



**PROGRAMMATIC AGREEMENT  
BETWEEN THE BUREAU OF LAND MANAGEMENT SCHELL FIELD OFFICE  
AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER  
REGARDING  
THE SOUTH SPRING & HAMBLIN WATERSHED RESTORATION PROJECT,  
WHITE PINE & LINCOLN COUNTIES, NEVADA**

**WHEREAS**, the Schell Field Office of the Bureau of Land Management (BLM) is preparing a plan to conduct multiple phased vegetation treatments on public lands at various locations within the watersheds of South Spring Valley and Hamblin Valley in White Pine and Lincoln Counties; comprising an Area of Potential Effect (APE) of approximately 670,000 acres of BLM land shown in Appendix A, (hereinafter referred to as the "Undertaking" as defined in 36 C.F.R. § 800.16[y]); and

**WHEREAS**, the BLM proposes to implement the undertaking to comply with all relevant Federal laws, regulations and policies; and implementing these policies subject to the requirements of the National Environmental Policy Act of 1969 (NEPA); and the BLM is responsible for ensuring compliance with Section 106 of the National Preservation Act of 1966, as amended (NHPA), 16 U.S.C. §470f, and its implementing regulations, 36 CFR 800; and

**WHEREAS**, the BLM proposes to implement this Undertaking in compliance with the NHPA, such that cultural resources which may be affected by the proposed projects will be managed in compliance with Section 106 of the NHPA and the 2014 Nevada State Protocol Agreement (SPA) between the BLM and the SHPO; and

**WHEREAS**, effects to historic properties in the APE (Appendix A) cannot be fully determined and the Signatories desire to enter into this Programmatic Agreement (PA) to set forth procedures to be followed in compliance with the BLM's Section 106 responsibilities of the NHPA for the proposed treatments; and

**WHEREAS**, the Undertaking would be implemented over the course of the next 10 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 vegetation removal and thinning with Dixie harrow, roller-chopper, mowing, chaining, mastication, mulching, and hand-cutting with chainsaws; chemical treatment; prescribed fire; seeding with rangeland drill, dribblers or aerial seeding, and fencing; and

**WHEREAS**, the BLM is responsible for Native American consultation with the Tribes on a government to government level, and the BLM sent letters (May 3, 2011) to the Confederated Tribes of the Goshute Reservation, NV-UT, the Duckwater Shoshone Tribe of the Duckwater Reservation, NV, and the Ely Shoshone Tribe of Nevada, inviting them to consult, and will follow the Tribal Consultation Procedures outlined in Appendix B (BLM Handbook H-8120-1) and has invited these Tribes to participate as concurring parties in this PA; and

**WHEREAS**, the BLM has consulted with the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR §800.14 to develop and execute this PA and the ACHP has elected not to formally enter consultation on the development of this PA; 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 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, including reports, determinations of eligibility and effect, and treatment plans; and for seeking SHPO concurrence with agency compliance decisions. The Schell Field Manager is the BLM Authorized Officer for the project.

## **II. AREA OF POTENTIAL EFFECT (APE)**

The APE for cultural resources is defined as approximately 670,000 acres of BLM lands located within the South Steptoe and Hamblin Valley's Watersheds which is considered for vegetation treatments (Appendix A). Within the APE boundary land administered by BLM is 96% with an additional 2% private and another 2% administered by the National Park Service. The Undertaking will be maintained within the BLM administered lands.

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

At present there are several known potentially eligible cultural resources within the APE, and fall within the cumulative impact analysis; all eligible or potentially eligible resources to the National Register of Historic Places will be avoided with a buffer from all ground disturbing activities. The size of the buffer will depend on the site type and location of the resource, but the minimum buffer will follow the protocol.

The minimum APE for an area proposed to receive a particular phase of vegetation or fire management will be the area plus 30 meters outward in all directions from the perimeter of each treatment unit. Based on current data, there are no known historic properties outside of the BLM APE with characteristics that qualify them for listing in the NRHP that would be adversely affected by visual impacts from the proposed action.

The BLM may amend the APE as needed or as requested by SHPO without amending the PA proper. If this occurs, all consulting parties will receive formal notification of the amended APE. Within (30) calendar days of their receipt of the proposed amendment, any consulting party may request the PA be amended in accord with the process outlined in Stipulation X. Following BLM receipt of the request, the Signatories shall prepare an amendment document.

## **III. STIPULATIONS**

The BLM will ensure that the stipulations of this PA are carried out by its contractors, subcontractors, or other personnel involved with this undertaking.

The BLM shall bear the expense of identification, evaluation, and treatment of historic properties directly or indirectly affected by a project-related activity. Such costs shall include, but 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.

Proposed projects that include mechanical treatments, tree removal, or prescribed burns will be designed in consultation with a qualified Cultural Resource Specialist (CRS), and each individual treatment projects will also be monitored to minimize potential adverse effects to significant historic properties.

#### **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 and the latest edition of the "Guidelines and Standards for Archaeological Inventory."
2. Required identification activities shall be completed for the APE regardless of the ownership of the lands involved, and the BLM shall be responsible for gaining access to privately held lands.
3. The BLM, in consultation with the SHPO, will ensure an appropriate level of recording of cultural resources discovered during reviews, interviews and inventories, including re-recording and re-evaluating cultural resources recorded more than ten years prior to the Undertaking, in compliance with Section 106 of the NHPA , in a manner consistent with the SPA.
4. The BLM shall make a good faith effort to consult with the Tribes and affected tribal members to identify properties of traditional religious or cultural importance. Tribal consultation procedures are specified in Appendix B.

#### **B. Eligibility**

1. Within the APE, the BLM shall evaluate cultural resources for eligibility to the NRHP. The BLM, in consultation with SHPO, will ensure that all evaluation for eligibility to the NRHP, including, archaeological, ethnographic, historic, and architectural resources in the proposed watershed treatment areas, will be supervised by cultural resource personnel who meet or exceed the Secretary of the Interior's Professional Qualifications. The BLM will determine NRHP eligibility prior to the initiation of treatments that may affect cultural resources.
2. The BLM shall consult with the Tribes or identified affected 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 potential properties, and consult on these determinations with SHPO and the Tribes.
3. The BLM shall ensure that appropriate cultural resource inventories that identify and evaluate cultural resources are completed and that appropriate reports are prepared in accordance with the SPA and with the *BLM Nevada State Office Guidelines and Standards for Archaeological Inventory, 5th edition* (January 2012), or any subsequent edition issued by the BLM (Guidelines).

#### **C. Treatment**

1. The BLM, in consultation with SHPO, shall ensure that proposed treatments are designed or redesigned to take into account cultural properties and paleontological resources, and avoid historic properties in a manner consistent with the SPA.

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 project APE. The BLM shall consult with the Native American Tribes and SHPO for any portion of the Undertaking resulting in an adverse effect determination, using the SPA as guidance.

3. The BLM shall consult with the Tribes, or identified affected tribal members, to evaluate the NRHP-eligibility of properties of traditional religious and cultural importance. Based on information thus shared with the BLM, the BLM would determine the NRHP eligibility of identified properties, and request concurrence on such determinations with SHPO and the Tribes. The BLM shall determine the appropriate treatment and buffer areas to avoid or minimize adverse effects to Traditional Cultural Properties within the APE, and consult on these determinations with SHPO and the Tribes.

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 recordation, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). 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 in the Nevada State Museum. As defined in the Native American Graves Protection and Repatriation Act (NAGPRA), materials collected will be maintained in accordance with 36 CFR 79 or 43 CFR 10, until the final treatment report is complete and collections are curated and/or returned to their owners. BLM will encourage private owners to donate collections from their lands to the federal repository housing the public records and materials.

#### **IV. DURATION**

This PA shall remain in effect for ten (10) 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 signatory to reconsider the terms of the PA and amend it in accordance with Section X below. The BLM shall notify the signatory as to the course of action it will pursue.

#### **V. POST-REVIEW DISCOVERY SITUATIONS**

Stipulations of this PA and the SPA are intended to identify and treat cultural resources that are eligible for inclusion in the NRHP. Unplanned, inadvertent discoveries of cultural resources, including subsurface or buried cultural resources are not anticipated. In the case of an unplanned discovery, the BLM will ensure that provisions in the SPA (Section VL. B) 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, or appropriate Agency's Authorized Officer's representative provides written authorization that the required mitigation is complete and activities can resume.

## **VI. NOTICES TO PROCEED**

When appropriate, in consultation with SHPO 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 SHPO, has determined that there are:

1. No historic properties within the APE, or through project design all historic properties will be avoided for the current phase of the undertaking; and
2. In consultation with the Tribes, no properties of traditional religious or cultural importance were identified within the APE for the current phase of the undertaking; and

B. the BLM, after consultation with SHPO, or the Tribes (in case of properties of traditional religious or cultural importance) has 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 three (3) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.
2. The BLM shall review and comment on any report submitted by contractors within thirty (30) calendar days of receipt.

3. The BLM shall submit the results of identification, evaluation, and treatment efforts, including discovery situations, and treatment plans or treatment reports to SHPO for a thirty (30) calendar day review and comment period.

4. If the SHPO fails to respond to the BLM within thirty (30) calendar days of the certified 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 Tribe(s) in the latter instance pending official request and a Memorandum of Understanding Information Sharing Agreement with the BLM is in place at the time of request. 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, associated and unassociated funerary objects, 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 NAGPRA, 25 U.S.C. 3001 et seq., and its implementing regulations (43 CFR 10). Human remains and associated funerary objects found on private land will be handled according to the provisions of NRS 383.

C. Information on the location and nature of cultural resources, and information provided by and considered proprietary by the Tribe, 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 Ely District Manager and BLM Nevada Deputy Preservation Officer, to resolve the objection. The BLM Ely District Manager'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**

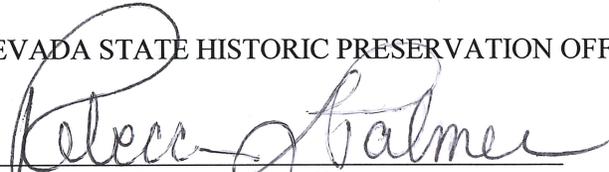
Any signatory to this PA may terminate the PA by providing thirty (30) days advance written notice with cause to the other signatories, provided that the signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

**SIGNATORIES:**

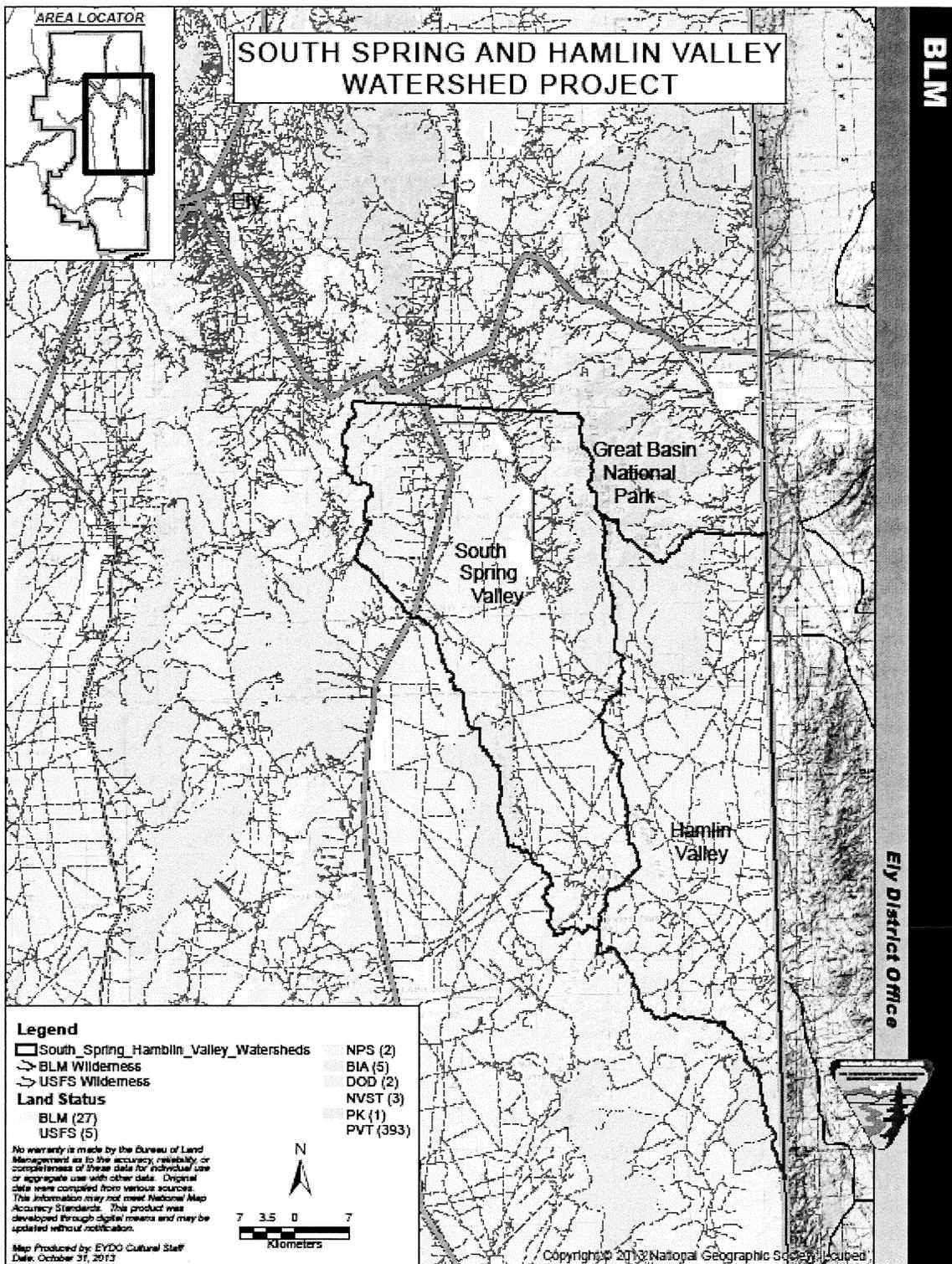
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT:

 (MATT RISKI - APR 16) 10/1/14  
Schell Field Office Manager Date

NEVADA STATE HISTORIC PRESERVATION OFFICE:

 10/21/14  
State Historic Preservation Officer Date

**APPENDIX A: AREA OF POTENTIAL EFFECT**



**APPENDIX B: TRIBAL CONSULTATION PROCEDURES**

## **I. Identification of Parties for Consultation**

Consultation on the Project was initiated on May 10, 2010, by the Ely District Native American Coordinator (NAC) following the procedures described below.

- A. Parties for consultation were identified by the Ely District Native American Coordinator. Letters were sent to the following federally recognized Tribes with cultural and natural resources interests in the Ward Mountain Area: the Confederated Tribes of the Goshute Reservation, NV-UT, the Duckwater Shoshone Tribe of the Duckwater Reservation, NV, and the Ely Shoshone Tribe and the Paiute Indian Tribe of Nevada. None of the Tribes responded.
- B. After follow-up discussions of the APE and the initial phase of proposed action, a consultation meeting will be hosted in the field by the BLM with members of the Tribes.
- C. Comments received from the Tribes during the consultation will be incorporated into the project's NEPA documentation.
- D. Additional consultation will be initiated for implementation of each project over the life of the NEPA decision record and this PA, and for any action identified in initial consultation as of interest to the Tribe, traditional cultural and religious leaders, and other interested tribal organizations or members.
- E. Based on a written request, any federally recognized Tribe may be included in this PA as a concurring party.

## **II. Consultation Methods**

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

### **A. Letter Contact.**

The BLM Authorized Officer and Ely District Native American Coordinator (NAC) will prepare a letter to the Tribes as early as possible in the process explaining the proposed project and indicating that this will begin a formal government-to-government consultation process. The letter will be prepared to ensure that Tribes are part of the initial contact and scoping process. The letter initiating the consultation will be signed by the BLM Authorized Officer. The proposed activity will be explained in sufficient detail to allow the Tribes to determine 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 written document.

### **B. Follow-up Telephone Contact.**

The Ely District NAC will follow-up the initial letter with telephone contacts after 10 working days after the letters have been mailed. Information from these telephone contacts will be documented in a telephone log format. This telephone log will be kept up to date and will become part of the project record. Any follow-up action recommended by the Tribes 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 Tribes in order to discuss the proposed Project, a specific project, or related issues.
2. Meetings will take place in Tribal Offices, 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. Meetings will be confirmed by a letter to the tribal leadership, with a copy furnished to the designated tribal cultural committee lead or 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.
6. Comments from 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 Ely District NAC, in writing, to the tribal leadership and representatives. If ongoing consultation is productive, the BLM and the Tribes 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 EFFECTS PROCEDURES

In the event that previously unknown cultural resources are discovered within the APE of the undertaking, or should previously identified resources be directly or indirectly effected 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, 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 effects to known resources will be managed according to the provisions of this PA and the Protocol. After consultation with the appropriate parties, BLM shall then make a determination of eligibility, treatment and effect. If necessary, BLM, in consultation with the SHPO, the Tribe 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 effect situation, will be handled according to 36 C.F.R. § 10 or Nevada state laws, 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 is complete and activities can resume.