

1
2
3
4
5
6
7
8

**PLAN OF ACTION
FOR THE TREATMENT OF
INTENTIONALLY EXCAVATED OR INADVERTENTLY DISCOVERED
HUMAN REMAINS DURING CONSTRUCTION FOR THE
BRIGHTLINE WEST—LAS VEGAS TO VICTOR VALLEY—PROJECT
CLARK COUNTY, NEVADA AND
SAN BERNARDINO COUNTY, CALIFORNIA**

9 As defined by the Native American Graves Protection and Repatriation Act (NAGPRA) and its
10 implementing regulations (43 CFR Part 10), this written Plan of Action (POA) will be implemented for
11 all discoveries of human remains on federal land made during construction activities associated with
12 construction of the Brightline West, Las Vegas to Victor Valley Project, located in Clark County, Nevada,
13 and San Bernardino County, California. The only federal land within the area of potential effects (APE)
14 is managed by the Bureau of Reclamation (BLM). DesertXpress Enterprises, LLC (Project Sponsor) has
15 proposed the Project in coordination with the Federal Railroad Administration (FRA). The Project
16 Sponsor intends to retain services by qualified archaeological personnel, including a Principal
17 Investigator (PI) to conduct fieldwork and activities under this POA.
18

19 **I. Kinds of Objects to be Considered as NAGPRA Items**

20
21 For all discoveries, the kinds of objects to be considered and referred herein as *NAGPRA items* includes
22 the following legal definitions adopted from 43 CFR 10.2(d), which shall serve as the basis for defining
23 any potential NAGPRA items in consultation with the culturally affiliated tribes:
24

25 A. *Human remains* mean the physical remains of a human body of a person, partial and
26 complete, including non-articulated bone fragments, of Native American ancestry. The term does not
27 include remains or portions of remains that may reasonably be determined to have been freely given or
28 naturally shed by the individual from whose body they were obtained, such as hair made into ropes or
29 nets, unless such remains or portions of remains identified as part of a possible cremation or disturbed
30 burial.
31

32 B. *Funerary objects* mean items that, as part of the death rite or ceremony of a culture, are
33 reasonably believed to have been placed intentionally at the time of death or later with or near individual
34 human remains. Funerary objects must be identified by a preponderance of the evidence as having been
35 removed from a specific burial site of an individual affiliated with a particular Indian tribe. *Associated*
36 *funerary objects* are those objects reasonably believed to have been placed intentionally at the time of
37 death or later with or near individual human remains and are *associated* as those funerary objects for
38 which the human remains with which they were placed intentionally are also in the possession or control
39 of a Federal agency.
40

41 C. *Sacred objects* mean items that are specific ceremonial objects needed by traditional Native
42 American religious leaders for the practice of traditional Native American religions by their present-day
43 adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with
44 sacredness in the eyes of an individual, this POA is specifically limited to objects that were devoted to a
45 traditional Native American religious ceremony or ritual and which have religious significance or
46 function in the continued observance or renewal of such ceremony. The term *traditional religious leader*

1 means a person who is recognized by members of an Indian tribe as:

- 2
- 3 1. Being responsible for performing cultural duties relating to the ceremonial or religious
- 4 traditions of that Indian tribe, or
- 5 2. Exercising a leadership role in an Indian tribe or based on the tribe's cultural, ceremonial, or
- 6 religious practices.
- 7

8 D. *Objects of cultural patrimony* mean items having ongoing historical, traditional, or cultural
9 importance central to the Indian tribe itself, rather than property owned by an individual tribal or
10 organizational member. These objects are of such central importance that they may not be alienated,
11 appropriated, or conveyed by an individual tribal or organization member. Such objects must have been
12 considered inalienable by the culturally affiliated Indian tribe at the time the object was separated from
13 the group.

14 II. Specific Information Used to Determine Custody

15
16 In the event of the removal of NAGPRA items during archaeological investigation associated with or
17 construction of the Project, the following specific information will be used to determine custody of
18 those items pursuant to 43 CFR 10.6(a). During the construction of the Project, NAGPRA objects may
19 be recovered in contexts that render determination of lineal descendants impossible.

20
21 Within the Project APE, *cultural affiliation* will be determined pursuant to 43 CFR 10.14(c). Cultural
22 affiliation means a relationship of shared group identity that may be reasonably traced historically or
23 prehistorically between a present-day Indian tribe and an identifiable earlier group. Based upon the
24 preponderance of the evidence, all of the following requirements must be met to determine cultural
25 affiliation between a present-day Indian tribe and the NAGPRA items of an earlier group:

26
27 A. Existence of an identifiable present-day Indian tribe with standing under these regulations
28 and the NAGPRA;

29
30 B. Evidence of the existence of an identifiable earlier group. Support for this requirement may
31 include, but is not necessarily limited to evidence sufficient to:

- 32 1. Establish the identity and cultural characteristics of the earlier group;
- 33 2. Document distinct patterns of material culture manufacture and distribution methods for
- 34 the earlier group, or;
- 35 3. Establish the existence of the earlier group as a biologically distinct population, and;

36
37 C. Evidence of the existence of a shared group identity that can be reasonably traced between
38 the present-day Indian tribe and the earlier group. Evidence to support this requirement must establish
39 that a present-day Indian tribe has been identified from prehistoric or historic times to the present as
40 descending from the earlier group. This evidence may exist as geographical, kinship, biological,
41 archaeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant
42 information or expert opinion. Claimants do not have to establish cultural affiliation with scientific
43 certainty.

44
45 Various studies in the Project APE indicate that the APE is within the traditional ethnographic territory
of members of the Consulting Tribes. Further, during consultation, Consulting Tribes identified the area

1 encompassing the Project as part of their traditional territory. Therefore, pursuant to 43 CFR 10.14(e),
2 based on the available geographic, archaeological, anthropological, historical, and ethnographic
3 evidence, the Chemehuevi Indian Tribe of the Chemehuevi Reservation, Colorado River Indian Tribes
4 (CRIT), Fort Mojave Indian Tribe (FMIT), Las Vegas Tribe of Paiute Indians of the Las Vegas Indian
5 Colony, Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Morongo Band of
6 Mission Indians (MBMI), Soboba Band of Luiseño Indians, Timbisha Shoshone Tribe, Twenty-Nine
7 Palms Band of Mission Indians, Yuhaaviatam of San Manuel Nation (YSMN), have been determined to
8 be culturally affiliated with any NAGPRA items recovered during archaeological investigation within or
9 construction of the Project.

10 **III. Planned Treatment, Care, and Handling of NAGPRA Items**

11
12 It is possible that NAGPRA items will be found during archaeological investigation or during the course
13 of construction activities for the Project.

14
15 A. If faunal material suspected of being of human origin are discovered intentionally or
16 inadvertently, all ground-disturbing activities shall cease within a safe distance of where the discovery
17 was made and a reasonable effort shall be made to secure the area from additional disturbance. Until the
18 faunal material has been positively identified as of human origin, they shall be left in situ during the
19 notification period is completed.

20 B. Once the area where suspected human remains have been identified is secured, FRA shall
21 contact the BLM by phone and e-mail to inform them of the discovery. As the federal land managing
22 agency BLM is responsible for completion of the NAPRA process.

23 C. The BLM shall contact Consulting Tribes by phone and e-mail to inform them of the
24 discovery.

25 D. Once BLM has determined the suspected human remains are not part of a crime scene,
26 BLM will work with the PI to coordinate identification of the bone by a qualified human osteologist.
27 BLM may determine that unidentified remains need to be collected as specified below once in situ
28 documentation has been captured. Such scenarios may involve pieces of bone identified in spoils piles
29 or other disturbed contexts and that leaving them in place would put them at risk of loss or mistreatment.

30 E. If the discovery is positively identified as human and of prehistoric age, BLM will notify
31 Consulting Tribes verbally within one (1) business day, followed by written notification within three (3)
32 business days. This notification shall contain the following information:

- 33 1. A verbal description of what has been found and the context in which the NAGPRA
34 items are located;
35 2. The location of the NAGPRA items;
36 3. Whether avoidance in place is feasible;
37 4. The proposed location for reburial or other treatment; and
38 5. Any other pertinent information.

39 F. As soon as possible, but no later than three (3) working days after receipt of the written
40 confirmation of notification, BLM will direct the PI to:

41

- 1 1. Collect the human remains in a manner approved by Consulting Tribes. The human
2 remains will be placed in a muslin bag that is then placed in an acid free box with a
3 bundle of natural tobacco. The box containing the remains will be secured in an agreed
4 upon secure facility and locked;
- 5 2. Notify Consulting Tribes verbally by telephone within one (1) day, followed up with
6 written notification within three (3) business days. The notification must include
7 information about the kinds of human remains and associated funerary objects (if any)
8 and the circumstances of their discovery, their condition, and their current location.

9 G. The activity that resulted in the inadvertent discovery may resume immediately after the
10 remains have been secured and following the verbal notification of the inadvertent discovery to the
11 Consulting Tribes unless the tribes request an opportunity to inspect the location of the discovery. In the
12 event of such a request, the activity may resume one (1) day following the site visit, or thirty (30) days
13 following the date of verbal notification, whichever occurs sooner.

14 **IV. Planned Archaeological Recording of NAGPRA Items**

15
16 All NAGPRA items will be recorded *in situ* using standard archaeological methods, whether the
17 discoveries occur intentionally during the data recovery phase, or inadvertently during construction.
18 Documentation may consist of photography and/or detailed hand drawings using a 10 cm grid.
19 However, Consulting Tribes may request no photographs of human remains and/or funerary objects be
20 taken. The archaeological context of the NAGPRA items will be clearly documented.

21 **V. Kinds of Analysis Planned for NAGPRA Items**

22
23 During the discovery and notification period, analysis of discovered NAGPRA items will consist of
24 non-destructive, in-field photography (if permissible) or drawings to determine the age and sex of the
25 individual(s). This analysis will typically require minimal handling of suspected human remains
26 necessary to take multiple scaled photographs of each item. Suspected human remains will not be
27 brushed or handled beyond what is necessary to facilitate the photography. As noted above, upon
28 receiving confirmation that the remains are of Native American human origin, the PI will collect and
29 secure the human remains in the manner approved by the consulting tribes.

30 **VI. Traditional Treatment of NAGPRA Items by Indian Tribes**

31
32 The Consulting Tribes have not expressed any additional traditional treatments to occur beyond the care
33 of collecting the remains as already stipulated in this document. However, ongoing consultation may
34 result in specific traditional treatments prior to or during any handling or treatment applied to NAGPRA
35 items.

36 **VII. Nature of Reports to Be Prepared**

37
38 As noted above, all NAGPRA items recovered during archaeological investigation for or construction of
39 the Project will derive from archaeological contexts. Therefore, a formal report on NAGPRA
40 compliance will be prepared at the conclusion of Project construction activities.

41 **VIII. Planned Disposition of NAGPRA items**

42

1 In accordance with 43 CFR 10.6(c), following the discovery of NAGPRA objects, BLM will ensure
2 that all NAGPRA objects are re-interred in a pre-approved location.

3 **IX. Approval**

4
5 Approval of this Plan of Action is executed by signature of the BLM. Representatives of Consulting
6 Tribes have been invited to sign this Plan of Action. This document is evidence that the BLM has
7 conformed to the requirements of NAGPRA and its implementing regulations (43 CFR Part 10)
8 AND ALSO Section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16
9 U.S.C. 470aa et seq.) and the ARPA implementing regulations found at 43 CFR 7 et seq. by
10 consulting with the Consulting Tribes and developing concurrence on the treatment and potential
11 disposition of discovered NAGPRA items during archaeological investigations for or construction
12 of the Project. All matters concerning the administration of this Plan of Action shall be referred to
13 BLM.

14
15
16 A. For BLM

17
18
19 _____
20 (1) BLM Signature (date)

21
22
23
24 B. For the XXX Tribe

25
26
27 _____
28 (1) XXXX (date)

29
30
31 B. For the XXX Tribe

32
33
34 _____
35 (1) Chairman XXXX (date)

36