

**PROGRAMMATIC AGREEMENT
AMONG
THE US BUREAU OF RECLAMATION,
THE US ARMY CORPS OF ENGINEERS,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,
CLARK COUNTY, NEVADA
AND
THE SOUTHERN NEVADA WATER AUTHORITY
REGARDING IMPLEMENTATION OF
THE CLARK COUNTY WETLANDS PARK**

WHEREAS, the U. S. Bureau of Reclamation and the U.S. Army Corps of Engineers (ACOE), are involved in federal undertakings within the Clark County Wetlands Park (Wetlands Park), located in Clark County, Nevada, as shown on the map in Appendix A, requiring compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*) (NHPA) and the implementing of rules found in 36 Code of Federal Regulations (CFR) Part 800; and

WHEREAS, this programmatic agreement (agreement) was developed according to 36 CFR Part 800.14(b), to govern the resolution of adverse effects from complex project situations and multiple undertakings of Reclamation and the ACOE, involving the leasing of federal land, permitting and funding of various projects for erosion control, wetlands development, and public recreation and education facilities to be constructed and developed in the Wetlands Park; and

WHEREAS, Reclamation is the lead federal agency for implementing this agreement for purposes of NHPA Section 106 review of the undertakings covered by this agreement, except as otherwise provided in Stipulation IIE at the discretion of ACOE; and

WHEREAS, the ACOE is authorized by federal law to issue permits for projects in certain wetlands, waters of the United States and other locations within the Wetlands Park over which the ACOE has permitting jurisdiction, and ACOE is a cooperating agency for purposes of this agreement; and

WHEREAS, Reclamation has consulted in the development of this agreement with the Advisory Council on Historic Preservation (Advisory Council) and the Nevada State Historic Preservation Officer (SHPO), as provided in 36 CFR Part 800.14(b); and

WHEREAS, in 1991, in response to environmental and water-resource issues involving the Las Vegas Wash (Wash), which forms the primary drainage for the Las Vegas Valley Hydrographic Basin with significant water inflow to Lake Mead, Nevada residents approved a \$13.3 million bond to fund a series of major erosion control projects for the wash and the creation of a wetlands park covering portions of the lower wash; and

WHEREAS, in 1995, Clark County (the County) adopted a Master Plan (Master Plan) to reverse the trend of degradation within the wash and to enhance the area's recreational, social, and

educational potential for the Wetlands Park and recommended the creation of a system of trails, interpretive exhibits and picnic areas and a series of projects designed to stabilize erosion and create or enhance some 190 acres of wetlands; and

WHEREAS, Reclamation, in compliance with the National Environmental Policy Act (NEPA), conducted environmental reviews and released a Final Program Environmental Impact Statement (PEIS) in 1998, followed in 1999 by a Record of Decision (ROD), for the environmental review for leasing of Reclamation lands for the purposes of creating the Wetlands Park; and

WHEREAS, the PEIS and ROD state that Reclamation's grant of a lease or right-of-way for public lands necessary for establishing the Wetlands Park is the federal nexus both for environmental review of the Wetlands Park under NEPA and compliance with the NHPA, or for a programmatic agreement that would govern compliance with NHPA Section 106 for undertakings in the Wetlands Park; and

WHEREAS, the PEIS and ROD provided that Class III intensive archaeological inventories to identify historic properties would be conducted for the Wetlands Park, and that Reclamation would conduct NHPA consultations as appropriate; and

WHEREAS, Reclamation identified the area of potential effects (APE) for undertakings within the Wetlands Park having the potential to directly affect historic properties as the whole of the area within the Wetlands Park, and in 2000-2001 engaged qualified professional archaeologists to conduct Class III intensive cultural resources surveys for the entire Wetlands Park, including reevaluations of previously recorded archaeological sites; and

WHEREAS, Reclamation had, in 1977, originally defined and proposed the Las Vegas Wash Archaeological District (Archaeological District), which was officially determined by the federal Office of Archeology and Historic Preservation to be eligible for listing on the National Register of Historic Places (NRHP); and

WHEREAS, as noted in the PEIS and ROD, future projects within the Wetlands Park may have an effect upon identified historic properties, or may discover historic properties previously unknown, and accordingly, those projects will undergo preapproval and preconstruction NHPA Section 106 review as provided in this agreement; and

WHEREAS, on November 2, 2000, Reclamation and the County executed a lease for 1151.04 acres of federal land for the Wetlands Park, under which the County agreed to "construct, reconstruct, operate, and maintain the Wetlands Park on Reclamation lands substantially as described in the Master Plan," to conduct prior to construction, cultural clearance surveys to identify historic resources, and during construction and operation and maintenance activities to take all reasonable and necessary precautions to protect and preserve historic sites; and

WHEREAS, the 2000-2001 archaeological surveys identified numerous cultural resources and previously recorded historic properties, and Reclamation determined that 49 of these met the criteria in 36 CFR Part 60.4(d) for NRHP eligibility, that 48 of those properties contributed to the eligibility of the Archaeological District; and

WHEREAS, on the basis of those survey findings, in 2001 Reclamation expanded the boundaries of the Archaeological District (see Appendix B) and determined that the revised district is eligible for listing on the NRHP, with SHPO concurrence; and

WHEREAS, re-recording of certain sites resulted in combining those sites under a single site number, and projects conducted within the Wetlands Park since issuance of the ROD have resulted in complete mitigation of certain historic properties, with the current number of remaining historic properties within the Wetlands Park identified as 32 contributing properties to the Archaeological District and one eligible property that does not contribute to the Archaeological District (see Appendix B); and

WHEREAS, in June of 2002, the County and other state and local entities executed a memorandum of understanding and interlocal agreement (the 2002 agreement), whereby the Southern Nevada Water Authority (SNWA) was designated as the lead agency to implement the Las Vegas Wash Comprehensive Adaptive Management Plan, and to construct erosion control structures in the Wash, including within the boundaries of the Wetlands Park; and

WHEREAS, on October 18, 2007, SNWA, along with the County and several other local government departments and agencies, executed an agreement that terminated the 2002 agreement and delegated to SNWA, the authority to negotiate, obtain and hold for other relevant state and local parties, all necessary federal, state and local permits required to construct, operate and maintain all erosion control and bank stabilization facilities for the Wetlands Park; and

WHEREAS, the County and SNWA have participated in the development of this agreement, have been invited and have agreed to be signatories; and

WHEREAS, in developing this agreement in compliance with 36 CFR Part 800.6, Reclamation has sought to identify those groups likely to be interested in historic properties in the Wetlands Park, including federally recognized Indian tribes that because of a historic connection with the area of the Wash might attach religious and cultural significance to historic properties potentially affected by undertakings in the Wetlands Park, and;

WHEREAS, Reclamation contacted the Las Vegas Paiute Tribe, the Fort Mojave Indian Tribe, the Colorado River Indian Tribes, the Hualapai Indian Tribe, the Chemehuevi Indian Tribe, the Havasupai Tribe, the Kaibab Paiute Tribe, Paiute Indian Tribe of Utah Tribal Council, Fort McDowell Mohave-Apache Community, Moapa Tribe, Hopi Tribe, the Navajo Nation, the Shivwits Band of Paiutes, and the Las Vegas Indian Council (Identified Tribes); and

WHEREAS, in response to Reclamation's inquiries, communications and attempts to communicate with the previously mentioned Identified Indian Tribes and other interested parties, Reclamation received responses from the following parties: (1) the Las Vegas Tribe of Paiute Indians; (2) the Fort Mojave Indian Tribe; (3) the Colorado River Indian Tribes; (4) the Hualapai Indian Tribe; and (5) the Chemehuevi Indian Tribe (together, the "Participating Tribes"), with each of these tribes expressing interest in the Wash area and participating in the development and execution of this agreement; and

WHEREAS, the parties agree that consultation on future undertakings within the APE will benefit from the flexibility provided under 36 CFR Part 800.14(b), and wish to enter into this agreement; and

NOW THEREFORE, the parties hereto agree that NHPA Section 106 review of, and resolution of any adverse effects from, undertakings within the boundaries of the Wetlands Park will be administered in accordance with the following stipulations, and that completion of such reviews and any required resolution as provided herein will satisfy the NHPA Section 106 responsibilities of Reclamation and ACOE for each such undertaking.

STIPULATIONS

I. Definitions

A. For purposes of this agreement, the following definitions will apply:

1. Area of Potential Effect (APE) is defined as the entire area within the Wetlands Park boundaries, except for privately owned land.
2. Contributing property - Any historic or pre-contact site identified as contributing to the eligibility of the Archaeological District.
3. Days - Means calendar days, except that periods of five days or less will not include Saturdays, Sundays or legal holidays.
4. Effect - Means any alteration to the characteristics of a historic property qualifying it for inclusion in, or eligibility for inclusion in, the NRHP.
5. Ground disturbance or ground-disturbing - Means any activity that significantly changes the surface features of the earth.
6. Historic property - Means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP.
7. Proponent - Means any party to this agreement who proposes an undertaking within the APE.
8. Undertaking - Means a project or activity that has the potential to cause effects to historic properties.
9. Wetlands Park - Means Clark County and Reclamation lands within the boundaries of the Clark County Wetlands Park, as the boundaries exist now or as hereinafter amended, as shown on the map attached as Appendix A.

II. Overview of Planning, Avoidance, Treatment and Other Procedures

- A. Reclamation will be lead Federal agency for the purposes of monitoring and ensuring NHPA Section 106 review and compliance for all undertakings, except for certain ACOE undertakings as provided in Stipulation IIE.
- B. Prior to the issuance of permits or approvals for an undertaking, the proponent must, at its own expense, provide to Reclamation, early in the planning and at least by the 50% design phase, a set of proposed project plans. The proponent may also submit draft avoidance and treatment plans, as they deem appropriate, with the proposed project plans. Reclamation will review the proposed project plans within 10 days and determine if avoidance and treatment plans are required. If avoidance and treatment plans are not required, Reclamation will notify the proponent, ACOE, and the County, as appropriate, within the 10 day review period and follow the remaining process identified in Appendix C.
 - C. If Reclamation determines that avoidance or treatment is required, the proponent will submit to Reclamation for review a draft avoidance or treatment plan as specified in Stipulation III or IV, respectively.
 1. Any ground disturbing undertaking that has the potential to affect historic properties within the APE that is 75 feet or less from the recorded limits of a contributing property, and not the Archaeological District itself, or a historic property will require an avoidance plan or a treatment plan, or both, as specified in Stipulations III and IV respectively. The proponent will prepare the plan and, at the proponent's expense, comply with the terms of this agreement.
 2. Any proposed project that falls within the areas identified as not previously surveyed due to thick vegetation will require survey for the identification of historic properties at the expense of the proponent.
- C. Reclamation will monitor and ensure compliance with the following procedures.
 1. New surveys for thickly vegetated areas:
 - a. Where ground disturbing activities of an undertaking will occur within the boundaries of any area identified as an area where the presence of thick vegetation may have obscured the ground during the surveys of the Wetlands Park in 2000-2001, as Reclamation determines is necessary, the proponent will clear the existing vegetation and engage a qualified archaeologist to perform a Class III Intensive Survey of those sections.
 - b. If the survey identifies any previously unknown cultural resources, such cultural resources will be recorded pursuant to SHPO guidance and reported to Reclamation.

- c. Reclamation, in consultation with the SHPO and Participating Tribes, will make a determination as to whether the discovered cultural resources meet the criteria for NRHP eligibility.
- d. If necessary, the proponent will submit an avoidance plan and/or treatment plan for identified contributing properties or historic properties as provided below.

2. Avoidance Plan

- a. If Reclamation determines that avoidance is required, within 30 days of being so notified under Stipulation IIB, the proponent will submit to Reclamation for review an avoidance plan as specified in Stipulation III.
- b. Within five days of receipt, Reclamation will submit to SHPO and ACOE, if appropriate, a copy of the proposed avoidance plan along with its recommendations. The SHPO, and ACOE, if appropriate, will have 15 days to review the plan.
- c. If at the end of the 15 day review period SHPO, or the ACOE, does not respond, Reclamation will assume the SHPO, or the ACOE, has no objection to the avoidance plan.
- d. If SHPO and ACOE provide comments within the 15 day review period, Reclamation will consider the comments and ensure that the proponent makes any needed revisions.
- e. Reclamation will notify the proponent of any needed revisions to the avoidance plan within 10 days following the end of the SHPO and ACOE, review period.
- f. The proponent will have 15 days to revise the avoidance plan and resubmit it to Reclamation.
- g. Reclamation will notify the proponent of revised plan approval within seven days of submittal, with copies to all parties.

3. Treatment Plan

- a. If the proponent or Reclamation determines that avoidance is not reasonably feasible and the undertaking is likely to adversely affect a historic property within the APE, the proponent will submit to Reclamation a proposed treatment plan as specified here and in Stipulation IV.
- b. Within five days of receipt, Reclamation will submit to SHPO and ACOE, if appropriate, a copy of the draft treatment plan for a 15 day review period.

- c. If at the end of the 15 day review period SHPO, or the ACOE, if appropriate, does not respond, Reclamation will assume the SHPO, or the ACOE, has no objection to the treatment plan.
- d. If SHPO and ACOE provide comments within the 15 day review period, Reclamation will consider the comments and ensure that the proponent makes any needed revisions.
- e. Reclamation will notify the proponent of any needed revisions to the draft treatment plan within 10 days following the end of the SHPO and ACOE, review period.
- f. The proponent will have 15 days to revise the avoidance plan and resubmit it to Reclamation.
- g. Upon completion of Reclamation, SHPO, and ACOE reviews, Reclamation shall submit a copy of the draft or revised draft treatment plan to the Participating Tribes, for 30 day review period, beginning the day that the reviewing parties receive the treatment plan;
- h. Reclamation will notify the proponent of revised plan approval within seven days of submittal, with copies to all parties.
- i. The proponent shall address all comments and submit seven copies of the final treatment plan to Reclamation. Reclamation will distribute the final plan to SHPO, the ACOE, and other consulting parties.
- j. If any consulting party objects to the treatment plan, Reclamation will work with that party and the proponent to resolve the issues. If the issues cannot be resolved, then the procedures in Stipulation XVI will be followed.
- k. Subject to the confidentiality limitations in Stipulation IVG, Reclamation will promptly post the treatment plan on Reclamation's Lower Colorado Region website (www.usbr.gov/lc) seeking public comment during the concurrent review period;
 - 1. Subject to the confidentiality limitations in Stipulation IVG, Reclamation will forward the treatment plan to SNWA, which will promptly post them on the Las Vegas Wash Coordination Committee website (www.lvwash.org), directing that public comments be sent to Reclamation during the concurrent review period; and
 - 2. Reclamation will notify other Indian Tribes known to have an interest in the APE, and any other potentially interested persons or groups as Reclamation may determine in consultation with the SHPO, and make the plan available to

any such person, group or entity upon request, for review during the concurrent review period.

- l. Should the SHPO or a reviewing party submit a timely objection to the proposed treatment plan, Reclamation will contact the proponent and the objecting party within five days of receipt of the objection to arrange a meeting or conference call for the purpose of attempting to resolve or reasonably address the objection. If no resolution is reached, Reclamation will, in consultation with the SHPO, consider the views of each objecting party and the proponent in determining whether any revisions to the treatment plan will be required.
- m. Reclamation will notify the proponent of any required revisions to the treatment plan within 21 days following the end of the concurrent review period.
- n. The proponent will have up to 30 days to revise the treatment plan and resubmit it to Reclamation.
- o. Reclamation will notify the proponent, and ACOE, if appropriate, of treatment plan approval or other action within seven days of re-submittal, with copies of the notice sent to the SHPO, the County, and Participating Tribes.

D. Project Approval, Notices to Proceed, and Compliance Notification.

1. Concurrently with the last approval of the avoidance plan, treatment plan, or both, Reclamation will issue a written notice to proceed on Reclamation lands. Reclamation will notify the County of the approval and the County will issue a written notice to proceed on County lands. The proponent may implement the project, except that no ground disturbing actions will be allowed within 75 feet of any historic property subject to treatment until all treatment directly affecting such property is completed.
2. Reclamation will provide to the SHPO, ACOE, if appropriate, and Participating Tribes notice of final project approval within 30 days.
3. After the approved treatment plan(s) has been fully implemented to Reclamation's satisfaction, the project has been completed under the terms of the notice to proceed, this agreement and any avoidance plan, Reclamation will provide written notification to the proponent that the NHPA Section 106 process for this undertaking is complete, and will send copies of the notice to the SHPO, the County, Participating Tribes, and the ACOE for projects requiring an ACOE permit.

E. ACOE Procedures.

1. Proponents requiring an ACOE permit for any undertaking will submit their plans to Reclamation for review and follow the process established in Stipulation IIA, B, and C. Upon determining that the terms of this agreement have been met for the

undertaking, Reclamation will provide written notification to the ACOE. This notification will confirm compliance with the NHPA Section 106 rules for the permitted action.

2. Reclamation will coordinate with the ACOE to ensure that the requirements of this agreement have been met for all undertakings within the ACOE jurisdictional permit area, unless the ACOE exercises the following option:
 - a. At its discretion, at any time prior to Reclamation's approval of an avoidance plan or treatment plan for the undertaking, the ACOE may conduct its own NHPA Section 106 review and consultations of any undertaking or part of an undertaking within the APE for this agreement subject to an ACOE permit without applying the terms of this agreement.
 - b. In exercising this option, the ACOE will notify Reclamation of its decision in writing, whereupon, within 10 days of such notification, Reclamation will provide the ACOE with copies of all plans, reports, correspondence and related documents produced in compliance with the terms of the agreement for that undertaking. When the ACOE has completed its NHPA Section 106 review of the undertaking, the ACOE will inform Reclamation and provide Reclamation with copies of all reports and pertinent documentation.

F. County Procedures

1. The County agrees to abide by the terms of this agreement for all undertakings on County-owned or County-leased lands within the Wetlands Park for as long as the agreement is in effect and the County is a party to the agreement.
2. The County intends to become a Certified Local Government (CLG) under the National Park Service's CLG program. Should the County become a CLG and should it wish to change its role and responsibilities under this agreement accordingly, it may propose an amendment to do so pursuant to Stipulation XIV.

III. Details of Avoidance of Historic Properties

- A. Undertakings will avoid impacts to historic properties whenever reasonably possible. Avoidance means that no ground disturbing activities associated with an undertaking will adversely affect a historic property during construction. To ensure avoidance, undertakings or portions of undertakings may be modified, redesigned, or eliminated during the planning process.
- B. For undertakings that will involve ground disturbance within 75 feet of the recorded boundaries of an identified contributing element or historic property within the Wetlands Park (not including the Archeological District, *see* Stipulation XC), the proponent will be required to prepare and submit to Reclamation and to the SHPO, prior to construction, a written avoidance plan. Reclamation, in consultation with the SHPO, must review and

approve the avoidance plan and provide a written concurrence before construction on the undertaking may begin. Reclamation will notify the ACOE, if appropriate, of avoidance plans.

C. The avoidance plan will contain:

1. A brief description of the undertaking
2. A written description of the steps that will be taken to ensure avoidance.
3. A map showing the location of each historic property to be avoided in relation to the limits of the ground-disturbing actions of the proposed undertaking, plus the 75-foot buffer around each property.
4. A method of visibly delimiting the 75-foot buffer area surrounding the nearby historic property, which may involve any reasonable method such as lath staking with color coded flagging tape.
5. Provisions for archaeological monitoring, if required under Stipulation III G.
6. Provisions for the training of construction personnel on procedures for avoiding historic properties.

D. The proponent will be responsible for communicating the avoidance requirements to employees, contractors and all heavy equipment operators that may be assigned to work in the vicinity of historic properties to be avoided. The approved avoidance plan will be discussed with the operators prior to construction.

E. Staking, flagging and other markings used to identify historic properties will be removed as soon as possible after the undertaking has been completed and avoidance has been achieved.

F. Vegetative screening and other long-term physical barriers may be used as part of project design to enhance site protection, as determined in consultation with Reclamation, SHPO, and the County.

G. Avoidance Monitoring. To ensure avoidance, an archaeologist meeting the professional qualifications set forth in Stipulation VII, may be required to monitor construction. The monitor will have the authority to direct or halt construction within the buffer zone as may be needed to ensure site avoidance.

H. The proponent will include in the avoidance plan a recommendation as to whether, when and how monitors should be used for the project. Reclamation may make its own analysis of the need for monitors and will make the final determination of whether, when and how monitors will be used for a given undertaking.

IV. Details of Treatment Plans

A. Any undertaking that will involve ground disturbance within the recorded limits of a contributing element or historic property in the Wetlands Park (not including the District, *see* Stipulation XC) will be deemed to have an adverse effect on that property and

therefore will require a treatment plan. The proponent will develop the treatment plan for the purposes of addressing the adverse effects. The treatment plan will include the following:

1. A brief description of the undertaking and the historic properties to be affected.
 2. The general nature and extent of effects to which historic properties will be subjected and the strategies proposed to minimize or mitigate the adverse effects.
 3. Any general research questions and data needs, along with general methods and analytical strategies related to the stated research goals, identified in the Clark County Wetlands Park Archaeological Research Design (Stipulation VI) when completed.
- B. The treatment plan will include educational materials or activities produced to educate and inform the public about cultural resources in the Wetlands Park. These supplemental materials or activities will be specified in the treatment plan and will be consistent with the Clark County Wetlands Park Interpretive Plan. These materials or activities may include a brochure or other publication on local archaeology; an interpretive display in the Wetlands Park visitor center; a public lecture on the results of site treatment, public site tours of excavations, a presentation at a local school on such things as the history and prehistory of the Wash, as may be appropriate in scope and content considering the nature and scale of the undertaking. Reclamation and SHPO shall determine and approve the appropriate scope and content of public education for each treatment plan.
- C. Treatment of adverse effects to archaeological sites involving archaeological research and fieldwork will be consistent with the guiding research directions, field methods, and analytical strategies contained in the Clark County Wetlands Park Cultural Resources Research Design referenced in Stipulation VI. Should treatment be necessary prior to the completion of the Research Design, a generally accepted or reasonable archaeological research design or design standard may be used.
- D. The treatment plan will be prepared and implemented by a professional archaeologist, historian or other appropriately qualified expert, as described in Stipulation VII.
- E. Draft Report. The proponent will submit to Reclamation a draft report on the results of the treatment and analysis, along with any supplemental educational materials or activities, within 12 months of the end of field work required under the treatment plan. Reclamation will provide a copy of the draft report to the SHPO, ACOE, if appropriate, and Participating Tribes for review.
- F. Final Report. Upon approval of the draft by both Reclamation and the SHPO, the proponent will produce a professional quality final report within 60 days of approval. The proponent will prepare and submit to Reclamation seven copies, including one electronic version, of the final report, and one copy each to the SHPO, ACOE, if appropriate, the County, SNWA and each Participating Tribe.

- G. Confidential Treatment of Sensitive Historic Properties. The parties acknowledge that disclosure of the location of archaeological resources may expose those resources to damage, depredation or theft, and therefore the parties agree to use their best efforts, consistent with applicable laws (NHPA Section 304 and the Archaeological Resources Protection Act), to protect from public disclosure the location of archaeological resources in the Wetlands Park.

V. Guidance Through the Cultural Resources Coordinating Committee

- A. The parties to this agreement agree that future management of the historic properties in the Wetlands Park will benefit from communication and coordination among the parties. To this end, the County will establish and maintain a Cultural Resources Coordinating Committee (CRCC) for the Wetlands Park.
- B. The purpose of the CRCC will be to provide recommendations on historic preservation, public education and interpretation of the historic properties within the Wetlands Park. Its mandate will include, but is not limited to, establishing lines of communication; enhancing coordination among the members; discussing treatment and site avoidance issues; providing recommendations to the Clark County Wetlands Interpretive Committee as described in Stipulation IXC, and periodically reviewing the performance of this agreement as described in Stipulation XVII. The CRCC's mandate, structure, leadership, operating procedures, and mission statement will be formally adopted as soon as reasonably possible, and no later than one year after the first meeting.
- C. As determined by the County, the CRCC may consist of representatives of Reclamation, the ACOE, the SHPO, the Clark County Parks and Recreation Department, the Clark County Museum, the SNWA, and any Identified Indian Tribe or other interested party that expresses an interest in participating. The CRCC will meet periodically as the members may determine, but at least once per year, as long as this agreement is in effect.
- D. Within 12 months of the effective date of this agreement, the County, as the responsible party for management of the Wetlands Park, will develop a draft Cultural Resources Management Plan (CRMP) for the Archaeological District (Appendix E) and other historic properties within the Wetlands Park, intended to provide guidance for managing these resources in the development of the park, operations and maintenance within the park, and coordination with ongoing and future proposed projects within the park. The CRCC will review the CRMP and provide comments for finalization of the plan. The CRMP will be finalized within two years of the effective date of this agreement. The CRMP will be reviewed every two years by the CRCC and revised as necessary.

VI. Cultural Resources Research Design

- A. Within 12 months of the effective date of this agreement, Reclamation will prepare and distribute to the members of the CRCC for their review and comment, a draft of a

comprehensive Clark County Wetlands Park Cultural Resources Research Design (Research Design) intended to assist proponents and consultants in addressing research of historic properties in the Wetlands Park.

- B. The Research Design will:
1. Identify the cultural resources recorded within the Wetlands Park.
 2. Provide a synthesis of prior cultural resources research in the Wetlands Park and the surrounding region.
 3. Present general research questions, goals and objectives to direct future research in the Wetlands Park
 4. Identify the data needed to address the research questions.
 5. Recommend general field work methods and analytical strategies related to the stated research questions.
- C. Each CRCC member will submit to Reclamation, comments on the draft Research Design within 60 days of the date Reclamation transmits the draft. At the end of that review period, the County will convene the CRCC for the purpose of discussing the Research Design. If any party fails to provide timely comments, Reclamation may assume that party has no objection to the draft Research Design. If any member of the CRCC objects to the draft Research Design, Reclamation will consult with the objecting party to resolve the objection as provided in Stipulation XVI.
- D. Within 45 days of the CRCC meeting, Reclamation will consider the comments received and make any revisions to the draft Research Design that Reclamation deems appropriate, and distribute the final Research Design to all members of the CRCC.
- E. Reclamation will prepare and distribute the final version of the Research Design within 18 months of the execution of this agreement, and thereafter the Research Design will be used for all treatment plans for undertakings in the Wetlands Park.
- F. The Research Design will be reviewed at least every two years and revised and updated as needed to meet the needs of this agreement and the goals of the plan.
- G. Until the final Research Design is adopted, Reclamation may review and approve undertakings under any generally accepted or reasonable archaeological research design or design standard.

VII. Professional Qualifications

Reclamation will ensure that all research, field work, data analysis, and report preparation carried out pursuant to this agreement, will be conducted by, or under the direct supervision of an archaeologist or historian or other appropriate specialist who meets the requirements specified in the Secretary of the Interior's Professional Qualification Standards as described in 48 Federal Register 44716 (September 29, 1983), or as may be updated and published by the Secretary.

VIII. Curation

- A. All archaeological artifacts and other cultural materials recovered from historic properties on Reclamation-administered land will be curated at a Reclamation facility, or other repository in southern Nevada that meets the curation requirements of 36 CFR Part 79.
- B. All archaeological artifacts and other cultural materials recovered from historic properties on County land will be the responsibility of the County and preferably curated at the Clark County Museum, in Henderson, Nevada.
- C. Archaeological artifacts and other cultural materials recovered on private land may only be removed with the permission of the landowner, and may be curated at the Clark County Museum in Henderson, Nevada.

IX. Outreach and Education

- A. Reclamation may, as funding allows, assist the County in developing educational and interpretive projects and programming for general public audiences, as funding allows, to be used at the Wetlands Park Nature Center and along trails throughout the Wetlands Park area, or as determined by the County.
- B. Educational and interpretive, projects and programming may be developed following the Clark County Wetlands Park Interpretive Plan, and may include, but are not limited to, written brochures, guides, and other publications; trail signage and kiosks; interpretive displays in the Wetlands Park Nature Center; public demonstrations of traditional Native American technologies; guest lecturers; a volunteer program, etc.
- C. The CRCC will, upon request, assist the Clark County Wetlands Park Interpretive Committee on matters relating to the interpretation of the cultural resources in the Wetlands Park. Special effort will be made to include the Participating Tribes in telling the story from their perspective of past Native American life ways in the Wash.

X. Exemptions

- A. The following types of undertakings will be exempted from NHPA Section 106 review and consultation under this agreement (unless implementation of the project encounters unexpected discoveries as provided in Stipulation XIII).
 - 1. Chemical treatment of vegetation.
 - 2. Limited planting of trees or other vegetation involving digging less than two (2) feet in depth.
 - 3. Limited soil testing employing scooping or digging with hand tools in an area less than 1 yard square and 2 feet in depth.
 - 4. Soil or other below-ground testing making limited use of core-sampling or boring using bits, tubes or augers 6 inches in diameter or less.

5. Removal of tamarisk or other vegetation using hand held equipment within the recorded limits of a historic property and within the 100 year flood plain.
- B. Normal pedestrian or vehicular traffic along existing paved roads or established or bladed dirt roads and trails near to or within the recorded limits of a historic property are not undertakings, and these activities are deemed to have no effect on that property and will not require consultation with Reclamation or the SHPO.
- C. Undertakings Within the Archaeological District.
1. Undertakings within the Archaeological District will not require an avoidance plan or treatment plan based on effects on or proximity to the Archaeological District itself, but only based on potential effects to or proximity to previously recorded, or newly identified, eligible historic properties that are contributing elements to the eligibility of the Archaeological District.
 2. Accordingly, undertakings that will be within the boundary of the Archaeological District but that will not involve ground disturbance within, or within 75 feet of, the boundary of a previously or newly identified historic property, are deemed to have no adverse effect on the Archaeological District or the individual historic property, and do not require either an avoidance plan, treatment plan or notice to proceed, or prior notice to or consultation with either Reclamation or the SHPO.
- D. Exemption Reporting.
1. The proponent of any undertaking exempted from consultation under Stipulation XA, above, will within three month to beginning the undertaking, submit a report to Reclamation describing the nature, date(s) and location of the exempted undertaking. The notification must be a written communication and must include a map. This procedure will be reviewed and may be amended or eliminated by agreement of the signatories at or after the first biennial review of this agreement.
 2. Every year during which reports are submitted, within 30 days of the anniversary date of the signing of this agreement, Reclamation will submit to the SHPO and the County, and to any other signatory or Participating Tribe that so requests, a summary report describing the exempted undertakings reported that year. The summary report will briefly describe each exempted undertaking and provide a map of its location.

XI. Tribal Consultation

- A. Reclamation has consulted with all Indian tribes with a historic association with or connection to the area of the Wash, has contacted and offered to consult with all such tribes, and has sought their input into this agreement.
- B. In addition, Reclamation has provided to the five Participating Tribes (the Las Vegas Paiute Tribe, the Fort Mojave Indian Tribe, the Colorado River Indian Tribes, the

Hualapai Tribe; and the Chemehuevi Indian Tribe) copies of this agreement and solicited their comments and input in its development.

- C. Reclamation will be responsible for government-to-government consultations with tribes under NHPA Section 106 and will continue to consult with all interested and potentially interested Indian tribes as the NHPA Section 106 rules require.

XII. Human Remains

- A. Native American human remains or burials encountered on Reclamation administered land will be subject to the requirements of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*) (NAGPRA). In that event, Reclamation will conduct consultations in accordance with the federal regulations in 43 CFR Part 10.
- B. Human remains or burials encountered on County or private lands will be subject to the requirements of Nevada State law (N.R.S. 383.170). In the event that the human remains appear to be Native American, Reclamation will conduct tribal consultation with the appropriate Indian tribe in accordance with state requirements. Reclamation will act as the SHPO's agent in facilitating these consultations for undertakings or discoveries within the Wetlands Park.

XIII. Post-Review Discoveries of Historic Properties

- A. If a previously unknown archaeological or historic resource is discovered during implementation of an undertaking, the process presented below will be followed.
 - 1. The proponent will immediately cease construction in the vicinity of the discovery, secure the discovery location from further disturbance, and notify Reclamation.
 - 2. Reclamation will ensure that an archaeologist or other appropriate professional meeting the professional qualifications set forth in Stipulation VII assesses the discovery to determine its nature, extent and condition, and assess its possible eligibility for the NRHP.
 - 3. If the archaeologist or other appropriate professional concludes that the discovered resource is an isolated feature or artifact, the archaeologist or other appropriate professional will document that conclusion and the project may proceed without further consultation or review.
 - 4. If the archaeologist or other appropriate professional concludes that the discovered resource is a site potentially eligible for listing on the NRHP, the archaeologist or other appropriate professional will report that finding to Reclamation. Reclamation, in consultation with the SHPO and appropriate Tribes, will make a determination of the find's NRHP eligibility. Reclamation will consult on eligibility and assess effects

within two working days of the discovery, via email, telephone or fax, as appropriate, with the SHPO and any Participating Tribe. If Reclamation and the SHPO agree that the discovery is not eligible, then the project may proceed.

5. If Reclamation, in consultation with the SHPO and the tribes, determines that the site is eligible for listing in the NRHP, then the proponent will follow the provisions in this agreement regarding treatment.
 6. If Reclamation and the SHPO or the tribes cannot agree on eligibility, Reclamation will submit the matter to the Keeper of the NRHP for a final determination of eligibility.
- B. If unanticipated adverse effects to a known historic property are discovered, or if Reclamation, in consultation with the SHPO and any Participating Tribe, determines that continued development of the undertaking will adversely affect the historic property, then the proponent will choose one of the following three options to address the discovery, either:
1. Expedited Treatment.
 - a. The proponent will immediately prepare an abbreviated plan for expedited treatment generally following the procedures in Stipulation IV, and with the approval of Reclamation, implement the treatment plan. All treatment will be completed within seven days of plan approval, unless Reclamation believes that extending the time for treatment is warranted. When the proponent notifies Reclamation that treatment field work has been completed per the approved plan, the undertaking may recommence.
 - b. The proponent will prepare a brief professional-quality report of the completed treatment within 30 days of the end of treatment and will submit a full report in draft form to Reclamation and the SHPO for review within 90 days thereafter. Upon approval of the draft report by Reclamation and the SHPO, the proponent will prepare and submit a final treatment report within 30 days of approval with seven copies to Reclamation; or
 2. Delay the Undertaking. If for any reason the proponent determines that it cannot or will not initiate treatment immediately, the proponent may suspend work on the undertaking until such time as it can commence treatment. The proponent will stabilize and back-fill to the satisfaction of Reclamation any ground disturbance or other measures necessary to protect or secure the discovery. When the proponent is ready, it may prepare a standard treatment plan and follow the requirements for submission and implementation of a treatment plan as described in Stipulations IIC3 and IV; or
 3. Avoid the Undertaking. The proponent may redesign the project to avoid adversely affecting the discovery. The proponent will stabilize and back-fill to the satisfaction

of Reclamation any ground disturbance or other measures necessary to protect or secure the discovery. If the redesigned undertaking will be within 75 feet of the limits of the historic property recorded in discovery, then the proponent will prepare an avoidance plan for the project and future maintenance needs and follow the requirements in Stipulations IIC2 and III.

- C. Reclamation will inform the other signatories and concurring parties of reported discoveries after consultation with the SHPO and the Participating Tribes under paragraphs XIII A and B. has been concluded. Reclamation will distribute for information purposes copies of any reports of discoveries to any signatory and concurring party who requests the same.
- D. The proponent will have the right to challenge any requirement of a treatment plan or stabilization plan imposed by Reclamation in accordance with the provisions for dispute resolution in Stipulation XVI.

XIV. Amendments

- A. Any party to this agreement may request that it be amended, whereupon the signatories will consult to reach a consensus on the proposed amendment, and execute a form of amended agreement. When no consensus among signatories can be reached, the agreement will not be amended.

XV. Termination

- A. Any signatory to this agreement may terminate it by providing 30 days notice to the other parties, provided that the signatories and concurring parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.
- B. In the event of termination, Reclamation and the ACOE will comply with the regulations in 36 CFR Part 800 with regard to any of its undertakings proposed within the Wetlands Park.

XVI. Dispute Resolution

- A. Should any party to this agreement object in writing regarding any action carried out or proposed with respect to an undertaking or implementation of this agreement, Reclamation will consult with the objecting party to resolve the objection. If Reclamation determines that the objection cannot be resolved, Reclamation will forward all documentation relevant to the objection to the Advisory Council.
- B. Within 30 days after receipt of all pertinent documentation the Advisory Council will either:

1. Provide Reclamation with recommendations, which Reclamation will take into account in reaching a final decision regarding the dispute; or
2. Notify Reclamation that the Advisory Council will comment on the dispute using the procedures outlined in 36 CFR Part 800.7(a)(4), and proceed in that way. In that event, Reclamation will take the Advisory Council's comments into account in the same way as provided in 36 CFR Part 800.7(c)(4).

XVII. Biennial Review

- A. Every two years following the execution of this agreement, at its first meeting of the calendar year, the CRCC will evaluate the performance of this agreement. At that time, the parties will discuss whether or not the agreement is functioning as intended and whether the agreement should be amended to correct or improve its performance. Amendment procedures in Stipulation XIV will be followed.

XVIII. Execution, Notice and Effect

- A. This agreement might not be signed simultaneously by all signatories. However, this agreement will be as though it had been signed simultaneously by all signatories. Reclamation will retain the original agreement and signature sheets. A copy of the agreement and each signature sheet will be sent to the Advisory Council, all signatories, and concurring parties.
- B. This agreement will become effective after it is signed by all the signatories, and will remain in effect for a period of 10 years unless extended by unanimous approval of the signatories, or unless terminated in accordance with Stipulation XV.
 1. Reclamation shall convene a meeting of all signatory parties not less than 90 days prior to the 10 year anniversary to discuss the extension or termination of this agreement.
- C. Execution and implementation of this agreement is evidence that Reclamation and the ACOE satisfied their NHPA Section 106 responsibilities by taking into account the effects of the undertakings on historic properties and have afforded the Advisory Council an opportunity to comment.

SIGNATORIES

NEVADA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

(Print Name)

Title: _____

U.S. BUREAU OF RECLAMATION

By: _____ Date: _____

(Print Name)

Title: _____

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____

(Print Name)

Title: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

(Print Name)

Title: _____

SIGNATORIES (Continued)

CLARK COUNTY NEVADA

Attest:

Rory Reid, Chairman
Board of Commissioners
Date _____

Diana Alba, County Clerk
Date _____

Approved As To Legal Form:

Mary Ann Peterson,
Deputy District Attorney
Date: _____

SOUTHERN NEVADA WATER AUTHORITY

Patricia Mulroy, General Manager

Date: _____

Approved as to Legal Form

Dana R. Walsh, Deputy Counsel

CONCUR:

LAS VEGAS PAIUTE TRIBE

By: _____

Date: _____

(Print Name)

Title: _____

CHEMEHUEVI INDIAN TRIBE

By: _____

Date: _____

(Print Name)

Title: _____

COLORADO RIVER INDIAN TRIBES

By: _____

Date: _____

(Print Name)

Title: _____

FORT MOJAVE INDIAN TRIBE

By: _____

Date: _____

(Print Name)

Title: _____

HUALAPAI INDIAN TRIBE

By: _____

Date: _____

(Print Name)

Title: _____

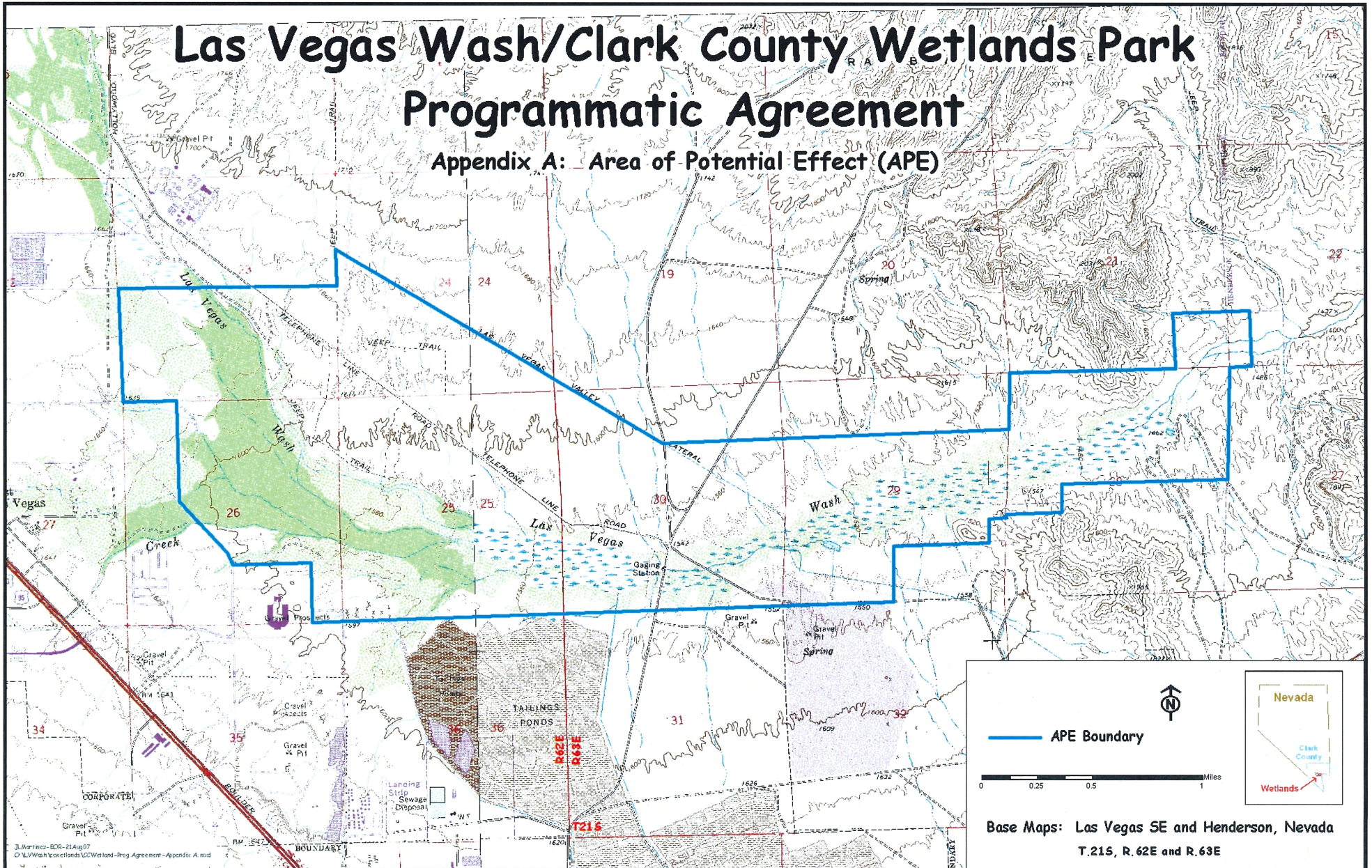
APPENDICES

- Appendix A Map of the Clark County Wetlands Park and Area of Potential Effect
- Appendix B Map of the Las Vegas Wash Archeological District and Historic Properties within the Clark County Wetlands Park
 - B-1 Table of Cultural Resource Sites within the Las Vegas Wash Archeological District and Historic Properties within the Clark County Wetlands Park
- Appendix C Flow Charts of Programmatic Agreement Processes
 - C-1 Flow chart of Project Plan Submittal Process
 - C-2 Flow chart of Avoidance Plan Review and Approval Process
 - C-3 Flow chart of Treatment Plan Review and Approval Process
- Appendix D Land Ownership in the Clark County Wetlands Park Area of Potential Effect.

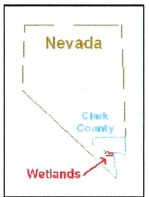
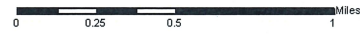
Las Vegas Wash/Clark County Wetlands Park

Programmatic Agreement

Appendix A: Area of Potential Effect (APE)



— APE Boundary



Base Maps: Las Vegas SE and Henderson, Nevada

T. 21 S., R. 62 E. and R. 63 E.

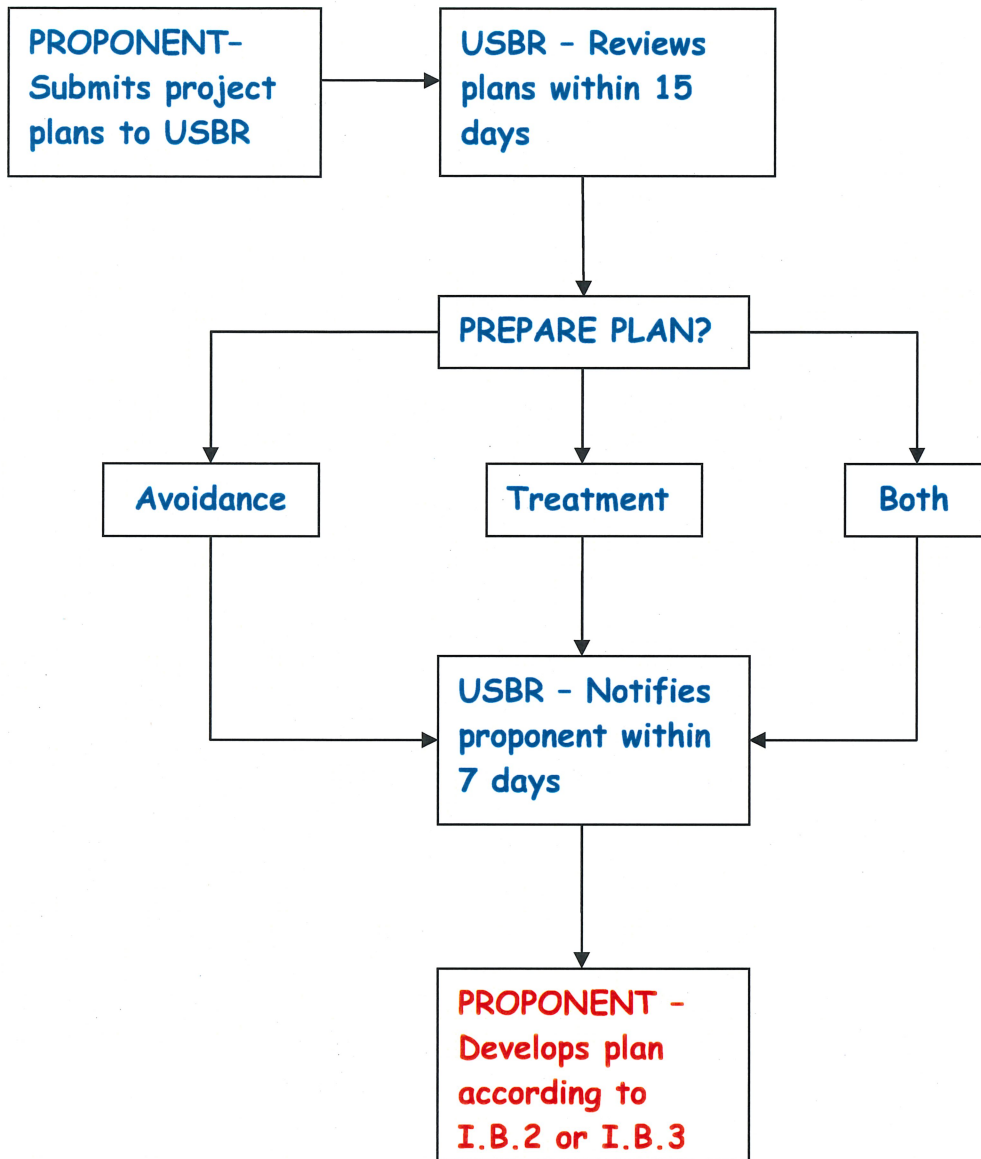
3/13/2007-EDR-21.Aug07
© LVW/Wash/Wetlands/CC Wetland-Program Agreement-Appendix A.mxd

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

Please consult the appropriate federal agency to obtain this information.

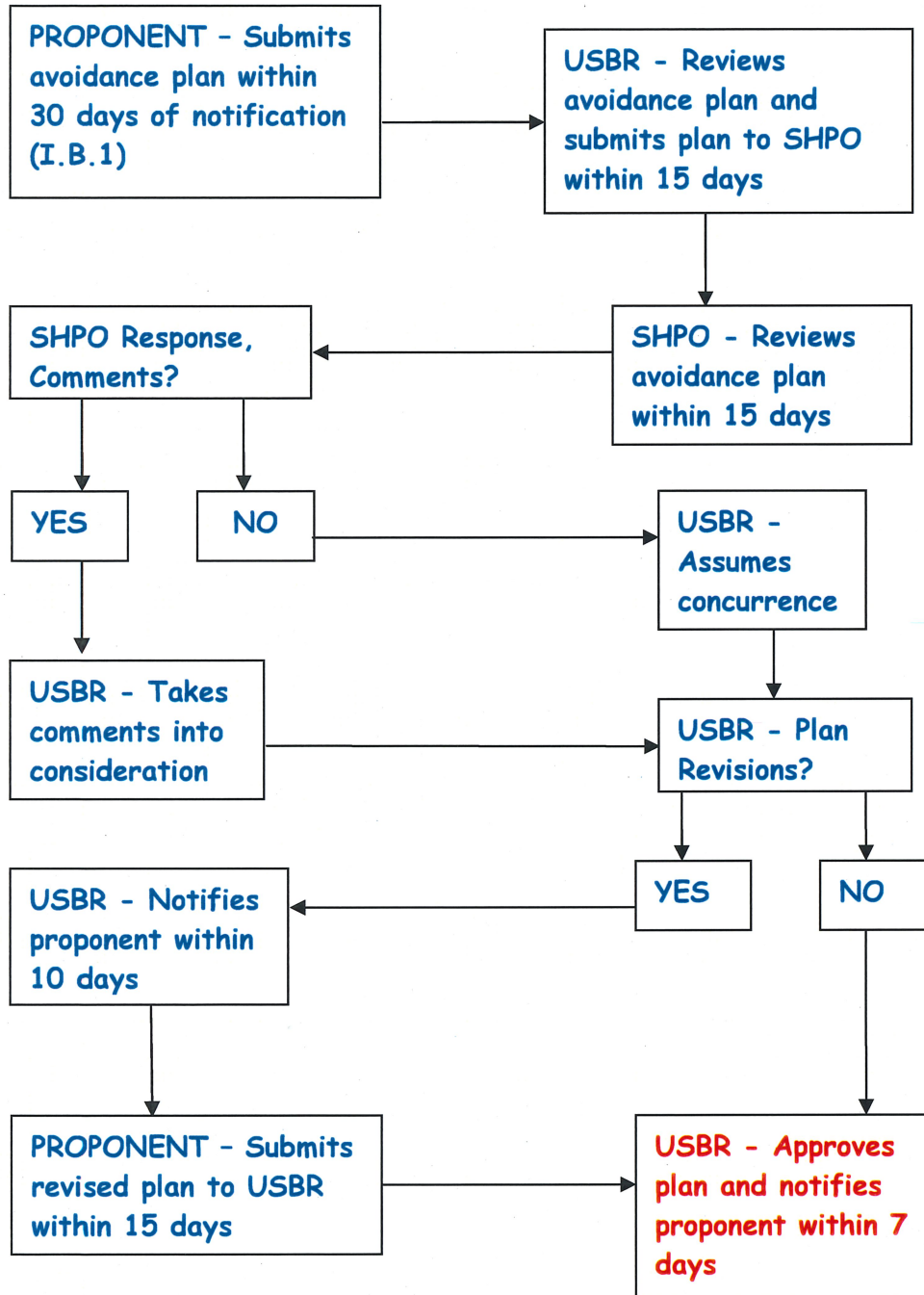
APPENDIX C-1

Flow Chart of Project Plan Submittal Process



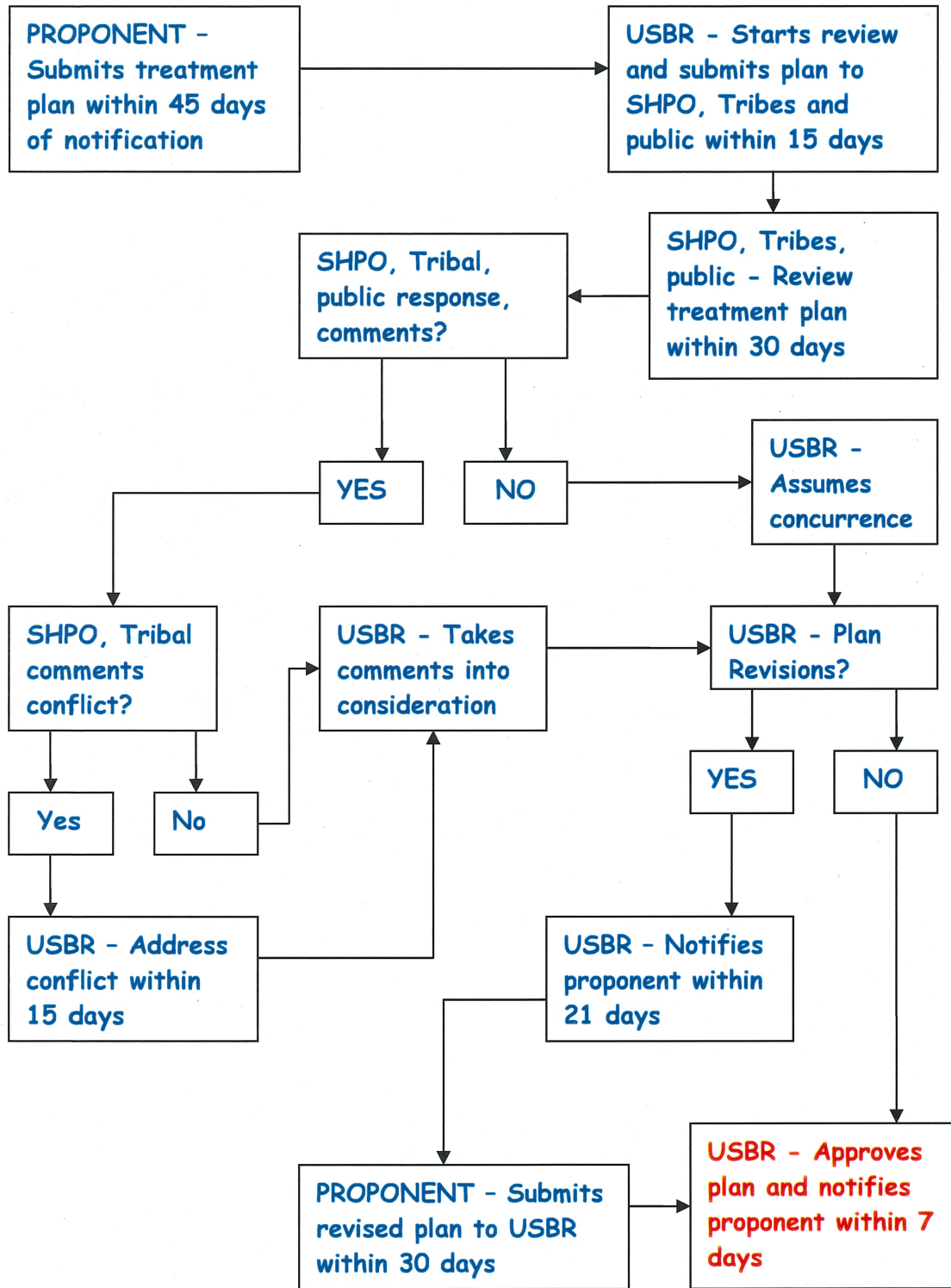
APPENDIX C-2

Flow Chart of Avoidance Plan Review and Approval Process



APPENDIX C-3

Flow Chart of Treatment Plan Review and Approval Process



APPENDIX D

Non-Federal Land Ownership in the Clark County Wetlands Park Area of Potential Effect

(as of September 8, 2010)

Legal Location	Parcel Number	Total Acres	Land Owner	Comments
T21S, R62E, Sec 23 SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$	161-23-301-002 161-23-301-003	237.62	Clark County	
T21S, R62E, Sec 25 SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ (except for that portion in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ belonging to Silver Bowl 5 Partnership), S $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ - Clark County	161-25-601-001 161-25-102-001 161-25-102-003 161-25-101-001 161-25-101-002 161-25-101-003 161-25-101-004 161-25-103-001 161-25-103-002 161-25-201-001 161-25-201-002 161-25-301-001 161-25-301-002 161-25-301-003 161-25-301-004 161-25-301-006 161-25-301-007 161-25-401-001 161-25-701-001 161-25-801-001	460.80	Clark County	
T21S, R62E, Sec 25 E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$	161-25-101-002 161-25-101-004	3.98	William Burch	
T21S, R62E, Sec 25 A Portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$	161-25-301-005	7.38	Silver Bowl 5 Partnership and Signal Viney	
T21S, R62E, Sec 26 NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, a portion of NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$	161-26-501-001 161-26-501-002 161-26-501-003 161-26-601-001 161-26-601-002 161-26-101-008 161-26-302-002 161-26-302-003 161-26-701-001	344.81	Clark County	
T21S, R62E, Sec 26 A portion of SW $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$	161-26-801-001	58.14	University Board of Regents	
T21S, R63E, Sec 21	160-21-810-001	40	Clark County	Boulder Dam

SE $\frac{1}{4}$ SE $\frac{1}{4}$	Thru 039			Park Tract No. 2 –
T21S, R63E, Sec 22 W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$	160-22-410-001 Thru 040	20	Clark County	Boulder Dam Park Tract No. 1
T21S, R63E, Sec 28 N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{2}$ NW $\frac{1}{4}$	160-28-501-001 160-28-501-002 160-28-501-003 160-28-601-001 160-28-201-001 160-28-201-002 160-28-201-003	164.56	Clark County	
T21S, R63E, Sec 29 S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$	160-29-601-001 160-29-301-001 160-29-701-002	230	Clark County	
T21S, R63E, Sec 30 N $\frac{1}{2}$ S $\frac{1}{2}$	160-30-000-002	160	Clark County	