

## StrataRossLAPem Resource

---

**From:** John Eddins [jeddins@achp.gov]  
**Sent:** Thursday, November 07, 2013 2:55 PM  
**To:** Moore, Johari; Monteith, Emily; Richard Currit; Mary Hopkins; bschiffer@wwcengineering.com; MGriffin@stratawyo.com; Tratebas, Alice; kbo@kiowatribe.org; Olmstead, Joan; BLKFTTHPO@aol.com; Fringer, John; Darlene Conrad; John Murray; Lynnette Gray; Steve Vance; Alvin Windy Boy; Francis Auld; Hubert Two Leggins; Wanda Wells; Flandreau Santee Lakota; Morris Belgard; Darrell 'Curly' Youpee; Kiowa Indian Tribe of Oklahoma; clairgreenoffice@gmail.com; Conrad Fisher; Oglala Lakota; Russell Eagle Bear; Richard Thomas; Shoshone; dianned@swo-nsn.gov; malex@spiritlakenation.com; Standing Rock Lakota; Terence Clouthier; Elgin Crows Breast; Lyle Miller  
**Cc:** StrataRossLA Resource; doris@attenuation.us.com; Cheryl A. Chapman; Waldron, Ashley; Saxton, John  
**Subject:** RE: Ross Project Programmatic Agreement - WORKING DRAFT for 11-7-13 Webinar and Webinar Agenda  
**Attachments:** ACHP comments - Ross Project Programmatic Agreement\_WORKING DRAFT 11-5-13rev1.docx

Comments from ACHP  
John

John T. Eddins PhD  
ACHP  
Phone: 202-606-8553  
Fax: 202-606-5072  
[jeddins@achp.gov](mailto:jeddins@achp.gov)

---

**From:** Moore, Johari [<mailto:Johari.Moore@nrc.gov>]  
**Sent:** Tuesday, November 05, 2013 7:11 PM  
**To:** Monteith, Emily; Richard Currit; Mary Hopkins; 'Benjamin J. Schiffer, P.G. ([bschiffer@wwcengineering.com](mailto:bschiffer@wwcengineering.com))'; 'Mike Griffin ([MGriffin@stratawyo.com](mailto:MGriffin@stratawyo.com))'; John Eddins; 'Tratebas, Alice'; 'kbo@kiowatribe.org'; Olmstead, Joan; 'BLKFTTHPO@aol.com'; John Fringer; Darlene Conrad; John Murray; Lynnette Gray; Steve Vance; Alvin Windy Boy; Francis Auld; Hubert Two Leggins; Wanda Wells; Flandreau Santee Lakota; Morris Belgard; Darrell 'Curly' Youpee; Kiowa Indian Tribe of Oklahoma; Lower Brule Lakota ([clairgreenoffice@gmail.com](mailto:clairgreenoffice@gmail.com)); Conrad Fisher; Oglala Lakota; Russell Eagle Bear; Richard Thomas; Shoshone; Sisseton-Wahpeton Lakota ([dianned@swo-nsn.gov](mailto:dianned@swo-nsn.gov)); Spirit Lake ([malex@spiritlakenation.com](mailto:malex@spiritlakenation.com)); Standing Rock Lakota; Terence Clouthier; Elgin Crows Breast; Lyle Miller  
**Cc:** StrataRossLA Resource; 'Doris Minor ([doris@attenuation.us.com](mailto:doris@attenuation.us.com))'; 'Cheryl A. Chapman'; Waldron, Ashley; Saxton, John  
**Subject:** Ross Project Programmatic Agreement - WORKING DRAFT for 11-7-13 Webinar and Webinar Agenda

Good afternoon,

During the 10/31/13 webinar to develop the Ross Project Programmatic Agreement (PA), we discussed and proposed revisions to the draft "whereas" clauses and discussed the objectives for the draft stipulations. In preparation for the next scheduled webinar, the NRC was to revise the "whereas" clauses, based on comments provided during the webinar, and provide draft stipulation language as well as draft appendices for discussion by the group. Attached, please find the current draft of the PA, which includes revisions to the "whereas" clauses and the draft stipulation language. Also, attached, please find the draft appendices to the PA.

We welcome you to provide your comments on all sections of the draft PA and appendices (you may send comments to me or to the group via email). In addition, we invite you to join us this Thursday, 11/7/13, at our

next webinar where we are planning to continue drafting the “whereas” clauses and the stipulations and to discuss the appendices. I have attached the webinar agenda, which includes the date/time and call in information.

For your information, the NRC has invited the following parties to participate in the webinars and the development of the PA:

BLM  
WYSHPO  
ACHP  
Strata Energy, Inc.  
Ross Project Consulting Tribes  
Crook County Museum District  
Alliance for Historic Wyoming

The following parties participated in the webinars on the dates shown:

NRC - 10/24 and 10/31  
BLM - 10/24 and 10/31  
WYSHPO - 10/24 and 10/31  
ACHP - 10/24  
Strata Energy, Inc. - 10/24 and 10/31

Thank you,

Johari A. Moore  
Project Manager  
U.S. Nuclear Regulatory Commission  
FSME/DWMEP/Environmental Review Branch  
Mail Stop: T-8F05  
Washington, DC 20555  
Office: (301) 415-7694  
Mobile: (301) 832-4919  
Fax: (301) 415-5369  
[johari.moore@nrc.gov](mailto:johari.moore@nrc.gov)

**Hearing Identifier:** StrataEnergyRoss\_LA\_Public  
**Email Number:** 430

**Mail Envelope Properties** (CECE58486BFEEA47A2C7C630608FFEAC9855A5)

**Subject:** RE: Ross Project Programmatic Agreement - WORKING DRAFT for 11-7-13  
Webinar and Webinar Agenda  
**Sent Date:** 11/7/2013 2:55:27 PM  
**Received Date:** 11/7/2013 2:57:54 PM  
**From:** John Eddins

**Created By:** jeddins@achp.gov

**Recipients:**

"StrataRossLA Resource" <StrataRossLA.Resource@nrc.gov>  
Tracking Status: None  
"doris@attenuation.us.com" <doris@attenuation.us.com>  
Tracking Status: None  
"Cheryl A. Chapman" <Cheryl.Chapman@respec.com>  
Tracking Status: None  
"Waldron, Ashley" <Ashley.Waldron@nrc.gov>  
Tracking Status: None  
"Saxton, John" <John.Saxton@nrc.gov>  
Tracking Status: None  
"Moore, Johari" <Johari.Moore@nrc.gov>  
Tracking Status: None  
"Monteith, Emily" <Emily.Monteith@nrc.gov>  
Tracking Status: None  
"Richard Currit" <richard.currit@wyo.gov>  
Tracking Status: None  
"Mary Hopkins" <mary.hopkins@wyo.gov>  
Tracking Status: None  
"bschiffer@wwcengineering.com" <bschiffer@wwcengineering.com>  
Tracking Status: None  
"MGriffin@stratawyo.com" <MGriffin@stratawyo.com>  
Tracking Status: None  
"Tratebas, Alice" <trateba@blm.gov>  
Tracking Status: None  
"kbo@kiowatribe.org" <kbo@kiowatribe.org>  
Tracking Status: None  
"Olmstead, Joan" <Joan.Olmstead@nrc.gov>  
Tracking Status: None  
"BLKFTTHPO@aol.com" <BLKFTTHPO@aol.com>  
Tracking Status: None  
"Fringer, John" <John.Fringer@nrc.gov>  
Tracking Status: None  
"Darlene Conrad" <narapahothpo\_2009@ymail.com>  
Tracking Status: None  
"John Murray" <john.murray@blackfeetplanning.org>  
Tracking Status: None  
"Lynnette Gray" <lgray@c-a-tribes.org>  
Tracking Status: None  
"Steve Vance" <cpthpo@lakotanetwork.com>  
Tracking Status: None

"Alvin Windy Boy" <awindyboy@cccprpd.com>  
Tracking Status: None  
"Francis Auld" <francisa@cskt.org>  
Tracking Status: None  
"Hubert Two Leggins" <hubertt@crownsations.net>  
Tracking Status: None  
"Wanda Wells" <wandawells@midstatesd.net>  
Tracking Status: None  
"Flandreau Santee Lakota" <Jb.weston@fsst.org>  
Tracking Status: None  
"Morris Belgard" <mbelgarde@yahoo.com>  
Tracking Status: None  
"Darrell 'Curly' Youpee" <cultres@nemontel.net>  
Tracking Status: None  
"Kiowa Indian Tribe of Oklahoma" <mrseskew@yahoo.com>  
Tracking Status: None  
"clairgreenoffice@gmail.com" <clairgreenoffice@gmail.com>  
Tracking Status: None  
"Conrad Fisher" <conrad.fisher@cheyennenation.com>  
Tracking Status: None  
"Oglala Lakota" <ostnrrathpo@gwtc.net>  
Tracking Status: None  
"Russell Eagle Bear" <rstthpo@yahoo.com>  
Tracking Status: None  
"Richard Thomas" <rick\_thpo02@yahoo.com>  
Tracking Status: None  
"Shoshone" <wjferrisiii@yahoo.com>  
Tracking Status: None  
"dianned@swo-nsn.gov" <dianned@swo-nsn.gov>  
Tracking Status: None  
"malex@spiritlakenation.com" <malex@spiritlakenation.com>  
Tracking Status: None  
"Standing Rock Lakota" <wyong@standingrock.org>  
Tracking Status: None  
"Terence Clouthier" <tclouthier@standingrock.org>  
Tracking Status: None  
"Elgin Crows Breast" <redhawk@mhanation.com>  
Tracking Status: None  
"Lyle Miller" <yzt.thpo@gmail.com>  
Tracking Status: None

**Post Office:** mail2.achp.gov

<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
MESSAGE	3172	11/7/2013 2:57:54 PM
ACHP comments - Ross Project Programmatic Agreement_WORKING DRAFT 11-5-13rev1.docx		
68449		

**Options**  
**Priority:** Standard  
**Return Notification:** No  
**Reply Requested:** No  
**Sensitivity:** Normal  
**Expiration Date:**  
**Recipients Received:**

**Predecisional Draft – Do Not Release**

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. NUCLEAR REGULATORY COMMISSION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE WYOMING STATE HISTORIC PRESERVATION OFFICE,  
AND  
[THE U.S. BUREAU OF LAND MANAGEMENT,  
STRATA ENERGY, INC., CONSULTING TRIBES, CROOK COUNTY MUSEUM  
DISTRICT, ALLIANCE FOR HISTORIC WYOMING]  
REGARDING  
THE ROSS IN-SITU URANIUM RECOVERY PROJECT  
IN CROOK COUNTY, WYOMING**

**DRAFT AS OF October 25, 2013**

**Comment [JTE-ACHP1]:** Normally only statutory signatories are listed in the title. Many agencies also list invited signatories. Concurring parties are not listed.

WHEREAS, this Programmatic Agreement (PA) addresses the federal undertaking regarding the issuance of a license for the Ross Project *In-Situ* Recovery [ISR] Project pursuant to U.S. Nuclear Regulatory Commission's (NRC) authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.* for purposes of NRC's compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et. seq.*; and

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC) has authority by the Atomic Energy Act, as amended, to issue licenses to qualified individuals to possess, use, store and transport uranium-bearing material for the development of fuel for the commercial nuclear industry; and

**Comment [JM2]:** Joan will add language for NRC's authority.

JWO: Language provided 11/4/13

WHEREAS, on January 4, 2011, Strata Energy, Inc. (Strata) submitted to NRC for review and approval a new source and byproduct materials license for an *in-situ* uranium recovery (ISR) project at the Ross Project site located in Crook County, Wyoming; and

WHEREAS, the U.S. Department of the Interior, Bureau of Land Management (BLM), Newcastle, Wyoming Field Office received from Strata Energy on January 21, 2011, a Plan of Operations for the Ross ISR Project for review and approval [describe the BLM's federal action here]; and

WHEREAS, the BLM, by letter dated November 21, 2011, has designated the NRC as the lead agency for Section 106 consultation regarding the Ross Project; and

WHEREAS, upon issuance of a license and approval of a mine plan, the project undertaking (the Undertaking) would use utilizes ISR technology to extract uranium and would processes the extracted uranium into yellowcake at the Ross Project site, which consists of 1,721 acres (696 ha) located approximately 38 km (24 mi) north of Moorcroft on County Route 68 in Crook County, Wyoming (in portions of Sections 7, 17, 18, and 19, Township 53 North, Range 67 West and portions of Sections 12, 13, and 24, Township 53 North, Range 68 West), as shown in Appendix A; and

**Comment [JM3]:** Johari will draft for next week's meeting

JM: Drafted.

WHEREAS, the area of potential effects (APE) for the Undertaking is the area at the Ross Project site and its immediate environs, which may be impacted by activities associated with the construction and operation of the proposed facility, as shown in Appendix A; and

**Predecisional Draft – Do Not Release**

~~WHEREAS, NRC, as lead Federal agency, in conjunction with the BLM (cooperating agency), has prepared a Supplemental Environmental Impact Statement (SEIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) to evaluate address the potential impacts of the Undertaking on a variety of human and natural resources; and~~

**Comment [JM4]:** Check with ACHP.

**Comment [OJ5]:** WY SHPO also recommended deleting clause. NRC agrees.

**Comment [JTE-ACHP6]:** NEPA is irrelevant unless using NEPA substitution

**Comment [JM7]:** SHPO will look at. NRC recommends deleting.

~~WHEREAS, NRC, in consultation with the Signatories and Invited Signatory with consulting parties, developed an Identification Plan (ID Plan) for inventory of potentially eligible historic properties prior to construction, and has conducted potentially eligible historic properties inventories for the entire Project Site as detailed in Appendix B; and,~~

**Comment [JTE-ACHP8]:** Feds are required to carry out identification effort to id historic properties. That includes identify properties and evaluate eligibility. We should collapse this to state NRC

~~WHEREAS, NRC has made a reasonable and good faith effort to identify and evaluate historic properties within the APE for purposes of comparing impacts in the EIS; and,~~

**Comment [JTE-ACHP9]:** This includes tribal opportunity to provide information and concerns and assist in id of properties of religious and cultural significance to tribes?

~~WHEREAS, identification of potential historic propertiesy identification efforts that have been completed for the Undertaking include background research of the existing records, Class II, Class III, and Traditional Cultural Property surveys within the APE, as shown in Appendix B; and~~

**Comment [JM10]:** SHPO will look at

**Comment [JTE-ACHP11]:** The goal is a r&GF effort. Not sure it is up to the agency to characterize its effort as such. Ultimately, up to a judge if you get sued. ACHP is more comfortable with agency summarizing its id effort, and not trying to pass judgment on its effort.

~~WHEREAS, NRC has made determinations of eligibility for the National Register of Historic Places (NRHP) for two historic properties within the APE and SHPO has concurred with these findings; and,~~

**Comment [JM12]:** Group will look at

Placeholder develop further in Section 106 identification of properties

~~WHEREAS, NRC has to make determinations of eligibility for the National Register of Historic Places (NRHP) for [x] potentially eligible historic properties within the APE; and,~~

Mary – Do not need this clause

~~WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq. (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. and 43 CFR 10 (NAGPRA), have been considered in this Agreement and this Agreement does not waive the responsibilities of the Signatories and Invited Signatory under these Acts and regulations; and,~~

**Comment [JTE-ACHP13]:** This is more or less covered in the whereas clause above, and should be spelled out in Appendix; however there should be a separate whereas clause that sums the effort to identify properties of religious and cultural significance to tribes and references an Appendix for details as needed

WHEREAS, effects on all historic properties within the APE cannot be fully determined prior to approval of the Undertaking (36 CFR 800.14(b)(1)(ii)); and

**Comment [JM14]:** Group will look at

Placeholder develop further in Section 106 identification of properties

WHEREAS, the NRC has determined that a phased process for compliance with Section 106 of the National Historic Preservation Act (NHPA) is appropriate for the Undertaking, as specifically permitted under 36 CFR 800.4(b)(2), such that completion of the evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this Programmatic Agreement (PA); and

**Comment [JTE-ACHP15]:** What were the determinations, were they found eligible or not. Should specify here.

**Comment [JM16]:** Group will look at

Placeholder develop further in Section 106 identification of properties

~~WHEREAS, the U.S. Department of the Interior, Bureau of Land Management (BLM), Newcastle, Wyoming Field Office [describe the BLM's federal action here]; and~~

**Comment [JTE-ACHP17]:** You could combine this with the whereas clause above and reference a table in an appendix that lists the properties and eligibility status.

**Comment [JM18]:** Group will look at

~~WHEREAS, the BLM, by letter dated November 21, 2011, has designated the NRC as the lead agency for Section 106 consultation regarding the Ross Project; and~~

... [1]

**Comment [JTE-ACHP19]:** NAGPRA only applies on fed or tribal land. The responsibilities only apply to feds.

**Predecisional Draft – Do Not Release**

WHEREAS, the NRC, by letter dated August 19, 2011, initiated Section 106 consultation with the Wyoming State Historic Preservation Office (WYSHPO) and the WYSHPO is a consulting party; and

**Comment [JM20]:** WYSHPO to send Johari additional language

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i)(C), the NRC, by letter dated September 19, 2013, has invited the Advisory Council on Historic Preservation (Council) to participate in Section 106 consultation and preparation of this PA and the Council, by letter dated October 28, 2013, has accepted the invitation and is a consulting party; and

**Comment [JTE-ACHP21]:** SHPO is a by-right consulting party. There is no 106 unless SHPO is consulting, except in the very rare situation when ACHP would agree to finish the 106 process when SHPO ends its participation.

WHEREAS, the NRC, by letter dated September 19, 2013, invited the following Indian tribes, which are Section 106 consulting parties for the Ross Project, to participate in preparation of this PA: the Northern Arapaho Tribe; the Cheyenne and Arapaho Tribe; the Blackfeet Tribe; the Cheyenne River Sioux Tribe; the Chippewa Cree Tribe, the Confederated Salish and Kootenai Tribe; the Crow Tribe; the Crow Creek Sioux Tribe; the Eastern Shoshone Tribe; the Flandreau Santee Sioux Tribe; the Fort Belknap Tribe; the Fort Peck Tribe; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe; the Northern Cheyenne Tribe; the Oglala Sioux Tribe; the Rosebud Sioux Tribe; the Santee Sioux Nation, the Sisseton-Wahpeton Tribe; the Spirit Lake Tribe; the Standing Rock Sioux Tribe, the Three Affiliated Tribes; the Turtle Mountain Band of Chippewa Indians; and the Yankton Sioux Tribe; and

**Comment [JTE-ACHP22]:** Can't we put the original date when NRC began its initial communications with the tribes about the project and about soliciting their concerns and knowledge about properties of religious and cultural significance to them that might be affected?

WHEREAS, the following invited tribes have accepted the NRC's invitation engaged in the consultation to participate in preparation of this PA and to be Concurring Parties on the PA and participated in the preparation of this PA: [redacted] and are, therefore, referred to as Consulting Tribes for the purposes of this PA; and

**Comment [JTE-ACHP23]:** List the tribes who responded, or attended meetings or teleconferences, etc.

~~WHEREAS, the NRC has invited the Consulting Tribes to be Concurring Parties on the PA and [note here which Consulting Tribes accepted] have accepted the NRC's invitation to be Concurring Parties on the PA; and~~

~~WHEREAS, the following invited tribes did not accept the NRC's invitation and did not participate in the preparation of this PA: [redacted] and are, therefore, not considered Concurring Parties Consulting Tribes for the purposes of this PA but are considered to be Section 106 consulting parties; and~~

WHEREAS, the NRC, by letter dated September 19, 2013, has invited the Crook County Museum District and the Alliance for Historic Wyoming, to participate in the preparation of this PA Section 106 consultation for this undertaking, and [note here whether the invitation was/was not accepted]; and

**Comment [JTE-ACHP24]:** Focus should be on the consultation, that was ongoing before September 2013

~~WHEREAS, the NRC has invited the Crook County Museum District and the Alliance for Historic Wyoming to be Concurring Parties on the PA and [note if the Crook County Museum District or the Alliance for Historic Wyoming accepted] have accepted the NRC's invitation to be Concurring Parties on the PA; and~~

~~WHEREAS, historic property identification efforts that have been completed for the Undertaking include background research of the existing records, Class II, Class III, and Traditional Cultural Property surveys within the APE, as shown in Appendix B; and~~

WHEREAS, the PA will be a condition of the NRC license, if granted; and

**Comment [JM25]:** Condition to be added to license

**Comment [JTE-ACHP26]:** This must also be a stipulation

**Predecisional Draft – Do Not Release**

WHEREAS, the PA will be a condition of Strata’s Plan of Operations, if approved by the BLM; and

**Comment [JTE-ACHP27]:** This must also be a stipulation

~~WHEREAS, nothing in this PA will be construed to waive the responsibilities of signatories to this PA under other federal laws; and~~

**Comment [OJ28]:** Covered in Section M.

~~Whereas, the refusal of any Invited Signatory or Invited Concurring party to sign this PA does not invalidate the PA. invited to concur in the Agreement does not invalidate the Agreement, 36 CFR 800.6(e)(2)(iv);~~

**Comment [JM29]:** Joan will draft language. To be applied to all invited signatories and invited concurring parties  
  
JWO Language provided 11/4/13

~~WHEREAS, the NRC has invited the Consulting Tribes to be Concurring Parties on the PA and [note here which Consulting Tribes accepted] have accepted the NRC’s invitation to be Concurring Parties on the PA; and~~

~~WHEREAS, the NRC has invited the Crook County Museum District and the Alliance for Historic Wyoming to be Concurring Parties on the PA and [note if the Crook County Museum District or the Alliance for Historic Wyoming accepted] have accepted the NRC’s invitation to be Concurring Parties on the PA; and~~

**Comment [JM30]:** Look for combining with previous WHEREAS clauses  
  
JM: Combined.

WHEREAS, the NRC has invited Strata, by letter dated [redacted], to be a signatory to the PA and Strata, by letter dated [redacted], has [redacted] the NRC’s invitation; and

WHEREAS, the BLM has notified the NRC, by letter dated [redacted], that it will be a signatory to the PA; and

~~WHEREAS, the Council and WYSHPO have agreed to be signatories to this agreement; and~~

NOW, THEREFORE, the NRC, WYSHPO, ACHP, [redacted] agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

**STIPULATIONS**

NRC shall ~~require as a condition of any license issued to Strata that Strata complies with all stipulations and other provisions in this PA~~ensure that the following stipulations are carried out:

**Comment [JTE-ACHP31]:** Put this in stipulations

**A. GENERAL STIPULATIONS**

**[Objectives]**

1. Define who will fund the activities to take place under the PA.
2. Define role of NRC, BLM, and Strata in conducting future activities pursuant to the PA.
3. Define entity responsible and general direction for tribal consultation activities.

**Comment [JM32]:** Strata will fund all field work

**Comment [JM33]:** NRC as lead remains responsible?  
NRC & BLM will determine roles

**Comment [JM34]:** NRC & BLM will determine roles  
  
Describe how tribal consultation will occur

**[Stipulations]**

1. Strata shall fund all required fieldwork, analysis, reporting, curation, and mitigation necessary to comply with this PA and Section 106 of the NHPA.



**Predecisional Draft – Do Not Release**

Strata will ensure that all of its employees, contractors, subcontractors, inspectors, monitors, and any additional parties involved in the project not to search for, retrieve, deface, or impact historic and prehistoric materials (e.g., archaeological materials such as, arrowheads, [pottery shards, petroglyphs) and receive training regarding the sensitivity of all historic and cultural resources, both Native American and non-Native American. Strata shall ensure cooperate with the NRC, BLM and the WY SHPO to ensure compliance with the Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C 470) on public lands, with Wyoming Statute §36-1-115 on state lands. and the Native American Graves Protection and Repatriation Action (NAGPRA) 25 U.S.C. 3001)

- 2. TBD
- 3. TBD

**Comment [J35]:** Language from SHPO example:

Strata, in cooperation with the NRC, and WYSHPO, shall ensure that all its personnel, and all the personnel of its contractors, are directed not to engage in the illegal collection of historic and prehistoric materials. Strata shall cooperate with the NRC to ensure compliance with the Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C 470) on public lands and with Wyoming Statute §36-1-115 on state lands.

**B. CONTINUING DETERMINATIONS OF ELIGIBILITY AND ASSESSMENTS OF EFFECT**

**[Objectives]**

Require Strata to submit a plan to complete the testing for eligibility and/or effects for those historic properties that are unevaluated by the NRC and WYSHPO prior to commencing project activities within an area where historic properties have been identified.

1. Require Strata to conduct testing in accordance with an approved testing plan and evaluate historic and cultural resources identified within the APE for eligibility for the NRHP using the National Register Criteria for Evaluation (36 CFR 60).
2. Require that Strata submit testing results, eligibility recommendations, and adverse effects recommendations to the NRC, the BLM, and/or WYSHPO (based on the roles defined in the general stipulations).
3. Require that all reports and documentation meet the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44716-42) and WYSHPO standards.

**Comment [JM36]:** Actual stipulation should describe what activities require submission of a plan and when the plan needs to be submitted.

**Comment [JM37]:** Add reporting section

**[Stipulations]**

Consistent with the phased process for Section 106 compliance under this PA, Strata shall submit a plan to complete the testing for eligibility for those historic properties that are unevaluated or for which there is no consensus on eligibility determination by the NRC and WYSHPO. Strata shall submit a plan to complete the testing for effects to those historic properties for which no determination of effect has been made. Strata shall submit the testing plan no later than two years prior to the date on which project activities are expected to commence within an area where historic properties have been identified. The testing plan shall include a map depicting the area where proposed project activities associated with the plan are expected to occur.

**1. Determination of Eligibility**

Strata shall evaluate and make recommendations on historic and cultural resources identified within the APE that the NRC may use in making determinations of eligibility for the NRHP using the National Register Criteria for Evaluation (36 CFR 60).

**2. Assessment of Effects**

**Comment [J38]:** Here, and where I have APE highlighted below, we mean the area where the limited set of proposed activities associated with the testing plan will occur, not the entire APE. Need to determine terminology.

**Predecisional Draft – Do Not Release**

Strata shall evaluate and make recommendations that the NRC may use in making determinations of potential effect on identified historic properties within the APE. The determinations for the unevaluated potentially eligible sites must be completed prior to commencement of the project activities within the APE.

**Comment [JTE-ACHP39]:** Only need to resolve ADVERSE effects on historic properties (ie., properties determined eligible)

3. All cultural resource inventory reports and documentation must meet the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44716-42) and WYSHPO standards.

**C. AVOIDANCE, MINIMIZATION and MITIGATION of ADVERSE EFFECTS**

**[Objectives]**

1. Avoidance and Minimization of Adverse Effects
  - a. Require that Strata notify the NRC, the BLM, and/or WYSHPO (based on the roles defined in the general stipulations) if it can avoid historic properties within the APE, including historic properties of traditional religious and cultural importance to the Tribes, through project design, redesign, relocation of facilities, or by other means in a manner consistent with this PA.

~~Require that Strata, in consultation with the other consulting parties, ensure that all its personnel, including contractors, inspectors and monitors, receive training regarding the sensitivity of all cultural resources, both Native American and historic properties not of tribal significance and in regards to Native American issues in general.~~

**Comment [JWO40]:** Moved this information into earlier general stipulation.

**Comment [OJ41]:** Joan will revise paragraph to clarify point.

**[Stipulations]**

Avoidance and Minimization of Adverse Effects

Strata shall notify the NRC if it can avoid historic properties within the APE, including properties of traditional religious and cultural importance to the Tribes, through project design, redesign, relocation of facilities, or by other means in a manner consistent with this PA.

**[Objectives]**

2. Mitigation of Adverse Effects

**Predecisional Draft – Do Not Release**

- a. Define methodology and roles of consulting parties to develop a strategy to mitigate adverse effects on affected historic properties, including historic properties of traditional religious and cultural importance to the Tribes in the APE, if Strata determines that the historic properties cannot be avoided. Mitigation will be commensurate with the nature and significance of the cultural resources involved and the extent of the possible direct, indirect, and cumulative effects.
- b. Define who will review and comment on the mitigation plan(s) and what timeframe will be expected. Define what will happen if a Party does not respond within the defined timeframe. Define how comments on the plan(s) will be addressed.
- c. Define the roles and procedures for final acceptance of the mitigation plan(s).
- d. Require that the final mitigation plan(s) will be appended to this PA and the mitigation measures will be completed prior to authorization by the NRC, the BLM, and/or WYSHPO (based on the roles defined in the general stipulations) of Strata's proposed activities.

**Stipulations**

**2. Mitigation of Adverse Effects**

- a. If Strata determines that the historic properties within the APE cannot be avoided, Strata and NRC shall consult with the Parties to identify those measures to be implemented by Strata to mitigate adverse effects on affected historic properties. NRC shall consult with the Tribes regarding mitigation of adverse effects to historic properties of traditional religious and cultural importance. Mitigation will be commensurate with the nature and significance of the cultural resources involved and the extent of the possible direct, indirect, and cumulative effects.
- b. Strata and NRC, in consultation with the Parties and Tribes, shall ensure that plans are developed by Strata that outline mitigation for adverse effects to historic properties, including historic properties of traditional religious and cultural importance to the Tribes in the APE.
- c. Strata and NRC shall submit the mitigation plan(s) to Parties and Tribes as appropriate. The Parties will review and comment on the mitigation plan(s) within 30 days of receipt of the documentation. If a Party does not respond within 30 days, NRC may assume concurrence with the mitigation plan(s). Strata will work with the NRC to address comments and recommendations in preparation of the final mitigation plan(s).
- d. Upon final acceptance by the WYSHPO, and after informing the NRC, the mitigation plan(s) shall be appended to this PA. The mitigation measures shall be completed prior to disturbance except as allowed under Stipulation D of this PA.

**Comment [JTE-ACHP42]:** "Parties" needs to be defined.

**Comment [JTE-ACHP43]:** Make sure Tribes is defined

**D. DISCOVERIES**

**[Objectives]**

- 1. Define a plan for handling inadvertent discoveries of cultural resources
  - a. Define avoidance buffer of the area of discovery and Strata's notification requirements and follow-up activities.

**Comment [JM44]:** Possible appendix – Strata will submit Discovery Plan (needs to be reviewed and approved by agencies).

JM: Strata submitted the plan on 10/31.

**Predecisional Draft – Do Not Release**

- b. Require that, although work may continue in other areas of the site, activities may not resume in the area of discovery unless the NRC, the BLM, and/or WYSHPO (based on the roles defined in the general stipulations) has issued a written notice to proceed.

**[Stipulations]**

**1. Inadvertent Discoveries of [Historic and Cultural Resources](#)**

- a. If previously unknown cultural resources, including archaeological, are discovered during implementation of the Ross Project, all construction activities will cease within 150 feet of the area of discovery and Strata will immediately notify the NRC and the WYSHPO. Strata will have any discovered materials evaluated for NRHP eligibility by a professional meeting the Secretary of Interior's Standard for Archaeology and History. Documentation of the discovery and evaluation will be promptly provided to the NRC. Strata will then consult with the WYSHPO and NRC on the determination of eligibility and adverse effect. If NRC determines that there is an adverse effect to a historic property, NRC will follow the procedure to resolve the adverse effect in accordance with Stipulation C.2.
- e-b. Work may continue in other areas of the site; however construction will not resume in the area of discovery unless the NRC has issued a written notice to proceed.

**[Objectives]**

- 1. Define a plan for handling inadvertent discoveries of human remains
  - a. Define buffer area of the discovery and Strata's notification requirements and follow-up activities (per W.S. 7-4-104). Require notification of Sheriff's Office and Coroner's Office.
  - b. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR § 10). BLM will be responsible for compliance with the provisions of NAGPRA on Federal land. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on state or private land will be handled in accordance with applicable law. Non-Native American human remains found on federal, state, or private land will also be treated in accordance with applicable law. The NRC, BLM, and Strata recognize that any human remains, funerary objects, sacred objects, or items of cultural patrimony encountered during construction should be treated with dignity and respect.

**Comment [JM45]:** Joan will talk to BLM

**[Stipulations]**

**1. Inadvertent Discoveries of Human Remains**

- a. In the event human remains are discovered on private land during implementation of the Ross Project, all work within 300 feet of the discovery will cease, the area will be secured, and Strata will immediately contact local law enforcement and the county coroner per W.S. 7-4-104. The NRC shall notify the Crook County Sheriff's Office and Coroner's Office of the discovery.
- b. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its

**Predecisional Draft – Do Not Release**

implementing regulations (43 CFR § 10). BLM will be responsible for compliance with the provisions of NAGPRA on Federal land. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on state or private land will be handled in accordance with applicable law. Non-Native American human remains found on federal, state, or private land will also be treated in accordance with applicable law. The NRC, BLM, and Strata recognize that any human remains, funerary objects, sacred objects, or items of cultural patrimony encountered during construction should be treated with dignity and respect.

**Comment [JTE-ACHP46]:** Can we put in citations to the "applicable" law?

**E. ONGOING TRIBAL CONSULTATION and COORDINATION**

**Comment [JM47]:** Refer to Appendix B

**[Objectives]**

- 2.1. The NRC and/or the BLM (based on the roles defined in the general stipulations) shall continue to consult with the Tribes throughout the implementation of the PA- Undertaking. The Tribes shall be invited to participate in the development of any mitigation plans necessary to mitigate adverse effects to historic properties of traditional religious and cultural importance to the Tribes.
2. Define opportunities for additional site visits by tribal representatives to evaluate effects on, and convey tribal knowledge regarding historic properties of traditional cultural and religious importance.

**Comment [JM48]:** Sites that have been determined eligible

**Comment [JM49]:** Consultation with SHPO

**Comment [JM50]:** Consulting tribes – Consider clarifying that tribes initially contacted as consulting tribes.

**Comment [OJ51]:** Consider describing how tribal consultation will be conducted for future activities under the PA.

**[Stipulations]**

1. The NRC shall continue to consult with the Tribes representatives throughout the implementation of the PA-. The Tribes shall be invited to participate in the development of any mitigation plans necessary to mitigate adverse effects to historic properties of traditional religious and cultural importance to the Tribes. Any information provided by the Tribes on sites of traditional religious and cultural importance will remain confidential to the fullest extent permitted by law.
2. The NRC shall coordinate with Strata and the Tribes to allow Tribes to visit sites of known tribal interest within the APE. The NRC shall consider, in consultation with the Tribes, the necessity to conduct additional site visits by tribal representatives to evaluate effects on, and convey tribal knowledge regarding historic properties of traditional cultural and religious importance.

**Comment [JTE-ACHP52]:** Does this include all archaeological sites? How do we know if the HPs are of religious and cultural significance?

**E.F. CONFIDENTIALITY OF CULTURAL RESOURCE DATA**

To the extent consistent with NHPA Section 304, cultural resource data will be treated as confidential by all Parties and is not to be released to any person, organization, or agency not a Party to this PA. Duplication or distribution of cultural resource data from BLM-managed lands by any Party requires written authorization from the BLM Newcastle Field Manager. Confidentiality concerns for properties that have traditional religious and cultural importance to the Tribes will be respected and will remain confidential to the fullest extent permitted by law.

**G. ANNUAL REPORT AND EVALUATION**

**[Objectives]**

**Predecisional Draft – Do Not Release**

1. Define the annual reporting requirements, including the date by which reports should be filed by Strata and who should receive the reports. Define when comments should be received and how they will be addressed.
2. Define the frequency of meetings or conference calls to review implementation and achieved outcomes of the terms of this PA and to discuss the annual report, as needed. The Parties shall determine whether amendments are needed to improve the effectiveness of this PA.

**Stipulations**

1. On or before January 1 of each year, until the Consulting Parties agree in writing that the terms of this PA have been fulfilled, Strata shall prepare and provide a letter report to the NRC detailing how the applicable terms of the PA are being implemented. Upon acceptance, Strata shall provide this annual report to all Parties. The Parties may provide comments on the report to Strata within 30 days of receipt, and Strata will distribute all comments to the Parties.
2. Strata shall coordinate a meeting or conference call of the Parties 30-60 days after providing the annual report for the first five (5) years, and (if the PA is still in effect) every third year after that, unless the Consulting Parties agree to another timeframe. The purpose is to review implementation and achieved outcomes of the terms of this PA and to discuss the annual report, as needed. The Parties shall determine whether amendments are needed to improve the effectiveness of this PA.

**Comment [JTE-ACHP53]:** Does Parties include Tribes?

**F.H. DISPUTE RESOLUTION**

1. Should any Signatory or concurring party to this PA provide notice to the NRC of its objection to an action under this PA, or implementation of the measures stipulated in this PA, within 30 days of becoming aware of an action, the NRC shall consult with the objecting party to this PA to resolve the objection, unless otherwise specified in this document. If the NRC determines that the objection cannot be resolved, the NRC shall forward all documentation relevant to the dispute to the ACHP, including NRC's proposed response to the objection. The objecting party must provide reasons for, and a justification of, its objection at the time it initially submits its objection to the NRC. Within 30 days after receipt of all pertinent documentation, the ACHP shall either: any Signatory to this Agreement object to any action carried out or proposed by the NRC with respect to the implementation of this Agreement, the NRC shall consult with that Signatory party to resolve the objection. If the NRC, after initiating such consultation determines that the objection cannot be resolved, the NRC shall forward documentation relevant to the objection to the ACHP, including the NRC's proposed response to the objection. Within forty-five (45) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
  - a. Advise the NRC that the ACHP concurs with the NRC's proposed final decision, whereupon the NRC shall respond accordingly;
  - b. Provide the NRC with recommendations, which the NRC shall take into account in reaching a final decision regarding ~~its response to the objection~~the dispute; or
  - c. Notify the NRC that it will comment within an additional 30 days, in accordance with 36 CFR 800.7(c)(4). Any ACHP comment provided in the response to such a request will be taken into account, and responded to, by the NRC in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute. the objection will

**Comment [JM54]:** Compare with ACHP guidance in SHPO template

**Comment [JTE-ACHP55]:** Tribes and other consulting parties need a chance to

**Predecisional Draft – Do Not Release**

~~be referred to the ACHP membership for formal comment and proceed to refer the objection and comment within forty five (45) days. The resulting comment shall be taken into account by the NRC in accordance with 36 CFR § 800.7(c)(4).~~

- d. Should the ACHP not exercise one of the above options within forty-five (45) days after receipt of all pertinent documentation, the NRC may assume the ACHP's concurrence in its proposed response to its objections.
- 2. ~~The NRC shall take into account any ACHP~~Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. ~~in accordance with this stipulation with reference only to the subject of the objection;~~ ~~I~~the NRC's responsibility to carry out all actions under this Agreement PA that are not the subject of the ~~objection dispute~~ shall remain unchanged.

**G.I. AMENDMENT**

Any Signatory to this PA may request that it be amended, whereupon the Signatories will consult to reach agreement. Such amendment shall be effective upon the signature of all Signatories to this PA, and the amendment shall be appended to the PA as an Appendix.

**H.J. TERMINATION**

- 1. Any Signatory to this PA may initiate termination by providing written notice to the other ~~parties~~Signatories of their intent. After notification by the initiating Signatory, the remaining Signatories shall have 60 business days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. If such consultation fails, the termination will go into effect at the end of the 60-day period, unless all the Signatories agree to a longer period.
- 2. In the event of termination, the NRC will comply with any applicable requirements of 36 CFR §§ 800.4 through 800.6 with regard to ~~the original this individual~~ undertaking covered by this PA.

[From SHPO template: In the event of termination, the FEDERAL AGENCY shall refer to 36 CFR Part 800 to address any remaining adverse effects to the Trails or sites.]

**H.K. DURATION OF AGREEMENT**

This PA shall remain in effect ~~for~~ for the term of the license plus any period of timely renewal from its date of execution by the Signatories (last date of signature), or until completion of the work stipulated, whichever comes first, unless extended by agreement among the Signatories.

[From SHPO template: This PA shall remain in effect for XX years after the date of execution hereof. The FEDERAL AGENCY and WYSHPO shall re-evaluate the PA every XX years. The FEDERAL AGENCY shall ensure the PA will be re-evaluated and amended, to accommodate any changes to the terms. All signatories will be consulted during the amendment process (See Section V).]

**J.L. ANTI DEFICIENCY ACT**

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341). If compliance with the Anti-Deficiency Act alters or impairs the NRC's ability to

**Comment [JTE-ACHP56]:** ACHP template: If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation ???, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the undertaking, [Agency abbreviation] must either (a) execute an MOA/PA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. [Agency abbreviation] shall notify the signatories as to the course of action it will pursue

**Comment [J57]:** SHPO template says 90 business days.

**Comment [J58]:** Not included in SHPO template.

**Comment [JM59]:** Revisit next webinar



**Predecisional Draft – Do Not Release**

implement the stipulations of this Agreement, the NRC will consult in accordance with the amendment and termination procedures found in this Agreement.

**K.M. GENERAL PROVISIONS**

1. **Entirety of Agreement.** This PA, consisting of number (xx) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding compliance with Section 106 of the National Historic Preservation Act.
2. **Prior Approval.** This PA shall not be binding upon any party unless this PA has been reduced to writing before performance begins as described under the terms of this PA, and unless the PA is approved as to form by the Wyoming Attorney General or his representative.
3. **Severability.** Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
4. **Sovereign Immunity.** The State of Wyoming ~~and~~ the WYSHPO, the BLM, the NRC, the ACHP, [other parties] do not waive their sovereign or governmental immunity by entering into this PA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA.
5. **Indemnification.** Each Signatory to this PA shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify the other Signatories to this PA.

**Comment [OJ60]:** Add NRC, BLM etc. to this paragraph. However, it's covered in M. 3 below. Need to check for redundancy as we revise document.

- ~~1. This PA shall not be binding upon any party unless this PA has been reduced to writing before performance begins as described under the terms of this PA, and unless the PA is approved as to form by the Wyoming Attorney General or his representative.~~
- ~~2.1. Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.~~
- ~~3. The NRC, ACHP, WYSHPO, [other parties] do not waive their sovereign or governmental immunity by entering into this PA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA.~~
- ~~4. Each Signatory to this PA shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify the other Signatories to this PA.~~

**5.2. \_\_\_\_\_**

Execution of this PA by NRC, BLM, ACHP, WY SHPO, Strata (and other signatories), the submission of documentation and filing of this PA with the ACHP pursuant to 36 CFR 800.6(b)(1)(iv) prior to the Signatories' approval of the undertaking, and implementation of its



**Predecisional Draft – Do Not Release**

~~terms, are evidence that the NRC and BLM have taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment, and implementation of its terms evidences that the NRC has taken into account the effects of the Undertaking on historic properties.~~

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

**Predecisional Draft – Do Not Release**

**SIGNATURES:** In witness thereof, the Signatories to this PA through their duly authorized representatives have executed this PA on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this PA is the date of the last signature affixed to this page.

**Lead Federal Agency**

\_\_\_\_\_  
Lead Federal Agency Official                      Date

**Any other federal agencies**

\_\_\_\_\_  
Other Federal Agency Officials                      Date

**Wyoming State Historic Preservation Officer**

\_\_\_\_\_  
Mary Hopkins, SHPO                      Date

**Advisory Council on Historic Preservation**

\_\_\_\_\_  
John M. Fowler, Executive Director                      Date

**Other signature lines as needed (interested parties, etc.)**

\_\_\_\_\_  
Name and title                      Date

Approval as to Form:  
Wyoming Attorney General's Office

\_\_\_\_\_  
S. Jane Caton,                      Date  
Senior Assistant Attorney General

**Consulting Parties:**

**Predecisional Draft – Do Not Release**

Entity

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

**Predecisional Draft – Do Not Release**

**Invited Concurring Parties**

Entity

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title:

Group will look at

Covering this as a Stipulation in Discovery section – only federal lands?