

**MEMORANDUM OF AGREEMENT
AMONG
THE NEVADA DIVISION OF ENVIRONMENTAL PROTECTION,
THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 9,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,
AND WASHOE COUNTY
REGARDING REACH 3 OF THE PLEASANT VALLEY INTERCEPTOR PROJECT,
WASHOE COUNTY, NEVADA
(UT #2019-5827)**

WHEREAS, the Nevada Division of Environmental Protection (Division), is proposing to issue loan funds under the Nevada Clean Water State Revolving Fund (CWSRF) program to Washoe County for the construction of Reach 3 of the Pleasant Valley Sewer Interceptor (PVI). PVI constitutes an undertaking as defined in the National Historic Preservation Act (NHPA) (54 U.S.C. § 300320); and

WHEREAS, the PVI consists of a buried sewer pipeline totaling three (3) miles extending from just south of the Brookside mobile home park in South Reno and ending on the privately owned Damonte Ranch property at its northern extent (Attachment 1). The corridor for the sewer totals 50-feet wide, including a 20-foot wide permanent easement, and a 30-foot wide temporary construction easement. Other permanent project elements include the Pleasant Valley lift station located immediately east of Highway 395 and west of Steamboat Creek, and underground wastewater collection system improvements in the Brookside mobile home park. Temporary project elements include construction staging and access areas. Except for the lift station, all permanent project features will be installed below ground. The depth of proposed excavation for facility installation ranges from 7.5 to 22 feet below the existing ground surface; and

WHEREAS, the Division is responsible for compliance with Section 106 of the NHPA for the PVI and the Division has consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, implementing Section 106 of the NHPA (54 U.S.C. § 306108); and

WHEREAS, the Division has consulted with the U.S. Environmental Protection Agency (U.S. EPA) and it has agreed to sign this MOA as a Signatory; and

WHEREAS, the Division has defined the PVI's Area of Potential Effects (APE) as the geographic areas within which the undertaking may have direct or indirect effects to historic properties (Attachments 1 and 2). The direct physical APE, in which effects to historic properties may occur through temporary or permanent ground disturbance, is a corridor of irregular width totaling three (3) miles in length, or 40.3 acres. The direct visual, audible, and atmospheric APE is comprised of a ¼ mile buffer surrounding the Pleasant Valley lift station; and

WHEREAS, the Division will consult with the public as part of the National Environmental Policy Act (NEPA) process, and will make a draft environmental assessment for PVI available for public review and comment; and

WHEREAS, the Division, in consultation with the SHPO, determined that the PVI will have an adverse effect on two (2) historic properties in the direct APE, a Native American cultural site (26Wa1441) eligible for listing in the National Register of Historic Places (NRHP) under the Secretary's Significance Criterion D, a historic ditch on the Damonte Ranch property (26Wa5728) eligible under the Secretary's Significance Criterion A, and the Steamboat Hot Springs which is currently unevaluated for listing in the NRHP but is being treated as eligible for the purposes of PVI as a property of traditional religious and cultural significance. The Division will, as part of the mitigation for PVI, complete a NRHP evaluation of the Steamboat Hot Springs; and

WHEREAS, in accordance with 36 CFR § 800.3(f), the Division has invited the following federally recognized tribes, with areas of interest in Washoe County, Nevada, to consult regarding the effects of the PVI on historic properties, to attend public meetings, and to provide input in the design: Confederated Tribes of the Warm Springs Reservation of Oregon; Pyramid Lake Paiute Tribe; Washoe Tribe of Nevada and California; Yerington Paiute Tribe; Fallon Paiute-Shoshone Tribe; Reno-Sparks Indian Colony; and Fort McDermitt Paiute and Shoshone Tribe; and

WHEREAS, the Washoe Tribe of Nevada and California, the Reno-Sparks Indian Colony, and the Pyramid Lake Paiute Tribe (herein collectively referred to as the Tribes) have elected to participate in the resolution of adverse effects and are invited to sign this Memorandum of Agreement (MOA) as Concurring Parties; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the Division has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination, and the ACHP has declined to participate in consultation in a letter dated March 4, 2020 and instructed the Division to file a copy of the final MOA with ACHP pursuant to 36 CFR § 800.6(b)(1)(iv); and

WHEREAS, the Division has consulted with Washoe County and it has agreed to sign this MOA as an Invited Signatory; and

WHEREAS, the Signatories, Invited Signatories, and Concurring Parties (hereinafter collectively referred to as the Parties and individually by name) 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;

NOW, THEREFORE, the Division, the SHPO, and the U.S. EPA agree that the PVI shall be implemented in accordance with the following stipulations to consider the effect of the undertaking on historic properties.

STIPULATIONS

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

I. IMPLEMENTATION OF THE HISTORIC PROPERTIES TREATMENT PLAN (HPTP)

- A. The Division, in consultation with the SHPO, has prepared a HPTP to conduct data recovery to resolve the adverse effect of PVI on historic properties (Attachment 3). This HPTP is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 CFR 44716-37) and the ACHP guidance for Reaching Agreement on Appropriate Treatment in *Section 106 Archaeology Guidance* available online at https://www.achp.gov/protecting-historic-properties/Section_106_Archaeology_Guidance.
- B. Washoe County, through a cultural resource management firm/cultural resource manager (CRM) meeting the Secretary of the Interior's Professional Standards appropriate to the historic property, will initiate the activities identified in the HPTP.
- C. Washoe County shall allow Tribal monitors to be present during all fieldwork associated with mitigation of effects on historic properties. The Tribes have recommended Tribal monitors for PVI due to its archaeological sensitivity. The Division has invited all Tribes to participate in ground disturbance activities. The Tribes shall coordinate with Washoe County if they are providing or recommending Tribal monitors.

II. NOTICES TO PROCEED (NTP)

- A. Upon execution of this MOA, and prior to initiating any surface disturbing activities associated with PVI, Washoe County, with the assistance of their CRM, will implement measures to avoid adverse effects to known historic properties, including but not limited to the Native American cultural site (26Wa1441), and the Steamboat Hot Springs. Avoidance measures may include, but are not limited to flagging, fencing, archaeological, and tribal monitoring.
- B. The Division may authorize Washoe County to conduct ground disturbing operations in areas outside of established avoidance buffer zones following installation of avoidance measures, with the exception of any archaeological monitoring required during operations (see Stipulation VI).
- C. Washoe County shall avoid adverse effects to historic properties until the Division issues an NTP in accordance with Stipulation II.D. If post-review discoveries occur, the requirements of Stipulation VI will apply.
- D. NTPs After Mitigation of Adverse Effects:
 - 1. The Division shall provide Washoe County with an NTP after the Division, in consultation with the SHPO, determines that the fieldwork portion of the mitigation at a historic property has been completed pursuant to the procedures agreed upon in the HPTP.

2. Washoe County, through its CRM, will provide the Division with a summary of mitigation fieldwork at each historic property after that phase of the mitigation program is complete. A summary of mitigation fieldwork at the Native American cultural site(s) will also be provided to the Tribes, for review only.
3. The Division shall review the fieldwork summary within two (2) working days and notify Washoe County that the Division accepts or rejects the summary.
4. Upon acceptance of the fieldwork summary, the Division shall provide an electronic copy of the summary to the SHPO for review and comment. The SHPO shall provide comments or concurrence on the summary within two (2) working days of receipt. If the SHPO does not respond within two (2) working days, the Division shall issue the NTP for ground disturbance within the avoidance area for that historic property.
5. The Division shall address comments received from the SHPO. The Division shall submit an updated fieldwork summary to the SHPO & Tribes for review and comment. The SHPO & Tribes shall have two (2) working days to provide comments to the Division.

III. REPORTING RESULTS OF MITIGATION

- A. Washoe County, through its CRM, shall provide a draft mitigation document to the Division within twelve (12) months, or as otherwise negotiated by the Signatories, of SHPO acceptance of the last fieldwork summary.
- B. The Division shall review the draft mitigation document and provide comments to Washoe County within thirty (30) calendar days of receipt.
- C. Washoe County shall respond to any comments and provide a response to the Division within ten (10) calendar days.
- D. Upon Division approval of the draft mitigation document, the Division shall provide a hard copy of the data recovery report and any public mitigation product to the SHPO and the Tribes, within five (5) calendar days.
- E. The SHPO and the Tribes will have thirty (30) calendar days from receipt to review and comment on the submission. The Division shall provide the SHPO with all comments received from the Tribes on the HPTP within two (2) working days of receipt. If no comments are received within the comment period, the Division may direct the CRM to finalize the report and any public mitigation product.

- F. Washoe County, through its CRM, shall make changes to the documents at the direction of the Division, to address comments received from the SHPO and/or the Tribes.
- G. Once the Division determines that the documents are adequate, Washoe County shall finalize the documents and submit one hard copy and one electronic copy to the Division.
- H. The Division shall ensure that the final data recovery document and any public mitigation product resulting from actions pursuant to this MOA is provided to the SHPO, and the Tribes as appropriate.

IV. STEAMBOAT HOT SPRINGS ETHNOGRAPHIC HISTORY

- A. Washoe County shall fund an ethnographic history and a NRHP evaluation of the Steamboat Hot Springs. The contracted professional developing, preparing, and completing these documents shall be a qualified cultural anthropologist (62 Fed. Reg. 33,708 (June 20, 1997)). The contracted professional should be familiar with the preparation of ethnographic histories and NRHP evaluations of properties with traditional religious and cultural significance to Tribes.
- B. The ethnographic history will include interviews with members of the Tribes.
- C. The resulting documents will be provided to the Tribes for review and comment.
- D. Washoe County shall ensure that Tribal comments on the draft ethnographic history are addressed and final copies of the documents are provided to the Division and to the Tribes.
- E. If Tribes request, then Washoe County shall make available supplementary public documents to the ethnography of the Steamboat Hot Springs, such as signage, brochures etc.

V. DURATION

This MOA will expire if its terms are not carried out within five (5) years of its execution. Prior to such time, the Division may consult with the other Signatories and Invited Signatory to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

VI. MONITORING AND POST-REVIEW UNANTICIPATED DISCOVERIES

- A. Washoe County shall ensure that an archaeological monitor, under the supervision of an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology, will monitor all ground disturbing

activities (clearing, debris, removal, and subsurface excavation) in the PVI 's APE.

- B. Washoe County shall allow Tribal monitors to be present during all clearing, debris removal, implementation of avoidance measures, and subsurface excavation in previously undisturbed soils.
- C. If Washoe County, its subcontractors, the archaeological monitor, Tribal monitors, or the CRM identify unanticipated cultural resources during construction, all construction-related activities within fifteen (15) meters of the discovery will cease immediately until an authorization to proceed is granted by the Division.
- D. The Division shall ensure that, depending on the nature of the discovery, the protocols and process of reviewing and evaluating a discovery shall be in accordance with the Unanticipated Discoveries Plan (Attachment 4).
- E. If the discovery includes human remains, Washoe County or its CRM shall immediately contact law enforcement officials and the SHPO to assess the nature and age of the remains. Washoe County shall ensure that the protocols, roles, and responsibilities regarding such discovery shall be carried out by staff or its CRM in accordance with NRS 383.170 as detailed in Attachment 4.

VII. DISPUTE RESOLUTION

Should any Signatory, Invited Signatory, or Concurring Party to this MOA object at any time to any of the actions proposed or the manner in which the terms of this MOA are implemented, the Division shall consult with such parties to resolve the objection. Note that the Concurring Party does not have the authority to amend or terminate the MOA. If the Division determines that such objections cannot be resolved, the Division will:

- A. Forward all documentation relevant to the dispute, including the Division's proposed resolution, to the ACHP. The ACHP shall provide the Division 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 Division shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the Parties and provide them with a copy of this written response. The Division will then proceed according to the final decision.
- B. If the ACHP does not provide advice regarding the dispute within the thirty (30) day period, the Division may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, the Division shall prepare a written response that takes into account any timely comments regarding the

dispute from the Parties and provide them and the ACHP with a copy of such written response.

- C. The Division's responsibility to carry out all actions subject to the terms of this MOA, which are not the subject of the dispute, remain unchanged.

VIII. AMENDMENTS

This MOA may be amended only when all Signatories and the Invited Signatory agree to such an amendment in writing. The amendment will be effective on the date a copy signed by all Signatories and the Invited Signatory is filed with the ACHP.

IX. TERMINATION

- A. If any Signatory or Invited Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories and Invited Signatory to develop an amendment pursuant to Stipulation VIII. If within thirty (30) days (or another period agreed to by all Signatories and the Invited Signatory) an amendment cannot be reached, any Signatory or Invited Signatory may terminate the MOA upon written notification to the other Signatories and Invited Signatory.
- B. Once the MOA is terminated and prior to work continuing on the undertaking, the Division 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 Division shall notify the Signatories and Invited Signatory as to the course of action it will pursue.

EXECUTION of this MOA by the Division, the SHPO, the U.S. EPA, and Washoe County and implementation of its terms evidence that the Division has considered the effects of the undertaking on historic properties and afforded the ACHP an opportunity to comment.

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SIGNATORIES:

US Environmental Protection Agency
TOMAS
TORRES
Tomás Torres
Division Director, Water Division

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June 9, 2021
Date

Nevada Division of Environmental Protection

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Greg Lovato
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Greg Lovato
Administrator

6/15/2021 | 1:11 PM PDT
Date

Nevada State Historic Preservation Office

Rebecca Lynn Palmer
Rebecca L. Palmer
State Historic Preservation Officer

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Date

INVITED SIGNATORY:

Washoe County

Chair, Board of County Commissioners

Date

SIGNATORIES:

US Environmental Protection Agency

Tomás Torres
Division Director, Water Division

Date

Nevada Division of Environmental Protection

Greg Lovato
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Nevada State Historic Preservation Office

Rebecca L. Palmer
State Historic Preservation Officer

Date

INVITED SIGNATORY:

Washoe County



Chair, Board of County Commissioners

5/11/21

Date

CONCURRING PARTIES:

Washoe Tribe of Nevada and California

Serrell Smokey, Chairman

Date

Darrel Cruz, Director
Tribal Historic Preservation Office/CRO

Date 5/18/21

Reno-Sparks Indian Colony

Arlan Melendez, Chairman

Date

Michon R. Eben, Tribal Historic Preservation Officer

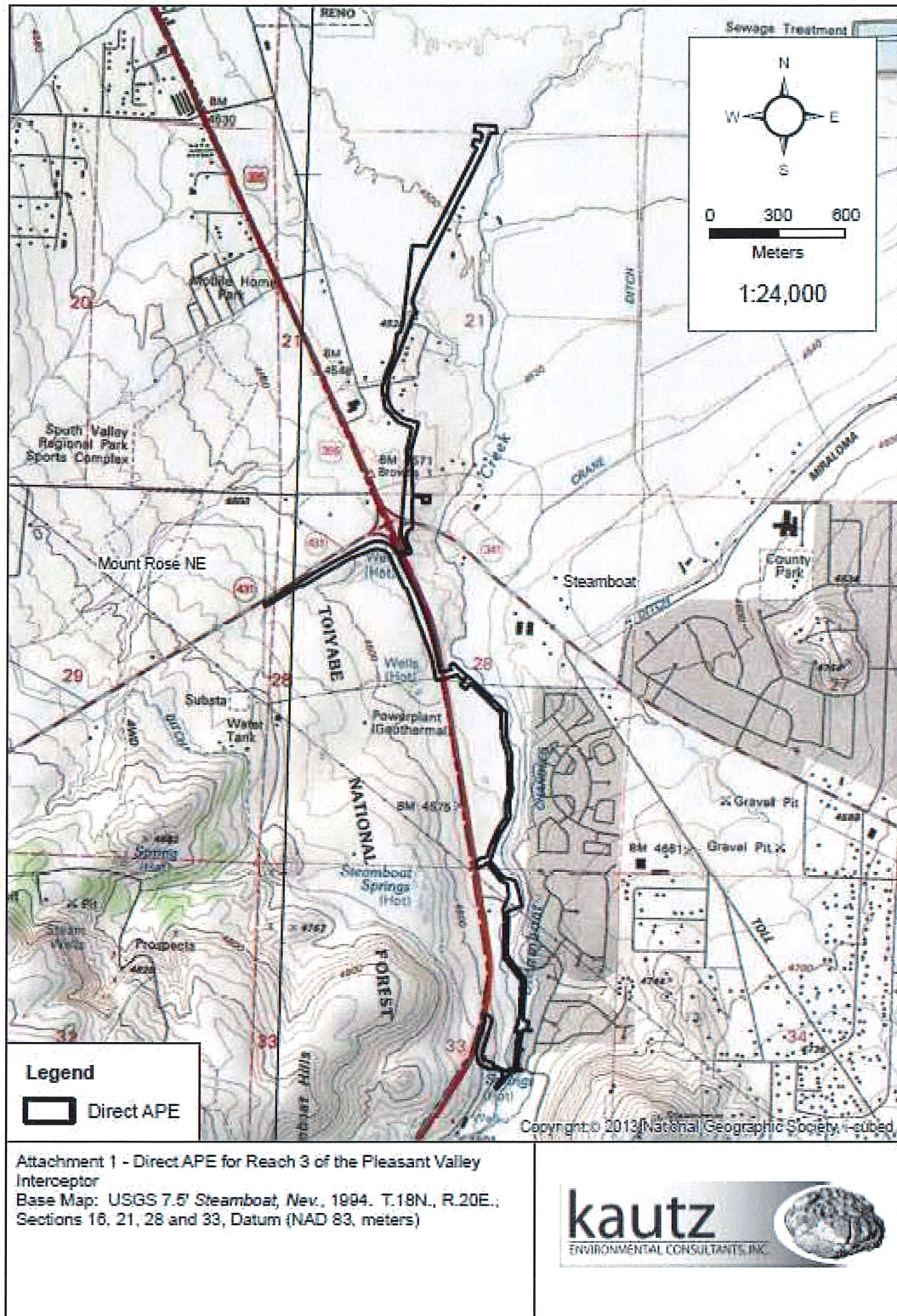
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Pyramid Lake Paiute Tribe

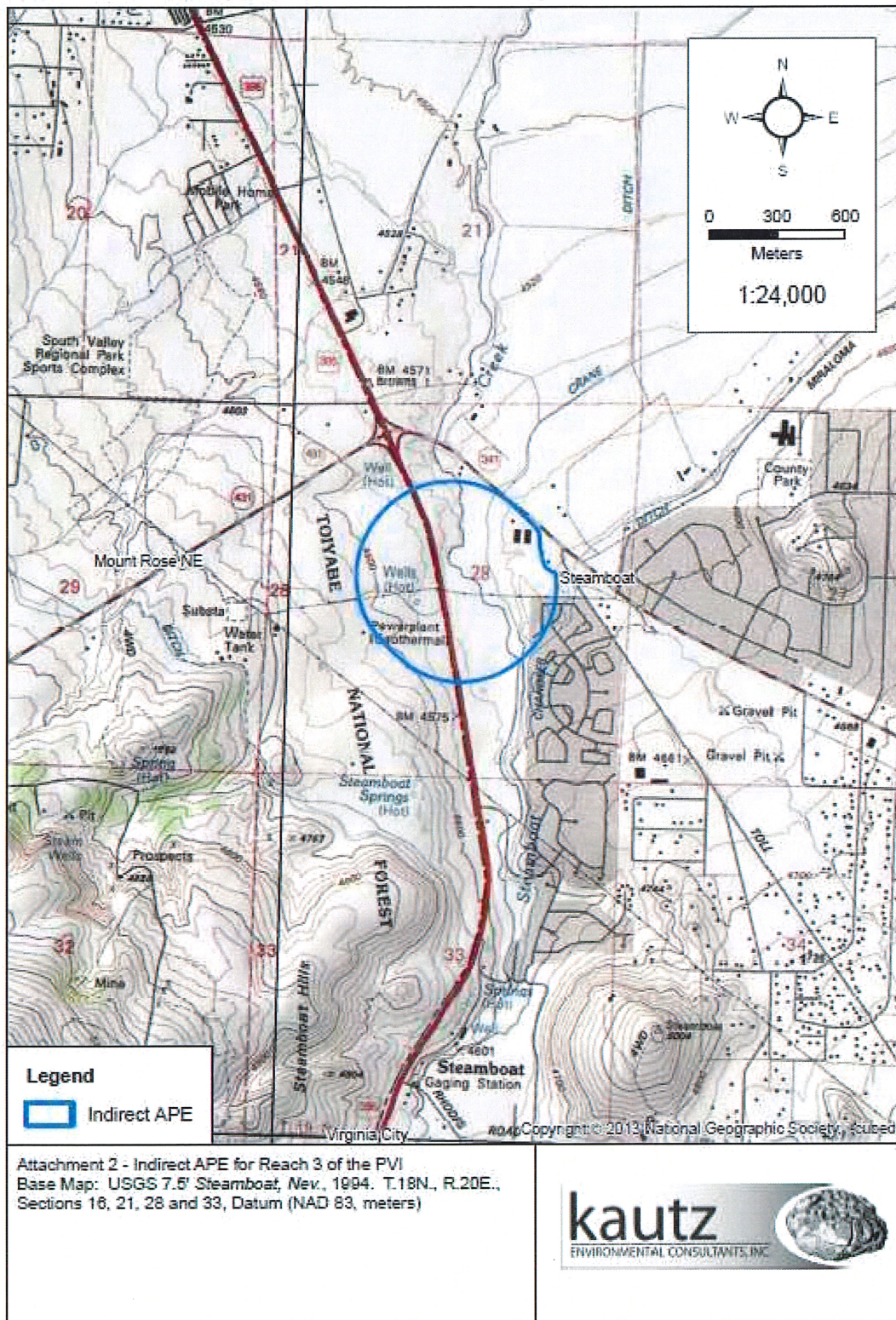
Janet Davis, Chairwoman

Date

Betty J. Aleck, Tribal Historic Preservation Officer Date



ATTACHMENT 2



ATTACHMENT 4

UNANTICIPATED DISCOVERIES PLAN

Unanticipated discoveries and unanticipated adverse effects to historic properties that occur during the Pleasant Valley Sewer Interceptor (PVI) will be handled according to the following plan. Participants referenced in this plan include Washoe County, the Nevada Division of Environmental Protection (Division), the U.S. Environmental Protection Agency (U.S. EPA), the Nevada State Historic Preservation Officer (SHPO), and the Tribes, Washoe Tribe of Nevada and California, Pyramid Lake Paiute Tribe, and the Reno-Sparks Indian Colony, as defined in the Memorandum of Agreement for the PVI (MOA).

A. DESIGNATION OF A CULTURAL RESOURCE MANAGER (CRM)

Washoe County shall identify a CRM for the PVI before any undertaking-related activities begin within the area of potential effects (APE).

1. The CRM shall possess training and background conforming to the Secretary of Interior's Professional Qualifications Standards for an Archaeologist.
2. The CRM shall provide Washoe County, Division, U.S. EPA, and SHPO with a list of authorized representatives including Tribal monitors, who are empowered to halt PVI activities in a discovery situation.
 - The authorized representatives identified by the CRM are the archaeological and Tribal monitors as described in Stipulations VI.A and VI.B of the MOA.
3. The CRM will be responsible for notifying Washoe County and the Division of any discovery situations.

B. DISCOVERY SITUATIONS

Unanticipated discoveries that do not meet the qualifications outlined in Sections D. and E., below, will be handled according to the following protocols.

1. Upon discovery of an artifact or other evidence of the possibility of a buried or previously undiscovered historic property including Native American cultural sites by anyone associated with the undertaking, all surface disturbing activities shall be halted by the CRM's authorized representatives including the Tribal monitors, within 15 meters of the discovery.
2. The CRM shall simultaneously notify Washoe County and the Division of the discovery, and Washoe County shall secure the site of the discovery until notified to proceed by the Division. Washoe County shall provide 24-hour security of the site if deemed appropriate by the CRM, or Tribal monitors.
3. Within 24 hours, the discovery shall be documented on the appropriate Nevada Intermountain Antiquities Computer Form (IMACS) or Nevada Architectural Resources Assessment Form (NARA), and Washoe County and Division shall be provided with that documentation and an evaluation of the discovery's eligibility for listing in the National Register of Historic Places.

4. Within two (2) working days of receipt of the documentation and evaluation of the discovery, the Division shall notify U.S. EPA, the SHPO, and the Tribes of the discovery and the Division's NRHP eligibility determination. The SHPO shall have five (5) working days from receipt to review and provide comments. If comments or concurrence are not received from the SHPO within 5 working days, the Division may finalize the site's NRHP determination.
5. If the Division, in consultation with the SHPO and Tribes as appropriate, determines that the discovery is not eligible, the Division shall provide Washoe County with a Notice to Proceed (NTP) pursuant to Stipulation II.D of the MOA.
6. If the Division determines, in consultation with the SHPO and Tribes, as appropriate, that the discovery is eligible and that mitigation is appropriate, Washoe County, through its CRM, shall develop a Historic Properties Treatment Plan (HPTP) in accordance with the following protocols:
 - a. Washoe County, through its CRM, shall provide the Division with a draft HPTP consistent with Stipulation I.A of the MOA, which addresses all NRHP criteria for which the historic property has been determined eligible. Washoe County shall provide the draft HPTP to the Division within five (5) working days of the Division's final determination of eligibility.
 - b. The Division shall review the draft HPTP and provide comments within five (5) working days of its receipt. The CRM will produce a draft final HPTP for the Division within two (2) working days of receipt of comments.
 - c. The Division shall submit the draft final HPTP to the U.S. EPA, the SHPO, and the Tribes for review and comment. The U.S. EPA, the SHPO and the Tribes as appropriate shall have five (5) working days from receipt to review and provide comments. If comments or concurrence are not received from U.S. EPA, the SHPO or the Tribes within five (5) working days of receipt, the Division may finalize the HPTP.
 - d. Upon finalization of the HPTP, the mitigation can be implemented pursuant to the procedures outlined in Stipulation I.B of the MOA.
7. Washoe County, through the CRM, shall ensure that mitigation shall proceed according to the HPTP developed specific to the discovery.
8. PVI activities within 15 meters of the discovery shall not resume until the Division provides Washoe County with a Notice to Proceed (NTP) pursuant to Stipulation II.D of the MOA.
9. Reporting protocols for mitigation shall follow the procedures outlined in Stipulation III.

C. HUMAN REMAINS

Washoe county shall ensure that any human remains encountered during PVI will be given sensitive and respectful treatment in accordance with all relevant federal, state, tribal, and local laws.

1. If human remains are discovered, the authorized representative shall immediately halt all PVI-related activities within 15 meters of the discovery, and Washoe County

through CRM shall immediately contact law enforcement officials to assess the nature and age of the remains.

2. Every effort shall be made to ensure the remains are not removed from the discovery location. If the Coroner determines that such removal is necessary, the SHPO and the Division shall be notified immediately and provided with a 24-hour opportunity to visit the discovery and inspect the location prior to the removal of the remains.
3. If the Coroner determines that the human remains are older than 50 years, and are not a crime scene, Washoe County shall immediately contact the SHPO and the Division. Following notification, SHPO will administer the requirements of NRS 383 for remains determined by the Coroner to be Native American in origin.
4. For all other remains, Washoe County will assume responsibility for their appropriate reinternment.

D. DISCOVERIES OF MATERIALS LESS THAN 45 YEARS OF AGE

Materials less than 45 years old are considered not eligible for the NRHP and do not merit consideration for recordation or mitigation if encountered during monitoring or construction

E. DISCOVERIES OF MATERIALS MORE THAN 45 YEARS OF AGE

Washoe County, through the CRM, shall treat previously undiscovered cultural resources over 45 years of age listed in Section E.2 and Section E.3 as eligible under the Secretary of Interior's Criterion D for the purposes of PVI and shall be mitigated in the manner described in Section E.1. Cultural resources not included in Sections E.2 and E.3 shall be addressed through the protocols outlined in Sections B or C of this document, as appropriate. Discoveries in Sections E.2 and E.3 shall not be collected. The CRM shall ensure that all cultural resources over 45 years in age will be recorded on appropriate forms, mapped, and photographed.

1. Mitigation for discoveries treated as eligible for the purposes of PVI
 - a. The authorized representative shall halt construction in the immediate vicinity of the discovery with a buffer of 15 meters.
 - b. Under the supervision of the CRM, the authorized representative shall record the discovery on the Nevada IMACS form and create an accompanying map and photographic record.
 - c. The authorized representative shall notify Washoe County that construction may resume in the vicinity of the discovery.
 - d. The CRM shall submit the discovery documentation to the Division on a monthly basis.
 - e. Division will forward the discovery documentation for SHPO and the Tribes.
2. The following classes of Native American prehistoric archaeological resources shall be treated as eligible for the NRHP and adverse effects shall be mitigated by following the process outlined in Section E.1.

- a. Small, sparse (less than 20 pieces per square meter) scatters of lithic debitage that do not contain obsidian.
 - b. Sparse occurrences of fire-cracked rock that do not co-occur with other cultural materials.
 - c. Isolated Native American prehistoric artifacts (not found within 30 meters of other prehistoric artifacts)
 - d. Sparse occurrences of ecofacts (non-human bone, shell, charcoal) that do not co-occur with other cultural materials.
3. The following classes of historic archaeological resources shall be treated as eligible for the NRHP and adverse effects shall be mitigated by following the process outlined in Section E.1.
- a. Roadside disposal of debris or refuse
 - b. Unmodified bone of domestic animal origin
 - c. Small, isolated artifact concentrations (fewer than 20 artifacts or artifact fragments) that do not co-occur with other cultural materials.
 - d. Deposits of building and other materials (metal, concrete, ceramic pipes, bricks, etc.) that are not *in situ*.
 - e. Isolated historic artifacts (not found within 30 meters of other historic artifacts)