

**PROGRAMMATIC AGREEMENT AMONG THE USDI BUREAU OF LAND  
MANAGEMENT, BATTLE MOUNTAIN FIELD OFFICE, AND THE NEVADA STATE  
HISTORIC PRESERVATION OFFICER REGARDING THE MIDWAY  
EXPLORATION PROJECT**

WHEREAS, the USDI, Bureau of Land Management, Battle Mountain Field Office (BLM) has determined that the construction and exploration activities associated with the Midway Exploration Project (Project) by Midway Gold Corp., situated in Nye County, Nevada 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 (Section 106). BLM, SHPO and Midway Gold Corp. are collectively referred to herein as the "Parties."

WHEREAS, Midway Gold Corp. the operator of the Project, participated in the consultation and has been invited to participate as a concurring party in this Programmatic Agreement (PA),

WHEREAS, Tribes that may have an interest in the area have been contacted and offered an opportunity to participate in the Section 106 process and those Tribes requesting an opportunity to participate as concurring parties will be included in the process as provided in this PA,

WHEREAS, this PA covers all aspects of the planning, construction, and exploration activities associated with the Project within the Area of Potential Effect (APE), including but not limited to, road construction, overland travel, sump construction, and access roads,

WHEREAS, the definitions given in the state protocol agreement between the Bureau of Land Management, Nevada and the Nevada State Historic Preservation Office (Protocol) apply throughout this PA, unless specifically modified below: and

NOW THEREFORE, the Parties agree that development of the Project within the APE shall be administered in accordance with the following stipulations of this PA to ensure that historic properties (as defined at 36 C.F.R. 800.16(l)(i)) will be treated to avoid or mitigate effects to the extent practicable, regardless of surface ownership and to satisfy BLM Section 106 responsibilities for all aspects of the Project.

**PURPOSE**

The purpose of this PA is to establish an understanding among BLM, SHPO, and Midway Gold Corp. on how the consultation process under Section 106 will be implemented regarding mineral exploration Undertakings. This PA defines general and specific measures that will be undertaken by all Parties to ensure that mutual objectives and individual requirements of Section 106 will be fulfilled.

## **AREA OF POTENTIAL EFFECT**

The APE has been defined to include the geographic area within which the Exploration Project may have potential direct and indirect effects to historic properties. The APE is that area as defined as the Project Area defined in the Project environmental assessment. At the discretion of the BLM, the APE may be amended as needed and any amendments will be handled under the terms of this agreement. The attached map shows the APE boundary.

## **STIPULATIONS**

### *A. Identification*

1. BLM has identified interested persons and tribes pursuant to Protocol. As a result of that process, the Yomba Shoshone Tribe (Tribe) requested consultation on the Project and that process is ongoing.
2. Midway Gold Corp. has funded a cultural resource inventory, including reports, encompassing the APE and adjacent areas, consistent with Protocol. That inventory has covered all lands within the APE, regardless of the ownership (public or private) of the lands involved.

### *B. Eligibility*

1. The BLM, in consultation with the SHPO, will evaluate all cultural resources located within the APE for eligibility to the NRHP in accordance with BLM/SHPO Protocol. Unevaluated sites shall be treated as if they are eligible sites.

### *C. Activity Areas*

1. The Parties agree that the Project will be implemented in phases. Prior to implementing a phase that occurs within the APE, Midway Gold Corp. shall identify the area within which such phased activities will occur (Activity Area) and provide a description of the proposed phase and maps of the Activity Area to the BLM. At a minimum the maps will include one map that uses the geomorphologic map in Vierra and Young (2003), or subsequent supplemental reports, as a base to show the location of the drill sites, sumps, existing overland travel routes, and planned overland travel routes relative to mapped cultural features, and a second map that uses the USGS 7.5 minute topographic map as a base to show the planned activities relative to topographic features.
2. Upon receipt of a proposed Project phase, the BLM shall:
  - a. Review the proposed Project phase and Activity Area to determine whether any eligible resources may be affected by the Project phase.

- b. If it is determined that there would be no adverse effect to an eligible resource, the BLM shall document such finding, and Midway Gold Corp. may proceed with the proposed Project phase, in accordance with Section G below. If it is determined that there would be an adverse effect to an eligible resource within the Activity Area, appropriate mitigation methods will be developed in accordance with the PA.
  - c. To the extent economically and technically practicable, BLM shall ensure that Midway Gold Corp. avoids effects to eligible resources through project design, or redesign, relocation of facilities, or by other means in a manner consistent with Protocol.
  - d. When avoidance is not practicable the BLM shall ensure that Midway Gold Corp. develops and implements an appropriate treatment plan designed to lessen or mitigate Project-related effects to the eligible resources (such as CrNV-61-7421). The treatment plan, consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-37), shall be developed for the site (CrNV-61-7421) and implemented, as necessary, with each Project phase in the Project phase area of activity. Where appropriate, the treatment plan shall include provisions (content and number of copies) for publication for the general public.
  - e. In the surveyed areas within the APE, BLM's determination of effect on each Project phase shall be completed within 15 calendar days, in accordance with Sections H.2 and H.3 below.
- 3. When a treatment plan for a project phase is approved, the BLM shall ensure that Midway Gold Corp., through its contractor, implements the fieldwork portions of any final treatment plan prior to initiating any activities that may affect eligible Resources.
  - 4. The BLM shall ensure that all records and materials resulting from identification and treatment efforts are curated in accordance with 36 CFR 79 in BLM-approved facilities in Nevada. All materials collected will be maintained in accordance with 36 CFR 79 until the final treatment report is complete and collections are curated.
  - 5. The BLM shall ensure that all final archeological reports resulting from actions pursuant to this PA will be provided to the SHPO. 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 (42 FR 5377-79).

#### *D. Discovery Situations*

1. When cultural resources are discovered during implementation of a Project phase, Project-related activities within 100 meters of the discovery will cease immediately and Midway Gold Corp. shall notify the BLM authorized officer. Prior to initiating any activities within the APE, Midway Gold Corp. will provide BLM with a list of, and schedule for, the Midway Gold Corp. employees empowered to halt all activities in a discovery situation and who will be responsible for notifying BLM of any discoveries. At least one of these employees shall be present during all Midway Gold Corp. activities.
2. Within two working days of being notified of the discovery, the BLM shall notify Midway Gold Corp. of the BLM's decision to either allow Project-related activities to proceed or to require mitigation.
3. If BLM determines that mitigation is appropriate, the BLM shall solicit comments from the SHPO and interested persons, as appropriate, to develop mitigating measures. The SHPO and other interested persons, as appropriate, will be allowed five working days to provide BLM with comments to be considered when the BLM makes a decision on the extent of mitigative efforts. BLM shall notify the SHPO, Midway Gold Corp., Tribes, and other interested persons within two working days after receipt of comments from all interested parties of its decision regarding evaluation and treatment and shall ensure that treatment actions, if any, are implemented in a timely manner.
4. The BLM shall ensure that post field-work reports of mitigation efforts for discovery situations are completed in a timely manner and conform to the Department of Interior's Formal Standards for Final Reports of Data Recovery Program (42 FR 5377-79). Final reports shall be submitted to the SHPO and interested persons for informational purposes.

#### *E. Other Considerations*

1. The BLM shall ensure that all stipulations of this PA are carried out by the BLM, SHPO, Midway Gold Corp., and all of its contractors or other personnel.
2. The BLM shall ensure that prehistoric, architectural, and archaeological work conducted pursuant to this Agreement is carried out by, or under the direct supervision of persons meeting qualifications set forth in the Secretary of the Interior's Professional Qualification Standards (36 CFR 61) and who have been permitted for such work on public lands, by the BLM.
3. Midway Gold Corp., in cooperation with the BLM and the SHPO, shall ensure that all its personnel, and all the personnel of its contractors, are directed not to engage in the illegal collection of historic and prehistoric materials. Midway Gold Corp. shall cooperate with the BLM to ensure compliance with the

Archaeological Resources Protection Act of 1979 (16 U.S.C. 470) (ARPA) on public lands and with Nevada statute NRS 383 for state and private lands.

4. Midway Gold Corp. shall bear the expense of identification, evaluation, and treatment of all cultural properties directly or indirectly affected by Midway Gold Corp.-related activity. Such costs shall include, but not be limited to, pre-field planning, field work, 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.
5. Information on the location and nature of all cultural resources will be held confidential to the extent provided by the National Historic Preservation Act (NHPA), Native American Graves Protection Act (NAGPRA), and ARPA.
6. The BLM shall ensure that any human remains, grave goods, items of cultural patrimony, and sacred objects, encountered during the undertaking are treated with the respect due such materials. In coordination with this PA, human remains and associated grave goods found on public land will be handled according to the provisions of the NAGPRA and its implementing regulations (43 CFR 10). Human remains and associated grave goods found on state or private land will be handled according to the provisions of Nevada statute NRS 383.

#### *F. Monitoring*

1. The BLM may monitor actions carried out pursuant to this PA.
2. Any areas that the BLM identifies as sensitive will be monitored by an appropriate professional during construction activities that may impact the area. Treatment Plans will contain monitoring plans as needed. Monitors shall be empowered to stop work to protect eligible Resources.

#### *G. Notices to Proceed*

Notices to Proceed (NTP) may be issued to Midway Gold Corp. within five working days of a no adverse effect determination by the BLM for each Project phase as defined by Midway Gold Corp., under one of the three following conditions:

1. When activities under the Project phase occur within Site CrNV-61-7421 in the following geomorphologic units as defined in Vierra and Young (2003) (map attached to this PA), or subsequent supplemental reports, the following standard measures are implemented.
  - a. AVF1/D1 (North) - All Project activities will avoid features that contribute to the eligibility of Site CrNV-61-7421, other eligible sites, and unevaluated sites. Sump construction will be limited to a depth of 1.5 meters and will be monitored by an archaeologist to ensure that buried

features are not encountered. Overflow of water from the sumps will occur as a directed sheet flow that would not inundate identified surface features. Prior to use of the sumps archaeological monitoring will determine the appropriate areas for the overflow water. Planned overland travel routes from the existing travel routes to the drill sites will be identified with global positioning system (GPS) coordinates and placed on the maps submitted to the BLM. Subsequent to the issuance of the NTP by the BLM, the overland travel routes will be monitored by an archaeologist to ensure that surface features are avoided. As necessary, the overland travel routes will be relocated to avoid surface features or surface conditions that may promote effects to near-surface features. Once the overland travel routes have been monitored and as necessary relocated, as-built maps of the routes will be provided to the BLM;

- b. AVF1/D1 (South) - All Project activities will avoid features that contribute to the eligibility of Site CrNV-61-7421, other eligible sites, and unevaluated sites. Sump construction will be limited to a depth of 1.5 meters, archeological inspection of proposed drill sites, sumps, and overland travel will be conducted prior to work plan activities;
- c. D2/D3/D3S (Dune Areas) - No Project activities will occur within those portions of the geomorphologic unit that are barcan or pedestal dunes, or are not exposures of the underlying geomorphologic units D1, AFM, or AVF units.
- d. D2/D3/D3S (Non-Dune Areas) - All Project activities will avoid features that contribute to the eligibility of Site CrNV-61-7421, other eligible sites, and unevaluated sites. Sump construction will be limited to a depth of 1.5 meters and will be monitored by an archaeologist to ensure that buried features are not encountered. Overflow of water from the sumps will occur as a directed sheet flow that would not inundate identified surface features. Prior to use of the sumps archaeological monitoring will determine the appropriate areas for the overflow water. Planned overland travel routes from the existing travel routes to the drill sites will be identified with GPS coordinates and placed on the maps submitted to the BLM. Subsequent to the issuance of the NTP by the BLM, the overland travel routes will be monitored by an archaeologist to ensure that surface features are avoided. As necessary, the overland travel routes will be relocated to avoid surface features or surface conditions that may promote effects to near-surface features. Once the overland travel routes have been monitored and as necessary relocated, as-built maps of the routes will be provided to the BLM;
- e. All other Geomorphologic Units within Site CrNV-61-7421 - All areas outlined in the Project phase will be inspected by an archaeologist prior to

implementing the Project phase to avoid features that contribute to the eligibility of Site CrNV-61-7421;

2. Surveyed portions of the APE outside of Site CrNV-61-7421 - All Project phase activities will avoid eligible sites and unevaluated sites. Archeological monitoring of activities is not required; or
3. BLM, after consultation with the SHPO and interested parties, has implemented an adequate treatment plan for the Project phase, which includes the following:
  - a. The field work portion of the treatment plan for the Project phase has been completed;
  - b. BLM has accepted a summary description of the field work performed and a report preparation schedule; and
  - c. Midway Gold Corp. has posted a surety as stipulated in I. below for the post-field work costs associated with completion of the treatment plan for the Project phase.

#### *H. Time Frames*

1. Reports: The BLM shall review and comment on any report submitted by Midway Gold Corp. within 30 calendar days of receipt.
2. In surveyed areas of the APE, except for discovery situations, the BLM shall submit the results of all identification and evaluation efforts, and treatment plans for each Project phase to the SHPO and interested persons, including the Tribe, for a 15 calendar day review and comment period.
3. In unsurveyed areas of the APE the BLM shall submit the results of all identification and evaluation efforts and treatment plans for each Project phase to the SHPO and interested persons, including the Tribe, for a 35 calendar day review and comment period.
4. If any of the Parties to this PA, or other interested person, including the Tribe, fails to respond to the BLM within 35 calendar days of the receipt of a submission (15 days in surveyed areas), the BLM shall presume concurrence with the BLM's findings and recommendations as detailed in the submission and proceed accordingly.
5. Reports: A draft final report of all identification, evaluation, treatment or other mitigative activities will be due to the BLM within nine months after the completion of all fieldwork associated with the Project, unless otherwise negotiated.

6. Curation: All records, photographs, maps, field notes, artifacts, and other materials collected or developed for any identification, evaluation, or treatment activities will be curated in a facility approved by the BLM at the time the final report associated with that activity is accepted by the BLM, unless materials and artifacts must be returned to the owner.

#### *I. Surety Bonds*

1. As part of a NTP, BLM may require Midway Gold Corp. to post a surety with the BLM in an amount sufficient to cover all post-fieldwork costs associated with implementing a treatment plan or other mitigative activities, as negotiated by Midway Gold Corp. when they contract for services in support of this PA. Such costs may include, but are not limited to post-field analyses, research and report preparation, interim and summary reports preparation, and the curation of project documentation and artifact collections in a BLM-approved curation facility. The surety shall be posted prior to BLM issuing a NTP.
2. The surety posted shall be subject to forfeiture if the post-fieldwork tasks are not completed within the time period established by the treatment option selected; provided, however, that the BLM and Midway Gold Corp. may agree to extend any such time periods. The BLM shall notify Midway Gold Corp. that the surety is subject to forfeiture and shall allow Midway Gold Corp. 15 days to respond before action is taken to forfeit the surety.
3. The surety shall be released, in whole or in part, as specific post-fieldwork tasks are completed and accepted by the BLM.

#### *J. Dispute Resolution*

1. If any of the Parties to this PA object to any activities proposed pursuant to the terms of this PA, the BLM shall consult with the objecting party to resolve the issue. If the BLM determines that the objection cannot be resolved, the BLM shall request the assistance of SHPO, or if the objecting party is SHPO, the Advisory Council on Historic Preservation to help resolve the objection.
2. The Parties may continue all actions under this PA that are not the subject of the dispute.

#### *K. Amendment*

Any of the Parties to this PA may request that this PA be amended, whereupon the Parties will consult to consider such amendment.

*L. Termination*

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

*M. Execution*

1. Execution and implementation of this PA evidences that the Parties have satisfied their Section 106 responsibilities for all actions associated with the construction, installation and operation of the Project.
2. In the event that the Parties do not carry out the requirements of this PA or it is terminated, the BLM will comply with the provisions of the Protocol.
3. This PA shall become effective on the date of the last signature below, and shall remain in effect until terminated as provided in Stipulation L, or until the Project is completed.
4. Upon the date of the last signature below, the PA of March, 2004, is terminated.

**CONSULTING PARTIES:**

**BUREAU OF LAND MANAGEMENT, NEVADA**

By: *Maddie Smith* Date: *11/18/04*

Title: *Field Manager*

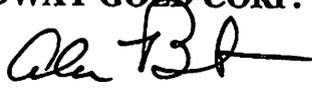
**NEVADA STATE HISTORIC PRESERVATION OFFICER**

By: *Alan M. Balducci* Date: *3/7/05*

Title: *Deputy SHPO, State of Nevada*

**CONCURRING PARTIES:**

**MIDWAY GOLD CORP.**

By: 

Date: 11-16-01

Title: *President & CEO*

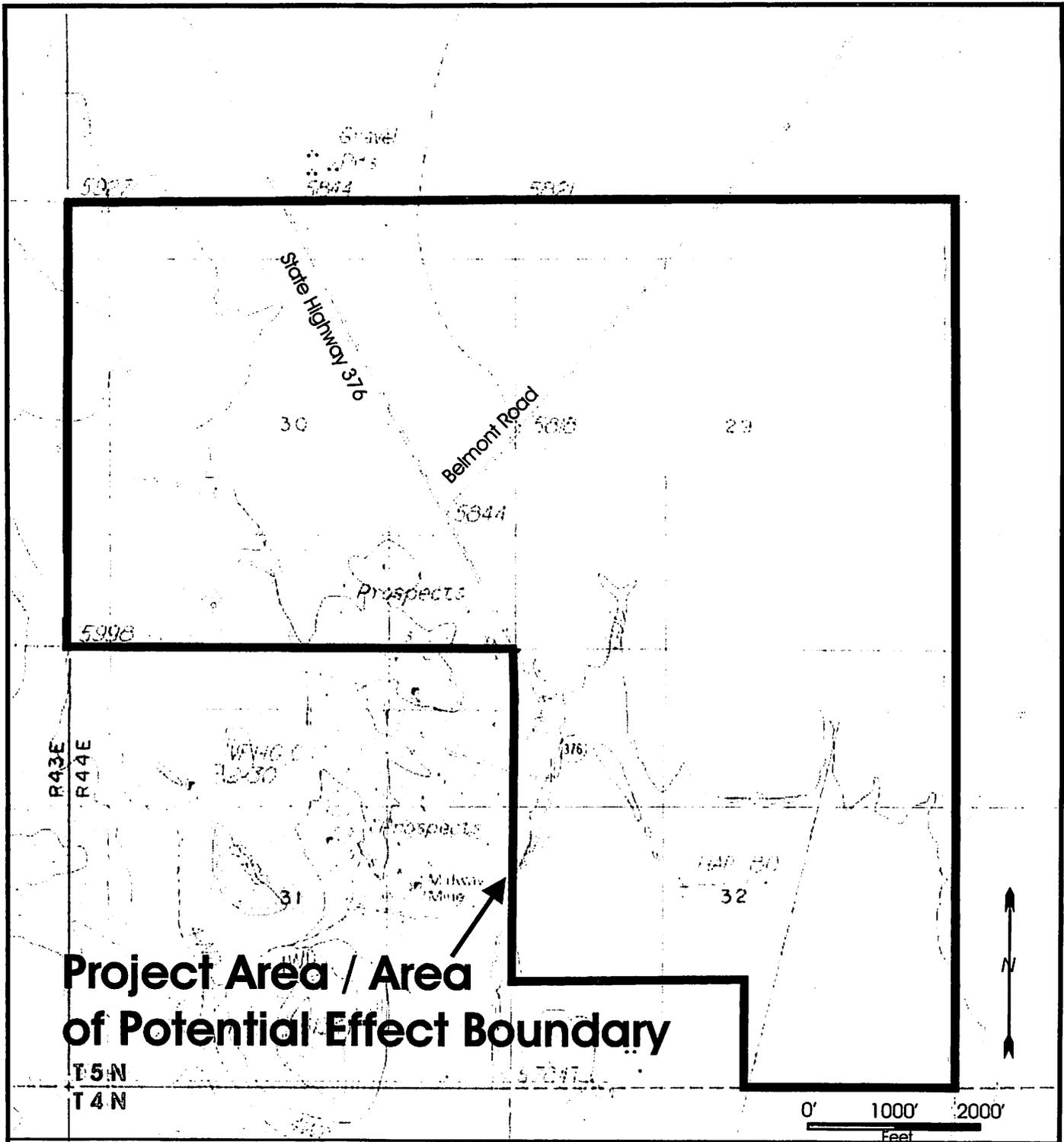
**YOMBA SHOSHONE TRIBE**

By:

Date:

Title:

**APPENDIX A: AREA OF POTENTIAL EFFECT**



Henrys Well and Thunder Mountain Nevada 7.5 Minute Quadrangles

# Midway Project Area of Potential Effect