

**MEMORANDUM OF AGREEMENT
BETWEEN THE BUREAU OF LAND MANAGEMENT, LAS VEGAS FIELD OFFICE
AND THE
NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE GOLD BUTTE NATIONAL MONUMENT HISTORIC
PROPERTIES PROTECTION PROJECT**

WHEREAS, the Bureau of Land Management, Las Vegas Field Office (BLM) has prepared the Gold Butte National Monument (GBNM) Historic Properties Protection Project and has determined that the implementation of this plan is an undertaking as defined by 36 CFR § 800.16(y) (hereinafter Undertaking); and

WHEREAS, the BLM, in consultation with the Nevada State Historic Preservation Office (SHPO), has determined that three historic properties identified as cultural site complexes, the Whitney Pocket Complex (26CK1644 and 26CK1984), the Falling Man Complex (26CK8140), and the Kirk's Grotto Complex (26CK7029 and 26CK5179) (hereinafter the complexes; Attachment 1), are under imminent threat from the impacts of increased recreational use. These threats include dismantling of archaeological features, damages due to foot traffic, and unauthorized artifact collection; and

WHEREAS, the BLM proposes to complete a coordinated preservation effort that will address the joint goals of conducting archaeological research on the complexes and installing protection measures that reflect the diverse cultural heritage of past occupations. The BLM will implement archaeological excavations as a mitigation measure to recover the remainder of scientific data in the damaged or looted complexes. The BLM also proposes to construct public facilities to halt further damage to the complexes by visitors and protect the fragile features at the complexes (e.g., petroglyphs and pictographs); and

WHEREAS, the BLM, in consultation with the SHPO, determined that on-going and heavy visitation has caused and continues to cause adverse effects to all five (5) historic properties and that the implementation of the Undertaking will have adverse effects to the historic properties through the construction of various protection measures (Attachment 1); and

WHEREAS, the BLM has defined the Undertaking's area of potential effects (APE) as 0.5 miles from the construction of the protection measures (Attachment 1); and

WHEREAS, the BLM consulted with the following tribal governments the Moapa Band of Paiutes, Las Vegas Paiute Tribe, Twenty-Nine Palms Band of Mission Indians, Chemehuevi Tribe, Timbisha Shoshone Tribe, Fort Mojave Indian Tribe, Colorado River Indian Tribes, Fort Independence Paiute Tribe, Hopi Tribe, Hualapai Tribe, Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe, and the Kaibab Band of Paiutes (hereinafter the Tribes) identified for consultation based on previously established research in the Gold Butte region and correspondence that indicates that this area is part of their ancestral territory (Attachment 1). BLM shall continue to consult with the Tribes throughout the implementation of this Memorandum of Agreement (MOA) and BLM has invited the Tribes, as concurring parties, to

sign this MOA; and

WHEREAS, the BLM has consulted with the public and interested parties through the NEPA process by means of an open public comment period for *The United States Department of the Interior, Bureau of Land Management Draft Environmental Assessment (DOI-BLM-NV-S010-2019-0096-EA) Gold Butte National Monument Historic Properties Protection Project (Draft EA)* in August 2019; and

WHEREAS, the BLM has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination with specified documentation in accordance with 36 C.F.R. § 800.6(a)(1) and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, jointly the SHPO and the Tribes (Attachment 1) shall be called the reviewing parties and individually by their name; and

NOW, THEREFORE, the BLM and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to consider the effect of the undertaking on historic properties.

STIPULATIONS

The BLM shall ensure that the following measures are carried out:

- I. CREATION AND IMPLEMENTATION OF THE HISTORIC PROPERTIES TREATMENT PLAN
 - a. The BLM has developed the Gold Butte National Monument Historic Property Treatment Plan (HPTP) that includes, but is not limited to, data recovery at the historic properties, recording of architectural features and petroglyphs, photography, and site recordation consistent with current BLM standards.
 - b. The BLM has submitted the Draft HPTP to the reviewing parties for a thirty (30) calendar day from receipt review period. If the reviewing parties do not respond within thirty (30) calendar days from date of receipt, the BLM may finalize the HPTP. The BLM will submit any comments received from the Tribes on the HPTP to the SHPO within ten (10) days of receipt.
 - c. The BLM will revise the Draft HPTP to address any comments from the reviewing parties. The BLM will provide the reviewing parties with the Revised Draft HPTP and written documentation in hard copy indicating whether and how the Draft HPTP has been modified in response to any timely comments received. The reviewing parties shall have a fifteen (15) day from receipt review period to provide any comments on the Revised Draft HPTP. If the reviewing parties do not respond within this time frame, the BLM will finalize the HPTP. The BLM will provide the reviewing parties with a copy of the Final

HPTP. The Final HPTP will be labelled as Attachment 3 to this MOA.

- d. The BLM through internal funding will ensure that adequate funds and trained personnel are directed to the historical/archaeological study to ensure that the HPTP is implemented.
- e. The BLM shall ensure that the HPTP is finalized prior to issuance of a Notice to Proceed (NTP) to the person(s) conducting activities on behalf of the BLM related to any of the Protection Measures listed in Attachment 1.
- f. Within thirty (30) calendar days of the completion of fieldwork as defined in the HPTP, the BLM will provide the reviewing parties with a draft preliminary fieldwork summary report outlining fieldwork activities.
- g. The reviewing parties will review the draft fieldwork summary report within fifteen (15) calendar days of receipt. If the reviewing parties do not respond within fifteen (15) calendar days from the date of receipt, the BLM may finalize the fieldwork summary report.
- h. The BLM will address all reviewing party comments on the fieldwork summary and provide the reviewing parties with the revised fieldwork summary.
- i. The reviewing parties will review the revised fieldwork summary report within five (5) working days of receipt. If the reviewing parties do not respond within five (5) working days from receipt, the BLM may finalize the revised fieldwork summary report.
- j. The BLM shall provide the reviewing parties, with a draft mitigation report within six (6) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.
- k. The reviewing parties will review the draft mitigation report within thirty (30) days of receipt. If the reviewing parties do not respond within thirty (30) days of receipt, the BLM may finalize the draft mitigation report.
- l. The BLM will address all reviewing party comments on the draft mitigation report and provide them with the revised draft mitigation report.
- m. The reviewing parties will review the revised draft mitigation report within (30) days of receipt. If the reviewing parties do not respond within thirty (30) days of receipt, the BLM may finalize the draft mitigation report.
- n. The BLM shall ensure that all records and materials resulting from identification and treatment efforts are curated in accordance with 36 C.F.R. 79 in a BLM-approved facility in Nevada. Materials covered by the Native American Graves Protection and Repatriation Act (NAGPRA) will be handled in accordance with 43 C.F.R. 10. All materials collected will be maintained in accordance with 36 C.F.R. 79 or 43 C.F.R. 10 until the final

treatment report is complete.

- o. The BLM shall ensure that all reports shall be consistent with contemporary professional standards and the Department of Interior's Formal Standards for Final Reports of Data Recovery Programs (48 FR 44716-44740).

II. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the BLM may consult with the SHPO to reconsider the terms of the MOA and amend it in accordance with Stipulation V below.

III. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties are found, the BLM shall implement the discovery plan included as attachment 2 of this MOA.

IV. DISPUTE RESOLUTION

Should the SHPO or a concurring party object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the BLM shall notify the SHPO, if not the objecting party, and consult with such party to resolve the objection. If the BLM determines that such objection cannot be resolved, the BLM will:

- a. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide the BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, the SHPO, and concurring parties, and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the SHPO and the concurring parties to the MOA and provide them and the ACHP with a copy of such written response.
- c. The 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.

V. AMENDMENTS

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

VI. TERMINATION

- a. If any signatory to this MOA 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 V, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatory.
- b. Once the MOA is terminated, and prior to work continuing on the undertaking, the BLM must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. the BLM shall notify the SHPO as to the course of action it will pursue.

Execution of this MOA by the BLM and the SHPO and implementation of its terms evidence that BLM has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

This MOA may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

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SIGNATORIES:



Catrina Williams
Field Manager, Las Vegas Field Office
Bureau of Land Management

5/25/2023
Date



Rebecca L. Palmer
Nevada State Historic Preservation Officer
Nevada State Historic Preservation Office

5/25/2023
Date

CONCURRING PARTIES:

Gregory Anderson Sr.
Chairman
Moapa Band of Paiutes

Date

Darren Daboda
Tribal Historic Preservation Officer
Moapa Band of Paiutes

Date

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CONCURRING PARTIES (contd.):

Deryn Pete
Chairwoman
Las Vegas Paiute Tribe

Date

Darrell Mike
Chairman
Twenty-Nine Palms Band of Mission Indians

Date

Glenn Lodge
Chairman
Chemehuevi Indian Tribe

Date

Amelia Flores
Chairwoman
Colorado River Indian Tribes

Date

Brian Etsitty
Tribal Historic Preservation Officer Director
Colorado River Indian Tribes

Date

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CONCURRING PARTIES (contd.):

Margaret Cortez
Chairperson
Timbisha Shoshone Tribe

Date

Mandi Campbell
Tribal Historic Preservation Officer
Timbisha Shoshone Tribe

Date

Timothy Williams
Chairman
Fort Mojave Indian Tribe

Date

Timothy Nuvangyaoma
Chairman
Hopi Tribe

Date

This attachment contains information that may be considered privileged and that may be exempt from Freedom of Information Act (FOIA) requests.

Please consult the appropriate federal agency concerning this attachment for further information.

Site Eligibilities:

The BLM, in consultation with the SHPO, has identified five (5) historic properties eligible for the National Register of Historic Places (NRHP) within the APE for the Undertaking: 26CK1644, 26CK1645 (renamed 26CK1984), 26CK8140, 26CK7029, and 26CK5179 Locus K (see table 1 for more details).

Table 1 – Historic Properties eligible for the National Register of Historic Places

Name	Complex	Detail	Eligibility
26CK1644	Whitney Pocket	CCC Camp and Dam	Eligible under Criterion A and C
26CK1645 (renamed 26CK1984)	Whitney Pocket	Rock Shelter and Roasting Pit	Eligible under D, unevaluated under Criteria A-C
26CK8140	Falling Man	Petroglyphs	Eligible under D, unevaluated under Criteria A-C
26CK7029	Kirk's Grotto	Petroglyphs	Eligible under D, unevaluated under Criteria A-C
26CK5179 Locus K	Kirk's Grotto	Slot Canyon with Petroglyphs	Eligible under D, unevaluated under Criteria A-C

Protection Measures:

The goal of the BLM is to implement protection measures designed to protect the sites listed above from further damage and prepare them to sustain heavy visitation. Mitigation measures aimed at protection of these archaeological sites will include:

- Reconstruction of damaged historic features.
- Installation of post-and-cable fencing and parking barriers to restrict vehicular access to archaeological sites and define formal parking areas.
- Installation of carsonite posts with Archaeological Resources Protection Act (ARPA) stickers to discourage vandalism/looting and generate cultural awareness.
- Installation of information kiosks containing pamphlets to educate the public and discourage looting.
- Installation of restroom facilities to curtail unauthorized dumping of biowaste.
- Creation of trail markers to designate footpaths guiding visitors to numbered observation posts.
- Construction of walking paths/trails to minimize disturbance in undisturbed areas outside of the path/trail.
- Campground construction to provide the public with a designated camping area to

minimize disturbance within undisturbed areas.

Tribal and Public Consultation Summary:

Responses were heard from the Moapa Band of Paiutes, Las Vegas Paiute Tribe, Twenty-Nine Palms Band of Mission Indians, Chemehuevi Tribe, Timbisha Shoshone Tribe, Fort Mojave Indian Tribe, and the Hopi Tribe, who expressed interest in consultation. The Hopi Tribe (10/28/18) claims cultural affiliations with prehistoric groups in the area and considers the three archaeological sites as Traditional Cultural Properties. The BLM reinitiated consultation with the Hopi Tribe (4/11/22) with the Tribe responding (4/29/22) supporting the proposed protection measures and deferring to the Moapa Band of Paiutes on project alternatives. By letter (7/23/19), The Fort Mojave Tribe was unable to provide information about Traditional Cultural Properties in the area until additional Section 106, NEPA, and proposed management/treatment plan documents are provided, although it is noted that trail systems and corridors are culturally significant because they often connect to places of religious and cultural importance. The BLM reinitiated consultation with the Fort Mojave Indian Tribe (4/11/22) with attachments of the draft Environmental Assessment, after a draft Environmental Assessment was emailed on June 24, 2020, and May 7, 2021, and did not receive a response. Twenty-Nine Palms Band of Mission Indians (11/5/18) expressed support for the proposed project but requests an analysis of the impacts of increased visitor accessibility to cultural resources.

The BLM had government-to-government consultation meetings with the Moapa Band of Paiutes (2/12/2019, 4/2/2019, 5/7/2019, 7/2/2019, 7/16/2019, & 8/6/2019), Las Vegas Paiute Tribe (8/19/2019), Twenty-Nine Palms Band of Mission Indians (3/20/2019), Chemehuevi Tribe (2/23/2019), Fort Mojave Indian Tribe (3/25/19), and Timbisha Shoshone Tribe (3/18/2019). The BLM hosted site visits for the invited tribes to the cultural complexes on 4/11/2019 and 6/9/2019, which the Moapa Band of Paiutes and Twenty-Nine Palms Band of Mission Indians attended.

The BLM has consulted with the public and interested parties through the NEPA process. None of the comments received identified additional historic properties or effects to historic properties.

Attachment 2

Plan and Procedures for Unanticipated Discovery and Unanticipated Effects on Cultural Resources and NAGPRA Items in Areas Administered by the Bureau of Land Management, Nevada

The purpose of this Unanticipated Discovery and Unanticipated Effect Plan is to demonstrate compliance with applicable federal and state laws and regulations regarding cultural resources and human remains and associated materials, describe to regulatory and review agencies the procedures that will be followed in the event of unanticipated discoveries, and to provide guidance to Project personnel. The federal laws that govern cultural resources and human remains include, but are not limited to, the National Historic Preservation Act of 1966, as amended (NHPA); the regulations at 36 CFR Part 800 that implement Section 106 of the NHPA; the Native American Graves Protection and Repatriation Act (NAGPRA, 25 U.S.C. §§ 3001-3013); the regulations for NAGPRA at 43 CFR 10; and the Archaeological Resource Protection Act (ARPA, Public Law 96-95, 16 U.S.C 470aa-mm); and the ARPA regulations at 43 CFR 7. Discovery of human remains found on non-Federal lands in Nevada is governed by Nevada Revised Statutes, Chapter 383.150 to 383.190, Protection of Indian Burial Sites.

If the BLM determines that the Undertaking may affect or has affected a previously unidentified property that may be eligible for the National Register, the BLM will:

- a. Ensure that activities associated with the undertaking within one hundred (100) meters of the discovery are halted and the discovery is appropriately protected, until the BLM Authorized Officer issues a Notice to Proceed (NTP).
- b. The BLM, in consultation with the SHPO and Tribes, will determine if an adverse effect exists. If an adverse effect is found, the BLM will identify the applicable criteria of significance and will propose actions to resolve the adverse effects.
- c. The BLM shall consult with the SHPO and the Tribes and request their comments on the discovery. The BLM shall also notify Tribes with ties to the area of discovery as defined through the Tribes' aboriginal territories. The BLM shall consider and address comments from the SHPO and the Tribes on the discovery.
- d. Within two (2) working days of notification to the SHPO and Tribes, the BLM shall consult with the SHPO and the Tribes, and other interested persons as appropriate, on the BLM's decision on eligibility and proposed treatment, if any, and solicit comments on the BLM's proposed course of action.
- e. The BLM will request that the SHPO and the Tribes, and other interested persons as appropriate, provide comments to the BLM within two (2) working days of the BLM's notification. Any timely comments offered by the SHPO and the Tribes, and other interested persons, will be documented, considered and addressed in dealing with the discovery, and, subject to confidentiality requirements allowable under law, be made available for public inspection.

- f. The BLM shall notify the SHPO and Tribes, and other interested persons, of its decision regarding evaluation and treatment and shall ensure that treatment actions, if any, are implemented. Potential treatment options include archaeological excavation and removal under terms of an approved data recovery plan reflecting the Advisory Council's Guidance on the Recovery of Significant Information from Archaeological Sites (May 18, 1999).
- g. The BLM shall ensure that reports of treatment efforts for discovery situations are completed within thirty (30) calendar days of completion of any treatment actions. The BLM shall send draft reports on the treatment effort to the SHPO and the Tribes, and other interested persons as appropriate, for review and comment, within ninety (90) days after the BLM has accepted the report, subject to confidentiality requirements allowable under law.
- h. The SHPO and the Tribes will have thirty (30) calendar days from their receipt to review and comment on the draft reports of the treatment effort. If the SHPO and the Tribes do not respond within thirty (30) calendar days from the date of receipt, the BLM may finalize the report.
- i. The BLM will consider and address all comments from the SHPO and the Tribes on the draft and will revise the draft report to address any comments as necessary. The BLM will provide the SHPO and the Tribes with the revised report.
- j. The SHPO and the Tribes shall have a fifteen (15) day from receipt review period to provide any comments on the revised draft report. If the reviewing parties do not respond within this time frame, the BLM will finalize the report. The BLM will provide the SHPO and the Tribes with a copy of the final report.
- k. Upon BLM approval of a Plan of Action (POA) for steps to be taken regarding human remains, funerary objects, sacred objects, and objects of cultural patrimony from lands administered by the BLM Nevada and developed in accordance with the NAGPRA, the POA shall replace provisions in this Unanticipated Discovery Plan for handling those remains and objects subject to NAGPRA.

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