

Record of Decision for  
Cave Rock Management Direction  
Final Environmental Impact Statement

Lake Tahoe Basin Management Unit  
Douglas County, Nevada

## The Decision

This Record of Decision (ROD) amends the Land Resource Management Plan (Forest Plan) for the Lake Tahoe Basin Management Unit (LTBMU) to provide direction for the management of Cave Rock historic property. It is my decision to implement Alternative 6 of the Cave Rock Management Direction: Final Environmental Impact Statement (EIS) as modified in this Record of Decision (ROD). The Cave Rock parcel is located in Section 27, Township 14N, Range 18E, Mount Diablo Base and Meridian. Cave Rock is a site eligible for listing on the National Register of Historic Places (National Register) as a Traditional Cultural Property (TCP), historic transportation district, and archaeological site. This management direction's purpose is to:

protect the Cave Rock heritage resource and regulate uses there in a manner that, consistent with mandates and restrictions of law and regulation, preserves the historic and cultural characteristics that make the property eligible for listing in the National Register. As caretaker of a property eligible for listing in the National Register, the Forest Service has a responsibility to assess and manage for the appropriateness of activities occurring at Cave Rock (EIS, page 1-1).

The management direction's need is to address the fact that:

ongoing activities in the area have been identified as adversely affecting the integrity of the National Register-eligible properties. In addition, any long-term continuation of existing use restrictions requires a NEPA decision to implement (EIS, page 1-1).

The new management direction allows open access to the public and allows identified activities to occur while protecting and preserving the cultural and historical resource values at Cave Rock. The management policy prohibits the recreational activity of rock climbing as well as any new, non-historic activities that might be proposed at the site. All bolts and other climbing equipment that are technically feasible to remove will be removed. Modern graffiti and historic graffiti that do not contribute to historic districts will be removed when doing so will not physically damage Cave Rock. New graffiti is prohibited and will be removed if it occurs. The masonry flooring within the cave will be removed and disposed of. No motorized vehicles will be allowed outside of the highway corridor. College class instruction will not be permitted. Non-historic activities will be eliminated from Cave Rock; however other non-invasive recreation activities, consistent with the historic period (time immemorial through 1965) including, but not limited to, hiking, picnicking, stargazing, and fishing will be allowed to continue.

I am making one clarification to the selected alternative (Alternative 6). Examples of non-invasive activities that are consistent with the historic period (time immemorial through 1965)

that are allowed at Cave Rock are as follows: hiking, walking, picnicking, site seeing, fishing, and traditional Native American rituals and ceremonies. If monitoring indicates that these activities are occurring or increase to levels significantly higher than the historic period, the need for further restrictions will be assessed. Specifically, rock climbing, motorized vehicle use, commercial activities, bungee jumping, visitation by college classes, any activity that damages or defaces Cave Rock, or other new modern activities will be prohibited. If activities not listed above occur and it is not clear if they are allowed or not, I or the current Forest Supervisor will assess the activity and determine if it is consistent with the historic period.

The National Historic Preservation Act, 16 U.S.C. 470 et seq., authorizes the Secretary of the Interior to expand and to maintain a National Register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture. Pursuant to 36 C.F.R. 60.9, in September of 1998, the Forest service submitted a request for determination of eligibility for Cave Rock to be included on the National Register. In October of 1998, the Keeper of the National Register notified the Forest Service that Cave Rock was eligible for inclusion on the National Register. Cave Rock is eligible to the National Register of Historic Places as a Traditional Cultural Property. It is significant as a place of accumulated spiritual power that has played a central role in Washoe Indian traditions, beliefs, and practices since time immemorial and it embodies significant aspects of the Washoe world view (Criterion A). Cave Rock is believed by traditional Washoe to be the location of important mythological events that are central to Washoe cosmology. It is also believed to be the location: where water babies (powerful dwarf-beings, common in Washoe cosmology) congregate, of a white sand path traveled by Washoe doctors, and where an enormous man-eating bird (Ang) would take its victims. Traditional Washoe continue to believe that the health and integrity of their society may be jeopardized if traditional practices are not observed there.

Cave Rock is also eligible to the National Register as a historic transportation district (Criterion A) Remnants of the trestle built around Cave Rock to carry the Lake Tahoe Wagon Trail, later designated as the Lincoln Highway, are extant. The south bound tunnel constructed on the west side of Cave Rock in 1931 when the road was designated Highway and the north bound tunnel constructed in 1957 are still in use today. Together these features represent and characterize the evolution of the modern Highway 50 transportation corridor.

Additionally, Cave Rock is significant for its associations with important historical personalities in Washoe oral tradition. The development and practice of several influential historic Washoe spiritual leaders, the most notable being Weleiwkushkush and Henry Rupert was closely tied to Cave Rock (Criterion B). Weleiwkushkush was known to visit Cave Rock to acquire power and Henry "Moses" Rupert was the subject and informant of the only ethnographic study of Washoe spiritual practice and was known to have continued traditional use of Cave Rock throughout his lifetime.

Finally, Cave Rock is eligible to the National Register as an archaeological property. Excavations conducted in 1953 and 1957 at Cave Rock represent the first archaeological explorations in Douglas County as part of the earliest baseline investigations into Sierra Nevada prehistory by distinguished archaeologists Robert F. Heiser and Albert B. Elsasser. This is the only instance to date of the excavation of a shamanic archaeological deposit. Additionally, woodrat middens and dendrochronological specimens containing paleoenvironmental data have

been located at Cave Rock as well as possible examples of prehistoric rock art. All these contribute to Cave Rock's National Register eligibility for its data potential (Criterion D).

Cave Rock is a significant Traditional Cultural Property, Historic Transportation District, and Archaeological site. As such, it is unique as the quintessential symbol of the Washoe people's culture. Its significance as a symbol of cultural identity is analogous to the Statue of Liberty for many U. S. citizens. Throughout the Washoe tenure at Lake Tahoe and in spite of their 20<sup>th</sup>-century exclusion, Cave Rock has endured as an important symbol of Washoe traditional values and helped maintain the viability of Washoe culture.

The Washoe Tribe is a living community. As both a physical and symbolic feature, Cave Rock is historically rooted in the tribe's beliefs, customs, and practices. Cave Rock is fundamental to their traditions regarding the creation of a landscape central to their heritage and cultural identity. Traditional Washoe practitioners who have been called by greater powers, to seek power or knowledge at the rock, affect cures for the Washoe people. So powerful and important is Cave Rock that many Washoe continue to believe that the health and integrity of their society may be jeopardized if traditional practices are not observed there.

Historic and modern land development and recreational uses have introduced modern human presence and related activities into this traditionally sensitive setting. Recently, Cave Rock has gained an international reputation as an environmentally unique and extremely challenging sport-climbing venue. Local climbers, without Forest Service approval, established the first permanently bolted routes in 1987. Since then, the unapproved routes have expanded to include 46 routes ranging in difficulty from class 5.10c to 5.14a. Approximately 60% of the climbing routes are in the main cave and 40% outside of the main cave area.

This ROD amends the Forest Plan for the LTBMU. During the development of the Forest Plan, Cave Rock was mistakenly identified as private land and therefore not assigned a management prescription in the Genoa Management Area (MA). A 1998 title search of the original land patent documented that Cave Rock is located on land administered by the National Forest system. Because the Forest Service land acquisition program is active, the Forest Service has a normal protocol to apply under these circumstances. That protocol states that the land should be assigned to the nearby Management Area prescription, assuming the prescription is appropriate. Therefore, Cave Rock will be assigned to the Genoa MA. The most appropriate prescription for the Cave Rock area is Prescription 3 – Unroaded Recreation. This prescription maintains a natural forest setting for dispersed recreation, wildlife habitat and watershed production.

After considering the objectives, guidelines, and other contents of the Forest Plan, it has been determined that this is a non-significant amendment, in accordance with Forest Service forest planning regulations (36 CFR 219.10(f)).

The significance of forest plan amendments for NFMA purposes is evaluated, not on the basis of environmental consequences, but on whether the changes significantly alter the long term relationship between levels of goods and services originally projected in the Forest Plan (36 CFR 219.10 (e) and FSM 1922.52). Four factors guide the Forest Service "when determining whether a proposed change to a forest plan is significant or not significant" under NFMA (FSH 1909.12—5.32 (3)):

- **Timing** – the Forest Service Handbook states “the later the change, the less likely it is to be significant to the current Forest Plan”. This amendment is being made 13 years into a 10- to 15-year planning period.
- **Location and Size** – This amendment applies to one contiguous 20 acre area. The Forest Service manages approximately 157,000 acres in the Tahoe Basin. This amendment applies to less than one tenth of one percent of that area.
- **Goals, Objectives, and Outputs** – Accomplishments of Forest Plan goals and objectives are supported by this change. This amendment does not change the outputs projected in the Forest Plan FEIS.
- **Management Prescriptions** – The management prescriptions delineated in the Forest Plan are not changed by this amendment.

## Rationale for the Decision

I became the Lake Tahoe Basin Management Unit’s Forest Supervisor in 2000. At that time, the NEPA process for this EIS was well under way with a Draft EIS having been circulated and comments received. Reviewing the EIS myself, discussing it with my staff, reviewing the Forest Plan, and considering the comments that had been received, I became convinced that the preferred alternative in the Draft EIS (alternative 2) did not adequately satisfy the Purpose and Need stated in the document. In fact, it did little to reverse the documented impacts to Cave Rock other than to remove a few rock climbing routes that were health and safety concerns. Significantly, alternative 2 also was not consistent with Forest Plan direction.

My staff, key regional subject specialists and I went back with fresh eyes and re-reviewed the Draft EIS. The pre-NEPA collaborative meetings documented that many Washoe view Cave Rock as a sacred or spiritual site and the Draft EIS documented that Washoe spiritual activity does take place there. It also documented an extensive array of historic, cultural, archaeological and traditional values that are historic rather than religious in nature. Key to clarifying this issue is direction found in the US Department of Interior, National Park Service, National Register Bulletin 38: Guidelines for Evaluation and Documenting Traditional Cultural Properties (USDI 1994). Generally, a religious property is excluded from eligibility to the National Register of Historic Places and thus from the protections afforded by the National Historic Preservation Act. However, the bulletin notes:

Applying the “religious exclusion” without careful and sympathetic consideration to properties of significance to a traditional cultural group can result in discriminating against the group by effectively denying the legitimacy of its history and culture. The history of a Native American group, as conceived by its indigenous cultural authorities, is likely to reflect a kind of belief in supernatural beings and events that Euroamerican culture categorizes as religious, although the group involved, as is often the case with Native American groups, may not even have a word in its language for “religion”. To exclude from the National Register a property of cultural and historical importance to

such a group, because its significance tends to be expressed in terms that to the Euroamerican observer appear to be “religious” is ethnocentric in the extreme.

In simplest terms, the fact that a property is used for religious purposes by a traditional group, such as seeking supernatural visions, collecting or preparing native medicines, or carrying out ceremonies, or is described by the group in terms that are classified by the outside observer as “religious” should not by itself be taken to make the property ineligible, since these activities may be expressions of traditional cultural beliefs and may be intrinsic to the continuation of traditional cultural practices. Similarly, the fact that the group that owns a property—for example, an American Indian tribe—describes it in religious terms, or constitutes a group of traditional religious practitioners, should not automatically be taken to exclude the property from inclusion in the Register. Criteria Consideration A was included in the Criteria for Evaluation in order to avoid allowing historical significance to be determined on the basis of religious doctrine, not in order to exclude arbitrarily any property having religious associations. National Register guidelines stress the fact that properties can be listed in or determined eligible for the Register for their association with religious history, or with persons significant in religion, if such significance has “scholarly, secular recognition”(again, found in How to Complete the National Register Form). The integral relationship among traditional Native American culture, history, and religion is widely recognized in secular scholarship (for example see U.S. Commission on Civil rights 1983; Michaelson 1986). Studies leading to the nomination of traditional cultural properties to the Register should have among their purposes the application of secular scholarship to the association of particular properties with broad patterns of traditional history and culture. The fact that traditional history and culture may be discussed in religious terms does not make it less historical or less significant to culture, nor does it make properties associated with traditional history and culture ineligible for inclusion in the National Register.

This is precisely the case with the Cave Rock Traditional Cultural Property. Although it is spoken of in religious terms and is associated with spiritual figures, it has significant cultural and historical significance that make it eligible to the National Register of Historic Places. Its significance is not based on “Washoe religious doctrine” but rather on the secularly derived historic and ethnographic record. This significance has been recognized and documented by my staff and regional experts; it has been concurred with by experts at the Nevada State Historic Preservation Office, and been determined eligible by the Keeper of the National Register of Historic Places. The planning record shows no dissent to the determination of eligibility either from the professional or lay community. Therefore, it is clear to me that Cave Rock is a significant property as defined by the National Historic Preservation Act and a resource whose cultural and historical values I should protect from activities that adversely impact it.

Having determined that Cave Rock was a valid historic and cultural resource for which I was responsible and should protect, I viewed this as a conflict between resource values and user impacts. This is the type of conflict that Forest Supervisors resolve routinely by balancing the importance and value of the resource against the activity that is impacting it. I found that the Lake Tahoe Basin Management Unit’s Land Management Plan gives direction for resource conflicts of this type. The plan directs:

*In resolving conflicts, the following list of resources or uses are in order of priority and will normally apply:*

- a. Highest priority will be given to the protection of water quality and the enhancement of the clarity of water in Lake Tahoe.*
- b. Protection of threatened and endangered species native to the area;*
- c. Preservation of cultural resources determined or believed to be of significance;***
- d. Achievement of air quality standards for health, and visibility, and to prevent the adverse impacts of atmospheric deposition upon water quality;*
- e. Maintenance of viable populations of wildlife;*
- f. Achievement of diverse vegetation communities;*
- g. Establishment of a variety of outdoor recreation facilities and uses at a level that assures a 'fair share' of the basin capacity;***
- h. Harvesting and treatment of timber stands to maintain health and diversity of the vegetation and to provide for the safety of people and property;*
- i. Lowest priority will be given to forage grazing.*

This management direction prioritizes the protection of cultural resources over outdoor recreation. This direction was established in the Land Management Plan after careful thought, consideration and public input precisely so that in cases like this, general priorities would already be established without the need to rehash already decided issues. Jon Hoefer, former LTBMU Land Management Planning Staff Officer and Forest Plan Interdisciplinary Team Leader (retired) affirmed that this interpretation is exactly what Forest Service leadership intended when this direction was included in the Forest Plan (see email in planning record D-133).

There are two points that I would like to make about the above list of priorities. First, as has been pointed out by a recent commenter, the Lake Tahoe Basin Management Unit has previously made decisions that had adverse effects on cultural resources determined or believed to be of significance (*i.e.*, Boathouse Theater and East Shore Forest Health Project) and would appear to be in conflict with the above management direction priorities. In each of these cases, during the Section 106 process of complying with the National Historic Preservation Act, consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation resulted in agreements that implemented measures to mitigate the impacts to the cultural resources. When subject matter specialists are able to craft agreements that adequately mitigate impacts, then the above priorities have not been violated. In fact, the above priorities can be seen as requirements to adequately mitigate impacts. On the other hand, when consultation concerning impacts to cultural resources does not result in an agreement (as was the case with consultation on Alternative 2 of the Cave Rock Management Plan Draft EIS), the Section 106 process is concluded by formal termination. This formal termination culminates with the Advisory Council on Historic Preservation notifying the agency that it does not believe that adequate measures had been taken to protect the cultural resources. A decision that resulted after termination of consultation would violate the above list of priorities. The Forest Service rarely makes, and Lake Tahoe Basin Management Unit has never made, a decision to proceed after termination of the Section 106 process.

Second, the direction to establish a variety of outdoor recreation facilities and uses at a level that assures a 'fair share' of the basin capacity does not require the agency to allow every activity everywhere. Because of resource impacts, campfires are not allowed in Desolation Wilderness. Similarly, bicycles are not allowed on the Pacific Crest Trail. Restrictions are placed on activities when unacceptable impacts are recognized to important resources. In the case of rock climbing, 26 climbing locations are noted in Rock Climbing: Lake Tahoe (Carville, 1999). Most of these are located on federally managed land; and of these, only Cave Rock will have climbing restrictions, unless resource impacts are later identified at other sites. Allowing climbing at 95% of the identified climbing locations does more than assure a 'fair share' of the basin capacity. The Access Fund in communication with my staff and I, as well as on its web site, has voiced and demonstrated a sincere sensitivity to traditional and historical values that may be at risk, and a willingness to work with the Forest Service to craft solutions that will allow its members to continue climbing. It has also expressed a concern that this decision will set a precedent that will open the floodgates to closing climbing areas due to traditional cultural conflicts. I wish to assure the Access Fund that I have no intention to close climbing areas unless valid resource concerns exist. Cave Rock's significance is well documented and undisputed. Adverse effects to the site are also undisputed by experts in the field of cultural resource management. Consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation to mitigate the adverse effects to the site and find an acceptable management direction for the property has been lengthy and extensive.

While looking for an alternative that would meet the purpose and need of the EIS and comply with the Land Management Plan, I became concerned that the alternatives that did appear to meet these requirements (alternatives 3 and 5) had "phased in" implementation periods that were unacceptable to me. My rationale was that if I was going to eliminate adverse impacts, then I should not allow them to continue for a period of time, but should eliminate them as soon as possible. Therefore, I asked my staff to craft a new preferred alternative for the Final EIS that coupled the restrictions and restoration portions of alternatives 3 and 5 with the immediate implementation period of alternative 4. This new alternative (alternative 6) is the one I have chosen.

Figure 2-2 of the EIS (page 2-11) is a timeline of important events concerning the management of Cave Rock. I also look at it as a continuum of my decision space for acceptable improvements and activities. From it, I have chosen the historic period up to and including the life span of Henry Rupert (1885-1965), the historic Washoe shaman, as the time period for management of activities at Cave Rock. Improvements and activities that are consistent with this time period and do not adversely affect the integrity of Cave Rock will be allowed to continue; those that post-date his life span will be removed or restricted. I have chosen to manage for this historic period because it restricts the adversely impacting activities within my jurisdiction. The rationale for my decision follows.

The historic time period includes the existing National Register contributing features of Cave Rock as a traditional cultural property and archaeological site, and it includes the historic transportation system (Lake Tahoe Wagon Road, Lincoln Highway, and Highway 50) surrounding Cave Rock. Fundamentally, trying to manage for any time period before the construction of the Highway tunnels is not plausible because of the dominance these features have both visually and aurally. While the highway construction and the disturbance of the traffic would have been objectionable to Henry Rupert, they are consistent with the historic period

represented by his life span. The highways represent a historic use, not out of character with the historic period; although, they are outside my jurisdiction to manage.

Alternatives 3, 5, and 6 manage for the historic time period. Alternative 3 phases rock climbing out over a 6 year period, and Alternative 5 has a 3 year phase-out. I do not feel that I should allow adverse impacts to continue during a phase-out period. That is why I asked my staff to develop Alternative 6, which combines the immediate time frame for implementation of restrictions on rock climbing and hardware removal of Alternative 4 with the other historic preservation management direction found in Alternatives 3 and 5.

Alternative 4 considers managing for the period up until European encroachment in approximately 1848. The setting and feel of this time period would be characterized by the presence on Cave Rock of only Washoe shaman. At this time the trestle trail around Cave Rock and tunnels through it were not present. The atmosphere would be quiet and not intruded upon by boats or airplanes. Removal of the remnants of the historic trestle trail and highways and tunnels would be required under this alternative; however, these are contributors to the National Register eligible transportation district, and their removal would be an adverse effect. In addition, it is not possible for me to try to reestablish the setting and feel of this time period as I do not have jurisdiction over the historic transportation system, current highway, or the boat and aircraft traffic that intrude on the historic atmosphere.

Alternative 2, would select the cut off period for activities as 1996, the year that Cave Rock was determined eligible to the National Register of Historic Places. Under this alternative, activities that were in place in 1996 would be allowed to continue, and new activities would not, the rationale being that the property retained integrity at this time while these activities were taking place. This does not meet the purpose and need which is to protect the Cave Rock heritage resource and regulate uses there in a manner that, consistent with mandates and restrictions of law and regulation, preserves the historic and cultural characteristics that make the property eligible for listing in the National Register. Climbing and other more modern activities have been determined to be adverse impacts that are not historic or cultural.

Alternative 1, the no action alternative, would essentially manage for the present time period. All historic, modern, and future activities would be allowed without restriction. This alternative has been determined to be an adverse effect.

The decision to select Alternative 6 is consistent with the Forest Plan, as amended. As originally drafted in 1988, the Forest Plan did not provide direction for the Cave Rock area. For that reason this decision amends the Forest Plan. With the adoption of this non-significant amendment the decision will be in conformance with the Forest Plan when it is implemented.

## Monitoring and Mitigation

A description of the mitigation and monitoring related to this decision is found in Chapter 3 of the Final EIS. Selection of Alternative 6 effectively mitigates the identified adverse effects to the historic and cultural values at Cave Rock that initiated this analysis to the point that they are no longer adverse. Identified effects to the Social/Civil Rights environment are reduced by more

than 50%. These mitigation and monitoring activities will be implemented as part of the decision.

All practical means to avoid or minimize harm have been adopted. Heritage Resources, Social/Civil Rights, and Recreation are three areas with significant impacts. Due to the social nature of the proposed action it is very difficult to mitigate the potential negative effects. Where feasible, the Forest Service identified mitigation opportunities to reduce the effect for each alternative, however these measures would not reduce the overall impact to less-than-significant.

Information gathered through monitoring will be used to evaluate the effectiveness of the mitigation and to assess how well the purpose and need of the project is being met. Additionally, activities such as hiking and fishing that are allowed under this decision because they are consistent with the historic period may be occurring at a much higher level than occurred historically. These activities will be monitored and if it is determined that increased population levels have significantly increased this level of activity beyond that of the historic period, measures to moderate or control the use will be evaluated.

## Public Involvement

Before entering the formal planning phase, an extensive public involvement or “collaboration” effort occurred between January and May 1998. This effort encouraged and facilitated public involvement for an issue that affects the quality of the human environment, as required under 40 CFR 1500.2(d). Five meetings were held throughout the Reno-Tahoe-Truckee region. All were well attended by climbers and Washoe Tribe members. A summary of these collaboration meetings can be found in Appendix A of the Final EIS.

The Notice of Intent for the EIS was filed in the Federal Register January 25, 1999. Formal scoping for the Cave Rock Management Draft EIS began on January 13, 1999 with the public release of the proposed action and press release of its availability to 29 media outlets. A public scoping workshop was held on February 25, 1999. A Scoping Summary document was prepared and mailed to all planning participants in April 1999. The comment period for the Draft EIS closed on October 13, 1999.

## Issues Identified During Scoping

Chapter 4 of the Final EIS documents the public involvement and scoping process. The many issues identified were considered in formulating and understanding the consequences of implementing the alternatives. The following is a summary of the significant issues identified during the public collaboration and the formal scoping period:

*Issue 1 – Impact of Climbing at Cave Rock.* Is Cave Rock, as a sacred site to the Washoe Tribe, defaced and devalued by sport climbing and other activities that physically alter the rock formation? Is the Washoe Tribe excluded from its heritage in the Tahoe Basin area by activities such as sport climbing at Cave Rock?

*Issue 2 – Privacy.* Should Cave Rock be managed exclusively for use by Washoe spiritual leaders?

*Issue 3 – Cultural and Historic Resources.* Should the values that make Cave Rock eligible as a TCP, historic transportation district, and archaeological site be protected from activities that may adversely affect the integrity of these resources?

*Issue 4 – Land Ownership.* Should Cave Rock be returned to the Washoe Tribe to enable reconnection with its traditional lands?

*Issue 5 – Climbing.* Should climbers have the right to climb at Cave Rock without restriction?

## Summary of Public Comment Received

Twenty-one letters were received on the Draft EIS during the public comment period. In addition, over 1400 letters, emails and phone calls have been received since the formal comment period has ended. The specific comments received during the public comment period are presented in the Final EIS Chapters 4 and 5. Below is a summary of the issues that elicited the most public comment.

The original twenty one letters received during the Draft EIS comment period fell into three broad themes and are discussed in detail in Chapter 4 of the EIS. The first theme was support for the preferred alternative in the Draft EIS. These letters were primarily from rock climbers who feel that Alternative 2 is a balanced compromise, support the minimal removal of routes for health and safety reasons, and note that rock climbers have cleaned up accumulations of trash and debris from the Cave Rock area. Some of these letters also supported limited temporal closures to accommodate Washoe religious use. Many of these letters also commented that they felt the masonry floor should be left in place.

The second theme was characterized by comments from the Washoe Tribe and other tribal supporters that felt that Alternative 2 did not adequately protect the spiritual qualities at Cave Rock. They often noted the spiritual and sacred significance of Cave Rock to the Washoe and the desecration that has occurred there. Some noted that they felt that Alternative 2 would allow the continuation of activities that would impede traditional cultural practices.

The third theme derived from individuals, the Washoe Tribe, the Nevada State Historic Preservation Officer and the Advisory Council on Historic Preservation indicated that heritage resource values were not adequately protected by Alternative 2. They encouraged the Forest Supervisor to choose an alternative that provided additional protections and restrictions.

After the DEIS comment period ended over 1400 comments were received in response to newspaper articles, meetings with the Access Fund, a United Nations meeting on sacred sites and the Final EIS. Approximately 1150 of these comments were in the form of several petitions with multiple signatures expressing solidarity with a single document. The major themes of the comments included objections to climbing restrictions, support of alternative 2, support of alternative 6, assertions that restrictions would be for religious purposes and therefore

unconstitutional, and suggestions that temporary restrictions similar to those at Devils Tower should be attempted. Responses to all comments are located in Appendix A.

## Alternatives Considered

Six alternatives were considered in detail. Please refer to Chapter 2 of the Final EIS for a detailed description of each alternative. Table ROD-1 summarizes features and compares each alternative. The main features of each alternative are summarized below.

**Alternative 1 – No Action/No Project:** This alternative would allow continuation of existing management direction. The types of activities conducted on Cave Rock in recent years would continue without Forest Service interference or regulation. Climbing would continue without restriction.

**Alternative 2 – Manage Sport Climbing to Reduce Effects on Cave Rock TCP:** This alternative would manage Cave Rock consistent with the activities occurring at the time Cave Rock was determined eligible as a TCP. Under this alternative sport climbing would be allowed, however routes above the highway and several other selected routes would be removed. The installation of new climbing routes and the use of artificial light for climbing would be prohibited. The Forest Service would work with the climbing community to camouflage existing bright-colored and shiny climbing equipment to blend with the natural colors of the rock. If non-camouflaged equipment remains after 6 months following adoption of the management direction, it will be an indicator that the routes are not being used and the routes will be removed. Maintenance of the existing routes would be conducted only with permission of the Forest Service.

**Alternative 3 – Phase-Out Sport Climbing Over 6-Year Period:** This alternative would prohibit sport climbers from using Cave Rock, during a phase-out period of 6 years. The Forest Service would work with climbers to remove climbing equipment in stages (approximately 50 bolts per year) and fill the holes left by removing the bolts. Climbing would be allowed to continue when it can be done without the use of permanent technical equipment (e.g., fixed anchors). The installation of new routes, route maintenance, and climbing with artificial light would be prohibited.

**Alternative 4 – Exclusive Washoe Use:** This alternative would provide exclusive access to Cave Rock by spiritual practitioners of the Washoe Tribe only for their traditional practices. The National Forest at Cave Rock would be closed to all other recreational and public access. This level of privacy would maximize benefits to the tribe's spiritual practitioners during their ceremonial uses at Cave Rock. Where resource conflicts occur, resolutions favoring the TCP would normally take precedence. Where conflicts occur between historic districts – where a decision will have an adverse effect on a district whichever way the decision is made – protection of the values of the TCP will take precedence.

**Alternative 5 – Phase-Out Climbing Over 3-year Period:** This alternative would manage activities at Cave Rock in a manner that minimizes the effects of modern activities and technology. Climbers would be prohibited from using Cave Rock during a phase-out period of 3 years. Alternative 5 would allow activities and protect, preserve, enhance, and interpret improvements that are consistent with the historic period at Cave Rock beginning with the arrival of the Washoe Tribe to Lake Tahoe through 1965, the year of Henry Rupert's death. (Henry Rupert was a Washoe spiritual practitioner whose association with Cave Rock contributed to its National Register eligibility). Activities and improvements that adversely affect the qualities for which the property was found eligible to the National Register would be restricted or removed. Thus, sport climbing would be prohibited as inconsistent with the setting, feel, and association of the historic property, while general public access would be allowed as it had occurred during the historic period. When conflicts between National Register properties arise, they will be managed in favor of the Cave Rock TCP.

**Alternative 6 – Maximum Immediate Protection of Heritage Resources (Preferred Alternative):** This alternative provides maximum immediate protection of heritage resources by managing cave Rock in a manner that minimizes the effects of modern activities and technology. All climbing, both sport and traditional climbing, would be prohibited immediately following adoption of the management direction. Alternative 6 would allow activities and protect, preserve, enhance, and interpret improvements that are consistent with the historic period at Cave Rock beginning with the arrival of the Washoe Tribe to Lake Tahoe through 1965, the year of Henry Rupert's death. (Henry Rupert was a Washoe spiritual practitioner whose association with Cave Rock contributed to its National Register eligibility). Activities and improvements that adversely affect the qualities for which the property was found eligible to the National Register would be restricted or removed. Thus, climbing would be prohibited as inconsistent with the setting, feel, and association of the historic property, while general public access would be allowed as it had occurred during the historic period. When conflicts between National Register properties arise, they will be managed in favor of the Cave Rock TCP.

## Environmentally Preferable Alternative

Alternative number 4 would reduce human access to the area to a very limited number of individuals. Although there were no threatened or endangered species identified in the area, the reduction of human access would allow the natural restoration of user created trails and the biological environment would be left almost undisturbed. However, historic cultural resources not associated with the Traditional Cultural Property would not be managed for.

On the other hand, Alternatives 3, 5 and 6 more evenly manage for the array of historic, cultural, archaeological, and traditional resources, but do not provide as much protection to the Traditional Cultural Property as Alternative number 4 would. In addition, the biological environment would continue to receive impacts from human use that could increase over time.

Because Alternatives 3, 5, and 6 do not provide as much protection to the Traditional Cultural Property as Alternative number 4 and allow continued and possibly increasing human use to the

area which has the potential to effect the biological environment, I have decided that Alternative number 4 is the environmentally preferred alternative.

## **Applicable Laws, Regulations, and Policy and the Findings required by these Laws**

Implementation of decisions that lead to realizing the direction of a Forest Plan must meet legal requirements and public expectations of Forest Service actions. Most of these requirements stem from the National Environmental Policy Act (NEPA) and National Forest Management Act (NFMA). As required by NEPA, potential “significant environmental effects” have been disclosed. The scope of the action, a reasonable range of alternatives, and site specific environmental effects were assessed as required in the EIS document and Forest Service environmental policies and procedures.

NFMA requires that all resource management activities be consistent with Forest Land and Resource Management Plans. This ROD includes a non-significant Forest Plan amendment to correct the only area of inconsistency. This amendment assigns Cave Rock to Prescription 3 in the Genoa Management Area.

The project is in compliance with Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. Section 470f) and implementing regulations, 36 CFR 800, which require consideration of heritage resource values prior to any federal undertaking. Section 106 consultation has been extensive and complex. Because of the complex and controversial nature of the consultation, the Advisory Council on Historic Preservation requested it participate in the process. Consulting parties included the Nevada State Historic Preservation Office, Washoe Tribe of Nevada and California, Access Fund, local rock climbing community representatives, and members of State and local government agencies. Eligibility of Cave Rock was determined by consensus as well as a formal Determination of Eligibility by the Keeper of the National Register. A finding of no adverse effect for Alternative 6 was made by the LTBMU Forest Supervisor on November 12, 2002, and was concurred with by the Nevada State Historic Preservation Officer on December 10, 2002. No objection to the determination of eligibility or effect was noted.

This project is consistent with requirements of the Endangered Species Act (16 USC 1536[a]). A Biological Assessment was not completed because no federally listed threatened or endangered species were found to be directly or indirectly affected by the proposed action or any of the alternatives considered. A Biological Evaluation determined that project implementation would not affect sensitive species. This complies with Forest Service manual 2670, ensuring that Forest Service actions avoid effects that could cause a species to become threatened or endangered.

Implementation of the project will not adversely affect the environmental threshold carrying capacities, as described in the Forest Plan and in Tahoe Regional planning Agency (TRPA) Article V(g) findings.

This decision is consistent with the American Indian Religious Freedom Act in that it protects and preserves access to Cave Rock for the Washoe Tribe for use for traditional beliefs and practices.

This decision is consistent with the Sacred Sites Executive Order 13007 in that it protects access to and the physical integrity of Cave Rock.

This decision is consistent with the Archaeological Resources Protection Act in that it protects and preserves the archaeological resources at Cave Rock.

There are no other permits, reviews, or authorizations required from other State or local agencies prior to implementation of this management plan. The USDA Forest Service is the sole determinant of management actions necessary to implement this decision.

## Implementation

Implementation will not begin prior to September 2, 2003, which is 45 days plus 5 working days after the legal notice of this decision appears in the Tahoe Daily Tribune. If an administrative appeal is received, implementation will not begin until stay requirements associated with the appeal are satisfied. If this decision is affirmed upon administrative appeal, implementation will not begin until 15 days after the appeal.

## Administrative Review or Appeal Opportunities

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR 215. To initiate an appeal under 36 CFR 215, a copy of your written Notice of Appeal must be filed with the Appeal Deciding Officer, the Regional Forester, USDA Forest Service, Pacific Southwest Regional Office, 1323 Club Drive, Vallejo, CA 94592 on or before September 2, 2003. This date is at least 45 days from the date a legal notice of this decision appears in the Tahoe Daily Tribune. Notices of Appeal must meet the specific content requirements of 36 CFR 125.14.

For further information regarding the appeals process, contact John Maher, LTBMU, 35 College Drive, South Lake Tahoe, CA 96150, Phone (530) 543-2600.

/s/ Maribeth Gustafson

MARIBETH GUSTAFSON

July 8, 2003

Forest Supervisor

Date