**FINAL**
**PROGRAMMATIC AGREEMENT**
**AMONG**
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,**
**THE BUREAU OF LAND MANAGEMENT – CALIFORNIA,**
**AND**
**THE CALIFORNIA OFFICE OF HISTORIC PRESERVATION**
**REGARDING NATIONAL HISTORIC PRESERVATION ACT RESPONSIBILITIES**
**FOR**
**THE WEST MOJAVE PLAN ENVIRONMENTAL IMPACT STATEMENT AND**
**THE WEST MOJAVE ROUTE NETWORK PROJECT**

**WHEREAS**, this programmatic agreement (Agreement) is developed under the authority of Section 106 of the National Historic Preservation Act, as amended (NHPA) found at 54 USC § 306108 (Section 106) and its implementing regulations found at Title 36 Part 800 of the Code of Federal Regulations (36 CFR Part 800); specifically 36 CFR 800.14(b) which provides the Bureau of Land Management (BLM) with the authority to negotiate this Agreement to govern the resolution of adverse effects from complex project situations or multiple undertakings and 36 CFR 800.4(b)(2) which provides for phased historic property identification and evaluation efforts through a programmatic agreement; and

**WHEREAS**, in 2006, the BLM California Desert District Office signed the Record of Decision for the West Mojave Plan Amendment (WEMO) as an amendment to the California Desert Conservation Area (CDCA) Plan, which included designating a network of routes of travel on 3.2 million acres of public lands in the Barstow, Ridgecrest, Needles, and Palm Springs Field Offices; and

**WHEREAS**, the objectives of the BLM's travel management plans are to provide sustainable travel and transportation systems that provide access to public lands for a range of uses which compliment specific management goals and objectives in compliance with applicable laws and regulations including: 43 CFR 8342; the BLM's MS-1626 Travel and Transportation Management Manual (1626 Manual); the Council on Environmental Quality's Procedures for Implementation of the National Environmental Policy Act at 36 CFR Part 805; and the Federal Land Policy and Management Act (FLPMA) at 43 CFR 1610; and

**WHEREAS**, in 2009, the United States District Court for the Northern District of California (Court) issued a decision in response to *CBD, et al. v. BLM, et al.*, 3:06-cv-04884-SI brought by eleven environmental organizations against the BLM and the U.S. Fish and Wildlife Service which remanded portions of the 2006 decision; and

**WHEREAS**, the BLM will amend and revise the WEMO Plan and, through development of specific implementation-level travel management plans, referred to as the WEMO Route Network Project (WMRNP), decide upon the management of approximately 15,000 miles of existing transportation related linear features outside of Off-Highway Vehicle (OHV) Open Areas and managed by the BLM, including the designation of transportation-related linear features as either Motorized, Non-Motorized, Non-Mechanized use or transportation linear

disturbances (collectively, "Routes"); the routine maintenance, restoration and rehabilitation of existing Routes; and the classification of Routes for competitive use ("C" Routes"); and

**WHEREAS,** the BLM has determined that their actions associated with revising and amending the WEMO Plan and implementing travel management plans constitutes an Undertaking as defined in 36 CFR 800.16(y); and

**WHEREAS,** pursuant to 36 CFR 800.14(b)(1)(i) and (ii), the effects on historic properties are likely to be similar and repetitive, cross multiple regions, and cannot be fully determined prior to the approval of the Undertaking, ordered by the Court on a particular timeline**,** the BLM seeks to phase final identification and evaluation of historic properties in accordance with 36 CFR 800.4(b)(2); and

**WHEREAS**, the BLM is the lead federal agency, responsible for ensuring that all stipulations of this Agreement are carried out and is a Signatory to this Agreement; and

**WHEREAS**, the California Office of Historic Preservation (SHPO) has historic property management responsibilities under Section 106, 36 CFR Part 800 and 36 CFR Part 61 to advise and assist the BLM in complying with its Section 106 responsibilities for proposed undertakings on public lands in California and is a Signatory to this Agreement; and

**WHEREAS**, pursuant to the *Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which the BLM will Meet Its Responsibilities under the National Historic Preservation Act* and 36 CFR 800.6(a)(1)(c), the BLM has notified the Advisory Council on Historic Preservation (ACHP) to the Undertaking's potential for adverse effects and of its intent to develop this Agreement and the ACHP has elected to participate by formal notification received June 24, 2014, and is a Signatory to this Agreement; and

**WHEREAS,** the BLM has consulted with the SHPO and the ACHP pursuant to 36 CFR 800.14(b)(3) and following the procedures outlined at 36 CFR 800.6, and is in the process of considering alternatives for the Undertaking that have the potential to adversely affect historic properties and may reach a decision regarding approval of the Undertaking before the effects on historic properties have been fully determined, the BLM chooses to continue its assessment of the Undertaking's potential adverse effects and to resolve any such effects through the implementation of this Agreement; and

**WHEREAS,** this Agreement does not negate or supersede any agreements governing the project area or vicinity between the BLM and Tribes or Tribal Organizations in effect at the time the Agreement is executed, nor does it negate or supersede any agreement documents executed for existing projects within the project area or vicinity between the BLM and the SHPO pursuant to 36 CFR Part 800. If any agreement between the BLM and Tribes, or Tribal Organizations or between the BLM and the SHPO in effect at the time the Agreement is executed is found to be in conflict with this Agreement, the respective signatories will confer to resolve the conflict per Stipulation IX (B): Dispute Resolution. If the resolution results in a proposed amendment to this

Agreement, the provisions under Stipulation X: Amendment and Termination of this Agreement will be followed; and

**WHEREAS,** pursuant to the special relationship between the federal government and Indian tribes, and Section 101(d)(6)(B) of the NHPA (54 USC § 302706(b)), 36 CFR 800.2(c)(2)(ii), the American Indian Religious Freedom Act (AIRFA), Executive Orders including but not limited to 13007, and 13175, and Section 3(c) of the Native American Graves Protection and Repatriation Act (NAGPRA), the BLM as the lead federal agency is responsible for government-to-government consultation with federally recognized Indian tribes; and

**WHEREAS,** the BLM has formally notified and invited federally recognized Indian tribes including the Agua Caliente Band of Cahuilla Indians; the Big Pine Paiute Tribe of the Owens Valley; the Bishop Paiute Tribe; the Chemehuevi Indian Tribe; the Colorado River Indian Tribes; the Fort Independence Band of Paiute Indians; the Fort Mojave Indian Tribe; the Lone Pine Paiute-Shoshone Tribe; the Morongo Band of Mission Indians; the San Manuel Band of Mission Indians; the Soboba Band of Luiseno Indians; the Timbisha Shoshone Tribe; the Twenty-Nine Palms Band of Mission Indians; and the Tejon Indian Tribe (Tribes); and non-federally recognized Indian tribes including the Tubatulabals of Kern Valley; the Monache Intertribal Council; the Kern River Paiute Council; and the Kern Valley Indian Community (Tribal Organizations), to consult and coordinate on the proposed Undertaking and its possible effects on historic properties throughout the WEMO planning area that may be of religious and cultural significance; and to sign this Agreement as Concurring Parties. The BLM has documented its effort to consult and coordinate with Tribes and Tribal Organizations and a summary is provided in Appendix B to this Agreement; and

**WHEREAS,** the following Tribes and Tribal Organizations participated in the development of this Agreement: the Big Pine Paiute Tribe of the Owens Valley; the Bishop Paiute Tribe; the Chemehuevi Indian Tribe; the Colorado River Indian Tribes; the Fort Independence Band of Paiute Indians; the Fort Mojave Indian Tribe; the Lone Pine Paiute-Shoshone Tribe; the Morongo Band of Mission Indians; the San Manuel Band of Mission Indians; the Soboba Band of Luiseno Indians; the Timbisha Shoshone Tribe; the Twenty-Nine Palms Band of Mission Indians; the Tejon Indian Tribe; and the Kern Valley Indian Community; and

**WHEREAS,** the BLM will continue to consult with Tribes and Tribal Organizations throughout the implementation of this Agreement regarding the phased identification and evaluation efforts and the resolution of adverse effects to historic properties to which Tribes and Tribal Organizations may attach religious and cultural significance. The BLM, as the lead federal agency, and the other Signatories to the Agreement recognize that Tribes and Tribal Organizations have continuing deep interests in their Ancestral Lands that are now owned and managed by the United States government. These interests may range far beyond historic properties as defined by 36 CFR 800.16(l)(1); the BLM commits to accord Tribal Officials the appropriate respect and dignity of the position as leaders of sovereign nations and will make every effort to understand and consider Tribal interests in these Lands. The BLM will carry out its responsibilities to consult and coordinate with Tribes and Tribal Organizations with the further understanding that, notwithstanding any decision by these Tribes and Tribal

Organizations to decline concurrence with this Agreement, the BLM shall continue to consult and coordinate with these Tribes and Tribal Organizations throughout the implementation of this Agreement; and

**WHEREAS**, the BLM has invited the following federal and state government agencies to participate in the development of this Agreement: Joshua Tree National Park; Death Valley National Park; Mojave National Preserve; Inyo National Forest; San Bernardino National Forest; Sequoia National Forest; US Naval Air Weapons Station, China Lake; US Air Force Base Edwards; US Marine Corps Air Ground Combat Center Twentynine Palms; US Army Garrison Fort Irwin; the United States Fish and Wildlife Service; California State Parks, Off-Highway Motor Vehicle Recreation Division; California Department of Fish and Wildlife; California State Lands Commission; and California Department of Transportation, District 6, District 7, District 8, and District 9; and has invited them to sign this Agreement as Concurring Parties; and

**WHEREAS,** the following government agencies participated in the development of this Agreement: Joshua Tree National Park; Death Valley National Park; Mojave National Preserve; Inyo National Forest; Sequoia National Forest; US Army Garrison Fort Irwin; the United States Fish and Wildlife Service; California State Parks, Off-Highway Motor Vehicle Recreation Division; California Department of Fish and Wildlife; California State Lands Commission; and California Department of Transportation; and

**WHEREAS,** the BLM has invited the following local governments to participate in the development of this Agreement: Inyo County; Kern County; Los Angeles County; San Bernardino County; and Riverside County, and has invited them to sign this Agreement as Concurring Parties; and

**WHEREAS,** the following local governments participated in the development of this Agreement: Inyo County and San Bernardino County; and

**WHEREAS,** the BLM has invited the following organizations and individuals to participate in the development of this Agreement: American Motorcycle Association; American Rock Art Research Association; California Off-Road Vehicle Association; Friends of El Mirage; Friends of Jawbone; Friends of Public Land Cabins; the Historical Society of the Upper Mojave Desert; Maturango Museum; Mojave Air Resources Board; Mojave River Museum; National Public Lands News; Off-Road Business Association; Old Spanish Trail Association; Searles Valley Historical Society; United 4 Wheel Drive Association; Western San Bernardino Landowners Association; and individuals with demonstrated interest in the Undertaking, Mr. Mark Algazy and the Desert Tortoise Council; and has invited them to sign this Agreement as Concurring Parties; and

**WHEREAS,** the following local organizations and individuals participated in the development of this Agreement: American Rock Art Research Association; California Off-Road Vehicle Association; Friends of El Mirage; Friends of Jawbone; Friends of Public Land Cabins; the Historical Society of the Upper Mojave Desert; Maturango Museum; National Public Lands News; Searles Valley Historical Society; Mr. Mark Algazy and the Desert Tortoise Council; and

**WHEREAS**, for the purposes of this Agreement, "Consulting Parties" collectively refers to the Signatories and Concurring Parties, and shall include Tribes or Tribal Organizations regardless of their decision to sign this Agreement; and

**NOW THEREFORE,** the Signatories have determined that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties, resolve such adverse effects through the process set forth in this Agreement, and further agree that these stipulations shall govern the Undertaking and all of its parts until this Agreement, is modified, expires or is terminated.

## DEFINITIONS

Terms used in this Agreement are defined in Appendix A and are consistent with the definitions found in 36 CFR 60.3; 36 CFR 800.16; BLM 8100 Manual Identifying and Evaluating Cultural Resources (8100 Manual); and the 1626 Manual. All other terms not defined have the same meanings as set forth in the above-mentioned resources.

## STIPULATIONS

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

## I. AREA OF POTENTIAL EFFECTS

**A.** The BLM in consultation with SHPO and the Consulting Parties has determined and documented the area of potential effects (APE) for the Undertaking, in accordance with 36 CFR 800.16 (d). The APE for the Undertaking is shown on Attachments 1 and 2 to this Agreement. The APE is influenced by the scale and nature of the Undertaking and is based on potential direct, indirect, and cumulative effects associated with route designation under 43 CFR 8342, routine maintenance, restoration and rehabilitation activities and classification of "C" Routes. The APE, as currently defined, encompasses an area sufficient to accommodate all of the proposed alternatives of the WMRNP and account for the direct and indirect effects of the 2006 WEMO Plan. The BLM utilized current cultural resource information in the development of the proposed alternatives for the WMRNP, based on the results of a review and update to the BLM cultural resource GIS records. The APE is determined as follows:

**i.** The direct APE for Routes proposed for designations will be 50 feet beyond any existing or allowable ground disturbance associated with the route. Designated off-route parking or camping areas will be within the direct APE.

**ii.** The indirect APE will vary based on the presence of cultural resources identified during previous record searches; topography; visibility of historic properties from a Route; the vulnerability of historic properties to atmospheric, visual or auditory effects and looting; the extent of Traditional Cultural Places (TCPs) or districts; or other factors identified during on-going consultation with the Consulting Parties.

**iii.** The indirect APE extends to the visual horizon, not to exceed one mile on either side of the direct APE of a Route, unless otherwise identified by a Consulting Party in consultation or as identified through additional analysis.

**iv.** Where the indirect APE includes TCPs, properties of religious and cultural significance, and other classes of historic properties to which setting, feeling, and/or association contribute to eligibility, additional analysis may be required and the indirect APE may be modified according to Stipulation I.C below.

**B.** In some cases, historic properties and properties of religious and cultural significance may extend well beyond the narrow APE of the Route. Such properties will be identified through consultation with the Consulting Parties with applicable knowledge.

**C.** The BLM may modify the APE, in consultation with the Consulting Parties, without amending the Agreement. If it is determined, in the future, that the Undertaking may directly or indirectly affect historic properties located outside the currently defined APE, the BLM, in consultation with the Consulting Parties, shall modify the APE using the following process:

**i.** Any Consulting Party may propose that the APE established herein be modified. The BLM shall notify all Consulting Parties of the proposal to modify the APE, including a map and description of the proposed modification. The BLM will consult for no more than 30 days in an effort to reach consensus on the proposed modification. The BLM will keep copies of the description and the map on file for its administrative record and report the modification of the APE as part of the annual reporting requirements of Stipulation IV.E and during regularly scheduled Consulting Party meetings.

**ii.** If the modification to the APE adds a new geographic area, the BLM will identify historic properties in the new APE area, assess the effects of the Undertaking on any historic properties in the new APE area, and consult to seek resolution of adverse effects to such properties in accordance with the process outlined in Stipulation IV of this Agreement.

**iii.** If the Consulting Parties cannot agree to a proposed modification of the APE, then the BLM will consider the concerns and will render a final decision.

## II. TRIBAL CONSULTATION

**A.** The BLM is the lead federal agency responsible for consultation and coordination with Tribes and Tribal Organizations under this Agreement.

**B.** The BLM shall coordinate and consult on a government-to-government basis with designated Tribal representatives in the identification, evaluation, and treatment of resources to which the Tribes and Tribal Organizations may attach traditional religious and cultural significance [36 CFR 800.16(l)] and to determine whether they are historic

properties.

**i.** Tribes and Tribal Organizations may identify specific resources that meet the definitions of historic properties at 36 CFR 800.16(l) and 36 CFR 60.3 defined as districts, sites, buildings, structures, and objects through on-going consultation. Such resources may include but are not limited to:

**a.** Prehistoric and historic sites and districts;

**b.** Multicomponent and historic sites that are related to Native American history and /or contain Native American artifacts and/or features;

**c.** Traditional Cultural Places;

**d.** Isolated objects, materials or occurrences of religious and cultural significance.

**ii.** The BLM requests that any resources of traditional religious and cultural significance known to Tribes or Tribal Organizations that are located within the APE be identified by Tribes or Tribal Organizations in consultation.

**iii.** The BLM will endeavor to provide Route maps and Route-related GIS data that are easily understood by representatives in the consultation process.

**C.** Agency and Tribal Points of Contact

**i.** The BLM Point of Contact (POC) for official correspondence shall be the California Desert District Deputy District Manager for Resources, or designee.

**ii.** On behalf of each Tribe and Tribal Organization, the Tribal Chairperson shall be the official POC. A representative(s) in addition to the Tribal Chairperson may be designated in writing by the Tribal government to represent the Tribe or Tribal Organizations for the purposes of Section 106 consultation [36 CFR 800.2(C)(2)].

**iii.** Communication between the BLM and Tribes and Tribal Organizations will follow Stipulation III.A(ii).

**D**. The BLM will continue government-to-government consultation with Tribes and coordination with Tribal Organizations throughout the implementation of this Agreement, notwithstanding any decision by a Tribe or Tribal Organization to decline concurrence to this Agreement.

**E**. The BLM will invite and coordinate further Tribal participation in the BLM's Section 106 identification, evaluation, and treatment efforts.

## III. PARTICIPATION OF CONSULTING PARTIES AND NOTIFICATION TO THE PUBLIC

**A.** Throughout the duration of the Agreement, the BLM will seek, discuss, and consider the views of the Consulting Parties and will, where feasible, seek agreement with them [36 CFR 800.16 (f)] when making decisions under the stipulations of this Agreement.

**i.** The Consulting Parties are responsible for providing updated contact information to the BLM.

**ii.** Unless otherwise agreed, Consulting Parties shall have 30 days to respond to a review of documents and deliverables associated with this Agreement, from receipt of a formal request for review. The BLM shall make reasonable attempts to contact Consulting Parties to confirm the participation of the Consulting Party in review. "Reasonable attempts" may include contacting the Tribal Chairperson, designated staff or representatives of the Consulting Parties by Certified Letter, email and/or follow-up telephone call. Where the period for review or comment has passed after such reasonable attempts, the BLM shall assume that the Consulting Party has elected not to comment. The BLM will proceed with the proposed course of action, after taking into consideration the comments from other Consulting Parties, and without that party's comments on the matter.

**iii.** The BLM will utilize BLM webpages and the public participation process described in NEPA to notify the Public regarding the activities carried out pursuant to this Agreement.

**a.** The BLM will post the final Agreement, including any amendments, and all annual reports associated with this Agreement to the BLM California State Office and WMRNP webpages. The BLM will notify Consulting Parties of such postings by the methods described in Stipulation III.A(ii).

**b.** The BLM will ensure that activities associated with the Agreement that require NEPA documentation are posted to the appropriate managing BLM Field Office webpage. At a minimum the pending Undertaking's NHPA Section 106 information will be updated when the NEPA review is initiated and again when it is completed.

**c.** The activity information will include a basic project location and description of either the proposed finding of effect, (i.e. no historic properties affected, no adverse effect to historic properties, or adverse effect to historic properties) or the proposed use of an exemption under the Agreement if that is the case.

## IV. IDENTIFICATION, EVALUATION AND TREATMENT OF HISTORIC PROPERTIES

### A. Identification of Historic Properties:

The BLM shall make a reasonable and good faith effort to identify cultural resources in the APE. The BLM will determine if any of the cultural resources identified within the APE, including resources with religious and cultural significance to a Tribe or Tribal Organization, meets one or more of the eligibility criteria for the National Register of Historic Places (National Register) specified in 36 CFR 60.4. Resources that meet one or more criteria shall be considered historic properties. The BLM will carry out identification efforts for this Undertaking in phases, which may be completed or undertaken concurrently. To the extent that the phases require formalized documentation of process or have a specific timeline for completion, the BLM will incorporate the tasks as part of the Historic Properties Management Plan (HPMP). The phases of the Agreement are described as follows:

**i.** Phase 1 – Literature Review – The BLM completed a records review and annotated bibliography of inventory related to Routes for the WEMO Plan Revision to assist in the development of NEPA alternatives. The BLM will conduct additional literature reviews in order to have current data in advance of subsequent cultural inventories and to ensure properly identified research themes for the development of the Evaluation Plan for Phase 6 of the Undertaking, and as described in Stipulation IV(vi)(f)(3). Additional literature reviews may include more extensive scholarly research to identify particular property types; such methods of identification may include but are not limited to ethnographic research; examination of old maps and surveyors' reports; oral histories; interviews with Tribal Elders; and examination of primary archival resources such as Mission Records and travelers' diaries.

**a.** In addition to inventory efforts of the direct APE as described in Stipulation IV.A (iv), below, the BLM will conduct a Class I records review for one mile beyond the direct APE to account for the indirect APE. The BLM will conduct a GIS based viewshed analysis to refine the indirect APE. Where the GIS based sensitivity model results (Stipulation IV(iii) below) and viewshed analysis results indicate high visibility and high sensitivity, the BLM will consult with Consulting Parties to develop additional identification efforts.

**b.** The Class I Survey will result in a landscape level report synthesizing the data of the planning area rather than Route specific analyses. The BLM will be responsible for this report. The BLM will update the literature reviews and report every five years during the life of this Agreement. The literature reviews and reports for the direct and indirect APE, and the products of any scholarly research with all confidential or sensitive information redacted pursuant to Stipulation IX.A below, will be provided for review to the Consulting Parties either prior to the Record of Decision, or on a schedule as determined through consultation pursuant to Stipulation IV.A(vi).

**ii.** Phase 2 – Seek additional information – Pursuant to 36 CFR 800.4(a)(3), the BLM will continue to gather information from the Consulting Parties, other individuals, and organizations likely to have knowledge of or concerns with historic properties in the planning area, and identify issues relating to the Undertaking's potential effects on

historic properties. This phase will be on-going throughout the life of the Agreement.

**iii.** Phase 3 – GIS-Based Sensitivity Model – The BLM has developed a GIS-based Cultural Resource Sensitivity Model (Model) using known cultural resource location data and environmental factors (e.g. slope, aspect, elevation, hydrology, flora, landforms, or other landscape attributes and natural features). The BLM will compare the results of the Model with the results of randomly selected cultural resource inventories of Routes conducted during 2014-2015 to test the validity and further refine the Model. The BLM will provide documentation of the Model development to the Consulting Parties for review within 90 days of execution of this Agreement. The Model documentation will be included in the HPMP. The Model will be dynamic, adaptive, and will be refined through further data acquisition and application of the Model, including inventory and consultation with Consulting Parties.

**iv.** Phase 4 – Develop Route Inventory Prioritization/Strategy – Where BLM determines that less than a Class III survey of the direct APE is appropriate, the BLM, in consultation with the Consulting Parties, will develop a strategy of inventory priorities based on the results of the GIS-Based Sensitivity Model and the Recreation Use-Levels of the planning area (Strategy). The BLM shall seek informally the views of the SHPO staff concerning the justification and Strategy for the reduced level of inventory. The SHPO may concur with the proposed approach or may request that the BLM employ a Class III inventory. The BLM will take any requests into account and proceed at their discretion.

Priority and strategies for inventory will vary depending on the quality of existing information; extent of potential change to the Route by motorized, mechanized, non-motorized or non-mechanized use; the expected density and nature of historic properties; and the potential direct, indirect, and cumulative effects of proposed designations. The Strategy will be adaptive and may be modified as new information and data are gathered through consultation, inventory, and coordination with BLM Recreation staff, for example, where changes in the network of Routes result in a shift, concentration, or expansion of travel onto other designated Routes where historic properties are likely to be adversely affected. The Strategy will be formalized as part of the HPMP.

**v.** Phase 5 – Class III Inventory of Routine Maintenance, Restoration and Rehabilitation Activities and Classification of "C" Routes – The BLM, acknowledging the compliance requirements of the Court, will continue Section 106 review and Class III inventory of implementation actions associated with routine maintenance, restoration and rehabilitation activities, and classification of competitive routes. These activities will be on-going throughout the life of the Agreement.

**a. Routine Maintenance, Restoration and Rehabilitation Activities:** Routine maintenance activities may include: maintaining Route surfaces with heavy equipment; installation of erosion control features; installation of fencing; barriers

and other traffic controls; and the removal of attractants and debris not older than 45 years. Restoration and rehabilitation activities may include: decompaction of Route tread; terracing, seeding and vertical mulching to obliterate Route tread; and installation of fencing, barriers and other traffic controls. For routine maintenance activities or restoration and rehabilitation activities that result in ground disturbance on Routes not previously subjected to Section 106 review, the BLM will conduct Class III inventory of the APE (proposed direct effects plus a 50 foot buffer surrounding the disturbance) prior to implementation of the proposed action. No additional identification efforts are required if the APE is entirely within areas that have been previously inventoried; and the BLM archaeologists from either the Barstow or Ridgecrest Field Office have determined that the previous identification efforts represent a reasonable and good faith effort and conform to the prevailing professional survey standards for the geographic region, provided that the regional standards meet or exceed the Secretary's Standards and Guidelines. When assessing and certifying the adequacy of previous inventory work (i.e., reports and documentation), BLM archaeologists shall consider the following measures, with additional review for inventories completed greater than 15 years ago:

1. when the inventory was done;
2. experience level and survey objectives of the person or persons who did the inventory;
3. whether there are any previously identified problems with similar inventories;
4. what parties were consulted and how;
5. whether methodology accounted for prehistoric resources, properties of traditional religious and cultural significance, and historic resources;
6. changes in environmental conditions (e.g., burn areas where the potential exists for new exposure of resources; erosion, landslides, flood events or other actions which may cause the exposure or natural destruction of sites);
7. and adequacy of previous documentation.

**b. Classification of "C" Routes:** For Routes not previously designated for competitive use nor subjected to Section 106 inventory, the BLM will conduct Class III inventory of the APE of the Route prior to opening those Routes for competitive use.

**c.** The determination and the justification for determining that a prior survey was adequate to identify historic properties shall be explained in the annual report to the Consulting Parties pursuant to Stipulation IV.E.(iv) and will be subject to Stipulation IX.B Dispute Resolution. The BLM may at any time invite the SHPO or Consulting Parties to comment on the adequacy of previous inventory.

**vi.** Phase 6 – Development of the Historic Properties Management Plan – The BLM, in consultation with the Consulting Parties, will develop a HPMP that will formalize the inventory strategy, evaluation plan and specific processes for the Undertaking.

**a.** The BLM will develop the HPMP subsequent to the issuance of the BLM NEPA Record of Decision and within one (1) year of execution of this Agreement, or other period as agreed to by the Signatories.

**b.** The HPMP may be completed in phases and by task, as directed by BLM. The HPMP will specify how each task will be carried out, when it will be completed for each segment of the Undertaking, and shall provide sufficient flexibility to allow the BLM to fulfill requirements of the Court. Cultural resource mitigation measures for the alternative chosen in the BLM Record of Decision will be incorporated into the HPMP.

**c.** In consultation with the Consulting Parties, components of the HPMP may be prepared and implemented in phases prior to the completion of the final HPMP and will be incorporated into the final HPMP as agreed. The BLM will submit the individual phased components of the HPMP as they are drafted to Consulting Parties for a 30-day review and comment period. The BLM will consider all comments and revise the individual components as appropriate. The BLM, within 30 days of close of the comment period, will provide the reviewing Consulting Parties with written documentation indicating whether and how the individual components have been modified. The BLM will submit the revised individual components of the HPMP to the SHPO for an additional 15-day review and concurrence.

**d.** The BLM will submit the draft final HPMP to all Consulting Parties for a 45-day review period. The BLM may schedule Consulting Party meetings to review the HPMP as appropriate. The BLM may assume the concurrence of Consulting Parties that do not submit comments within this timeframe. The BLM, within 30 days of the close of the comment period, will provide the Consulting Parties with written documentation indicating whether and how the draft HPMP has been modified in response to any timely comments received.

**e.** The BLM will submit the draft final HPMP to the SHPO for an additional 15-day review and concurrence. If the BLM and the SHPO cannot reach an agreement on the components of the HPMP or the draft Final of the HPMP during the review period, the review period may be extended an additional 30 days or until such time an agreement is reached. If the BLM and the SHPO are unable to reach consensus after the additional review period, resolution will follow Stipulation IX. B.

**f**. The HPMP may include but will not be limited to the following:

1. Formalized Route Inventory Prioritization Strategy developed in Stipulation IV.A (iv).

2. Development of a comprehensive list of exemptions, or activities associated with routine maintenance, restoration and rehabilitation activities that may be exempt from further Section 106 review under this Agreement. These activities are generally exempt, but may require a records check to determine whether the activity may affect a known historic property or unevaluated cultural resource. Such exemptions shall be documented in a memo to the BLM project files in order to demonstrate compliance with Section 106. The activities may include, but are not limited to:

   **a)** Debris removal and clean out of culverts and lead outs;

   **b)** Removal of brush and vegetation to reduce safety hazards or improve passage along a route where removal does not result in surface disturbance;

   **c)** Removal of trash, structures, and materials such as abandoned automobiles, fences, buildings, and scattered refuse that do not exceed 45 years of age;

   **d)** Installation/removal of carsonite signs or metal t-post bars for signs;

   **e)** Installation/removal of signs or kiosks where disturbance does not exceed two square meters of cumulative disturbance in any given one acre location;

   **f)** Placement of educational or informational signs on existing posts or kiosks;

   **g)** Seed scattering that does not include drilling or trenching;

   **h)** Raking, sweeping, or blowing away tracks when little or no vegetation trampling or soil compaction has occurred.

3. Development of an Evaluation Plan that identifies research questions that will form the basis of evaluation tailored to the type and age of historic properties present and which will be applied to the identification and evaluation of as-yet-unidentified potential historic properties. The Evaluation Plan will be regularly updated as more research and data for the region becomes available.

**4.** In accordance with Stipulation IV.A(i)(b), the BLM will establish the methods and basic research questions to direct the development of a historic context for prehistoric, contact-era and historic trail networks in the WEMO area. The final context document will be completed within 5 years of execution of the Agreement to allow for adequate scholarly research and consultation with Consulting Parties.

**5.** Development of a comprehensive list of Standard Protective Measures that can be applied to minimize and mitigate adverse effects to historic properties.

**6.** Development of a Condition Assessment Program that will be used to track the effectiveness of Standard Protective Measures applied during implementation of this Agreement and the conditions of historic properties listed or determined eligible for listing in the NRHP.

**g.** Upon final acceptance by the BLM in consultation with the SHPO, the HPMP will be appended to this Agreement as Appendix C and the final document provided to all Consulting Parties.

**h.** Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the Consulting Parties only require written notification by BLM to the Consulting Parties prior to going into effect. The amendment process under Stipulation X is not applicable to such changes.

**vii.** Phase 7 – Development of Historic Property Treatment Plans – The BLM, in consultation with the Consulting Parties, may develop property-specific Historic Property Treatment Plans (HPTPs) if the BLM, in consultation with Consulting Parties, determines Standard Protective Measures developed as part of the HPMP and listed in Stipulation IV.D are not sufficient for the protection of a historic property. The process for developing, reviewing, and commenting on an HPTP will follow Stipulation IV. A(vi) (c) and (d) above.

**a.** Upon final acceptance by the BLM and the SHPO, any HPTP developed as part of this Agreement will be appended to this Agreement within Appendix D.

**b.** Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the Consulting Parties only require written notification by the BLM to the Consulting Parties prior to going into effect. The amendment process under Stipulation X is not applicable to such changes.

**viii.** Any disputes that may arise between the BLM and another Consulting Party over the phased approach as outlined above shall be resolved in accordance with Stipulation IX.B below.

**B. Evaluation of Historic Properties**

For each property that is identified within the APE as affected by any activity described as part of Stipulation I.A, the BLM, in consultation with the Consulting Parties, will determine NRHP eligibility pursuant to 36 CFR 800.4(c)(1). These may include properties of religious and cultural significance to Tribes or Tribal Organizations

**i.** Where resources are identified but will be avoided or protected by implementing Standard Protective Measures, the BLM may treat such resources as eligible for inclusion in the National Register without formal evaluation.

**ii.** The BLM will make determinations of NRHP eligibility based on the Evaluation Plan developed as part of the HPMP.

**iii.** The BLM may make determinations of NRHP eligibility prior to completion of the Evaluation Plan. The BLM will apply the criteria for evaluation found in 36 CFR 60.4 and National Register Bulletin 15 to all cultural resources that may be affected, including TCPs and properties of religious and cultural significance. The BLM shall provide sufficient written context and justification to support each determination but it need not be a full-scale evaluation report.

**iv.** BLM also acknowledges that Tribes and Tribal Organizations possess special expertise in assessing the eligibility of historic properties that may have religious and cultural significance to Tribes and Tribal Organizations in accordance with 36 CFR 800.4(c)(1).

**v.** The BLM will distribute determinations of NRHP eligibility to Consulting Parties, with confidential or sensitive information redacted pursuant to Stipulation IX.A below, for review and comment following 36 CFR 800.4(c) for a 30 day review period. The BLM will distribute determinations, at a minimum, during any of the regularly scheduled consultation meetings pursuant to Stipulation IV.E, or as necessary based on activities pursuant to Stipulation IV.A.

**a.** The BLM will concurrently request SHPO review and concurrence on the agency proposed determinations of eligibility.

**b.** The BLM will forward to the SHPO all comments received during the 30 day review and comment period.

**c.** After the 30-day comment period, the SHPO will have 10 days to provide any comments on the determination or concur with the BLM's determination.

**d.** If the SHPO and BLM agree that the cultural resource is not eligible for listing in the NRHP, no further review or consideration under this Agreement will be required for such resources.

**e.** If the SHPO and BLM agree that the property is eligible, then effect determinations will be made in accordance with Stipulation IV.C.

**f.** If the SHPO and BLM do not agree on eligibility, the BLM will consult further with the SHPO. If agreement cannot be reached within 30 days, the BLM will obtain a determination of eligibility from the Keeper of the National Register (Keeper) pursuant to 36 CFR 800.4(c)(2) and 36 CFR Part 63. The Keeper's determination will be final.

**g.** Pursuant to 36 CFR 800.4(C)(2), if a Tribe or Tribal Organization that attaches religious and cultural significance to a property located off Tribal lands does not agree with the BLM determination of eligibility, the Tribe or Tribal Organization may ask the ACHP to request that the BLM obtain a determination of eligibility from the Keeper.

**C. Assessment of Effects**

The BLM will, in consultation with the Consulting Parties, make findings of effect consistent with 36 CFR 800.4(d) and identify any adverse effects to historic properties within the APE in accordance with the criteria established at 36 CFR 800.5(a)(1) and (2)(i)-(vii).

**i.** The BLM will provide to Consulting Parties the results of the findings, with confidential or sensitive information redacted pursuant to Stipulation IX.A below, concurrently with the distribution of inventory results and determinations of eligibility for a single 30-day review and comment period.

**ii.** The BLM will concurrently request SHPO review and concurrence on the agency proposed findings of effect. The BLM will follow the timelines for SHPO review of comments as described in Stipulation IV. B(v)(c) above.

**iii.** If the BLM determines the effect may be adverse, the BLM will make a reasonable and good faith effort to avoid or minimize adverse effects to the most reasonable and fitting extent. Avoidance of historic properties is the preferred method to address potential adverse effects and the BLM will seek avoidance to the maximum extent practicable.

**iv.** The BLM will consider the views of Consulting Parties in the resolution of adverse effects. If adverse effects cannot be avoided, the BLM, in consultation, will develop an HPTP in accordance with Stipulation IV.A(vii) above. These determinations will serve as the basis for the development of specific HPTPs, if Standard Protective Measures developed as part of the HPMP are not sufficient.

**D. Standard Protective Measures**

The BLM will further define Standard Protective Measures as a component of the HPMP, and may further refine measures for specific classes of impacts, in specific

environments, and for specific types of historic properties in the HPMP. For cultural resources assumed eligible and immediately threatened or adversely effected by Route use and associated activities, the following Standard Protective Measures may be applied unless or until site-specific measures are developed. The BLM will define any necessary site-specific treatment in separate HPTPs, if required. For historic properties that have been determined eligible for inclusion on the NRHP and which are determined to be adversely effected by activities associated with Routes, the BLM may require additional protective measures developed in consultation with Consulting Parties.

**i.** BLM's Standard Protective Measures can include, but are not limited to:

**a**. Redirecting Routes to avoid historic properties, where the modification does not result in impacts to additional resources.

**b**. Changing designations to uses that cause less impacts (e.g. Motorized to non-motorized, non-mechanized).

**c**. Closure and restoration of the route using standard methods developed by the Recreation Staff and approved by the Cultural Resources Staff.

**d**. Fencing or exclosure of a historic property, sufficient to ensure long-term protection, according to the following specifications:

**1.** The BLM will ensure construction of the exclosure is not a hazard to life and safety; and

**2**. The area within the exclosure must be inventoried to locate and record all historic properties; and

**3.** The exclosure fence must not divide a historic property so that a portion is outside of the fence; and

**4.** The BLM Cultural Resource Staff will determine the appropriate buffer to be included between the cultural resource and its exclosing fence.

**e**. Excluding areas with historic properties from Special Recreation Permitted events (e.g. race courses, organized group camping sites, filming locations).

**f.** Removal of unauthorized, man-made, non-contributing, or intrusive attractants to a historic property when such removal, in the judgment of the BLM Cultural Resource Staff, will create no disturbance to or have no effect on the property (e.g. removing fire rings, picnic tables, modern trash or structures determined not to be historic properties).

**g**. Other protective measures may be established in consultation with Consulting Parties, as appropriate.

**ii.** Standard Protective Measures that are implemented will be reported annually pursuant to Stipulation IV.E.

**iii.** The BLM will consult with Tribes and Tribal Organizations prior to the application of Standard Protective Measures that have the potential to limit access to resources of religious and cultural significance. Where these resources have been identified in consultation, the BLM will work with Tribes and Tribal Organizations to design appropriate protection that will not violate EO13007 and AIRFA.

**E. On-Going Consultation Meetings and Annual Reporting**

The BLM acknowledges the complexity and scale of the Undertaking and will continue to facilitate meaningful consultation throughout the life of this Agreement. The BLM will coordinate and facilitate Consulting Party meetings three times per year for the first three (3) years of this Agreement. The meeting purpose is to update the Consulting Parties on the progress of the Agreement implementation and to receive feedback and information from the Consulting Parties regarding significant issues or resources that may not be identified prior to the execution of this Agreement.

**i.** The BLM POC in Stipulation II.C is responsible for scheduling meetings. The BLM will provide telephone and web-based access to any in-person meetings when available.

**ii**. The BLM will generally schedule meetings for the months of January, May, and September each year.

**iii**. The schedule of three times yearly Consulting Party meetings will be reviewed in Year Three (3) of the Agreement.

**iv**. The BLM will report annually to the Consulting Parties a summary, in writing, of activities carried out under this Agreement during the previous fiscal year. The BLM will provide the report by November 30 of each year, coinciding with the BLM's regular reporting schedule to SHPO. The report will be the primary subject of the Consulting Party meeting in January.

**a.** Annual reports shall be programmatic summaries of data and significant findings and not compilations of the individual project reports prepared for each activity. At a minimum, the report will include:

**1.** Total acreage and total route mileage inventoried;

2. Total number of resources identified by type;

3. Total number of condition assessments carried out;

4. Descriptions, as appropriate, of historic properties recommended eligible for the NRHP;

5. Summaries of additional consultation efforts;

6. Summaries of unanticipated effects or post-review discoveries with appropriate considerations for confidentiality/sensitivity in accordance with Stipulation IX.A;

7. Number and types of applications of Standard Protective Measures;

8. Any treatment that exceeds the application of Standard Protective Measures; and

9. Total number of route miles affected by the application of Standard Protective Measures.

**F. Final Documentation**

In the final year of the Agreement, the BLM will produce a synthesis report of all findings and activities associated with this Undertaking and provide a copy of the document to the Consulting Parties.

## V. TREATMENT OF HUMAN REMAINS

**A.** In the event of an inadvertent discovery of human remains, the BLM manager for the corresponding field office must be notified immediately by telephone and with written confirmation [43 CFR 10.4(a)]. No additional disturbance may take place and all work in the area must cease immediately within a 300-foot radius of the discovery. The 300-foot radius must be secured and all personnel and equipment will be excluded from this area to the extent practicable and permitted by law until a determination is made of the next action. All human remains, burial sites, and funerary objects will be treated with dignity and respect.

**B.** The BLM shall notify the County Coroner's Office of the county where the remains are located, requesting, if possible, the remains be examined in place. The Coroner has two working days to examine the remains after notification. The Coroner must determine if the remains are related to a crime scene or a recent burial. For human remains determined by the Coroner to be related to a crime scene or recent burial, the BLM will follow the protocols determined by the appropriate law enforcement agents for resolving such findings.

**C.** For inadvertent discoveries of human remains determined by the Coroner to not be related to a recent burial or crime scene, the BLM will be immediately notified of this determination. The BLM will be responsible for determining if the human remains are Native American. Inadvertent discoveries of human remains on federal lands determined to be Native American and any associated funerary objects shall be treated in accordance with the provisions of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and its implementing regulations at 43 CFR Part 10.

**i.** Pursuant to 43 CFR 10.4(d), the BLM, as soon as possible, but no later than 3 working days after receipt of written confirmation of notification of the inadvertent discovery, will:

**a**. Certify receipt of the notification [43 CFR 10.4(d)(1)(i)];

**b**. Take immediate steps to further secure and protect the human remains and associated objects [43 CFR 10.4(d)(1)(ii)];

**c**. Notify any lineal descendants or culturally affiliated Tribes by telephone with written confirmation [43 CFR 10.4(d)(1)(iii)];

**d.** Initiate consultation on the inadvertent discovery pursuant to 43 CFR 10.5 [43 CFR 10.4(d)(1)(iv)];

**e.** If any part of the discovery must be excavated or removed, follow the requirements and procedures outlined in 43 CFR 10.3(b) [43 CFR 10.4(d)(1)(v)]; and

**f.** Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following 43 CFR 10.5 [43 CFR 10.4(d)(1)(vi)].

**D.** Once it has been determined the remains are not recent and subject to the authority of the County Coroner and are Native American, and if the identified human remains could be adversely affected by the proposed work, the BLM will re-design the proposed activity to the extent practicable and permitted by law to avoid any further adverse effect on the discovery.

**E.** Pursuant to 43 CFR 10.4(d)(2), the activity that resulted in the inadvertent discovery may resume 30 days after the BLM certifies receipt of the written confirmation of notification of inadvertent discovery, if the resumption of the activity is otherwise lawful. The activity may also resume, if otherwise lawful, at any time that a written, binding agreement is executed between the Federal agency and the affiliated Indian tribe(s) that adopt a plan for the treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony following 43 CFR10.3 (b)(1).

**F.** The BLM will ensure that any archaeological excavation that is allowable under this Agreement through a specific Historic Property Management Plan will be consistent with the regulations pertaining to intentional archaeological excavations pursuant to 43 CFR 10.3.

## VI. POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS

**A.** A post-review discovery is defined as the identification of previously unknown historic properties within the context of BLM activities other than those planned as archaeological excavations.

**B.** The BLM, in consultation with Consulting Parties, will develop a comprehensive plan to manage post-review discoveries and unanticipated effects as part of the HPMP.

**C.** In the event that any post-review discoveries or unanticipated effects occur prior to development of the HPMP, the BLM shall ensure the following measures are implemented.

**i.** The BLM or agents acting on behalf of the BLM for activities covered by the Agreement, will halt all surface disturbing activities within 100 feet of any post-review discovery, protect any exposed archaeological resources, and notify the appropriate archaeologist and the BLM field manager within 24 hours.

**ii.** The BLM will inspect the discovery within 48 hours and will apply the National Register criteria to determine if the discovery is eligible for listing in the National Register in accordance with Stipulation IV. B of this Agreement.

**iii.** The BLM shall notify the SHPO, the ACHP, and the Tribes or Tribal Organizations, as appropriate, within 48 hours of the discovery and shall provide formal notification of the BLM's assessment of National Register eligibility and proposed actions to resolve any adverse effects.

**iv.** The SHPO, Tribes or Tribal Organizations shall respond within 48 hours of the notification. The BLM shall take into account their recommendations regarding National Register eligibility and the proposed actions, and then carry out the appropriate actions. The BLM shall provide the Consulting Parties a report of the actions when they are completed.

**iv.** Should the discovered cultural resource be identified by a Tribe or Tribal Organization as a property of traditional cultural and religious significance, the BLM will consult with the appropriate Tribe or Tribal Organization regarding eligibility and treatment.

**v.** Post-review discoveries which are not being adversely affected by the activity and which can be avoided will be protected, monitored, and to the extent possible, avoided by future operations.

**vi.** Standard Protective Measures in accordance with Stipulation IV.D. will be applied as appropriate or specific treatment will be developed in consultation.

**vii.** The BLM field manager may allow for the resumption of work following completion of review and consultation.

## VII. CURATION

The BLM will avoid historic properties to the extent possible during the implementation of activities associated with this Agreement. Any archaeological materials, with the exception of NAGPRA items, that are collected during any work undertaken pursuant to this Agreement or the Undertaking shall be curated in accordance with federal law and regulations, including 36 CFR Part 79, in repositories that meet federal standards and have no policies or conditions that violate federal laws or regulations.

## VIII. PROFESSIONAL QUALIFICATIONS AND DOCUMENTATION STANDARDS

### A. Professional Qualifications

All actions prescribed by this Agreement shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the applicable professional qualification standards set forth in the Office of Personal Management professional qualifications for archaeology and historic preservation, or the Secretary of the Interior's Professional Qualifications Standards (PQS), as appropriate (48 Fed. Reg. 44739 dated September 29, 1983, and 36 CFR Part 61. The PQS are also available online at: http://www.nps.gov/history/local-law/arch_stnds_9.htm), and any regional experience or other requirements of a BLM-issued Cultural Resources Use Permit issued under the authority of Archaeological Resources Protection Act of 1979 (16 USC § 470aa-mm) and its regulations (43 CFR Part 7) and/or Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225, 16 USC § 431-433) and its regulations (43 CFR Part 3) and/or Federal Land Policy and Management Act of 1976 (FLPMA)(Public Law 94-570). However, nothing in this Stipulation may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of persons who do not meet the PQS, so long as the work of such persons is directly supervised in the field and laboratory by someone who meets the PQS.

### B. Documentation Standards

Reporting on and documenting the actions cited in this Agreement shall conform to every reasonable extent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed. Reg. 44716-40 dated September 29, 1983), as well as the BLM 8100 Manual; the Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports; and any specific and applicable county or local requirements or report formats. This list represents the guidelines available during development of this Agreement. Should the guidelines be updated after the execution of this Agreement, the latest

versions will take precedent. In the event that any guidelines are modified in the future to conflict with this Agreement, the BLM shall notify all Consulting Parties and will consult to determine how this Agreement should be revised, if necessary, pursuant to Stipulation X. All records and all reports will be filed with the appropriate California Historic Resource Information Center. In areas of potential overlap with lands managed by other federal and state agencies (e.g. USDA Forest Service, National Park Service, Department of Defense installations, Tribal lands, California State Lands Commission, etc.), BLM will file GIS data and site forms with the appropriate agency in addition to the above mentioned Information Centers.

## IX. ADMINISTRATIVE PROVISIONS

### A. Confidentiality

**i.** All Consulting Parties to this Agreement will ensure protection of sensitive or confidential information by not distributing or providing it to any other party without the BLM's written consent. In deciding what is sensitive information, the BLM will comply with Section 9 of the Archaeological Resources Protection Act (ARPA) and Section 304 of the NHPA (54 USC § 307103). For the purposes of consultation under this Agreement, the Agency official may restrict certain information for the benefit of the resource.

**ii.** All Consulting Parties to the Agreement agree to not release or distribute any information on resources of traditional religious and cultural importance identified by Tribes and Tribal Organizations to the extent allowed by law.

**iii**. Information concerning the nature and location of any archaeological resource (historic or prehistoric), regardless of National Register eligibility, may be considered for release by BLM under the provision of Section 9 of the ARPA of 1979 as amended (16 USC § 470hh), provided the requesting Consulting Party has a demonstrated interest in the information being requested and will not release or distribute the information to any other party. Consideration may result in the sharing of summary reports that do not contain sensitive information. Prior to submitting complete reports or records, the BLM will require that a Data Sharing Agreement be completed and signed by the Consulting Party requesting data.

### B. Dispute Resolution

**i.** If at any time during implementation of this Agreement, any Signatory objects to any action or failure to act pursuant to this Agreement, they may object in writing to the BLM. The BLM will immediately notify all Consulting Parties and consult with the other Signatories to resolve the objection. The other Consulting Parties may comment on the objection to the BLM.

**a**. The BLM shall consult with the Signatory to resolve the objection. If the BLM-California State Director, acting as the responsible federal agency official for this

Agreement, determines that the objection cannot be resolved within 30 days, the BLM will:

**1.** Forward all documentation relevant to the dispute, including BLM's proposed resolution, to the ACHP and request comment, with copies to the Consulting Parties. The ACHP shall provide the BLM with comments 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 comments regarding the dispute from the Consulting Parties, and provide them with a copy of this written response. The BLM will then proceed according to its final decision.

**2.** If the ACHP does not provide its comments regarding the dispute within the 30 day period, the BLM may make a final decision on the dispute based on timely comments it has received from the Consulting Parties, notify those Parties, and proceed accordingly.

**ii.** At any time during implementation of the terms of this Agreement, should an objection pertaining to the Agreement be raised by a Concurring Party, the BLM shall immediately notify all Consulting Parties in writing, consult with the SHPO about the objection, and take the objection into account. The other Consulting Parties may comment on the objection to the BLM. The BLM shall consult with the objecting party/parties for no more than 30 days. Within 14 days following closure of consultation, the BLM will render a final decision regarding the objection and proceed accordingly after notifying all parties of its decision in writing. In reaching its final decision, the BLM will take into account all comments from the parties regarding the objection.

**iii.** The BLM's responsibility to carry out actions under this Agreement and the HPMP that are not subject to the specific dispute will be unaffected.

## X. AMENDMENT AND TERMINATION OF THIS AGREEMENT

**A**. Any Signatory to this Agreement may request that it be amended, whereupon the BLM will consult with the Signatories to consider such amendment. All Consulting Parties will be provided a 30-day review and comment period for all proposed amendments to this Agreement. A resultant amendment will be effective on the date a copy is signed by all of the Signatories.

**B**. If any Signatory to this Agreement determines that the terms are not being or cannot be carried out, that Signatory shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation X.A. above. If within ninety (90) days an amendment cannot be developed or agreed upon, any Signatory may terminate the Agreement upon written notification to the other Signatories. The BLM will seek comments from the Consulting Parties on the proposed termination during the 90-day notice period.

**C.** Once the Agreement is terminated, and prior to work continuing on the Undertaking, the BLM must complete one of the following:

**i.** Execute a Memorandum of Agreement pursuant to 36 CFR 800.6 or Programmatic Agreement pursuant to 36 CFR 800.14(b), or

**ii.** Request, take into account, and respond to the comments of the ACHP pursuant to 36 CFR 800.7. The BLM shall notify the Consulting Parties to this Agreement as to the course of action it will pursue.

## XI. ANTI-DEFICIENCY ACT

**A.** The BLM's obligations under this Agreement are subject to the availability of appropriated funds, and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. The BLM shall make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety.

**B.** If compliance with the Anti-Deficiency Act alters or impairs the BLM's ability to implement the stipulations of this Agreement, the BLM shall consult in accordance with the amendment and termination procedures found at Stipulations X of this Agreement.

## XII. DURATION OF THE AGREEMENT

Following its execution, unless terminated pursuant to Stipulation X of this Agreement, this Agreement will terminate and have no further force or effect after the earlier of 20 years after its execution, or the day all the Signatories concur in writing that all stipulations of this Agreement have been satisfactorily fulfilled.

## XIII. EFFECTIVE DATE

This Agreement will take effect on the date that it has been executed by the Signatories. The Agreement and any amendments thereto shall be executed in the following order: (1) BLM, (2) SHPO, (3) ACHP.

**EXECUTION** of this Agreement by the BLM, the SHPO, and the ACHP, and subsequent implementation of its terms, shall evidence that BLM has taken into account the effects of the Undertaking on historic properties for the Undertaking and that BLM has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties.

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**SIGNATORY PARTY**

Bureau of Land Management

9/30/2015

James G. Kenna
State Director
Bureau of Land Management, California

Date

30 Sept 2015

Julianne Polanco
State Historic Preservation Officer
California Office of Historic Preservation

Date

30 SEP 2015

Milford Wayne Donaldson, FAIA
Chairman
Advisory Council on Historic Preservation

Date

## PARTIES INVITED TO CONCUR IN THE AGREEMENT

**Federally Recognized Indian Tribes**
Big Pine Paiute Tribe of the Owens Valley
Bishop Paiute Tribe
Chemehuevi Indian Tribe
Colorado River Indian Tribes
Fort Independence Band of Paiute Indians
Fort Mojave Indian Tribe
Lone Pine Paiute-Shoshone Tribe
Morongo Band of Mission Indians
San Manuel Band of Mission Indians
Soboba Band of Luiseno Indians
Timbisha Shoshone Tribe
Twenty-Nine Palms Band of Mission Indians
Tejon Indian Tribe

**Non-Federally Recognized Indian Tribes**
Kern Valley Indian Community
Kern River Paiute Council
Monache Intertribal Council
Tubatulabals of Kern Valley

**Federal Agencies**
Joshua Tree National Park
Death Valley National Park
Mojave National Preserve
Inyo National Forest
San Bernardino National Forest
Sequoia National Forest
US Naval Air Weapons Station, China Lake
US Air Force Base Edwards
US Marine Corps Air Ground Combat Center Twentynine Palms
US Army Garrison Fort Irwin
United States Fish and Wildlife Service

**State and Local Government Agencies**
California State Parks, Off-Highway Motor Vehicle Recreation Division
California Department of Fish and Wildlife
California State Lands Commission

California Department of Transportation
Inyo County
Kern County
Los Angeles County
San Bernardino County
Riverside County

**Organizations and Individuals**
American Motorcycle Association
American Rock Art Research Association
California Off-Road Vehicle Association
Friends of El Mirage
Friends of Jawbone
Friends of Public Land Cabins
Historical Society of the Upper Mojave Desert
Maturango Museum
Mojave River Museum
National Public Lands News
Off-Road Business Association
Old Spanish Trail Association
Searles Valley Historical Society
United 4 Wheel Drive Association
Western San Bernardino Landowners Association
Mr. Mark Algazy
Desert Tortoise Council

## CONCURRING PARTY

Big Pine Paiute Tribe of the Owens Valley

By: _____ Date: 9/15/15

Title: Chairperson

**CONCURRING PARTY**

Bishop Paiute Tribe

By: _____ Date: 9-18-2015

Title: Chairman

**CONCURRING PARTY**

Chemehuevi Indian Tribe

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Colorado River Indian Tribes

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Fort Independence Band of Paiute Indians

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Fort Mojave Indian Tribe

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Lone Pine Paiute-Shoshone Tribe

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Morongo Band of Mission Indians

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

San Manuel Band of Mission Indians

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Soboba Band of Luiseno Indians

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Timbisha Shoshone Tribe

By: George Graham Date: 1-18-16

Title: Chairman

**CONCURRING PARTY**

Twenty-Nine Palms Band of Mission Indians

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Tejon Indian Tribe

By: _____ Date: 10-12-2015

Title: TRIBAL CHAIR

**CONCURRING PARTY**

Kern Valley Indian Community

By: Jane Walker Price Date: 10-18-2015

Title: Chairman

**CONCURRING PARTY**

Kern River Paiute Council

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Monache Intertribal Council

By: Andrew M. Tu Date: 9-29-15

Title: Chairperson

**CONCURRING PARTY**

Tubatulabals of Kern Valley
By: _____ Date: _____

Title: _____

## CONCURRING PARTY

Death Valley National Park

By: Mike Reynolds Date: 9/17/15

Title: Park Superintendent

**CONCURRING PARTY**

Joshua Tree National Park
By: _____ Date: 9/7/2015

Title: Superintendent

## CONCURRING PARTY

Mojave National Preserve

By: Todd J. Suess Date: 10-16-15

Title: Superintendent

**CONCURRING PARTY**

Inyo National Forest

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

San Bernardino National Forest

By: Jody Noiron Date: 9/9/2015

Title: Forest Supervisor

**CONCURRING PARTY**

Sequoia National Forest

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

United States Naval Air Weapons Station, China Lake

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

United States Air Force, Edwards Air Force Base

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

United StateVMarine Corps, Twenty-Nine Palms Air-Ground Combat Center

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

United States Army, Fort Irwin National Training Center

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

United States Fish and Wildlife Service

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

California Department of Fish and Wildlife

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

California Department of Transportation, District 6

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

California Department of Transportation, District 7

By: Carrie Bowen Date: 9-25-15

Title: District Director

**CONCURRING PARTY**

California Department of Transportation, District 8

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

California Department of Transportation, District 9

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

California State Lands Commission

By: _____ Date: 10/26/2015

Title: EXECUTIVE OFFICER

**CONCURRING PARTY**

California State Parks, Off-Highway Motor Vehicle Recreation Division

By: _____ Date: 10-13-2015

Title: DEPUTY DIRECTOR

**CONCURRING PARTY**

Inyo County Board of Supervisors

By: _____ Date: 10-6-15

Title: CHAIRPERSON BOARD OF SUPERVISORS

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**CONCURRING PARTY**

Kern County Board of Supervisors

By: _____ Date: _____

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**CONCURRING PARTY**

Los Angeles County, District 1

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Los Angeles County, District 2

By: _____ Date: _____

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**CONCURRING PARTY**

Los Angeles County, District 3

By: _____ Date: _____

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**CONCURRING PARTY**

Los Angeles County, District 4

By: _____ Date: _____

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**CONCURRING PARTY**

Los Angeles County, District 5

By: _____ Date: _____

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**CONCURRING PARTY**

Riverside County, District 1

By: _____ Date: _____

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**CONCURRING PARTY**

Riverside County, District 2

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Riverside County, District 5

By: _____ Date: _____

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**CONCURRING PARTY**

San Bernardino County, District 1

By: _____ Date: _____

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**CONCURRING PARTY**

San Bernardino County, District 2

By: _____ Date: _____

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San Bernardino County, District 3

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San Bernardino County, District 4

By: _____ Date: _____

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**CONCURRING PARTY**

San Bernardino County, District 5

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

American Motorcycle Association

By: _____ Date: _____

Title: _____

## CONCURRING PARTY

American Rock Art Research Association

By: John W Wedgwood Date: 29 Sep 2015

Title: Treasurer

**CONCURRING PARTY**

California Off-Road Vehicle Association

By: AMY GRANAT Amy Granat Date: 1/18/16

Title: MANAGING DIRECTOR

**CONCURRING PARTY**

Friends of El Mirage

By: _____ Date: 9/12/17

Title: President

**CONCURRING PARTY**

Friends of Jawbone

By: _____ Date: 9/20/17

Title: President

## CONCURRING PARTY

Friends of Public Land Cabins

By: L. Gerard. Date: 9/21/15

Title: President

**CONCURRING PARTY**

Historical Society of the Upper Mojave Desert

By: G W Hoffman Date: 25 Sept 2015

Title: PRESIDENT, BOARD OF DIRECTORS
HISTORICAL SOCIETY OF THE UPPER MOJAVE DESERT

**CONCURRING PARTY**

Maturango Museum

By: _____ Date: 9-8-2015

Title: EXECUTIVE DIRECTOR / CEO

**CONCURRING PARTY**

Mojave River Museum

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

National Public Lands News

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Off-Road Business Association

By: _____ Date: 9-10-15

Title: PRESIDENT/CEO

**CONCURRING PARTY**

Old Spanish Trail Association

By: Paul McClure Date: Sept. 23, 2015

Title: OSTA CALIFORNIA DIRECTOR

## CONCURRING PARTY

Searles Valley Historical Society

By: Margaret Brush Date: 12/12/2015

Title: President

**CONCURRING PARTY**

United 4 Wheel Drive Association

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**

Western San Bernardino Landowners Association

By: _____ Date: _____

Title: _____

**CONCURRING PARTY**
Mark Algazy

By: _____ Date: 9/15/15

Title: Public

**CONCURRING PARTY**

Ed LaRue

By: _____ Date: 25 September 2015

Title: Desert Tortoise Council
Ecosystems Advisory Committee

# APPENDIX A
# DEFINITIONS AND ACRONYMS

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Appendix A: Definition of Terms

Definitions are excerpted from the following sources:
36 CFR 800. 16; 36 CFR 60.3; 43 CFR 10; Travel and Transportation Management – (Public) BLM Manual 1626 Rel. 1-1731 07/14/2011; the Foundations for Managing Cultural Resources – (Public) BLM Manual 8100 .

- A -

***Access:*** The opportunity to approach, enter, or cross public lands.

***Administrative Access:*** A term used to describe access for resource management and administrative purposes such as fire suppression, cadastral surveys, permit compliance, law enforcement and military in the performance of their official duty, or other access needed to administer BLM-managed lands or uses.

***Adverse Effect:*** Alteration of the characteristics of a cultural property that may qualify it for the National Register, thereby reducing or eliminating the resource's use potential, diminishing its integrity, or disqualifying it from Register eligibility. Determination of adverse effect to cultural properties is guided by criteria in the Advisory Council on Historic Preservation's regulations, 36 CFR Part 800.

***Agreement:*** Agreement refers to this Programmatic Agreement which has been developed to consider adverse effects to historic properties and phase identification and evaluation efforts for the West Mojave Plan Amendment (WEMO) and the WEMO Route Network Project (WMRNP).

***All-Terrain Vehicle (ATV):*** A wheeled vehicle (other than a snowmobile) that is defined as having a wheelbase and chassis width of 50-inches or less, steered using handlebars, generally having a dry weight of 800- pounds or less, travels on three or more low-pressure tires, and has a seat designed to be straddled by the operator.

***Annual report:*** A summary, in writing, submitted on an annual basis to Consulting Parties for review and comment. The report summarizes the activities of the Agreement per fiscal year. The final Annual Report is posted to the BLM webpage.

***Assets:*** An engineering term used to describe building and non-building facility and transportation constructions which include roads, primitive roads, and trails that are included in the Facility Asset Management System (FAMS). Assets are maintained through the annual and deferred maintenance programs.

*a.* ***Road*****:** A linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use.

*b.* ***Primitive Road*****:** A linear route managed for use by four-wheel drive or high-clearance vehicles. These routes do not customarily meet any BLM road design standards. Unless specifically prohibited, primitive roads can also include other uses such as hiking, biking,

and horseback riding.

c. ***Trail*:** A linear route managed for human-powered, stock, or off-road vehicle forms of transportation or for historical or heritage values. Trails are not generally managed for use by four-wheel drive or high-clearance vehicles.

***Associated Funerary Objects:*** Items, as part of the death rite or ceremony of a cultural group, reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains.

***Area of Potential Effect:*** The APE is defined as a total geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of historic properties per 36 CFR 800.16(d). The APE is influenced by the scale and nature of an undertaking and includes those areas which could be affected by an undertaking prior to, during, and after ground disturbing activities.

-B-

***Building:*** A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn [36 CFR 60.3(a)].

-C-

***California Desert Conservation Area (CDCA):*** The CDCA is a 25-million acre expanse of land in southern California designated by Congress in 1976 through the Federal Land Policy and Management Act. About 10 million acres are administered by the U.S. Bureau of Land Management (BLM). The management and land-use objectives of the CDCA are guided by the CDCA Plan of 1980, as amended.

***Class I – Existing Information Inventory:*** A professionally prepared study that includes a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive and narrative overview, and synthesis of the data.

***Class II – Probabilistic Field Survey:*** A statistically based sample survey, designed to aid in characterizing the probable density, diversity, and distribution of cultural properties in an area, to develop and test predictive models, and to answer certain kinds of research questions. Within individual sample units, survey aims, methods, and intensity are the same as those applied in Class III survey.

***Class III – Intensive Field Survey:*** A professionally conducted, thorough pedestrian survey of an entire target area, intended to locate and record all historic properties.

***Classification:*** The grouping of similar transportation features (e.g., roads, primitive roads, and trails) to be entered into the BLM FAMS database.

***Concurring Parties:*** Collectively refers to parties (not Signatories or Invited Signatories) with a demonstrated interest in the undertaking, who agree, through their signatures, with the terms of this Agreement.

***Condition Assessment:*** Routine monitoring of historic property conditions, documentation of observed changes caused by natural environmental or human impacts and periodic checks of the effectiveness of standard protective measures applied to a historic property.

***Consulting Parties:*** Collectively refers to the Signatories and Concurring Parties, and includes Tribes and Tribal Organizations regardless of their decision to sign the Agreement.

***Cultural landscape:*** As defined by the National Park Service, a cultural landscape is a geographic area (including both cultural and natural resources and the wildlife or domestic animals therein), associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values. There are at least four general types of cultural landscapes, not mutually exclusive: historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes. Cultural landscapes may be evaluated as historic properties, and be eligible for the National Register of Historic Places (NPS Preservation Brief 36).

***Cultural Resource:*** A cultural resource is an object or definite location of human activity, occupation, use, or significance identifiable through field inventory, historical documentation, or oral evidence. Cultural resources are prehistoric, historic, archaeological, or architectural sites, structures, buildings, places, or objects and locations of traditional cultural or religious importance to specified social and/or culture groups. Cultural resources include the entire spectrum of objects and places, from artifacts to cultural landscapes, without regard to eligibility for inclusion on the National Register of Historic Places (NRHP) or California Register of Historical Resources (CRHR).

-D-

***Day:*** Day under this Agreement refers to calendar day.

***Desert Wildlife Management Area (DWMA):*** Conservation areas that have been established to protect high quality habitat for the threatened desert tortoise and Mohave ground squirrel.

***Designation:*** The formal selection of public land areas, roads, primitive roads, and trails where motorized vehicle use has been authorized, limited, or prohibited in accordance with 43 CFR 8342.2.

***Determination of Eligibility:*** A determination of eligibility is a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register. A determination of eligibility does not make the property eligible for such benefits as grants, loans, or tax incentives that have listing on the National Register as a prerequisite [36 CFR 60.3(c)].

***District:*** A district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history [36 CFR 60.3(d)].

-E-

***Effect:*** An effect is any change in the characteristics that contribute to the use(s) determined appropriate for a cultural resource, or to the qualities that qualify a cultural property for the National Register. Determination of effect to cultural properties is guided by criteria in the regulations of the Advisory Council, 36 CFR Part 800.

***Evaluation:*** The application of the National Register eligibility criteria, 36 CFR 60.4.

***Evaluation Plan:*** A formal plan developed to assist the BLM in evaluating historic properties. The evaluation plan identifies research questions that will form the basis of evaluation tailored to the type and age of historic properties present and which can be applied to the identification and evaluation of as-yet unidentified historic properties including prehistoric and historic archaeological resources; prehistoric and historic trails; built environment resources; Traditional Cultural Properties; and other resources identified through consultation and identification efforts.

-G-

***Ground Transportation Linear Feature (GTLF):*** A geospatial database of transportation (from motorized to foot) linear features as they exist on the ground. Features include all linear features not just what is in the BLM Transportation System.

-H-

***Historic Context:*** "An organizing structure for interpreting history that groups information about historic properties that share a common theme, common geographical area, and a common time period. The development of historic contexts is a foundation for decisions about the planning, identification, evaluation, registration, and treatment of historic properties, based upon comparative historic significance." (quoted from National Register Bulletin No. 15, Glossary)

***Historic Properties:*** Properties (cultural resources) that are included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior and per the NRHP eligibility criteria at 36 C.F.R.60.4. These may include any prehistoric or historic district, site, building, structure, traditional cultural property or object. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that meet the NRHP criteria. The term "eligible for inclusion on the NRHP" refers both to properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the NRHP criteria.

***Historic Properties Management Plan:*** A plan for considering and managing effects on historic properties by the Undertaking. It establishes a decision-making process for considering potential effects on historic properties. The HPMP should consider and manage the effects on historic properties of actions taken to implement the Undertaking over the term of the Agreement. The HPMP identifies goals for the preservation of historic properties; establishes guidelines for inventory and evaluations; and establishes the processes for continued consultation, if necessary**.**

***Historical Resources:*** The historic period is the time interval for which there are written records. In the Project area, this refers to the period after the entry of Europeans into the region.

***Human Remains:*** The physical remains of a human body.

-I-

***Identification:*** The general term for the component of BLM's cultural resource management program that includes locating, recording, and determining the legal, scientific, public, and conservation values of cultural resources, i.e. giving cultural resources a management identity.

***Implementation Plan Decisions:*** Decisions that take action to implement Land Use Plan decisions; generally appealable to the Interior Board of Land Appeals (IBLA) under 43 CFR 4.410.

***Implementation Plan:*** A site-specific plan written to implement decisions made in a Land Use Plan. An implementation plan usually selects and applies best management practices to meet land use planning objectives. Implementation plans are synonymous with activity plans. Examples of implementation plans include: interdisciplinary management plans, travel and transportation management plans, habitat management plans, recreation area management plans, and allotment management plans.

***Inventory:*** a term used to refer to both a record of cultural resources known to occur within a defined geographic area, and the methods used in developing the record. Depending on intended applications for the data, inventories may be based on (a) compilation and synthesis of previously recorded cultural resource data from archival, library, and other indirect sources; (b) systematic examinations of the land surface and natural exposures of the subsurface (survey) for indications of past human activity as represented by artificial modifications of the land and/or the presence of artifacts; and (c) the use of interviews and related means of locating and describing previously unrecorded or incompletely documented cultural resources, including those that may not be identifiable through physical examination. (See Class I, Class III, and Class III inventory definitions above).

***Invited Signatories:*** Invited Signatories are parties that have specific responsibilities as defined in this Agreement. Those Invited Signatories who sign this Agreement have the same rights with regard to seeking amendment or termination of this Agreement as the Signatory Parties, but whose signatures are not required for execution of the Agreement.

-K-

***Keeper of the National Register of Historic Places:*** The Keeper is the individual who has been delegated the authority by NPS to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

-L-

***Lands Administered by the U.S. Department of Interior, Bureau of Land Management (BLM):*** Any federal lands under the administrative authority of the BLM [36 CFR 60.3(f)]

***Literature Review:*** A literature review is one component of a BLM Class I inventory, as defined in BLM Manual Guidance 8100.21(A)(1), and is a professionally prepared study that includes a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive, narrative overview, and synthesis of the data. The overview may also define regional research questions and treatment options.

-M-

***Mechanized Travel:*** Moving by means of mechanical devices, such as a bicycle; not powered by a motor.

***Mitigation measures:*** Measures intended to lessen the severity of a potential adverse effect by application of appropriate protection measures, such as the recovery of archaeological data from sites, or other means.

***Motorcycle:*** Motorized vehicles with two tires and with a seat designed to be straddled by the operator. A motorcycle is capable of either on- or off-highway use.

***Motorized Travel:*** Moving by means of vehicles that are propelled by motors, such as cars, trucks, off-highway vehicles (OHV), motorcycles, snowmobiles, and boats.

***Motorized Vehicles:*** Vehicles that are propelled by motors or engines, such as cars, trucks, off-highway vehicles, motorcycles, and snowmobiles.

-N-

***National Programmatic Agreement:*** Agreement among the BLM, ACHP, and National Conference of State Historic Preservation Officers which defines how the BLM plans for and manages cultural resources under its jurisdiction in accordance with the spirit and intent of Section 106 of the NHPA, consistent with 36 CFR. § 800, and consistent with its other responsibilities for land-use planning and resource management under FLPMA, NEPA, other statutory authorities, and executive orders and policies.

***National Register:*** The National Register of Historic Places, expanded and maintained by the Secretary of the Interior, as authorized by section 2(b) of the Historic Sites Act and section

101(a)(1)(A) of the National Historic Preservation Act. The National Register lists cultural properties found to qualify for inclusion because of their local, State, or national significance. Eligibility criteria and nomination procedures are found in 36 CFR Part 60. The Secretary's administrative responsibility for the National Register is delegated to the National Park Service.

***Non-motorized Travel:*** Moving by foot, stock or pack animal, non-motorized boat, ski or mechanized vehicle such as a bicycle.

-O-

***Object:*** An object is a material thing of functional, aesthetic, cultural, historical or scientific value that maybe, by nature or design, movable yet related to a specific setting or environment [36 CFR 60.3(j)].

***Objects of Cultural Patrimony:*** An object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

***Off-Highway Vehicle (OHV):*** OHV is synonymous with off-road vehicles (ORV). ORV is defined in 43 CFR 8340.0-5 (a): Off-road vehicle means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding: 1) any non-amphibious registered motorboat; 2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; 3) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; 4) vehicles in official use; and 5) any combat or combat support vehicle when used in times of national defense emergencies.‖

***Official Use:*** Use by an employee, agent, or designated representative of the federal government or one of its contractors, in the course of his employment, agency, or representation.

***OHV Area Designations:*** Used by federal agencies in the management of OHVs on public lands. Refers to the land use planning decisions that permit, establish conditions, or prohibit OHV activities on specific areas of public lands. All public lands are required to have OHV designations (43 CFR 8342.1). The CFR requires all BLM-managed public lands to be designated as open, limited, or closed to off-road vehicles, and provides guidelines for designation. The definitions of open, limited, and closed are provided in 43 CFR 8340.0-5 (f), (g), and (h), respectively.

a. ***Open.*** Motorized vehicle travel is permitted year-long anywhere within an area designated as open to OHV use. Open designations are used for intensive OHV use areas where there are no special restrictions or where there are no compelling resource protection needs, user conflicts, or public safety issues to warrant limiting cross-country travel (See 43 CFR 8340.0-5).

b. ***Limited.*** Motorized vehicle travel within specified areas and/or on designated routes, roads, vehicle ways, or trails is subject to restrictions. The ―limited‖ designation is used where OHV use must be restricted to meet specific resource management objectives. Examples of limitations include number or type of vehicles; time or season of use; permitted or licensed use only; use limited to designated roads and trails; or other limitations if restrictions are necessary to meet resource management objectives, including certain competitive or intensive use areas that have special limitations (see 43 CFR 8340.0-5).

c. ***Closed.*** Motorized vehicle travel is prohibited in the area. Access by means other than motorized vehicle, such as mechanized or non-motorized use, is permitted. Areas are designated closed if closure to all vehicular use is necessary to protect resources, promote visitor safety, or reduce use conflicts (see 43 CFR 8340.0-5).

-P-

***Plan Amendment:*** The process of considering or making changes in the terms, conditions, and decisions of approved plans. Usually only one or two issues are considered that involve only a portion of the planning area.

***Prehistoric, Contact Era, and Historic Trails Networks:*** Trail networks that served as travel, trade, resource access, communication, social, and religious and ceremonial purposes for prehistoric and contact-era indigenous peoples of the western Mojave Desert. These resources are identified in consultation with Consulting Parties, and through literature reviews.

***Primitive Road:*** A linear route managed for use by four-wheel drive or high-clearance vehicles. These routes do not customarily meet any BLM road design standards. Unless specifically prohibited, primitive roads can also include other uses, such as hiking, biking, and horseback riding.

***Primitive Route:*** Any transportation linear feature located within a WSA or lands with wilderness characteristics designated for protection by a land use plan and not meeting the wilderness inventory road definition.

-R-

***Records Search:*** A records search is the process of obtaining existing cultural resource data from published and unpublished documents, BLM cultural resource inventory records, institutional site files, state and national registers, interviews, and other information sources.

***Road:*** A linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use.

***Road, Primitive Road, and Trail Identification:*** The on-the-ground process used to implement the road and trail network selected in the Land Use Plan or implementation plan. This includes

signs, maps, and other means of informing the public about requirements. Guidance on the identification requirements is in 43 CFR 8342.2 (c).

***Road, Primitive Road, and Trail Selection:*** The process whereby the BLM chooses a network of roads, primitive roads, and trails that is available for motorized use and other access needs, including non-motorized and non-mechanized use consistent with the goals, objectives, and other considerations described in the Land Use Plan.

***Routes:*** Multiple roads, trails and primitive roads; a group or set of roads, trails, and primitive roads that represents less than 100 percent of the BLM transportation system. Generically, components of the transportation system are described as routes.

***Route Classification:*** The BLM's transportation system includes a broad range of routes or linear assets classified as roads, primitive roads, and trails within the BLM Facility Asset Management System (FAMS).

-S-

***Sacred Objects:*** Specific ceremonial items determined through consultation with local Native American tribes to have been devoted to a traditional ceremony or ritual of the local tribes, and have religious significance or function in the continued observance or renewal of such ceremony or ritual. Pursuant to 43 CFR 10, "while many items, from ancient pottery to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony."

***Signatories:*** Signatories are parties that have the sole authority to execute, amend or terminate this Agreement. Signatories to this Agreement are the BLM, SHPO, and ACHP.

***Site:*** A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure [36 CFR 60.3(l)].

***Structure:*** A structure is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale [36 CFR 60.3(p)].

-T-

***Temporary Closure or Restriction:*** Temporarily limiting use or closing areas and trails on public lands to off-highway vehicle use under the authority of 43 CFR 8341.2 or 8364.1. Such limitations or closures are temporary in nature and therefore are not OHV designations.

***Traditional Cultural Property/Place:*** A traditional cultural property is defined generally as a property that is important to a living group or community because of its association with cultural practices or beliefs that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. It is a place, such as a traditional gathering area, prayer site, or sacred/ceremonial location that may figure in important community traditions. These places may or may not contain features, artifacts, or physical evidence, and are usually identified through consultation. A traditional cultural property may be eligible for inclusion in the NRHP and the CRHR.

***Trail:*** A linear route managed for human-powered, stock, or off-road vehicle forms of transportation or for historical or heritage values. Trails are not generally managed for use by four-wheel drive or high-clearance vehicles.

***Transportation Linear Disturbances:*** Human-made linear features that are not part of the BLM's transportation system. Linear disturbances may include engineered (planned) as well as unplanned single and two-track linear features that are not part of the BLM's transportation system.

***Transportation Linear Features:*** Represent the broadest category of physical disturbance (planned and unplanned) on the BLM-managed lands. Transportation-related linear features include engineered roads and trails, as well as user-defined, non-engineered roads and trails, created as a result of the public use of the BLM-managed lands. Linear features may include roads and trails identified for closure or removal as well as those that make up the BLM's defined transportation system.

***Transportation Network:*** The network of roads, primitive roads, and trails (motorized and non-motorized) that are selected (recognized, designated, or authorized) for use through the travel and transportation planning process.

***Transportation System:*** Represents the sum of the BLM's recognized inventory of linear features (roads, primitive roads, and trails) formally recognized, designated, and approved as part of the BLM's transportation system.

***Travel Management Area (TMA):*** The TMAs are polygons or delineated areas where travel management (either motorized or non-motorized) needs particular focus. These areas may be designated as open, closed, or limited to motorized use and will typically have an identified or designated network of roads, trails, ways, and other routes that provide for public access and travel across the planning area. All designated travel routes within TMAs should have a clearly identified need and purpose as well as clearly defined activity types, modes of travel, and seasons or times for allowable access or other limitations.

***Travel Management Plan (TMP):*** The document that describes the decisions related to the selection and management of the Transportation Network. This document can be an appendix to a Resource Management Plan (RMP), incorporated in an activity implementation plan (such as a Recreation Implementation Plan), or a stand-alone document after development of the RMP.

***Travel and Transportation Management (TTM):*** A comprehensive approach to on-the-ground management and administration of travel and transportation networks of roads, primitive roads and trails. TTM consists of implementation of travel and transportation planning decisions, route inventory and mapping, signing area and route designations, education and interpretation, law enforcement, easement acquisition, monitoring activities, and other measures necessary for providing access to and across public lands for a wide variety of uses (including recreational, traditional, authorized, commercial, educational, and for other travel and transportation purposes), as well as all forms of motorized and non-motorized access or use, such as foot, pack stock or animal-assisted travel, mountain bike, off-highway vehicle, and other forms of transportation.

***Travel and Transportation Planning (TTP):*** A comprehensive, interdisciplinary approach to travel and transportation planning for a wide variety of uses (including uses for recreational, traditional, authorized, commercial, educational, and other purposes), as well as all forms of motorized and non-motorized access or use, such as foot, pack stock or animal-assisted travel, mountain bike, off-highway vehicle, and other forms of transportation.

***Tribe:*** The federally recognized Indian tribes that the BLM is consulting with on this undertaking.

***Tribal Organization:*** A non-federally recognized Indian tribe or Native American organization that the BLM is consulting with on this undertaking.

-U-

***Unassociated Funerary Objects:*** Items, as part of the death rite or ceremony of a cultural group are reasonably believed to have been originally placed intentionally at the time of death or later with or near individual human remains, but were displaced thereafter. NAGPRA focuses on museum collections and not on items found in the field, but for the purposes of this project, they are defined as objects that been moved away from their original context by some form of post-depositional disturbance (e.g. ancient and ongoing rodent activity, natural erosion, modern construction activity, looting). They can sometimes be difficult to identify, but are typically found near known burials and would consist of artifacts commonly found in graves, but rarely found in deposits lacking graves.

***Undertaking:*** Collectively refers to all projects, activities, or programs funded in whole or in part under the direct or indirect jurisdiction of the BLM, including those carried out by or on behalf of the federal agency; those carried out by federal financial assistance; and those requiring a federal permit, license, or approval.

## Common Acronyms:

| | |
|---|---|
| ACHP | Advisory Council on Historic Preservation |
| AIRFA | American Indian Religious Freedom Act |
| APE | Area of Potential Effects |
| ARPA | Archaeological Resources Protection Act |
| BLM | Bureau of Land Management |
| the Court | United States District Court for the Northern District of California |
| CDCA | California Desert Conservation Area |
| CDD | California Desert District |
| CFR | Code of Federal Regulations |
| CRHR | California Register of Historic Resources |
| CHRIS | California Historic Resources Information System |
| DOI | Department of the Interior |
| DPR | Department of Parks and Recreation |
| DWMA | Desert Wildlife Management Area |
| EIS | Environmental Impact Statement |
| ESA | Environmentally Sensitive Area |
| FAMS | Facility Asset Management System |
| FLPMA | Federal Land Policy and Management Act |
| FOIA | Freedom of Information Act |
| GIS | Geographic Information System |
| GPS | Global Positioning System |
| GTLF | Ground Transportation Linear Features |
| HPMP | Historic Properties Management Plan |
| HPTP | Historic Properties Treatment Plan |
| IM | Instruction Memorandum |
| LUP | Land Use Plan |
| MOA | Memorandum of Agreement |
| NAGPRA | Native American Graves Protection and Repatriation Act |
| NEPA | National Environmental Policy Act |
| NHPA | National Historic Preservation Act |
| NRHP | National Register of Historic Places |
| OHP | Office of Historic Preservation |
| OHV | Off-Highway Vehicle |
| ORV | Off-Road Vehicle |
| PA | Programmatic Agreement |
| PQS | Professional Qualifications Standards |
| ROD | Record of Decision |
| ROW | Right-of-way |
| SHPO | State Historic Preservation Officer |
| SRMA | Special Recreation Management Area |
| SRP | Special Recreation Permit |
| TCP | Traditional Cultural Property |
| THPO | Tribal Historic Preservation Officer |

| | |
|---|---|
| TMA | Travel Management Area |
| TMP | Travel Management Plan |
| TTM | Travel and Transportation Management |
| TTP | Travel and Transportation Planning |
| USFWS | United States Fish and Wildlife Service |
| UTV | Utility Type (or Terrain) Vehicle |
| WEMO | West Mojave |
| WEMO Plan | 2006 West Mojave Plan Amendment |
| WMRNP | West Mojave Route Network Project |
| WSA | Wilderness Study Area |

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# APPENDIX B
# SUMMARY OF CONSULTATION

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## Appendix B: Tribal Consultation Summary

The Bureau of Land Management (BLM) has formally invited the following federally recognized tribes and non-federally recognized tribes to consult and coordinate for the West Mojave Plan Environmental Impact Statement and the West Mojave Route Network Project provided in the Executive Memorandum of April 29, 1994, Executive Order 13175, and Sections 101 and 106 of the National Historic Preservation Act (NHPA):

| Federally Recognized Tribes | Non-Federally Recognized Tribes |
|---|---|
| Agua Caliente Band of Cahuilla Indians | Kern Valley Indian Community |
| Big Pine Paiute Tribe of the Owens Valley | Kern River Paiute Council |
| Bishop Paiute Tribe | Monache Intertribal Council |
| Chemehuevi Reservation | Tubatulabals of Kern Valley |
| Colorado River Indian Tribes | |
| Fort Independence Band of Paiute Indians | |
| Fort Mojave Indian Tribe | |
| Lone Pine Paiute-Shoshone Tribe | |
| Morongo Band of Mission Indians | |
| San Manual Band of Mission Indians | |
| Soboba Band of Luiseno Indians | |
| Tejon Indian Tribe | |
| Timbisha Shoshone Tribe | |
| Twenty-Nine Palms Band of Mission Indians | |

All of the federally recognized and non-federally recognized tribes were invited to be consulting parties as provided in 36 CFR. Part 800, the implementing regulations for Section 106 of the NHPA.

Consistent with policy, the BLM notified and formally requested consultation with Indian tribes at the earliest stages of the project planning and review by letter on November 17, 2011, and has formally reiterated requests to consult in all subsequent correspondence. The BLM formally notified Indian tribes of its intent to develop a Programmatic Agreement (Agreement) for the Project, and invited the tribes to participate by letter on December 19, 2014. The BLM Field Managers and staff have actively responded to all requests to meet with tribal leaders and staff throughout project review and have met at BLM and tribal offices. A summary of the major consultation milestones includes:

- November 17, 2011: the BLM notified and formally requested consultation with tribes at the earliest stages of the WEMO project planning and review.
- December 20, 2013: the BLM invited the tribes to attend a series of tribal workshops for the WEMO project.
- January 21, 2014: the BLM hosted a tribal workshop in the Ridgecrest Field Office, providing hard copies and discs of route maps, and a presentation of the Section 106 efforts to date.

- January 23, 2014: the BLM hosted a tribal workshop in the Bishop Field Office, providing hard copies and discs of route maps, and a presentation of the Section 106 efforts to date.
- January 28, 2014: the BLM hosted a tribal workshop in the Barstow Field Office, providing hard copies and discs of route maps, and a presentation of the Section 106 efforts to date.
- February 6, 2014: the BLM invited additional tribes to a "Meet and Greet" with the BLM at the Nuui Cunni Native American Inter-Tribal Cultural Center.
- March 10, 2014: the BLM hosted a "Meet and Greet" at the Nuui Cunni Native American Inter-Tribal Cultural Center in Lake Isabella, CA and provided discs and hard copies of project maps to attendees.
- December 18, 2014: the BLM invited the tribes to attend a Section 106 consulting party meeting regarding the development of an Agreement.
- January 13, 2015: the BLM hosted a Section 106 consulting party meeting regarding the development of an Agreement in the Barstow Field Office.
- January 14, 2015: the BLM hosted a Section 106 consulting party meeting regarding the development of an Agreement in the Ridgecrest Field Office.
- January 15, 2015: the BLM hosted a Section 106 consulting party meeting regarding the development of an Agreement in the Bishop Field Office.
- January 22, 2015: the BLM invited the tribes to attend a Section 106 consulting party meeting to work on the development of an Agreement.
- February 18, 2015: the BLM hosted a Section 106 consulting party meeting to begin drafting an Agreement in the Ridgecrest Field Office.
- February 19, 2015: the BLM transmitted by email to the tribes notes from the February Section 106 meeting and a digital version first working draft of the Agreement.
- February 25, 2015: the BLM transmitted by certified letter the February draft of the Section 106 Agreement and invited the tribes to attend a Section 106 consulting party meeting to continue drafting the Agreement.
- March 20, 2015: the BLM transmitted by email to the tribes the consolidated comments and edits to the first working draft of the Section 106 Agreement.
- March 24, 2015: the BLM hosted a Section 106 consulting party meeting to draft the Section 106 Agreement in the Barstow Field Office.
- March 26, 2015: the BLM transmitted by email to the tribes notes from the March Section 106 meeting and a digital version of the second working draft of the Agreement.
- April 1, 2015: the BLM transmitted by certified letter the March draft of the Section 106 Agreement and invited the tribes to attend a Section 106 consulting party meeting to continue drafting the Agreement.
- April 13, 2015: the BLM hosted a consulting party WebEx and teleconference to draft specific sections of the Section 106 Agreement

- April 30, 2015: the BLM transmitted by email to the tribes the consolidated comments and edits to the second working draft of the Section 106 Agreement.
- May 4, 2015: the BLM hosted a Section 106 consulting party meeting to draft the Section 106 Agreement in the Ridgecrest Field Office.
- May 7, 2015: the BLM transmitted by certified letter the May draft of the Section 106 Agreement and invited the tribes to attend a Section 106 consulting party meeting to continue drafting the Agreement.
- May 11, 2015: the BLM transmitted by email to the tribes notes from the May Section 106 meeting and a digital version of the third working draft of the Agreement.
- June 15, 2015: the BLM transmitted by email to the tribes the consolidated comments and edits to the third working draft of the Section 106 Agreement.
- June 17, 2015: the BLM hosted a Section 106 consulting party meeting to draft the Section 106 Agreement in the Barstow Field Office.
- June 22, 2015: the BLM transmitted by certified letter the final draft of the Section 106 Agreement and invited the tribes to attend a Section 106 consulting party meeting for the final Agreement.
- July 24, 2015: the BLM transmitted by email to the tribes the consolidated comments and edits to the final draft of the Section 106 Agreement.
- July 27, 2015: the BLM hosted a Section 106 consulting party meeting to review the Section 106 Agreement in the Ridgecrest Field Office.
- July 27, 2015: the BLM transmitted by email to the tribes the final draft of the Section 106 Agreement with updates from the Consulting Party meeting for an additional two-week review period.
- August 12, 2015: the BLM transmitted by email to the tribes the consolidated comments and updated final draft of the Section 106 Agreement
- August 13, 2015: the BLM hosted a Section 106 consulting party conference call and WebEx to review the changes to the final draft of the Section 106 Agreement.
- August 13, 2015: the BLM transmitted by email to the tribes the revised final draft of the Section 106 Agreement with updates from the meeting.
- August 14, 2015: the BLM transmitted by email the revised final draft of the Section 106 Agreement with all appendices and changes, with a final opportunity to identify concerns by August 21, 2015.

The primary issues of concern identified through consultation are focused on identification efforts in the planning area and adverse effects to historic properties, including archaeological properties, and properties with cultural or religious significance to tribes. Through consultation, the BLM found that the West Mojave Project will have an adverse effect to historic properties. The BLM, in consultation with all of the consulting parties, including Indian tribes, has developed an Agreement to phase identification efforts and resolve the adverse effects to historic properties.

## ATTACHMENTS 1 and 2
## WEST MOJAVE PLAN AREA MAPS

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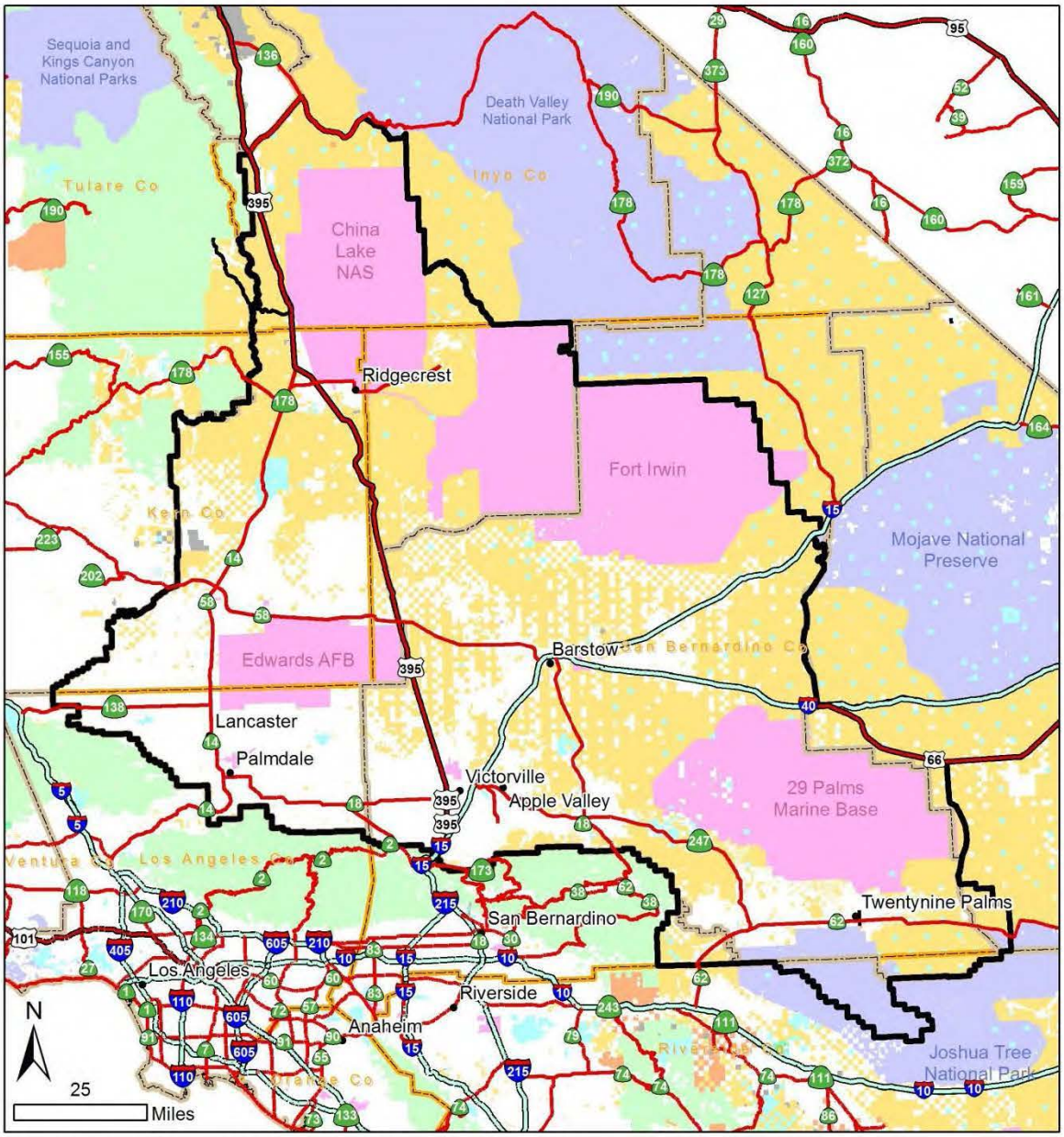


**Figure 1. Western Mojave Land Use Planning Area General Location**

Legend

- Western Mojave Land Use Planning Area Boudary
- Field Office Boundaries
- Counties
- Bureau of Land Management
- Forest Service
- National Park Service
- Fish and Wildlife Service
- Bureau of Reclamation
- Bureau of Indian Affairs
- Department of Defense
- Other Federal
- State
- Local Government
- Private

US Department of the Interior
**BUREAU OF LAND MANAGEMENT**
**California Desert District**
Moreno Valley, California
(909) 697-5200
www.ca.blm.gov/cdd

Location in California

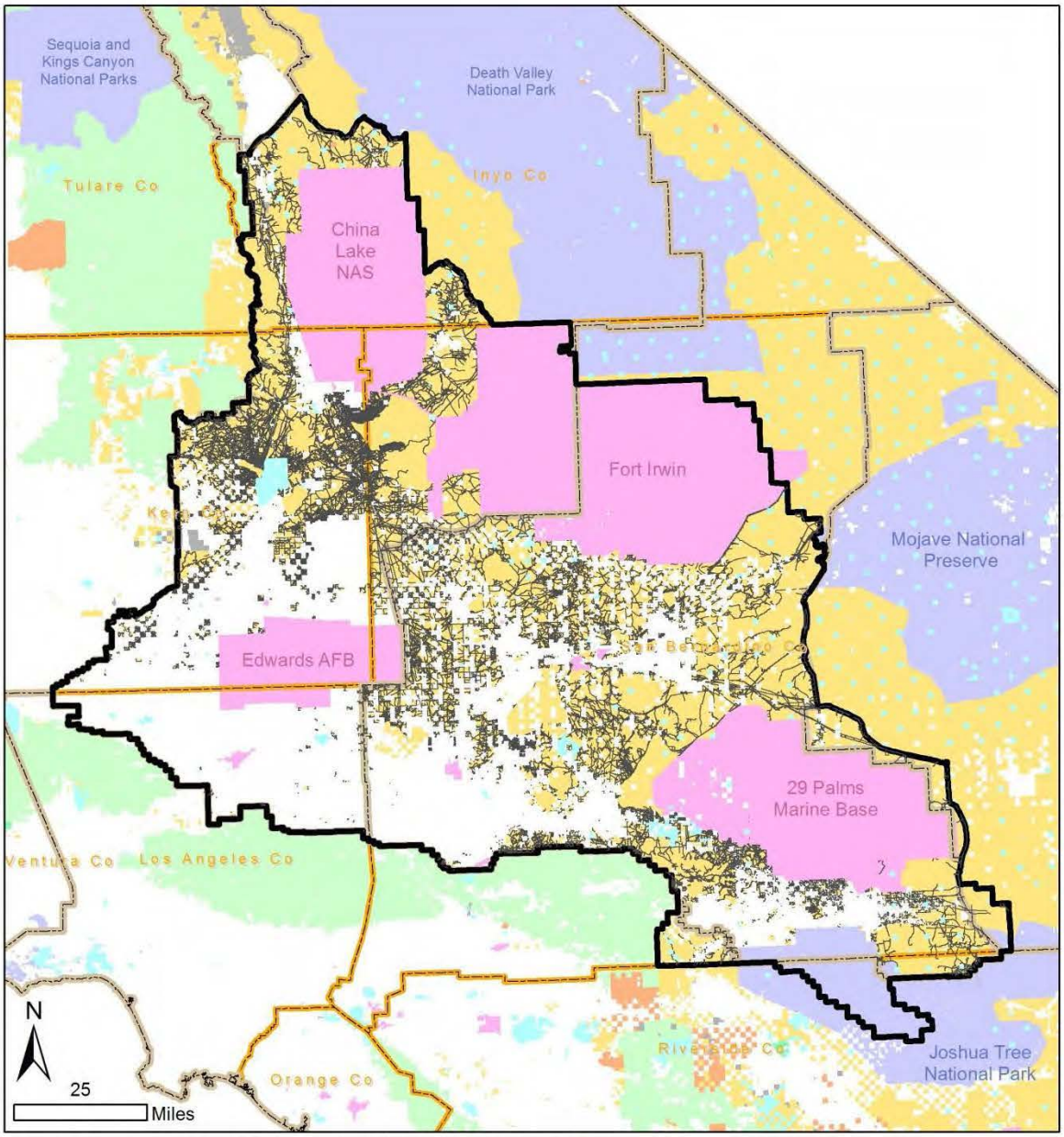


**Figure 2. Route Network in the Western Mojave Land Use Planning Area**

Legend

- Route Network
- Western Mojave Land Use Planning Area Boudary
- Field Office Boundaries
- Counties
- Bureau of Land Management
- Forest Service
- National Park Service
- Fish and Wildlife Service
- Bureau of Reclamation
- Bureau of Indian Affairs
- Department of Defense
- Other Federal
- State
- Local Government
- Private

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