

**PROGRAMMATIC 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 VIRGINIA MOUNTAINS VEGETATION TREATMENTS PROJECT,  
WASHOE COUNTY, NEVADA**

**WHEREAS**, the Sierra Front Field Office of the Bureau of Land Management (BLM) is preparing a plan to conduct phased vegetation treatments on 22,388 acres of public lands in the Virginia Mountains, Washoe County, Nevada (henceforth 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 *Vegetation Treatment on BLM Lands in Thirteen Western States Environmental Impact Statement* (BLM 1991); the *Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in 17 Western States Programmatic Environmental Impact Statement* (BLM 2007); the *Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment* (ARMPA) (BLM 2015); 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), 54 U.S.C. 300101 et seq., and its implementing regulations, 36 CFR § 800; and

**WHEREAS**, the BLM has defined the undertaking's Area of Potential Effects (APE) as lands within the boundary of the 193,213-acre Planning Area of the Virginia Mountains Vegetation Treatments Project Environmental Assessment (EA), including the approximately 22,388 acres of public lands considered for vegetation treatments within this Planning Area (see Attachment 1). The potential for direct effects is currently limited to the 22,388 acres planned for vegetation treatments. The BLM did not establish an indirect APE because the proposed vegetation treatments would protect and maintain healthy juniper woodlands and sagebrush habitats, which are landscapes that have existed in the region over a long period of time. All treatment methods would occur temporarily on the landscape, meaning there would be no lasting auditory, visual, atmospheric, olfactory, or other indirect effects from the use of chainsaws, masticators, and other equipment. The BLM may amend the APE as needed, or as requested by the Nevada State Historic Preservation Officer (SHPO) or the Tribe(s), without amending the PA. All Signatories and Concurring Parties will receive formal notification of the amended APE.

**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 SHPO pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA); and

**WHEREAS**, the BLM has consulted with the Pyramid Lake Paiute Tribe, the Reno-Sparks Indian Colony, the Washoe Tribe of Nevada and California, and the Susanville Indian Rancheria (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 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 chosen 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 PA to set forth procedures to be followed in satisfaction of the BLM's Section 106 responsibilities of the NHPA, for the undertaking 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 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 2014* (Protocol), except as amended here, will be used as guidance for this PA. This Protocol is incorporated by reference. Subsequent editions of the Protocol may also be used for guidance for this PA.

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 BLM determinations under the NHPA.

### 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](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 the undertaking within the APE, the BLM shall evaluate cultural resources for eligibility to the NRHP. The BLM, in consultation with the SHPO, 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 prepare reports in accordance with the Protocol and with the BLM Nevada's *Guidelines and Standards for Archaeological Inventory, 5<sup>th</sup> edition* (January 2012) (Guidelines), or any subsequent edition issued by the BLM.

### C. Treatment

1. The BLM, in consultation with the SHPO, 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 the 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 treatment 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 projects or 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 mitigation activities will be due to the BLM from the contractor within nine (9) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.
2. The BLM should review and comment on any report submitted by contractors within sixty (60) calendar days of receipt.
3. 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(s), and other identified interested persons, for a 30-calendar-day review and comment period. The BLM shall provide the inventory report in accordance with data sharing agreements between the BLM and each Tribe.
4. After review by the Tribe(s), and interested parties, the BLM shall submit the results of identification, evaluation, and treatment efforts, including discovery situations, treatment plans, and treatment report to the SHPO for a 30-calendar-day review and comment period.
5. If the Tribe(s), SHPO, or other interested party fails to respond to the BLM within thirty (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.
6. The BLM shall ensure that all final archaeological reports resulting from actions pursuant to this PA will be provided to the SHPO and to the Tribe(s) in accordance with data sharing agreements between the BLM and each Tribe. If no data sharing agreement exists between the BLM and a Tribe, the BLM shall submit a summary of the identification, evaluation, and treatment efforts, as well as a table listing sites and agency determinations. 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, funerary objects, objects of cultural patrimony, and sacred objects encountered during the undertaking are treated with respect. In coordination with this PA, human remains and associated funerary objects 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 funerary objects 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 are not 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, any consulting party, 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

\_\_\_\_\_  
Bryant D. Smith, Field Manager, Sierra Front Field Office

Date \_\_\_\_\_

NEVADA STATE HISTORIC PRESERVATION OFFICER

\_\_\_\_\_  
Rebecca L. Palmer, SHPO

Date \_\_\_\_\_

**Concurring Parties:**

PYRAMID LAKE PAIUTE TRIBE

\_\_\_\_\_  
Vinton Hawley, Chairman

Date \_\_\_\_\_

RENO-SPARKS INDIAN COLONY

\_\_\_\_\_  
Arlan Melendez, Chairman

Date \_\_\_\_\_

WASHOE TRIBE OF NEVADA AND CALIFORNIA

\_\_\_\_\_  
Neil Mortimer, Chairman

Date \_\_\_\_\_

SUSANVILLE INDIAN RANCHERIA

\_\_\_\_\_  
Stacy Dixon, Chairman

Date \_\_\_\_\_

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**APPENDIX A: AREA OF POTENTIAL EFFECT**

Figure 1 is a map of the Project vicinity, and Figure 2 shows the APE, which includes the specific 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 February 2015, 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. The BLM sent early project information letters to the Pyramid Lake Paiute Tribe (PLPT), the Reno-Sparks Indian Colony (RSIC), the Washoe Tribe of Nevada and California (WTNC), and the Susanville Indian Rancheria (SIR) in February 2015, and gave presentations to tribal councils in April and November 2015 (PLPT), October 2015 (WTNC), November 2015 (RSIC), and January 2016 (SIR). These Tribes are federally recognized Tribes with cultural and natural resource interests in the Virginia Mountains. Additional emails, phone calls, letters, and meetings with tribal staff have also taken place since the initiation of tribal consultation. Consultation will be ongoing throughout the life of the project with interested 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**

For each phase of implementation, the BLM Authorized Officer or designee will send an email to Tribes explaining the upcoming phase of treatment. The email will ensure that the Tribes are informed of the planned treatment effort as early as possible. The proposed treatment(s) will be explained in sufficient detail to allow for each Tribe to determine its level of interest, if any. A description of the planned work, a proposed schedule, and any important dates, 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, the 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 and emails will be documented and will become part of the project record. Any follow-up action recommended by the Tribe(s) will be noted.

### C. Meetings

The BLM Authorized Officer and/or BLM staff, as appropriate, will meet with tribal government, tribal staff, and/or tribal representatives as requested. This may include presentations at tribal council meetings, meetings between staff at BLM or Tribal offices or by conference call, or field visits at project locations.

### D. Concluding Consultation

Pursuant to federal legislation and executive orders concerning Native American consultation, the BLM considers the consultation process to be ongoing throughout the life of the Project. This section describes the process for formally concluding consultation when it is determined to be unproductive. After reasonable and good faith efforts to address and resolve issues, the BLM Authorized Officer, in consultation with the signatories, may determine the appropriate point of closure of the consultation on the Project or phase of the Project if consultation is no longer productive. Closure of a phase of consultation will be provided by the BLM, in writing, to Tribal leadership and representatives.

## 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 that known resources are 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, the 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 the 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, the BLM shall make a determination of eligibility, effect, and treatment. If necessary, the 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.

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