will be included in the email. The initial email will ask whether the Tribe wants consultation to be initiated with a formal letter. If so, BLM will prepare a consultation initiation letter. If the tribe does not request a letter, the BLM will proceed with the consultation process below.

B. Follow-up Telephone Contact

The Authorized Officer or designee will follow the initial email and/or letter with telephone contacts after 10 working days. Information from telephone contacts will be documented in a telephone log format. Telephone logs and emails will become part of the project record. Any follow-up action recommended by the Tribe(s) will be noted.

C. Planned Meetings

1. The Authorized Officer or designated party will meet with designated tribal leaders and/or designated tribal representatives as soon as possible upon request of the Tribe(s) in order to discuss the proposed project, a specific project phase, or related issues.
2. Meetings will take place at tribal offices as requested, in the field at the location of proposed actions, or at other mutually agreed upon locations in order to minimize costs to tribal members and to ensure maximum participation.
3. Meeting dates will be coordinated with designated tribal points of contact at least 10 working days prior to the meeting date.
4. The meeting will be confirmed by a letter and/or email to the tribal chair, with a copy furnished to the Tribal Historic Preservation Officer or designated tribal cultural resources point of contact. The letter will include a purpose statement, a proposed agenda, and a list of agency attendees.
5. Meeting summaries will be prepared within 5 working days following the meeting and will be distributed to the tribal leadership and other appropriate parties in draft. Comments from these tribal representatives will be incorporated as appropriate before finalizing the notes. Final meeting notes will be distributed within 10 working days following distribution of the draft notes.

D. Concluding Consultation

After reasonable and good faith efforts to address and resolve issues, the BLM Authorized Officer, in consultation with the signatories, will determine the appropriate point of closure of the consultation on the proposed action or phase of the project. Closure of a phase of consultation will be provided by the BLM, in writing, to the tribal leadership and representatives. If ongoing consultation is productive, the BLM and the Tribe(s) will make that determination and outline the appropriate scope, level, and process for its continuance. (Ongoing consultation may include such things as continued staff-to-staff coordination, weekly project phase reporting, and/or participation of tribal monitors)

APPENDIX C: DISCOVERY AND UNANTICIPATED IMPACTS PROCEDURES

In the event that previously unknown cultural resources are discovered within the area of potential effects of the undertaking, or should known resources be directly or indirectly impacted in an unanticipated manner, the following actions, at a minimum, would be initiated by the BLM in consultation with the signatories:

1. All activities will halt in the immediate vicinity of the discovery and all actions will be directed away from an area at least 100 meters in all directions from the point of discovery.
 - a. A BLM cultural resources specialist (CRS) will be notified immediately by the contractors or BLM staff working on the project. The BLM will ensure that a CRS with the proper expertise for the suspected resource type is on-site as soon as possible.
 - b. The BLM will initiate consultation with the appropriate parties, including the SHPO, other federal agencies, the Tribe(s), and interested parties as appropriate.
 - c. In the event that a CRS or other necessary persons are not immediately available, BLM may be required to cover and/or otherwise protect the resource until such time that the appropriate parties can be present for inspection and/or evaluation.
2. Upon arriving at the site of the discovery, the CRS shall assess the resource. At a minimum, the assessment shall include:
 - a. The nature of the resource (e.g., number and kinds of artifacts, presence/absence of features). This may require screening of already disturbed deposits, photographs of the discovery, and/or other necessary documentation.
 - b. The spatial extent of the resource. This may require additional subsurface testing, mapping or inspection, as is appropriate to the resource.
 - c. The nature of deposition/exposure. This may require interviews with construction personnel, other persons having knowledge concerning the resource or, in rare instances, the expansion of existing disturbances to establish the characteristics of the deposits.
3. Discoveries and unanticipated impacts to known resources will be managed according to the provisions of this PA and the Protocol. After consultation with the appropriate parties, BLM shall make a determination of eligibility, effect, and treatment. If necessary, BLM, in consultation with the SHPO, the Tribe(s) and appropriate parties, shall ensure that a treatment plan is prepared following the guidance provided in this PA.
4. Any items covered by NAGPRA encountered in a discovery, or unanticipated impact situation, will be handled according to 36 CFR § 10 or NRS 383, as appropriate.
5. All implementation activities in the area of the discovery will be halted until the BLM documents in writing that identification and treatment are complete and activities can resume.