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**PROGRAMMATIC AGREEMENT  
AMONG  
THE DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT, TUSCARORA FIELD OFFICE NEVADA  
AND  
THE NEVADA STATE HISTORIC PRESERVATION OFFICE  
REGARDING THE CLOVER EXPLORATION PROJECT**

WHEREAS, the Bureau of Land Management, Tuscarora Field Office (BLM) has determined that the construction and exploration activities associated with the Clover Exploration Project (Project) by Meridian Minerals Corporation (MMC), situated in Elko 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 MMC are collectively referred to herein as the "Parties."

WHEREAS, MMC the operator of the Project, has been invited to participate in consultation and to concur in this Programmatic Agreement (PA);

WHEREAS, the BLM has invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation, and they opted not to participate in the 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, sump construction, and access roads;

WHEREAS, the definitions given in the state protocol agreement between the BLM 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.

**ROLES AND RESPONSIBILITIES**

1. The signatories agree that the BLM will be the Lead Federal Agency for implementing this Programmatic Agreement in accordance with the Nevada BLM/SHPO

Protocol for implementing Section 106 of the NHPA, except as amended here. The Nevada BLM/SHPO Protocol for implementing Section 106 of the NHPA is incorporated by reference. A copy of the Protocol is attached as Appendix B.

The BLM is responsible for administering this Agreement. This includes but is not limited to: ensuring that all signatories carryout their responsibilities; consulting with Native American governments; overseeing all cultural resource work; assembling all submissions to the SHPO and to other signatories – including reports, determinations of eligibility and effect, and treatment or data recovery plans in Nevada; and for seeking SHPO concurrence with all agency compliance decisions.

BLM will be the responsible point of contact for reviewing reports, and collating responses to Project products, including but not limited to, inventory reports, determinations of eligibility, treatment options, and determining effects, etc.

The BLM will be responsible for all submissions to the SHPO and any other interested parties identified during the implementation of this PA for the Project. Any submission to SHPO or interested parties not from BLM will be considered as informational only and will not trigger any compliance timelines or other actions.

2. MMC will be the responsible point of contact for the Project and provide the BLM with any and all information needed to implement this PA.

3. The BLM shall ensure that historic, architectural, and 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 Qualification Standards (36 CFR 61) and who have been permitted for such work on public lands by the BLM.

4. MMC, in cooperation with the BLM and 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. MMC shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470) on public lands.

5. Should damage to cultural resources inside or outside the APE occur during the period of construction, operation or rehabilitation due to the unauthorized, inadvertent or negligent actions of MMC, their employees, contractors or any other project personnel, MMC shall be responsible for costs of rehabilitation or mitigation, and may be subject to criminal penalties.

6. MMC shall bear the expense of identification, evaluation, and treatment of all historic properties directly or indirectly affected by Project-related activity within the APE. 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, and artifact/records curation. If MMC abandons or withdraws its request for

a Notice to Proceed, then MMC shall incur no further expense for identification, evaluation or treatment for any cultural properties except for completing work (fieldwork and post-fieldwork activities including production of final inventory, testing and data recovery reports covering the description and analysis of all data collected up to that point, and curation of project materials) that is ongoing as of the date of withdrawal or disapproval.

## **AREA OF POTENTIAL EFFECT**

The APE shall be defined to include the geographic area within which the Project may have potential direct or indirect effects to cultural resources and Traditional Cultural Properties from any MMC activities associated with the Project. The APE is that area as defined as the Project Area in the Project environmental assessment. The APE is shown in Appendix A. The BLM, in consultation with the SHPO, may amend the APE as needed and any amendments will be handled under the terms of this Agreement.

## **STIPULATIONS**

### **A. Identification**

1. The BLM shall identify interested persons and tribes pursuant to the BLM/SHPO Protocols and involve them, as appropriate, in all activities associated with the undertaking.
2. BLM shall have the consulting archaeologists conduct records searches of GLO plat maps, the BLM's Master title Plats/Historic Index, the GLO Land Records website (<http://www.glorerecords.blm.gov/>), the Nevada State Lands Patent Database Query (<http://www.lands.nv.gov/patents/patents.htm>), the Nevada Cultural Resources Information System (NVCRIS), the National and State Register of Historic Places, historic maps, and BLM and SHPO cultural resources records, and pertinent historic records/publications and maps to identify historic resources within the APE which could be directly and indirectly affected by the project. The Nevada Department of Cultural Affairs website ([www.nevada.culture.org](http://www.nevada.culture.org)) has links to a number of historic maps sources. If any standing architecture exists within the APE the consultant must secure agreement from the SHPO architectural historian regarding methods of recording the structures.
3. The BLM shall ensure that MMC funds and completes appropriate cultural resource inventories, including reports, and ethnographic studies of the APE for all activity areas, or portions thereof, in a manner consistent with the BLM/SHPO Protocol, and respective BLM approved Historic Properties Identification Plans (HPIP) and Cultural Resource Use Permits (CRUP). Class III inventory of all proposed project facilities and disturbances shall be completed prior to construction. Specifics regarding inventory methodology and recording standards will be provided in a HPIP.

4. The BLM shall consult with appropriate tribes to identify properties considered to be of traditional religious and cultural importance.
5. The HPIP will also define the methods used to evaluate and mitigate visual effects to historic properties.

## **B. Eligibility**

1. The BLM, in consultation with the SHPO, shall evaluate all cultural resources located within the APE for eligibility to the NRHP during the early stages of project planning.
2. To the extent practicable, eligibility determinations shall be based on inventory information. In Nevada limited subsurface probing is allowed during the inventory for purposes of determining eligibility. If the information gathered in the inventory is inadequate to determine eligibility, MMC (through contractors) may be required to conduct limited subsurface testing, or other evaluative techniques, to determine eligibility. Subject to approval by the BLM, in consultation with the SHPO, evaluative testing is intended to provide the minimum data necessary to define the nature, density, and distribution of materials in potential historic properties, to make final evaluations of eligibility, and to devise treatment options responsive to the information potential of the property. The BLM requires MMC's contract archaeologies be approved for a testing CRUP prior to subsurface probing, testing, data recovery or surface material collection (Non-Collection CRUP [SPECIAL CONDITIONS 4 and 14]).
3. If the SHPO or the BLM disagree regarding eligibility of a cultural property, the BLM shall seek a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 63.2. The Keeper's determination will be considered final. If any of the other parties disagree regarding the BLM's determination of eligibility, the party may request in writing that the BLM, in consultation with SHPO, reconsider the determination. If the result is not satisfactory to the objecting party they may ask the ACHP to request the BLM to obtain a determination from the Keeper of the National Register.

## **C. Treatment**

1. The BLM, in consultation with the SHPO and tribal governments, shall ensure that MMC makes a good faith effort to avoid effects to historic properties through project design, or redesign, relocation of facilities, or by other means in a manner consistent with this PA.
2. In avoiding or mitigating effects, the BLM in consultation with SHPO, and interested persons, shall determine the precise nature of effects to historic properties identified in the APE.

When avoidance is not feasible or adverse effects cannot be effectively mitigated through avoidance, the BLM, in consultation with the SHPO, MMC, and interested persons or tribal governments, shall develop, or ensure that MMC develops and implements, an appropriate Historic Properties Treatment Plan (HPTP) designed to lessen or mitigate project-related effects to historic properties. Completion of measures in the HPTP shall be a condition of the Notice to Proceed. For properties eligible under criteria (a) through (c) (36 CFR 60.4), mitigation, other than data recovery, may be considered (e.g. HABS/HAER recordation, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, the HPTP shall include provisions (content and number of copies) for a publication for the general public. The HPTP shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-37) and *Treatment of Historic Properties: A Handbook* (Council 1980). MMC's contractor shall procure all appropriate BLM CRUPS prior to initiation of any treatment.

3. The BLM shall require as a condition of approval that MMC completes through its contractor, the fieldwork portions of any final treatment plan prior to initiating any activities that may affect historic properties. Segments to be released for construction shall be mapped and provided to the BLM for approval (see Section H for conditions under which notices to proceed would be issued).

4. The BLM shall ensure that all records and materials authorized for collection by approved HPIP and CRUP are curated in accordance with 36 CFR 79 in BLM-approved facilities. All materials collected will be maintained in accordance with 36 CFR 79 until the final treatment reports are complete and collections are curated.

#### **D. Discovery Situations**

1. When previously unidentified cultural resources are discovered, all Project-related activities within 100 meters of the discovery will cease immediately and MMC or its authorized representative shall secure the location to prevent vandalism or other damage. MMC or its authorized representative shall notify the BLM authorized officer of the discovery by telephone within 24 hours, followed by written confirmation. The activity shall remain suspended until after the discovery has been evaluated and any necessary mitigation measures completed and the BLM authorized officer has issued a written Notice to Proceed.

The BLM shall ensure that any human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the undertaking, whether discovered incidentally or during treatment of historic properties, are treated with the respect due such materials. In coordination with this Agreement, Native American human remains and associated grave goods found on public land will be handled according to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR 10). If

human remains, grave goods, sacred objects or items of cultural patrimony are discovered during Project implementation all Project-related activities within 100 meters of the discovery shall cease immediately and MMC or its authorized representative shall secure the location to prevent vandalism or other damage. MMC or its authorized representative shall notify the BLM authorized officer of the discovery by telephone within 24 hours, followed by written confirmation. The activity shall remain suspended until after the discovery has been evaluated and any necessary mitigation measures completed and the BLM authorized officer has issued a written Notice to Proceed.

Prior to initiating any ground disturbing activities within the APE, MMC shall provide the parties with a list of, and schedule for, MMC and/or other authorized employees empowered to halt all potentially destructive activities in a discovery situation and who will be responsible for notifying the BLM of any discoveries. At least one of these employees will be present during all of MMC's ground disturbing activities.

2. BLM shall notify the SHPO by phone, email or other means, and consider their initial comments on the discovery. Within five working days of the discovery, BLM shall notify MMC, the SHPO, and as appropriate, Indian tribes and identified interested persons, of the BLM's decision to either allow undertaking-related activities to proceed or to require mitigation.

3. If, in consultation with the SHPO, the BLM determines that mitigation is appropriate, the BLM shall solicit comments from the SHPO, and as appropriate, Indian Tribes and interested persons, to develop mitigating measures. The SHPO, Tribes and other interested persons will be allowed five working days to provide the BLM with comments to be considered. Any timely comments offered by the SHPO, Tribes, and other interested persons will be documented, considered in dealing with the discovery, and subject to confidentiality requirements, be made available for public inspection.

4. The BLM shall notify the SHPO, Tribes, and other interested persons of its decision regarding treatment and shall ensure that treatment actions, if any, are implemented.

5. The BLM shall ensure that 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). Drafts of such reports shall be submitted to the SHPO for a 30-day review and comment as stipulated in I(3). Final reports shall be submitted to the SHPO and, as appropriate, to Tribes, and interested persons for informational purposes.

## **E. Reporting**

MMC shall report the results of Section 106 compliance activities (planning, identification, evaluation, and treatment) to BLM by project component (study unit), as completed. BLM shall distribute pertinent reports to the SHPO. The BLM and SHPO agree to process these reports as they are produced (see Stipulation I, Time Frames, below).

The BLM shall ensure that all final archeological reports resulting from actions pursuant to this Agreement will be provided to the SHPO, and as appropriate, made available to other interested persons such as those with data sharing agreements, approved by the BLM and SHPO. All such reports shall be consistent with the Department of Interior's Formal Standards for Final Reports of Data Recovery Programs (42 FR 5377-79), and include site forms and other supporting documentation.

In addition, a separate report including appropriate historic contexts (date established, individuals involved, etc.) will be prepared to document historic properties with structural remains that qualify for the National Register under Criteria A, B or C.

Final reports will be submitted in both hard and electronic copies.

## **F. Other Considerations**

1. Identification, evaluation, and treatment efforts may extend beyond the geographic limits of the Project Area when the resources being considered extend beyond the Project Area. No identification, evaluation, or treatment efforts will occur beyond that necessary to gather data for the completion of the Section 106 process as agreed to in this document.

2. Properties of traditional religious and cultural importance (also known as Traditional Cultural Properties [TCPs]) will be identified, evaluated, and treated through consultation with appropriate interested persons and tribes. The BLM shall consult with the tribes to identify, evaluate and treat TCPs. TCP identification, evaluation and treatment efforts shall be consistent with BLM Manual 8120 and its associated handbook. MMC will contract for data gathering to assist the BLM.

3. Information on the location and nature of all cultural resources, and all information considered to be proprietary by tribes, will be held confidential to the extent provided by the NHPA, the NAGPRA, and the Archaeological Resources Protection Act (ARPA).

## **G. Monitoring**

1. The BLM, SHPO and Tribes may monitor actions carried out pursuant to this PA.
2. Any areas that the BLM, in consultation with the SHPO and Tribes, identifies as sensitive will be monitored by an appropriate professional cultural resource specialist approved by the BLM or tribal representative during any activities that may affect the area. MMC shall fund all monitoring efforts. The HPTP will contain monitoring provisions as needed. Monitors shall be empowered to stop work to protect resources if that work is inconsistent with the terms of this PA or any corresponding monitoring plan.
3. Upon treatment and project completion, BLM, SHPO, and MMC shall assess potential long term effects to historic properties attributable to the Project. If the potential for adverse effects are identified, the BLM or MMC will design, and shall ensure that MMC funds appropriate cultural resources monitoring and patrolling plans. Monitoring would be required for only those properties that are vulnerable to intensified vandalism, looting or other damage (e.g. a site containing numerous collectable artifacts), and where potential effects could be attributed to Project actions (e.g. constructed/maintained roads provide new or improved public access to historic properties). Funding would include all necessary field work for monitoring and patrolling, reports, and impact trend analyses, of the APE for all activity areas, or portions thereof. Duration and intensity of monitoring would be determined in the monitoring plan. Monitoring would be consistent with BLM/SHPO Protocols and respective HPTPs and CRUPs, as well as guiding regulations of BLM Manual 8130 §§ .1 and .13; and BLM Manual 8140 § .11A3.

## **H. Notices to Proceed**

Notices to Proceed (NTP) may be issued by the BLM to MMC for each Project phase as defined by MMC in its Work Plans under any of the following conditions:

- a. maps of the areas to be released for the Project phase have been provided to the BLM for approval;
- b. the BLM and SHPO have determined that there are no cultural resources within the APE for the Project phase;
- b. the BLM and SHPO have determined that there are no historic properties within the APE for the Project phase; or
- c. the BLM, after consultation with the SHPO and interested persons, has implemented an adequate treatment plan for the Project phase, and

- (1) the fieldwork phase of the treatment option has been completed;
- (2) the BLM has accepted, and the SHPO has reviewed, a summary description of the fieldwork performed and a reporting schedule for that work; and
- (3) MMC has posted, when required by the BLM, a surety bond as stipulated in Section I. below for post-fieldwork costs of the treatment plan.

Areas that have not been released will be clearly marked in the field for avoidance until the conditions outlined above have been met. A standard avoidance buffer for these areas will be 100 meters. These areas will be monitored by an appropriate professional cultural resource specialist approved by the BLM or tribal representative during any activities that may impact the area.

#### **I. Time Frames**

1. Reports: The BLM will review and comment on any report submitted by MMC's cultural resource consultant(s) within 60 calendar days of receipt. Sensitive information such as archaeological site locations shall only be provided to MMC on a need to know basis, following the approval of the BLM archaeologist. All reports and other documentation shall be submitted by the cultural resource consultant(s) directly to BLM. A version of the report without archaeological site locations can be provided by the consultant to MMC after the report is approved by BLM.

2. In inventoried 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 Tribes, for a 35 calendar day review and comment period, and issue the Notice to Proceed.

3. In un-inventoried 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 Tribes, for a 35 calendar day review and comment period. After the comment period the BLM shall issue the Notice to Proceed within 15 calendar days once any fieldwork involved in a treatment plan is completed and MMC provides a surety bond to cover the remaining costs associated with completion of the plan.

4. Consultation with Interested Parties: BLM shall consult with Tribes about TPCs and other concerns at the beginning of the project. Consultation shall be initiated early in the project, but may continue for some time. Additional

consultation may be needed prior to the implementation of each phase based on concerns raised in the initial consultation, the cultural resources documented during each phase of inventory, and proposals in treatment plans.

5. SHPO Consultation: The BLM shall submit the HPIP to the SHPO for a 35-day review and comment period. The BLM shall submit the results of all identification and evaluation efforts and treatment plans to the SHPO for a 35-day review and comment period. The BLM shall submit the HPTP to the SHPO for a 35-day review and comment period. Consultation for discovery situations shall be handled in accordance with Stipulation D.

6. If any consulting party to this PA fails to respond to the BLM within 35 calendar days of the receipt of a submission, the BLM shall presume concurrence with the BLM's findings and recommendations as detailed in the submission and proceed accordingly.

7. Reports: A draft final report of all identification, evaluation, treatment or other mitigative activities will be due to the BLM within nine (9) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated. Revised reports will be due 60 days after receiving BLM comments.

8. Curation: All records, data base files, photographs, negatives, maps, field notes, artifacts, reports (both a hard copy and electronic copy) 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. MMC or their contractor shall provide proof of curation to the BLM from the curatorial facilities within two weeks of BLM's acceptance of the final report.

## **J. Surety Bonds**

1. The terms of any Notice to Proceed issued by the BLM for the Project phase shall provide for the posting of sureties for the protection of historic properties, as set forth below. MMC shall, when required by the BLM, 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 MMC when they contract for services in support of this Agreement. 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 the BLM issuing any Notice to Proceed.

2. The surety posted as provided in Section J (1) above 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 MMC may agree to extend any such time periods. The BLM shall notify MMC that the surety is subject to forfeiture and shall allow MMC 15 days to respond before action is taken to forfeit the surety.

3. The surety shall be released once post-fieldwork tasks are completed and accepted by the BLM.

#### **K. Dispute Resolution**

1. If any party to this PA, or an interested person or tribe, 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.

2. An interested person, tribe or other consulting party can request participation by the ACHP should consultation not resolve the issue.

3. The State Office of the BLM in Nevada will have the authority to make a final determination for any objection that cannot be resolved after taking Advisory Council comments into account, should the ACHP choose to participate.

4. The Parties may continue all actions under this Agreement that are not the subject of the dispute.

#### **L. Amendment**

Any signatory to this PA may request that this Agreement be amended, whereupon the signatories will consult to consider such amendment.

#### **M. Termination**

Any signatory Party to this PA may terminate the Agreement by providing thirty-five (35) calendar 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.

#### **N. Execution**

1. Execution and implementation of this Agreement evidences that the BLM has satisfied its Section 106 responsibilities for all actions associated with the Project.

2. In the event that the signatory Parties do not carry out the requirements of this PA or it is terminated, the BLM will comply with the provisions of the current BLM/SHPO Protocol. If attempts to resolve differences or amend the agreement fail, then the agreement can be terminated.

3. This PA shall become effective on the date of the last signature below, and shall remain in effect for a period of ten (10) years; or until terminated as provided in Stipulation M; or until the undertaking, including mitigation and monitoring, is completed, whichever is longest. If the Project has not been initiated within the ten year period, this PA would automatically terminate.

**SIGNATORY PARTIES:**

**BUREAU OF LAND MANAGEMENT, TUSCARORA FIELD OFFICE  
MANAGER**

By:

Title:

*[Handwritten Signature]*  
*Field Mgr.*

Date:

*3-11-10*

**NEVADA STATE HISTORIC PRESERVATION OFFICE**

By:

Title:

*Alan M. Baldwin, Deputy*  
*State Historic Preservation Officer*

Date:

*3/15/10*

**CONCURRING PARTY:**

**MERIDIAN MINERALS CORPORATION**

By:

Title:

*[Handwritten Signature]*  
*PRESIDENT*

Date:

*MAR 5, 2010*