

**MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE
MOAPA BAND OF PAIUTE INDIANS
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
RESOLUTION OF ADVERSE EFFECTS FOR THE
EAGLE SHADOW MOUNTAIN SOLAR PROJECT ON THE MOAPA RIVER INDIAN
RESERVATION**



**Bureau of Indian Affairs, Western Regional Office
January 24, 2020**

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WHEREAS, the Regional Director of the Bureau of Indian Affairs, Western Regional Office (BIA/WRO), is responsible as the Agency Official for Western Region compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), and codified in Subpart B of Code of Federal Regulations Title 36, Part 800 (36 CFR 800), and BIA/WRO shall serve as lead federal agency for the proposed undertaking; and

WHEREAS, the undertaking before BIA/WRO is approval of a lease and rights-of-way for the Eagle Shadow Mountain Solar Project, a 300 megawatt solar photovoltaic electricity generation facility that will encumber up to 2,300 acres on the Moapa River Indian Reservation and an additional 500 acres for transmission lines and access roads requiring rights-of-way approval from the Bureau of Land Management Southern Nevada District Office (BLM) (hereinafter referred to as the undertaking); and

WHEREAS, the Moapa Band of Paiute Indians (Tribe) is a federally recognized Indian tribe, organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, which exercises general governmental jurisdiction over all lands of the Moapa River Indian Reservation; for purposes of this consultation is an Indian tribe as described at 36 CFR 800.2(c)(2)(i)(B); and as contemplated in the referenced regulation a Signatory to this Memorandum of Agreement (Agreement); and

WHEREAS, the BLM will grant an easement for right-of-way for an associated transmission line and access road for the undertaking that will encumber up to approximately 500 additional acres and is an Invited Signatory to this Agreement; and

WHEREAS, BLM has designated BIA/WRO as the lead federal agency for the purpose of Section 106 consultation pursuant to 36 CFR 800.2(a)(2); and

WHEREAS, 325MK 8ME, LLC as the project proponent, intends to construct, operate, and maintain the undertaking under lease terms extending up to a maximum period of fifty (50) years and is an Invited Signatory to this Agreement; and

WHEREAS, the Nevada State Historic Preservation Officer (SHPO) is authorized to enter into this Agreement as a Signatory in order to fulfill its role of advising and assisting federal agencies in carrying out their historic preservation responsibilities and to cooperate with these agencies under the following federal statutes: Sections 101 and 106 of the NHPA, 54 U.S.C. 306108, 36 CFR 800.2(c)(1)(i) and 800.6(b), and BIA/WRO has consulted with the SHPO pursuant to 36 CFR 800.6 in the development of this Agreement); and

WHEREAS, BIA/WRO has consulted with the Chemehuevi Indian Tribe, the Colorado River Indian Tribes, the Fort Mojave Indian Tribe, the Hopi Tribe, the Hualapai Indian Tribe, the Kaibab Band of Paiute Indians, the Las Vegas Paiute Tribe, and the Paiute Indian Tribe of Utah in accordance with 36 CFR 800.3(f)(2); and

WHEREAS, BIA/WRO has consulted with the National Park Service National Trails System-Intermountain Region, which has joint management responsibilities with BLM for the nearby congressionally-designated Old Spanish National Historic Trail, and is invited to concur with this Agreement; and

WHEREAS, BIA/WRO has notified the Advisory Council on Historic Preservation (ACHP) of this determination of adverse effect pursuant to 36 CFR 800.6(a)(1) and the ACHP has notified BIA/WRO by letter dated January 24, 2020 that it has declined to participate in this Agreement; and

WHEREAS, BIA/WRO is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) for the undertaking and has used the public notification process embodied in NEPA to seek public input and notify the public of the potential effects of the undertaking on historic properties as required in 36 CFR Part 800; and

WHEREAS, the Signatories, Invited Signatories, and Concurring Party will hereinafter be referred to as the consulting parties; and

WHEREAS, BIA/WRO, in consultation with the consulting parties, has determined that the undertaking will cause adverse effects to the historic properties identified as 26CK10722, 26CK10724, 26CK10725, and 26CK10726, lithic scatters eligible under Criterion D and the unevaluated segments of 256CK4429/26CK5685; and

WHEREAS, no provision of this Agreement shall be construed by any of the consulting parties as abridging or debilitating any sovereign powers of the Tribe; affecting the trust relationship between the Secretary of the Interior and the Tribe; or interfering with the government-to-government relationship between the United States and the Tribe; and

NOW, THEREFORE, BIA/WRO, Tribe, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS.

BIAWRO shall ensure that the following stipulations are implemented.

I. HISTORIC PROPERTIES TREATMENT PLAN.

A. BIAWRO, in consultation with the consulting parties, shall ensure that 325MK 8ME, LLC, through its qualified consultant meeting the Secretary of the Interior's Professional Qualifications standards appropriate to the historic property, develops and implements the fieldwork portion of a Historic Properties Treatment Plan (HPTP) to avoid, minimize, or otherwise mitigate adverse effects to historic properties within the area of potential effects (APE) before 325MK 8ME LLC initiates any ground disturbance associated with the undertaking. The HPTP will be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44737).

B. The HPTP will include, but not be limited to:

1. A description of the historic properties, or portions of historic properties, where treatment is to be carried out;
2. The results of previous research relevant to the undertaking and the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
3. The field and laboratory analysis methods to be used, with an explanation of their relevance to the research questions;
4. The methods to be used in data management and dissemination of data to the professional community and the public;
5. A proposed schedule for cultural resource tasks, and a schedule for the submission of draft and final reports to the consulting parties;
6. The proposed disposition and curation of recovered materials and records in accordance with 25 CFR 262;
7. Procedures for monitoring, evaluating, and mitigating any unexpected effects to historic properties during construction of the undertaking, including consultation with consulting parties;
8. A Native American Graves Protection and Repatriation Act (NAGPRA) Plan of Action for the treatment of human remains, in the event that such remains are discovered. The NAGPRA Plan of Action shall describe methods and procedures for the recovery, inventory, treatment, and disposition of Human Remains, Associated/Unassociated Funerary Objects, and Objects of Cultural Patrimony;
9. A plan for the conclusion of mitigation in the event that the undertaking is suspended or terminated that stipulates the procedures to be followed;
10. Preparation of a Preliminary Report of Findings and review process, as well as proposed timelines;

11. Preparation of a Data Recovery Report and review process, as well as proposed timelines.

C. Review and Comment on the HPTP.

1. 325MK 8ME, LLC, through its qualified consultant, shall submit a draft HPTP to BIA/WRO.
2. Upon receipt of the draft HPTP, BIA/WRO will review the document and provide comments within thirty (30) calendar days to 325MK 8ME, LLC.
3. 325MK 8ME, LLC shall address all BIA/WRO comments and submit any necessary draft updates within thirty (30) calendar days to BIA/WRO.
4. BIA/WRO shall submit the draft HPTP document concurrently to all consulting parties for review. All consulting parties shall have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO. If a consulting party does not respond to the submission within the review period, BIA/WRO may finalize the HPTP.
5. BIA/WRO shall ensure that any timely written comments received from the consulting parties are addressed during the preparation of the final draft HPTP.
6. BIA/WRO shall submit the final draft HPTP to all consulting parties. The consulting parties shall have thirty (30) calendar days from receipt to review the comments made by other consulting parties, review the revisions, and provide comments to BIA/WRO. If a consulting party fails to respond, BIA/WRO may finalize the HPTP.
7. BIA/WRO shall ensure that 325MK 8ME, LLS will address any timely written comments from the consulting parties on the final draft document during the preparation of the final HPTP.
8. BIA/WRO shall issue an authorization to proceed with the implementation of the HPTP to 325MK 8ME, LLC once consultation on the HPTP is complete and prior to construction. Fieldwork authorization will be contingent upon obtaining the necessary permits.
9. BIA/WRO shall ensure that copies of the final HPTP are provided to all consulting parties.

II. PRELIMINARY REPORT OF FINDINGS.

- A. 325MK 8ME, LLC, through its qualified consultant responsible for the work, will prepare and submit a brief Preliminary Report of Findings to BIA/WRO within fourteen (14) calendar days after the completion of all fieldwork. At a minimum, this report shall contain, but not be limited to:
 1. A discussion of the methods and treatments applied to each historic property or unevaluated resource, with an assessment of the degree to

which these methods and treatments followed the requirements of the HPTP along with a justification of all deviations, if any, from the approved HPTP; and

2. Topographic site plans for the historic properties and unevaluated resource depicting all features and treatment areas; and
3. General description of recovered artifacts and other data classes, including features excavated or sampled; and
4. Discussion of further analyses to be conducted, including any proposed changes in the methods or levels of effort from those proposed in the HPTP.
5. Draft images, as appropriate, of the unevaluated resource produced in accord with the terms of the HPTP.

B. Review of the Preliminary Report of Findings.

1. Upon receipt of the draft Preliminary Report of Findings, BIAWRO will review the document and provide comments to 325MK 8ME, LLC.
2. 325MK 8ME, LLC shall address all BIAWRO comments and submit any necessary draft updates to BIAWRO.
3. BIAWRO will distribute the revised draft Preliminary Report of Findings to all consulting parties for review. All consulting parties will have thirty (30) calendar days from receipt to review and provide written comments to BIAWRO (electronic mail is acceptable). If a consulting party fails to respond to the request for review, BIAWRO will finalize the document.
4. BIAWRO will address any comments received from the consulting parties.
5. If BIAWRO revises the draft Preliminary Report of Findings, BIAWRO will distribute the revised document to all consulting parties. All consulting parties will have thirty (30) calendar days from receipt to review the revisions and provide comments to BIAWRO.
6. BIAWRO shall ensure that any written comments received are addressed during the preparation of the final document.
7. Once BIAWRO finalizes the Preliminary Report of Findings, BIAWRO will notify 325MK 8ME, LLC, BLM and the Tribe that construction for the undertaking may commence.

III. MITIGATION REPORT

A. BIAWRO shall ensure that within one (1) year of the completion of the Preliminary Report of Findings, 325MK 8ME, LLC, through its contracted qualified archaeologist, prepares a draft comprehensive Mitigation Report.

1. Upon receipt of the draft Mitigation Report, BIAWRO will review the document and provide comments to 325MK 8ME, LLC.
2. 325MK 8ME, LLC shall address all BIAWRO comments and submit any necessary draft updates to BIAWRO.

3. BIAWRO will distribute the draft Mitigation Report to all consulting parties for review. All consulting parties will have thirty (30) calendar days from receipt to review and provide written comments to BIAWRO (electronic mail is acceptable). If a consulting party fails to respond to a request for review and comment, BIAWRO will finalize the document.
4. If BIAWRO makes revisions to the Mitigation Report, all consulting parties will have thirty (30) calendar days from receipt to review the revisions and provide comments to BIAWRO.
5. BIAWRO shall ensure that any written comments received are addressed during the preparation of the final document.
6. BIAWRO shall ensure that copies of the final mitigation report are provided to all consulting parties.

IV. CONTINUATION OF CONSULTATION WITH NATIVE AMERICAN TRIBES

BIAWRO shall ensure that consultation with the Native American Tribes that may attach religious or cultural importance to affected properties will continue throughout the life of the undertaking.

V. STANDARDS FOR MONITORING, TESTING, AND DATA RECOVERY

All cultural resources work carried out pursuant to this Agreement shall be carried out by or under the supervision of a person, or persons, meeting the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) and under the terms of the permits issued for the archaeological investigations.

VI. CUSTODY OF ARCHAEOLOGICAL RESOURCES AND RECORDS

With the exception of human remains or objects that fall under NAGPRA and for the unevaluated resource not located on Tribal land, the disposition of recovered archeological resources shall follow the regulations at 25 CFR 262.8, whereby all such resources are property of the Tribe. BIAWRO shall deliver all notes, photos, reports, and other records related to the undertaking to the Tribe upon completion of the final Data Recovery Report and the data are the property of the Tribe.

Subject to the terms and provisions of the Freedom of Information Act (FOIA), all archaeological and ethnographic reports generated by BIAWRO efforts to comply with NHPA are to be considered confidential and privileged and shall be withheld from the public, pursuant to Section 304 of NHPA (36 CFR 800.11(c)) and Section 9 of the Archeological Resources Protection Act.

VII. DISCOVERIES IN THE APE

If cultural resources or human remains are discovered within the APE after construction begins, the 325MK 8ME, LLC Solar Construction Supervisor shall require construction to immediately cease within the area of the discovery, protect the discovery, and promptly report the discovery to the Tribe and BIA/WRO.

- A. If the discovery involves human remains or objects that fall under NAGPRA, Project Manager shall immediately secure the discovery and notify Tribal representatives identified in the NAGPRA Plan of Action in the HPTP provided for in Stipulation I of this Agreement.
- B. If human remains are not involved, the BIA/WRO, in consultation with the SHPO, shall determine if the approved HPTP provided for in Stipulation I of this Agreement is appropriate to the nature of the discovery. If appropriate, the HPTP shall be implemented by BIA/WRO. If the HPTP is not appropriate to address the discovery, BIA/WRO shall ensure that an alternative plan for the mitigation of adverse effects is developed and provided to the consulting parties for review and comment.
- C. The BIA/WRO shall immediately notify the Tribe and the SHPO of all discoveries.

VIII. CHANGES IN THE APE

BIA/WRO may amend the APE as needed, or as requested by any Signatory, without amending the Agreement proper. If this should occur, all consulting parties will receive a formal notification of proposed amended APE. Within thirty (30) calendar days of their receipt of the proposed amendment, any Signatory may request that the Agreement be amended in accord with the process outlined in Stipulation X. Following BIA/WRO receipt of the request, the Signatories shall prepare an amendment document.

IX. REVIEW OF PUBLIC OBJECTIONS

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure, or its manner of implementation, be raised by a member of the public, BIA/WRO shall take the objection into account and consult as needed with the objecting party and the consulting parties to this Agreement to resolve the objection.

X. AMENDMENT

If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms is necessary, that party shall immediately consult with the other Signatories to develop an amendment to this Agreement pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the Signatories and Invited Signatories is filed with the ACHP.

XI. DISPUTE RESOLUTION

Should any Signatory or Invited Signatory to this Agreement object to any action(s) or plan(s) pursuant to this Agreement, BIA/WRO shall consult with the objecting party within thirty (30) days to resolve the objection. The objection must be identified specifically and the reasons for objection documented in writing. If the objection cannot be resolved, BIA/WRO shall notify the consulting parties to this Agreement of the objection and shall:

- A. Forward all documentation relevant to the dispute, including BIA/WRO's proposed resolution, to the ACHP in accordance with 36 CFR 800.2(b)(2). The ACHP shall provide BIA/WRO with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision regarding the dispute, BIA/WRO shall prepare a written response that takes into account any timely advice or comment provided by the ACHP, and all comments from the Signatories or Invited Signatories to this Agreement, and provide them with a copy of this written response. BIA/WRO will then proceed according to its final decision.
- B. If the ACHP does not provide any comments regarding the dispute within thirty (30) days after receipt of adequate documentation, BIA/WRO may render a decision regarding the dispute and proceed accordingly. Prior to reaching its decision, BIA/WRO shall prepare a written response that will take into account all written comments regarding the dispute from the consulting parties and provide them and the ACHP with a copy of such a written response.
- C. It is the responsibility of the BIA/WRO to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute.

XII. DURATION AND TERMINATION

This Agreement will expire if its stipulations are not carried out within ten (10) years from execution of the last Signatory signature on the Agreement or until BIA/WRO, in consultation with the consulting parties, determines that all of its terms have been satisfactorily fulfilled whichever comes first.

If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation X, above. If an amendment cannot be reached, any Signatory or Invited Signatory may terminate the Agreement upon written notification to the other Signatories. Within thirty (30) days following termination, the BIAWRO shall notify the parties if it will initiate consultation to execute an Agreement with the Signatories and Invited Signatory under 36 CFR 800.6(c)(1) or request the comments of the ACHP under 36 CFR 800.7(a) and proceed accordingly.

XIII. EXECUTION OF THIS AGREEMENT

Execution and implementation of this Agreement evidences that the BIAWRO has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment on the undertaking and its effects.

Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The BIAWRO will distribute copies of all signed pages to the consulting parties once the Agreement is executed in full.

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SIGNATORY PARTIES:

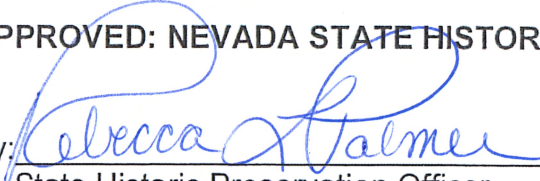
APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE

By:  Date 1/27/20
Regional Director

APPROVED: MOAPA BAND OF PAIUTE INDIANS

By: _____ Date _____
Chairperson, Moapa Business Council

APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE

By:  Date 01/27/20
State Historic Preservation Officer

INVITED SIGNATORY PARTIES:

**APPROVED: BUREAU OF LAND MANAGEMENT, SOUTHERN NEVADA DISTRICT,
LAS VEGAS FIELD OFFICE**

By: _____ Date _____
Field Office Manager

APPROVED: 325MK 8ME, LLC

By: _____ Date _____
Senior Associate, Clean Energy Infrastructure

CONCURRING PARTY:

APPROVED: NATIONAL PARK SERVICE, NATIONAL TRAILS

By: _____ Date _____
Superintendent