

FINAL



**PROGRAMMATIC AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS AND THE NEVADA STATE
HISTORIC PRESERVATION OFFICER**

**REGARDING THE ISSUANCE OF A PERMIT UNDER SECTION 404 OF THE CLEAN
WATER ACT FOR THE SUMMERLIN WEST PROJECT, CLARK COUNTY, NEVADA**

WHEREAS, the U.S. Army Corps of Engineers, Sacramento District (Corps) proposes to issue a permit pursuant to Section 404 of the Clean Water Act (Undertaking) to the Applicant identified as The Howard Hughes Corporation/Howard Hughes Properties Incorporated (THHC) for the Summerlin West Project (Project), Clark County, Nevada; and

WHEREAS, the Applicant intends to fill waters of the U.S. to construct infrastructure improvements for construction of residential or commercial projects in an area referred to as Summerlin West, an area of 6,529 acres over the next 10 to 25 years; and

WHEREAS, the Corps is the lead Federal Agency for this Project and responsible for compliance with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), and has consulted with the Nevada State Historic Preservation Officer (SHPO) regarding effects of the Project; and,

WHEREAS, the Corps, in consultation with the SHPO and in accordance with 36 CFR 800.4(a)(1), has established the Undertaking's Area of Potential Effects (APE) as the shaded area planned for preservation (Preserve) and Village 29 as depicted in Attachment 1 to this Programmatic Agreement (PA); and

WHEREAS, Attachment 1 to this PA is meant to be a representative map only and not a legal definition of the final area to be designated as the Preserve; and

WHEREAS, because the area known as Village 29 has not yet been inventoried to Class III archaeological standards, therefore not all the cultural resources may have been identified nor the effects of the project known, a PA is appropriate; and

WHEREAS, the Corps has determined, and the SHPO has concurred, that five archaeological sites; Little Red Rocks Site (26CK470), Shaman Site (26CK506), Crewcut Site (26CK507), Bear Mark Site (26CK4183), and Packsaddle Site (26CK5742), are considered eligible for the National Register of Historic Places (NRHP) under Criterion D and may be eligible under Criterion C; and,

WHEREAS, the Corps has determined that sites 26CK470, 26CK506, 26CK507, 26CK4183, and 26CK5742 may be affected by the Project; and,

WHEREAS, sites 26CK470, 26CK506, 26CK507, 26CK4183, and 26CK5742 are located within approximately 109 acres planned for preservation (Preserve) by THHC; and,

WHEREAS, THHC has prepared a draft preservation plan entitled "A Cultural Resources Preservation Plan for the Summerlin West Development Project, Clark County, Nevada," dated June, 2004, revised December, 2004 (draft Preservation Plan) and this plan has been incorporated in the PA where appropriate; and,

WHEREAS, Native American tribes (Tribes), including the Kaibab Paiute, the Las Vegas Paiute Tribe, the Paiute Indian Tribe of Utah, the Moapa Band of Paiute, and the Hopi Tribe, and other interested Native Americans, have been invited to participate in the Section 106 consultation process in accordance with provisions at 36 CFR 800.2-4 and have been provided an opportunity to comment on the draft Preservation Plan; and,

WHEREAS, interested members of the public have been provided an opportunity to express their views on the Project and on the draft Preservation Plan; and,

WHEREAS, the title to the lands set aside for the Preserve will be transferred by THHC to the Summerlin Council, a non-profit corporation recognized by the State of Nevada, upon recordation of the first parent final map of the appropriate village or villages which include the identified cultural sites; and,

WHEREAS, pursuant to 36 CFR 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (Council) and the Council has declined to participate in the consultation;

NOW, THEREFORE, the Corps and the SHPO agree that the Undertaking shall be implemented with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and that these stipulations shall govern the Undertaking and all of its parts until this PA expires or is terminated.

STIPULATIONS

The Corps has made this PA a condition of the Clean Water Act, Section 404 permit for the Project, and shall ensure that the following measures are carried out by THHC.

I. DEFINITIONS

The definitions provided at 36 CFR 800.16 are applicable throughout this PA. Other terms used in this PA are defined as follows:

"Archeological Monitor" means a person or persons that meet, at a minimum, the Secretary of Interior's Professional Qualification Standards for Archeology (48 FR 44739), or an experienced avocational archeologist participating in the stewardship of those cultural sites eligible for or potentially eligible for the National Register of Historic Places. An avocational archeologist is one who has received training and is certified under the Clark County Site Stewardship Program administered by the University of Nevada at Las Vegas.

“Area of Potential Effects” (APE) means the Preserve area and Village 29 as depicted in Attachment 1 to this PA.

“Cultural Resources” means those sites, structures, districts, objects and artifacts, and historic documents associated with or representative of peoples, cultures, and human activities and events, either in the present or in the past and that have not been evaluated for National Register of Historic Places significance.

“Days” means calendar days for completion of requirements under this PA.

“Evaluation” means the process of evaluating the NRHP eligibility of cultural resources in the APE with reference to NRHP eligibility criteria at 36 CFR Part 60.4.

“Historic Properties” means cultural resources that are listed on or eligible for listing on the NRHP. Individual historic properties may be referred to as an “historic property.” Traditional cultural properties may also be historic properties.

“Inventory” means to identify historic properties by undertaking background research, consultation with Native Americans and other interested parties, and field survey in accordance with standards as accepted by the Corps and the SHPO. Included in the inventory is an evaluation of all previously un-evaluated cultural resources.

“Intensive Survey” means identification of all cultural properties in the Village 29 area including, boundaries of the area surveyed; method of survey, estimate of the extent of survey coverage; record of precise locations of all properties identified; and information on the appearance, integrity, and boundaries of each property sufficient to permit an evaluation of its significance. The survey may include testing by various means to determine geographic extent and depth of a site, or site constituents for the purposes of evaluation. Intermountain Antiquities Computer System (IMACS) forms are to be completed for all cultural resources located

“Parties” to the PA means the Corps, the SHPO, Native American tribes, Summerlin Council, and THHC.

“Preserve” means the approximately 109 acres set aside by THHC in perpetuity as a preserve for the five NRHP-eligible archeological sites and all associated features. The Preserve will include at a minimum a 100-foot buffer surrounding each of the five eligible sites.

II. STANDARDS

A. Professional Qualifications. All inventory and evaluation efforts implemented pursuant to this PA shall be conducted by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of Interior’s Professional Qualifications Standards for Archeology (48 FR 44739). In addition, rock art sites shall be recorded under the direct supervision of a professional archeologist experienced in the recordation of rock art in accordance with the International Federation of Rock Art Organizations standards.

B. Curation and Curation Standards. To the extent feasible, all cultural materials, including artifacts and records resulting from the inventory of Project lands and as may be found in the 109 acres to be set aside as a permanent preserve and in Village 29, shall be curated in accordance with 36 CFR Part 79. Artifacts and other materials will be returned to the landowner (THHC) for curation at the Clark County Museum unless the Museum requests the artifacts and other materials be curated elsewhere. A written agreement from the Clark County Museum or other facility acceptable to the Corps and the SHPO shall be obtained and become part of the Preserve Management Plan as described in Stipulation III below.

C. Site Documentation Standards. All site reporting shall be accomplished under the Secretary of the Interior's Standards for Archeological Documentation.

D. Intensive Survey Standards. The Secretary of the Interior's Standards and Guidelines for Identification as amended, shall serve as the basis for the intensive survey.

III. PRESERVE MANAGEMENT PLAN

A. A draft Preservation Plan was prepared on behalf of THHC for the approximately 109-acre area proposed as a permanent archeological and environmental preserve and managed by the Summerlin Council. This draft was circulated for public review, including Native American tribes and members of rock art associations. Comments from the public, Native American tribes, and members of rock art associations have been addressed in this PA and will also be addressed in the Preserve Management Plan (PMP) described in III.B below.

B. A Preserve Management Plan to address both short-term and long-term management of the historic properties in perpetuity will be prepared and, at a minimum, will incorporate the following:

1. Identification of the role and responsibilities of THHC prior to the assumption of management of the Preserve by the Summerlin Council.

2. Identification of the role and responsibilities of the Summerlin Council on a long-term basis.

3. How THHC will ensure the legal continuation of the Preserve in perpetuity, such as recording the area with Clark County, a conservation easement, and/or other means, subject to the approval of the Corps and the SHPO.

4. Reporting and scheduling for initiation, implementation, and continuation of management actions.

5. THHC shall hire professional land surveyors to define the limits of the Preserve to include, but not be limited to, a minimum of 100 feet buffer zone around each historic property in the Preserve, as well as the remaining environmental setting of the Little Red Rocks area to be included as part of the Preserve. The boundaries of the Preserve shall be surveyed prior to

completion of the draft PMP and shall be identified by aliquot parts or meets and bounds in the draft PMP.

6. THHC will arrange for a stewardship program in association with the Nevada Rock Art Foundation. This stewardship program will entail periodic monitoring of the sites, reporting of the condition of the sites, recommendations for remedying threats or actual vandalism to the sites, and public education.

7. A professional anthropologist, hired by THHC, shall work with the Tribes identified in this PA to establish the extent and nature of tribal participation in development of the PMP and in the long term management of the Preserve. The anthropologist shall have experience in working with tribal groups and Native Americans and be acceptable to the Corps and SHPO. At a minimum, the anthropologist will consult with the Tribes on the following issues; means of notification to the Tribes, periodic monitoring by the Tribes, access by tribal representatives, public education, and other issues relating to the management of the Preserve. Documentation of the consultation efforts and the Tribes' recommendations shall be included in the PMP. THHC shall identify those parts of the PMP which respond to the Tribes' concerns.

C. The following schedule and reporting requirements shall be met by THHC.

1. Within 90 days of issuance of the Department of the Army permit, a letter report describing how THHC will meet its commitment to involving the Tribes (as described in III.B.6) on both a short-term and long-term basis shall be submitted to the Corps and SHPO for comment. THHC will address and resolve comments to the satisfaction of the Corps and SHPO.

2. Within 360 days of issuance of the Department of the Army permit, the draft Preserve Management Plan will be submitted by THHC to the Corps and SHPO for review.

3. Prior to completion of the draft PMP, THHC shall hire professional land surveyors to identify the perimeter of the Preserve in accordance with Stipulation IIIB above.

4. The Corps and SHPO shall have 30 calendar days from receipt of the draft Preserve Management Plan to review and comment upon its contents.

5. THHC will have 60 days to address and resolve Corps and SHPO comments and resubmit a final Preserve Management Plan.

6. Within 90 days of issuance of the Department of the Army permit, THHC will install private property/no trespassing signs and create barriers at access points to deter illegal access to the Preserve. Prior to the start of construction activities in the vicinity of the Preserve, THHC shall install and maintain temporary markers (e.g., fencing, flagging) to delineate the perimeter of the Preserve that will be avoided.

7. THHC shall implement the final PMP within 60 days after written approval by the Corps and the SHPO.

IV. ARCHEOLOGICAL INVENTORY FOR VILLAGE 29

A. That area identified by THHC as Village 29 previously surveyed to reconnaissance level shall be surveyed to an intensive level by a professional archeologist hired by THHC. All sites shall be evaluated for the NRHP by the professional archeologist.

B. The archeological inventory of Village 29 shall be initiated within 90 days of issuance of the Department of the Army permit. The resulting draft report shall be submitted by THHC to the Corps and SHPO for review and comment within 60 days after completion of the inventory. THHC must address all comments to the satisfaction of the Corps and the SHPO. The report shall follow standards identified in the Secretary of the Interior's Standards for Archeological Documentation referenced in Stipulation IIC of this PA. Two copies of the report shall be sent to the Corps and one copy of the report shall be sent to the SHPO by THHC.

C. The Corps shall make a determination of each site's eligibility for the NRHP and shall forward the draft Village 29 survey and evaluation report to the SHPO for concurrence. The SHPO shall have 30 days for review and comment.

D. For those sites determined eligible for the NRHP by the Corps and concurred with by the SHPO, a draft treatment plan will be prepared by a professional archeologist hired by THHC. The draft treatment plan shall be submitted to the Corps and SHPO by THHC within 60 days of completion of the final inventory report. The treatment plan shall meet the Secretary of Interior's Standards for Archeological Documentation. The treatment plan must specify appropriate time periods for implementation based on the type of treatment proposed and shall include a written agreement with the Clark County Museum or other repository acceptable to the Corps and the SHPO for the curation of artifacts. THHC must address all comments to the satisfaction of the Corps and the SHPO.

E. The final treatment plan shall be submitted to the Corps and the SHPO by THHC on or before 30 days after receipt of written comments on the draft treatment plan. Upon written acceptance of the final treatment plan by the Corps and the SHPO, THHC shall implement all measures identified in the final treatment plan in accordance to the schedule identified in the final treatment plan.

V. SITE RECORDING FOR CULTURAL RESOURCES

A. THHC shall hire a professional archeologist who shall record cultural resources in the Village 29 area on IMACS forms, if that has not already been accomplished under previous surveys. In addition, rock art shall be recorded in accordance with standards identified by the SHPO and the International Federation of Rock Art Organizations standards.

B. Site recordation shall begin within 90 days of issuance of the Department of the Army permit and be completed within 360 days of initiation of site recordation.

C. THHC shall hire a professional archeologist who will evaluate the five known historic properties and any other historic properties discovered under the inventory for Village 29, for eligibility to the NRHP.

VI. DISCOVERY OF HUMAN REMAINS

No human remains are expected to be encountered; however, in the event of a discovery of any human remains, any work in the immediate vicinity will be halted and THHC will contact the Corps. The Corps will then initiate consultation with SHPO and the Native American Tribes pursuant to the Nevada Revised Statute 383.170.

VII. UNANTICIPATED DISCOVERIES

In the event of an unanticipated discovery of artifacts or other materials, THHC will cease work and immediately notify the Corps, and the provisions of 36 CFR 800.13 will be implemented.

VIII. CONFIDENTIALITY

The parties to this PA acknowledge that historic properties covered by this PA are subject to provisions of §304 of the NHPA and §11(c)(1) of 36 CFR 800 relating to the disclosure of archeological site information and, having so acknowledge, will ensure that all actions and documentation prescribed by this PA are consistent with §304 of the NHPA and § 11(c)(1) of 36 CFR 800.

IX. REPORT PREPARATION AND DISTRIBUTION

Upon 30 days after completion of the site recordation and evaluations completed by the archeologists, THHC shall ensure that a copy of all technical reports is provided to the Corps and the SHPO. These reports must be technically acceptable to both the Corps and the SHPO. Revisions to the reports are the responsibility of THHC but must be undertaken by the professional archeologists working under contract to THHC.

X. RESOLVING OBJECTIONS

A. Should any party to this PA object at any time in writing to the manner in which the terms of this PA are implemented, to any action carried out or proposed with respect to implementation of the PA, or to any document prepared in accordance with and subject to the terms of the PA, the Corps will immediately notify the other parties of the objection, request their comments on the objection within 15 days following receipt of the Corps' notification, and proceed to consult with the objecting party for no more than 30 days to resolve the objection. The Corps will honor the request of the other parties to participate in the consultation and will take any comments provided by those parties into account.

B. If the objection is resolved during the 30-day consultation period, the Corps may proceed with the disputed action in accordance with the terms of such resolution.

C. If after initiating such consultation, the Corps or the objecting party determines that the objection cannot be resolved through consultation, the Corps shall forward all documentation relevant to the objection to the Council, including the Corps' proposed response to the objection, with the expectation that the Council will within 30 days after receipt of such documentation:

1. Advise the Corps that the Council concurs in the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly;

2. Provide the Corps with recommendations, which the Corps will take into account in reaching a final decision regarding its response to the objection; or

3. Notify the Corps that the objection will be referred for comment pursuant to applicable regulation, and proceed to refer the objection and comment. The Corps shall take the resulting comment into account in accordance with applicable regulation.

D. Should the Council not exercise one of the above options within 30 days after receipt of all pertinent documentation, the Corps may assume the Council's concurrence in its proposed response to the objection.

E. The Corps shall take into account any Council recommendation or comment and any comments from the parties to this PA in reaching a final decision regarding the objection. The Corps' responsibility to carry out all actions under this PA that are not the subjects of the objection shall remain unchanged.

F. The Corps shall provide all parties to this PA and the Council, if the Council has commented, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.

G. The Corps may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation and the authorization complies with Stipulations III, IV, V, and VI.

H. At any time during implementation of the terms of this PA, should a member of the public or Native American tribes raise an objection pertaining to such implementation, the Corps shall immediately notify the other parties in writing of the objection and take the objection into consideration. The Corps shall consult with the objecting party, and, if the objecting party so requests, with the other parties to this PA, for no more than 30 days. Within 30 days following closure of this consultation period, the Corps will render a decision regarding the objection and notify the other parties of its decision in writing. In reaching its decision, the Corps will take all comments from the other parties into consideration. The Corps' decision regarding resolution of the objection will be final.

XI. AMENDMENTS

If any party to this PA determines that the terms and conditions will not or cannot be carried out, or that an amendment to the terms and conditions must be made, that party will immediately

consult with the other parties to develop an amendment to this PA pursuant to 36 CFR 800.6(c)(7) and 36 CFR 800.6(c)(8). Any such proposed amendment must pertain to the material terms of the Agreement. Advance notice of the material circumstance that allegedly requires amendment to the Agreement and an adequate opportunity to cure must be provided to the appropriate parties prior to issuing the "Notice of Termination", as described later in this Agreement.

The amendment will be effective on the date a copy is signed by all of the original parties.

XII. TERMINATION

A. Only the Corps or the SHPO may terminate this PA. THHC may propose to terminate this PA upon agreement by either the Corps or the SHPO. If this PA is not amended as provided for in Stipulation XI, or if either the Corps or the SHPO proposes termination of this PA for other reasons, the party proposing termination shall in writing notify the other parties to this PA, explain the reasons for proposing termination, and consult with the other parties for at least 30 days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, then the parties shall proceed in accordance with the terms of that agreement.

B. Should such consultation fail, the party proposing termination may terminate this PA by promptly notifying the other parties to this PA in writing. Termination hereunder shall render this PA null and void.

C. If this PA is terminated hereunder and if the Corps determines that its Undertaking will nonetheless proceed, then the Corps shall either consult in accordance with applicable regulation to develop a new PA or Memorandum of Agreement, as appropriate, or request the comments of the Council pursuant to such applicable regulation.

XIII. SUCCESSORS AND ASSIGNS

The terms, conditions, and provisions of this PA will apply to, bind, and inure to the benefit of the parties hereto, their heirs, executors, administrators, legal representatives, successors, and assigns. THHC may assign their rights under this Agreement subject to the Corps' and the SHPO's prior written consent, which will not be unreasonably withheld. THHC will provide the Corps and SHPO any information reasonably necessary to determine whether such consent should be granted. THHC will provide written notification to all parties 30 days in advance of the transfer of Preserve management responsibilities from THHC to the Summerlin Council.

XIV. THIRD PARTY/NO PARTNERSHIP

It is not intended by this PA to, and nothing contained in this PA will, create any partnership, joint venture, or other arrangement among THHC, SHPO, the Corps, and Nevada Rock Art Foundation. No term, condition, or provision of this PA is intended to benefit any person, partnership, corporation, or other entity not a party hereto, including, without limitation, any

broker, and no such other person, partnership, corporation or entity will have any right or cause of action hereunder.

XV. NOTICES

All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder will be in writing and will be deemed sufficiently given and received when personally delivered or three business days after deposit in the U.S. Mail, registered or certified mail, return receipt requested, postage pre-paid, to the parties of this PA.

XVI. DURATION OF THE PA

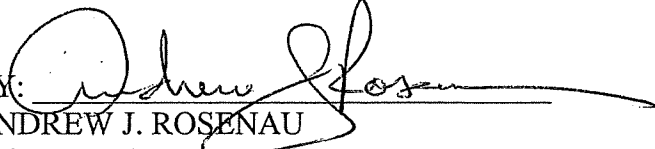
Unless terminated pursuant to Stipulation XII above, or unless it is superseded by an amended PA, this PA will be in effect until the Corps, in consultation with the other parties to this PA, determines that all of its stipulations have been satisfactorily fulfilled. Upon a determination by the Corps that all of the terms of this PA have been satisfactorily fulfilled, this PA will terminate and have no further force or effect. The Corps will promptly provide the other parties to this PA with written notice of its determination and of the termination of this PA. Following provision of such notice, this PA will be considered null and void.

XVII. EFFECTIVE DATE OF THIS PA

This PA will take effect immediately upon execution by the Corps and the SHPO.

EXECUTION of this PA by the Corps and the SHPO, its transmittal by the Corps to the Council in accordance with applicable regulation, and subsequent implementation of its terms, shall evidence, pursuant to applicable regulation, that this PA is an agreement with the Council for purposes of Section 106 of the NHPA, and shall further evidence that the Corps has afforded the Council an opportunity to comment on the Undertaking and its effects on historic properties, and that the Corps has taken into account the effects of the Undertaking on historic properties.

UNITED STATES ARMY CORPS OF ENGINEERS
SACRAMENTO DISTRICT

BY: 
ANDREW J. ROSENAU
Chief, Regulatory Branch

DATE: 25 AUG 05

NEVADA STATE HISTORIC PRESERVATION OFFICER

BY: Alice M. Baldrice


ALICE M. BALDRICA

State Historic Preservation Officer

DATE: 8/26/05

CONCURRING PARTIES:

THE HOWARD HUGHES CORPORATION


BY: 

KEVIN ORROCK
Executive Vice President

DATE: Aug 2, 2005

CONCURRING PARTIES:

SUMMERLIN COUNCIL

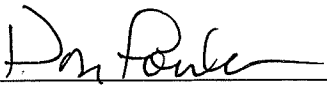
BY: 

RANDY ECKLUND
ASSISTANT SECRETARY

DATE: 8/2/05

CONCURRING PARTIES:

NEVADA ROCK ART FOUNDATION

BY: 
DON FOWLER
DIRECTOR

DATE: 08/08/05

This attachment contains information that may be exempt from
Freedom of Information Act requests.

Please consult the appropriate federal agency to obtain this information.