

APPENDIX J

Programmatic Agreement

PROGRAMMATIC AGREEMENT

AMONG THE BUREAU OF LAND MANAGEMENT, ELY DISTRICT, NEVADA NEVADA STATE HISTORIC PRESERVATION OFFICE, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING THE TREATMENT OF HISTORIC PROPERTIES DURING MINERAL DEVELOPMENT IN THE BALD MOUNTAIN MINING DISTRICT BY BALD MOUNTAIN MINE

WHEREAS, the Bureau of Land Management, Ely District, ("BLM") has determined that mineral development in the Bald Mountain Mining District ("BMMD") by Bald Mountain Mine ("BMM"), situated in White Pine County, Nevada, may have an effect upon properties eligible for inclusion in the National Register of Historic Places, and has consulted with the Nevada State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic Preservation ("COUNCIL") pursuant to Section 800.13 of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)), and

WHEREAS, BMM, the operator of several mines within the BMMD, participated in the consultation and has been invited to concur in this Programmatic Agreement, and

WHEREAS, this Programmatic Agreement is intended to cover all aspects of mineral development in the BMMD which is controlled or operated by BMM, and

WHEREAS, the definitions given in the Programmatic Agreement of August, 1990 among the Bureau of Land Management, Nevada State Office, Nevada State Historic Preservation Office, and the Advisory Council on Historic Preservation Regarding the Identification, Evaluation and Treatment of Historic Properties Throughout the State of Nevada on Lands Managed by the Bureau of Land Management, Nevada State Office (BLM Statewide Agreement) are applicable throughout this Agreement;

NOW THEREFORE, the parties agree that mineral development in the BMMD shall be administered in accordance with the following stipulations to satisfy the BLM's Section 106 responsibilities for all individual projects undertaken within the BMMD.

PURPOSE

BMM proposes to explore for mineral deposits and to conduct mineral extraction activities ("Undertaking") in the BMMD which are multi-year in scope and located on public lands with interspersed patented (private) land. Cultural inventories have identified historic properties in the area of the undertaking which are eligible to the National Register of Historic Places (NRHP). Other historic properties have been identified in the area of the undertaking that may be determined to be eligible after further evaluation.

The purpose of this Programmatic Agreement is to establish an understanding between the BLM, the COUNCIL, the SHPO, and BMM as to how the consultation process under Section 106 of the National Historic Preservation Act will be implemented with regard to the Undertaking.

The Programmatic Agreement ("Agreement") defines general and specific measures that will be undertaken by all parties to ensure that the mutual objectives and individual requirements of the National Historic Preservation Act are fulfilled.

INTENT

Subject to the limitations found in the BLM Statewide Agreement and guidelines in Stipulation A.3. of this Agreement, historic properties will be treated in such a way that effects are avoided or mitigated to the extent practicable, regardless of surface ownership.

AREA DESCRIPTIONS

The cultural resources review area for this undertaking is the Bald Mountain Mining District (BMMD) as defined in Appendix A.

Prior to conducting activities in the BMMD related to proposed mineral exploration or extraction on lands that have not been disturbed by the existing mining operations or within areas of known historic properties (regardless of ownership), BMM shall submit to the BLM plans of operation or amendments to existing plans as appropriate for BLMs review under this agreement.

STIPULATIONS

The BLM shall ensure that the following stipulations are implemented:

A. Identification

1. Upon receipt of BMMs proposed mine development plan of operations or any amendments to existing plans of operations, BLM shall seek to identify interested persons pursuant to 36 CFR 800.1(c)(2) and 36 CFR 800.4(a)(1)(iii).
2. The BLM shall ensure that appropriate cultural resource inventory of the Area of Potential Effect (APE) of all activity areas or portions thereof, not previously inventoried is completed, and that appropriate reports are prepared.
3. The BLM shall ensure that an inventory of the APE of any activity area is completed in a manner consistent with stipulation A.2. of this agreement, the BLM Statewide Agreement and the BLMs *Cultural Resources Inventory General Guidelines* (4th edition, January 1990) or any subsequent edition issued by the BLM.
4. The BLM shall ensure that the inventory is conducted by BMM in consultation with the BLM, and that an inventory report is submitted to the BLM by BMM for the BLMs approval. The approved inventory report shall be submitted by the BLM to the SHPO, and interested persons as appropriate, for review and comment. BLM shall consult with the SHPO to resolve the eligibility of identified cultural resources per 36 CFR 800.4(c).

5. The BLM shall ensure that the level, intensity and methods of recording cultural resources conform to the standards identified in Stipulation A.3.

B. Resolving Eligibility

1. The BLM, in consultation with the SHPO, shall ensure that all cultural resources located within the APE of an activity area are evaluated for eligibility to the NRHP prior to the initiation of activities that may affect historic properties.
2. Information gathered by the inventory process may be inadequate to allow determination of a cultural resource's eligibility for the NRHP. In such case, the BLM may, after obtaining SHPOs concurrence on an evaluation plan which may include subsurface testing, authorize the plan under the mandates of the Archeological Resources Protection Act (16 U.S.C. 470aa *et seq.*).
3. In developing a subsurface evaluation plan for SHPO concurrence, the BLM shall ensure that any testing is limited to defining the nature, density and distribution of materials in potential historic properties. Subsurface testing is intended to provide the minimum data necessary to make final evaluations of NRHP eligibility and to devise treatment options responsive to the information potential of the historic properties.
4. Documentation of inventory and evaluation results, including eligibility recommendations, shall be reviewed by the BLM. Upon approval, the BLM shall forward this documentation to the SHPO for review and comment per Stipulation A.4.
5. If the SHPO and the BLM disagree regarding the eligibility of properties for listing on the NRHP, the BLM shall seek a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR 800.4. The Keeper's determination will be considered final. BMM will be kept informed of the progress in a timely manner.

C. Treatment

1. In developing treatment plans, the BLM in consultation with SHPO and interested persons, shall determine the precise nature of effects that can be anticipated to the values of historic properties identified in the APE in accordance with 36 CFR 800.5. BLM shall ensure that BMM seeks to avoid properties eligible for inclusion in the NRHP through design of project facilities, relocation of facilities, or by other means, to the extent practicable.
2. Recognizing that avoidance may not be feasible or prudent, the BLM, in consultation with SHPO, BMM and interested persons, shall ensure that BMM develops an appropriate treatment plan designed to lessen or mitigate project-related effects to archaeological resources. For properties eligible under criteria a through c (36 CFR 60.4) other forms of mitigation may be considered in the treatment plan in lieu of or in addition to data recovery (*e.g.* oral history, historic markers, exhibits, interpretive brochures or publications).

3. When archaeological data recovery is the preferred treatment option for an eligible property or properties, the BLM shall ensure that BMM develops a plan for the recovery of archaeological data based on an appropriate research design and that the plan is submitted to the SHPO and COUNCIL as stipulated in H.2., for a concurrent 30-day review and comment period. Such data recovery plans and historic or architectural documentation (for historic properties eligible under criterion *d*) shall be consistent with the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-37) and shall conform to Stipulation A.3.
4. If the SHPO, COUNCIL or an interested person objects to all or part of the proposed treatment plan, the BLM shall attempt to resolve the objection pursuant to Stipulation J. Upon completion of the consultation process, the BLM shall ensure that the treatment plan and any modifications to it resulting from the negotiations are implemented.
 - a. The BLM shall ensure that any human remains and grave-related artifacts encountered during data recovery are treated with the respect due such evidence and according to federal law, and, to the extent not inconsistent with federal law, state laws and local ordinances.
 - b. The BLM shall ensure that all records and materials resulting from identification and treatment efforts are curated in accordance with 36 CFR 79 by a BLM-approved facility in Nevada, and that all materials to be returned to their owners will be maintained in accordance with 36 CFR 79 until the materials analysis is complete and the materials are returned.
 - (1) Unless otherwise negotiated all materials must be curated or returned to their owners when the final report is accepted by the BLM.
 - (2) The BLM shall hold a surety bond from BMM as specified in Stipulation I until curation is complete.
 - c. The BLM shall ensure that all final archeological reports resulting from actions pursuant to this Agreement will be provided to the SHPO and COUNCIL, and made available to other interested parties, and to the National Technical Information Service (NTIS). The BLM shall ensure that all such reports are responsive to contemporary professional standards, and to the Department of the Interior's *Formal Standards for Final Reports of Data Recovery Program* (42 FR 5377-79).
 - (1) Precise locational data may be provided only in a separate appendix if it appears that release of locational data could jeopardize historic properties.
 - (2) A draft final report shall be due as stated in Stipulation H.3. unless otherwise negotiated.

D. Discovery Situations

1. Cultural resources, not previously identified, which are discovered while conducting mining activities shall be subject to this Agreement. If such cultural resources are discovered, or if known historic properties are being affected in an unanticipated manner, mining related activities within the general vicinity of the discovered resources will cease immediately and BMM shall notify the BLM authorized officer.
2. The BLM shall notify the SHPO and COUNCIL and consider SHPOs initial comments on the discovery. The COUNCIL may offer comments within two days of notification if it chooses. Within two working days of notification to the SHPO and COUNCIL, the BLM shall notify BMM, SHPO and interested persons, as appropriate, of the BLMs decision whether to allow mining related activities to proceed or to seek mitigative measures for the discovered cultural resources per 36 CFR 800.11.
3. If, in consultation with the SHPO, BLM determines that mitigation is appropriate, the BLM shall notify the COUNCIL of the proposed mitigative measures, and request comments from the SHPO and interested persons, as appropriate, on means of mitigating such properties. Any comments offered by the SHPO and interested persons will be documented and made available for public inspection. The SHPO and other interested persons as appropriate will provide BLM with comments in two working days so that they can be considered and the BLM can make a decision regarding the nature and extent of mitigative efforts within seven working days of BLMs notification to BMM of the need for mitigation. The BLM shall notify the SHPO, COUNCIL and interested persons of its decision and shall ensure that such mitigative actions are implemented
4. In the event an objection arises from the SHPO or interested persons, regarding a discovery or the means by which it will be treated, the BLM shall attempt to resolve the objection in accordance with Stipulation J.
5. The BLM shall ensure that reports of mitigation efforts for discovery situations, are completed in a timely manner and conform to the Department of the Interior's Formal Standards for *Final Reports of Data Recovery Program* (42 FR 5377-79). Drafts of such reports shall be submitted to the SHPO for a 30-day review and comment as stipulated in H.2. Final reports shall be submitted to the SHPO, COUNCIL and interested persons for informational purposes.
6. Mining activity in the area of the discovery or affected site will be halted until BMM is notified by the BLM Authorized Officer that mitigation is complete and activities can resume.

E. Other Considerations

1. The BLM shall ensure that all stipulations of this Agreement are carried out by the BLM,

BMM, and all of its contractors or other personnel. Non-conformance to the stipulations of this Agreement shall invoke the non-compliance provisions of 43 CFR 3809 and may result in a letter of non-compliance or other litigative actions.

2. The BLM shall ensure that historic, architectural, and archaeological work conducted pursuant to this Agreement is carried out by, or under the direct supervision of persons meeting qualifications set forth in the Secretary of the Interior's *Professional Qualification Standards* (36 CFR 61) and acceptable to the BLM to conduct an inventory and report the results to the BLM.
3. BMM, in cooperation with the BLM and the SHPO, shall ensure that all its personnel, and all the personnel of its contractors, are directed not to engage in the illegal collection of historic and prehistoric materials. BMM shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*).
4. BMM shall bear the expense of identification, evaluation, and treatment of all historic properties directly or indirectly affected by BMM-related activity to the extent that such properties are situated on land owned or controlled by BMM as shown in Appendix A. Such costs shall include, but not be limited to, pre-field planning, field work, post-fieldwork analysis, research and report preparation, interim and summary report preparation, public interpretation, and costs associated with the curation of project documentation and artifact collections.

F. Reports and Monitoring

The BLM, the SHPO, and the COUNCIL may monitor actions carried out pursuant to this Agreement, and the COUNCIL shall review such actions when so requested. The BLM shall submit a monitoring report to the SHPO and the COUNCIL at least every 12 months. This report will assist the SHPO and the COUNCIL in monitoring actions carried out under this Agreement and provide a basis for review. The reporting year shall conform to the federal fiscal year and the report will be submitted to the SHPO and the COUNCIL by June 1st of the year following the fiscal year under review.

G. Notices to Proceed

Notices to Proceed (NTP) may be issued by the BLM to BMM under any of the following conditions:

1. the APE has been inventoried and BLM and SHPO have determined that there are no historic properties within the APE;
2. evaluation of potentially eligible sites has been conducted and BLM and SHPO have determined that the site(s) are not eligible;

3. a treatment option for historic properties affected by the activity has been approved by the BLM after consultation with the SHPO and interested persons. If the treatment option selected for a historic property requires fieldwork to be performed, the BLM may authorize BMM to proceed with the specific mining activities that would affect the historic property after:
 - a. the fieldwork phase of the treatment option has been completed; and,
 - b. the BLM has accepted a summary description of the fieldwork performed and a reporting schedule for that work; and,
 - c. BMM has posted a surety acceptable to the BLM as stipulated in I. below for post-fieldwork costs of the treatment plan.

H. Time Frames

1. **Inventory:** The BLM shall review and comment on the results of any cultural resources inventory submitted by BMM within the time frames indicated in the BLMs *Cultural Resources Inventory General Guidelines* (4th edition, January 1990) or any subsequent edition issued by the BLM.
2. **Consultation:** The BLM shall submit the results of all identification and evaluation efforts, including discovery situations, and treatment plans to the SHPO, COUNCIL and interested persons for a 30-day concurrent review and comment period. If the SHPO, COUNCIL or interested persons do not respond to the BLM within 30 days of receipt of a submittal, the BLM shall presume concurrence with the BLMs findings and recommendations as detailed in the submittal. The concurring party, BMM, will be apprised by the BLM as to the status of these efforts.
3. **Reports:** A draft final report of all identification, evaluation, treatment or other mitigative activities will be due to the BLM within 9 months after the completion of the fieldwork associated with the activity, unless otherwise negotiated. The concurring party, BMM, will be apprised by the BLM as to the status of the draft reviews.
4. **Curation:** All records, photographs, maps, field notes, artifacts, and other materials collected or developed for any identification, evaluation, or treatment activities will be curated in a facility approved by the BLM at the time the final report associated with that activity is accepted by the BLM, unless materials and artifacts must be returned to the owner.

I. Surety Bonds

1. BMM will post a surety with the BLM in an amount sufficient to cover all post-fieldwork costs associated with implementing a treatment plan or other mitigative activities, as negotiated by BMM where they contract for services in support of this Agreement. Such costs may include, but are not limited to post-field analyses, research and report preparation, interim and summary reports preparation, public interpretation, and the curation of project documentation and artifact collections in a BLM-approved curation facility. The surety shall be posted prior to BLM issuing a notice to proceed.
2. The surety posted shall be subject to forfeiture if the post-fieldwork tasks are not completed within the time period established by the treatment option selected; provided, however, that the BLM and BMM may agree to extend any such time periods. The BLM shall notify BMM that the surety is subject to forfeiture and shall allow BMM 15 days to respond before action is taken to forfeit the surety.
3. The surety shall be released, in whole or in part, as specific post-fieldwork tasks are completed and accepted by the BLM.

J. Dispute Resolution

1. If the SHPO issues an objection regarding a matter submitted by the BLM for review, the BLM shall consult with the SHPO to resolve the objection. If then, either party determines that the objection cannot be resolved, the BLM shall request the comments of the COUNCIL. The COUNCIL shall provide its comments, if any, within 30 days after receipt of the request from the BLM. Any COUNCIL comment provided in response to such a request will be taken into account by the BLM and the BLM will notify the COUNCIL and SHPO of its decision. The BLMs responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.
2. If an objection is raised by a representative of local government, or a member of the public, the BLM shall take the objection into account and consult as needed with the objecting party and the SHPO in an attempt to resolve the objection. If the BLM determines that the objection cannot be resolved, it shall request the comments of the COUNCIL. The COUNCIL shall provide its comments, if any, within 30 days after receipt of the request from the BLM. Any COUNCIL comment provided in response to such a request will be taken into account by the BLM and the BLM will notify the COUNCIL, SHPO and objecting party of its decision. The BLMs responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

K. Amendment

Any party to this Agreement may request that this Agreement be amended, whereupon the parties will consult in accordance with 36 CFR 800.13 to consider such amendment.

L. Termination

Any party to this Agreement may terminate the Agreement by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of a termination, the BLM will comply with 36 CFR 800.4 through 800.6 with regard to individual actions covered by this Agreement.

M. Execution

1. Execution and implementation of this Agreement evidences that the BLM has afforded the COUNCIL a reasonable opportunity to comment on the Undertaking and its effects on historic properties and that BLM has satisfied its Section 106 responsibilities for all individual actions associated with the development of the Bald Mountain Mine District.
2. In the event that the BLM does not carry out the requirements of this Agreement, the BLM shall comply with 36 CFR 800.4 through 800.6 with regard to individual actions covered by this agreement.
3. This agreement shall become effective on the date of the last signature below, and shall remain effective, unless earlier terminated as provided in Stipulation L, until the later of a date of 10 years from the effective date or until the development of the Bald Mountain Mine District, including all exploration, mining, and reclamation, is complete.

CONSULTING PARTIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Robert D. Bush Date: 12/15/95

Title: Executive Director

BUREAU OF LAND MANAGEMENT

By: Gene A. Holton Date: 10/19/95

Title: Ely District Manager

NEVADA STATE HISTORIC PRESERVATION OFFICER

By: Allen M. Baldwin, Deputy for Date: 11/21/95

Title: State Historic Preservation Officer

CONCURRING PARTY:

PLACER DOME U.S., INC

By: [Signature] Date: 10/16/95

Title: Manager

APPENDIX A

Bald Mountain Mining District

The Bald Mountain Mining District comprises the cultural resource review area for the purposes of this Programmatic Agreement. The cultural resource review area consists of all lands within the boundaries depicted on the attached Figure 1. The parties agree that Figure 1 shall be amended from time to time as may be necessary to include any additional properties or mining interests BMM may acquire for development of mineral resources within the Bald Mountain Mining District.

The parties acknowledge the property owned or controlled by BMM is comprised of scattered patented mining claims within contiguous and noncontiguous unpatented mining and mill site claims on public land administered by the BLM. These claim areas comprise the Bald Mountain Mining District as depicted on Figure 1.

APPENDIX B

Sequential Planning

The Area of Potential Effect (APE) encompasses identified historic properties, not all of which need to be dealt with immediately upon the initiation of a specific mineral development project. Therefore, for those identified historic properties, a general schedule of events for evaluating and treating those properties is outlined. Timing of appropriate evaluation and treatment of historic properties will occur in advance of proposed development activities and future exploration activities as described in the BLM-approved BMM Plans of Operations (POOs).

A. For BMM POOs exploration and development activities occurring on lands (regardless of surface ownership) within the BMMD that have been previously inventoried:

1. BMM shall notify the BLM prior to initiating activities which may affect a property or properties determined eligible or potentially eligible for the NRHP. Potential effects to properties will be determined by the BLM.
2. Upon receipt of a notification regarding potentially eligible properties, BLM will require that an evaluation program, which may include subsurface testing, be approved by the BLM and implemented by BMM, and that a report assessing eligibility be prepared. Eligibility recommendations presented in the report shall be reviewed by the BLM, in consultation with the SHPO to determine eligibility.
3. Upon receipt of a notification regarding properties that have already been determined to be eligible, the BLM will, in consultation with the SHPO, interested persons and BMM, select a treatment option.
4. Where fieldwork is required by the treatment plan, BLM may issue BMM a Notice to Proceed (NTP) with mining operations in the activity area after:
 - a. the fieldwork phase of the treatment plan has been completed;
 - b. a summary of the fieldwork has been accepted by BLM; and,
 - c. BMM has provided a surety for post-fieldwork costs acceptable by BLM as stipulated in I.

B. For activities amended to BMM POOs, proposed to occur on lands (regardless of ownership) within the BMMD that have not been previously inventoried:

1. BMM shall retain a qualified archaeologist, historian or architectural historian meeting the Secretary of the Interior's *Professional Qualification Standards* (36 CFR 61) and acceptable to the BLM to conduct an inventory and report the results to the BLM.

2. The BLM, in consultation with the SHPO, shall review the inventory report for the APE of an activity area and shall determine if it contains cultural resources eligible for inclusion in the NRHP (36 CFR 800.4).
3. If no cultural resources are identified, the BLM may authorize BMM to proceed in the APE of the activity area and notify SHPO and any interested persons of BLMs decision to authorize the activity per 36 CFR 800.4(d).
4. If, after consultation with the SHPO, the cultural resources in the APE of an activity area are determined not eligible for inclusion on the NRHP, the BLM may authorize BMM to proceed in the APE of that activity area per 36 CFR 800.4(d).
5. For any historic properties identified in the APE of the activity area that are determined to be eligible to the NRHP, the procedures outlined in A.1 through 4 above will be followed.

