

## StrataRossLAPem Resource

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**From:** Richard Currit [richard.currit@wyo.gov]  
**Sent:** Monday, March 03, 2014 4:18 PM  
**To:** Moore, Johari  
**Cc:** Monteith, Emily; Mary Hopkins (mary.hopkins@wyo.gov); Benjamin J. Schiffer, P.G. (bschiffer@wwcengineering.com); Mike Griffin (MGriffin@stratawyo.com); John Eddins; Tratebas, Alice; kbo@kiowatribe.org; Olmstead, Joan; Fringer, John; Arapaho; Cheyenne and Arapahoe Tribes of Oklahoma; Cheyenne River Lakota; Chippewa Cree (awindyboy@cccrpd.com); Confederated Salish and Kootenai; Crow (hubertt@crownsations.net); Crow Creek Sioux; Flandreau Santee Lakota; Fort Belknap; Fort Peck; Lower Brule Lakota (clairgreenoffice@gmail.com); Northern Cheyenne; Michael B. CatchesEnemy; Rosebud Sioux (rstthpo@yahoo.com); Santee Sioux Nation; Shoshone; Sisseton-Wahpeton Lakota (dianned@swo-nsn.gov); Spirit Lake (malex@spirittakenation.com); Standing Rock Lakota; Terrence Clouthier; Three Affiliated Tribes; Yankton Lakota (yst.thpo@gmail.com); jmflydown@gmail.com; Ohms, Rene; Ralph@stratawyo.com; Reed Robinson; Clark, Michael; Andrew Willey (awilley@c-a-tribes.org); Barkman Marsh, Molly; Corinne Headley (crynhdly@gmail.com); 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:** Re: Ross Project Programmatic Agreement - Comments/Revisions from 2-26-14 Webinar  
**Attachments:** Ross PA\_Working Draft 2-27-14 SHPO Comments.docx

SHPO comments on the latest.

Richard L. Currit  
Senior Archaeologist  
Wyoming State Historic Preservation Office  
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Cheyenne, WY 82002  
307-777-5497

On Thu, Feb 27, 2014 at 3:24 PM, Moore, Johari <[Johari.Moore@nrc.gov](mailto:Johari.Moore@nrc.gov)> wrote:

Good afternoon,

In yesterday's webinar to develop the Ross Project Programmatic Agreement (PA), we discussed comments provided by BLM, ACHP, and Strata on the Draft PA. Attached, please find the current working draft of the PA, which reflects the changes we discussed during the webinar. Comments on the appendices to the PA were not discussed during the webinar.

**In yesterday's webinar, we also discussed the path forward for completing development of the PA and decided to hold another webinar on Thursday, 3/13/14 from 12 PM – 3 PM MST (2 PM – 5 PM EST). Please mark your calendars and note the additional hour.** In preparation for the next webinar, we are requesting comments on the sections of the current draft of the PA that we were not able to discuss during the last webinar, and the appendices. We are also requesting that PA

participants provide proposed revisions to the PA language as discussed during the last webinar. **Please provide your input by 3/5/14.** So that we can best anticipate any additional terms for discussion in the 3/13/14 webinar, please also consider taking this opportunity to share the current version of the PA with those in your organization who may need to provide input. 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 and to join us at our next webinar. Each of the Ross Project Consulting Tribes will be invited to sign the final PA as a Concurring Party. I will provide the information to join the next webinar in a follow-up email.

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:

Participant	10/24/13	10/31/13	11/7/13	11/14/13	11/21/13	12/12/13	2/26/14
NRC	X	X	X	X	X	X	X
BLM	X	X	X	X	X	X	X
WYSHPO	X	X	X	X	X	X	X
ACHP	X		X	X	X	X	X
Strata Energy, Inc.	X	X	X	X	X	X	X
Cheyenne and Arapaho Tribes of Oklahoma THPO			X	X	X	X	X
Chippewa Cree Tribe THPO			X				
Northern Cheyenne Tribe THPO			X				

Fort Peck Assiniboine and Sioux Tribes THPO			X				
Cheyenne River Sioux Tribe THPO						X	
Northern Arapaho Tribe THPO							X
National Park Service (Devils Tower)				X			

Thank you,

Johari A. Moore  
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**Hearing Identifier:** StrataEnergyRoss\_LA\_Public  
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**Subject:** Re: Ross Project Programmatic Agreement - Comments/Revisions from 2-26-14 Webinar  
**Sent Date:** 3/3/2014 4:18:20 PM  
**Received Date:** 3/3/2014 4:18:56 PM  
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**Options**

**Priority:** Standard

**Return Notification:** No

**Reply Requested:** No

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**WORKING DRAFT FOR 2-26-14 WEBINAR**

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. NUCLEAR REGULATORY COMMISSION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE WYOMING STATE HISTORIC PRESERVATION OFFICE,  
THE BUREAU OF LAND MANAGEMENT–NEWCASTLE FIELD OFFICE,  
AND  
STRATA ENERGY, INC.,  
REGARDING  
THE ROSS IN SITU URANIUM RECOVERY PROJECT  
IN CROOK COUNTY, WYOMING**

**WHEREAS**, this Programmatic Agreement (PA or “Agreement”) addresses the federal action regarding the issuance of a license for the Ross In Situ Uranium Recovery (ISR) Project (Ross 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**, NRC is considering issuance of a license for the Ross Project pursuant to its authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et seq.* which makes the Project an undertaking requiring compliance by NRC with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470, and its implementing regulations (36 CFR § 800 (2004)); and

**WHEREAS**, the U.S. Department of the Interior, Bureau of Land Management (BLM), Newcastle, Wyoming Field Office received from Strata on January 21, 2011, a Plan of Operations for the Ross Project for review and approval which requires compliance with Section 106 of NHPA for the Undertaking as defined at 36 CFR § 800.16(y) and pursuant to BLM’s authority under the Mining Law of 1872, 30 U.S.C. §§ 22-54 and the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1784; and

**WHEREAS**, review and approval of a Plan of Operations (POO) for the Ross Project that meets the requirements of 43 CFR Subpart 3809 by the BLM- Newcastle, Wyoming Field Office makes the Project an undertaking requiring compliance by BLM with Section 106 of the NHPA, 16 U.S.C. § 470 and 36 CFR Part 800; and

**WHEREAS**, the BLM, by letter dated November 21, 2011, has designated the NRC as the lead agency for compliance with requirements of Section 106 of the NHPA regarding the Ross Project pursuant to 36 CFR § 800.2(a)(2) of the Section 106 regulations; and

**WHEREAS**, upon issuance of a license and approval of a mine plan, 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 (697 ha) located approximately 38 km (24 mi) north of Moorcroft on County Route 68 in Crook County, Wyoming (in portions of Sections 7,

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

**WHEREAS**, the NRC, in consultation with WYSHPO as provided in 36 CFR § 800.4(a) and 36 CFR § 800.16(d), established the area of potential effects (APE) for the Undertaking as 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. The direct APE is the Ross Project boundary within which areas may be directly affected by physical ground disturbance and construction of the Ross Project, and the indirect APE is comprised of the area within three miles of the Ross Project boundary wherein potential visual and audible effects to historic properties may occur, as described in Appendix A; and

**WHEREAS**, the Phase I area, shown in Figure 3 of Appendix A, encompasses all areas within the direct APE where Strata's physical ground disturbance and construction of the Ross Project is currently proposed to occur; and

**WHEREAS**, ~~identification of surveys to locate~~ cultural properties that may be eligible for inclusion ~~of on~~ the National Register of Historic places has been completed for the Undertaking, including background research of the existing records and Class III and Tribal field surveys within the APE, as described 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 WYSHPO has concurred with these findings; as described in Appendix B; and

**WHEREAS**, the NRC has yet to make determinations of eligibility for the NRHP for 32 unevaluated cultural properties within the APE as shown in Table 1-D and Table 3 of Appendix B; and

**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 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**, by letter dated April 17, 2013, Strata has submitted an Additional Testing Plan to the NRC to test two unevaluated sites (48CK2076 and 48CK2073) that are located within the Phase I area for NRHP eligibility and to test two eligible sites (48CK1603 and 48CK2083) that are located within the Phase I area for effects; and

**WHEREAS**, the NRC is coordinating with the BLM to review Strata's Additional Testing Plan and, if accepted by the NRC in consultation with WYSHPO, the Additional Testing Plan will be implemented as necessary; and

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**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 Assiniboine 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-two tribes 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 Assiniboine and Sioux Tribes; 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 Standing Rock Sioux Tribe, The Three Affiliated Tribes; The Turtle Mountain Band of Chippewa Indians; and the Yankton Sioux Tribe; and

**WHEREAS**, the applicable requirements of NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 *et. seq.*, 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

**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 (ACHP) to participate in Section 106 consultation and development of this PA and the ACHP, by letter dated October 28, 2013, accepted the invitation and is a Signatory; and

**WHEREAS**, the NRC, by letters dated September 19, 2013, invited each of the Ross Project Consulting Tribes to participate in the development of this PA and representatives from The Cheyenne and Arapaho Tribes of Oklahoma, The Cheyenne River Sioux Tribe, The Chippewa Cree Tribe, The Fort Peck Assiniboine and Sioux Tribes, and The Northern Cheyenne Tribe, participated; and

**WHEREAS**, each of the Ross Project Consulting Tribes will be invited to sign the PA as a Concurring Party; and

**WHEREAS**, the NRC, by letter dated September 19, 2013, invited the Crook County Museum District and the Alliance for Historic Wyoming, to participate in the development of this PA, and no response was received; and

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**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 subsequently participated in the development of this PA; and

**WHEREAS**, Strata has participated in the development of this PA, shall implement the Undertaking in accordance with this PA, and will be invited to sign the PA as an Invited Signatory; and

**WHEREAS**, the NRC, WYSHPO, ACHP, BLM, and Strata are collectively hereafter called “Signatories;” and

**WHEREAS**, the Signatories, Invited Signatory, and Concurring Parties are collectively referred to as the “Parties;” and

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

**NOW, THEREFORE**, the NRC, WYSHPO, ACHP, and BLM 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**

~~4. The NRC will require as a condition of any license issued to Strata, and the BLM will require as a condition of approval of Strata’s Plan of Operations, that Strata complies with all stipulations and other provisions in this PA.~~

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**B.A. GENERAL STIPULATIONS**

- ~~1. The NRC will require as a condition of any license issued to Strata, and the BLM will require as a condition of approval of Strata’s Plan of Operations, that Strata complies with all stipulations and other provisions in this PA.~~
2. Strata shall fund all required fieldwork, analysis, reporting, curation, and mitigation necessary to comply with this PA.
3. The NRC will ensure that all work undertaken to satisfy the terms of this PA, including all cultural resource inventory reports and documentation, meets the Secretary of the Interior’s Standards for Archaeology and Historic Preservation (48 FR 44716-42), WYSHPO standards, and ACHP guidance on archaeology found at [www.achp.gov/archguide](http://www.achp.gov/archguide).
4. Strata shall have a qualified archaeologist, as defined in the Secretary of Interior’s Professional Qualifications and Standards (48 FR 22716), conduct recordation and testing, prepare testing reports, conduct data recovery, and prepare data recovery reports whenever these activities are required.

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5. Strata shall direct all of its employees, contractors, subcontractors, inspectors, monitors, and any authorized additional parties involved in the Ross Project not to search for, retrieve, deface, or impact historic and prehistoric materials (e.g., archaeological materials such as, arrowheads, pottery sherds, petroglyphs) and ensure that they receive training regarding the sensitivity of all historic and cultural resources, both Native American and non-Native American. Strata shall cooperate with the NRC, BLM and the WYSHPO to ensure compliance with ARPA of 1979 as amended (16 U.S.C 470) and NAGPRA (25 U.S.C. 3001) on public lands, and with Wyoming Statute § 36-1-115 on state lands.
6. The NRC will continue to consult with the representatives of the Ross Project Consulting Tribes throughout the implementation of the PA. The Ross Project Consulting Tribes will be invited to participate in the determinations of eligibility for the unevaluated properties, the determinations of effect to historic properties, and the development of any plans to avoid, minimize, or mitigate adverse effects to historic properties. Any information provided by the Ross Project Consulting Tribes on sites of traditional religious and cultural importance will remain confidential to the greatest extent permitted by law.
7. For each Ross Project Phase, all cultural resources that may be affected by that Phase of the Undertaking will be evaluated by the NRC in consultation with the Parties and Ross Project Consulting Tribes pursuant to 36 CFR § 800.4(c)(1) if not previously evaluated.
8. Strata shall provide to the BLM Newcastle Field Office point of contact copies of all reports required to be provided to the NRC pursuant to the PA. The BLM shall review all reports concurrently with the NRC. The NRC will coordinate with the BLM when fulfilling the NRC's PA responsibilities. The NRC will provide information on the project timelines to the BLM and the BLM will make a good faith effort to support the NRC's timelines. The NRC may designate the BLM staff as the local point of contact to address unanticipated discoveries or other tasks as needed.

### C.B. CONTINUING DETERMINATIONS OF ELIGIBILITY

1. Completing Recordation and Work Proposed in Additional Testing Plan
  - a. Strata shall complete recordation of 48CK2087, 48CK2229, 48CK2230, and 48CK2231 (see Table 1-A of Appendix B) and prepare a report on this inventory. If any of these sites are located within the Phase I area of the Ross Project, then Strata shall submit a Supplement to the Additional Testing Plan to the NRC to include those sites.
  - b. Upon receipt of Strata's Supplement to the Additional Testing Plan, the NRC and BLM will review the plan and request any corrections or modifications from Strata within 30 days of receipt. If no Supplement to the Additional Testing Plan is necessary, the NRC in coordination with BLM will review the existing plan and request any corrections or modifications from Strata within 30 days following notification that a Supplement is not required. During review of the testing plan, the NRC will consult with Strata concerning whether any sites or portions of sites may be avoided. If avoidance is possible, the testing plan shall be revised to include a map and documentation to support this avoidance.

**Comment [J1]:** For discussion.

Strata requests clarification on the sites listed here.

**Comment [JM2]:** Be evaluated...  
Strata to provide additional language.

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- c. The NRC will then distribute the Additional Testing Plan to the Parties (excluding WYSHPO) and Ross Project Consulting Tribes for a 30 day review and comment period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing from the Parties or the Ross Project Consulting Tribes within the specified review period.
  - d. The NRC will then submit the final Additional Testing Plan to the WYSHPO for a 30 day review and concurrence. Copies of this correspondence will be sent to the other Parties and Ross Project Consulting Tribes.
  - e. If the WYSHPO concurs with the NRC's final Additional Testing Plan or fails to respond within 30 days, the NRC will notify Strata in writing that it may proceed with the final Additional Testing Plan.
  - f. The NRC will consult to resolve any comments or objections regarding the final Additional Testing Plan received in writing from the WYSHPO within the 30 day review period. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
2. Testing Unevaluated Properties for NRHP Eligibility
- a. For subsequent Phases of the Ross Project, Strata shall not conduct ~~ground disturbance~~ activities, such as ground disturbance activities, which may have direct effects on historic properties or unevaluated sites beyond the boundaries of the Phase I area (see Appendix A, Figure 3) and within the direct APE without first notifying the NRC and fulfilling the relevant requirements set forth in this Agreement.
  - b. If Strata proposes ~~ground disturbance any~~ activities, such as ground disturbance which activities, which may have direct effects on historic properties or unevaluated sites will occur beyond the boundaries of the Phase I area and within the direct APE, then, consistent with the phased process for Section 106 compliance under this PA, Strata shall submit a Notice of Intent (NOI) to the NRC. The NOI shall state Strata's intent to prepare a plan for testing the eligibility of any unevaluated properties within the New Phase area or the NOI shall demonstrate that all the previously identified properties within the New Phase area will be avoided by Strata. The NOI shall be submitted at least three months prior to the testing plan's proposed submission date so that the NRC and BLM can appropriately allocate staff resources to the extent possible, acknowledging that additional time may be necessary in the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control. If the NOI demonstrates that all the adverse effects to previously identified properties within the New Phase area will be avoided by Strata and the NRC staff, in coordination with BLM, agree, the NRC will notify Strata within ~~420~~60 days of receipt of the NOI that it may proceed with its proposed activities.
  - c. Strata's NOI shall include a description of the area of ground disturbance activities for the New Phase. Strata shall delineate the New Phase area with township/section/range, GPS data points, GIS map, or other land survey techniques such that the New Phase area can be reproducibly defined and illustrated with appropriate graphic materials and sufficient documentation to enable any reviewer to readily understand its scope and basis.

**Comment [J3]: For discussion.**

Strata suggests adding "within 30 days of the close of the comment period" here and throughout the PA, consistent with a 2012 PA between BLM, ACHP, and others and consistent with the 2006 BLM/SHPO Protocol (and 2014 draft revision).

**Comment [J4]:** BLM: *Federal agencies take the appropriate time to complete analyses and prepare documents for SHPO consultation. The BLM-WYSHPO Protocol does not have a time frame for this work.*

**Comment [JM5]:** NRC will check throughout the document.

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- d. Strata shall submit a testing and evaluation plan for all unevaluated sites that may be affected by each subsequent Phase of the Ross Project. Upon receipt of Strata's testing and evaluation plan for each subsequent Phase of the Project, the NRC in coordination with the BLM will review the plan and request any corrections or modifications from Strata within 30 days of receipt.
  - e. Prior to accepting Strata's testing plan, the NRC will consult with Strata to determine if the unevaluated properties can be avoided in the proposed project phase. If any properties in the original testing plan can be avoided, Strata shall submit a revised testing plan, including a map and sufficient documentation to support this avoidance determination.
  - f. The NRC will distribute the revised testing plan to the Parties (excluding WYSHPO) and Ross Project Consulting Tribes for a 30 day review and comment period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing within the specified review period.
  - g. The NRC will then submit the final testing plan to the WYSHPO for a 30 day review and concurrence, copying the other Parties and Ross Project Consulting Tribes on this correspondence.
  - h. If the WYSHPO concurs with the NRC's final testing plan or fails to respond within 30 days, the NRC will notify Strata in writing that it may proceed with the testing plan.
  - i. The NRC will consult to resolve any comments or objections received in writing from WYSHPO within the 30 day review period regarding the final testing plan. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
3. Determination of Eligibility
- a. In accordance with an approved final testing plan from Sections B.1 or B.2, Strata shall evaluate and make NRHP eligibility recommendations for unevaluated properties.
  - b. Upon receipt of Strata's eligibility recommendations, the NRC in coordination with BLM will review the recommendations and request any corrections or modifications from Strata within 30 days of receipt.
  - c. The NRC will then distribute revised eligibility determinations to the Parties (excluding WYSHPO) and Ross Project Consulting Tribes for a 30 day review period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing from the Parties and the Ross Project Consulting Tribes within the specified review period.
  - d. The NRC will then provide its eligibility determinations to the WYSHPO for a 30 day review and concurrence, copying the other Parties and Ross Project Consulting Tribes on this correspondence. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any objections regarding eligibility determinations received from the WYSHPO or the ACHP in writing within the specified WYSHPO review period.

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- e. If the WYSHPO concurs with the NRC's eligibility determinations, or if no written objections are received from WYSHPO within the 30 day review period, the NRC's eligibility determinations are final.
  - f. If the WYSHPO and NRC agree that a cultural resource is not eligible for the NRHP, no further review or consideration under this PA will be required for the cultural resource. If, after appropriate consultation, the WYSHPO and NRC agree that the property is eligible, then a determination of effect will be made in accordance with Stipulation C.
  - g. In accordance with 36 CFR § 800.4(c)(2), if there is disagreement regarding eligibility between the NRC and the WYSHPO, and that disagreement cannot be resolved after further consultation, or if the ACHP so requests, the NRC will refer the property(ies) in question to the Keeper of the National Register (Keeper) and request a formal determination of eligibility. The Keeper's decision is final.
4. Sites of Traditional Religious and Cultural Importance
- a. The NRC, in coordination with the BLM, will consult with WYSHPO to make NRHP eligibility determinations and effects determinations for the 18 properties identified during the Tribal field survey (see Table 3 of Appendix B).
  - b. The NRC will prepare a report documenting its eligibility determinations for the 18 properties and submit it to the WYSHPO for a 30 day review and concurrence period, copying other Parties and the Ross Project Consulting Tribes on this correspondence.
  - c. If the WYSHPO concurs with the NRC's eligibility determinations, or if the WYSHPO or ACHP does not object to the NRC's eligibility determinations within the 30 day review period, the NRC's eligibility determinations are final.
  - d. The NRC will consult to resolve any written objections from the WYSHPO or the ACHP received during the 30 day review period regarding eligibility determinations.
  - e. For any unevaluated cultural resources that are of concern to the Ross Project Consulting Tribes, the NRC will conduct further consultation with Ross Project Consulting Tribes, ~~and, if needed, schedule additional site visits in order to complete eligibility assessments.~~
  - f. If the WYSHPO and NRC agree that a cultural resource is not eligible for the NRHP, no further review or consideration under this PA will be required for the cultural resource. If the WYSHPO and NRC agree that the property is eligible, then a determination of effect will be made in accordance with Stipulation C.
  - g. In accordance with 36 CFR § 800.4(c)(2), if there is disagreement regarding eligibility between the NRC and the WYSHPO, and that disagreement cannot be resolved after further consultation, or if the ACHP so requests, the NRC will refer the property(ies) in question to the Keeper and request a formal determination of eligibility. The Keeper's decision is final.

**Comment [JM6]:** NRC/BLM will review evaluation vs. disagreement resolution timeframes.

**Comment [J7]:** For discussion.

### D.C. CONTINUING ASSESSMENT OF EFFECTS

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~~1. The NRC, in consultation with the Parties and Ross Project Consulting Tribes will make determinations of the effects of the proposed Undertaking on the viewshed of historic properties within the three-mile indirect APE.~~

2.1. The NRC, in consultation with the Parties and Ross Project Consulting Tribes, will make determinations of the visual and audible adverse effects of the proposed Undertaking on historic properties within the three-mile indirect APE of the Undertaking.

3.2. Testing Historic Properties for Direct Adverse Effects

- a. Following eligibility determinations, if additional testing is needed to assess the effects of the proposed Project Phase on a historic property, Strata shall submit to the NRC a testing plan to determine the direct (i.e., physical disturbance) adverse effects to historic properties that cannot be avoided.
- b. Upon receipt of Strata's testing plan, the NRC in coordination with the BLM will review the plan and request any corrections or modifications from Strata within 30 days of receipt.
- c. Prior to accepting Strata's testing plan, the NRC will consult with Strata to determine if the historic properties can be avoided. If any historic properties in the testing plan can be avoided, Strata shall submit a revised testing plan, including a map and sufficient documentation to support this avoidance determination.
- d. The NRC will distribute the revised testing plan to the Parties (excluding WYSHPO) and the Ross Project Consulting Tribes for a 30 day review period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing within the specified review period.
- e. The NRC will then distribute the final testing plan to the WYSHPO for a 30 day review and comment period, copying the other Parties and the Ross Project Consulting Tribes on this correspondence.
- f. If the WYSHPO concurs with the NRC's final testing plan or fails to respond within 30 days, the NRC will notify Strata that it may proceed with the testing plan, and Strata shall submit the results of the testing to the NRC.
- g. The NRC will consult to resolve any comments or objections received in writing from the WYSHPO within the 30 day review period regarding the testing plan. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).

4.3. Assessment of Effects

- a. Strata shall have a qualified archaeologist conduct the testing in accordance with the approved adverse effects testing plan from Stipulation C.3 and shall submit a report to the NRC that documents Strata's evaluations and recommendations, which the NRC may use in making determinations of effect on identified historic properties within the area of ground disturbance activities for each Ross Project Phase.
- b. Upon receipt of Strata's ~~assessments recommended determinations~~ of effect, the NRC in coordination with the BLM will review those ~~determinations recommendations~~ and request any corrections or modifications from Strata within 30 days of receipt.

**Comment [J8]:** For discussion.

BLM suggests adding atmospheric effects here.

**Comment [RLC9]:** I recommend changing to "indirect effects" for consistency.

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- c. The NRC will then distribute its determinations of effects and the associated documentation [pursuant to 36 CFR §§ 800.5 and 800.6(a)(3)] to the Parties (excluding WYSHPO) and the Ross Project Consulting Tribes for a 30 day review period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing within the specified review period.
- d. The NRC will then distribute the determinations of effect to the WYSHPO for a 30 day review period, copying the other Parties and the Ross Project Consulting Tribes on this correspondence.
- e. If the WYSHPO concurs with NRC's determinations of effect, or if no written objections are received from the Parties or the Ross Project Consulting Tribes within the 30 day review period, the effects determinations are final.
- f. The NRC will consult to resolve any written objections received from the WYSHPO regarding determinations of effect. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
- g. If any eligible properties will be adversely affected, plans to avoid, minimize, or mitigate the adverse effects will be developed in accordance with the Stipulation D of this PA.

**Comment [J10]: For discussion.**

BLM suggests adding "including indirect effects" here.

**Comment [RLC11]:** Generally, we like to see all efforts to avoid and minimize adverse effects applied prior to making a determination of "adverse effect". Perhaps add that requirement under "b" above?

**E.D. AVOIDANCE, MINIMIZATION and MITIGATION of ADVERSE EFFECTS**

1. Avoidance of Adverse Effects

a. Once the assessment of adverse effects to a historic property has been finalized per Stipulation C, Strata shall notify the NRC in writing within 30 days if it can avoid the historic property that would be adversely affected within the area of ground disturbance activities for each Ross Project Phase, including properties of traditional religious and cultural significance to the Tribes. Potential avoidance measures include, but are not limited to, relocating pipelines, roads, facilities, monitoring wells, and other disturbances.

**Comment [RLC12]:** This works for direct effects, but what about indirect? Again, avoidance should be considered prior to making a determination of adverse effect.

Maybe change to read: "...Strata will notify the NRC in writing within 30 days if the adverse effect to historic properties can be avoided..."

b. Upon receipt of Strata's proposed avoidance measures, the NRC in coordination with the BLM will review those proposed measures and request any corrections or modifications from Strata within 30 days of receipt.

a-c. The NRC will then document the decision to avoid adverse effects to the historic property(ies) and notify the Parties and Ross Project Consulting Tribes.

**Comment [J13]: For discussion.**

New language added to address ACHP comment that decisions to use avoidance measures should be documented and shared.

**Comment [RLC14]:** Will need to consult with the SHPO on the change of effect determination.

2. Development of Plan for the Minimization and Mitigation of Adverse Effects

a. If the NRC determines adverse effects to historic properties within the area of ground disturbance activities for any Ross Project Phase cannot be avoided, for each Phase of the Undertaking, the NRC will consult with the Parties and Ross Project Consulting Tribes to identify those measures to be implemented by Strata to minimize and/or mitigate adverse effects to affected historic properties. A wide range of options to minimize and/or mitigate adverse effects shall be considered, including but not limited to the following:

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- i. For historic properties that are archaeological in nature and significant for their research data potential (~~Eligibility Criterion D, National Register of Historic Places~~), the treatment ~~chosen is often measures may follow standard mitigation through~~ data recovery. Mitigation plan(s) for data recovery shall include, at a minimum, a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records, and shall be consistent with the *Secretary of Interior's Standards and Guidelines* (48 FR 44734-44737). ~~Mitigation plan(s) must be consistent with easement and permit requirements of other agencies, when applicable.~~ To the extent possible, mitigation plan(s) should group related sites or areas, so that treatment of related resources can be considered in context, and to minimize the burden of review and approval by agencies.
  - ii. Mitigation plan(s) for those ~~resources relating to properties historic properties that are~~ eligible under Criteria A, B, and C, ~~or that are significant for values other than their potential research value, if warranted,~~ shall specify approaches for treatment or mitigation of the property in ~~that accordance~~ with the ~~nature and significance of the property principles, standards, and guidelines appropriate to the resource.~~ ~~This These~~ may include, but not be limited to, ~~use of~~ such approaches as ~~relocating the historic property,~~ re-landscaping to reduce effects, public interpretation, ethnographic ~~recordation research,~~ oral history, archival research, or ~~altering or designing an prescribing use of a component or~~ activity of this Undertaking ~~in such a way as~~ to minimize effects to historic properties or to those ~~who ascribe importance and value to the property concerned about the effects of that component or activity.~~ ~~Methods of recordation and documentation described in the mitigation plan(s) shall conform with the Secretary of the Interior's Standards for Architectural and Engineering Documentation (48 FR 44730-44734) or other standards specified by NRC.~~
  - iii. ~~In lieu of standard mitigation approaches described above, mitigation plan(s) may adopt other alternative approaches to avoid, minimize, or mitigate effects to historic properties, including, but not limited to, assisting in the development of Tribal historic preservation plans, developing detailed historic contexts for the region, developing educational materials, purchasing properties containing historic resources acquiring and preserving historic properties away from the Project area, or developing historic property management plans.~~
- b. The NRC shall consult with the Ross Project Consulting Tribes regarding minimization and/or mitigation of indirect effects to historic properties of traditional religious and cultural importance.
  - c. Meetings and conference calls shall be scheduled as needed to develop mitigation measures for the Undertaking. Meetings and telephone conferences shall involve all or part of the Parties and Ross Project Consulting Tribes, as appropriate.
  - d. ~~For each Project Phase,~~ following the development of measures to minimize and/or mitigate adverse effects, Strata shall prepare a Mitigation Plan. The Mitigation Plan shall identify minimization and/or mitigation measures to address the adverse effects of the Undertaking on each individual historic property.

**Comment [RLC15]:** I recommend deleting this. S106 requires that we mitigate adverse effects to historic properties. Any effects to those "who ascribe importance and value to the property" is outside the scope of this document.

**Comment [RLC16]:** It should be made clear that this is only to be used if on the ground mitigation is completely impossible. For instance, I can think of no circumstance where this would be an appropriate replacement for data recovery.

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- i. The Mitigation Plan shall contain a map of all proposed effects for that Project Phase, a description of the effects on each historic property, and a description of the proposed treatment for each historic property.
  - ii. ~~A Monitoring Plan shall be included in the Mitigation Plan if~~ monitoring by a qualified archaeologist and/or by Tribal monitors is part of the strategy for ~~identifying and resolving adverse effects, the Mitigation Plan shall include a Monitoring Plan.~~ The objective of monitoring is to protect extant sites from construction impacts, identify at the time of discovery any archaeological materials exposed during ground disturbance, and protect such resources from damage until the procedures for Discoveries per Stipulation ~~E-F~~ are implemented.
  - iii. If data recovery is part of the strategy for resolving adverse effects, the Mitigation Plan shall specify all details of the research design, field and laboratory work methodology (including mapping, geomorphological studies, controlled scientific excavation methods, analyses of data recovered, and photographic documentation), and report preparation.
- e. The NRC in coordination with the BLM will review the Mitigation Plan developed by Strata and request any corrections or modifications within 30 days of receipt.
  - f. The NRC will distribute the Mitigation Plan to the Parties (excluding WYSHPO) and the Ross Project Consulting Tribes for a 30 day review period. The NRC will share comments and objections consider any comments received in writing from the Parties ~~(excluding WYSHPO)~~ and the Ross Project Consulting Tribes within the specified review period.
  - g. Within 30 days of the close of the above review period, Strata or its consultant will address the comments and make revisions to the Mitigation Plan as requested by the parties. The NRC will then distribute the final Mitigation Plan to the WYSHPO for a 30 day review period, copying the other Parties ~~, and~~ the Ross Project Consulting Tribes on this correspondence.
  - h. Upon final concurrence by the WYSHPO, or if WYSHPO fails to respond in writing within 30 days, ~~and no other objections from the Parties or the Ross Project Consulting Tribes are received,~~ the final Mitigation Plan will be appended to this PA.
  - i. The NRC will consult to resolve any written comments or objections received from the ~~Parties and the Ross Project Consulting Tribes~~ WYSHPO regarding the final Mitigation Plan ~~within the WYSHPO's 30 day review period~~. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with 36 CFR § 800.7 or Stipulation I (Dispute Resolution).
  - j. The NRC will notify the Parties and the Ross Project Consulting Tribes of the approval of any Mitigation Plan.
3. Implementation of Mitigation Plan
- a. For any data recovery on BLM-administered lands, the archaeologist shall have a BLM Cultural Resource Use permit for Excavation and/or Removal.

**Comment [RLC17]:** If objections are made, we would like to be made aware of them.

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- b. For data recovery on State lands, the archaeologist shall have an Authorization for Archaeological Investigations on State Lands.
- c. Upon completion of data recovery fieldwork, Strata shall submit a ~~data recovery report~~ Fieldwork Completion Report documenting implementation and results within 60 days to the NRC, BLM, and WYSHPO for a 30-day review and comment period.
- d. The NRC in coordination with the BLM will review the ~~data recovery report~~ Fieldwork Completion Report, distribute as necessary developed by Strata and request any corrections or modifications within 30 days of receipt, allowing additional time if NRC/BLM fieldwork inspection is needed and is not feasible within the 30 day review period. After the Fieldwork Completion Report has been approved, implementation of the proposed activities may commence.
- e. Strata will provide a Final Mitigation Report to the NRC and BLM within 2 years of approval of the Fieldwork Completion Report. The NRC will then distribute the ~~data recovery report~~ Final Mitigation Report or revised report to the Parties (excluding WYSHPO) and Ross Project Consulting Tribes for a 30 day review and comment period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any written comments received from the Parties and the Ross Project Consulting Tribes during the specified review period.
- f. The NRC will submit the final data recovery report to WYSHPO for a 30 day review and concurrence, copying the other Parties and Ross Project Consulting Tribes on this correspondence.
- g. If the WYSHPO concurs with NRC's data recovery report or fails to respond within 30 days, the NRC shall notify Strata that the data recovery report is ~~final~~ has been accepted. After such notification, Strata may proceed with implementation of that Phase of the Undertaking.
- h. The NRC will consult to resolve any comments received in writing from the WYSHPO during the ~~WYSHPO's~~ 30 day review period. If the NRC determines that a dispute ~~arises~~ cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
- i. For other mitigation measures specified in the Mitigation Plan that result in a product or process that requires review and acceptance, the process of review and acceptance shall be specified in the Mitigation Plan. Strata shall not proceed with implementation of ground disturbance activities outside of the within each Project Phase area prior to completion of such review and acceptance.

**Comment [J18]: For discussion.**

Strata has proposed revisions to D.3.c, D.3.d, and D.3.e.

**Comment [J19]:** BLM: *For projects of this relatively small scale a Final Mitigation Report should be submitted, reviewed, and accepted prior to Strata receiving notification they may proceed with that phase of the undertaking. The PA has short time frames for this review. There is no advantage in dragging out the process for years. Only very large scale projects such as multiple state pipelines typically would have mitigation reports submitted later.*

**Comment [RLC20]:** We do not need a review time here as we do not ask for changes in a final data recovery report. Once we have received it, you can assume we concur.

**Comment [J21]: For discussion.**

Strata suggests deleting this sentence.

BLM suggests revising this sentence to read: "Following acceptance of the data recovery report, the NRC shall issue Strata a Notice to Proceed."

**Comment [J22]: For discussion.**

ACHP has the following comment:

*Not sure I understand this. Is this saying Strata won't proceed with ground disturbance outside the current project phase area prior to completion of review and acceptance of a mitigation plan for adverse effects in the current project phase area? That doesn't seem to make sense.*

**Comment [J23]: For discussion.**

ACHP asks if this should be identification, evaluation, and data recovery.

**F.E. Curation**

- 1. BLM will ensure that curation of all records and other archaeological items resulting from identification and data recovery efforts on ~~public~~ (BLM) and State land is completed in accordance with 36 CFR § 79 and the provisions of 43 CFR § 10 (NAGPRA). All archaeological materials recovered from Federal and State land shall be curated at the University of Wyoming Archaeological Repository. Strata shall provide documentation of the curation of the materials to the NRC, BLM, and WYSHPO within 60 days of acceptance of the final cultural resource inventory report and/or data recovery report.

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- 2. BLM will encourage private landowners to curate archaeological materials recovered from their lands in accordance with Federal curation policies. If private landowners agree to curate archaeological materials recovered from their lands, the curation shall be done in accordance with Federal curation policies. Materials from private lands to be returned to private landowners shall be maintained in accordance with 36 CFR § 79 until all necessary analysis has been completed. Strata shall provide documentation of the disposition of private collections to the NRC, BLM, and WYSHPO.

G.F. DISCOVERIES

1. Inadvertent Discoveries of Historic and Cultural Resources

- a. If previously unknown cultural resources, including archaeological sites, are discovered during implementation of the Ross Project, or previously known historic properties will be affected in an unanticipated manner, all construction activities will cease within 150 feet of the area of discovery to avoid or minimize harm to the resource, and Strata shall immediately notify the NRC and the WYSHPO. Activity in the area will cease until NRC, in consultation with the Parties and Ross Project Consulting Tribes, can evaluate the eligibility of the properties, and evaluate any adverse effects on historic properties, and, if necessary, authorize steps to mitigate impacts to the new discovery resolve the adverse effects. Strata shall have any discovered materials evaluated for NRHP eligibility by a professional cultural resource specialist qualified archaeologist meeting the Secretary of Interior's Standards for Archaeology and History. Documentation of the discovery and evaluation will be promptly provided to the NRC in order for the NRC, in consultation with the WYSHPO, ACHP, BLM, and the Ross Project Consulting Tribes, to make a determination of eligibility and effect. ~~Inadvertent discoveries may include artifacts, bone, features, or concentrations of these materials outside previously identified sites or in and adjacent to previously identified eligible and not eligible sites. Discoveries may also include stones and groups of stones that are out of place in their sedimentary contexts and may be parts of stone features. Discoveries may also include changes in soil color, texture, or content suspected to be of anthropic origin, such as burned soil, ash, or charcoal fragments.~~
- b. If a cultural resource monitor or Tribal monitor is present, the monitor shall have the authority to temporarily halt construction operations within 150 feet of the find or exposed resource and shall flag or otherwise mark the area of avoidance. If a monitor is not present, Strata shall halt work and mark the location for avoidance.
- c. Strata shall have a qualified archaeologist and, if needed, a Tribal monitor, inspect the area for additional resources, document the discovery, make recommendations concerning eligibility, and submit the findings to the NRC. The Parties and Ross Project Consulting Tribes shall consult to determine what data recovery or other mitigation may be needed.
- d. Work may continue in other areas of the site; however, construction shall not resume in the area of discovery unless the NRC has issued a written Notice to Proceed.
- e. Evaluation and mitigation will be carried out by NRC in consultation with the WYSHPO, Ross Project Consulting Tribes, BLM, ACHP, and Strata as expeditiously as possible in accordance with 36 CFR § 800.13(b).

Comment [J24]: For discussion.

ACHP comment: Need to include time frames for notification and response in this stipulation.

Comment [J25]: For discussion.

Strata requests a basis for this distance.

Comment [J26]: For discussion.

Strata requests a basis for this distance.

Comment [J27]: ACHP Comment:

Where does this Tribal monitor come from?

NRC Response: A Tribal monitor could be present if a Mitigation Plan includes a requirement to have a Tribal monitor present.

Comment [J28]: ACHP Comment:

F.1.b. and c. seem to be out of place. Already in F. 1. A., Strata has had to provide documentation including an evaluation of eligibility to NRC so that NRC can consult with BLM, SHPO, tribes, etc. to determine eligibility and effect.

NRC Response: This is for inadvertent discoveries.

Comment [J29]: For discussion.

Comment [J30]: ACHP Comment:

"By referencing 800.13(b) are you intending that NRC will notify ACHP and tribes, etc. in 48 hours of the discovery and they must respond back in 48 hours?"

NRC Response: Yes

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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 shall immediately contact ~~NRC~~ BLM and, ~~who will notify~~ the Crook County Sheriff's Office, ~~who will notify the and~~ Coroner's Office of the discovery per W.S. 7-4-104 ~~and W.S. 7-4-201~~.
- 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 NAGPRA and its implementing regulations (43 CFR § 10). In the event that human remains are discovered on Federal land during implementation of the Ross Project, all work within 300 feet of the discovery will cease, the area will be secured, and BLM ~~and the Crook County Sheriff's Office~~ shall be contacted immediately. 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 procedures agreed upon by the NRC and WYSHPO for State and private land. If non-Native American human remains are found on Federal land, Strata shall immediately notify ~~the NRC and~~ BLM and BLM will treat such remains 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 [J31]: For discussion.**

Strata requests a basis for this distance.

**Comment [J32]:** BLM: *The standard minimum protection area for discoveries of human remains that is used by BLM is 300 feet. This is specified in the BLM-WYSHPO Protocol which will be implemented this year. Examples of requiring 300 feet include the Gas Hills Uranium PA.*

**Comment [J33]: For discussion.**

ACHP suggests dividing this paragraph into several, one for federal, one for state.

**Comment [J34]: For discussion.**

Strata requests a basis for this distance.

H.G. CONFIDENTIALITY OF CULTURAL RESOURCE DATA

Cultural resource data, including data concerning the 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. These data shall be protected from public disclosure to the greatest 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 greatest 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.

H.H. ANNUAL REPORT AND EVALUATION

- 1. On or before January 1 of each year, beginning in 2015, unless the 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 the Parties and Ross Project Consulting Tribes. The Parties may provide comments on the report to Strata within 30 days of receipt, and Strata shall distribute all comments to the Parties.

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2. Strata shall coordinate a meeting or conference call of the Parties and Ross Project Consulting Tribes, in coordination with the NRC, within 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 Parties agree to another timeframe. ~~As appropriate, Parties may request a separate meeting to discuss the annual report.~~ The purpose of the meeting/conference call is to review implementation and achieved outcomes of the terms of this PA and to discuss the annual report, as needed. As appropriate, Parties may request a separate meeting to discuss the annual report.

### J.I. DISPUTE RESOLUTION

1. Should any Signatory object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the NRC shall consult with the Signatories to resolve the objection. If the NRC determines that such objection cannot be resolved, the NRC will:
  - a. Forward all documentation relevant to the dispute, including the NRC's proposed resolution, to the ACHP. The ACHP shall provide the NRC with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NRC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Ross Project Consulting Tribes, and provide them with a copy of this written response. The NRC will then proceed according to its final decision.
  - b. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, the NRC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NRC shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Ross Project Consulting Tribes, and provide them and the ACHP with a copy of such written response.
2. The NRC's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

### K.J. COORDINATION WITH OTHER FEDERAL AGENCY REVIEWS

In the event that Strata or other agency applies for federal funding or approvals for the Undertaking and the Undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with WYSHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation K.

### L.K. 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.

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### M.L. **TERMINATION**

1. If any Signatory to this PA determines that its terms will not or cannot be carried out, that Signatory shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation K. If within 60 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.
2. Once the PA is terminated, and prior to work continuing on the Undertaking, the NRC must either (a) execute a 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. The NRC shall notify the Signatories as to the course of action it will pursue.

### N.M. **DURATION OF AGREEMENT**

This PA will be null and void if its stipulations are not carried out within 20 years from the date of its execution. At such time, and prior to work continuing on the Undertaking, the NRC shall either (a) execute a PA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, the NRC may consult with the other Signatories to reconsider the terms of the PA and amend it in accordance with Stipulation K. The NRC shall notify the Signatories as to the course of action it will pursue.

### O.N. **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.

### P.O. **GENERAL PROVISIONS**

1. **Entirety of Agreement.** This PA, consisting of twenty ~~one two~~ (2122) 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 NHPA.
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 NRC, the BLM, the ACHP, and Ross Project Consulting Tribes 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.

**Comment [RLC35]:** I'm surprised to see these changes accepted as we had not gotten around to discussing them. I prefer we keep the original language. As currently written, the signatories are limited to being able to seek termination to only if the will or cannot be carried out. We have no desire to limit our options here.

I also prefer the direct step from the PA to the regulations as previously defined.

**Comment [RLC36]:** Again, I prefer the previous language as it is simpler and cleaner.

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- 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.

Execution of this PA by the NRC, BLM, ACHP, WYSHPO, Strata, 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 has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

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**Approval as to Form:**

**Wyoming Attorney General's Office**

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S. Jane Caton, Date  
Senior Assistant Attorney General

**Concurring Parties:**

**Blackfeet Tribe**

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Name and title Date

**Cheyenne and Arapaho Tribes**

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Name and title Date

**Cheyenne River Sioux Tribe**

---

Name and title Date

**Chippewa Cree Tribe**

---

Name and title Date

**Confederated Salish and Kootenai Tribe**

---

Name and title Date

**Apsaalooke (Crow) Nation**

---

Name and title Date

**WORKING DRAFT FOR 2-26-14 WEBINAR**

**Crow Creek Sioux Tribe**

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

**Eastern Shoshone Tribe**

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

**Flandreau-Santee Sioux Tribe**

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

**Fort Belknap Community**

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

**Fort Peck Assiniboine/Sioux**

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

**Lower Brule Sioux Tribe**

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

**Northern Arapaho Tribe**

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

**Northern Cheyenne Tribe**

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

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**Oglala Sioux Tribe**

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

**Rosebud Sioux Tribe**

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

**Santee Sioux Tribe of Nebraska**

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

**Sisseton-Wahpeton Oyate Tribes**

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

**Standing Rock Sioux Tribe**

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

**Mandan, Hidatsa & Arikara Nation  
Three Affiliated Tribes**

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

**Turtle Mountain Band of Chippewa**

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

**Yankton Sioux Tribe**

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