

DRAFT

LAND USE AND DEVELOPMENT PROCEDURAL PLAN FOR THE PINE NUT ALLOTMENTS (NV)

Bureau of Indian Affairs
Western Regional Office



September 2009

Prepared by



CASCADE DESIGN
PROFESSIONALS, INC.

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Land Use Development and Procedural Plan (“Plan”) for the Pine Nut Allotments in Western Nevada

Preface

This document contains a set of procedures, standards, and lease provisions that will apply to any type of new land use developed under a lease agreement between an allotment owner and a private developer.

The purpose of this Plan is twofold: first, it is intended to guide the BIA in its review of development proposals which require commercial leases; and, second, the Plan will protect the long-term financial interest of allotment owners through a leasing mechanism by which the land can be kept in trust.

The Plan does not preclude development on an allotment by an owner(s). Moreover, the Plan does not promote or encourage the development of any allotment as that decision rests solely with the owner(s).

Allotment owners will continue to enjoy the rights and privileges associated with the allotments. Owners have the right to build their own home or other facilities, or they can choose to leave it in a natural, undeveloped state. The Plan does not restrict the type of development on an allotment as would be the case in a local government’s land use plan and zoning regulations. This plan will only apply when a majority of the allotment owners choose to lease their land to a private developer.

The Plan also provides uniform and consistent procedures, and appropriate development standards. Through their use of the Plan, the BIA can effectively evaluate proposed development projects and structure commercial leases that benefit allotment owners.

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EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

In May 2007, the Bureau of Indian Affairs, Western Regional Office, contracted with Cascade Design Professionals, Inc. to prepare a Land Use and Development Procedural Plan for the Pine Nut Allotments. The purpose of the plan is to guide BIA decision making in its review of commercial (residential, investment and recreational) development proposals made by individual Indian landowners and potential lessees. The Plan includes:

- A land use suitability analysis and identification of the “highest and best” use for allotments that have development potential
- Analysis of the impacts of development and identification of appropriate mitigative actions
- Development standards to ensure a minimum level of development quality as well as providing a measure of protection to adjacent allotment owners
- Recommendation of lease provisions that would provide the best economic return to landowners

This Land Use and Development Procedural Plan for the Pine Nut Allotments (Procedural Plan or Plan) is not a traditional land use plan that designates specific uses for each allotment; but rather, it is composed of a set of procedures, standards, and lease provisions that will address any type of land use that would be developed under a lease agreement with a private developer. **The intent of the Plan is to keep the land in trust, so the land owners can realize an income stream over the long term.**

The Plan does not (1) preclude any individual development on an allotment by an allotment owner or owners; nor (2) is there any intent to promote the development of any allotment. Allotment owners will continue to have the right to build their own home or other facilities on their allotment, or they can choose to leave it in its natural, undeveloped state. **This plan only comes into effect when allotment owners choose to lease their land to a private developer.** The Plan is also intended to provide a uniform process and appropriate development standards in order for the BIA to effectively evaluate proposed development projects as well as in structuring a commercial lease to the benefit of the property owners.

STUDY AREA

Of approximately 300 allotments currently held in trust, the BIA identified 176 allotments that might potentially have some development potential for inclusion in the planning effort. As shown in Figure E-1, the allotments were divided into three clusters for purposes of planning:

- North Allotments – 10 contiguous allotments north-northeast of the Minden/Gardnerville urban area and east of the Minden-Tahoe Airport

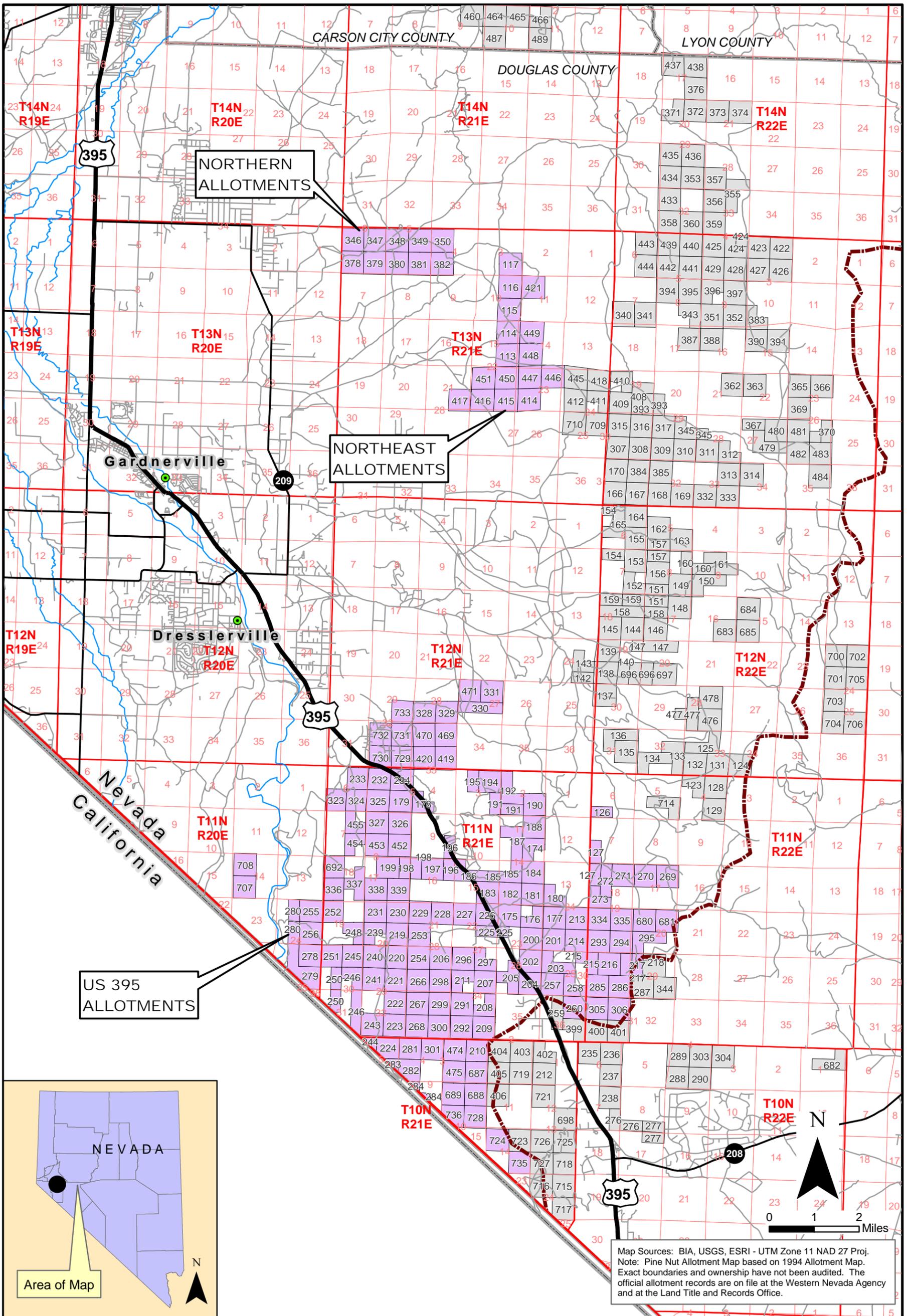


Figure E-1

Study Area

Pine Nut Allotments, Douglas County, Nevada

Map Prepared by Cascade Design Professionals, Inc., Jan. 2009

Legend

-  Carson River Watershed Boundary
-  Allotment Included in Land Use Plan
-  Allotment Not Included in Land Use Plan
-  Local Road
-  50 Meter Contours

- Northeast Allotments – 16 allotments east and slightly to the south of the North Allotments
- US 395 Allotments – 150 allotments southeast of Minden/Gardnerville urban area along the US 395 corridor

The North and Northeast Allotments are characterized by flat to rolling terrain, with elevations less than 5800 feet. The US 395 Allotments are in the Pine Nut Mountain Range and many of the allotments are in areas of steep slopes, with elevations exceeding 6500 feet in some areas, and have no access or are far from any existing road. The vast majority of the Pine Nut Allotments are undeveloped. What development does exist is scattered along the US 395 corridor.

PLAN DEVELOPMENT

Land Use Suitability

Initial planning efforts centered on determining, based on physical characteristics, which of the approximately 176 Pine Nut Allotments included in this study would be suitable for major development and how they would rank from the standpoint of developers interested in entering into long-term lease agreements with allotment owners.

Criteria defined as critical to development suitability were:

- Topography
- Access
- Public Services
- Soils Suitability for Development
- Ownership

Of these criteria, topography and access directly affect the cost of development and its attractiveness to developers and were determined to be critical to the development potential of allotments. Consequently, it was determined that some of the allotments were not suitable for development because of their elevation and/or slope or lack of access and were removed from further development analysis; they will be designated for cultural, recreational, or natural resource uses. Results of the evaluation of the remaining allotments indicated:

- All of the 10 North Allotments are totally, or in part, developable.
- All of the 16 Northeast Allotments are totally developable.
- In the US 395 Allotments area, 39 allotments are suitable for development, 15 have marginal suitability, and 96 are not suitable. The most attractive allotments for development lie adjacent to US 395 where access is direct and there is fairly level terrain. A few other allotments are also attractive on the north and northwest boundary of the allotments, due to favorable slopes and existing access.

A detailed description of the Land Suitability Analysis is included in Appendix C.

Highest and Best Use Designation

Based on the land use suitability analysis as well as a development trend analysis, the following highest and best land use designations were assigned.

- Northern Allotments - Larger-scale, planned development such as residential subdivisions or self-contained communities such as a retirement center or resort
- Northeast Allotments - Larger-scale, planned development such as residential subdivisions or self-contained communities such as a retirement center or resort
- US 395 Allotments - Single-family residential development or small subdivisions on the flatter parcels in the area between the Pine Nut Mountains and Carson Valley; horse ranches or other “lifestyle” homesites in the Topaz Lake—Holbrook Junction Area, at the southern end of the Pine Nut Mountains; single-family residential development in the flatter allotment areas in the central Hwy 395 Allotments, close to the highway for families that want relative isolation and a rural lifestyle; essentially no development potential beyond the flatter areas for allotments east and west of the highway (retain for cultural, recreational, or resource uses).

A detailed description of the Development Trend Analysis and Use Designations is provided in Appendix D.

Impact Analysis

As part of the planning effort, the impact of development on the allotments and surrounding environment was conducted and measures to mitigate those impacts were identified. The impact analysis was based on the results of the Land Use Suitability Analysis and focused on a maximum development scenario from the Highest and Best Use Designations.

Unlike most impact analyses, there is no specific proposed project to evaluate, making a detailed impact analysis impossible. Because of this unique situation, the impact analysis was limited to addressing general impacts based on a residential development scenario that would potentially produce the most severe impacts.

Overall, based on that development scenario, the major cumulative effect would be the change in character of the landscape in specific areas from undeveloped, unspoiled natural areas to rural and suburban densities of residential uses. Clearly the most significant changes would be the conversion of land use and the increase in traffic that it will generate, particularly in the North and Northeast Allotment areas where there is no development other than a few earth roads.

A table summarizing environmental impacts is presented in Chapter 5 of this Plan, and the complete impact analysis is contained in Appendix F.

PLAN SUMMARY

Development Process

Because the Pine Nut Allotments are not subject to the jurisdiction of any city, county, or state government and have no comprehensive plan, public policies or development process in place to control or direct land use, developing a traditional land use plan is not a workable option. Therefore, the plan developed for the Pine Nut Allotments is a *procedural* plan that consists of a development process with accompanying development standards that ensure developments meet appropriate standards for public health, safety, and general welfare, as well as protect the value of the land for the allotment owners over the long term and provide neighboring allotment owners a degree of protection against nuisance uses and any negative impacts from development. Development proposals will be evaluated through a uniform process and on their own merits.

The process and standards spelled out by this Procedural Plan are similar to normal land development requirements at a city or county level, but also include some post-development requirements that are related to the BIA trust responsibility and are important to the allotment owners and to the sub-lessees. The Procedural Plan involves a three stage process:

- Pre-development – site planning, environmental analysis, establishing agreements for utilities and public services, project approval, and if approved, execution of a Master Lease
- Development – construction and ongoing inspections ending with the issuance of a Certificate of Occupancy
- Post-development – ongoing monitoring, reporting, and enforcement to ensure that the terms and conditions of the Master Lease and the provisions of the development standards are maintained in order to protect the value of the land for the allotment owners

A detailed description of this development process is provided in Chapter 4 of this Procedural Plan.

Development Standards

Based on the type and scale of recommended development for the Pine Nut Allotments, codified development standards and design criteria for the development of leased property were developed to aid in the submittal of plans for review and approval. The Development Standards are intended to be used together with the applicable Douglas County Engineering Design Criteria and Improvements Standards Code (DCIS), the provisions of the International Building Code (IBC), and the International Fire Code as required, outlining which uses are allowed, conditional, temporary or prohibited on leased lands within the Pine Nut Allotments.

All new developments and modifications of existing developments will require one of two types of review processes:

- Development Review Type I – less complex developments and land uses that do not have significant design review issues; no public hearing required
- Development Review Type II (Conditional Use Permit) – for all development uses except those specifically listed under Type I or deemed to be prohibited uses; requires public notification of adjacent property owners and may include a third party design professional

Development Standards, Design Criteria, and Type I and Type II applications procedures and requirements are described in more detail in Chapter 6 and included in Appendix G of this Plan.

Lease Recommendations

Under a land lease, the ground on which a proposed structure is to be built is leased to a builder/developer (Lessee) instead of being sold, meaning that the land and the structure(s) are owned independently. Two key assumptions underlie the lease recommendations for the Pine Nut Allotments:

- The Pine Nut Allotments will remain in Trust status, and there will be no provisions for granting fee title to the land to any parties
- The leases are expected to return fair market value to the allotment owners over the periods of those leases

Some issues are of particular importance for lease provisions specific to the Pine Nut Allotments:

- **Ownership** – Many of the Pine Nut Allotments are held in multiple ownerships. For those allotments not held in single ownership, there need to be an express provision designating who can sign the lease on behalf of the other owners
- **Term of Agreement** – Recognizing that the leases need to protect the allotment holders but still provide incentives for developers, the length of term of the leases has to be long enough to enable conventional financing of projects, perhaps 99 years or with escalating terms
- **Lease Renewal** – The Lessor may renew a lease as it approaches termination, usually at renegotiated amounts of rent; however, that is not automatic and can make it difficult to lease land on which other parties are expected to make capital improvements.
- **Lease Revenues** – Allotment lands should be valued to ensure that the lease revenues provide market rates of return over the full period of those leases, i.e. obtain a qualified appraisal to set the current market value, then apply an escalator that assures the lease revenues at least match rates of inflation over the term of the lease.
- **Uses of the Property** – Leases often allow for flexibility in the development of properties to adjust for changing markets and other circumstances that are unforeseen when the lease is negotiated. However, the BIA should require having a general plan for development provided by the Lessee prior to the execution of the lease.
- **Time and Expenditure for Improvements** – Language needs to be included in all leases delineating timed benchmarks that must be met to ensure continuing progress toward the final full development. Equally important is a default provision that describes the rights of the Lessor in case the Lessee fails to meet the requirements of the lease.
- **Water Use and Facilities** – Water is an important issue in the Pine Nut Mountains and there needs to be flexible but clear language that describes how water will be provided to each allotment, who is responsible for providing it, what uses are allowed for that water, what limitations are imposed, and how the water use will be monitored. Leases and subleases also should include a disclaimer that groundwater may not be available over the life of the development.

Overall, it is important for any lease to have specific provisions for performance and remedies for defaults, to obtain the Lessor's approval for any changes in a lease through subletting, assignments, transfers of property, or other actions, and for the Lessor to perform due diligence into the qualifications, experience, track record and financial capabilities of the Lessee before the lease agreement is signed.

A detailed description of lease recommendations is provided in Chapter 6 and Appendix H of this Plan.