

StrataRossLAPEm Resource

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Sent: Friday, November 15, 2013 8:48 AM
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Cc: StrataRossLA Resource; 'Doris Minor (doris@attenuation.us.com)'; 'Brad Noisat'; 'Cheryl Chapman'; Waldron, Ashley; Saxton, John; Hsueh, Kevin; Miller, Richard C (rcmiller@blm.gov)
Subject: Ross Project Programmatic Agreement - Comments/Revisions from 11-14-13 Webinar
Attachments: Appendix A and B to Ross Project PA_WORKING DRAFT 11-14-13.docx; Ross Project Programmatic Agreement_WORKING DRAFT 11-14-13.docx

Good morning,

In yesterday's webinar to develop the Ross Project Programmatic Agreement (PA), we discussed and proposed revisions to the appendices, the draft "whereas" clauses, and the draft stipulations. For the next scheduled webinar (next Thursday, 11/21), which is currently the last scheduled webinar, the NRC will revise the language in these sections of the PA per the comments provided. Attached, please find the current drafts of the PA and appendices, which include the comments and revisions we discussed during yesterday's webinar.

The NRC staff will make the suggested revisions assigned to the NRC and I will resend these documents to the group by next Wednesday, 11/20. If you volunteered to make revisions, I will try to include those revisions provided to me by 12:00 PM EST (10:00 AM MST) next Wednesday in the version I will send out later that day. Otherwise, I will have the revisions sent to me before next week's webinar available to be viewed and discussed by the group during the webinar. As requested, please email your comments/revisions to the entire group.

For those of you that have not yet been able to participate in a webinar, we also welcome you to provide your comments on the PA (you may send comments to me via email). In addition, we invite you to join us at our next webinar, scheduled for Thursday, 11/21. Next week we will be discussing the draft appendices to the PA as well as the proposed revisions to the "whereas" clauses and the draft stipulations. Since next week is the last scheduled webinar, we will also discuss the path forward for completing the PA during that meeting.

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

National Park Service (Devils Tower)

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

NRC - 10/24, 10/31, 11/7, and 11/14

BLM - 10/24, 10/31, 11/7, and 11/14

WYSHPO - 10/24, 10/31, 11/7, and 11/14

ACHP - 10/24, 11/7, and 11/14

Strata Energy, Inc. - 10/24, 10/31, 11/7, and 11/14

Cheyenne and Arapaho Tribes of Oklahoma THPO – 11/7 and 11/14

Chippewa Cree Tribe THPO – 11/7

Northern Cheyenne Tribe THPO – 11/7

Fort Peck Assiniboine and Sioux Tribes THPO – 11/7

National Park Service (Devils Tower) – 11/14

Thank you,

Johari A. Moore

Project Manager

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FSME/DWMEP/Environmental Review Branch

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Ross Project Programmatic Agreement_WORKING DRAFT 11-14-13.docx

67788

Options

Priority: Standard

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Recipients Received:

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DRAFT Appendix A – Undertaking and Area of Potential Effects

Undertaking

On January 4, 2011, Strata Energy, Inc. (Strata or the applicant) submitted to the U.S. Nuclear Regulatory Commission (NRC) a license application to construct and operate the Ross Project, which is a proposed uranium *in situ* recovery (ISR) facility located in Oshoto, Crook County, Wyoming.

The Atomic Energy Act of 1954, as amended, authorizes the NRC to issue licenses, either as a general or specific license, to qualified applicants for the receipt, possession and use of byproduct and source materials resulting from the removal of uranium ore from its place of deposit in nature. An NRC specific license is issued to a commercial uranium or thorium ISR facility pursuant to NRC implementing regulations listed in Title 10 of the Code of Federal Regulations (10 CFR) Part 40.

On January 21, 2011, Strata submitted to the U.S. Department of the Interior, Bureau of Land Management (BLM), Newcastle, Wyoming Field Office a Plan of Operations for the Ross Project for review and approval.

[Describe the BLM's authority here]

Comment [A1]: Alice will draft

Ross Project Location and Proposed Activities

Comment [A2]: Section needs to reference Figs 1-1 and 1-2

The proposed activities consist of constructing and operating an ISR facility at the Ross Project located in Oshoto, Crook County, Wyoming. Strata is a U.S.-based corporation registered in Wyoming and a wholly owned subsidiary of Peninsula Energy Limited, an Australian registered company. Peninsula Energy is a publicly traded corporation on the Australian Securities Exchange. For this Undertaking, Strata is the applicant.

Crook County is located in the northeastern corner of Wyoming, abutted by Montana to the north, South Dakota to the east, Weston County, Wyoming, to the south, and Campbell County, Wyoming to the west. The total area encompassed by Crook County is 2871 square miles. The nearest town to the project is Moorcroft, which is located approximately 22 miles south of the Ross Project. The closest community is Oshoto, which includes 11 residences located within 2 miles (mi) [3.2 kilometers (Km)] of the project area. In addition to Moorcroft, the other nearest major urban centers include Sundance, Hulett, and Pine Haven, all of which are located in Wyoming. The largest population in those nearby urban centers is in Sundance with a 2010 population of 2602 persons (Strata, 2011a).

The Ross Project area is located within the headwaters of the Little Missouri River near the settlement of Oshoto, approximately 18 miles north of Moorcroft, Wyoming. Elevations range between 4,120 – 4,260 feet (ft). The local geological setting in the Ross Project area is the Upper Cretaceous, Lance Formation, a non-marine shale and sandstone. Upland landforms, including hills, ridgelines, cuestas, and higher elevation tablelands, dominate the topography. Inter-fluvial valleys and narrow draws divide the uplands from the Little Missouri River, which flows on a northeasterly course through the central portion of the Project area. A dam in the Project area, across the Little Missouri River, impounds the Oshoto Reservoir. Deadman Creek, a reliable seasonal stream, is a major tributary of the Little Missouri River joining the River in the southwestern part of the Project area. Extensive terrace systems occur in the Little

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Missouri River and Deadman Creek drainages. Vegetation is mixed grass prairie intermingled with stands of big sagebrush and sand sagebrush on open drier slopes. Deciduous woodlands occur in several deeply entrenched draws, and wetland flora occurs around ponded holes in some sections of these draws. Soils generally consist of residual sandy loams forming on clays, sands, and paralithic bedrock.

The public natural resources located within Crook County include portions of the Black Hills National Forest, Devils Tower National Monument, [Missouri Buttes](#), and the Keyhole Reservoir State Park. Devils Tower National Monument and Missouri Buttes are located approximately 12 miles east of the Ross Project. The Keyhole Reservoir State Park is located approximately 18 miles south-southeast of the Ross Project. In addition to uranium [mining](#), other mineral resources in Crook County include oil and gas, and bentonite mining.

Comment [A3]: Not public resource, 100% private land per Crook County Assessor's Office.

Access to the project is through several county roads including Road 68 (D Road) and Road 164 (New Haven Road), all of which are gravel capped. The closest interstate highway is Interstate 90; the closest point to the interstate highway is located at Moorcroft, Wyoming.

The Ross Project comprises approximately 696 hectares (ha) [1,721 acres (ac)]. Surface ownership of land located within the Ross Project is as follows: private entities, 553 ha [1367.2 ac]; State of Wyoming, 127 ha [314.1 ac]; and the Federal Government as administered by the BLM, 16 ha [40.0 ac]. Mineral rights are owned by the same entities as the surface rights; however, the distribution differs slightly from that of the surface ownership in that federal mineral rights ownership occurs in several [quarter/quarter](#) sections for which surface land is owned by private entities.

The proposed activities for the Ross Project include the construction of wellfields and a central processing plant (CPP) with ancillary equipment. The ancillary equipment includes underground piping from the wellfield to the CPP and from the CPP to the deep disposal wells, two to three dozen header houses, an administrative and warehouse/maintenance building, chemical and equipment storage area, lined retention ponds, and deep disposal wells. Except for the wellfields, header houses, deep disposal wells and piping, most of the development is limited to a 50-acre area referred to as the "CPP area" within the project.

The applicant proposes in situ recovery processes for this project. The ISR process involves extracting uranium from underground ore bodies without bringing the ore bodies to the surface by injecting a leaching solution through wells into underground ore bodies to dissolve the uranium. The leaching solution is recovered from the subsurface through the extraction wells and piped to the CPP through a system of underground piping. At the CPP, two generic processes produce the final product, which is referred to as yellowcake.

The applicant requests that the Ross Project be licensed to process 28,400 liters per minute (Lpm) [7,500 gallons per minute (gpm)] of leaching solution through the resins and produce 1.36 million kilograms (kg) [3 million pounds (lbs)] per year of yellowcake at the CPP.

From the initial construction to final decommissioning, the applicant proposed timeline for the Ross Project is approximately 10 years; however, the applicant also requests processing of uranium-rich resins derived from other ISR operations (either a future Strata facility or a facility operated by another licensee) or other entity (e.g., water treatment resins). The applicant states that processing of resins outside sources could extend the life of the CPP to 20 years.

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The applicant proposes restoration of the production aquifer and stability monitoring. Restoration of portions of wellfields may occur simultaneously with operations (recovery of uranium) at other wellfields. After restoration is completed and approved by NRC staff, the wellfields will undergo decommissioning and reclamation by removing the piping and other ancillary equipment. Upon completion of operations, all surface facilities that were installed for the Ross Project will be decommissioned to allow unrestricted future use of the property. All equipment not fully decontaminated for unrestricted use will be disposed of at an NRC-licensed facility.

Ross Project Area of Potential Effects

As indicated in the NRC's letters to the Wyoming State Historic Preservation Office and the Advisory Council on Historic Preservation, dated August 19, 2011, the Area of Potential Effects (APE) 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.

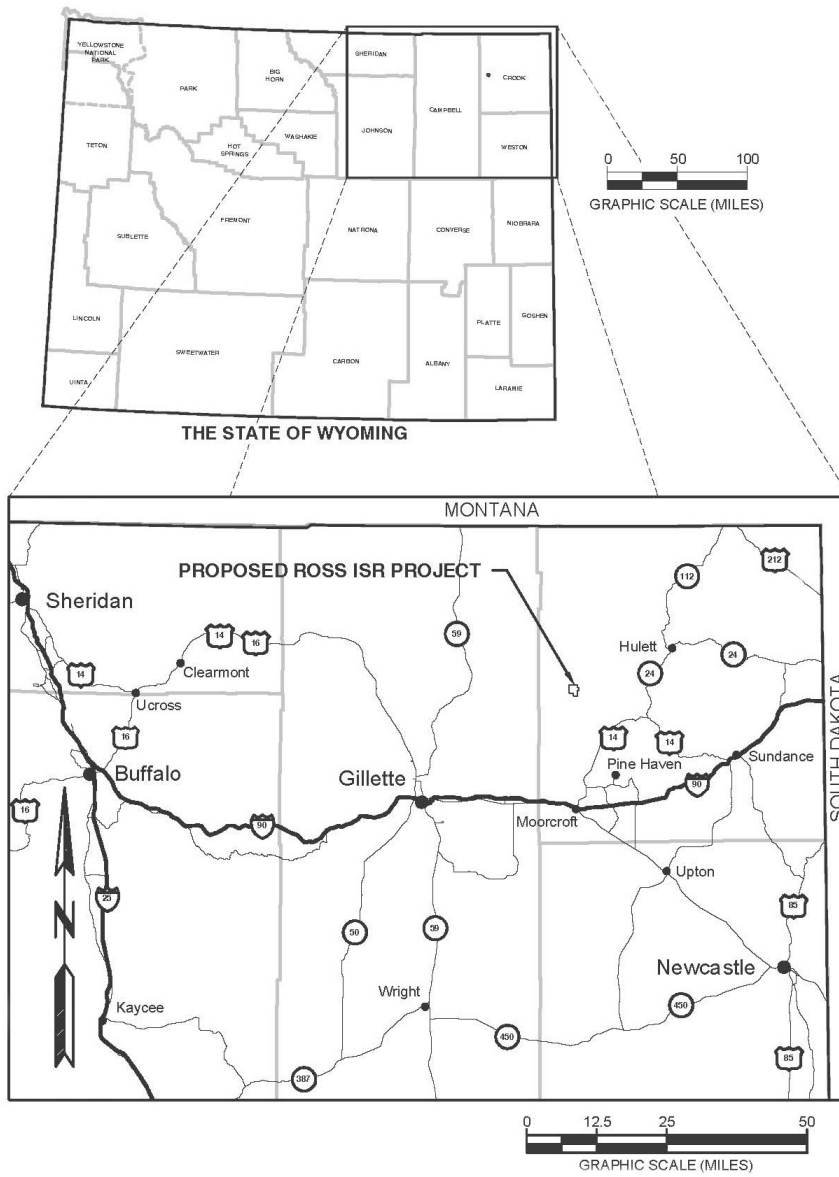
By letter dated August 27, 2012, Strata provided to the NRC the results of its analysis to identify and assess the potential visual effects to properties located within three (3) miles of the Ross Project boundary. Strata determined that three (3) of 58 previously recorded sites fall in areas that may be visible from the Ross Project and recommended that there is zero indirect effect on the prehistoric sites within this APE.

Comment [A4]: General license boundary and legal

Comment [A5]: Suggest area inside license boundary only for direct impacts and support with ER Figs 1.2-6 and/or 1.2-7.

Comment [A6]: This seems misplaced here, at least as written. Is the point that if there are no visual effects outside of the property boundary, the APE has appropriately been defined as the project boundary? What about noise and vibration? Any other indirect effects from the project that could potentially affect historic properties?

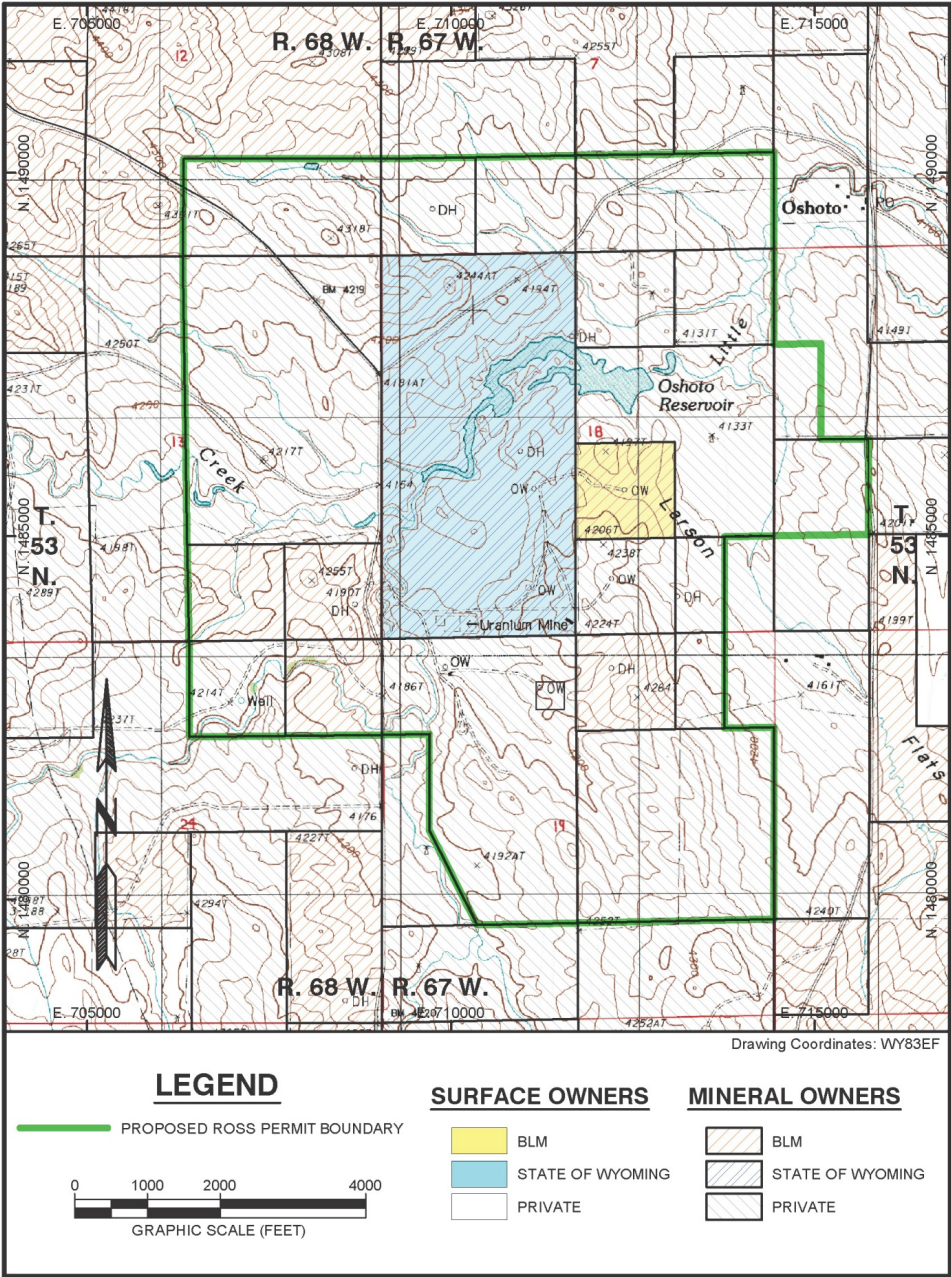
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Source: Figure 1.4-1 of the Ross ISR Project USNRC License Application, Crook County, Wyoming, prepared by Strata Energy, Inc., Docket No. 040-09091. ADAMS Accession No. ML110120063, January 2011.

Figure 1-1 Ross Project Location Map

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Source: Figure 2.1-1 of the Ross ISR Project USNRC License Application, Crook County, Wyoming, prepared by Strata Energy, Inc., Docket No. 040-09091. ADAMS Accession No. ML110120063, January 2011.

Figure 1-2 Ross Project License Boundary and Distribution of Land Ownership

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DRAFT Appendix B – Cultural Resource Inventory

Cultural Resource Inventory

A Class III Cultural Resource Inventory (Class III Inventory) was conducted in support of the Ross Project in April 2010 and July 2010 (Ferguson, 2010). The Inventory included a pedestrian survey in transects of 30-m [102-ft] intervals throughout the Ross Project area. Subsurface exposures such as cut banks, anthills, rodent burrows, roads ruts, and cow tracks were examined. Shovel probes were placed at the discretion of the surveyors, primarily in locations where artifacts or features were located or where soil had accumulated. The Inventory focused on landforms where intact sites might be expected, such as intact, stable terraces and their margins as well as areas of exposure (Ferguson, 2010).

In November 2011, additional evaluative work was accomplished: A geophysical magnetometer survey was conducted at several sites, but found to be ineffective because of the nature of the soils. Then, 6 back-hoe trenches, approximately 27 test pits measuring 0.5 m x 0.5 m [1.6 ft x 1.6 ft], and approximately 44 test pits measuring 1.0 m x 1.0 m [3.3 ft x 3.3 ft] were excavated to further evaluate sites near areas where road construction would be expected.

In preparation for the Class III Inventory, a Class I Inventory (i.e., a records search) was conducted for the Ross Project area in 2010; this search included the records of the Wyoming Cultural Records Office (WYCRO), the WYCRO online data base, and the BLM's Newcastle Field Office (Ferguson, 2010). The records search showed that, prior to the 2010 Class III Inventory, no substantial block inventory (i.e., survey) had been conducted in the Project area. Small-scale investigations, including two associated with power lines and buried telephone cables as well as a drilling-pad and access-road survey, have been conducted in the Ross Project area. Only one survey, an inventory for a linear buried telephone cable in Section 13, identified one prehistoric campsite, 48CK1603. Avoidance of this campsite was recommended as a result. The campsite lies on both State of Wyoming and private land, and it was described as "bisected" by D Road (Ferguson, 2010).

Buildings and Structures

No buildings or structures eligible for the National Register of Historic Places (NRHP) or Wyoming State Register were identified within the Ross Project area (Ferguson, 2010). An earthen structure in the Ross Project area, the Oshoto Dam, did not meet the criteria for eligibility for listing in the NRHP (48 CFR Part 2157). The original dam has been rebuilt numerous times because of flood damage, most recently in 2005, and is considered to be essentially a reconstruction rather than the original dam.

Archaeological Sites

During the Applicant's Class III Inventory for the Ross Project, 24 new sites and 21 isolated finds were recorded. Twenty-three of the recorded sites are prehistoric camps, and one is a historic-period homestead. Paleontological material, believed to be out of context, was found at two of the sites. These two sites produced projectile points that represent Middle Archaic and Late Archaic periods; other fragments found indicate Late Prehistoric-period occupation. Twenty-one isolates were also recorded during the Inventory. All but two of these are prehistoric artifacts; the two historic isolates are trash scatters. In addition to the sites identified during the Class III Inventory, the potential exists for deeply buried sites to be found within the

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Ross Project area because of its propitious location near the headwaters of the Little Missouri River.

As described in the Tribal Consultation section below, a Class III Inventory designed to identify and evaluate the NRHP significance of Traditional Cultural Properties (TCPs) in the Ross Project area was performed by representatives of ten Tribes during May and June 2013. During the June TCP Inventory, additional archaeological content including bone and lithic artifacts was found at No. 48CK2087, a site formerly limited to a hill-top cairn. The new cultural finds at No. 48CK2087 (identified preliminarily as NRC Site #3) potentially extend the boundary of 48CK2087. Additionally, three new archaeological sites were found within the Ross Project Area: Temporary Nos. NRC Site #1, NRC Site #2, and NRC Site #4.

The 28 sites along with the previously identified 48CK1603 are listed in Table 1-A, Table 1-B, Table 1-C, and Table 1-D. The eligibility determinations for site #1 through site #25 shown in Table 1-A are documented in the following letters between the NRC and the Wyoming State Historic Preservation Office (WYSHPO): NRC letter to WYSHPO, dated March 8, 2013; WYSHPO letter to NRC, dated March 28, 2013; NRC letter to WYSHPO, dated September 20, 2013; WYSHPO letter to NRC, dated October 22, 2013.

Table 1-A. Summary of Ross Project Cultural Properties

#	Site Number	NRHP Eligibility
1	48CK1603	Eligible
2	48CK2070	Unevaluated
3	48CK2071	Not Eligible
4	48CK2072	Not Eligible
5	48CK2073	Unevaluated
6	48CK2074	Not Eligible
7	48CK2075	Unevaluated
8	48CK2076	Unevaluated
9	48CK2077	Not Eligible
10	48CK2078	Unevaluated
11	48CK2079	Unevaluated
12	48CK2080	Unevaluated
13	48CK2081	Unevaluated
14	48CK2082	Unevaluated
15	48CK2083	Eligible
16	48CK2084	Not Eligible
17	48CK2085	Unevaluated
18	48CK2086	Not Eligible
19	48CK2087	Unevaluated
20	48CK2088	Not Eligible
21	48CK2089	Unevaluated
22	48CK2090	Unevaluated
23	48CK2091	Unevaluated
24	48CK2092	Unevaluated
25	48CK2093	Not Eligible
26	NRC Site #1	Unevaluated
27	NRC Site #2	Unevaluated
28	NRC Site #3	Unevaluated

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29	NRC Site #4	Unevaluated
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Table 1-B. Summary of NRHP Eligible Ross Project Cultural Properties

#	Site Number	NRHP Eligibility
1	48CK1603	Eligible
2	48CK2083	Eligible

Table 1-C. Summary of NRHP Not Eligible Ross Project Cultural Properties

#	Site Number	NRHP Eligibility
1	48CK2071	Not Eligible
2	48CK2072	Not Eligible
3	48CK2074	Not Eligible
4	48CK2077	Not Eligible
5	48CK2084	Not Eligible
6	48CK2086	Not Eligible
7	48CK2088	Not Eligible
8	48CK2093	Not Eligible

Table 1-D. Summary of Unevaluated Ross Project Cultural Properties

#	Site Number	NRHP Eligibility
1	48CK2070	Unevaluated
2	48CK2073	Unevaluated
3	48CK2075	Unevaluated
4	48CK2076	Unevaluated
5	48CK2078	Unevaluated
6	48CK2079	Unevaluated
7	48CK2080	Unevaluated
8	48CK2081	Unevaluated
9	48CK2082	Unevaluated
10	48CK2085	Unevaluated
11	48CK2087	Unevaluated
12	48CK2089	Unevaluated
13	48CK2090	Unevaluated
14	48CK2091	Unevaluated
15	48CK2092	Unevaluated
16	NRC Site #1	Unevaluated
17	NRC Site #2	Unevaluated
18	NRC Site #3	Unevaluated
19	NRC Site #4	Unevaluated

Tribal Consultation

According to Executive Order (EO) No. 13175, *Consultation and Coordination with Indian Tribal Governments*, the NRC is encouraged to “promote government-to-government consultation and

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coordination with Federally-recognized Tribes that have a known or potential interest in existing licensed uranium-recovery facilities or applications for new facilities.” Although the NRC, as an independent regulatory agency, is explicitly exempt from the Order, NRC remains committed to its spirit. The agency has demonstrated a commitment to achieving the Order’s objectives by implementing a case-by-case approach to interactions with Native American Tribes. The NRC’s case-by-case approach allows both the NRC and the Tribes to initiate outreach and communication with one another.

As part of its obligations under Section 106 of the NHPA and the regulations at 36 CFR 800.2(c)(2)(B)(ii)(A), the NRC must provide Native American Tribes “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties and evaluation of historic properties, including those of religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” Tribes that have been identified as potentially having concerns about actions near Devils Tower were formally invited by the NRC staff, by letter dated February 9, 2011, to participate in the Section 106 consultation process for the proposed Ross Project (see Table 2). The NRC staff invited the Tribes to participate as consulting parties in the NHPA Section 106 process and sought their assistance in identifying Tribal historic sites and cultural resources that may be affected by the Proposed Action.

Table 2. Tribes Invited to Participate in Section 106 Consultation for the Ross Project

1	Apache Tribe of Oklahoma ^a
2	Blackfeet
3	Cheyenne and Arapaho Tribes of Oklahoma
4	Cheyenne River Sioux
5	Chippewa Cree
6	Confederated Salish & Kootenai Tribes
7	Crow Tribe
8	Crow Creek Sioux Tribe
9	Eastern Shoshone Tribe
10	Flandreau Santee Sioux Tribe
11	Fort Belknap Community
12	Fort Peck Assiniboine and Sioux Tribes
13	Kiowa Tribe of Oklahoma
14	Lower Brule Sioux Tribe
15	Northern Arapaho Tribe
16	Northern Cheyenne Tribe
17	Oglala Sioux Tribe
18	Rosebud Sioux Tribe
19	Santee Sioux Tribe of Nebraska
20	Sisseton-Wahpeton Sioux Tribe
21	Spirit Lake Tribe
22	Standing Rock Sioux Tribe
23	Three Affiliated Tribes
24	Turtle Mountain Band of Chippewa Indians
25	Yankton Sioux Tribe

^aThe Apache Tribe of Oklahoma notified the NRC by email dated August 19, 2011 that it did not wish to participate in consultation on the Ross Project.

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Culturally Significant Locations

No Native American heritage, special interest, or sacred sites have been formally identified or recorded to date that are directly associated with the Ross Project area. The geographic position of the Project area between mountains considered sacred by various Native American cultures (the Big Horn Mountains to the west, the Black Hills and Devils Tower to the east), however, creates the possibility that existing, specific locations could have special religious or sacred significance to Native American groups.

Traditional Cultural Properties

Comment [A7]: Include field methodology that tribes used

As required by Section 106 of the NHPA, the NRC requested information about places of cultural, religious, and traditional significance that could be affected by the Ross Project from various interested Tribes in order to complete government-to-government consultation efforts. Places of cultural, religious, and traditional significance that meet the NRHP criteria are included in the definition of Historic Property under 36 CFR Part 800.16(l)(1). According to the NPS' American Indian Liaison Office (at <http://www.nps.gov/tribes/Documents/TCP.pdf>), "A TCP is a property that is eligible for inclusion in the NRHP based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community."

TCPs that are considered eligible for listing on the NRHP could include any prehistoric or historic entity (i.e., a district, site, building, structure, or object), as defined in 36 CFR Part 64.4 (Parker and King, 1998). TCPs also include all artifacts, records, and remains that are related to and located within such TCPs. Not all TCPs qualify as eligible properties; consequently, not all TCPs are subject to preservation measures or mitigation treatments. The evaluation process to evaluate eligibility involved three steps.

The first step in the evaluation process is to determine if the entity being evaluated for eligibility for inclusion on the NRHP is tangible (Parker and King, 1998). In this respect, the entity must be a "site" as defined for the NRHP, that is, the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure. All TCP resources identified in the Ross Project area meet this threshold.

The second step in the evaluation process is to assess site integrity. In order to be eligible for inclusion on the NRHP, an entity must also exhibit "integrity of location, design, setting, materials, workmanship, feeling, and association" per 36 CFR Part 60. As with other historic properties, a TCP that once had traditional cultural significance can lose its significance through physical alteration of its location, setting, design, or materials (Parker and King, 1998). This loss can occur if the traditional, spiritual, or ceremonial values upon which the TCP might achieve NRHP significance have been significantly altered by severe erosion, post-use damage, or surrounding land-use developments inconsistent with the setting of the TCP.

The final step in the evaluation process is to assess the TCP in terms of four NRHP criteria (A – D). All TCPs in the Ross Project area have been evaluated under Criterion A, which refers to an "association with events that have made a significant contribution to the broad patterns of our history." As applied to the Ross Project TCPs, Criterion A has been met if the TCP is associated with significant traditional events reflecting a broad pattern or theme in a Native American group's history: the cultural practices or beliefs of a living community (e.g., a Tribe)

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that 1) are rooted in that community's history and 2) are important in its maintaining continuing cultural identity of the community (Parker and King, 1998).

NRC invited the Ross Project Consulting Tribes (see Table 2) to participate in a field survey of the Ross Project area under an "Open-Site approach" and a "Tribal Working Group" approach. A detailed description of the NRC's efforts to provide an opportunity for Consulting Tribes to conduct a field survey of the Ross Project site is provided in the NRC's letter to the Advisory Council on Historic Preservation (ACHP), dated August 14, 2013 (**ML13197A139**). A Class III Inventory designed to identify and evaluate the NRHP significance of TCPs in the Ross Project area was performed by representatives of six Tribes on May 13 – 16, 2013. The six Tribes participating in the May TCP Survey included:

- Santee Sioux Tribe of Nebraska (Niobrara, Nebraska)
- Crow Creek Sioux Tribe (Fort Thompson, South Dakota)
- Rosebud Sioux Tribe (Rosebud, South Dakota)
- Yankton Sioux Tribe (Wagner, South Dakota)
- Northern Cheyenne Tribe (Lame Deer, Montana)
- Turtle Mountain Band of Chippewa Indians (Belcourt, North Dakota)

A second Class III Inventory for TCPs was performed by representatives of four Tribes on June 3 – 6, 2013. The four Tribes participating in the [May-June](#) TCP Survey included:

- Cheyenne and Arapaho Tribes of Oklahoma (Concho, Oklahoma)
- Northern Arapaho Tribe (Fort Washakie, Wyoming)
- Fort Belknap Indian Community (Harlem, Montana)
- Eastern Shoshone Tribe (Fort Washakie, Wyoming)

As a result of the May and June TCP Surveys, 18 TCP sites were located, recorded, and evaluated for NRHP eligibility in the Ross Project area. A *TCP Survey Report* documenting these findings, based on the recommendations provided by the Northern Arapaho Tribe, the Cheyenne and Arapaho Tribes of Oklahoma, archaeologist Mr. David Scwhab, who accompanied the May TCP Survey participants, and Mr. Brad Noisat, the archaeologist who accompanied the June TCP Survey participants, will be submitted to the Wyoming SHPO for review and comment.

Comment [A8]: Need reference for Table 3.

Comment [A9]: Inconsistent with structure of proposed stipulation re: additional plan required of Strata? And Strata's recommendation re: eligibility?

Table 3. Summary of Ross Project Traditional Cultural Properties

#	Site Number	NRHP Eligibility
1	48CK2070	Unevaluated
2	48CK2080	Unevaluated
3	48CK2087	Unevaluated
4	48CK2089	Unevaluated
5	48CK2214	Unevaluated
6	48CK2215	Unevaluated
7	48CK2216	Unevaluated
8	48CK2217	Unevaluated
9	48CK2218	Unevaluated
10	48CK2219	Unevaluated
11	48CK2220	Unevaluated
12	48CK2221	Unevaluated
13	48CK2222	Unevaluated

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14	48CK2223	Unevaluated
15	48CK2224	Unevaluated
16	48CK2225	Unevaluated
17	48CK2226	Unevaluated
18	48CK2227	Unevaluated

Reference:

Ferguson, D. *A Class III Cultural Resource Inventory of Strata Energy's Proposed Ross ISR Uranium Project, Crook County, Wyoming* (Redacted Version). Prepared for Strata Energy, Inc., Gillette, Wyoming. Butte, MT: GCM Services, Inc. 2010.

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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

WHEREAS, this Programmatic Agreement (PA) addresses the federal undertaking regarding the issuance of a license for the Ross *In Situ* Uranium Recovery (ISR) Project pursuant to the 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, on January 4, 2011, Strata Energy, Inc. (Strata) submitted to the NRC for review and approval a new source and byproduct materials license for an 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 ISR technology to extract uranium and would process 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

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

WHEREAS, identification of cultural resources properties has been completed for the Undertaking including background research of the existing records and Class III and Traditional Cultural Property surveys within the APE, as shown in Appendix B; and

WHEREAS, the NRC has made determinations of eligibility for the National Register of Historic Places (NRHP) for two historic properties within the APE (48CK1603 and 48CK2083) and SHPO has concurred with these findings; and,

Comment [JM1]: See Strata's previous comments

Comment [ELM2]: Cultural resources or cultural properties? Meeting notes not clear.

Comment [JM3]: Reword. Mary to provide language.

Update as we have more information

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WHEREAS, the NRC has to make determinations of eligibility for the NRHP for ~~[x33] potentially eligible historic~~unevaluated cultural properties within the APE as shown in Table 1-D and Table 3 of Appendix B; and

Comment [JM4]: Reference appendix for sites that are unevaluated.

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), and the Archaeological Resources Protection Act, 16 U.S.C 1979 *et. seq.* (ARPA) 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 [JM5]: Add ARPA.

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 PA; 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 [JM6]:
ACHP: 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.

Joan: From meeting notes – did WYSHPO wish to delete the “consulting party” clause?

WHEREAS, the NRC, by letter dated February 9, 2011, invited the following Indian tribes to participate in Section 106 consultation for the Ross Project: The Apache Tribe of Oklahoma; the Blackfeet Tribe; the Cheyenne and Arapaho Tribes of Oklahoma; the Cheyenne River Sioux 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 Community; the Fort Peck Assiniboiné and Sioux Tribes; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe; the Northern Arapaho Tribe; the Northern Cheyenne Tribe; the Oglala Sioux Tribe; the Rosebud Sioux Tribe; the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Sioux 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 twenty-four tribes (Ross Project Consulting Tribes) have chosen to participate in the consultation~~are the Ross Project Consulting Tribes~~: The Blackfeet Tribe; the Cheyenne and Arapaho Tribes of Oklahoma; 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 Community; the Fort Peck Assiniboiné and Sioux Tribes; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe; the Northern Arapaho Tribe; the Northern Cheyenne Tribe; the Oglala Sioux Tribe; the Rosebud Sioux Tribe; the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Sioux 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, 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

Comment [JM7]:
ACHP: 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?

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Section 106 consultation and ~~preparation~~ development of this PA and the Council, by letter dated October 28, 2013, has accepted the invitation and is a consulting party; and

Comment [ELM8]: Joan: I think "development" is a better word than "preparation" to describe our activities.

WHEREAS, the NRC, by letter dated September 19, 2013, invited the ~~following Indian tribes, which are Section 106 consulting parties for the Ross Project, Ross Project Consulting Tribes~~ 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~~ Ross Project Consulting Tribes have accepted the NRC's invitation to participate in preparation of this PA and to be Concurring Parties on the PA: [TBD]; and

Comment [JM9]: Add that NRC is inviting the tribes to be concurring parties

Comment [J10]: I thought I heard John E. say that this is unnecessary as it will be clear by viewing the signature line.

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 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 development of this PA, and ~~[note here whether the invitation was/was not accepted]~~ no response was received; and

Comment [JM11]: Replace preparation with development throughout document

WHEREAS, by email dated November 8, 2013, the National Park Service—Devils Tower National Monument informed the NRC that it would like to be involved with the development of 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

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

Comment [JM12]: NRC to send this letter

Comment [J13]: NRC to review.

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

Comment [ELM14]: Joan: Discuss with BLM whether to delete this whereas clause.

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

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

Comment [JM15]: Also include in stipulations.

WHEREAS, the refusal of any Invited Signatory or Invited Concurring Party to sign this PA does not invalidate the PA;

Comment [JM16]: Condition to be added to license

Comment [J17]: Add to stipulations

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

Comment [J18]: NRC to review.

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

NOW, THEREFORE, the NRC, WYSHPO, ACHP, and Strata (collectively hereafter called "Signatories") 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.

Comment [JM19]: ACHP: only statutory signatories are to be listed here

Comment [JM20]: Move this to one WHEREAS clause and also define Strata

STIPULATIONS

The NRC shall require as a condition of any license issued to Strata and the BLM shall require as a condition of Strata's Plan of Operations that Strata complies with all stipulations and other provisions in this PA.

Comment [J21]: ACHP:

Revise to state: "The NRC shall ensure that the following stipulations are carried out:" and move this text to the stipulations.

A. GENERAL 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.

2. 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)

Comment [JM22]: See Strata's comment

3. Define role of NRC, BLM, and Strata in conducting future activities pursuant to the PA.

4. Define entity responsible and general direction for tribal consultation activities.

Comment [J23]: 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

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 for eligibility for listing in the NRHP 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 plans for NRHP eligibility and/or effect, whichever is appropriate, to the NRC 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. The NRC staff shall consult with the WYSHPO to define the APE for these proposed activities (referred to henceforth as

Comment [JM24]: NRC as lead remains responsible?
NRC & BLM will determine roles

Comment [JM25]: NRC & BLM will determine roles

Describe how tribal consultation will occur

Comment [JM26]: Amy to send suggested language

Comment [ELM27]: Joan: Discuss whether other parties want to see the plan and supply comments to NRC. Also the plan should be submitted for NRC's approval

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the limited APE), to determine which identified properties are within the limited APE, and to approve the testing plan. A determination of effect needs to be made for all historic properties in the limited APE, and adverse effects mitigated, prior to commencement of project activities that may affect the historic property.

1. Determination of Eligibility

Strata shall evaluate and make NRHP eligibility recommendations on historic and cultural resources properties identified within the limited 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

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

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.

Comment [JM28]: Suggest discuss for each phase of development – Johari will revise

Comment [JM29]: SHPO Comment: General comment. We need to address consultation regarding determination of eligibility and effect. How and when will you consult with the SHPO on these determinations? Or do we just want a separate "reporting" section?

C. AVOIDANCE, MINIMIZATION and MITIGATION of ADVERSE EFFECTS

Avoidance and Minimization of Adverse Effects

Strata shall notify the NRC if it can avoid historic properties within the limited 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.

1. Mitigation of Adverse Effects

a. If Strata NRC determines that the adverse effects to historic properties within the limited APE cannot be avoided, Strata and NRC shall consult with the Signatories and Concurring Parties (collectively "Parties") to identify those measures to be implemented by Strata to minimize and mitigate adverse effects on affected historic properties. NRC shall consult with the Ross Project Consulting Tribes regarding minimization and mitigation of adverse effects to historic properties of traditional religious and cultural importance. Measures to minimize and mitigation will take into account 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 Ross Project Consulting 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 limited APE.

c. Strata and NRC shall submit the mitigation plan(s) to the Parties (excluding SHPO) and Ross Project Consulting 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 proceed with the mitigation plan(s). Strata will work with the NRC to address comments and recommendations in preparation of the final mitigation plan(s).

Comment [ELM30]: Joan: Are there additional consulting parties for the Ross Project that are not captured by this definition? We should also check on level of public involvement needed on subsequent determinations.

Comment [JM31]: See previous comments above.

Comment [JM32]: If reporting section is added this may not be necessary

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d. After addressing comments and recommendations from the Parties, the NRC will submit the final mitigation plan(s) to the SHPO for review and comment. Upon final acceptance by the WYSHPO, and after informing the NRC, the mitigation plan(s) shall be appended to this PA. If the SHPO does not concur on the mitigation plan within thirty (30) days of receipt of the plan from the NRC, the NRC may proceed with the mitigation plan. The mitigation measures shall be completed prior to disturbance except as allowed under Stipulation D of this PA.

D. DISCOVERIES

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 and make recommendations that the NRC the may use to make WYSHPO and NRC on the a determination of eligibility and adverse effect. If NRC determines that the 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.

a-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.

2. 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 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

1. The NRC shall continue to consult with the Ross Project Consulting Tribes' representatives throughout the implementation of the PA. The Tribes shall be invited to

Comment [JM33]: Include Strata's discovery plan as an appendix to this PA?

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Comment [j34]: ACHP: Can we put in citations to the "applicable" law?

Comment [JM35]: ACHP: Include protocol (B1 & B2) timing – look at Strata comments also OR SHPO: add new reporting section – review times

Comment [JM36]: Move up to A? or WHEREAS?

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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.

- ~~The NRC shall coordinate with Strata and the Ross Project Consulting Tribes to allow Tribes to visit sites of known tribal interest within the APE. The NRC shall consider, in consultation with the Ross Project Consulting Tribes, the necessity to conduct of conducting additional site visits by tribal representatives to evaluate effects on, and convey tribal knowledge regarding historic properties of traditional cultural and religious importance. The NRC shall coordinate with Strata and the Ross Project Consulting Tribes to allow Tribes to visit sites of known tribal interest within the APE.~~

Comment [J37]: ACHP: Does this include all archaeological sites? How do we know if the HPs are of religious and cultural significance?

JM: We have received feedback from the tribes on this. Appendix B might answer this question.

Comment [JM38]: Move to A?

E.F. CONFIDENTIALITY OF CULTURAL RESOURCE DATA

To the extent consistent with NHPA Section 304, ~~c~~cultural resource data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance, will be treated as confidential by all Parties and any additional parties involved in the Ross Project, including but not limited to employees, contractors, and subcontractors of Strata. This data shall be protected from public disclosure to the fullest extent permitted by law, including conformance with Section 304 of the NHPA, as amended, Section 9 of the ARPA, and Executive Order No. 13007 on Indian Sacred Sites (Federal Register, Vol. 61 No. 104, May 24, 1996). Confidentiality concerns for properties that have traditional religious and cultural importance to the Ross Project Consulting Tribes will be respected and will remain confidential to the fullest extent permitted by law. ~~Duplication or distribution of cultural resource data from BLM-managed lands by any Party requires written authorization from the BLM Newcastle Field Manager.~~

~~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.~~

Comment [JM39]: Look at adding any additional language for next time

Comment [JM40]: Strata's subcontractors to have this information for avoidance. "No go zone" map

Comment [JM41]: Alice will look into this

G. ANNUAL REPORT AND EVALUATION

- On or before January 1 of each year, ~~until unless~~ 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 the 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.
- Strata shall coordinate a meeting or conference call of the Parties within 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. ~~If warranted, The Parties shall determine/evaluate whether amendments are needed to improve the effectiveness of this PA.~~

Comment [ELM42]: As originally worded this may have conflicted with the automatic termination of the PA upon fulfillment of its terms or 20 years passing, whichever came first.

Comment [JM43]: NRC have a review time of 30 days?

Comment [JM44]: Add sentence for meeting

Comment [JM45]: ok

Comment [JM46]: Do we need this sentence?

Comment [JM47]: May request to have separate meetings with tribes and other parties

Comment [ELM48]: Not necessary in light of Section I.

Predecisional Draft – Do Not Release

F.H. DISPUTE RESOLUTION

1. ~~Any Party?~~ Signatory to this PA who objects to an action under this PA, or the implementation of the measures stipulated in this PA, shall provide notice to the NRC within 30 days of becoming aware of an action. The NRC ~~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 [Signatories or Parties] ~~Signatories 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~~ Signatory 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 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.
 - 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 proceed with its proposed response to the objection.
2. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The NRC's responsibility to carry out all actions under this PA that are not the subject of the dispute shall remain unchanged.

Comment [JM49]: Get suggested language from Richard

Comment [j50]: ACHP: Tribes and other consulting parties need a chance to.

Comment [ELM51]: Joan: Based on my meeting notes. ACHP said tribes could raise concerns to ACHP and they could raise the objection. So that would limit the signatories to being able to raise an objection. Then it's a question of the information going to all consulting parties or just the "Parties" (signatories and concurring parties on the PA.) Probably need to discuss this during the call Thursday.

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.

Comment [JM52]: Compare to 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

I.K. DURATION OF AGREEMENT

SHPO is ok with using ACHP language

Predecisional Draft – Do Not Release

This PA shall remain in effect for 20 years 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.

Comment [JM53]: SHPO suggests 5-10 years if it goes beyond that we should review PA again. ACHP agrees this language shouldn't be open ended.

NRC - 10 year license period. Revise language here.

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.

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, 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 [JM54]: Body of PA w/o appendices.

Comment [OJ55]: Add NRC, BLM etc. to this paragraph. However, it's covered in M. 3 below. Need to check for redundancy as we revise document.

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.

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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