



Preserving America's Heritage

March 4, 2015

Ms. Lydia Chang
Branch Chief, NMSS/FCSE/ERB
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
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Rockville, MD 20852-2738

Ref: *Strata Energy Inc. Ross ISR Project, License Number SUA-1601, Docket #40-9091*
Request for Amended Tribal Field Survey Report

Dear Ms. Chang:

On February 13, 2015, the Advisory Council on Historic Preservation (ACHP) received your email requesting our views regarding sharing the unredacted version of the *Tribal Field Survey Report* from the Ross In-Situ Uranium (ISR) Project to the licensee (Strata Energy). This letter will respond to your question, as well as advise the Nuclear Regulatory Commission (NRC) on the merits of seeking a formal Determination of Eligibility (DOE) from the Keeper of the National Register of Historic Places (National Register) for sites identified in the tribal field surveys.

Based on the Ross ISR Project information submitted to us by the NRC, the Indian tribes were asked to complete the survey, identification, and evaluation of sites with religious and cultural significance to them that were located in the project's Area of Potential Effects. The licensee agreed to fund this effort and worked with the NRC to procure the services of the Indian tribes.

As we understand, the licensee expected an unredacted version of the survey report upon completion of the surveys and the *Tribal Field Survey Report*. The participating Indian tribes had no objection to the Report being provided to the licensee. However, the NRC, in consultation with the Bureau of Land Management (BLM), questioned the appropriateness of sharing this level of unredacted information. This resulted in conflicts between the Indian tribes and federal agencies regarding who could review the information, and how it would be used. The ACHP was contacted by the NRC to assist the agency in resolving the issues. Our comments, therefore, focus on confidentiality and the identification and evaluation of historic properties.

The executed Ross ISR Project Programmatic Agreement (PA) includes a confidentiality clause stating that all information related to properties that have traditional religious and cultural importance to the Ross Project Consulting Tribes will remain confidential to the greatest extent permitted by law, which, in this case, refers particularly to Section 304 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 307103. Section 304 protects information regarding the location, character, and ownership of historic

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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properties when disclosure of that information to the public may cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners. Historic properties are those listed, or eligible for listing, in the National Register.

Under Section 304, the federal agency that receives the request for information is required to consult with the Secretary of the Department of the Interior, represented by the National Park Service (NPS), before making a joint decision regarding what historic property information, if any, will be withheld and under what justification. Pursuant to 36 C.F.R. § 800.11(c), when the information requested was developed in the course of an agency's compliance with Section 106 of the NHPA, 54 U.S.C. § 306108, the NPS consults with the ACHP in this process. The federal agency or the NPS provides the ACHP available information, including the views of the State Historic Preservation Officer/Tribal Historic Preservation Officer, Indian tribes, and other relevant consulting parties, related to the confidentiality concern. The ACHP then reviews the NPS's comments and provides its views within 30 days on whether it agrees or disagrees with the proposed decisions regarding withholding.

In this case, the NRC, as the federal agency receiving the request, and NPS will make a final, joint decision on whether or not to withhold the information on historic properties from the public under Section 304. If NRC and NPS disagree on whether to withhold information, the information will not be protected by Section 304. However, if NRC and NPS agree on withholding information, NPS will determine who may have access to the protected information. NPS will make this determination after consulting with NRC and the ACHP.

Considering the role that NPS plays in this, the ACHP recommends that the NRC approach the NPS regarding the confidentiality and Section 304 questions raised with the licensee, in order to initiate that consultation process. The NPS Section 304 contact is Ms. Erika K. Martin Seibert, who can be reached at (202) 354-2217, or via e-mail at Erika_Seibert@nps.gov.

Since Section 304 only protects information related to historic properties (again, those properties either listed, or eligible for listing, in the National Register), it is critical for NRC to understand what items of information being considered for withholding relate to such properties. The *Tribal Field Survey Report* identifies and evaluates historic properties based on the information and expertise provided by the Indian tribes who participated in the field surveys. It also clarifies which tribal sites may be eligible for listing in the National Register based on tribal input. Traditional Cultural Properties and properties of religious and cultural significance to tribes were identified in this report. However, after reviewing this report, the Wyoming SHPO did not agree on the eligibility determinations for 12 Traditional Cultural Properties and recommended the NRC request a formal DOE from the Keeper of the National Register.

Given the unresolved issues regarding National Register eligibility of these sites, we urge NRC to consider requesting a formal DOE from the Keeper of the National Register. The Keeper is Ms. Stephanie Toothman, who can be reached at (202) 208-7625, or via e-mail at Stephanie_Toothman@nps.gov. The Keeper will respond within 45 calendar days once it receives a formal DOE request and adequate background information. The Keeper will determine if the properties are eligible, not eligible, or the documentation is insufficient. If the Keeper determines that not enough documentation is provided to make a professional evaluation, the Keeper will advise the agency in writing of the additional information needed. We believe the formal DOE request will be supported by the Wyoming SHPO as it provides a timely and definitive response to the findings of the report. Additionally, it will enable qualified professionals to determine the historic significance of the sites identified in the archaeological surveys and the tribal survey.

The formal DOE request to the Keeper of the National Register can occur concurrently with the notification to the NPS regarding the Section 304 issues. Accordingly, the NRC would not need to delay the implementation of the Tribal Field Surveys Report for an extended period.

If you have any questions or require our further assistance, please contact Sarah Stokely, NRC Liaison at 202 517-0224 or via e-mail at sstokely@achp.gov.

Sincerely,

A handwritten signature in cursive script that reads "Charlene Dwin Vaughn".

Charlene Dwin Vaughn, AICP
Assistant Director
Federal Permitting, Licensing and Assistance Section
Office of Federal Agency Programs