

**PROGRAMMATIC
AGREEMENT
AMONG
THE NATIONAL PARK SERVICE - LAKE MEAD NATIONAL
RECREATION AREA AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
AND
THE ARIZONA STATE HISTORIC
PRESERVATION OFFICER REGARDING
IMPLEMENTATION OF THE LOW
WATER PLAN GENERAL
MANAGEMENT PLAN
AMENDMENT**

WHEREAS, the National Park Service (NPS) has completed ~~the Sustainable Low Water Access Plan which follows the~~ a Low Water Plan Environmental Assessment (the plan) as an amendment to the General Management Plan for Lake Mead National Recreation Area. ~~The purpose of the sustainable low water access plan is to develop an updated strategic direction for the future of motorized boat launching, related commercial services, facility and infrastructure needs, and related implementation actions at five priority locations—Hemenway Harbor, Callville Bay, Echo Bay, South Cove, and Temple Bar.~~ ~~The purpose of the plan is to continue to provide recreational facilities and services at Hemenway Harbor, Callville Bay, Echo Bay, South Cove, and Temple Bar at or in close proximity to existing areas to the maximum extent physically and financially feasible as lake levels change.~~ Visitor access may be maintained ~~to the extent feasible~~, even if some facilities and services change; and

WHEREAS, the Superintendent of the Lake Mead National Recreation Area is the responsible NPS agency official for the plan. The Superintendent has determined that the implementation of this plan is an undertaking subject to review under 54 USC § 306108, commonly known as Section 106 of the National Historic Preservation Act (NHPA), and its implementing regulations, 36 CFR § 800; and

WHEREAS, the NPS has determined that effects on historic properties cannot be fully evaluated prior to approval of the plan, and has developed this Programmatic Agreement (PA) establishing a process to assess and resolve adverse effects in accordance with 36 CFR § 800.14(b)(1)(ii); and

WHEREAS, the NPS has defined the plan's Area of Potential Effects, which includes the developed areas of Hemenway Harbor, Callville Bay, Echo Bay,

South Cove, and Temple Bar as defined by Alternative **A2** of the plan (see map in Attachment A); and

WHEREAS, the NPS considered alternatives and provided opportunities for public involvement in the context of complying with the National Environmental Policy Act of 1969 (NEPA) as provided for in 36 CFR § 800.8. **The public was given the opportunity to review and provide comments on the EA, as well as this PA, from July x, 2023 to August x, 2023;** and

WHEREAS, the NPS initiated Native American consultation for the plan which included sending letters at the beginning of the planning process to those Tribes that may attach religious or cultural importance to affected cultural resources and Traditional Cultural Properties pursuant to 36 CFR § 800.2(c)(2)(ii)(A-F). The Tribes consulted included: Kaibab Paiute Tribe, Las Vegas Paiute Tribe, Moapa Band of Paiute Indians, Shivwits Band of Paiute, Paiute Indian Tribe of Utah, Chemehuevi Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Fort Yuma Quechan Indian Tribe, Gila River Indian Community, Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Salt River Pima-Maricopa Indian Community, Yavapai-Prescott Indian Tribe, Ak-Chin Indian Community, Navajo Nation, and Pueblo of Zuni. The NPS will continue to consult with the Tribes and has invited them to sign this PA as concurring parties; and

WHEREAS, the NPS has consulted with the Nevada State Historic Preservation Officer (NVSHPO) and the Arizona State Historic Preservation Officer (AZSHPO) pursuant to Section 106 of the NHPA and 36 CFR § 800.14(b)(2); and

WHEREAS, the SHPO is authorized to enter this PA in order to fulfill its role of advising and assisting Federal agencies in carrying out Section 106 responsibilities pursuant to Section 101 and 106 of the NHPA, at § 800.2(c)(1)(i) and § 800.6(b), and the NVSHPO and AZSHPO are Signatories to this PA; and

WHEREAS, the NPS has notified the Advisory Council on Historic Preservation (ACHP) of its undertaking in accordance with 36 CFR § 800.6(a)(1)(C), **and after no response was received by the NPS within 15 calendar days of invitation dated June 1, 2023, the ACHP has thereby** chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, unless defined differently in this PA, all terms are used in accordance with 36 CFR § 800.16; and

NOW, THEREFORE, the NPS, the AZSHPO, and the NVSHPO agree that the plan shall be implemented in accordance with the following stipulations to take into account the effect of the plan on historic properties in compliance with

Section 106 of the NHPA.

STIPULATIONS

The NPS will ensure that the following stipulations are carried out:

I. Professional Qualifications

All historic preservation work, including reviews of modifications under Stipulation V below, carried out pursuant to this PA shall be carried out by or under the supervision of a person, or persons, meeting at a minimum the Secretary of Interior's Professional Qualifications Standards (48FR 44738-44739) appropriate to the cultural resources anticipated, evaluated or mitigated.

II. Identification and Evaluation of Historic Properties

- A. Area of Potential Effects (APE). The APE for the project considers direct (physical, **visual, audible, atmospheric**), indirect (**further removed in time or distance**)(~~visual, audible, atmospheric~~), and cumulative effects for all project features. The project APE is depicted on the map in Attachment A.
- B. The NPS shall ensure that all areas directly or indirectly affected by the project are surveyed for cultural resources in accordance with Director's Order No. 28 and current standards for intensive pedestrian survey and cultural resource recording, as appropriate. The NPS shall consult with the appropriate SHPO **and concurring parties** on survey methodology prior to commencement of any archeological fieldwork. Portions of the project that were surveyed over 10 years **prior** to the effective date of this PA will be reviewed to ensure they meet current methods of site for site recording and survey or need to be resurveyed using current standards.
- C. The NPS will prepare ~~a~~ **separate** cultural resources reports **for each of the subject developed area APEs** that describes the cultural resources survey effort **in each location** ~~as a whole~~, the survey methods used, provides the results of the literature review and pedestrian surveys, and includes any previous NPS determinations of National Register of Historic Places (NRHP) eligibility, or if not previously completed, new determinations of eligibility, are made in accordance with 36 CFR § 80.4(c) for all cultural resources discovered or revisited.

- D. The NPS shall provide cultural resources survey reports, site documentation, and NRHP evaluations to the appropriate SHPO and concurring parties for review and comment. The appropriate SHPO and concurring parties shall have thirty (30) calendar days from receipt to provide comments to the NPS. If the appropriate SHPO or concurring parties do not provide comments **within thirty (30) calendar days**, the NPS may move forward to the next step in the design process or implement the plans, as appropriate. However, NPS shall make a good faith effort to obtain a response before proceeding to the next step in the process.
- E. The NPS shall provide the appropriate SHPO with all comments received from the concurring parties on the documents in Stipulation II.D above within ten (10) calendar days of receipt.
- F. If the appropriate SHPO and concurring parties provide comments within thirty (30) calendar days from receipt, the NPS shall provide the SHPO and concurring parties with a written response including, as necessary, an explanation as to how ~~the submission will be revised to address the comments~~ **the NPS will take the comments into account** within thirty (30) calendar days of receiving comments.

III. Design Review for the **Sustainable Low Water Access Plan**

- A. The NPS shall submit a description of the proposed undertaking, which will consist of any proposed modifications to the facilities at Hemenway Harbor, Callville Bay, Echo Bay, **South Cove**, and Temple Bar, and a map showing the APE. An assessment of effects to historic properties will also be included in the submittal. All draft design development documents for projects within the APE (e.g. ~~30~~**70**% plans, site plans, renderings, sections, elevations, specifications, photographs, narrative scopes of work) shall be submitted to the appropriate SHPO for review and comment.
- B. The SHPO **and concurring parties** shall have thirty (30) calendar days from the date of receipt to provide comments to the NPS.
- C. The NPS shall make a good faith effort to obtain a response before proceeding to the next step in the process. If the SHPO **or concurring parties** does not provide comments, the NPS may move forward to the next step in the design process or implement the plans, as appropriate.
- D. If the SHPO **or concurring parties** provides comments within the

specified time period, the NPS shall provide the SHPO **or concurring parties** with a written response including, as necessary, an explanation as to how the **NPS will take the comments into account in the design revisions** ~~design will be revised to address the comments~~ within thirty (30) calendar days of receiving comments from the appropriate SHPO.

IV. Assessment of Effects and Resolution of Adverse Effects

- A. The NPS, in consultation with the appropriate SHPO **and concurring parties**, shall seek to avoid adverse effects to historic properties during the design of project activities where feasible and prudent. The NPS may achieve this through engineering redesign, alternate placement of necessary structures, or shifting of alignments to avoid historic properties.
- B. If the NPS finds that the project activities will not adversely affect historic properties within the APE, NPS shall consult with the appropriate SHPO and the concurring parties regarding their assessments of effects for project activities at the 70% design phase. The SHPO and concurring parties will have thirty (30) calendar days from receipt to review and comment on the NPS findings. The NPS shall make a good faith effort to obtain a response before proceeding to the next step in the process. If the SHPO and concurring parties fail to respond to NPS within thirty (30) calendar days of receipt of an adequately documented submission, NPS may finalize the documentation and initiate the project.
- C. If the NPS, in consultation with the appropriate SHPO **and concurring parties**, finds that project activities will adversely affect historic properties and cannot be resolved through avoidance or design changes, then the NPS shall prepare a Historic Properties Treatment Plan (HPTP) as part of a Memorandum of Agreement to detail the appropriate mitigation to address effects as determined for the project activity.
- D. Historic Properties Treatment Plan
 - a. ~~The NPS will develop an HPTP to address adverse effects of the project to historic properties. The HPTP will describe the environmental setting, include a research design, research questions and relevant data requirements, identify the nature of the effects to which each historic property will be subjected and the proposed mitigation to minimize or mitigate adverse effects.~~ **For archeological data recovery, the NPS shall ensure that any NRHP-eligible or -listed archeological sites whose preservation**

in place is not feasible is subject to data recovery, following a data recovery plan developed in consultation with the Signatories and Tribes as appropriate. All data recovery plans shall be consistent with the Secretary of Interior's *Standards and Guidelines for Archeological Documentation* (48 FR 44734-37), and take into account the ACHP's publication, *Treatment of Archeological Properties*. Each data recovery plan shall minimally include a description of the environmental setting, research design, research questions, methods, identification the nature of the effects to which each property will be subjected, the proposed mitigation to minimize or mitigate adverse effects, and data management and dissemination.

- b. The NPS shall engage a qualified architectural historian to conduct intensive-level survey, prepare HABS/HAER-standard documentation of the historic property, and/or prepare an alternative mitigation measure. HABS/HAER-standard documentation means products acceptable for inclusion in the Historic American Buildings Survey (HABS) / Historic American Engineering Record (HAER) / Historic American Landscapes Survey (HALS) collection at the Library of Congress in accordance with the Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation.
 - c. Alternative mitigation measures for adverse effects on historic properties other than described above may be developed in consultation with SHPO and concurring parties.
 - d. Monitoring and inadvertent discoveries plans will be developed and included as part of the HPTP. The HPTP will identify those areas that will be monitored. Cultural resources discovered during project activities will be treated in accordance with the inadvertent discoveries plan.
- E. The NPS shall submit a draft HPTP to the appropriate SHPO and concurring parties, as appropriate, for review and comment. The SHPO and concurring parties will have thirty (30) calendar days from receipt to review and comment on the HPTP. If the SHPO fails to respond to the NPS within thirty (30) calendar days of receipt of an adequately documented submission, the NPS may finalize the HPTP and initiate the fieldwork portion of the HPTP.
- F. The NPS shall take into account comments provided under Stipulation IV.E. and submit the draft final HPTP, revised as necessary to address

~~SHPO comments, to the appropriate SHPO or concurring party for review and comment.~~ The SHPO or concurring party will have thirty (30) calendar days from receipt to provide additional comments to the NPS. If the SHPO or concurring party does not submit additional comments within thirty (30) calendar days of receipt, the NPS may finalize the HPTP.

- G. The NPS shall submit a draft report of the results of any mitigation effort to the appropriate SHPO and concurring parties as appropriate. The SHPO or concurring party will have thirty (30) calendar days from receipt to review and comment on the draft report. If the SHPO or concurring party fails to respond to the NPS within thirty (30) calendar days of receipt of an adequately documented submission, the NPS may finalize the document.
- H. The NPS will take into account comments provided by ~~edit the draft report to address any SHPO and/or concurring party comments or concerns.~~
- I. The NPS shall submit the ~~draft final~~ report, revised as necessary to address SHPO comments, to the appropriate SHPO for review and comment. The SHPO will have thirty (30) calendar days from receipt to provide additional comments to the NPS. If the SHPO does not submit additional comments within thirty (30) calendar days of receipt, the NPS may finalize the report.

V. Post-Review Exempted Modifications

In the event that minor modifications in design or materials are required after the design review process outlined in Stipulation III above has been completed and/or after construction has begun, such modifications may occur provided that the changes are approved by NPS cultural resources staff. Such modifications must be consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* and must not result in a loss of integrity or changes to character-defining features. The NPS will document such minor modifications in an internal memorandum to the files that will be made available for inspection by the appropriate SHPO and concurring parties. The NPS shall provide a summary memorandum listing the modifications reviewed during the year to the appropriate SHPO and concurring parties in the annual summary report required under Stipulation IX.

VI. Standards for Survey and Curation

All records, photographs, maps, field notes, artifacts, and other material

collected or developed for any mitigation activities will be curated in a NPS facility in the appropriate state that meets the standards set forth in 36 CFR § 79.

VII. Inadvertent Resource Discoveries or Unanticipated Effects

If during construction previously unknown archeological resources are discovered or unanticipated effect to historic properties are identified, all work in the immediate vicinity of the discovery or historic property would be halted and the procedures of 36 CFR § 800.13(c) followed. In the event that human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered during construction, the regulations implementing the Native American Graves Protection and Repatriation Act (43 CFR §10) (NAGPRA) would be followed under an NPS NAGPRA Plan of Action.

VIII. Dispute Resolution

Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the NPS shall consult with such party to resolve the objection. If the NPS determines that such objection cannot be resolved, the NPS will:

- A. Forward all documentation relevant to the dispute, including the NPS's proposed resolution, to the ACHP. The ACHP shall provide the NPS with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NPS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The NPS will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NPS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. The NPS' responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

IX. Annual Report and Meeting

Each year, by April 30, following the execution of this PA until it expires or is terminated, the NPS shall provide the signatories and concurring parties with a summary report detailing work carried out pursuant to its terms during the previous calendar year (January 1 – December 31). Such report shall include any proposed scheduling changes, any problems encountered, and any disputes or objections received in the NPS's efforts to carry out the terms of this PA. A meeting to review these undertakings will be held if so requested by the signatories.

X. Amendment

The PA may be modified by amendment at any time by mutual concurrence of all signatories. Amendment of the PA as necessary shall be accomplished in the same manner as the original agreement. Amendments will be in writing and approved by the original signatories or their designated official and will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

XI. Emergency Situation

Should an emergency situation occur which represents an imminent threat to public health or safety, or creates a hazardous condition, the NPS shall immediately notify the SHPO, concurring parties, and the ACHP of the condition which has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the SHPO, concurring parties, or the ACHP desire to provide technical assistance to the NPS, they shall submit comments within seven (7) calendar days from notification, if the nature of the emergency or hazardous condition allows for such coordination.

XII. Termination of Agreement

If any signatory to this PA determines that its terms will not or cannot be carried out, that signatory shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII above. Following consultation, any signatory may terminate the PA by providing thirty (30) calendar days written notice to the other signatories. ~~In the event of termination by a signatory, the NPS will request the comments of the ACHP, in accordance with 36 CFR §800.7(a).~~

In the event of termination and, to the extent feasible prior to work continuing

on the plan, the NPS must either (a) execute a new agreement pursuant to 36 CFR § 800.14(b)(3), or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7, or (c) comply with 36 CFR §§ 800.1 et. seq. with regard to individual actions covered by this PA: The NPS shall notify the signatories as to the course of action it will pursue.

XIII. Term

This PA shall become effective upon signature of the last signatory and will remain in effect for ten (10) years after the effective date, or when the plan is complete and all of the above stipulations are fulfilled, whichever occurs first. The signatories may agree in writing to an extension for carrying out its terms prior to its expiration. The agreement and any amendments shall be binding upon the parties, their successors, and assigns.

XIV. Anti-deficiency Act

Any requirement for the payment or obligation of funds by the Government established by the terms of this PA shall be subject to availability of appropriated funds. No provision in this PA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC Section 1341. If the availability of funds and compliance with the Anti-Deficiency Act impair the NPS' ability to perform under this PA, then the NPS shall consult in accordance with Stipulation X ~~XI~~ of this PA.

XV. Counterpart Signatures

This PA may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The NPS shall distribute copies of the entire PA to all signatories and concurring parties once the agreement is fully executed.

EXECUTION of this **PA** by the NPS, AZSHPO, and NVSHPO, and implementation of its terms, evidences that the NPS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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AND
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PRESERVATION OFFICER REGARDING
IMPLEMENTATION OF THE LOW
WATER PLAN GENERAL
MANAGEMENT PLAN
AMENDMENT**

SIGNATORY

Lake Mead National Recreation Area

Mike Gauthier
Acting Superintendent, Lake Mead National Recreation Area

Date: _____

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SIGNATORY

Nevada State Historic Preservation Office

Rebecca L. Palmer
Nevada State Historic Preservation Officer

Date: _____

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SIGNATORY

Arizona State Historic Preservation Office

Kathryn Leonard
Arizona State Historic Preservation Officer

Date: _____

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CONCURRING PARTY

Ak-Chin Indian Community

Mr. Robert Miguel
Chairman
Ak-Chin Indian Community

Date: _____

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CONCURRING PARTY

Chemehuevi Indian Tribe

Date: _____

Mr. Glenn Lodge
Chairperson
Chemehuevi Indian Tribe

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CONCURRING PARTY

Colorado River Indian Tribes

Ms. Amelia Flores
Chairwoman
Colorado River Indian Tribes

Date: _____

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CONCURRING PARTY

Fort Mojave Indian Tribe

Date: _____

Mr. Timothy Williams
Chairman
Fort Mojave Indian Tribe

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CONCURRING PARTY

Fort Yuma Quechan Indian Tribe

Mr. Jordan D. Joaquin
President
Fort Yuma Quechan Indian Tribe

Date: _____

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CONCURRING PARTY

Gila River Indian Community

Mr. Stephen R. Lewis
Governor
Gila River Indian Community

Date: _____

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CONCURRING PARTY

Havasupai Tribe

Mr. Thomas Siyuja
Chairman
Havasupai Tribe

Date: _____

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CONCURRING PARTY

Hopi Tribe

Mr. Timothy L. Nuvangyaoma
Chairman
Hopi Tribe

Date: _____

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CONCURRING PARTY

Hualapai Tribe

Date: _____

Ms. Sherry J. Parker
Chairwoman
Hualapai Tribe

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CONCURRING PARTY

Kaibab Band of Paiute Indians

Date: _____

Ms. Ona M. Segundo
Chairwoman
Kaibab Band of Paiute Indians

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CONCURRING PARTY

Las Vegas Paiute Tribe

Ms. Deryn Pete
Chairwoman
Las Vegas Paiute Tribe

Date: _____

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CONCURRING PARTY

Moapa Band of Paiutes

Mr. Gregory Anderson, Sr.
Chairman
Moapa Band of Paiutes

Date: _____

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CONCURRING PARTY

Navajo Nation

Mr. Buu Nygren
President
Navajo Nation

Date: _____

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CONCURRING PARTY

Paiute Indian Tribe of Utah

Ms. Corrina Bow
Chairwoman
Paiute Indian Tribe of Utah

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CONCURRING PARTY

Pueblo of Zuni

Mr. Arden Kucate
Governor
Pueblo of Zuni

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CONCURRING PARTY

Salt River Pima-Maricopa Indian Community

Mr. Martin Harvier
President
Salt River Pima-Maricopa Indian Community

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CONCURRING PARTY

Shiwits Band of Paiutes

Date: _____

Ms. Hope Silvas
Band Chair
Shiwits Band of Paiutes

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CONCURRING PARTY

Yavapai-Prescott Indian Tribe

Mr. Robert Ogo
President
Yavapai-Prescott Indian Tribe

Date: _____