

**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF LAND MANAGEMENT, TUSCARORA FIELD OFFICE  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER  
AND ELKO COUNTY  
REGARDING  
THE ELKO MOTOCROSS LAND CONVEYANCE**

**WHEREAS**, the National Defense Authorization Act for Fiscal Year 2015 (Act) was signed into law (Public Law 113-291), and Section 3009(e) of the Act, titled "Elko Motocross Land Conveyance" requires the Bureau of Land Management (BLM) to convey approximately 275 acres of public lands to Elko County (County); and

**WHEREAS**, the BLM has determined that this land conveyance (Conveyance) is an undertaking under Title 54 U.S.C. §300101, et. seq., commonly known as the National Historic Preservation Act of 1966, as amended (NHPA), and Title 54 U.S.C. §306108, commonly known as Section 106 of the NHPA (Section 106); and

**WHEREAS**, the BLM has defined the Conveyance's area of potential effect (APE) as all geographic areas within which the Conveyance may have direct or indirect effects to historic properties (Attachment 1). The BLM has determined that the APE is the area of land to be conveyed to the County, approximately 275 acres; and

**WHEREAS**, a Class III cultural resources inventory has been completed for the Conveyance's APE and the BLM has determined that two archaeological sites (26EK9902 (CrNV-12-11458) and 26EK9903 (CrNV-12-11459)) within the APE are eligible for listing on the National Register of Historic Places (NRHP) (eligible sites hereinafter referred to as "historic properties") under the Secretary's significance criterion D; and

**WHEREAS**, the BLM has determined that the Conveyance will have an adverse effect to the above historic properties within the APE and has consulted with the State Historic Preservation Officer (SHPO) pursuant to 36 CFR § 800 and Section 106 of the NHPA (54 USC § 306108); and

**WHEREAS**, the BLM has determined that one archaeological site (26EK9930; CrNV-12-11415) remains unevaluated pending additional subsurface testing; and

**WHEREAS**, the County, as the lands recipient identified in the Act, is assuming responsibilities under this Memorandum of Agreement (MOA) and is an Invited Signatory; and

**WHEREAS**, the BLM has consulted with the Te-Moak Tribal Council, Elko Band Council, Wells Band Council, Battle Mountain Band Council, South Fork Band Council on the Conveyance; and

**WHEREAS**, the BLM has not invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation because this action does not meet the requirements for their participation (as specified in Component 5 of the 2012 National PA among BLM, ACHP, and National Conference of SHPOs); and

**WHEREAS**, the Signatories and Invited Signatory (hereinafter collectively referred to as the Parties and individually by name or as Party) agree that this MOA may be signed in counterparts and the executed MOA, and each signature, will be effective and binding as if all Parties had signed the same document; and

**NOW, THEREFORE**, the BLM and the SHPO agree to the following stipulations in order to resolve adverse effects of the Conveyance on historic properties.

### **STIPULATIONS**

BLM shall ensure that the following measures are carried out:

#### **I. Roles and Responsibilities**

##### **A. BLM:**

1. The Field Manager for the Tuscarora Field Office is the BLM Agency Official for the Conveyance. The Field Manager, or designee, is the point of contact for the BLM.
2. The BLM shall ensure that all work undertaken to satisfy the terms of this MOA, meets the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716 44742, September 23, 1983) (Standards), and takes into consideration the ACHP's Section 106 Archaeology Guidance (2009) or any subsequent edition issued by the BLM, and any other applicable guidelines or standards.
3. BLM shall ensure that historic, architectural and archaeological work conducted pursuant to this MOA is carried out by or under the direct supervision of persons meeting qualifications set forth in the draft Secretary of the Interior's Professional Qualification Standards dated June 20, 1997 (62 FR 33707-33723). The Nevada State Office will permit inventories, recordation, and mitigation work on historic and prehistoric resources.

##### **B. County:**

1. The Chairman of the Elko County Commission, or designee, is the point of contact for the County.
2. The County shall bear the reasonable expense of NRHP evaluation, and treatment of all historic properties directly or indirectly affected by the Conveyance. 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, all mitigation, including publications for the public, and the cost of curating project documentation and artifact collections.

## **II. Testing and Evaluation of 26EK9930 (CrNV-12-11415)**

- A. The County (through its permitted contractor) shall develop a testing plan to characterize the subsurface component of 26EK9930.
- B. The County shall submit the draft testing plan to the BLM who will approve it in consultation with the SHPO. Review of the plan will proceed in accordance with items B.1 through B.5 below.
  - 1. The BLM shall review and comment on the draft testing plan within thirty (30) calendar days of receipt.
  - 2. The BLM shall provide comments on the draft testing plan to the County.
  - 3. The County shall revise the draft testing plan to address the BLM comments.
  - 4. Upon BLM approval of the draft testing plan, the BLM shall submit the draft final testing plan to the SHPO for review of BLM's determination that the activities described in the document are adequate to determine the subsurface potential of 26EK9930 and for the completion of the NRHP evaluation for the resource.
  - 5. The SHPO shall review the draft final testing plan within twenty five (25) calendar days of receipt. If the SHPO does not respond within twenty five (25), BLM may assume concurrence and finalize the testing plan.
  - 6. The BLM shall provide the SHPO's comments to the County to revise the draft final testing plan to address the SHPO comments.
- C. The County (through its permitted contractor) shall complete the activities described in the final testing plan and shall make a recommendation of NRHP eligibility for 26EK9930. The County shall submit the results of the testing activities and the NRHP recommendation to the BLM within fourteen (14) calendar days of the completion of the fieldwork as outlined in the testing plan.
- D. The BLM, in consultation with the SHPO, shall review the submission and make a final determination of NRHP eligibility for 26EK9930.
- E. If the BLM, in consultation with the SHPO, determines that 26EK9930 is eligible for the NRHP under any of the Secretary's significance criteria, the County shall amend the HPTP in Stipulation III.A to provide a plan to mitigate the adverse effect of the Conveyance on 26EK9930.

- F. If BLM, in consultation with the SHPO, determines that 26EK9930 is not eligible for the NRHP following site testing, 26EK9930 will not be considered further in the Conveyance.

### **III. Mitigation of Historic Properties**

- A. The County (through its permitted contractor) shall develop a Historic Properties Treatment Plan (HPTP) for the historic properties in the Conveyance APE. The HPTP shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 CFR 44716-37) and follow the guidance provided in the ACHP's Section 106 Archaeology Guidance (2009) and the Mitigation Standards for Historical Resources of Local and State Significance (BLM, 2014) as appropriate.
- B. The County shall submit the draft HPTP to the BLM who will approve it in consultation with the SHPO. HPTP review will proceed in accordance with items B.1 through B.5 below.
1. The BLM shall review and comment on the draft HPTP within thirty (30) calendar days of receipt.
  2. The BLM will provide a copy of the draft HPTP to the Te-Moak Tribal Council, Elko Band Council, Wells Band Council, Battle Mountain Band Council, South Fork Band Council, who will be afforded 30 calendar days from receipt to provide the BLM with comments.
  3. The BLM shall provide comments on the draft HPTP to the County, incorporating BLM and appropriate tribal comments.
  4. The County shall revise the draft HPTP to address the BLM comments.
  5. Upon BLM approval of the draft final HPTP, the BLM shall submit the draft final HPTP to the SHPO for review of BLM's determination that the draft final HPTP is adequate to recover the NRHP values of the historic properties.
  6. The SHPO shall review the final draft HPTP within thirty (30) calendar days of receipt. If the SHPO does not respond within thirty (30) working days, BLM may assume concurrence and finalize the HPTP.
  7. The BLM shall provide the SHPO's comments to the County to revise the draft final HPTP to address the SHPO comments.
- C. Upon final approval of the HPTP, the County (through its permitted contractor) shall apply to the BLM Nevada State Office for an ARPA permit to conduct mitigation of the historic properties.

- D. Once an ARPA permit is issued, the County (through its permitted contractor) shall apply to the BLM Tuscarora Field Office for a Fieldwork Authorization (FWA). Once BLM issues this FWA, fieldwork for the mitigation of the historic properties may commence.
- E. The County shall provide the BLM with a preliminary fieldwork summary report outlining fieldwork activities, sampling, and preliminary findings on all historic properties within fourteen (14) calendar days of completion of fieldwork as defined in the HPTP.
- F. The County shall provide the BLM with a draft data recovery report for historic properties in the Conveyance within one (1) year after the completion of the fieldwork required by the HPTP, unless otherwise negotiated. The County shall ensure that all such reports are consistent with contemporary professional standards and the Department of Interior's Formal Standards for Final Reports of Data Recovery Programs (48 CFR 44716-44740).
- G. The BLM shall review the draft data recovery report and provide the County with any comments and required edits.
- H. BLM shall submit all draft data recovery reports to the SHPO for review and comment. If the SHPO fails to respond to the BLM within thirty (30) calendar days of receipt of a submission, the BLM shall presume concurrence with the BLM's determination that the draft report was adequate.
- I. BLM shall ensure that all final mitigation reports resulting from actions pursuant to this MOA will be provided to the SHPO.
- J. The County shall ensure that all records and materials resulting from identification and mitigation efforts are curated at the Nevada State Museum, Carson City. The County shall pay all curation fees.

**IV. Ground-Disturbing Activities outside of Avoidance Areas and the Release of Avoidance Areas**

- A. Upon execution of the MOA, the County shall not proceed with ground disturbing activities in the APE for the Conveyance until the BLM, in consultation with the Parties, has established Avoidance Areas to protect all historic properties and unevaluated cultural resources in the APE.
  - 1. The County (through its permitted contractor) shall ensure that the Avoidance Areas are adequately marked and protected by any means deemed appropriate by the BLM.
  - 2. BLM shall approve the Avoidance Areas and may issue a Notice to Proceed (NTP) for ground disturbing activities for the Conveyance outside of the Avoidance Areas.

3. The County (through its permitted contractor) shall inspect the Avoidance Areas at least once per week during any construction activities for the Conveyance or at least once per month when no construction activity is planned for the Conveyance. The County shall provide electronic reports of these inspections to the BLM within one (1) day of the inspection.
- B. The BLM may release the Avoidance Areas, or portions of the Avoidance Areas, from continued protection after the BLM has provided the County with a written determination that the fieldwork portion of the HPTP for one or all of the historic properties has been completed. The BLM may issue this determination after:
1. The permitted contractor has completed the fieldwork phase of the HPTP; and
  2. The BLM has accepted a summary description of the fieldwork performed and a reporting schedule for that work; and
  3. The BLM shall provide a copy of the summary to the SHPO for review; and
  4. The SHPO shall review the summary within two (2) working days of receipt. If the SHPO does not respond within two (2) working days, BLM may assume concurrence; and
  5. The BLM has provided the County with a written determination that all or a portion of the Avoidance Areas may be released and any land disturbing activities inside the Avoidance Area for that historic property may proceed.
- C. All Avoidance Areas that have not been released by the BLM under Stipulation IV.B.5 will remain protected and monitored in accord with Stipulation IV.A.3 above for the duration of the MOA.

## **V. Duration**

This MOA will expire if its terms are not carried out within three (3) years from the date of its execution.

## **VI. Post-Review Discoveries**

Stipulations of this MOA are intended to identify and mitigate adverse effects to historic properties. If unplanned discoveries of buried cultural resources or unanticipated effect on historic properties are found, the BLM shall implement the process found in Stipulation IV.B of the *State Protocol Agreement Between the Bureau of Land Management, Nevada and the Nevada State Historic Preservation Officer* (Revised December 22, 2014).

## **VII. Dispute Resolution**

Should any Party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the BLM shall consult with such party to resolve the objection. If the BLM determines that such objection cannot be resolved, BLM shall:

- A. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide BLM with its advice on the resolution of the objection. Prior to reaching a final decision on the dispute, BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and Parties, and provide them with a copy of this written response. The BLM shall then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the Parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. BLM's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

## **VIII. Amendments**

This MOA may be amended when such an amendment is agreed to in writing by all Parties. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

## **IX. Termination**

If any Party to this MOA determines that its terms will not or cannot be carried out, that Party shall immediately consult with the other Parties to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all Parties) an amendment cannot be reached, any Party may terminate the MOA upon written notification to the other Parties.

Once the MOA is terminated, and prior to work continuing on the Conveyance, the BLM shall notify the Parties of the termination and consult with the Parties to determine how the remaining historic and/or unevaluated properties will be mitigated prior to the Conveyance. The BLM shall notify the Parties as to the course of action it will pursue.

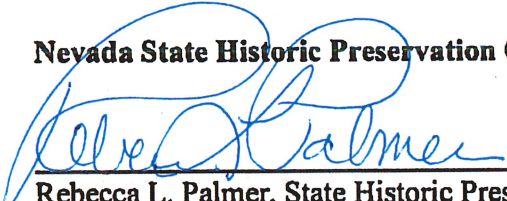
**EXECUTION** of this MOA by the BLM and the SHPO and implementation of its terms, serve as evidence that the BLM has taken into account the effects of this Conveyance on historic properties.

**SIGNATORIES:**

**Bureau of Land Management, Tuscarora Field Office**

 Date 8/14/17  
Melanie A. Peterson, Field Manager

**Nevada State Historic Preservation Officer**

 Date 08/11/17  
Rebecca L. Palmer, State Historic Preservation Officer

**INVITED SIGNATORY:**

**County of Elko**

\_\_\_\_\_  
Elko County Commissioner, Chairman

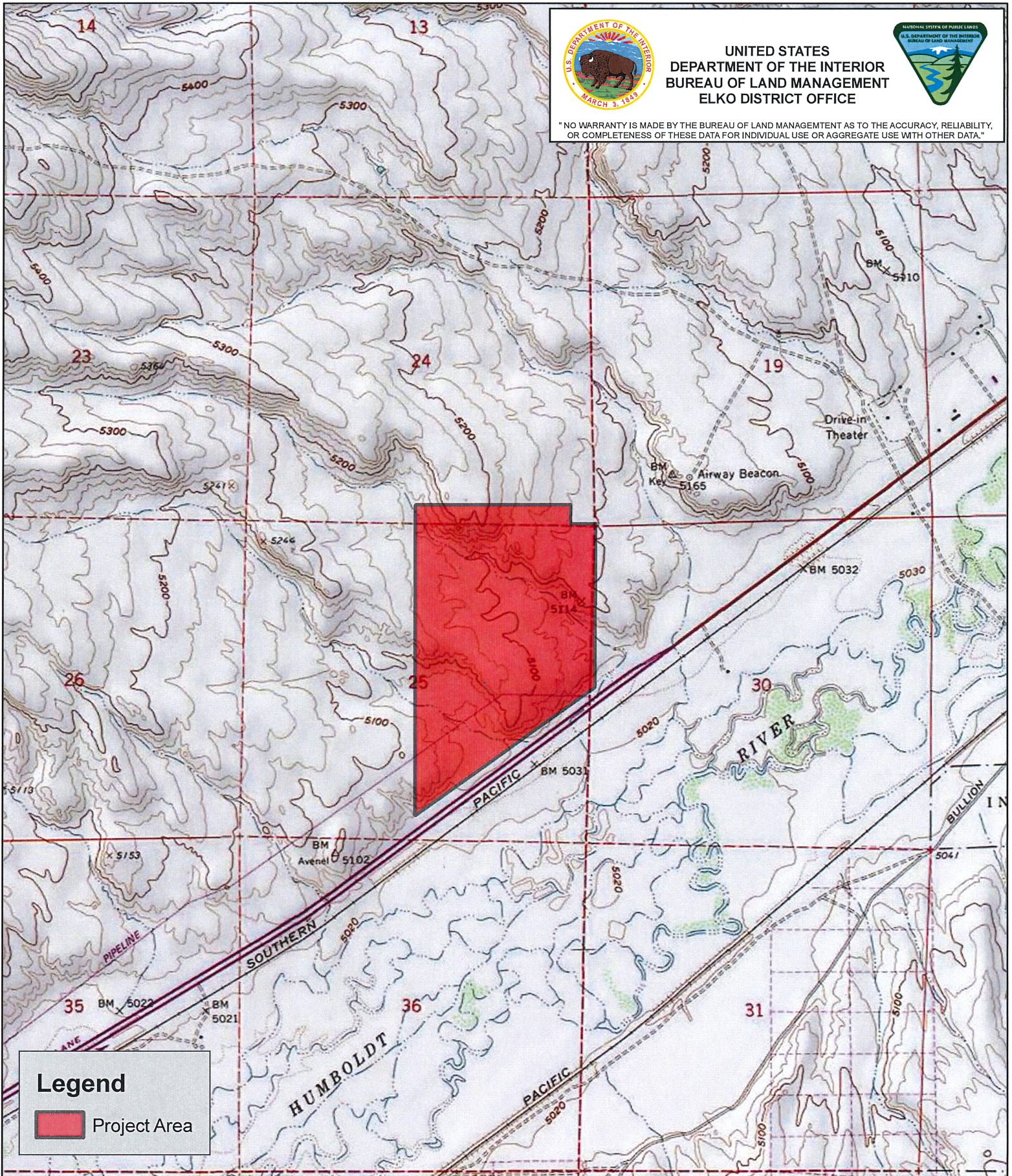




UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
ELKO DISTRICT OFFICE



"NO WARRANTY IS MADE BY THE BUREAU OF LAND MANAGEMENT AS TO THE ACCURACY, RELIABILITY, OR COMPLETENESS OF THESE DATA FOR INDIVIDUAL USE OR AGGREGATE USE WITH OTHER DATA."



1:24,000

0 0.1250.25 0.5 0.75 1 Kilometers

0 0.0750.15 0.3 0.45 0.6 Miles

**Figure 1: Project Location**

Elko County Motocross Park Land Conveyance

T. 34N., R. 54E., Section 25: Lots 5, 6, 11, NE;

T. 34N., R. 54 ½ E., Section 25: All.

USGS 7.5' Topographic Quad: *Elko West*



Data is published in:  
NAD 83, UTM,  
Zone 11, meters