

StrataRossLAPem Resource

From: bschiffer [bschiffer@wwcengineering.com]
Sent: Thursday, November 07, 2013 2:05 PM
To: Moore, Johari; Monteith, Emily; 'Richard Currit (richard.currit@wyo.gov)'; 'Mary Hopkins (mary.hopkins@wyo.gov)'; 'Mike Griffin (MGriffin@stratawyo.com)'; 'John Eddins'; 'Tratebas, Alice'; 'kbo@kiowatribe.org'; Olmstead, Joan; 'BLKFTTHPO@aol.com'; Fringer, John; 'Arapaho'; 'Blackfeet'; 'Cheyenne and Arapahoe Tribes of Oklahoma'; 'Cheyenne River Lakota'; Chippewa Cree (awindyboy@cccrpd.com); Confederated Salish and Kootenai; Crow (hubertt@crownations.net)
Cc: StrataRossLA Resource; 'Doris Minor (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: 7260418-v5-Strata Edits Ross Project Programmatic Agreement_WORKING DRAFT 11-07-13.DOCX

Johari--

Please see the attached draft PA with some suggested red lines to the clause regarding the APE as well as some suggested language in Stips A, B, C and General Provisions. We also have some minor suggestions on the draft Appendix A and B text but they are more editorial than content driven at this point so we'll address as the opportunity arises. We look forward to the webinar.

Ben

On 11/5/2013 5:10 PM, Moore, Johari wrote:

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



Benjamin J. Schiffer, PG
WWC Engineering
1849 Terra Ave.
Sheridan, WY 82801
Ph. (307) 672-0761 ext. 148
fax (307) 674-4265
www.wwcengineering.com

Hearing Identifier: StrataEnergyRoss_LA_Public
Email Number: 431

Mail Envelope Properties (527BE478.3070706)

Subject: Re: Ross Project Programmatic Agreement - WORKING DRAFT for 11-7-13
Webinar and Webinar Agenda
Sent Date: 11/7/2013 2:05:28 PM
Received Date: 11/7/2013 2:06:27 PM
From: bschiffer

Created By: bschiffer@wwcengineering.com

Recipients:

"StrataRossLA Resource" <StrataRossLA.Resource@nrc.gov>
Tracking Status: None
"Doris Minor (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)" <richard.currit@wyo.gov>
Tracking Status: None
"Mary Hopkins (mary.hopkins@wyo.gov)" <mary.hopkins@wyo.gov>
Tracking Status: None
"Mike Griffin (MGriffin@stratawyo.com)" <MGriffin@stratawyo.com>
Tracking Status: None
"John Eddins" <jeddins@achp.gov>
Tracking Status: None
"Tratebas, Alice" <atrateba@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
"Arapaho" <Narapahothpo_2009@ymail.com>
Tracking Status: None
"Blackfeet" <John.murray@blackfeetplanning.org>
Tracking Status: None
"Cheyenne and Arapahoe Tribes of Oklahoma" <lgray@c-a-tribes.org>
Tracking Status: None
"Cheyenne River Lakota" <cpthpo@lakotanetwork.com>
Tracking Status: None

"Chippewa Cree (awindyboy@cccrpd.com)" <awindyboy@cccrpd.com>

Tracking Status: None

"Confederated Salish and Kootenai" <francisa@cskt.org>

Tracking Status: None

"Crow (hubertt@crownsations.net)" <hubertt@crownsations.net>

Tracking Status: None

Post Office: wwwengineering.com

Files	Size	Date & Time
MESSAGE	2596	11/7/2013 2:06:27 PM
2002logo.jpg	14769	
7260418-v5-Strata Edits Ross Project Programmatic Agreement_WORKING DRAFT 11-07-13.DOCX		
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Options

Priority: Standard

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**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

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 [A1]: 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 [A2]: Johari will draft for next week's meeting

JM: Drafted.

WHEREAS, generally-speaking, the area of potential effects (APE) for the Undertaking is the area ~~at~~ within the Ross Project ~~boundary site and its immediate environs~~, which may be impacted by activities associated with the construction and operation of the proposed facility. For potential visual effects, the area of potential effects for the Undertaking is the area within three (3) miles of the Ross Project boundary, as shown in Appendix A; and

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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 [A3]: Check with ACHP.

Comment [A4]: WY SHPO also recommended deleting clause. NRC agrees.

WHEREAS, NRC, in consultation with the Signatories and Invited Signatory, 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; and,

Comment [A5]: SHPO will look at. NRC recommends deleting.

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 [A6]: SHPO will look at

WHEREAS, ~~identification of potential historic properties; 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 [A7]: Group will look at
Placeholder develop further in Section 106 identification of properties
Mary – Do not need this clause

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 [A8]: 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,

Comment [A9]: Group will look at
Placeholder develop further in Section 106 identification of properties

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 [A10]: Group will look at
Covering this as a Stipulation in Discovery section – only federal lands?

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

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

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~~

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~~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, 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 [A11]: 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

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

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

~~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: [] 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, and [note here whether the invitation was/was not accepted]; 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~~

~~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 [A12]: Condition to be added to license

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

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

Comment [A13]: 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 [A14]: 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 [A15]: 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.

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 [A16]: Strata will fund all field work

Comment [A17]: NRC as lead remains responsible? NRC & BLM will determine roles

Comment [A18]: 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.

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Strata will ensure that all of its employees, contractors, subcontractors, inspectors, monitors, and any authorized additional parties involved in the project are directed 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)

Comment [A19]: In line with language from SHPO, below.

Comment [A20]: 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.

- 2. TBD
- 3. TBD

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.

Comment [A21]: Actual stipulation should describe what activities require submission of a plan and when the plan needs to be submitted.

- 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 [A22]: Add reporting section

[Stipulations]

Consistent with the phased process for Section 106 compliance under this PA, Strata shall submitted a Testing Plan to complete the testing for eligibility for these two potentially eligible historic properties that may be adversely affected by Phase One of the Undertaking and that are unevaluated or for which there is no consensus on eligibility determination by the NRC and WYSHPO. This Testing Plan has been reviewed and approved by NRC, SHPO and BLM, and is attached hereto as Appendix X. Within 60 days of completing the testing, Strata shall submit to NRC, SHPO, the BLM and any consulting parties, as appropriate, the results of its Testing Plan. The reviewing parties shall submit any comments to Strata within 30 days of receipt of the results, otherwise it shall be assumed that the actions called for under the Testing Plan have been completed. If any comments are received from the reviewing parties, Strata shall work with NRC to resolve them.

Comment [A23]: Need to carefully identify which two sites this is referring to, and cross-cite to Appendix B.

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Strata shall submit a Testing Plan to complete the testing for eligibility for the other potentially eligible historic properties for which there is no consensus on eligibility determination by NRC and WYSHPO as soon as practicable and no later than eight (8) months before project activities are expected to commence that may adversely affect these sites. NRC, SHPO, the BLM, and any concurring parties, as appropriate, shall have 30 days to review and comment on the Testing Plan. A failure to comment shall be interpreted as concurrence with the Testing Plan. Strata shall work with NRC to resolve any comments received. Review and finalization of the results of the Testing Plan shall proceed as stated in the paragraph immediately above.

Comment [A24]: Need to carefully identify which sites this is referring to, and cross-cite to Appendix B.

For the two sites that have been determined by NRC, SHPO and the BLM to be eligible historic properties, Strata shall submit a plan to complete the testing for adverse effects. This Testing Plan has been reviewed and approved by NRC, SHPO and BLM, and is attached hereto as Appendix X. Within 60 days of completing the testing, Strata shall submit to NRC, SHPO, the BLM and any consulting parties, as appropriate, the results of its Testing Plan. The reviewing parties shall submit any comments to Strata within 30 days of receipt of the results, otherwise it shall be assumed that the actions called for under the Testing Plan have been completed. If any comments are received from the reviewing parties, Strata shall work with NRC to resolve them. ~~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).

Comment [A25]: 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.

2. Assessment of Effects

A. If the above Determination of Eligibility results in the identification of properties that are eligible for the National Register, within 30 days, Strata shall evaluate and make recommendations regarding adverse effect on any eligible historic properties within the APE that the NRC may use in making determinations of potential adverse effect on eligible identified historic properties within the APE.

Comment [A26]: With the exception of those sites identified during the tribal surveys, Strata has completed this task. Need to discuss.

Formatted: Highlight

Within 60 days of receipt of Strata's recommendations, NRC shall assess adverse effects in accordance with 36 CFR 800.5 and distribute for review and comment the report and findings to the ACHP, SHPO, BLM, Strata and any appropriate consulting parties. Reviewing parties shall have 30 days to submit their comments to NRC, or it shall be assumed they concur in NRC's finding(s).

NRC shall incorporate the comments received to the extent practicable, and issue a final assessment of adverse effects within 30 days.

The adverse determinations for the ~~unevaluated potentially eligible sites~~ historic properties must be completed prior to commencement of the project activities within the APE.

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- 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 [A27]: Moved this information into earlier general stipulation.

Comment [A28]: Joan will revise paragraph to clarify point.

[Stipulations]

Avoidance and Minimization of Adverse Effects

~~Once NRC's report regarding adverse effects to eligible historic properties has been finalized per the above paragraph, Strata shall notify the NRC within 60 days if it can avoid eligible historic properties that will be adversely affected within the APE, including properties of traditional religious and cultural importance to the Tribes located on public lands, through project design, redesign, relocation of facilities, or by other means in a manner consistent with this PA.~~

[Objectives]

2. Mitigation of Adverse Effects

- 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**

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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.

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.
 - 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.

Comment [A29]: Possible appendix – Strata will submit Discovery Plan (needs to be reviewed and approved by agencies).

JM: Strata submitted the plan on 10/31.

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[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 [A30]: 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 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

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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.

E. ONGOING TRIBAL CONSULTATION and COORDINATION

[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.

[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 [A31]: Refer to Appendix B

Comment [A32]: Sites that have been determined eligible

Comment [A33]: Consultation with SHPO

Comment [A34]: Consulting tribes – Consider clarifying that tribes initially contacted as consulting tribes.

Comment [A35]: Consider describing how tribal consultation will be conducted for future activities under the PA.

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]

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.

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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.

F.H. DISPUTE RESOLUTION

1. Should any Signatory 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:
 - 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 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).

Comment [A36]: Compare with ACHP guidance in SHPO template

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- 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; T~~he 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 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 implement the stipulations of this Agreement, the NRC will consult in accordance with the amendment and termination procedures found in this Agreement.

Comment [A37]: SHPO template says 90 business days.

Comment [A38]: Not included in SHPO template.

Comment [A39]: Revisit next webinar

Comment [A40]: In light of the proposed agenda and timing constraints, Strata has not had the opportunity to review and comment on these stipulations.

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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 [A41]: Needs to include all Appendices.

Comment [A42]: What is this process / timing?

Comment [A43]: 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 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~~

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~~implementation of its terms evidences that the NRC has taken into account the effects of the Undertaking on historic properties.~~

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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:

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Entity

By: _____ Date: _____

Title:

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Invited Concurring Parties

Entity

By: _____ Date: _____

Title: