



RE: Tongue River RR, PA Working group, Stipulations V and VI, continued
Starzak, Richard

to:

brhodd1@yahoo.com, Betsy Merritt, Jenkins, Paul C (Chris) NWS, Conrad Fisher, 'conrad.fisher@cheyennenation.com', dcoburn@steptoe.com, doug_melton@blm.gov, 'swilmoth@mt.gov', Catherine.Nadals@stb.dot.gov, Vicki.Rutson@stb.dot.gov, Summerville, Alan, Mello, Sarah, Reynolds, Alisa, Diller, Elizabeth, cvaughn@achp.gov, 'ngabriel@achp.gov'

11/10/2014 06:52 PM

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From: "Starzak, Richard" <Richard.Starzak@icfi.com> Sort List...

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5 Attachments



ACHP_letter_09-08-2014_EI-20518.pdf B2H_PA_Rev2 5_29_2014.ACHP rev.25Jun2014.docx



id-wy.blm.gateway west transmission line project.pa.sep13.pdf mt.stb.tongue river railroad project.con.03sept14.pdf



Draft PA Whereas Clauses and Stipulations I - VI distributed to CPs on 11-10-2014.docx

Hi everyone,

In our working group call on Friday, Nov. 7, we decided that the examples of a process PA provided by the ACHP be distributed for reference, so they are attached to this e-mail along with ACHP's letters of Sept. 3 and Sept. 8 that explain how the PA should be revised. Also attached is the consolidated Draft PA that we've been working on which Cathy distributed to the consulting parties for today's call.

So if you choose to dig deeper and compare what we've been doing to revise the draft PA according to the ACHP's guidance, here is a summary.

- Stipulations I and II follow ACHP's Sept 8 letter asking that we add new stipulations for Roles and Responsibilities and Analysis of Alternatives. (There were no similar stipulations in the process PA examples, so these were new text.)
- Stipulation III-APE follows the BLM Gateway process PA example for Direct, Indirect and Cumulative Effects, but was customized for TRRR.
- Stipulation IV-Identification and Evaluation, follows the current TRRR methodology, because there were major differences from the two transmission line process PAs. For TRRR, we involved tribal members in the field work for a wide geographic range of alternatives and conducted intensive field work on private land, none of which had been previously surveyed. Neither BLM process PA seemed appropriate to use as a template for this stipulation: the BLM Gateway process PA relies heavily on a limited sampling survey on federal lands only (not private lands) and the BLM Boardman to Hemingway process PA puts off the literature review and identification work to the future.
- Stipulation V-Assessing Effects, covers the Draft EIS analysis for accessible and inaccessible lands, and then follows relevant parts of the BLM Boardman to Hemingway process PA.
- Stipulation VI-Resolution of Effects follows the 2011 draft TRRR PA for developing treatment plans. The BLM Gateway PA has a stipulation entitled "Historic Properties Treatment Plan" and the BLM Boardman to Hemingway PA has a stipulation entitled "Historic Properties Management Plan"
- Still in development are some of the other stipulations ACHP asked for in the Sept 8. Letter, including Data Recovery Plan, Emergency Situations, etc.

As applicable, in each stipulation we first describe the consultation effort as it relates to the Section 106 process that is being coordinated with the NEPA process and will inform the STB about the effects of each alternative on cultural resources/historic properties. Then the stipulation describes the additional consultation, reviews, and work that would be needed to complete the Section 106 process, in the event the STB decides to approve a build alternative.

Thanks again for all your hard work and participation in helping develop this draft PA. I hope these documents and summary are helpful.

Rick

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-----Original Appointment-----

From: Starzak, Richard

Sent: Thursday, October 30, 2014 10:41 AM

To: Starzak, Richard; brhodd1@yahoo.com; Betsy Merritt; Jenkins, Paul C (Chris) NWS; Conrad Fisher; 'conrad.fisher@cheyennenation.com'; dcoburn@steptoe.com; doug_melton@blm.gov; 'swilmoth@mt.gov'; Catherine.Nadals@stb.dot.gov; Vicki.Rutson@stb.dot.gov; Summerville, Alan; Mello, Sarah; Reynolds, Alisa; Diller, Elizabeth; cvaughn@achp.gov; 'ngabriel@achp.gov'

Subject: Tongue River RR, PA Working group, Stipulations V and VI, continued

When: Friday, November 07, 2014 10:00 AM-11:30 AM (UTC-08:00) Pacific Time (US & Canada).

Where: 1-877-423-6338, Passcode: 364456#

Hi Ben, Betsy, Charlene, Chris, Conrad, David, Doug, Najah, and Stan,

As discussed in our Oct. 31 call, the next PA working group call is scheduled for Friday, November 7 at 1 PM EST. (Call in information is: 1-877-423-6338, Passcode: 364456#)

I wanted to send out this invite now so you all have it on your calendars. Information about any discussions with the ACHP next week, and the current versions of the draft PA with embedded comments will be sent to you as soon as they are ready. They are drafted, but under review.

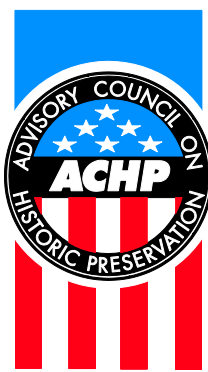
We understand everyone has busy schedules, and we truly appreciate your participation.

Thank you very much,
Rick (in support of Cathy)

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EI-20518

Preserving America's Heritage

September 8, 2014

Ms. Victoria Rutson
Surface Transportation Board
Office of Environmental Analysis
395 E Street, SW
Washington, DC 20423

Ref: *Proposed Tongue River Railroad Project*
ACHP Comments on Draft Programmatic Agreement Stipulations
Custer, Rosebud, Powder River and Bighorn Counties, Montana

Dear Ms. Rutson:

On August 28, 2014, the Advisory Council on Historic Preservation (ACHP) received the Surface Transportation Board's (STB's) draft Programmatic Agreement (PA) stipulations for the referenced undertaking. We are providing the STB with our initial comments on the draft PA stipulations, recognizing that the development of this document has not yet been informed by consulting parties.

The draft PA does not adequately reflect the recommendation that we provided to STB regarding the development of a "process PA" that outlines how STB will consult during the analysis of alternatives and consideration of measures to avoid, minimize and mitigate adverse effects. While we understand that STB's decision on a "preferred" alternative and the approval of a rail line will consider several factors in addition to historic preservation, we would be remiss to agree to the development of a draft PA that did not ensure that effects to historic properties were given adequate consideration in this decision making process. In an effort to assist STB in this review, we offer the following comments regarding the Stipulations sections. We trust that they will be discussed by consulting parties during the scheduled September 8th teleconference.

Analysis of Alternatives

A stipulation should be inserted at the beginning of the Stipulations section that clarifies that STB is coordinating the review of alternatives for this undertaking as part of its NEPA review. STB also should clarify how the review process outlined in the draft PA will inform the analysis of alternatives, including the selection of a preferred alternative. Although we understand that STB intends to address this matter in the Whereas Section, it also needs to be addressed in the Stipulations section.

Roles and Responsibilities

Given the prominent role that the applicant, Tongue River Railroad Company (TRRC), will assume in project planning and implementation, we recommend that a stipulation be added to the stipulations section that clarifies the roles and responsibilities of key consulting parties. We believe that all consulting parties would find this information useful since other Federal agencies such as BLM will be involved in project reviews. Further, it will help to avoid confusion in implementing the PA once it is executed.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Identification Plan

The draft PA starts with the assumption that an alignment will be chosen. The ACHP has previously advised the STB that it may be premature to make this assumption. Given STB's ability to recommend a "no-build" option, we need to recognize that this option could be selected as the "preferred alternative." We, therefore, suggest that the PA outline specific measures that will be taken once the analysis of alternatives is completed and STB makes a decision. Accordingly, STB should clarify in the draft PA how the four-step Section 106 review process will be coordinated during the analysis of alternatives, and what role the consulting parties will have as determinations and findings are made. To defer involvement of consulting parties in findings and determinations until the preferred alternative is selected would be imprudent. Moreover, it would likely leave STB open to challenges regarding the preferred alternative and questions about whether other alternatives may have avoided adverse effects of concern to consulting parties.

Development of Treatment Plans

Further explanation is needed in this stipulation regarding how the applicant, TRRC, will consult with consulting parties to develop treatment plans. The timing of the development of these plans is unclear. Will this occur during the analysis of alternatives or after the selection of the preferred alternative? Will the Contractor have sole discretion to carry out this task or will it be done in consultation with STB? The Stipulations section should be explicit in encouraging the Contractor to give priority consideration to measures that would avoid adverse effects to historic properties. We also are concerned about the notion that a treatment plan can be prepared for a portion of the line. This concept needs to be better explained in the PA, and have agreement of affected consulting parties. Finally, the treatment of the Wolf Mountain Battlefield, a National Historic Landmark (NHL) must adhere to Section 110(f) of the NHPA and Section 800.10 of the ACHP's regulations, which requires a higher consideration of alternatives to minimize harm to the NHL.

Consultation on Developing Treatment Plans

During the analysis of alternatives, consulting parties should understand the extent to which STB has considered measures to avoid adverse effects on historic properties on the particular alternative. It is our understanding that once the rail alignment is selected, the planning process will not be very flexible. Thus, once a preferred STB alignment is chosen, consulting parties will be limited in requesting modifications. It is therefore important that the consulting parties be able to share their comments on alternatives during the evaluation of an alternative and in advance of the Board's decision. The Stipulations section, therefore, needs to emphasize that the identification and evaluation process will be coordinated with the State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officers (THPOs) to ensure that adequate baseline information is prepared for below ground historic properties, cultural landscapes, and traditional cultural properties associated with each alternative.

Data Recovery Plan

If avoidance of adverse effects to historic properties is not feasible, we do not believe that it is a forgone conclusion that data recovery the appropriate treatment. There should be some consultation regarding this matter, particularly when properties of religious and cultural significance to Indian tribes are involved. There are other treatment options for National Register eligible and listed archeological sites that can be considered; however, they are not outlined in the draft PA. Further, any archeology data recovery plan should have a public benefit that is explained. How would data recovery plans benefits the State, Region, and Tribes?

Construction

We are concerned that we are being asked by STB to provide comments on a build alternative before STB has demonstrated that a no-build alternative is not appropriate. A stipulation needs to be added that makes it clear that good faith consultation will occur for the no build alternative. Perhaps STB should revise this

stipulation to make it clear under what circumstances construction will proceed. We also recommend that stipulations be added to be precise about how construction management, staging areas, use of Tribal monitors, etc., will be determined for the preferred alternative, and what consulting parties will be involved in this decision making.

Emergency Situations

We encourage STB to add a new section that is related to emergency situations. Emergencies occur in a number of ways that could complicate the implementation of a PA. They could change the scope of the project, or compromise the agency's ability to meet the terms of an executed PA. This provision should be developed with the consulting parties so that it addresses the concerns of the residents in the project area and provides for contingencies, as appropriate.

Dispute Resolution

As currently drafted, the stipulation for dispute resolution allows "any party to this PA" to object. Does this mean that all consulting parties can file objections? Are objections during the alternative analysis to be handled differently from objections during project implementation? This stipulation needs to be revised.

Tribal Coordination

This stipulation should recognize that there may be a need to amend tribal protocols if new tribal leadership is elected and proposes a different approach to coordinating the undertaking. To address this potential change to approved tribal protocols, we recommend that language be included in the PA that recognizes the need for amendments to the ID Plan.

Public Participation

The STB needs to include in the Stipulations section language that allows the public to file objections regarding the implementation of the terms of this PA. While the filing of reports is helpful, it is unclear what steps should be taken if the public wants to file objections to the actions, findings, or determinations that are required under the terms of the PA.

We know that the negotiation of stipulations will require extensive consultation if we are to develop a comprehensive process to address the full range of effects on historic properties. STB has advised us that it intends to continue the monthly teleconferences to finalize a draft PA. We also recommend that STB keep a comment matrix for all comments received on Whereas clauses and stipulations so that we can monitor how STB addresses comments and proposed revisions submitted during consultation.

If you have any questions regarding our comments and recommendations, please contact Najah Duvall-Gabriel at (202)517-0210 or via email at ngabriel@achp.gov. We look forward to consulting further with STB.

Sincerely,



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

Boardman to Hemingway Programmatic Agreement

DRAFT
PROGRAMMATIC AGREEMENT
AMONG
THE BUREAU OF LAND MANAGEMENT
THE U.S.D.A. FOREST SERVICE
THE BONNEVILLE POWER ADMINISTRATION
THE U.S. ARMY CORPS OF ENGINEERS
BUREAU OF RECLAMATION
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
THE OREGON STATE HISTORIC PRESERVATION OFFICER
THE IDAHO STATE HISTORIC PRESERVATION OFFICER
THE WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC
PRESERVATION (SHPO)
THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
TRIBAL HISTORIC PRESERVATION OFFICER
IDAHO POWER COMPANY
REGARDING COMPLIANCE WITH
THE NATIONAL HISTORIC PRESERVATION ACT
FOR THE CONSTRUCTION OF THE
BOARDMAN TO HEMINGWAY 500 KV TRANSMISSION LINE PROJECT

WHEREAS, Idaho Power Company (Proponent) has proposed to construct, operate, maintain and eventually decommission the Boardman to Hemingway 500 kV Transmission Line Project (Undertaking), an approximately 300-mile-long transmission line stretching from near Boardman, Oregon to near Melba, Idaho across multiple federal, state and local jurisdictions and across the ancestral lands of several Indian tribes, requiring permits from multiple federal agencies; and

WHEREAS, the Bureau of Land Management (BLM), in consultation with the State Historic Preservation Officers (SHPOs) / Tribal Historic Preservation Officer (THPO), determined that a phased process for compliance with Section 106 of the National Historic Preservation Act (NHPA) through a Programmatic Agreement (PA) is appropriate, as specifically permitted under 36 Code of Federal Regulation (CFR) 800.4(b)(2), such that the identification and evaluation of historic properties, determinations of specific effects on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any

Boardman to Hemingway Programmatic Agreement

adverse effects will be carried out in phases as part of planning for and prior to the issuance of any Notices to Proceed (NTP) as detailed in stipulation XII; and

WHEREAS, the Proponent intends to construct, operate and maintain and eventually decommission the Boardman to Hemingway Transmission Line Project according to general parameters contained in the project Plan of Development (POD) for the Undertaking which shall be appended to and made a part of the Record of Decision (ROD) authorizing the right of way (ROW) grant; and

WHEREAS, the BLM is considering the issuance of a ROW grant for the construction, operation and maintenance, and eventual decommissioning of the Undertaking, and the ROW grant will incorporate this PA by reference; and

WHEREAS, this PA, and the Historic Properties Management Plan (HPMP) that will be developed pursuant to this PA, will be incorporated into the approved project POD; and

WHEREAS, the BLM is a multiple use agency responsible for permitting and issuing a ROW grant as well as the protection of cultural resources as authorized under the Federal Lands Policy and Management Act (FLPMA) of 1976 (43 USC 1701) and the Proponent has requested a 30-year, renewable ROW grant from the BLM for the Undertaking; and

WHEREAS, portions of this Undertaking will occur on lands managed by the United States Department of Agriculture Forest Service (USFS), and USFS has designated that the BLM will serve as lead federal agency for Section 106 of the NHPA compliance pursuant to 36 CFR 800, the regulations implementing Section 106 of the NHPA of 1966, as amended (16 USC 470f) and is a Signatory to this PA; and

WHEREAS, portions of this Undertaking will occur on lands managed by the Bureau of Reclamation (BOR) and the BOR has designated that the BLM will serve as lead federal agency for Section 106 of the NHPA compliance pursuant to 36 CFR 800, the regulations implementing Section 106 of the NHPA of 1966, as amended (16 USC 470f) and is a Signatory to this PA; and

WHEREAS, the Bonneville Power Administration (BPA) will market and distribute power transmitted by the Undertaking, has agreed to fund a portion of the environmental and cultural compliance and permitting of the line, and may participate in the construction of the line, and has designated the BLM to serve as lead federal agency to serve as the agency official who shall act on its behalf, fulfilling any BPA responsibilities under Section 106 of the NHPA regarding the Undertaking, and is a Signatory to this PA; and

WHEREAS, the Portland District, U.S. Army Corps of Engineers (USACE) will evaluate a permit application for the Undertaking to place structures in, under, or over navigable waters of the U.S. pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and for the placement of dredged or filled material in the Waters of the U.S. pursuant to Section 404 of the Clean Water Act (33 USC 1344; 33 CFR 323) and the issuance of a permit under either statute will be a federal action associated with the Undertaking that requires compliance with Section 106 of the NHPA and 36 CFR 800 and USACE has

Boardman to Hemingway Programmatic Agreement

designated that the BLM will serve as lead federal agency for Section 106 of the NHPA compliance pursuant to 36 CFR 800, the regulations implementing Section 106 of the NHPA of 1966, as amended (16 USC 470 f) and is a Signatory to this PA; and

WHEREAS, the BLM has determined the Undertaking may have direct, indirect and cumulative effects on properties listed in, or eligible for the National Register of Historic Places (NRHP); and

WHEREAS, the BLM has notified the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the NHPA (16 U.S.C 470 as amended) and its implementing regulations (36 CFR 800.13) and the ACHP has elected to participate in consultations and is a Signatory to this PA; and

WHEREAS, the Undertaking crosses both Oregon and Idaho, and the SHPOs for each state are participating in this consultation and are Signatories to this PA; and

WHEREAS, the Undertaking does not physically cross into Washington but the Area of Potential Effect (APE) for indirect effects on one of the alternatives extends into Washington and the Department of Archaeology and Historic Preservation (DAHP) is a Signatory to this PA; and

WHEREAS, the APE extends onto the Umatilla Indian Reservation (UIR) and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) THPO is a Signatory to this PA; and

WHEREAS, the National Park Service (NPS) has been invited to participate in this consultation in its capacity as administrator of the Oregon National Historic Trail, as this Undertaking may affect segments of the Oregon National Historic Trail and is an Invited Signatory to this PA; and

WHEREAS, the Undertaking may have an Adverse Effect under NHPA Section 106 on the Oregon National Historic Trail and the Oregon-California Trails Association (OCTA) is committed to protect emigrant trails by working with government agencies and private interests, OCTA has been invited to participate in consultation and is a Concurring Party to this PA; and

WHEREAS, the Undertaking may have an Adverse Effect under NHPA Section 106 on some of Oregon's 16 legislatively designated historic trails, as well as some National Historic Trails in Oregon and the Governor's Oregon Historic Trails Advisory Council (OHTAC) is committed to evaluating and recording trail conditions and making recommendations for marking, interpretation, education, and protection for Oregon's Historic Trails, and OHTAC has been invited to participate in consultation and is a Concurring Party to this PA; and

WHEREAS, the Undertaking may have an indirect effect on a segment of the Oregon Trail within the Naval Weapons System Training Facility of Boardman, and the US Department of the Navy, has been invited to participate in consultation and may be a Concurring Party to this PA; and

Comment [ACHP1]: Consider rewording to "has been invited to."

Boardman to Hemingway Programmatic Agreement

WHEREAS, the Undertaking does not physically cross into Washington but the Area of Potential Effect (APE) for indirect effects on one of the alternatives extends into Washington and the Umatilla National Wildlife Refuge and the US Fish and Wildlife Service has been invited to participate in consultation and may be a Concurring Party to this PA; and

WHEREAS, the BLM has initiated government-to-government consultation with the following Indian tribes that may be affected by the proposed Undertaking and invited them to be consulting parties to this PA. The CTUIR, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, Nez Perce Tribe, Yakama Nation, Confederated Tribes of the Colville Reservation, Burns Paiute Tribe, Fort McDermitt Paiute and Shoshone Tribe, Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, and the Confederated Tribes of Warm Springs Reservation of Oregon with the further understanding that, notwithstanding any decision by these Tribes, the BLM will continue to consult with these Tribes throughout the implementation of this PA pursuant to 36 CFR 800.2(c); and

WHEREAS, the CTUIR, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, the Burns Paiute, the Fort McDermitt Paiute and Shoshone-Bannock Tribes of the Fort Hall Indian Reservation have expressed interest in the Undertaking and desire to review studies conducted on their ancestral lands.

Comment [GJL2]: . Also may want to add a paragraph on tribes who may sign the agreement as concurring parties.

WHEREAS, the Proponent has participated in consultation per 36 CFR 800.2(c)(4), agrees to carry out the terms of this agreement under BLM oversight, and is an Invited Signatory to this PA; and

WHEREAS, it is the position of Oregon Department of Energy (ODOE) that the execution of this PA can assist the Energy Facility Siting Council (EFSC), to which ODOE serves as technical staff, in determining whether the Undertaking complies with EFSC's historic, Cultural and Archaeological standard at meeting its responsibilities regarding the protection of cultural resources as required in OAR 345-022-0090 and OAR 345-021-00010(1)(s) during its review of the for the Undertaking lands outside of tribal lands in Oregon when determining whether to issue a site certificate application for the Undertaking; and ODOE is a Concurring Party to this PA; and

Comment [ACHP3]: Check capitalization.

WHEREAS, the project does not physically cross into Washington but the Area of Potential Effect (APE) for indirect effects on one of the alternatives extends into Washington and the Umatilla National Wildlife Refuge and the US Fish and Wildlife Service is a concurring party to this PA; and

Comment [ACHP4]: What is the difference between this whereas and the one in yellow at the top of this page?

WHEREAS, reference to "parties to this agreement" shall be taken to include the Signatories to this PA, Invited Signatories, and Concurring Parties. Tribes and other parties consulting under Section 106 of the NHPA may decline to execute this document; however, the decision not to execute shall not preclude their continued or future participation as consulting parties to this Undertaking; and

WHEREAS, all parties agree that the PA will serve as the definitive document delineating Section 106 procedures to be followed for the undertaking, if actual or construed discrepancies arise between the PA's requirements and direction found in other documents, or appendices to the PA, the requirements set forth in the main body of the PA will be followed; plans/documents completed prior to execution of the PA will not necessarily require revision due to these circumstances; and

Boardman to Hemingway Programmatic Agreement

NOW, THEREFORE, the Signatories to this PA agree that the proposed Undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties and to satisfy all Section 106 NHPA responsibilities for all aspects of the Undertaking.

STIPULATIONS

The BLM will ensure that the following stipulations are carried out:

I. Area of Potential Effects (APE)

A. Defining the APE

The BLM, in consultation with the parties to this agreement, has defined and documented the APE based on potential direct, indirect and cumulative effects. The APE will apply to all lands regardless of management status that may be affected by the transmission line corridor, staging areas, access roads, borrow areas, transmission substations, or other related transmission infrastructures for this Undertaking. The APE, as defined and documented, is a baseline for survey and inventory.

1. Direct Effects—The following definition of direct effects APE takes into account ground-disturbing activities associated with the Undertaking:

- a. The direct effects APE for the above ground transmission line will be 250 feet on either side of centerline (500 feet total) for the ROW and extend the length of the Undertaking, approximately 300 miles.
- b. The direct effects APE for new or improved access roads will be 100 feet either side of centerline (200 feet total). Existing crowned and ditched or paved roads will be excluded from inventory.
- c. The direct effects APE for existing unimproved service roads will be 50 feet either side of centerline (100 feet total).
- d. The direct effects APE for the staging areas, borrow areas, substations and other ancillary areas of effects will include the footprint of the facility and a buffer of 200 feet around the footprint of the proposed activity.
- e. The direct effects APE for pulling/tensioning sites that fall outside the ROW will be a 250 foot radius around these points.
- f. The direct effects APE for borehole locations needed for geotechnical studies conducted as part of detailed engineering will include a 250 foot radius area centered on the borehole location if outside the transmission line direct effects APE.
- g. The direct effects APE for operation and maintenance activities will be the same as the APE's described in a.-f. above and within the area of the ROW grant.

Boardman to Hemingway Programmatic Agreement

2. Indirect Effects

- a. The APE for indirect effects on historic properties will include, but not be limited to, the visual, audible and atmospheric elements that could adversely affect NRHP listed or eligible properties. Consideration will be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the NRHP.
- b. The indirect effects APE for the Undertaking will extend generally for five miles or to the visual horizon, whichever is closer, on either side of the centerline of the proposed alignment and alternative routes.
- c. Studies for previous 500 kV lines have identified noise created by corona and electro-magnetic fields as possible indirect effects for transmission lines. These same studies indicate that these effects are greatest immediately under the line and within the APE for direct effects. Although they may on occasion be measured as far as 300 feet from the centerline of a 500 kV line, data gathered for this Undertaking indicate that the noise created by corona and electro-magnetic fields will be limited to within the inventoried indirect effects APE.
- d. Where the indirect APE includes Traditional Cultural Properties (TCPs), National Historic Trails (NHTs), and other classes of visually-sensitive historic properties, additional analyses may be required and the indirect APE may need to be modified accordingly. These areas will require analysis on a case by case basis.

3. Cumulative Effects

- a. The identification of the APEs will consider cumulative effects to historic properties as referenced in 36 CFR 800.5. Cumulative effects may be direct and/or indirect, or reasonably foreseeable effects caused by the Undertaking that may occur over time, be farther removed in distance or be cumulative.

B. Modifications to the APE

1. An APE may be modified where tribal consideration, additional field research or literature review, consultation with parties to this agreement, or other factors indicate that the qualities and values of historic properties that lie outside the boundaries of the APEs may be affected directly, indirectly and/or cumulatively.
2. Any party to this agreement may propose that the APEs be modified by submitting a written request to the BLM providing a description of the area to be included, justification for modifying the APE(s), and map of the area to be included. The BLM will notify the parties to this agreement of the proposal with a written description of the modification requested within 15 days of receipt of such a request. From the date of notification, the BLM will consult with the parties to this agreement for no more than 30 days to reach consensus on the proposal.

Boardman to Hemingway Programmatic Agreement

3. If the parties to this agreement cannot agree to a proposal for the modification of the APEs, then the BLM will consider their concerns and will render a final decision within 30 days after the consultation period closes.
4. For all modifications to the APE(s) the BLM will provide a written record of the decision to the parties to this agreement.
5. Amending the APEs will not require an amendment to the PA.
6. Minor changes to the APE during construction of the Undertaking that may require additional fieldwork, regardless of land ownership, may be handled through the BLM ROW grant variance process in accordance with stipulation VII.C.4.c.

II. Identification of Cultural Resources

- A. For the purposes of this document cultural resources are defined as archaeological, historical or architectural sites, structures or places that may exhibit human activity or occupation and/or may be sites of religious and cultural significance to tribes (excerpted from BLM Manual 8100).
- B. All cultural resources within the APEs that will have achieved 50 years of age or more at the time of the completion of construction, defined as “the cessation of all construction activities associated with the Undertaking”, or shall have achieved “exceptional significance” (National Register Bulletin 15, Criteria Consideration G) shall be identified and evaluated.
- C. The BLM will ensure that work undertaken to satisfy the terms of this PA and to adequately identify and document cultural resources that may be affected by this Undertaking and as described herein, will be consistent with ACHP and NPS guidance. The BLM will also ensure that all identification, evaluation, assessment and treatment of cultural resources will be conducted by, or under the direct supervision of, persons with applicable professional qualifications standards set forth in the Secretary of the Interior’s Standards for Archaeology and Historic Preservation (48 FR 44716 Federal Register, September 29, 1983) and the federal agency or SHPOs / THPO guidance or permitting requirements.
- D. The Proponent will directly fund all fieldwork, analysis, reporting, treatment and curation. Fieldwork will be conducted only after the Proponent has obtained the appropriate federal and state permits for such fieldwork. Depending on land ownership, the appropriate federal or state agency will require fieldwork authorizations to conduct inventories on public lands upon receipt of an application from the Proponent and within the timeframes stipulated in the land-managing agency’s procedures.
- E. The Proponent will conduct the identification effort and inventory of cultural resources in order to identify historic properties for this Undertaking through the following series of steps including a literature review and phased field surveys. Details on these surveys are found in the Archaeological Survey Plan (Appendix A) and the Visual Assessment of Historic Properties (VAHP) Study Plan (Appendix B).

Boardman to Hemingway Programmatic Agreement

- 1 1. Class I Literature Review—The Proponent will conduct a literature review/record search
2 and include a review of all cultural resource investigations and all cultural resources
3 previously identified within a corridor two miles wide on either side of the transmission
4 centerline (4 miles total) and will include the proposed and alternative routes to be
5 considered for detailed analysis in the Draft Environmental Impact Statement (DEIS). The
6 literature review/record search on the UIR will consider a corridor one mile wide on either
7 side of the transmission centerline (2 miles total).

8 The Proponent will also conduct a literature review and record search for the indirect APE,
9 which will comprise a corridor five miles wide on either side of the transmission centerline
10 (10 miles total) and will include the proposed and alternative routes to be considered for
11 detailed analysis in the DEIS. The literature review for the indirect APE will at minimum
12 consist of review of ethnographic literature, General Land Office (GLO) and other available
13 historic maps, an electronic search of the National Register Information System (NRIS), the
14 Oregon Historic Sites Database, Archaeological Survey of Idaho Database, the Idaho Historic
15 Sites Inventory forms, the DAHP [WISSARD](#) Database, the Washington Information System
16 for Architectural and Archaeological Records Data (WISAARD), the CTUIR THPO site
17 database, local landmarks and registers, and an investigation of historic and contemporary
18 aerial photography. Information on cultural resources existing in the indirect APE that may
19 require further analysis will also be sought from parties to this agreement.

- 20 2. Class II Sample Inventory—The Proponent will undertake a Class II pedestrian inventory to
21 document all cultural resources within the 15 percent sample area of the direct effects APE
22 for the Proponent's proposed alignment and all analyzed DEIS alternatives. The 15 percent
23 sample survey will consist of a series of one-mile long by 500-foot-wide units, centered on
24 the centerline of the Proponent's proposed alignment and all analyzed DEIS alternatives.
25 The Class II survey will also record the location of areas judged to have high potential for
26 buried cultural resources which may require further subsurface probing, as discussed under
27 stipulation II.E.7.

- 28 3. Indirect Effects APE Inventory —The Proponent will identify historic properties within the
29 indirect APE that may be affected by the visual, atmospheric and audible elements of the
30 Undertaking.

31 The visual elements of the indirect APE will be identified using Geographic Information
32 Systems (GIS) viewshed analysis and field verification. Details regarding the process for
33 indirect visual effects are provided in the VAHP Study Plan (Appendix B). The BLM will
34 consult with tribes to identify TCPs and properties of religious and cultural significance
35 within the APE.

36 A reconnaissance level survey will be conducted to identify potential historic properties.
37 The preliminary results report will be distributed to the federal agencies party to this
38 agreement, SHPOs, THPO and tribes for consultation on eligibility as per stipulations V. and
39 VIII. At their discretion, any federal agency may decline receipt and review of the report by
40 notifying the BLM in writing prior to report distribution. Intensive level survey will be

Boardman to Hemingway Programmatic Agreement

conducted on select properties upon consultation with the appropriate parties to this agreement (the BLM to determine based on location, state and/or jurisdiction, property ownership, etc.). The reconnaissance and intensive level surveys will be documented in reports.

Once historic properties are identified, the BLM will consult with additional and relevant technical studies (such as the noise and electromagnetic field studies) and parties to this agreement to assess indirect effects from atmospheric or audible elements that may diminish the integrity of the property's significant historic features (36 CFR 800.5(a)(2)(v)).

4. Initial Class III Intensive Level Inventory—The Proponent will complete a 100 percent Class III inventory to document all cultural resources within the direct effects APE of the BLM-preferred alternative(s) and all roads and facilities related to the Undertaking on lands where access has been granted, including all federal, state, and private lands. Previously surveyed areas from the Class II inventory will count toward the 100 percent inventory. This survey will also record the location of areas judged to have high potential for buried cultural resources which may require further subsurface probing, as discussed under stipulation II.E.7.
5. Class III Intensive Level Inventory of Geotechnical Testing APE—The Proponent will complete Class III surveys around each proposed borehole location for areas outside the direct effects APE. See stipulation I.A.1.f.
6. Preconstruction Class III Intensive Level Inventory—The BLM shall ensure that Class III inventory is completed by the Proponent for all areas within the direct effects APE that have not been subject to previous Class III inventories. These will include any areas where access was previously denied or where there are modifications to the Undertaking, such as modified access roads or lay-down yards that are identified after the ROD has been issued.

Comment [s5]: All current geotechnical testing is planned for the area inside the direct APE, which will already have been surveyed. This provision requires testing for any new sites identified outside the direct APE.

7. Subsurface Investigations for Purposes of Identifying Cultural Resources—*BLM will employ reasonable and good faith efforts to identify historic properties, in accordance with ACHP guidance.* There will be neither collection of artifacts nor disturbance of ground during initial Class II and Class III intensive level pedestrian cultural resources surveys. *Wherever possible, existing information, professional judgment and situational flexibility will prevail in an effort to be efficient, pragmatic and protect the resources during the identification of historic properties. The use of subsurface investigations may include a provision for modeling using a sampling strategy as well as a provision for reporting the results and the validity of the methods.*

Comment [GJL6]: This section has been added to address concerns voiced by consulting parties over subsurface testing strategies. See yellow highlights in subsequent sections.

Comment [ACHP7]: Please simplify if possible; it should help clarify the meaning.

Areas identified as possessing a high potential for buried cultural resources located within the direct APE may be subjected to subsurface probing to determine the presence or absence of cultural resources, where ground disturbing activities will occur. *Selection of areas with a high potential for buried deposits, which include factors such as proximity to water, deep soils, geological features etc. which may be coupled with low surface visibility,*

Boardman to Hemingway Programmatic Agreement

will be based on professional judgment, in consultation with the BLM, and comparison with existing site context in the area.

The BLM will develop a research design and sampling strategy for the subsurface investigation, in conjunction with the Proponent, and parties to this agreement, prior to undertaking any such investigation. The details of the sampling strategy for the subsurface investigation will be encompassed within the HPMP.

The BLM will consult with Indian tribes and parties to this agreement regarding the areas proposed for this testing prior to commencement of any ground disturbing or collection activity and appropriate federal and state permits will be obtained.

Comment [ACHP8]: We usually see the word consultation or coordination in stipulations like these.

7.8. Subsurface Investigations Alternatives—For certain classes of resources, less invasive technologies, such as remote sensing, may be appropriate. Such methods may be considered as an alternative to subsurface testing.

F. The BLM will make a reasonable and good faith effort to identify properties of religious and cultural significance to Indian tribes, through tribal participation. Identification of historic properties of religious and cultural significance to Indian tribes will occur through government-to-government consultation and ethnographic studies.

The BLM will make a reasonable and good faith effort to identify TCPs as discussed in *National Register Bulletin #38, Guidelines for Evaluating and Documenting Traditional Cultural Properties*, of the NPS guidance, through the consultation and/or through ethnographic studies. Reports identifying such historic properties will be prepared with the participation of the associated group.

G. The BLM will ensure that the Proponent completes draft and final reports for the steps of stipulation II. The BLM will send the reports out to the parties to this agreement for review as described in stipulation V. Review times will be 30 days unless otherwise agreed to.

III. Evaluation and Determination of Eligibility

A. The BLM, in consultation with the parties to this agreement, will determine the NRHP eligibility of cultural resources within the APEs, pursuant to 36 CFR 800.4(c)(1). NRHP evaluations may be conducted in phases as project plans are refined. That is, initial evaluations may be followed by more thorough evaluations or final evaluations as the APEs become better defined. Cultural resources that possess some or all of the characteristics of both archaeological and built environment resources, such as cultural landscapes and trails, shall be evaluated according to the provisions of stipulations C. and D. of this section.

B. Determinations of eligibility will be consistent with applicable SHPO / THPO guidelines in each respective jurisdiction. Determinations of eligibility require concurrence by the SHPO / THPO as detailed in stipulation III.G.

C. Determinations of eligibility will be based on reasonable efforts using available knowledge and data such as existing surface manifestations of the site and cultural context from other site

Boardman to Hemingway Programmatic Agreement

investigations, as well as environmental/paleoenvironmental setting. Subsurface investigation may be considered as a tool to determine eligibility on an as needed basis but must be prudent and minimize disturbance of cultural deposits. The research design and sampling strategy outlined under Stipulation II. F. will include provisions for the determinations of eligibility. Such testing will only occur in areas that cannot be avoided and will be directly impacted by the Undertaking. Sites may be determined not eligible based on professional judgment using factors such as shallow soils, gravelly substrate, or bedrock, lack of morphologically or temporally diagnostic tools, low density and/or low artifact diversity and minimal potential to yield information under the National Register Criteria.

Comment [ACHP9]: Delete unneeded space.

B.D. Archaeological Resources

1. Initial evaluations for archaeological resources may rely on surface observations, additional research or remote sensing. If a site is recommended as "eligible" during the initial evaluation and will be affected by the Undertaking, subsurface investigations (i.e. archaeological testing) may be required to make a final determination of NRHP eligibility, but shall be undertaken only after consultation with affected tribes.
2. In cases where surface observations, additional research or remote sensing are not sufficient to provide an initial recommendation of NRHP eligibility, the recorder will recommend the resource as requiring further investigation to assess eligibility. Further subsurface investigations will be undertaken in the event that final design will directly impact the resource, per stipulation II.E.7.

Subsurface investigation strategy shall include an assessment of the depositional environment and objectives for subsurface testing; methods to be employed for subsurface testing and probing; proposed disposition of materials associated with subsurface testing and probing; provisions for reporting and consultation on results of testing. If the site is found ineligible, the evaluation will be reported per the procedures established in stipulation III. g. If the site is found to be eligible, then effects will be assessed as outlined in stipulation IV, and a mitigation plan will be prepared, as applicable per VII.C.2.

Subsurface investigation strategy shall be subject to review and consultation per the terms of stipulations V. and VI. of this agreement.
3. In cases where surface observations are adequate to support a recommendation that the resource is "not eligible" for listing in the NRHP, this evaluation will be reported per the procedures established in stipulation III.G.

C.E. Built Environment

- The BLM, in consultation with the parties to this agreement, will determine NRHP eligibility of built environment resources (e.g., buildings, structures, objects, districts, and sites with above ground components), pursuant to 36 CFR 800.4(c)(1).
1. Initial assessment of eligibility for built environment resources will take into account the resources' age and integrity (location, setting, design, materials, workmanship, feeling and

Boardman to Hemingway Programmatic Agreement

association) per the guidance provided in NRHP Bulletin 16A, and per other applicable NPS and state guidance.

2. Resources determined NRHP eligible per initial assessment and assessed as affected by the Undertaking per the procedures established in stipulation IV. of this PA will be reassessed to verify their eligibility in terms of the resources' association with the NRHP criteria of significance. This secondary assessment may involve additional research into the history, events and people associated with the resource, as well as more detailed recordation of the resources' physical attributes and character-defining features.

D.F. Historic Trails

The BLM, in consultation with the parties to this agreement, will determine the National Register eligibility pursuant to 36 CFR 800.4(c)(1). Historic trails will be evaluated for eligibility as historic properties including linear resources along with associated trail sites such as camps, associated markers, glyphs or other trail elements. For designated National Historic Trails, such as the Oregon Trail, the trail elements, as well as trail segments, will be evaluated as contributing or non-contributing in terms of National Register eligibility based on their integrity (primarily for feeling, association, location and setting).

BLM may seek input and utilize existing information and strategies from other agencies and groups, such as the NPS and trail associations, as well as consulting parties in determining the National Register eligibility of sites and trail segments.

E.G. Traditional Cultural Properties

Like all historic properties, to be considered eligible a TCP must be a district, site, building, structure, or object that meets at least one of the four criteria established by the NRHP. It must also be associated with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. TCPs apply to groups of every ethnic origin that have properties to which they ascribe traditional cultural value (NRHP Bulletin 38).

To identify TCPs, the BLM will rely on NRHP Bulletin 38 and other NPS guidance, and consultation with Indian tribes, ethnic groups or communities ascribing traditional significance to an area. The BLM will make its determinations of eligibility based on consultation and information from literature reviews, ethnographies, traditional use studies, field inventories, oral histories, interviews, and other forms of research.

F.H. Properties of Religious and Cultural Significance to Indian Tribes

Federal agencies are required to consult with Indian tribes to identify properties of religious and cultural significance and to determine if they are eligible for the NRHP (NHPA Section 101 (d)(6)(B) and 38 CFR 800.2(c)(2)). The BLM acknowledges that Indian tribes possess special expertise in assessing the eligibility of properties that may possess religious and cultural significance to them (NHPA Section 101 (d)(6)(A) and 36 CFR 800.4(c)(1)). Unlike TCPs, the

Boardman to Hemingway Programmatic Agreement

determinations of NRHP eligibility of such properties are not tied to continual or physical use of the property (ACHP Handbook on Consultation with Indian Tribes 2012).

To identify properties of religious and cultural significance, the BLM will rely on consultation with Indian tribes. The BLM will make its determinations of eligibility based on consultation and information from literature reviews, ethnographies, traditional use studies, field inventories, oral histories, interviews, and/or other forms of research.

G.I. Reporting on Initial and Final Recommendations of NRHP Eligibility

1. The BLM will distribute recommendations of initial NRHP eligibility to parties to this agreement for review and comment following 36 CFR 800.4(c). After a 30 day review period, the BLM will consider all comments and consult with parties to this agreement before submitting its determinations of eligibility, with all comments and responses, to the applicable SHPOs / THPO for concurrence. The BLM will then seek consensus on its determinations of eligibility with the appropriate SHPOs / THPO for all properties regardless of ownership.
 - a. If the applicable SHPOs / THPO, tribes, and BLM agree that the cultural resource is eligible, an assessment of effects will be completed in accordance with stipulation IV.
 - b. If the applicable SHPOs / THPO, tribes, and BLM agree that the cultural resource is ineligible, then the resource will receive no further consideration under this PA.
 - c. If the applicable SHPOs / THPO, tribes, and BLM do not agree on eligibility, the BLM will discuss issues of eligibility with the parties to this agreement and continue to consult to reach consensus. If agreement cannot be reached within 30 days, then the BLM will obtain a determination of eligibility from the Keeper of the NRHP pursuant to 36 CFR 800.4(c)(2) and 36 CFR 63. The Keeper's determination will be final. The BLM will distribute the Keeper's comments to the parties to this agreement.
2. The BLM will distribute the results of the final evaluations to parties to this agreement for review and comment following 36 CFR 800.4(c). After a 30 day review period, the BLM will submit the final determinations of eligibility, with all comments to the applicable SHPOs / THPO for concurrence. The BLM will then seek consensus on the final determination of eligibility with the appropriate SHPOs / THPO for all properties regardless of ownership.

IV. Assessment of Effects

- A. The BLM, in consultation with the parties to this agreement, will assess the direct, indirect and cumulative effects of this Undertaking on historic properties consistent with 36 CFR 800.4(d) and identify effects on each historic property within the APEs in accordance with the criteria established in 36 CFR 800.5(a)(1-2), and provide the parties to this agreement with the results of the finding following 36 CFR 800.11(e)(4-6), as outlined under stipulation V. The assessment of effects will serve as the basis for the development of the Historic Properties Management Plan (HPMP).

Boardman to Hemingway Programmatic Agreement

- 1 B. The BLM will consult with the parties to this agreement to seek ways to avoid or minimize
2 adverse effects to historic properties. If historic properties cannot be avoided, subsurface
3 investigation may be necessary for archaeological sites within the direct effect APE which may
4 be adversely affected. Determination of the site boundaries in relation to the direct effect APE,
5 and actual area of ground disturbance, may be undertaken through subsurface investigation
6 to aid in developing alternative design and or mitigation strategies. If adverse effects cannot
7 be avoided the BLM will consult with the parties to this agreement to determine appropriate
8 mitigation measures to be detailed in the HPMP.
- 9 C. The Proponent has developed a VAHP Study Plan, (Appendix B) in consultation with federal
10 agencies party to this agreement, SHPOs, THPO and tribes, to assess whether the Undertaking
11 will introduce visual effects that may alter the characteristics that qualify the historic property
12 for the NRHP or that may diminish the integrity of the property's setting, feeling and/or
13 association. The guidelines for conducting the assessment of visual effects of the Undertaking
14 are located in the VAHP. The inventory will focus on indirect visual effects. Other potential
15 indirect effects, including but not limited to atmospheric and audible elements, will be
16 addressed as per stipulation IV.A. above.
- 17 D. The Proponent will prepare maps indicating the extent of electromagnetic fields, corona and
18 noise generated by the proposed Undertaking as well as the distribution of identified historic
19 properties in the APE. The BLM will employ these maps in the agency's assessment of effects
20 and will consult with parties to this agreement per the procedures outlined in stipulation V.
- 21 E. The BLM, in consultation with the parties to this agreement, will broadly assess cumulative
22 effects under Section 106 in order to identify all reasonably foreseeable, potentially adverse
23 effects, such as effects due to increased access, as a result of the Undertaking (36 CFR 800.5
24 (a)(1)). Potential cumulative or reasonably foreseeable effects will be based on the APEs for
25 direct and indirect effect and be addressed in the HPMP.
- 26 F. The BLM will provide all assessments of effect to historic properties in writing to the parties to
27 this agreement. Review will proceed according to the procedures and timeframes established
28 in stipulation V.
- 29 G. Disagreement regarding assessments of effect will be handled according to the procedures
30 established in stipulation XIV.

31 V. Reporting and Review of Documentation

- 32 A. Consistent with the terms and conditions of this PA, the Proponent will prepare reports of
33 cultural resource activities (inventory, evaluation, mitigation/treatment, monitoring and
34 related cultural resource actions) including associated site records and organize them for
35 distribution and review following these general guidelines:
- 36 1. Organization of reports by geographic/administrative boundaries: The Proponent will
37 prepare separate reports for those activities and cultural resources and/or historic
38 properties (a) within the state of Oregon (excluding lands within the Umatilla Indian

Boardman to Hemingway Programmatic Agreement

Reservation); (b) within the state of Idaho; and (c) on lands within the Umatilla Indian Reservation.

a. The Proponent will prepare reports (including report revisions) of activities within the state of Oregon (excluding the Umatilla Indian Reservation) for the BLM's distribution to the Oregon SHPO, federal agencies, applicable parties to this agreement and tribes.

b. The Proponent will prepare reports (including report revisions) of activities within the state of Idaho for the BLM's distribution to the Idaho SHPO, federal agencies party to this agreement and tribes.

c. The Proponent will prepare reports (including report revisions) of activities, cultural resources and/or historic properties on tribal lands administered exclusively by the CTUIR for the BLM's distribution to both the THPO and Chairman of the CTUIR.

2. Reports shall clearly identify land ownership and administrative jurisdiction for both (a) lands covered by the report and (b) cultural resources/historic properties discussed in the report(s).

B. At the conclusion of the phases of fieldwork described under stipulation II.E, the Proponent will submit the draft report for the phases to the lead BLM office for distribution to the appropriate parties to this agreement in each state.

C. Each report will follow appropriate state guidelines and formats including recommendations of eligibility and effect. Reports will include appropriate site inventory forms and recommendations on the NRHP eligibility of cultural resources (36 CFR 800.4(c)).

D. The BLM will consolidate comments received from parties to this agreement on the reports and submit comments to the Proponent within 60 days of receipt of all comments. The Proponent will produce a revised report addressing these comments within 30 days of receipt.

E. The BLM will submit revised reports to the appropriate agencies, SHPOs / THPO, tribes and applicable parties to this agreement for review.

F. All reviews of reports may occur within 30 calendar days of receipt of the report. Comments may address issues such as the adequacy of inventory, methods of assessment and reporting, the eligibility of historic properties identified during each phase (36 CFR 800.4(c)), and the effects of the Undertaking on any historic properties (36 CFR 800.4(d) and 36 CFR 800.5). Reviewers will notify the lead BLM office if the 30 day review time frame cannot be met. Within 10 days of receipt of a request for an extension, the BLM will determine if the request will be granted and send written notification to the requesting party. After 30 days, provided there is no request for extension, the BLM will submit all comments to the Proponent for the Proponent to address per the process outlined in stipulation V.D.

G. For reports that are not time sensitive or are in excess of 200 pages, the BLM may expand review times beyond 30 calendar days.

Boardman to Hemingway Programmatic Agreement

H. Versions of reports redacted (see stipulation VIII.) by the BLM for sensitive information, such as site-specific locations and names, may also be distributed to other parties to this agreement for review and comment.

I. The Proponent will prepare a HPMP per the terms specified in stipulation VII.

J. Prior to any eventual decommissioning of the Undertaking, the Proponent will prepare a plan for protecting historic properties per the terms in stipulation VII.C.5.

K. The Proponent will prepare a comprehensive state specific report for each respective SHPO / THPO that covers all pre-construction surveys and eligibility determinations performed for this Undertaking. A comprehensive report may also be provided to parties to this agreement in accordance with stipulation VIII. The comprehensive report will include the completed 15 percent sample surveys for non-selected alternatives and the full Class III inventory of the selected route that the Proponent will be permitted to construct and operate. The comprehensive report will be produced no later than three years after the final surveys and will be considered the final Class III inventory report(s).

L. In addition, the Proponent will produce one or more separate report(s), such as to cover minimization, mitigation, monitoring and construction related activities, no later than three years after any mitigation has been undertaken in conjunction with the HPMP.

Comment [s10]: Do we need to insert language here clarifying the nature and content of this report and the question of project surveys completed after access issues such as condemnation, variances etc. ? Will these be completed within 3 years?

VI. Consultation

A. Through government-to-government consultation with Indian tribes, based on the U.S. Constitution and Federal treaties, statutes, executive orders and policies; the BLM, in consultation with appropriate federal agencies, will make a good faith effort to identify properties that have traditional religious and cultural importance to Indian tribes and to determine whether they are historic properties. Discussion of these properties may be submitted as a separate report, such as an ethnographic study. Ethnographic studies are not required, but may be requested by tribes. Confidentiality concerns expressed by tribes for properties that have traditional religious and cultural importance will be respected and will be protected to the extent allowed by law. See stipulation VIII.

B. BLM will ensure that tribes and parties to this agreement will be kept informed as to the development of the Undertaking and engaged in review and comment on all pertinent documents associated. The BLM will seek, discuss and consider the views of the consulting parties throughout the Section 106 process. Such consultation may take a variety of forms in order to accommodate the consultation process with different tribes and parties to this agreement. The consultation will occur through previously established protocols, Memoranda of Understanding and/or forums established for the Undertaking. BLM will consult with tribes and parties to this agreement during the identification of cultural resources, the determination of NRHP eligibility, determination of effect and avoidance and mitigation steps of the process. While the nature of consultation is fluid and the input may vary from tribes

Boardman to Hemingway Programmatic Agreement

and parties to this agreement, in general, the procedures and schedule for review of documents outlined in stipulation V. will be followed.

VII. Historic Properties Management Plan (HPMP)

A. The Proponent will begin to draft an outline of the HPMP in consultation with the parties to this agreement following execution of the PA that includes mitigation options for anticipated general classes of historic properties that may be affected by the Undertaking. This outline may include options for treatment of specific properties, as discussed under stipulation VII.C.2, if the details of the historic property are available and the exact effects have been determined. The final HPMP, including protection measures, property-specific mitigation plans, and monitoring plans will be finalized prior to the NTP.

Comment [GJL11]: To help define this document separately from the mitigation plans

Comment [GJL12]: Replaced prior to execution of the ROD with PA since some Class III surveys may not be completed prior to the ROD.

B. The draft HPMP will characterize historic properties identified within the APE and will be used as a guide to address pre-construction and post-construction treatment measures to avoid, minimize and mitigate adverse effects to historic properties identified through subsequent phases of the Undertaking. The draft HPMP will also broadly identify classes of historic properties, relevant research, and potential data gaps in research for classes of properties present in the APE and propose a range of resource-specific strategies, such as for historic trails, including but not limited to mitigation and monitoring, to address reasonably foreseeable direct, indirect and/or cumulative adverse effects that may be caused by the Undertaking. The BLM will consult with the parties to this agreement to obtain comments and recommendations for proposed treatment measures to be included in the HPMP per the procedures established in stipulation V., VI.

C. Wherever feasible, avoidance and preservation in place shall be the preferred treatment for historic properties located within the APE. Avoidance may include design changes or relocation of specific components of the Undertaking and/or use of fencing or barricades to limit access to identified historic properties. For historic properties that cannot be avoided the HPMP will include the following plans and provisions to minimize or mitigate direct, indirect and/or cumulative adverse effects to historic properties that may result at any time during the Undertaking.

1. Protection Measures

The HPMP shall include measures to protect identified historic properties from adverse effects that may result from the Undertaking. These measures may include but not be limited to placement of barricades and fencing, notices to law enforcement, seasonal restrictions, and other appropriate measures.

2. Mitigation Plans

- a. All historic properties adversely affected by the Undertaking will be subject to property-specific mitigation plans to be drafted after issuance of the ROD to resolve adverse effects as determinations of effect for these properties are made pursuant to stipulation IV. The mitigation plans will be included in the final HPMP.

Boardman to Hemingway Programmatic Agreement

- b. Mitigation plans shall include appropriate measures to resolve adverse effects to the qualities of the historic property that make it eligible for listing in the NRHP. All mitigation plans will be consistent with Secretary of Interior Standards for archaeological, historical and architectural documentation; the ACHP Section 106 archaeology guidance and other guidance from the appropriate SHPOs / THPO.
- c. For effects to archaeological sites that will be mitigated through data recovery, mitigation plans shall include but not be limited to a research design that articulates research questions; data needed to address research questions; methods to be employed to collect data; laboratory methods employed to examine collected materials; and proposed disposition and curation of collected materials and records.
- d. Mitigation plans for direct effects to historic properties eligible for listing in the NRHP under criteria other than or in addition to criterion D shall articulate the context for assessing the properties' significance, an assessment of the character-defining features that make the property eligible for listing in the NRHP, and an assessment of how the proposed mitigation measures will resolve the effects to the property.
- e. Mitigation plans for indirect effects to historic properties eligible under any NRHP criteria shall include an assessment of the character-defining features that make the property eligible for listing in the NRHP; the nature of the indirect effect; an evaluation of the need for long-term monitoring; and an assessment of how the proposed mitigation measure(s) will resolve the effects to the property.
- f. Mitigation plans for direct, indirect, and cumulative effects to historic properties may include, but will not be limited to:
- 1) Completion of NRHP nomination forms
 - 2) Conservation easements
 - 3) Purchase of land for long-term protection of sites
 - 4) Partnerships and funding for public archaeology projects
 - 5) Partnerships and funding for Historic Properties interpretation
 - 6) Print or Media publication
- g. Mitigation plans shall be subject to the review and consultation procedures outlined in stipulation V. of this agreement.
3. Monitoring Plan
- A Monitoring Plan will be developed as a subsection of the HPMP for implementation during construction, operation, and maintenance.
- a. This plan will address monitoring for compliance with stipulations of the HPMP, as well as a potential strategy to avoid, minimize, or mitigate direct, indirect and/or cumulative adverse effects to historic properties at any time during the Undertaking.

Boardman to Hemingway Programmatic Agreement

- b. All monitoring plans shall identify monitoring objectives and the methods necessary to attain these objectives, and in particular address those areas determined under the inventory to show a high probability for buried cultural deposits.

Monitoring shall, as appropriate, include archaeological inspection of construction activities by personnel either meeting the Secretary of Interior Professional Qualification standards or working under the direct supervision of a person meeting the standards. Provisions for tribal monitors will meet the above qualifications as well, per the discretion of consulting tribes.

- c. Any cultural resources, human remains or funerary objects discovered at any time during construction, construction monitoring, or operation and maintenance activities will be treated in accordance with the Inadvertent Discovery Plan (IDP, Appendix C). The IDP shall also be appended to the HPMP.

4. Operations and Maintenance

The HPMP shall include operations and maintenance to address all activities related to the functioning of the Undertaking after construction and reclamation are completed and prior to decommissioning. During operations and maintenance, the ROW grant holder will be required to follow all the terms, conditions, and stipulations concerning historic properties which are included in the POD as part of the ROW grant.

- a. The HPMP will identify those stipulations necessary to ensure the consideration of historic properties throughout the life of the ROW grant.
- b. The BLM will be responsible for ensuring that the stipulations in the BLM ROW grant are enforced for the life of the ROW grant. Federal or state agencies issuing a permit for the Undertaking will take responsibility for permit enforcement under their jurisdiction.

- c. The HPMP will identify a variance review process for construction, operations and maintenance, to address any changes in procedures that could have an adverse effect on historic properties in the ROW. The Proponent will submit a request for variance review to the BLM through BLM's third party Compliance Inspection Contractor for any proposed changes in use of equipment, additional work areas, access roads, ancillary features, reroutes or other changes that may result in ground disturbing activities outside of the previously surveyed APE. At a minimum the variance area will be checked to ensure that it falls within an area where the following have been completed:

- Class I literature review in accordance with stipulation II.E.1.
- Class III inventory in accordance with stipulation II.E.4
- Determinations of Eligibility in accordance with stipulation III.G.
- Assessment of Effects in accordance with stipulation IV.
- Protection, Mitigation and Monitoring plans in accordance with stipulation VII.C.1-3.

Boardman to Hemingway Programmatic Agreement

Where BLM determines that additional inventory is needed through the variance request process, no ground disturbance will be authorized in the variance area until the above items and any mitigation measures are completed and the variance is approved.

Additional inventory and evaluation undertaken for these variances will be reported as part of the Class III inventory and included in the comprehensive report outlined in stipulation V.K. Such documentation will tier to the previous background context in the existing reports so that only new information such as site forms, eligibility determinations etc. will be included.

- d. The BLM will develop a list of operation and maintenance activities in consultation with parties to this agreement that will NOT be subject to additional Section 106 review, and will identify the types of activities that will require additional Section 106 review.
- e. BLM administration of the ROW grant shall include appropriate BLM cultural resource specialists to participate in ROW grant review and to review compliance with stipulations or changes in procedures that may affect historic properties in the ROW.

5. Decommissioning

- a. Prior to decommissioning the Undertaking, the BLM, in consultation with the parties to this agreement, will assess the direct, indirect and cumulative effects of decommissioning this transmission line and associated facilities on historic properties, in accordance with stipulation IV. The BLM will consult with the parties in accordance with stipulation V. on assessments of effect from decommissioning to historic properties and to seek ways to avoid, minimize or mitigate adverse effects to historic properties under the HPMP stipulation VII.
- b. Review will proceed according to the procedures and timeframes established in stipulation V. Disagreement regarding assessments of effect will be handled according to the procedures established in stipulation XIV.

D. Reporting

The HPMP shall provide for the preparation of reports as called for during the implementation of plan activities, including but not limited to monitoring reports, Historic American Buildings Survey / Historic American Engineering Record / Historic American Landscapes documentation, and archaeological data recovery documentation, if applicable.

The BLM will ensure that the Proponent completes draft and final reports as called for under the implementation of the HPMP. The BLM will send the reports out to the parties to this agreement for review as described in stipulation V. Review times will be 30 days unless otherwise noted.

E. HPMP and Mitigation Plans Review

Boardman to Hemingway Programmatic Agreement

1. The Proponent shall submit the draft HPMP to the BLM for review. Distribution and review of the HPMP and associated documents shall proceed according to the terms outlined in stipulation V. of this agreement.
 2. After consultation with the parties to this agreement to address comments and/or objections, and acceptance by the SHPOs / THPO, the BLM will finalize the HPMP.
 3. Any party to this PA may object at any time to any actions proposed or the manner in which the terms of the HPMP are implemented. The objecting party must submit in writing to the BLM the reasons for, and a justification of, its objections. The BLM will consult with the party and the parties to this agreement to resolve the objection within 30 days. If the BLM determines that such objection cannot be resolved, the BLM will follow the procedures defined in this PA under stipulation XIV.
- F. The HPMP will be finalized prior to the NTP to resolve adverse direct, indirect and/or cumulative effects to historic properties that may result from this Undertaking.
- G. The Proponent, in consultation with the Signatories, will conduct a formal review of the HPMP and associated mitigation plans annually during the period of construction and every five (5) years thereafter throughout the life of this agreement.
- H. Any party to this agreement may suggest an amendment to the HPMP and should submit the contents of the amendment in writing to the BLM. The BLM will consider the amendment within 30 days of receipt and consult with the parties to reach agreement on the amendment. An amendment to the HPMP will not require an amendment to the PA. As directed by the BLM, the Proponent will incorporate the amendment into the HPMP after agreement is reached by the parties to this agreement.

VIII. Confidentiality of Cultural Resources Information

- A. The parties to this agreement acknowledge that certain information about cultural resources may be protected from public disclosure by Section 304 of the NHPA (16 USC 470w-3), ARPA (43 CFR 7.18), Idaho state law (Idaho Code § 9-340E (1,2) and Oregon state law (ORS 192.501 (11)). Parties to this agreement will ensure that all actions and documentation prescribed by this PA are consistent with the non-disclosure requirements of these laws. BLM will ensure that reports sent to parties to this agreement who do not have staff meeting the Secretary of Interior Professional Qualifications have certain confidential information such as place names, location etc. redacted. Due to the potential for inadvertent discoveries, incomplete prior evaluations or the passage of time resulting in changing perceptions of significance (36 CFR 800.4(c)(1)), cultural resources that have not been evaluated for eligibility or that have been determined Not Eligible will be afforded the same level of confidentiality under this agreement. The BLM may require data sharing agreements with parties interested in obtaining confidential information. The data sharing agreements will be written in consultation with the tribes and other parties which so request.

Comment [ACHP13]: Delete space after open parenthesis so that the citation is all on one line.

Comment [ACHP14]: I think the citation should be all on one line.

Boardman to Hemingway Programmatic Agreement

1 B. The Proponent will not retain sensitive information that tribes and interested parties authorize
2 them to collect, including but not limited to ethnographic data and similar information beyond
3 the time that it is needed to inform the decision-makers and complete compliance with the
4 terms of the PA. The Proponent will return sensitive information to the BLM, or destroy it and
5 provide written documentation of such action to the BLM.

6 **IX. Inadvertent Discovery of Cultural Resources and Human Remains on Non-Federal Lands**

7 A. The Proponent in consultation with federal agencies party to this agreement, SHPOs, THPO and
8 tribes has prepared an Inadvertent Discovery Plan (Appendix C), to include cultural resources
9 and human remains, that establishes procedures for immediate work stoppage and site
10 protection to be followed in the event that previously unreported and unanticipated cultural
11 resources or human remains are found on state or private lands during the Undertaking in
12 accordance with 36 CFR 800.13(a)(2)(b) and appropriate state laws.

13 **X. Inadvertent Discovery of Human Remains, Funerary Objects, Sacred Objects or Objects** 14 **of Cultural Patrimony (NAGPRA) on Federal Lands**

15 A. The Proponent in consultation with federal agencies party to this agreement, SHPOs, THPO and
16 tribes has prepared an Inadvertent Discovery Plan (Appendix C), to include cultural resources
17 and human remains, that establishes procedures for immediate work stoppage and site
18 protection to be followed in the event that previously unreported and unanticipated cultural
19 resources or human remains are found on federal lands during the Undertaking.

20 B. Discovery of Native American human remains, funerary objects, sacred objects, or objects of
21 cultural patrimony on federal lands shall be subject to 25 U.S.C. 3001 et seq., the Native
22 American Graves Protection and Repatriation Act (NAGPRA), and its implementing regulations.
23 The BLM will prepare a NAGPRA Plan of Action in consultation with federal agencies party to
24 this agreement and in consultation with Native American tribes. The Plan of Action will
25 describe the procedures for the treatment and disposition of Native American human
26 remains, funerary objects, sacred objects or objects of cultural patrimony for intentionally
27 excavated and inadvertent discoveries during construction and planned, if any, excavation of
28 sites located within the Project APE.

29 **XI. Curation**

30 A. The BLM will ensure curation and other disposition of cultural materials and associated records
31 not subject to the provisions of NAGPRA resulting from implementation of this PA on federal
32 land is completed in accordance with 36 CFR 79. Documentation of the curation of these
33 materials will be provided to the BLM and the appropriate SHPOs / THPO within 30 days of
34 acceptance of the final cultural resource report for the Undertaking. Cultural materials not
35 subject to the provisions of NAGPRA found on BLM and USFS lands will remain federal
36 property when curated. Curation will be undertaken in a manner consistent with and

Boardman to Hemingway Programmatic Agreement

respectful of cultural sensitivities. Materials found on federal land in Oregon will be curated at the federally approved Oregon Museum of Natural and Cultural History (OMNCH). Materials found on federal land in Idaho will be curated Archaeological Survey of Idaho-Western Repository in Boise at the Archaeological Survey of Idaho-Western Repository federally approved curation facility.

B. Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered from federal lands shall be subject to the provisions of NAGPRA, and shall be treated in accordance with protocol developed between the BLM, USFS, and consulting tribes and memorialized in the approved NAGPRA Plan of Action for the Undertaking. This protocol shall be consistent with 43 CFR 10.7, the regulations implementing NAGPRA.

C. Collections made on state land in the State of Oregon, will comply with ORS 390.235. Collections on state land in Idaho will be curated at the Archaeological Survey of Idaho-Western Repository in accordance with Idaho Statute Title 33, Chapter 39, Idaho Archaeological Survey, Sections 3901-3905.

D. For collections recovered from private lands in Oregon, the Proponent will work with landowners and parties to this agreement, through applicable state permits, to arrange for the disposition of cultural resources collections. In Oregon, private landowners will be encouraged to reburial or to donate cultural resources collections to the OMNCH and will be informed that Oregon state law (ORS 97.745) excludes retention of Native American human remains, funerary objects, or objects of cultural patrimony and requires the return of such objects to the appropriate Tribe. Collections from private lands to be returned to the landowner will be maintained in accordance with 36 CFR 79 until any specified analysis is complete. The Proponent will provide documentation of the transfer of the collection to the landowner as well as to the BLM and the appropriate parties to this agreement within 30 days of acceptance of the final cultural resource reports for the Undertaking. In the event a landowner chooses to retain a collection they will be notified by the BLM or Proponent that tribes may prefer collected items be reburied. Any arrangements for reburial will be negotiated with the tribe(s) outside of the Section 106 process.

~~D.~~E. Collections recovered from private lands in Idaho remain the property of the landowner. The landowner will be encouraged to donate the collections to the Archaeological Survey of Idaho-Western Repository. Collections from private lands to be returned to the landowner will be maintained in accordance with 36 CFR 79 until any specified analysis is complete.

~~E.~~F. The Proponent will assume the cost of curation including the preparation of materials for curation in perpetuity.

XII. Initiation of Construction Activities

Comment [ACHP15]: In final edit check for widows and orphans (no titles at bottom of page without info, etc.)

Boardman to Hemingway Programmatic Agreement

1 A. Construction will only occur after issuance of a federal ROW grant, Special Use Authorization
2 and specific NTP or any other federal or state authorization to the Proponent which will occur
3 after the ROD.

4 B. The BLM will ensure that mitigation for adversely affected historic properties is implemented
5 to the degree required in the mitigation plans prior to issuance of NTPs. The BLM will
6 authorize construction to begin once the parties to this agreement have been provided with
7 documentation of mitigation activities and consultation has occurred pursuant to stipulation
8 V. Disagreements regarding the adequacy of the implementation of mitigation plans are
9 subject to resolution as described in stipulation XIV. NTPs may be issued to the Proponent for
10 individual construction segments under the following conditions:

- 11 1. Construction of the segment will not restrict subsequent rerouting of the ROW corridor or
12 affiliated ancillary feature locations to avoid, minimize, or mitigate the Undertaking's
13 adverse effects on historic properties; and
- 14 2. The permitting agencies, in consultation with parties to this agreement, determine that all
15 surveys have been completed and no cultural resources have been identified through Class
16 III inventories and there are no historic properties within the APEs for the construction
17 segment; or
- 18 3. The permitting agencies, in consultation with the SHPOs / THPO, have implemented the
19 procedures described in the HPMP within the construction segment, and
 - 20 a. The fieldwork phase of the treatment option has been completed; and
 - 21 b. The federal agencies party to this agreement have accepted a summary description
22 from the Proponent of the fieldwork performed and a reporting schedule for that work;
23 and
 - 24 c. The permitting agencies have provided the parties to this agreement with a summary
25 description of the fieldwork performed and a reporting schedule for that work; and
 - 26 d. The permitting agencies, in consultation with the parties to this agreement, have
27 determined that all preconstruction fieldwork is complete and adequate.

28 C. Changes in Ancillary Areas/Construction ROW

- 29 1. The BLM will notify the parties to this agreement of proposed changes in ancillary areas or
30 the ROW. The BLM will ensure that the APE of the new ancillary area or reroute is
31 inventoried and evaluated in accordance with stipulation II, and will consult with the
32 parties to this agreement on the proposed APE and the determination of eligibility and
33 effect in accordance with stipulations III. and IV. The reports addressing these areas will be
34 reviewed in accordance with stipulation V. of this PA.
- 35 2. The BLM will provide the tribes, and parties to this agreement with the revised addendum
36 reports and findings on eligibility and effects for a 30 day review and comment period. The
37 BLM will seek consensus determinations of eligibility for all properties identified in the

Boardman to Hemingway Programmatic Agreement

1 APEs. If consensus cannot be reached, the process articulated in stipulation III. for seeking a
2 determination of eligibility from the Keeper of the NRHP will be followed.

3 **XIII. PA Evaluation**

- 4 A. The BLM will evaluate the implementation and operation of this PA annually until all
5 construction and reclamation activities and mitigation reports are complete. The annual
6 evaluation will include a written report submitted by the BLM to the parties to this agreement
7 and may include in-person meetings among the BLM and parties to this agreement to discuss
8 any potential PA modifications or amendments.
- 9 B. The BLM's written report will describe all activities pertaining to the Undertaking for that year
10 and will be sent to all parties to this agreement by December 31st of each year. Parties to this
11 agreement may provide comments on reports to the BLM within 30 days of receipt. The BLM
12 will collate and distribute comments to the parties to this agreement, revise the report, as
13 necessary, and explain why particular revisions were or were not made. If there are significant
14 revisions needed, and if the parties to this agreement agree, the BLM may hold a meeting or
15 conference call to discuss any needed revisions.

16 **XIV. Dispute Resolution**

- 17 A. Any party to this agreement may object at any time to any actions proposed or the manner in
18 which the terms of this PA are implemented. The objecting party must submit in writing to the
19 BLM the reasons for, and a justification of, its objections. The BLM will consult with the
20 objecting party and all parties to this agreement to resolve the objection within 30 days. If the
21 BLM determines that such objection cannot be resolved, the BLM will:
- 22 1. Forward all documentation relevant to the dispute, including the BLM's proposed
23 resolution, to the ACHP within 30 days after determination the objection cannot be
24 resolved. The ACHP will provide the BLM with its advice on the resolution of the objection
25 within 30 days of receiving adequate documentation. Prior to reaching a final decision on
26 the dispute, the BLM will prepare a written response that takes into account any timely
27 advice or comments regarding the dispute from the ACHP and parties to this agreement,
28 and provide them with a copy of this written response within 30 days of receiving advice
29 from ACHP. The BLM will then proceed according to its final decision.
- 30 2. If the ACHP does not provide its advice regarding the dispute within the 30 day time
31 period; the BLM may make a final decision on the dispute and proceed accordingly. Prior to
32 reaching such a final decision, the BLM will prepare a written response that takes into
33 account any timely comments regarding the dispute from the parties to this agreement to
34 the PA, and provide to all parties to this agreement with a copy of such written response
35 within 30 days.
- 36 3. The BLM's responsibilities to carry out all other actions subject to the terms of this PA that
37 are not the subject of the dispute remain unchanged.

Boardman to Hemingway Programmatic Agreement

XV. Review of Public Objection

A. At any time during implementation of the measures stipulated in this PA, should an objection to any such measure or its manner of implementation be raised by a member of the public, the BLM will take the objection into account, consult as needed with the objecting party and the parties to this agreement to resolve the objection. The BLM will determine the final resolution.

XVI. Amendment

A. Signatories and Invited Signatories of this PA may request in writing that it be amended. The BLM will notify all parties to this agreement of the proposed amendment and consult with them for no more than 30 days to reach agreement. The amendment will be effective on the date the amendment is signed by all Signatories. If the amendment is not signed within 60 days of receipt the BLM will reinstate consultation for another 30 days. If all the signatories do not agree to the amendment, BLM will determine that the PA will stand as is.

XVII. Termination

A. If any Signatory or Invited Signatory to this PA determines that its terms will not or cannot be carried out, that party will immediately provide written notice to the BLM and the other Signatories and Invited Signatories stating the reasons for the determination. BLM will then consult with all parties to this agreement to attempt to develop an amendment per stipulation XVI, above. If within 60 days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory or Invited Signatory may terminate the PA upon written notification to the other parties to the agreement.

B. If an individual SHPO / THPO terminates their participation in this PA, that termination will apply only within the jurisdiction of the SHPO / THPO electing to terminate

C. An individual SHPO/THPO may withdraw from the PA upon written notice to all Signatories and Invited Signatories after having consulted with them for at least 30 days to attempt to find a way to avoid the withdrawal. Upon withdrawal, the BLM and the withdrawing SHPO/THPO will comply with Section 106 in accordance with 36 CFR 800.3 through 800.7 or the execution of an agreement in accordance with 36 CFR 800.14(b). Such Section 106 compliance will be limited to consideration of effects of the Undertaking solely within the jurisdiction of the withdrawing SHPO/THPO. This PA will still remain in effect with regard to the portions of the Undertaking located in the jurisdiction of the SHPO that have not withdrawn from the PA. If both SHPOs/THPO withdraw from the PA, the PA will be considered to be terminated. In the event this PA is terminated, and prior to work continuing on the Undertaking, the BLM will comply with 36 CFR 800.6(c)(8) and will take reasonable steps to avoid adverse effects to historic properties until another PA has been executed or will request, take into account, and respond to Council comments, in accordance with 800.7. 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

Boardman to Hemingway Programmatic Agreement

under 36 CFR 800.7. The BLM will notify all parties to this agreement as to the course of action it will pursue.

XVIII. Duration of This PA

A. If the terms of the PA have not been implemented within five years of its execution, the BLM may consult with the parties to this agreement to reconsider the terms of the PA and amend it in accordance with stipulation XVI. The BLM will notify the parties to this agreement within 30 days as to the course of action the BLM will pursue. This PA will expire if the Undertaking has not been initiated within 10 years or the BLM ROW grant expires or is withdrawn.

B. Unless this PA is terminated pursuant to stipulation XVII. above, another agreement executed for the Undertaking supersedes it, or the Undertaking itself has been terminated, this PA will remain in effect until the BLM, in consultation with the other parties to this agreement, determines that construction of all aspects of the Undertaking has been completed and that all terms of this PA and any subsequent agreements have been fulfilled in a satisfactory manner, not to exceed 10 years.

C. Parties to this agreement shall meet no later than nine years after the ROW grant is issued to determine if the conditions of this PA have been met. At that time, the parties to this agreement may agree to amend or terminate the PA or to meet again within an agreed-upon period of time to consider the status of the PA. The BLM will retain responsibility for administering the terms and conditions of the ROW grant pertaining to historic properties for the life of the grant.

XIX. Failure to Carry Out the Terms of this PA

A. In the event that the terms of this PA are not carried out, the BLM will comply with 36 CFR 800.4 through 800.6 with regard to individual actions pertaining to this Undertaking.

EXECUTION of this PA by the BLM, USFS, BPA, USACE, ID SHPO, OR SHPO, and CTUIR THPO, and implementation of its terms evidence that the BLM has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

Boardman to Hemingway Programmatic Agreement

SIGNATURE PAGES – REQUIRED SIGNATORIES

1 **BUREAU OF LAND MANAGEMENT**

2 Signature: _____ Date: _____
3 Donald Gonzalez, Authorized Officer

4 **USDA FOREST SERVICE**

5 Signature: _____ Date: _____
6 SIGNING OFFICIAL

7 **BONNEVILLE POWER ADMINISTRATION**

8 Signature: _____ Date: _____
9 SIGNING OFFICIAL

10 **U.S. ARMY CORPS OF ENGINEERS**

11 Signature: _____ Date: _____
12 SIGNING OFFICIAL

13 **OREGON STATE HISTORIC PRESERVATION OFFICER**

14 Signature: _____ Date: _____
15 Roger Roper, Deputy SHPO

16 **IDAHO STATE HISTORIC PRESERVATION OFFICER**

17 Signature: _____ Date: _____
18 Ken Reid, Deputy SHPO

19 WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION (SHPO)

20 Signature _____ Date: _____

21 Allyson Brooks, SHPO

22 **BUREAU OF RECLAMATION**

23 **Signature** _____ **Date:** _____

24 **Name?**

25

Boardman to Hemingway Programmatic Agreement

SIGNATURE PAGES – REQUIRED SIGNATORIES

1

2 **CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION TRIBAL HISTORIC PRESERVATION**
3 **OFFICER**

4 Signature: _____ Date: _____

5 | Carey Miller, THPO

6

7 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

8 Signature: _____ Date: _____

9 John M. Fowler, Executive Director

Boardman to Hemingway Programmatic Agreement

SIGNATURE PAGES – INVITED SIGNATORIES

1 IDAHO POWER COMPANY

2 Signature: _____ Date: _____

3 SIGNING OFFICIAL

4 NATIONAL PARK SERVICE

5 Signature: _____ Date: _____

6 SIGNING OFFICIAL

Boardman to Hemingway Programmatic Agreement

SIGNATURE PAGES – CONCURRING PARTIES

1 OREGON DEPARTMENT OF ENERGY

2 Signature: _____ Date: _____

3 SIGNING OFFICIAL

4 SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION

5 Signature: _____ Date: _____

6 Dennis Smith, Sr., Chair

7 CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

8 Signature: _____ Date: _____

9 Gary Burke, Chair, Board of Trustees

10 SHOSHONE-BANNOCK TRIBES OF THE FORT HALL INDIAN RESERVATION

11 Signature: _____ Date: _____

12 Nathan Small, Chair, Fort Hall Business Council

13 NEZ PERCE TRIBE

14 Signature: _____ Date: _____

15 Silas Whitman, Chair

16 CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

17 Signature: _____ Date: _____

18 John Sirois, Chair

19 BURNS PAIUTE TRIBE

20 Signature: _____ Date: _____

21 Charlotte Roderique, Chair

22 FORT MCDERMITT PAIUTE AND SHOSHONE TRIBE

23 Signature: _____ Date: _____

24 Maxine Smart, Chair

25 CONFEDERATED TRIBES OF THE WARM SPRINGS INDIAN RESERVATION

26 Signature: _____ Date: _____

27 Eugene Austin Greene Jr., Chair

Boardman to Hemingway Programmatic Agreement

SIGNATURE PAGES – CONCURRING PARTIES

OREGON AND CALIFORNIA TRAILS ASSOCIATION

Signature: _____ Date: _____

SIGNING OFFICIAL

OREGON HISTORIC TRAILS ADVISORY COUNCIL

Signature: _____ Date: _____

Name??

U.S. FISH AND WILDLIFE SERVICE

Signature _____ Date: _____

Name??

U.S. DEPARTMENT OF THE NAVY

Signature _____ Date: _____

Name?

Boardman to Hemingway Programmatic Agreement

APPENDICES

- 1 Appendix A: Archaeological Survey Plan
- 2 Appendix B: Visual Assessment of Historic Properties Study Plan
- 3 Appendix C: Inadvertent Discovery Plan

FINAL
PROGRAMMATIC AGREEMENT
AMONG
THE BUREAU OF LAND MANAGEMENT,
THE USDA FOREST SERVICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE IDAHO STATE HISTORIC PRESERVATION OFFICER,
THE WYOMING STATE HISTORIC PRESERVATION OFFICER,
THE BUREAU OF RECLAMATION,
THE NATIONAL PARK SERVICE,
THE U.S. ARMY CORPS OF ENGINEERS,
IDAHO POWER, AND ROCKY MOUNTAIN POWER
REGARDING COMPLIANCE WITH
THE NATIONAL HISTORIC PRESERVATION ACT FOR THE
GATEWAY WEST TRANSMISSION LINE PROJECT

WHEREAS, Idaho Power Company and PacifiCorp (doing business as Rocky Mountain Power), collectively known as the Proponents have applied for and the following federal agencies are considering the issuance of federal right-of-way (ROW) grants and associated permits for the Gateway West Transmission Line Project (Undertaking): the Bureau of Land Management (BLM), the United States Department of Agriculture Forest Service (USFS), the Bureau of Reclamation (BOR), the U.S. Army Corps of Engineers (Corps), and the National Park Service (NPS). These agencies (federal agencies) are Signatories to this Programmatic Agreement (PA); and

WHEREAS, the Proponents intend to construct, operate and maintain the Undertaking according to the approved project Plan of Development (POD) for the Undertaking, which shall be appended to and made a part of the Record of Decision (ROD) authorizing the ROW grant; and;

WHEREAS, the Undertaking includes the construction, operation and maintenance, of an approximately 1,000-mile-long transmission line stretching from near Glenrock, Wyoming, to 30 miles southwest of Boise, Idaho, across multiple federal, state, and local jurisdictions and across the ancestral lands of several Indian tribes (Appendix A – Map of Proposed Undertaking and Alternatives); and

WHEREAS, the BLM intends to issue a ROW grant for the construction, operation and maintenance of the Undertaking, following the issuance of the ROD, and the ROW grant will incorporate by reference this PA; and

WHEREAS, this PA and the Historic Properties Treatment Plan (HPTP) that will be developed pursuant to this PA will be incorporated into the POD; and

WHEREAS, the BLM has determined that issuance of the ROW grant triggers the requirements of Section 106 of the National Historic Preservation Act (NHPA) for the Undertaking as defined at 36 CFR 800.16(y); and

WHEREAS, for purposes of the Undertaking, the BLM Rawlins Field Office is lead for compliance with Section 106 on behalf of the federal agencies (36 CFR 800.2(a)(2)) and is the primary contact for all parties to this Agreement and Indian tribes; and

WHEREAS, the BLM has determined that the Undertaking may have direct, indirect, and cumulative effects on properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter called historic properties, and has consulted with the Idaho and Wyoming State Historic Preservation Officers (SHPOs) who are Signatories to this PA; and

WHEREAS, the effects of the Undertaking on historic properties are multi-state in scope and cannot be fully determined prior to approval of the Undertaking, and the BLM is using the regulations at 36 CFR 800.14(b)(1)(i)-(ii) to create this PA, BLM consultation has determined that a phased process for compliance with Section 106 is appropriate for the Undertaking, as specifically permitted under 36 CFR 800.4(b)(2), such that completion of the identification and 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, as part of planning for and prior to any Notice to Proceed and Undertaking implementation; and

WHEREAS, the BLM has notified the Advisory Council on Historic Preservation (ACHP), pursuant to Section 106 and its implementing regulations (36 CFR 800.6(a)(1)), and the ACHP has elected to participate in consultations and is a Signatory to this PA; and

WHEREAS, the BLM recognizes its government-to-government obligation to consult with Indian tribes that may attach religious and cultural significance to historic properties that may be affected by the proposed Undertaking and will continue to consult with such affected tribes regarding their concerns under Section 106; in addition, the BLM will comply with the American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act (NAGPRA), and Executive Orders 13007 and 13175; and

WHEREAS, the BLM continues to consult with the Shoshone-Paiute Tribes; the Shoshone-Bannock Tribes; the Ute Tribe of the Uintah & Ouray Reservation; the Eastern Shoshone; the Northern Arapaho; the Northern Cheyenne; the Northwestern Band of Shoshone; and the Oglala Sioux and has invited all of these tribes to be Concurring Parties to this PA; and

WHEREAS, the USFS, Intermountain and Rocky Mountain Regions, manages National Forest System lands on the Medicine Bow and the Caribou-Targhee National Forests that would be crossed by the Undertaking. The USFS must therefore consider whether to issue a Special Use Authorization for the construction and operation of the Undertaking and whether such issuance is consistent with the Medicine Bow National Forest and Caribou-Targhee National Forests Land and Resource Management Plans, thereby making it an Undertaking subject to review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the Corps has determined that authorization for the Undertaking to place structures in, under or over navigable waters of the United States, as defined under 33 CFR 329, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and authorization for placement of dredge or fill material in waters of the United States as part of the Undertaking, as defined under 33 CFR 328, pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344), requires review under Section 106 and 36 CFR 800; and

WHEREAS, the Corps reserves the right as needed, to conduct additional consultations on a government-to-government basis with Indian tribes regarding permitting actions related to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344); and

WHEREAS, alternative routes may affect (a) the City of Rocks National Reserve, a unit of the NPS and a National Historic Landmark, and containing Cassia Silent City of Rocks, a National Natural Landmark; (b) Minidoka National Historic Site, a unit of the NPS and listed on the NRHP as a nationally significant historic property; (c) Hagerman Fossil Beds National Monument, a unit of the NPS, containing the Hagerman Horse Quarry, a National Natural Landmark, and a portion of the Oregon National Historic Trail; (d) Fossil Butte National Monument, a unit of the NPS, containing Haddenham Cabin, listed on the NRHP as a nationally significant historic property; and (e) intact segments of the Oregon and California National Historic Trails, which are administered by the NPS, which has elected to participate in consultations and is an Invited Signatory to this PA; and

WHEREAS, alternative routes may cross the Sawtooth National Forest, and if any of these alternatives is selected, the Sawtooth National Forest must consider whether to issue a Special Use Authorization; and

WHEREAS, the BLM has consulted with and invited to be Concurring Parties to this PA the Oregon-California Trails Association (OCTA), the Alliance for Historic Wyoming (AHW), and the National Trust for Historic Preservation (National Trust); and

WHEREAS, the Proponents, as potential grantees of the ROW, have participated in consultation per 36 CFR 800.2(c)(4), and through signature to this PA, agree to carry out the stipulations herein under the oversight of the BLM, and are Invited Signatories to this PA; and

WHEREAS, the BLM will require that the Undertaking be executed in accordance with the conditions of the right-of-way that may be granted by the federal land managing agencies, and in accordance with the stipulations of this PA, which shall be appended to and made a part of the ROD authorizing the ROW grant; and

WHEREAS, unless defined otherwise in this Agreement, all terms are used in accordance with 36 CFR 800.16; and

NOW, THEREFORE, the Signatories to this PA agree that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties and to satisfy all Section 106 responsibilities of the federal agencies for all aspects of the Undertaking.

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STIPULATIONS

The BLM shall ensure that the following measures are carried out:

I. Area of Potential Effects (APE)

A. Defining the APE

The BLM, in consultation with the SHPOs and other consulting parties, has defined and documented the APE based on direct, indirect, and cumulative effects of the Undertaking. The APE will apply to federal, state, tribal, and private lands that may be affected by the transmission line corridor, staging areas, access roads, borrow areas, transmission substations, distribution lines and other related transmission infrastructure for this Undertaking. The APE, as defined and documented, is a baseline for survey and inventory. The BLM may modify the APE in accordance with Stipulation I.B. of this PA.

1. Direct Effects

The APE for direct effects is the area within which historic properties may sustain physical alteration or destruction as a result of the Undertaking. The following APEs take into account ground-disturbing activities associated with the Undertaking:

- a. For above ground transmission lines, the APE will be 500 feet (250 feet on either side of centerline for the ROW).
- b. The APE for access roads, except for existing crowned and ditched or paved roads, will be 100 feet on either side of the centerline for a total width of 200 feet.
- c. The APE for distribution lines to substations and regeneration stations will be included in the APE for access roads where distribution lines follow access roads and are within the APE for these roads. Where distribution lines do not follow access roads, the APE for distribution lines will be 200 feet (100 feet on either side of the centerline for the ROW).
- d. The APE for staging areas, borrow areas, substations, and other transmission infrastructure will include the footprint of the facility and a buffer of 200 feet around the footprint of the proposed activity.
- e. The APE for pulling/tensioning sites that fall outside the ROW will be the footprint of the site plus a 250-foot radius around these points.
- f. The APE for boreholes is a five-acre area centered on the borehole.
- g. The APE for direct effects from the post-construction operation and maintenance of the transmission lines and other facilities is the area of the federal ROW grants and/or permits.

2. Indirect Effects

The APE for indirect effects from the Undertaking on historic properties considers visual, audible, and atmospheric elements that could diminish the integrity of the properties for which setting, feeling, and/or association are qualifying characteristics of NRHP eligibility. The indirect APE for the Undertaking extends for five miles, or to the visual horizon, whichever is closer, on either side of the preferred routes and alternatives. The indirect APE may extend beyond the five-mile convention to encompass properties that have traditional religious and cultural importance, including traditional cultural properties (TCPs), or other geographically extensive historic properties such as trails, when effects have been determined by BLM, in consultation with SHPOs and appropriate consulting parties, to extend beyond this distance. The assessment of visual effects on historic properties will incorporate a Geographic Information System (GIS) viewshed assessment as well as BLM Visual Resource Management (VRM) concepts as discussed in Stipulation ILC.2, and Indian Tribes' traditional, cultural, and spiritual views of the landscape.

3. Cumulative Effects

For the purposes of this PA, the APE for cumulative effects is the same as that for direct and indirect effects. Cumulative effects may be direct or indirect and result from incremental effects related to the Undertaking over time (e.g., increased access because of new roads, future transmission lines along the same corridor, new projects feeding into the Undertaking, etc.).

B. Amending the APE.

1. The APE, as currently defined, encompasses an area sufficient to accommodate all of the proposed and alternative Undertaking components under consideration as of the date of the execution of this Agreement. The APE may be modified where tribal consultation, additional field research or literature review, consultation with interested parties, or other factors indicate that the qualities and values of historic properties that lie outside the boundaries of the currently defined APE may be affected directly, indirectly, or cumulatively.
2. If the BLM determines that currently unforeseen changes to the Undertaking may cause direct, indirect, or cumulative effects to historic properties beyond the extent of the established APE, then the BLM shall adjust the APE using the process set forth in Stipulation I.B.3. below.
3. Any Signatory, Invited Signatory, or Concurring Party to this PA may propose that the APE be modified. The BLM shall send all Signatories, Invited Signatories, and Concurring Parties to this agreement a description and a map of the modification and consult with them for no more than 30 days in an effort to reach consensus on the proposal. Agreement to amend the APE will not require an amendment to the PA. If all the said parties cannot agree to a proposal for the modification of the APE, then the BLM will consider their concerns and will render a final decision.
4. Amendment of the ROW grant during operations and maintenance of the facilities will be considered a separate Undertaking under Section 106.

II. Identification and Evaluation of Historic Properties

- A. The BLM will ensure that all work undertaken to satisfy the terms of this PA meets the Secretary of the Interior's Standards for Archeology and Historic Preservation (48 FR 44716) (*Federal Register*, September 29, 1983) and is consistent with the ACHP guidance on archaeology found at www.achp.gov/archguide and the Guidelines for Evaluating and Documenting Traditional Cultural Properties, *National Register Bulletin 38*, 1998, as incorporated by reference herein. The BLM has defined conventions or standards for survey corridors and survey intensity to adequately identify historic properties that may be directly affected by this Undertaking, which may include properties of religious and cultural significance to Indian Tribes. All survey activity will meet BLM Manual 8110 guidance for a comprehensive survey (BLM Class III Survey) and be consistent with that of the SHPOs, including guidance and standards found in respective BLM and SHPO State Protocol Agreements. The BLM will also ensure that the work is carried out by or under the direct supervision of a person or persons meeting, at a minimum, the applicable professional qualifications standards set forth in the Secretary's Standards and the state BLM permitting requirements.
- B. The Proponents will directly fund all required fieldwork, analysis, reporting, and curation, which will be conducted only after they have obtained the appropriate federal and state permits for such fieldwork. The BLM or other appropriate federal land managing agency shall approve Fieldwork Authorizations to conduct inventories on land they manage, respectively, within the timeframe stipulated within the managing agencies' procedures upon receipt of a complete application from the Proponents.
- C. The Proponents will conduct the cultural resources inventory and identification effort for this Undertaking in six phases.
1. Phase 1 – Literature Review – A literature review has already been completed for a one mile-wide corridor along all alternatives of the proposed Undertaking. The literature review resulted in a report for each state that has been reviewed and commented on by BLM and each state's SHPO. The Proponents conducted the literature review to inform all subsequent phases, and it will be used as a reference document to support all of the Class III surveys conducted for this Undertaking. The Proponents will conduct additional file searches as needed to address changes in the APE and to be current in advance of any Class III inventories.
 2. Phase 2 – Alternatives Surveys – The Proponents conducted an initial Class II sampling survey (referred to in the Technical Reports as "Class III sampling surveys") for the Undertaking that consisted of an intensive pedestrian survey of 15 percent of the length of all alternatives. One-mile-long by 500-foot-wide transect strips were surveyed along the proposed and alternative routes on federal lands only, for use in detailed analysis in the EIS. This also included a detailed preliminary assessment of effects on historic trails on all lands within the APE, including existing trail condition and a visual effects assessment.

The BLM required the Proponents to conduct a study of the National Historic Trails in order to determine indirect effects to these properties. The BLM required the use of *Guidelines for Determination of Visual Effects of an Undertaking on the Integrity of a Historic Setting*, Appendix C of the *State Protocol between the BLM and SHPO* (Protocol), executed between the Wyoming BLM and Wyoming SHPO (BLM 2006), for determining visual effects on the trails' historic settings. The viewshed assessment involved a GIS exercise of overlaying the known historic trails on the visibility surface (consisting of five miles on either side of the transmission

line) to determine areas from which the towers could potentially be seen. Specific Key Observation Points (KOPs) were selected for conducting Visual Contrast Ratings (VCRs) and potential photo simulations in the field.

3. Phase 3 – Geotechnical Boring – As analyzed under the Environmental Assessment for the Gateway West Geotechnical Drilling Project, Class III surveys of five-acre blocks for each proposed borehole location are being completed by the Proponents. This was required in order to obtain BLM or other federal land managing agency permits for the completion of geotechnical testing necessary to support preliminary design and feasibility studies for specific locations for transmission infrastructure.
4. Phase 4 – Preferred Route Surveys – The fourth phase will be a Class III inventory of previously uninventoried portions of the Preferred Route (i.e. the route that will be considered for a ROW grant or other federal or state authorization) and all related Undertaking facilities located on lands where access has been granted, including all federal lands, state lands, tribal lands, and those privately owned lands for which survey permission has been received. As a part of the Class III survey of the Undertaking, the BLM has required the Proponents to conduct a visual effects assessment for effects of the Undertaking on historic trails and other properties where the setting is important to the qualities that make the property eligible. This work will be done in accordance with Stipulation II.E.
5. Phase 5 – Final Pre-Construction Surveys – After the BLM determines the selected route, the Proponents will complete Class III surveys under BLM guidance for the direct APE, with an assessment of indirect effects for the indirect APE, where not covered by previous Class III surveys or assessments. Where sufficient information for making site eligibility determinations is not available, the BLM and SHPOs may determine that additional archaeological testing or other investigations are necessary to complete NRHP evaluations for properties that may be affected. The Proponents will complete consultation and fieldwork for this phase prior to the initiation of construction.
6. Phase 6 – Surveys During Construction – The final phase will include surveys, as needed, of any components of the Undertaking that are outside the currently defined APE and are identified by the BLM after the Undertaking's initial Notice to Proceed has been issued (including changes in construction ROW and ancillary areas). Where the BLM determines that additional surveys are needed, no ground disturbance will be allowed in the specific areas requiring survey until the surveys and the effects determinations and any required mitigation are completed. Construction within the previously surveyed APE may continue while these additional surveys are being completed (see Stipulation XI).

D. Determinations of Eligibility

For each property that is within the APE, the BLM, in consultation with the Signatories, Invited Signatories and Concurring Parties, will determine NRHP eligibility pursuant to 36 CFR 800.4(c)(1) for each such property. These may include properties of religious and cultural significance to Indian tribes.

1. The BLM will distribute recommendations of NRHP eligibility to the appropriate Signatories, Invited Signatories and Concurring Parties for review and comment following 36 CFR 800.4(c). After a 30 day review period, the BLM will submit the determinations of eligibility, with all

comments, to the applicable SHPO for concurrence within 30 days. Following this review period, the BLM will seek consensus determinations of eligibility with the appropriate SHPO for all properties whether on federal, state, tribal, or private lands.

- a. If the applicable SHPO and BLM agree that the cultural resource is not eligible for listing in the NRHP, no further review or consideration under this PA will be required for such cultural resources.
- b. If the applicable SHPO and BLM agree that the property is eligible, then effect determinations will be in accordance with Stipulation E.
- c. If the applicable SHPO and BLM do not agree on eligibility, the BLM will consult with the applicable SHPO further. If agreement cannot be reached within 30 days, then the BLM will obtain a determination of eligibility from the Keeper of the National Register (Keeper), pursuant to 36 CFR 800.4(c)(2) and 36 CFR Part 63. The Keeper's determination will be final.

E. Assessment of Effects

1. The BLM will, in consultation with the Signatories, Invited Signatories and Concurring Parties, make determinations of effect consistent with 36 CFR 800.4(d) and identify any adverse effects for each historic property within the APE in accordance with the criteria established at 36 CFR 800.5(a)(1) and (2)(i)-(vii), and will provide SHPOs, tribes, and the other Signatories, Invited Signatories and Concurring Parties with the results of the finding following 36 CFR 800.11(e)(4)-(6). This will be done concurrently with the distribution of the Class III Inventory Report and the above determinations of eligibility. These determinations of effect will serve as the basis for the development of a Historic Properties Treatment Plan (HPTP).
2. The BLM will utilize the VCR assessment to determine the visual effects of the proposed Undertaking on historic properties. A visual effect is any modification in landforms, water bodies, or vegetation, or any introduction of structures, which interrupts the visual character of the landscape and disrupts the harmony of the basic elements (i.e., form, line, color, and texture). The guidelines for determination of visual effects of an Undertaking on the integrity of a historic setting under the VCR assessment are located in Appendix C.
3. The BLM will, in consultation with the Signatories, Invited Signatories and Concurring Parties, broadly assess cumulative effects under Section 106 in order to identify all reasonably foreseeable, potentially adverse effects as a result of the proposed Undertaking.

III. Reporting, Consultation and Review of Documentation

- A. At the conclusion of the following phases of the fieldwork described in Stipulation II.C., the Proponents will submit copies of the draft report (either electronic or print) for each phase to the lead BLM Office for distribution to the appropriate BLM District or Field Office in each state and to the appropriate Signatories, Invited Signatories, and Concurring Parties for review:
 - Literature Review (See Stipulation II.C.1)
 - Alternative and Proposed Route Surveys Evaluation (See Stipulation II.C.2)
 - Pre-Construction Surveys Evaluation (See Stipulation II.C.5)

- Surveys During Construction (multiple reports) (See Stipulation II.C.6; See Stipulation XI for review times)

Each report will be consistent with the appropriate state guidelines and formats including determinations of eligibility and effect. Reports shall also include appropriate state site inventory forms, other documentation for results of identification of properties of cultural and religious significance to tribes, and recommendations on the historic significance, integrity, and NRHP eligibility of identified cultural properties (36 CFR 800.4(c)). The following outlines review times applicable to Literature Review, Alternative and Proposed Routes Surveys Evaluation, and Pre-Construction Surveys Evaluation. Review times for Surveys During Construction can be found in Stipulation XI.

1. The Proponents will submit copies of the draft reports and site forms to the lead BLM Office for distribution to the appropriate Field Offices, and to the appropriate federal land managing agencies for review. The federal land managing agencies will have 30 days from receipt of each report to review and provide comments to the lead BLM Office on the initial draft. These comments will address adequacy of inventory and reports, the eligibility of properties identified during each phase (36 CFR 800.4(c)), and the effects of the Undertaking on any cultural resources considered to be historic properties (36 CFR 800.4(d) and 800.5). Based on the comments received, the BLM may require the Proponents to revise the reports. Any revised reports will be submitted to the BLM for a 15 day review.
 2. After the federal review, and any subsequent time for revisions, the BLM will distribute reports to the appropriate Signatories, Invited Signatories, and Concurring Parties for a 15 day review and opportunity to provide comments to the lead BLM Office (see Stipulation VI for confidentiality requirements). Any revised reports will be submitted to the appropriate Signatories, Invited Signatories, and Concurring Parties for a 15 day review.
 3. The BLM will then distribute reports to and seek consensus determinations of eligibility and effect with the appropriate SHPO for all properties whether on federal, state, or private lands for a 30 day review. If the 30 days pass with no request for extension and no other comments, the BLM shall assume acceptance of the report.
 4. In addition to the above-cited reports, the Proponents will prepare a comprehensive inventory report for each state that covers all pre-construction surveys performed for this Undertaking. The final report will include the completed 15 percent sample surveys for non-selected alternatives and the full Class III inventory of the selected route that the Proponents will be permitted to construct and operate. These comprehensive report(s) will be produced no later than three years after the Phase 5 Pre-Construction Surveys and will be considered the final Class III inventory reports.
 5. All other outstanding reports, such as mitigation or monitoring reports, or other reporting actions required under the HPTP, will be produced no later than three years after the completion of the relevant work element (as described in the HPTP) of the Undertaking.
- B. Reviewing offices will notify the lead BLM Office main point of contact in writing (including email) requesting a review extension and providing the reason the time frame cannot be met. The lead BLM Office will determine whether to grant an appropriate extension.

IV. Tribal Consultation

Through government-to-government consultation with Indian tribes, pursuant to 36 CFR 800.2(c)(2), the BLM, and other federal land managing agencies as appropriate, will make a good faith effort to identify properties that have traditional religious and cultural importance to one or more Indian tribes and to determine whether they are historic properties. Discussion of these properties will be integrated, as applicable, as a separate chapter or appendix, or submitted as a separate report, such as an ethnographic study. Ethnographic studies are not required, but may be requested by tribes. Confidentiality concerns expressed by tribes for properties that have traditional religious and cultural importance will be respected and will be protected to the extent allowed by law (see Stipulation VI).

V. Historic Properties Treatment Plan (HPTP)

- A. If the BLM determines that the Undertaking will have adverse effects on historic properties, the BLM shall consult with the appropriate SHPO and other Signatories, Invited Signatories, and Concurring Parties to develop and evaluate alternatives or modifications to the Undertaking that could avoid, minimize, or mitigate adverse effects to those properties. The Proponents will develop an umbrella HPTP, which will include treatment guidelines for certain categories of adversely affected historic properties such as trails. The HPTP will be utilized as a field guide during construction of the transmission line and associated facilities, and for the reclamation of temporary disturbance areas once construction is completed. It will also include provisions for monitoring during construction and reclamation, and appendices for treatment of Inadvertent Discoveries of Cultural Resources and Human Remains at any time during the Undertaking. The HPTP will also include Segment Plans, negotiated per Stipulation V.D., that will outline treatments for individual historic properties that may be adversely affected within particular segments of the Undertaking. Individual Segment Plans must be completed to an acceptable level, to be determined by the BLM and SHPOs as described in Stipulation X.B., by the Proponent prior to issuance of a Notice to Proceed (NTP) for the segment or resources in question, as stipulated in Stipulation V.C. below. The BLM will ensure consultation with all the parties, as noted in Stipulation V.E., prior to the development, finalization, and/or implementation of the umbrella HPTP or HPTP Segment Plans.
- B. The mitigation strategy may vary depending on the type of adverse effect. For direct effects, avoidance is the preferred strategy and may involve redesign or relocation of specific components of the Undertaking. If avoidance and/or minimization is not a reasonable option, selected mitigation may include data recovery, especially for archaeological sites. For indirect effects, mitigation options such as topographic screening will be used to the maximum extent possible to reduce the visibility of the transmission line route from historic properties. The HPTP will provide specific avoidance, minimization, or mitigation measures, commensurate with the Undertaking, to lessen any potential for cumulative effects. Determinations of the potential cumulative effects within the reasonably foreseeable future will be based on the APE and be defined in the HPTP.

Other treatment measures for direct, indirect, and cumulative effects may include, but will not be limited to:

- a. Completion of NRHP nomination forms.
- b. Conservation easements.
- c. Historic American Buildings Survey (HABS) documentation.
- d. Historic American Engineering Record (HAER) documentation.

- e. Historic American Landscapes Survey (HALS) documentation.
 - f. Purchase of land containing National Historic Trail segments for long term protection.
 - g. Partnerships and funding for public archaeology projects.
 - h. Print publication (brochure/book).
 - i. Visual media publication (website/podcast/video).
- C. An HPTP Segment Plan will be completed by the Proponent for each work element (typically a Segment or its substations) before the BLM will issue a NTP for that segment or Undertaking element. An HPTP Segment Plan will not be required for a work element where no historic properties have been identified within the APE or for a work element with no adverse effect determination. Each HPTP Segment Plan will outline a strategy to mitigate adverse effects to the specific characteristics of the historic property that make it eligible for listing in the NRHP. Both the manner in which these NRHP qualities will be lessened and how proposed mitigation efforts will offset said effects will be clearly defined in the mitigation plan for each historic property. The plan will also identify the responsible parties and their roles. Given the nature of the phased construction of the Undertaking, specific treatment plans may be developed in stages. Each HPTP Segment Plan will list all historic properties that have been identified, including those avoided, by land ownership and by state. The plans will identify the specific mitigation strategies proposed to address the direct, indirect, and cumulative effects of the Undertaking on both individual historic properties and specific groups of historic properties (e.g., archaeological sites, trails, etc.). Each HPTP Segment Plan will adhere to the guidance provided by ACHP (<http://www.achp.gov/archguide/>)¹, the Secretary of the Interior's Professional Standards, HABS/HAER/HALS guidance (<http://www.nps.gov/hdp/>), and appropriate state guidelines.
- Each HPTP Segment Plan will address, but is not limited to, the following:
- 1. The assessment of effects and how adverse effects to historic properties will be resolved in consultation with the Proponents and other consulting parties.
 - 2. Preparation of a Monitoring Plan, including tribal participation, for the Undertaking.
 - 3. Monitoring as part of a defined strategy to identify and resolve adverse impacts to historic properties from indirect and cumulative effects.
 - 4. Methods to document proposed treatment and reporting of mitigation.
- D. The Proponents will develop and submit each HPTP Segment Plan to the BLM for review and comment for 30 days. The BLM will respond with written comments, if needed, and the Proponents will incorporate the comments and revise each HPTP Segment Plan as appropriate.
- E. When the BLM has approved each HPTP Segment Plan proposed by the Proponents, the BLM will submit each draft HPTP Segment Plan to the Signatories, Invited Signatories, and Concurring Parties for review and comment for 20 days. The BLM will incorporate the comments, as appropriate, into a revised document and will submit the HPTP Segment Plan to the said parties for a second review. All said parties will respond to the second review of the HPTP Segment Plan within 10 days. The BLM will submit the final HPTP Segment Plan with comments to the SHPOs for review and comment for

¹ Two items in this guidance will not apply to Wyoming: specifically, site burial and mitigation banking of archaeological sites.

30 days. Upon final acceptance by the BLM and SHPO, each HPTP Segment Plan will be appended to the PA.

- F. The HPTP will address operations and maintenance of the transmission line and related facilities. The HPTP will:
- Identify potential effects to historic properties remaining in the ROW from operation and maintenance of the Undertaking;
 - Identify stipulations to the ROW grant for the operator to avoid, minimize, or mitigate adverse impacts to historic properties from operation and maintenance activities;
 - Define a variance review process to be used during operations and maintenance to address any changes in procedure that could have an adverse effect on historic properties in the ROW (e.g., use of new types of equipment for vegetation maintenance in areas with sensitive resources), and stipulate that a BLM cultural resources specialist will review the proposed actions and make recommendations regarding the potential effects and the appropriate actions to avoid, minimize, or mitigate any adverse effects;
 - Identify operation and maintenance activities that will not be subject to additional Section 106 review.
 - Identify operation and maintenance activities that will require additional 106 review (e.g. an amendment to the ROW).
- G. Operation and maintenance stipulations regarding historic properties shall be incorporated into the ROW grant via the POD. Federal land managing agencies shall ensure compliance with these stipulations, and that the appropriate cultural resource specialist will participate in compliance and grant reviews for the life of the grant.

VI. Confidentiality of Historic Property Information

The parties to this PA acknowledge that historic properties covered by this PA are subject to the provisions of Section 304 of the NHPA relating to the nondisclosure of sensitive information about the location, character, and ownership of a historic property, including historic properties of traditional religious and cultural importance to Indian tribes, and having so acknowledged, will ensure that all actions and documentation prescribed by this PA are consistent with the Act. The BLM may require data sharing agreements with parties interested in obtaining confidential information.

VII. Inadvertent Discovery of Cultural Resources

If potential historic properties are discovered or unanticipated effects occur to known historic properties at any time during the Undertaking, the BLM will implement the Inadvertent Discovery Plan. This plan will be included as an appendix of the HPTP.

VIII. Inadvertent Discovery of Human Remains

If human remains are discovered at any time during the Undertaking, the BLM will follow the provisions of applicable state and local laws and NAGPRA (25 U.S.C. § 3001). These procedures would be included as an appendix of the HPTP.

IX. Curation

- A. The BLM shall ensure that curation of the material remains and all associated records resulting from identification and data recovery efforts is completed in accordance with 36 CFR Part 79 and the provisions of NAGPRA (25 U.S.C. § 3001). The Proponents shall provide documentation of the curation of these materials to the BLM and the appropriate SHPO within 60 days of acceptance of the final comprehensive inventory report for the Undertaking. Materials found on federal lands will remain federal property when curated (unless otherwise appropriately repatriated in accordance with NAGPRA).
- B. Archaeological materials collected from private lands pursuant to the implementation of this PA shall be maintained in accordance with 36 CFR Part 79 until all analysis is complete. If private landowners wish to donate collections from their lands to a museum, university, historical society, or other repository, the BLM will offer to assist in the transfer by completing the repository's donation forms and other paperwork. Otherwise, collections from private lands shall be returned to the landowners within 30 days of acceptance by the SHPO of the final mitigation report. Documentation of the disposition of private collections shall be provided to the BLM and the appropriate SHPO.

X. Initiation of Construction Activities

- A. The BLM will authorize treatment and/or construction only after issuance of a federal ROW grant, Special Use Authorization, and specific NTP or any other federal or state authorization to the Proponents. NTPs will be issued on a construction segment basis.
- B. Prior to issuance of an NTP, the BLM shall ensure that each final HPTP Segment Plan is completed to a level acceptable to the BLM, in consultation with the appropriate SHPO. The completion of the Segment Plan will apply to all land in the segment regardless of ownership. An acceptable level may consist of the following conditions:
 - 1. If fieldwork or alternative mitigation is complete:
 - a. summary description of the work undertaken, and
 - b. status of the reporting stipulations and schedule, or
 - 2. If fieldwork or alternative mitigation is incomplete:
 - a. a buffer for avoidance is clearly marked in the field until completion, and
 - b. cultural resources monitoring, if required, is in place as outlined in the HPTP, or
 - c. alternative mitigation plans are in place or completed to an acceptable level (per Stipulation X.B.1)
- C. The BLM may issue NTPs for individual construction segments as defined by the Proponents in their construction plans, under the following conditions:
 - 1. The construction of the segment will not preclude rerouting of other segments or affiliated ancillary feature locations.
 - 2. The BLM, in consultation with the appropriate SHPO, per Stipulation II.D-E, determines that:

- a. no historic properties are present within the APE for that segment; or
- b. historic properties are present within the APE for that segment but will not be affected or adversely affected.

XII. Changes in Construction Activities

A. The BLM and SHPOs will make every effort to expedite review of any changes to construction plans after initiation of construction. If the Proponents propose changes in the construction ROW or any ancillary areas outside of the APE surveyed for the Undertaking, the Proponents will conduct identification and evaluation of historic properties in accordance with Stipulation II. Results of the inventory report will be handled as follows:

1. If the inventory results in no cultural resources identified, the Proponents will submit copies of the draft inventory report to the lead BLM Office for distribution to the appropriate Field Offices, and to the appropriate federal land managing agencies for review. The land managing agencies will have 10 days to provide comments on the report to the lead BLM Office. If the BLM accepts the findings, the BLM may issue the NTP without SHPO review. If not, the Proponents will revise the report as necessary and resubmit it to the lead BLM Office within 10 days. The BLM will send the documentation to the SHPO and proceed. The report data will also be included in any final report for the Undertaking.
2. If the inventory results in no historic properties identified, the Proponents will submit copies of the draft inventory report to the lead BLM Office for distribution to the appropriate Signatories, Invited Signatories and Concurring Parties to this Agreement. Reviewers will provide any comments to the lead BLM Office within 15 days of receipt of the document. Any necessary changes to the report will be made by the Proponents and resubmitted to the appropriate Signatories, Invited Signatories, and Concurring Parties within 10 days. The BLM will then send the documentation to the SHPO who will have 20 days to review and comment. The BLM will have 10 days to respond to any SHPO comments. If the SHPO does not respond within the stated timeframe, the BLM will assume SHPO has no objection to the report and concurs with the agency determination of eligibility. The BLM may issue the NTP or other applicable authorization to proceed at this point per Stipulation X.
3. If the inventory results in historic properties identified, the Proponents will submit copies of the draft inventory report, including summaries of potential effects to any historic properties, to the lead BLM Office for distribution to the appropriate Signatories, Invited Signatories and Concurring Parties to this Agreement. Reviewers will provide any comments to the lead BLM Office within 30 days. Any changes to the report will be performed by the Proponents and resubmitted to the appropriate Signatories, Invited Signatories, and Concurring Parties within 15 days. The BLM will then send the documentation to the SHPO who will have 30 days to review and comment. The BLM will have 15 days to respond to any SHPO comments. If the SHPO does not respond within the stated timeframe, the BLM will assume SHPO has no objection to the report and concurs with the agency determination of eligibility and finding of effect. The BLM may issue the NTP or other applicable authorization to proceed at this point per Stipulation X.

XIII. Annual Reporting and Evaluation

The lead BLM office shall prepare an annual letter report of cultural resources activities pertaining to this Undertaking for all Signatories, Invited Signatories, and Concurring Parties by December 31 for the duration of this PA. The implementation and operation of this PA shall be evaluated on an annual basis by the Signatories, Invited Signatories, and Concurring Parties. This evaluation, to be conducted after the receipt of the BLM letter report, may include in-person meetings or conference calls among these parties, and suggestions for possible modifications or amendments to this Agreement.

XIV. Dispute Resolution

- A. Should any Signatory to this PA provide notice to the BLM 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 BLM shall consult with all Signatories, Invited Signatories, and Concurring Parties to this PA to resolve the objection, unless otherwise specified in this document. If the BLM determines that the objection cannot be resolved, the BLM shall forward all documentation relevant to the dispute to the ACHP. The objecting party must provide reasons for, and a justification of, its objection at the time it initially submits its objection to the BLM. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:
1. Provide the BLM with recommendations, which the BLM shall take into account in reaching a final decision regarding the dispute; or
 2. Notify the BLM that it will comment within an additional 30 days, in accordance with 36 CFR 800.7(c)(4). Any ACHP comment provided in response to such a request will be taken into account, and responded to, by the BLM in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.
- B. The BLM's responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

XV. Amendment

A Signatory or Invited Signatory may recommend the PA be amended. This PA may be amended after a 30 day review and consultation among the Signatories, Invited Signatories, and Concurring Parties to this Agreement, if the amendment is agreed to in writing by all Signatories and Invited Signatories who have signed the PA. The amendment will be effective on the date a copy signed by all of the Signatories and Invited Signatories is filed by the BLM with the ACHP.

XVI. Termination

- A. Any of the Signatories and Invited Signatories who have signed this PA may terminate it.
- B. The termination process starts when a Signatory or Invited Signatory who has signed the PA provides written notice to the other Signatories and Invited Signatories of its intent to terminate. Termination shall take effect no less than 30 days after this notification, during which time the Signatories, Invited

Signatories, and Concurring Parties shall consult to seek Agreement on amendments or any other actions that would address the issues and avoid termination. The notice must explain in detail the reasons for the proposed termination. The PA will be terminated at the end of the 30 day period unless the Signatories and Invited Signatories agree to a longer period of consultation or the party proposing termination retracts its proposal.

- C. If the PA is terminated, the BLM will notify all parties to the PA of its plan for considering and resolving adverse effects to historic properties for the remainder of the Undertaking and request the ACHP comment within 45 days per 36 CFR 800.7(c).
- D. In accordance with 36 CFR 800.7(c)(4), the BLM will take into account and respond to comments provided by the ACHP within 45 days, prior to making a final decision on how to proceed with regard to historic properties for the remainder of the Undertaking in the absence of a PA.
- E. An individual SHPO may withdraw from the PA upon written notice to all Signatories and Invited Signatories after having consulted with them for at least 30 days to attempt to find a way to avoid the withdrawal. Upon withdrawal, the BLM and the withdrawing SHPO will comply with Section 106 in accordance with 36 CFR 800.3 through 800.7 or the execution of an agreement in accordance with 36 CFR 800.14(b). Such Section 106 compliance will be limited to consideration of effects of the Undertaking solely within the jurisdiction of the withdrawing SHPO. This PA will still remain in effect with regard to the portions of the Undertaking located in the jurisdiction of the SHPO that have not withdrawn from the PA. If both SHPOs withdraw from the PA, the PA will be considered to be terminated.

XVII. Duration of This PA

- A. This PA will expire if the Undertaking has not been initiated, the BLM ROW grant expires or is withdrawn, or the stipulations of this PA have not been initiated within five (5) years from the date of its execution. Upon such expiration, and prior to work continuing on the Undertaking, the BLM shall either (a) execute a Memorandum of Agreement 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. Prior to the expiration date, the BLM may consult with the other Signatories, Invited Signatories, and Concurring Parties to reconsider the terms of the PA and amend it in accordance with Stipulation XIV. The BLM shall notify the Signatories, Invited Signatories, and Concurring Parties within 30 days as to the course of action the BLM will pursue.
- B. Unless this PA is terminated pursuant to Stipulation XIV above, another agreement executed for the Undertaking supersedes it, or the Undertaking itself has been terminated, this PA will remain in full force and effect until the BLM, in consultation with the other Signatories and Invited Signatories, determines that construction of all aspects of the Undertaking has been completed and that all terms of this PA have been fulfilled in a satisfactory manner, not to exceed ten (10) years. Upon a determination by the BLM that all terms of this PA and any subsequent agreements have been fulfilled in a satisfactory manner, the BLM will notify the Signatories, Invited Signatories, and Concurring Parties in writing of the agency's determination. This PA will terminate and have no further force or effect on the day that the BLM so notifies the Signatories, Invited Signatories, and Concurring Parties.

XVIII. Wyoming General Provisions

- A. Entirety of Agreement. This PA, consisting of seventeen (17) total pages, plus individual signature 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 NHPA for the Undertaking.
- B. 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 or her representative.
- C. 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.
- D. Sovereign Immunity. The State of Wyoming and the WYSHPO, as well as the Shoshone-Paiute Tribes, the Shoshone-Bannock Tribes, the Ute Indian Tribe of the Uintah & Ouray Reservation, the Eastern Shoshone, the Northern Arapaho, the Northern Cheyenne, the Northwestern Band of Shoshone, and the Oglala Sioux, 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.
- E. 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 Signatories, Invited Signatories, and Concurring Parties and subsequent implementation of its terms shall evidence that the BLM and the federal agencies have taken into account the effects of the Undertaking on historic properties and afforded the ACHP an opportunity to comment on it in compliance with Section 106.

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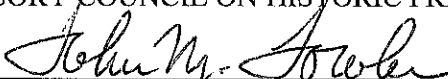
July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

SIGNATORIES

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____



John M. Fowler, Executive Director

Date: _____

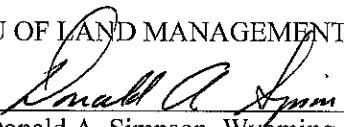
9/12/13

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

SIGNATORIES

BUREAU OF LAND MANAGEMENT

By: 
Donald A. Simpson, Wyoming State Director

Date: 8/12/13

Final Programmatic Agreement Among the Bureau of Land Management, The USDA Forest Service, The Advisory Council on Historic Preservation, The Idaho State Historic Preservation Officer, The Wyoming State Historic Preservation Officer, The Bureau of Reclamation, The National Park Service, The U.S. Army Corps of Engineers, the Idaho National Guard, Idaho Power, and Rocky Mountain Power Regarding Compliance with the National Historic Preservation Act for the Gateway West Transmission Line Project

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

SIGNATORIES

USDA FOREST SERVICE, INTERMOUNTAIN REGION

By:

Mariela Julez
for Nora Rasure, Regional Forester

Date:

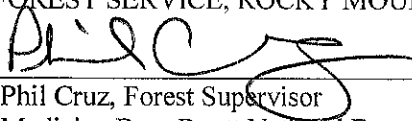
8-7-2013

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

SIGNATORIES

USDA FOREST SERVICE, ROCKY MOUNTAIN REGION

By: 

Date: 8-21-2013

Phil Cruz, Forest Supervisor

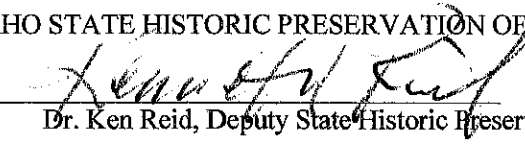
Medicine Bow-Routt National Forests and Thunder Basin National Grassland

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

SIGNATORIES

IDAHO STATE HISTORIC PRESERVATION OFFICER

By: 

Dr. Ken Reid, Deputy State Historic Preservation Officer

Date: August 15, 2013

Final Programmatic Agreement Among the Bureau of Land Management, The USDA Forest Service, The Advisory Council on Historic Preservation, The Idaho State Historic Preservation Officer, The Wyoming State Historic Preservation Officer, The Bureau of Reclamation, The National Park Service, The U.S. Army Corps of Engineers, the Idaho National Guard, Idaho Power, and Rocky Mountain Power Regarding Compliance with the National Historic Preservation Act for the Gateway West Transmission Line Project

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

SIGNATORIES

WYOMING STATE HISTORIC PRESERVATION OFFICER

By: Mary Hopkins
Mary Hopkins, State Historic Preservation Officer

Date: 8/8/13

Approval as to Form

WYOMING ATTORNEY GENERAL'S OFFICE

By: S. Jane Caton #103299
S. Jane Caton, Senior Assistant Attorney General

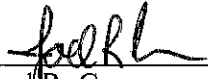
Date: 8-7-13

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

SIGNATORIES

U.S. ARMY CORPS OF ENGINEERS

By: 
Joel R. Cross
Colonel, Corps of Engineers
Omaha District Commander

Date: 8 Aug 2013

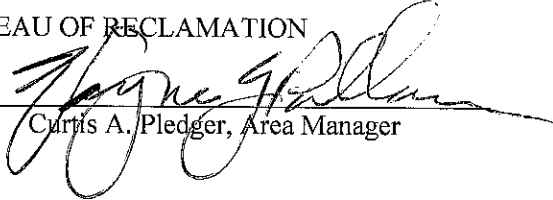
July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

INVITED SIGNATORIES

BUREAU OF RECLAMATION

By:


Curtis A. Pledger, Area Manager

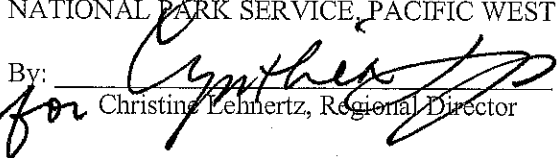
Date: AUG 14 2013

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

INVITED SIGNATORIES

NATIONAL PARK SERVICE, PACIFIC WEST REGION

By: 

for Christine Lehnertz, Regional Director

Date: Aug. 16, 2013

Final Programmatic Agreement Among the Bureau of Land Management, The USDA Forest Service, The Advisory Council on Historic Preservation, The Idaho State Historic Preservation Officer, The Wyoming State Historic Preservation Officer, The Bureau of Reclamation, The National Park Service, The U.S. Army Corps of Engineers, the Idaho National Guard, Idaho Power, and Rocky Mountain Power Regarding Compliance with the National Historic Preservation Act for the Gateway West Transmission Line Project

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

INVITED SIGNATORIES

NATIONAL PARK SERVICE, INTERMOUNTAIN REGION

By: *John Wessels*
for John Wessels, Regional Director

Date: 8/16/13

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

INVITED SIGNATORIES

IDAHO POWER COMPANY

By:  Date: 8-6-13
Vern Porter, Vice President, Engineering and Operations

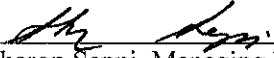
Final Programmatic Agreement Among the Bureau of Land Management, The USDA Forest Service, The Advisory Council on Historic Preservation, The Idaho State Historic Preservation Officer, The Wyoming State Historic Preservation Officer, The Bureau of Reclamation, The National Park Service, The U.S. Army Corps of Engineers, the Idaho National Guard, Idaho Power, and Rocky Mountain Power Regarding Compliance with the National Historic Preservation Act for the Gateway West Transmission Line Project

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

INVITED SIGNATORIES

ROCKY MOUNTAIN POWER

By:  Date: 8-6-13
Sharon Seppi, Managing Director, Construction, Construction Services

GATEWAY WEST PROGRAMMATIC AGREEMENT

CONCURRING PARTIES

ALLIANCE FOR HISTORIC WYOMING

By: Carly Ann Marie Anderson
Carly Ann Anderson, Executive Director

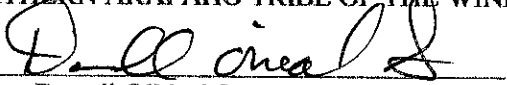
Date: August 9, 2013

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

CONCURRING PARTIES

NORTHERN ARAPAHO TRIBE OF THE WIND RIVER RESERVATION

By: 

Darrell O'Neal Sr.

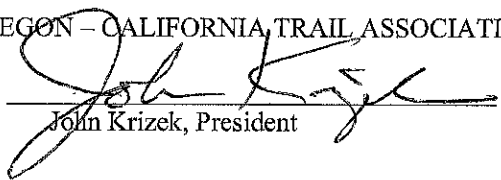
Date: 8-14-2013

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

CONCURRING PARTIES

OREGON - CALIFORNIA TRAIL ASSOCIATION

By: 

John Krizek, President

Date: 11 August 13

Final Programmatic Agreement Among the Bureau of Land Management, The USDA Forest Service, The Advisory Council on Historic Preservation, The Idaho State Historic Preservation Officer, The Wyoming State Historic Preservation Officer, The Bureau of Reclamation, The National Park Service, The U.S. Army Corps of Engineers, the Idaho National Guard, Idaho Power, and Rocky Mountain Power Regarding Compliance with the National Historic Preservation Act for the Gateway West Transmission Line Project

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

CONCURRING PARTIES

TRACKS ACROSS WYOMING

By: Charles Lanham
Charles Lanham
President/Chairman

Date: Aug 13, 2013

July 12, 2013

GATEWAY WEST PROGRAMMATIC AGREEMENT

CONCURRING PARTIES

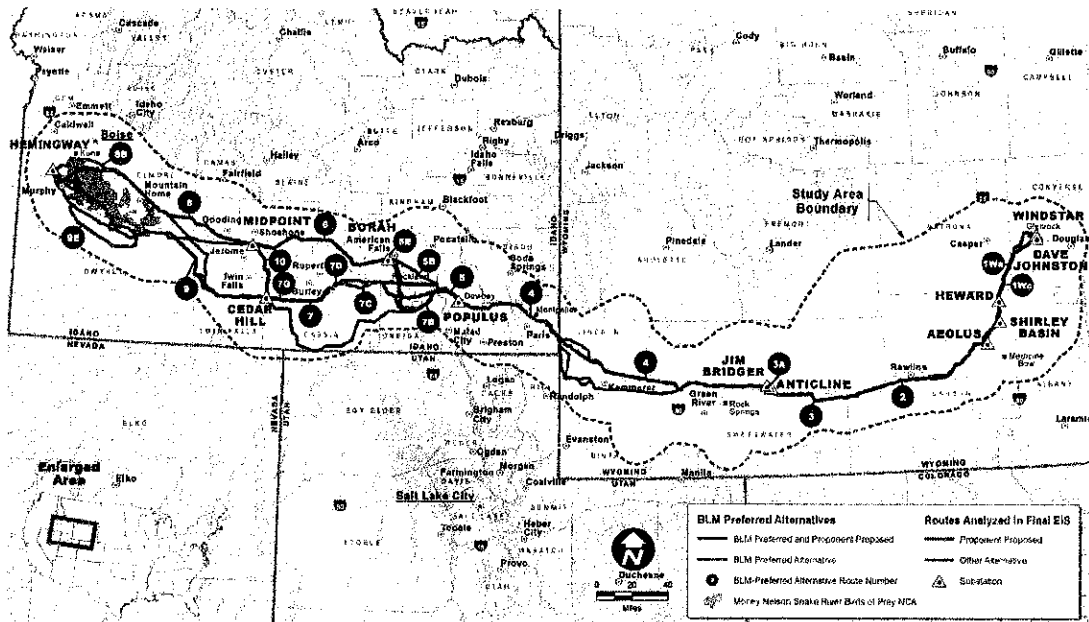
U.S. AIRWAYS HERITAGE ASSOCIATION

By: Marion Reid Miller
Marion Reid Miller
Secretary

Date: AUGUST 17, 2013

APPENDICES

A. Map of Proposed Undertaking and Alternatives



Map as of 4/26/2013.

B. Historic Properties Treatment Plan

[Historic Properties Treatment Plan and associated Historic Properties Treatment Segment Plans will be appended to the document as they are developed.]

C. Guidelines for Determination of Visual Effects on the Integrity of a Historic Setting Under the VCR Assessment

The Visual Contrast Rating will be used by the Proponents to analyze the potential visual impact of the Undertaking to historic properties for which setting is a contributing aspect of integrity. The basic philosophy underlying the system is: The degree to which the Undertaking affects the setting of a historic property depends on the visual contrast created between the Undertaking and the existing setting of the historic property. The contrast can be measured by comparing the project features with the major features in the existing setting. The basic design elements of form, line, color, and texture are used to make this comparison and to describe the visual contrast created by the Undertaking. In conjunction with the Visual Contrast Rating worksheet, the use of illustrations, photographs, photo simulations and computer-generated models and images will be utilized to communicate the degree of contrast the Undertaking will have on the setting of historic properties.

No Visual Contrast occurs if the proposed project elements will not be seen; there is no contrast between the Undertaking and the setting. The agency determination will be "No Historic Properties Affected."

Appendices

Final Programmatic Agreement Among the Bureau of Land Management, The U.S. Forest Service, The Advisory Council on Historic Preservation, The Idaho State Historic Preservation Officer, The Wyoming State Historic Preservation Officer, The Bureau of Indian Affairs, The Bureau of Reclamation, The National Park Service, The U.S. Army Corp of Engineers, the Idaho National Guard, Idaho Power, and Rocky Mountain Power Regarding Compliance with the National Historic Preservation Act for the Gateway West Transmission Line Project

Weak Visual Contrast occurs if the proposed project elements, or portions of the elements, can be seen but will not dominate the setting or attract the attention of the casual observer because the basic elements of form, line, color and texture found in the setting are repeated in the project's physical elements. The agency determination will be "No Historic Properties Adversely Affected."

Moderate or Strong Visual Contrast occurs if the proposed project elements tend to dominate the setting. The agency determination will be "Historic Properties Adversely Affected."

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D. Table of Review Times

Stipulation	Document/Report	Sender	Reviewer	Review/consultation time	Revision time
I.B.3: Amending the APE	Description/map of proposed modification	BLM	S/IS/CP	30 day review	
	NHRP eligibility recommendations	BLM	S/IS/CP	30 day review	
	SHPO concurrence	BLM	SHPO	30 day review	
	If BLM/SHPO do not agree on eligibility	BLM	SHPO	30 day consultation	
III.A: Reporting, Consultation and Review of Documentation	Phase Reports and Site Forms	Proponents to BLM Lead Office	BLM, Federal land managing agencies	30 day review	15 day review (if needed)
		BLM	S/IS/CP	15 day review	15 day review (if needed)
		BLM	SHPO	30 day review	
		Proponents	BLM	30 day review	
V.D-E: Historic Properties Treatment Plan	HPTP Segment Plans	BLM	S/IS/CP	20 day review	10 day review (if needed)
		BLM	SHPO	30 day review	
		See below			
XI: Changes in Construction Activities	Inventory Reports	Proponents to BLM Lead Office	BLM, Federal land managing agencies	10 day review	(Proponents may need to revise report and resubmit within 10 days)
		Proponents to BLM Lead Office	S/IS/CP	15 day review	(Proponents may need to revise report and resubmit within 10 days)
		BLM	SHPO	20 day review	(BLM 10 days to respond to SHPO comments)
		Proponents to BLM	S/IS/CP	30 day review	(Proponents may need to revise report and resubmit within 15 days)
If historic properties identified		BLM	SHPO	30 day review	(BLM 15 days to respond to SHPO comments)

*S/IS/CP = Signatories, Invited Signatories and Concurring Parties

Appendices

Final Programmatic Agreement Among the Bureau of Land Management, The U.S. Forest Service, The Advisory Council on Historic Preservation, The Idaho State Historic Preservation Officer, The Wyoming State Historic Preservation Officer, The Bureau of Indian Affairs, The Bureau of Reclamation, The National Park Service, The U.S. Army Corp of Engineers, the Idaho National Guard, Idaho Power, and Rocky Mountain Power Regarding Compliance with the National Historic Preservation Act for the Gateway West Transmission Line Project



Preserving America's Heritage

September 3, 2014

Ms. Victoria Rutson
Surface Transportation Board
Office of Environmental Analysis
395 E Street, SW
Washington, DC 20423

Ref: *Proposed Tongue River Railroad Project, Analysis of Alternatives to Resolve Adverse Effects Custer, Rosebud, Powder River and Bighorn Counties, Montana*

Dear Ms. Rutson:

On August 11, 2014, the Advisory Council on Historic Preservation (ACHP) participated in the Surface Transportation Board's (STB's) consulting party meeting via teleconference for the referenced undertaking. During the teleconference, the National Trust for Historic Preservation (NTHP) raised a concern regarding the proposed language in the Whereas Clauses regarding how STB intends to involve consulting parties in the analysis of alternatives to the proposed undertaking. Although STB has indicated that it will consider the effects of each of the alternative routes on historic properties, such analysis should not be conducted in a vacuum. Accordingly, the inquiry made by the NTHP is relevant to the STB Section 106 consultation, and should be addressed in future consulting party meeting teleconferences.

During the teleconference on July 25, 2014, the ACHP recommended that STB develop a process Programmatic Agreement (PA) which would outline the procedures to be followed prior as STB selects the preferred alternative for the Tongue River Project. We understood that we were proposing an approach that differs from that recommended by the Tongue River Railroad. However, the ACHP believes that in this particular undertaking, it is critical that STB have transparency and stakeholder engagement in all aspects of decision making. Therefore, we urge STB to take appropriate measures to engage consulting parties as each alternative is considered so that issues related to the APE, scope of work for identification and evaluation and assessment of effects are considered in a timely manner. Section 800.6(a) of our regulations, "Protection of Historic Properties" (36 CFR Part 800) states:

The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications that could avoid, minimize, or mitigate adverse effects to historic properties.

Since STB has not yet selected a preferred alternative for the Tongue River Project, the evaluation of alternatives must be incorporated in any PA that will be used by the agency to fulfill the requirements of Section 106. We have recommended to STB during previous teleconferences that it develop a PA that outlines the procedure to be followed for each step of the Section 106 process that will not have been completed prior to executing the PA. The analysis of alternatives would be done under the Resolution of Adverse Effects in Step IV. We are providing STB with an example of a processed PA that the ACHP

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street, Suite 308 • Washington, DC 20001-2637

Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

was involved in developing (see enclosed). We recommend that STB share this sample PA with other consulting parties so that we can discuss this issue further.

Since the last teleconference held on August 11, 2014, ended without a discussion regarding the analysis of alternatives, we request that STB include this topic on the next meeting agenda. Other consulting parties may want to share their views regarding the analysis of alternatives as well. Moreover, we believe that STB's position on this issue be resolved before consulting parties negotiate the avoidance, minimization, and mitigation stipulations.

If you have any questions, please contact Najah Duvall-Gabriel at (202) 517-0120, or via email at ngabriel@achp.gov.

Sincerely,

A handwritten signature in cursive script that reads "Charlene Dwin Vaughn". The signature is written in dark ink and is positioned above the printed name and title.

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

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**PROGRAMMATIC AGREEMENT AMONG
THE SURFACE TRANSPORTATION BOARD,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE U.S. ARMY CORPS OF ENGINEERS,
THE U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT,
THE U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL
RESEARCH SERVICE,
THE MONTANA STATE HISTORIC PRESERVATION OFFICER,
THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION, AND
THE TONGUE RIVER RAILROAD COMPANY, INC.,
REGARDING CONSTRUCTION AND OPERATION
BY THE TONGUE RIVER RAILROAD COMPANY, INC. OF A RAIL LINE
IN CUSTER, POWDER RIVER AND ROSEBUD COUNTIES, MONTANA**

17 **WHEREAS**, the Tongue River Railroad Company Inc. (TRRC), the project applicant, filed a
18 revised application with the Surface Transportation Board (STB) proposing to construct and
19 operate a new, approximately 42-mile rail line between Colstrip, Montana, to two terminus
20 points, near Ashland, Montana in Custer, Powder River and Rosebud Counties to transport low
21 sulfur, sub-bituminous coal from proposed mine sites in the Tongue River Valley and Powder
22 River Basin (TRRC project) (Map, Attachment A); and,
23

24 **WHEREAS**, the STB is preparing an Environmental Impact Statement (EIS) in accordance with
25 the requirements of the National Environmental Policy Act (NEPA) to address the potential
26 impacts of the TRRC project on the environment, including on cultural resources. Review under
27 Section 106 of the National Historic Preservation Act (NHPA) is being coordinated with the
28 NEPA process and cultural resources documentation prepared will be the basis for determining
29 the potential impacts on historic properties, cultural resources, and tribal sites of significance for
30 both reviews; and,
31

32 **WHEREAS**, the STB is considering the No Action Alternative and five build alternative routes,
33 and certain variations on the five build alternative routes, to be carried forward in the EIS: the
34 Colstrip Alternative (the applicant's preferred alternative), the Tongue River Alternative, the
35 Tongue River Road Alternative, the Moon Creek Alternative, and the Decker Alternative, some
36 of which traverse portions of Custer County as well as Powder River and Rosebud Counties; and,
37

38 **WHEREAS**, the STB will be comparing the potential impact of each of the build alternatives on
39 historic properties, cultural resources and tribal sites of significance to inform its selection of any
40 build alternative; and,
41

42 **WHEREAS**, the STB is the lead federal agency responsible for compliance with Section 106 of
43 the NHPA, 16 U.S.C. Part 470f and its implementing regulations at 36 CFR Part 800; and,
44

45 **WHEREAS**, the STB's potential approval of the TRRC project is an Undertaking as defined at
46 36 CFR § 800.16(y); and,
47

Comment [SR1]: Clause added per NTHP
comment

1 **WHEREAS**, the STB has determined its potential approval of the TRRC project, the
2 Undertaking, may affect properties listed in or eligible for listing in the National Register of
3 Historic Places (National Register) pursuant to 36 CFR Part 60 as well as tribal sites of
4 significance as defined in Appendix C; and,

5 **WHEREAS**, tribal sites of significance identified and evaluated by tribal experts or authorities
6 may be eligible for listing in the National Register as historic properties of religious and cultural
7 significance to tribes; and,

8 **WHEREAS**, the effects on historic properties and tribal sites of significance cannot be fully
9 determined prior to any decision approval of the TRRC project by the STB, and therefore a
10 programmatic agreement (PA) is appropriate pursuant to the Section 106 regulations at 36 CFR §
11 800.14(b)(1)(ii); and,

12 **WHEREAS**, in the event that the STB approves any build alternatives, this PA would be
13 included in its record of decision to guide the resolution of adverse effects to historic properties
14 and tribal sites of significance; and,

15 **WHEREAS**, the STB may or may not approve construction and operation of the TRRC rail line,
16 the STB developed this PA to defer final identification and evaluation of historic properties
17 pursuant to 36 CFR § 800.4(b)(2), to phase the application of the criteria of adverse effect
18 pursuant to 36 CFR § 800.5(a)(3), and to continue consultation to avoid, minimize and mitigate
19 the potential adverse effects of the Undertaking to historic properties and tribal sites of
20 significance in accordance with 36 CFR § 800.6(a); and,

21 **WHEREAS**, pursuant to 36 CFR § 800.4(b)(2) and 36 CFR § 800.5(a)(3), the STB, through the
22 phased identification, evaluation and effect assessment, has established the likely presence of
23 historic properties and tribal sites of significance within the area of potential effects (APE) for
24 each alternative or inaccessible area through background research, consultation and the
25 appropriate level of field investigation, taking into account the number of alternatives under
26 consideration, the magnitude of the undertaking and its likely effects, and the views of the
27 consulting parties; and,

28 **WHEREAS**, upon approval of the project, the STB would develop a treatment plan as an
29 amendment to this PA that would outline the specific measures that would be implemented to
30 resolve adverse effects to historic properties and tribal sites of significance for any approved
31 alternative; and,

32 **WHEREAS**, this PA was developed in consultation with the Advisory Council on Historic
33 Preservation (ACHP) and the Montana State Historic Preservation Officer (SHPO) pursuant to
34 36 CFR § 800.6, who are signatories to this PA; and,

35 **WHEREAS**, the U.S. Army Corps of Engineers (COE), U.S. Department of Interior Bureau of
36 Land Management (BLM), and the U.S. Department of Agriculture Agricultural Research
37 Service (ARS) are cooperating agencies under NEPA and signatories to this PA; and,

Comment [SR2]: In an e-mail dated 10/27/2014, Lana Gravatt of the Yankton Sioux suggested the beginning of this clause be revised as: "Whereas, because of the several alternative build routes, the effects on historic properties (which include tribal sites of significance)..."

Comment [SR3]: The Colstrip Alternative Landowner Group letter dated 9/30/2014, had multiple comments about this WHEREAS clause. The letter stated that this clause appears to contemplate the choice of a route by STB prior to the full identification and consideration of potentially significant cultural resources, did not agree the Tongue River Railroad is a complex project, and did not agree that a PA is appropriate for this project. In terms of specific language in this clause, the letter stated: "Finally, we do not agree that the language of 36 C.F.R. § 800.14(b)(1)(ii) – 'When effects on historic properties cannot be fully determined prior to approval of an undertaking' – applies to this proposed project. To the contrary, determining effects on historic properties along all alternative routes is feasible prior to the agency's decision. As the agency appears to believe otherwise, we request an explicit property description of which portions of the alternatives cannot be fully analyzed prior to the agency's final decision."

"Even if the regulations authorized use of a PA in this situation, it would be inadvisable as a practical matter for STB to wait until after authorizing construction – if that is the outcome – to identify some effect on historic properties. If effects turn out to be more serious or widespread than understood at the decision point, the No Action Alternative will no longer be available."

The Colstrip Alternative Landowner Group letter dated 11/4/14, stated: "Landowners continue to object to the wording of this item. The agency has not produced any written record showing that effects "cannot be fully determined prior to any approval of the TRRC project by the STB." Without such a written showing, the decision to use a PA on this basis is arbitrary, capricious, and unsupported by substantial evidence."

Comment [SR4]: In Lana Gravatt's e-mail dated 10/27/2014, she asked that the following clause be added: "Whereas, historic properties (which includes tribal sites of significance) within the actual boundaries of APE, will be protected and given every consideration under the American Indian Religious Act of 1978 within the NEPA Process and before approval of TRRC by STB, etc."

1
2 **WHEREAS**, the Montana Department of Natural Resources and Conservation (MT DNRC)
3 (acting as lead agency for all Montana State agencies, including the Montana Department of
4 Transportation (MDOT)) is a cooperating agency and signatory to this PA; and,

5
6 **WHEREAS**, the MDOT has the responsibility for complying with Section 4(f) of the
7 Department of Transportation Act where applicable; and,

8
9 **WHEREAS**, the TRRC, the project applicant, is a signatory to this PA; and,

10
11 **WHEREAS**, the STB has consulted by letter, email, monthly teleconferences, and meetings with
12 the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; the Crow
13 Tribe of Montana; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota;
14 the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; the Standing Rock
15 Sioux Tribe of North & South Dakota; the Cheyenne River Sioux Tribe of the Cheyenne River
16 Reservation, South Dakota; the Yankton Sioux Tribe of South Dakota; the Sisseton-Wahpeton
17 Oyate of the Lake Traverse Reservation, South Dakota; the Assiniboine and Sioux Tribes of the
18 Fort Peck Indian Reservation, Montana; the Flandreau Santee Sioux Tribe of South Dakota; the
19 Shakopee Mdewakanton Sioux Community of Minnesota; the Rosebud Sioux Tribe of the
20 Rosebud Indian Reservation, South Dakota; the Santee Sioux Nation, Nebraska; the Arapaho
21 Tribe of the Wind River Reservation, Wyoming; Three Affiliated Tribes of the Fort Berthold
22 Reservation, North Dakota; the Cheyenne and Arapaho Tribes, Oklahoma; the Fort Belknap
23 Indian Community of the Fort Belknap Reservation of Montana; the Oglala Sioux Tribe, the
24 Shoshone Tribe of the Wind River Reservation, Wyoming; and the Spirit Lake Sioux Tribe,
25 North Dakota concerning properties of traditional religious and cultural significance, ~~and who~~
26 have been invited to participate in the development of the PA as concurring parties, and who are
27 hereafter referred to as consulting tribes; and,

Comment [SR5]: Per TRRC request to
identify consulting tribes

28
29 **WHEREAS**, the STB has contacted the Lower Sioux Indian Community in the State of
30 Minnesota; the Upper Sioux Community, Minnesota; and the Blackfeet Tribe of the Blackfeet
31 Indian Reservation of Montana by letter, email and phone, and invited them to participate as
32 consulting parties in the development of this PA, however each of these tribes has either not
33 responded to STB's invitation or declined to participate in the development of this PA; and,

34
35 **WHEREAS**, other consulting parties, including the Colstrip Alternative Landowners Group, Fix
36 Ranch, National Trust for Historic Preservation (NTHP), Montana Preservation Alliance (MPA),
37 National Wildlife Federation (NWF), Northern Cheyenne Otter Creek Descendants (NCOCD),
38 Northern Plains Resource Council (NPRC), Rocker Six Cattle Company (RSCC), and the Sierra
39 Club have been invited to participate in the development of the PA as concurring parties; and,

Comment [MS6]: The Colstrip Alternative
Landowner Group letter dated 11/4/14,
requested that OEA "Please clarify legal
significance – if any – of 'concurring' versus
'consulting' parties."

40
41 **WHEREAS**, the Wolf Mountains Battlefield, a property located within the view shed of the
42 Decker Alternative, was designated a National Historic Landmark (NHL) on October 6, 2008;
43 and,

44
45 **WHEREAS**, the Wolf Mountains Battlefield Site may be indirectly affected if the STB licenses
46 the Decker alternative; and,

1
2 **WHEREAS**, given the designation of the Wolf Mountains Battlefield as an NHL, the STB has
3 invited the U.S. Department of Interior, National Park Service, National Landmarks Program
4 (NLP), and the NLP has agreed, to participate in consultation and invited to be a concurring
5 party in the development of this PA; and,
6

7 **WHEREAS**, the signatory and concurring parties to this PA are hereafter collectively referred to
8 as ***PA consulting parties***; and,
9

10 **WHEREAS**, TRRC, the applicant, would not be required to act under the terms of this PA
11 unless or until the STB authorizes the construction and operation of a new rail line; and,
12

13 **WHEREAS**, the TRRC project's Area of Potential Effects (APE), as defined at 36 CFR §
14 800.16(d), is outlined and identified in the Identification Plan (ID Plan), Attachment B of this
15 PA; and,
16

17 **WHEREAS**, the definitions of 36 CFR Part 800 and the definitions and acronyms in Attachment
18 C are applicable throughout this PA and any attachments to this PA; and,
19

20 **WHEREAS**, the PA consulting parties have considered requirements of NHPA, the American
21 Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq. (AIRFA), the Native American Graves
22 Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. (NAGPRA), Executive Order 13007 –
23 Indian Sacred Sites, Executive Order 13175 – Consultation and Coordination with Indian Tribal
24 Governments, the Archaeological Resources Protection Act of 1979 (ARPA) and Section 4(f) of
25 the Department of Transportation Act (49 U.S.C. 303) where applicable in the course of
26 consultation; and,
27

28 **WHEREAS**, in 2013 and 2014, the STB conducted a SHPO records search for previously
29 recorded archaeological and historic sites, for a one-mile area on either side of the proposed
30 right-of-way of the five build alternative routes, and variations, being considered for the TRRC
31 project under NEPA; and,
32

33 **WHEREAS**, in 2013 and 2014, the STB conducted pedestrian transect surveys by tribal
34 members, contracting archeologists, historians and architectural historians along portions of each
35 of the alternatives considered under NEPA; and,
36

37 **WHEREAS**, the STB has been advised by some consulting parties, including tribal members
38 and ranchers, that the Tongue River Valley is an area of rich cultural heritage; and,
39

40 **WHEREAS**, the STB in collaboration with the ACHP, SHPO and consulting parties, will
41 include specific mitigation in its treatment plan to resolve project related adverse effects within
42 the APE for any licensed alternative; and,
43

44 **WHEREAS**, all the data gathered under the terms of this PA will be made available to
45 consulting tribes to inform any future undertakings that may take place in the Tongue River
46 Valley; and,

1
2 **WHEREAS**, the ID Plan in Attachment B requires that TRRC complete Phase I and Phase II
3 surveys as defined in Attachment C and the ID Plan for the entire line approved by the STB in
4 order to take into account any potential adverse effects to historic properties and tribal sites of
5 significance; and,

6
7 **WHEREAS**, the STB will use an independent third-party contractor, working under its sole
8 supervision, direction and control, and at TRRC's expense, to assist STB in implementing the
9 Stipulations below; and,

10
11 **NOW, THEREFORE**, the signatories to this PA agree that the proposed TRRC project will be
12 implemented in accordance with the following stipulations in order to take into account the
13 effects of the TRRC project on historic properties and sites of significance.

14
15
16 **Definitions** [to be developed and added to the acronyms listed in Attachment C]

- 17 • *Phase I*
- 18 • *Phase II*
- 19 • *The Tongue River Railroad Company, Inc.*
- 20 • *Tribal Sites of Significance*

21
22
23
24
25
26 Other definitions
27
28
29
30

Comment [MS7]: Add to this list of definitions and create a Glossary for the PA based on comments from WG meetings, Section 106 meetings, and written comments.

STIPULATIONS

STB has a statutory obligation as the lead federal agency to fulfill the NHPA requirements of Section 106; therefore, STB will ensure that the measures in the following parts are carried out.

I. ROLES AND RESPONSIBILITIES

A. Federal Agency

Consistent with the requirements of 36 CFR 800.2(a), the STB remains legally responsible for ensuring that the terms of this PA are carried out. The STB is responsible for notifying the ACHP if a Memorandum of Agreement (MOA) is required and determining ACHP's participation and for notifying the signatories to this PA when Section 106 is concluded. STB reserves the right to seek qualified independent expert consultation through a third-party contractor in order to fulfill its responsibilities under this PA.

B. Other Federal Agencies

1. USACE-note any responsibilities of the Corps, if applicable.
2. BLM--If a selected alternative or associated infrastructure crosses lands managed by the U.S. Bureau of Land Management, BLM is responsible for issuing a right-of-way under Title V of the Federal Land Policy and Management Act (43 U.S.C 1701) as amended. Crossing BLM managed lands would be considered a Federal undertaking and require BLM to comply with NHPA and 36 CFR 800. If the southern route was selected BLM would also need to add a sentence saying that the ROW would avoid the BLM Wolf Mountain Battlefield Area of Critical Environmental Concern (ACEC) since the ACEC is closed to ROWs.
- 2-3. Montana DOT-note any special responsibilities-responsibility for alternatives that cross a highway or modify a highway alignment.
- 3-4. USDA-ARS-note any responsibilities for alternatives that cross ARS land

C. ACHP

The ACHP shall be responsible for providing technical guidance, monitoring the effectiveness of this PA, participating in dispute resolutions if needed, and notifying the STB if ACHP will participate in consultation for an MOA if needed.

D. SHPO

The SHPO shall be responsible for reviewing project documentation in a timely manner and participating in consultation as set forth in this PA.

E. Tribes

The participating Tribes shall be responsible to assist in the identification of tribal sites of significance in the APE and notifying STB and SHPO whether the properties are eligible for the National Register and also sites of tribal significance. [Add tribes' role to assist in identification of and determination of effect assessing effects upon tribal sites of significance in the APE. Circle back to ACHP that they do not anticipate below ground surveys.] Tribes will adhere to the time frames in the stipulations.

Comment [MS8]: Colstrip Alternative Landowners Group letter dated 11/4/14: The 10/17/14 version "of the Stipulations lacks many sections for which the Landowners proposed changes in their 9-30-14 letter to Vicki Rutson. Are we to understand that STB has fully reviewed and decided to reject all those comments?"

Comment [SR9]: Colstrip Alternative Landowners Group letter dated 9/30/2014: "Preamble. We would like a clarification here that STB's duty extends to the full scope of NHPA and its implementing regulations, not just the section mentioned here. We would also like some commitment as to the overall timeline in which STB would carry out its legal duties under the PA, if the PA takes effect. The twelve-year lifetime of the proposed PA is far too long for the Landowners to live in limbo, especially given the decades this proposal has already dragged on."

Comment [rs10]: In ACHP's letter dated 9/8/2014, ACHP asked that a stipulation for "roles and responsibilities" be added as follows: "Given the prominent role that the applicant, Tongue River Railroad Company (TRRRC), will assume in project planning and implementation, we recommend that a stipulation be added to the stipulations section that clarifies the roles and responsibilities of key consulting parties. We believe that all consulting parties would find this information useful since other Federal agencies such as BLM will be involved in project reviews. Further, it will help to avoid confusion in implementing the PA once it is executed."

Comment [MS11]: Doug Melton's recommended language for BLM Roles and Responsibilities.

Comment [MS12]: MDT: In B. Other Federal Agencies, #3 MDT requests that this be changed to the following:

Montana DOT- note any special responsibility for alternative that cross a highway or modify a highway alignment. (This means that the railroad impacts the highway in any way that they must comply with MDT's requirements.)

Rick, this language appears to need further revision.

Comment [SR13]: Rick and Najah have traded voice mails about this, but not conversed as of 10/31/2014.

F. Applicant

The TRRC shall be responsible for providing information to accurately delineate the APE, and providing access to the right-of-way so that STB, tribes, and SHPO can complete the stipulations set forth in this PA. If specific circumstances arise that other consulting parties need to access the APE in order to complete their review under the PA, and the STB authorizes the request, the TRRC shall be responsible for providing access until the line constructed. [Check transmission line PAs]

G. Other Consulting Parties

The other participating consulting parties shall be responsible for reviewing project documentation in a timely manner and participating in consultation as set forth in this PA.

II. REVIEW OF ALTERNATIVES (09/26/2014 session)

A. Consistent with 36 C.F.R. § 800.3(b) and § 800.8, the STB coordinated its NEPA review with the Section 106 process. Under NEPA, the STB considered the No Action Alternative and five build alternative routes, and certain variations on the five build alternative routes: the Colstrip Alternative (the applicant's preferred alternative), the Tongue River Alternative, the Tongue River Road Alternative, the Moon Creek Alternative, and the Decker Alternative.

B. In the EIS, the STB compared the potential impact of each of the alternatives on historic properties, cultural resources and tribal sites of significance to inform its eventual selection of the preferred alternative. The EIS was distributed to all PA consulting parties for their review and comment. Comments received by STB from the PA consulting parties informed the STB's consideration of the preferred alternative.

C. Consistent with 36 C.F.R. § 800.3(b) and § 800.8, the STB coordinated the four-step Section 106 process set forth in 36 CFR § 800.3 through § 800.6 with the NEPA review of alternatives as follows:

1. Step 1: Initiation of the Section 106 Process

- a. Establish undertaking: Pursuant to 36 C.F.R § 800.3, STB established that its potential approval of the TRRC project is an Undertaking as defined at 36 C.F.R. § 800.16(y).
- b. Identify the appropriate SHPO: Pursuant to Section 36 C.F.R. § 800.3(c), STB sent a letter to the Montana SHPO initiating Section 106 consultation on October 22, 2012, and since then actively sought input from the SHPO regarding the Undertaking.
- c. Identify consulting parties: From October 2012 to December 2012, STB sent letters initiating Section 106 consultation with the PA consulting parties, and added additional consulting parties in 2013 and 2104. STB held monthly calls with the PA consulting parties since February 2013 to inform them of updates on the NEPA process, and progress on the Section 106 steps. STB held in person meetings with the PA consulting parties in Lame Deer, Montana on April 16-18, 2013, and in Billings, Montana on February 13-14, 2014, which included information about the alternatives being considered and discussions about the Section 106 process.

Comment [rs14]: In ACHP's letter dated 9/8/2014, ACHP asked that a stipulation for "analysis of alternatives" be added, as follows: "A stipulation should be inserted at the beginning of the Stipulations section that clarifies that STB is coordinating the review of alternatives for this undertaking as part of its NEPA review. STB also should clarify how the review process outlined in the draft PA will inform the analysis of alternatives, including the selection of a preferred alternative. Although we understand that STB intends to address this matter in the Whereas Section, it also needs to be addressed in the Stipulations section."

Comment [MS15]: Per 11/7/14 Working Group discussion: need to go through Stipulation II and clarify how the Board makes their decision and that it will take into account the work done thus far and the relative adverse effects

Comment [rs16]: This section was added to address the following comment in ACHP's letter dated 9/8/2104: "We, therefore, suggest that the PA outline specific measures that will be taken once the analysis of alternatives is completed and STB makes a decision. [SEE STIPULATIONS III AND ABOVE] Accordingly, STB should clarify in the draft PA how the four-step Section 106 review process will be coordinated during the analysis of alternatives, and what role the consulting parties will have as determinations and findings are made."

d. Plan to involve the public: STB held ten scoping meetings in multiple locations in the project vicinity from November 12-16, 2012. These meetings included maps of the alternatives and allowed for public comments on environmental topics, including cultural resources and historic properties. The project website, available to the general public at www.tonguerivereis.com, was updated regularly and has a page devoted entirely to historic preservation issues. [\[Add Draft EIS and public comments received.\]](#)

2. Step 2: Identification of Historic Properties

Pursuant to 36 C.F.R. § 800.4(b)(2), the STB is deferring final identification and evaluation of historic properties. For the analysis of impacts under NEPA, STB utilized crews of archaeologists, tribal members, historians and architectural historians to conduct field surveys in the APE of the build alternatives where access was granted to STB by landowners. [\[This information gathered follows the Section 106 process and is being used to inform the NEPA process and the selection of a preferred alternative.\]](#) The results of the identification effort were reported to the PA consulting parties, and were documented in the EIS for additional review and comment by the PA consulting parties, agencies, and the public.

3. Step 3: Assessment of Adverse Effect

Pursuant to 36 C.F.R. § 800.5(a)(3), the STB phased the application of the criteria of adverse effect. The EIS documented the adverse effects of the build alternatives for cultural resources identified by the field crews, and predicted the potential adverse effects in areas that were not surveyed.

4. Step 4: Resolution of Adverse Effect

A Draft of this PA, which includes ways to avoid, minimize, and mitigate potential adverse effects on historic properties discussed among the PA consulting parties, was included in the Draft EIS for further review and comment. In accordance with 36 C.F.R. § 800.6(a), should the STB approve a build alternative, the STB shall continue consultation with the PA consulting parties to avoid, minimize and mitigate the potential adverse effects of the Undertaking to historic properties and tribal sites of significance.

D. **In the event the STB approves a build alternative**, the STB would ensure that the stipulations that follow shall be implemented.

Comment [MS17]: Colstrip Alternative Landowners Group letter dated 11/4/14: "With regard to activities completed to date, the Landowners dispute the statement that the information gathering process has been consistent with federal guidelines."

Comment [MS18]: Colstrip Alternative Landowners Group letter dated 11/4/14: "With regard to activities completed to date, the Landowners dispute the statement that the agency has fully documented potential adverse effects."

1
2 **III. AREA OF POTENTIAL EFFECTS (APE)**

3 [The text below takes portions of the draft PA from 2011, and puts it within the framework of a
4 “process PA” requested by the ACHP. It is organized by what was completed during the first
5 phase of TRRR-the review of alternatives, followed by what would need to be completed if the
6 STB approves a build alternative.]

7 **A. First Phase-APE for Review of Alternatives**

8 STB defined two APEs during the effort to identify historic properties as alternatives were
9 being reviewed. The APE for tribal and archaeological resources was the right-of-way for
10 each build alternative plus a 200-foot-wide buffer zone on either side of the right-of-way
11 edge. ~~STB limited the APE for built resources (historic buildings, structures, objects, and~~
12 ~~districts) to the included the proposed~~ right-of-way with a maximum 1,500-foot buffer
13 measured from the outer edges of both sides of the proposed right-of-way.

14 **B. Second Phase-APE if a Build Alternative is Approved**

15 **1. Defining the APE**

16 The STB, in consultation with the SHPO, consulting tribes and other consulting parties, ~~has~~
17 ~~will defined and documented the APE based on the vertical and horizontal direct effects,~~
18 indirect, and cumulative effects ~~in the event the for any~~ STB ~~approves a build alternative.~~
19 The APE will apply to federal, state, tribal and private lands that may be affected by the
20 construction and operation of this Undertaking.

21 **a. Direct Effects**

22 The APE for direct effects is the vertical and horizontal area within which historic properties
23 may sustain physical alteration, damage, or destruction as a result of the construction of the
24 Undertaking. The APE for direct effects includes all areas where the ground will be
25 disturbed such as staging areas, work camps, cut and fill areas, material sources/gravel
26 quarries, overburden disposal areas, associated buildings/structures (e.g., sidings, bridges
27 etc.) and associated infrastructure (e.g., communication towers, power lines etc.). This
28 includes up to 200 feet on either side (up to a total of 400 feet), 50 vertical feet below the
29 construction area of the authorized construction right-of-way (ROW), to include a twenty-
30 foot buffer on either side of the fenced construction ROW along the entire route, with the
31 exception of the Wolf Mountains Battlefield NHL site. If the Decker Alternative is approved
32 by STB, the NPS would be consulted to expand the APE for consideration of moving the
33 alignment in order to avoid or minimize, to the extent feasible, adverse impacts on identified
34 historic properties within the NHL.

35 **b. Indirect Effects**

36 The APE for indirect effects includes areas outside the construction or ground disturbance
37 ROW where there is the potential for the Undertaking to have an indirect effect, including
38 visual, vibration and noise effects, on historic properties, as defined in 36 C.F.R § 800.5.
39 Tribal sites of significance located ~~Sensitive sites outside the field survey areas but within~~
40 ~~the line of sight of the proposed railroad including~~ line of sight, water resources, sacred and
41 ceremonial sites, areas where traditional plant-s are located ~~life, and association-associated~~
42 ~~features, will be included should also be considered for inclusion in the APE for indirect~~
43 ~~effects. If a build alternative is approved, consultation with the STB will consult with the MT~~
44 ~~SHPO, tribes and other consulting parties will be undertaken to determine if there are to~~
45 identify any locations where the APE should be extended beyond the buffer zones ~~beyond the~~

Comment [ADS19]: Colstrip Land Owners Group, letter dated 10/14/14: A cultural resources site was identified but not recorded as part of the cultural resources survey because it was beyond the APE (the 200-foot buffer on either side of the ROW). The land between the site and the railroad is steep and would likely require cut and fill which would impact (if not destroy) the cultural resources site. Requests that ICF reconsider its exclusion of this site. Additional engineering analysis of proposed route will be needed to determine necessary ROW width. Concerned that lack of detail from TRRC is impeding a complete study of impacts.

Comment [MS20]: Cathy Nadals: We need to define the vertical limits as well.

Comment [MS21]: Cathy Nadals: “Undertaking” capitalized in places below.

Comment [MS22]: Cathy Nadals: We need to consider a vertical APE as well. How deep?

From Rick--Per the ACHP 2009 guidance, suggest something like: **The lower limits of the APE for direct effects includes the depth of natural ground disturbance plus the depth of soil compaction that could affect the integrity of deeply buried archaeological or tribal resources, but does not exceed the depth beyond which such resources are reasonably expected to occur.**

Comment [MS23]: Per 9/30/2104 comment letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group: “The language of this stipulation represents the first notice the Landowners have had that there are plans for staging areas or work camps. Such facilities represent many potential impacts that have not yet been considered at all in the planning process, such as damage to roads and other infrastructure, and law enforcement needs. We are very concerned that STB would propose to consider these impacts, along ... [1]

Comment [MS24]: Cathy Nadals: suggested 50 feet below

From Rick: As alternative, see ACHP guidance above.

Comment [MS25]: Cathy Nadals: Capitalized

Comment [rs26]: From 2/2014 CP meeting

Comment [DC27]: This sentence is very broad and seems unnecessary given the prior sentence.

right of way established during the first phase – that is– 200 feet for archaeological and tribal resources and 1,500 feet for built resources.

c. Cumulative Effects

The identification of the APE will consider cumulative effects to historic properties as referenced in 36 C.F.R 800.5, which states: adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative. For the purposes of this PA, the APE for cumulative effects is the same as that for direct and indirect effects. [This is consistent with the PAs the ACHP provided as templates.]

2. Amending the APE

[Add a process to amend the APE in the event a build alternative is approved and the alignment changes, similar to that provided by the ACHP PA templates.]

IV. IDENTIFICATION AND EVALUATION (from 08/28-2014 draft PA)

A. First Phase-APE for Review of Alternatives

In 2013 and 2014, as the STB was reviewing the five alternative routes and two variations being considered for this undertaking, it completed the following tasks:

- 1. Phase I Inventory:** The Phase I Inventory is a professionally prepared study of existing cultural resource data from published and unpublished documents, SHPO and BLM cultural resource inventory records, archival records, geomorphological and soil studies, institutional site files, state and National registers, informant or ethnographic interviews and other information sources. The purpose of the Phase I Inventory was to obtain sufficient information about the existing or known prehistoric and historic properties, cultural landscapes, and properties of religious and cultural significance located within the project area and to inventory those properties. The Phase I Inventory, which encompassed completed for areas one-a mile away from each of the alternatives (2 miles total), also assisted helped in determining the potential for previously unidentified historic properties to be located within the project area. [Include results table as attachment]
- 2. Alternatives surveys:** Pedestrian transect field surveys were conducted by an equal number of tribal resource experts/members and STB archaeologists of accessible portions of the direct and indirect APE for the alternatives being considered for this Undertaking. Vehicular and pedestrian survey was conducted by historians and architectural historians of the direct and indirect APE. For areas that were not accessible, satellite imagery was used to determine the likely presence or absence of built resources. [Include survey results as an attachment]

B. Second Phase-Field Surveys if a Build Alternative is Approved

Comment [SR28]: Per NTHP comment on 10/10/2014

We should coordinate with analysis for cumulative impacts being developed for the EIS. Specifically for induced development at the mine itself

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Comment [SR29]: A.The Boardman to Hemingway PA provided by ACHP has the following text for the WG to consider:

“Modifications to the APE

1.An APE may be modified where tribal consideration, additional field research or literature review, consultation with parties to this agreement, or other factors indicate that the qualities and values of historic properties that lie outside the boundaries of the APEs may be affected directly, indirectly and/or cumulatively.

2.Any party to this agreement may propose that the APEs be modified by submitting a written request to the BLM providing a description of the area to be included, justification for modifying the APE(s), and map of the area to be included. The BLM [change to STB] will notify the parties to this agreement of the proposal with a written description of the modification requested within 15 da ... [2]

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Comment [SR30]: Colstrip Alternative

Landowners Group letter dated 9/30/2014: Many of the Landowners have long family relationships with the land to be crossed ... [3]

Comment [SR31]: For WG consideration, suggest replacing with: “The Phase I Inventory, completed for an area one mile wide on either side of the centerline for each ... [4]

Comment [SR32]: Based on PA working group comments, 10/10/2014, a summary of the records search and literature search would be included as an attachment to the draft ... [5]

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Comment [SR33]: Based on PA working group comments, 10/10/2014, a summary of the field survey results, including the sessions from 2014, would be included as an attac ... [6]

Comment [SR34]: ACHP in their letter dated 9/08/2014: “The draft PA starts with the assumption that an alignment will be chosen. The ACHP has previously advised the S ... [7]

1. The second phase of the identification and evaluation effort would be implemented if the STB approves a build alternative, and it would involve the following two steps:
- Completing the first phase field surveys that were conducted in 2013 and 2014 for any portions of the approved alignment that were inaccessible or where surveys were not previously completed; and
 - Conducting Phase II testing and evaluation of identified sites to determine those that qualify for listing on the National Register of Historic Places (National Register).
2. Prior to TRRC initiating construction of any portion of the rail line, STB will retain a Cultural Resources Contractor (Contractor). The Contractor shall meet the professional qualifications standards provided in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, (48 Fed. Reg. 44716-44742, September 29, 1983 and 48 C.F.R §§ 44720-44723 62 Fed. Reg. 33708, June 20, 1997). The Contractor shall work under the STB's sole direction, control and supervision but will be paid by TRRC. The Contractor will conduct the additional Phase I Surveys, collect information from landowners and other knowledgeable parties, conduct Phase II Testing and National Register Evaluations, and prepare the Identification Reports (Phase I ID Report) and Evaluation Reports (Phase II Evaluation Report). The Contractor will obtain any needed federal or state agency permits necessary to conduct the required work. The Contractor must have experience working in the field with tribal members.
3. The STB shall invite consulting tribes, tribal members to work with the contractor and help plan and participate in the field surveys to identify, document, and evaluate properties within the APE to which they attach traditional religious and cultural significance. Tribal Members Consulting Tribes are not required need not to meet the Secretary of the Interior's Standards specified in section B.2. of this stipulation.. The STB will also invite such tribal representative(s) consulting tribes to work with the Contractor to identify and compile a list of traditionally-important plants that occur in the APE, and identify gathering sites and access points for the plant gathering areas. TRRC will provide reasonable financial reimbursement¹ for professional services provided by the designated consulting tribes, tribal members(s).
4. STB will review each Phase I ID Report prepared by the Contractor and provide copies to the PA consulting parties for their review and comment. Each Phase I ID report provided by the Contractor will include the results of identification, preliminary National Register eligibility recommendations and summarize potential adverse effects. The timeline for PA consulting party review of each Phase I ID report will be as follows:
- The PA consulting parties will have 15 days after receipt of each Phase I ID Report to notify STB in writing if information is missing and/or provide any recommendations.

Comment [MS35]: NTHP asked to check this citation for 1983 and sent the published draft standards from 1997 to be added to the citation.

Comment [SR36]: Added to address 9/30/2014 comment from Colstrip Landowners Group that the ID plan obtain more information from landowners.

Comment [MS37]: Rick Starzak: Per applicant during 10/10/2014 call, define which Tribal Members would participate.

Comment [SR38]: Per applicant during 10/10/2014 call, define which Tribal Members would participate.

Per OEA, tribal members should be defined in the WHEREAS clauses.

Comment [SR39]: Added per Standing Rock Sioux during 10/10/2014 call.

Comment [MS40]: Cathy Nadals: Let's use the term, "consulting tribes" to distinguish those tribes that have been consulting with us (or will be) on the project. We can define the term in the whereas clauses.

Comment [SR41]: Per 10/10/2014 PA Working Group call, add that Tribal Members are not required to meet secretary standards mentioned above.

Comment [MS42]: Per 10/10/2014 PA Working Group call, Make this more focused. Cathy may have language for this.

From Rick: [see also footnote, as that may be useful to make more focused terms.

Comment [SR43]: David Coburn, representing TRRR, suggested the time frame be reduced from 15 to 10 days.

In the Colstrip Alternative Landowner Group letter dated 9/30/2014: "The 15-day timeline for response by PA consulting parties on each Phase I ID Report, and again for submitting final comments, is far too short. The Landowners are working people participating in this process in their spare time. At some points during the agricultural calendar, they are effectively unavailable for weeks. To ensure the Landowners' ability to participate meaningfully, the minimum turn-around for their response should be 45 days."

¹ Reasonable financial reimbursement shall include payment for professional services (based on an agreed upon hourly rate), travel and expenses incurred by the tribal member(s).

2. STB will have five days to provide any missing information to the PA consulting parties, or to determine that additional information is not needed to complete National Register evaluations included in a given Phase I ID Report.

3. STB will provide a 45-day comment period to the PA consulting parties beginning from their receipt of the additional information or STB's determination that additional information is not needed.

Comment [SR44]: In the Colstrip Alternative Landowner Group letter dated 9/30/2014: "The five days allowed for STB to provide missing information or determine that additional information is not needed may be inadequate where a significant data gap is identified. We also request an automatic extension period of at least 15 days on any deadline named in the PA, if requested in writing by one of the interested parties, and reasonable financial reimbursement for the Landowners' time required to review reports, or if deemed necessary by the Landowners, reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review."

Comment [SR45]: David Coburn, representing TRRR, suggested the time frame be reduced from 45 to 30 days.

Comment [DC46]: We see no point in doing a Phase II evaluation if the railroad can avoid the site.

C. Second Phase-Determinations of Eligibility if a Build Alternative is Approved

1. For each property identified in the Phase I ID Report that cannot be avoided by the rail line construction, the STB, in conjunction with the Signatories, Invited Signatories, and Concurring Parties, will determine eligibility for inclusion in the National Register pursuant to 36 CFR 800.4(c)(1) for each property, including properties of religious and cultural significance to tribes.

2. Some archaeological sites may be evaluated for National Register eligibility based purely on observed surface characteristics, e.g. a lithic scatter on bedrock. Many other archaeological sites will require test excavations to evaluate the NRHP eligibility of identified historic properties. Specific information should be recovered during a Phase II investigation, including determination of the horizontal and vertical limits of an archaeological site, location of areas of moderate and high artifact densities, if features are present, determining the vertical limits of the site, the presence of intact, sub-surface, and/or stratified deposits, site structure, and site formation processes.

3. Phase II Testing and Evaluation procedures and a summary of the results will be presented in a combined Phase I Survey/Phase II Testing and Evaluation Report. In the Phase II Evaluation Reports, STB will make its National Register eligibility determinations in consultation with the MT SHPO and federally recognized tribes that attach traditional religious and cultural significance to identified historic properties. STB will make a determination will seek to reach concurrence on the NRHP eligibility of all historic properties identified in the project area within 45 days of receipt of comments from consulting parties. Such comments shall be due within 15 days of the receipt by the consulting parties of the Phase II Evaluation Report, which STB shall send to the PA consulting parties within no more than 15 days of receipt of the Report from the contractor. STB will finalize determinations of eligibility in a manner consistent with 36 CFR § 800.4(c) and pertinent guidance of the National Park Service, ACHP, and MT SHPO.

Comment [DC47]: This term was defined above.

4. In making determinations of eligibility, STB will rely on the special expertise of tribes to inform it concerning determine whether or not the eligibility of tribal sites of significance as these may or may not meet the eligibility criteria of the National Register.

Comment [DC48]: We assume that you intend that the comments described in paragraphs 7 and 8 will be the comment on the Phase II report. We see no need for a second round of comments. We have built the timelines from paragraphs 7 and 8 into this paragraph.

5. For built resources, STB will rely on research and analysis by historians and architectural historians, and the views of consulting parties with an interest or knowledge of built resources.

6. Once STB has finalized its determinations of eligibility, and within 40 days of receipt of comments from the MT SHPO and tribes, it will apply the criteria of adverse effect (36 CFR § 800.5(a)) to any tribal sites of significance or properties determined eligible for listing in the

1 National Register. STB will direct the Contractor to make any required revisions and finalize the
2 Phase II Evaluation Report per the ID Plan.

3 7. ~~Within 15 days of receipt of a final Phase II Evaluation Report from the Contractor, STB will~~
4 ~~send approved Final Phase II Evaluation Reports to the PA consulting parties.~~

5 ~~The PA Consulting Parties will have 15 days to provide any final comments to the STB.~~ |

Comment [DC49]: See prior comment.

Remnants of Attachment B-Identification Plan (from 2011 Draft PA)

3. IDENTIFICATION AND EVALUATION

[Additional detail in the ID Plan from the 2011 PA that is more detailed than the ACHP templates.]

The Phase I Inventory will be performed for the entire approved alignment within the ROW; however, the Phase I Inventory may be performed for a portion of the alignment at one time, such that once TRRC has access to a portion of the alignment TRRC may direct the Contractor to perform a Phase I Inventory for that portion and prepare the Phase I Inventory Report for that portion. If the Decker Alternative is approved, the Phase I Inventory will be extended to 400 feet on either side of the ROW for sections of the alignment located within the Wolf Mountains Battlefield NHL. TRRC will provide the PA consulting parties with a map of the area to be inventoried prior to performing each Phase I Inventory. Representatives of the tribes will be invited by STB to participate in the Phase I Inventory to help identify, document, and evaluate properties within the APE to which they attach traditional, religious, and cultural significance.

The Phase I Inventory will include the following activities:

1. An intensive pedestrian survey of the construction ROW plus 20 feet on either side of the fenced construction ROW.
2. An intensive pedestrian survey of all the lateral areas, borrow areas, haul roads (new and upgraded), staging areas, and other ancillary areas related to the Undertaking.
3. A geomorphological survey of the construction ROW will be conducted to identify areas where buried historic properties may exist and where deep testing, as identified by the geomorphologist, may be necessary to identify cultural resources. The geomorphologist will also recommend construction monitoring areas and assist in evaluating the National Register eligibility of any newly identified buried historic properties by providing identification of the soil(s), soil characteristics, soil dating, and analysis of the probability of the soils to contain cultural material.
4. An intensive pedestrian survey of the construction ROW using transects no more than 30 meters apart to complete the Phase I effort. If necessary, Phase II testing and evaluation excavations will be conducted on any sites that cannot be avoided by the rail line construction to locate, record, and evaluate the National Register eligibility of any identified historic properties within the APE of the approved alternative route and only when tribal members consulting tribes do not consider such properties sensitive to testing. Test Phase II Testing and Evaluation excavations may include shovel testing, augering, 1 x 1m or 50 x 50 cm test units, and use of heavy equipment such as backhoes in certain cases. Tribal input will be sought when assessing the National Register eligibility of any properties of traditional religious and cultural significance to consulting tribes. If, in the opinion of the Contractor and the cultural resource representative designated by

Comment [MCR50]: This is out of order, but in the interests of light editing, is left in place.

Comment [rs51]: This phrase was added to include the areas where the Class II survey area was already completed in 2013-2014, as well as areas where landowner access won't be granted until after there is an approved alternative.

The additional text also makes it clear that testing not be done if tribal members consider them sensitive to testing.

the tribes, an historic property is eligible for the National Register as a traditional cultural property,² sufficient information to formulate Treatment Plan(s) will be obtained.

5. A reconnaissance level survey of those areas outside the ground disturbance area where there is the potential for the Undertaking to have an adverse effect, as defined in 36 C.F.R 800.5, on historic properties. A reconnaissance survey is an on the ground or pedestrian examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present. Identification of these areas will include consultation with the MT SHPO, THPO/cultural resource representative designated by the consulting tribes, TRRC, other identified consulting parties, and federal agencies.

Contractor will use GPS units that meet BLM requirements when conducting Phase I Inventory surveys. The resulting shapefiles will be made available to the PA consulting parties.

Any areas not originally identified within the APE, but potentially affected by the Undertaking, will be identified by STB in consultation with the MT SHPO, THPO/cultural resource representative designated by the consulting tribes, TRRC, other identified consulting parties, and federal agencies. STB will consult with the MT SHPO, THPO/cultural resource representative designated by the tribes, TRRC, other identified consulting parties (as defined in 36 C.F.R 800.2(c)), and federal agencies to address their concerns.

Phase II Testing and Evaluation procedures and a summary of the information to be presented in the combined Phase I Survey/Phase II Testing and Evaluation Report is presented below.

V. ASSESSMENT OF EFFECTS (10/24/2014 session, still in progress)

- a. On surveyed areas: In the EIS, the STB analyzed the impacts of each alternative upon the archaeological resources, tribal resources, and built resources identified through field survey in the APE on areas of accessible parcels. The EIS analyzed the types and numbers of resources that were identified in the proposed right-of-way for each build alternative and would likely be adversely affected by construction and operation activities. The EIS also analyzed potential resources that were not in the proposed right-of-way, but were identified by survey in the buffer area, and could be indirectly affected by construction and operation activities. The right-of-way plus the buffer area is identical to the APE.
- b. On inaccessible areas: In the EIS, STB also assessed impacts on land that was not accessible and therefore not surveyed during Phase I. STB assessed the sensitivity-likelihood of the presence of archaeological sites on the total acreage (both surveyed and unsurveyed) of each alternative based on the number of archaeological sites identified during the survey, combined with three slope percentage categories (high, moderate, and low). OEA then used this to extrapolate the probability of unidentified archaeological sites sensitivity

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Comment [MS52]: Define in glossary

Comment [SR53]: The WG asked that the comment received from Lana Gravatt of the Yankton Sioux be added here, but Lana's comments were about the WHEREAS clauses.

Comment [MS54]: Per 11/7/2014 Working Group meeting: Will include an attachment of surveyed sites located in the right-of-way and the Buffer Area.

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Comment [MS55]: Betsy Merritt asked for a different term than sensitivity

² See National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties.

information that could be located within the total build alternative. The probability of tribal sites of significance located within the build alternative was not assessed in the EIS. To assess impacts on built resources for areas where access was not granted, the STB's built resource survey teams reviewed tax assessor data and geographic information system (GIS) maps using Google Earth Pro satellite imagery.

Comment [MS56]: Use the terms that we use: -eligible -listed tribal sites of significance.

Comment [MS57]: Conrad Fisher asked to specify that tribal resources weren't considered in the sensitivity model. Stan Wilmoth: wanted definition of sensitivity model

Comment [MS58]: Define term in glossary and clarify in whereas clause. Came from David Coburn. Betsy Merritt and Stan Wilmoth both spoke on this matter.

Comment [SR59]: Sections C-H of this stipulation follow the format of the Boardman to Hemingway PA provided by the ACHP as a template for a "process PA".

- c. If the STB makes a decision to approve a build alternative, in consultation with the PA consulting parties, STB will assess the direct, indirect and cumulative effects of this Undertaking on historic properties consistent with 36 CFR 800.4(d) and identify effects on each historic property within the APE of the approved build alternative in accordance with the **criteria of adverse effect** established in 36 CFR 800.5(a)(1-2), and provide the PA consulting parties with the results of the finding in writing, following 36 CFR 800.11(e)(4-6), as follows:
1. A description of the Undertaking's effects on historic properties;
 2. An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and
 3. Copies or summaries of any views provided by consulting parties and the public.
- d. The assessment of effects will serve as the basis for the development of one or more Treatment Plan(s) as described in Stipulation VI.
- e. ~~The STB will consult with the PA consulting parties to seek ways to avoid or minimize adverse effects to historic properties. If historic properties cannot be avoided, subsurface investigation may be necessary for archaeological sites within the direct effect APE which may be adversely affected. Determination of the site boundaries in relation to the direct effect APE, and actual area of ground disturbance, may be analyzed to aid in developing alternative design and or mitigation strategies. If adverse effects cannot be avoided the STB will consult with the parties to this agreement to determine appropriate measures to resolve adverse effects to be detailed in the Treatment Plan(s).~~
- f. The STB, in consultation with the PA consulting parties, will broadly assess cumulative effects under Section 106 in order to identify all reasonably foreseeable potential adverse effects as a result of the Undertaking (36 CFR 800.5 (a)(1)). Potential cumulative or reasonably foreseeable effects will be based on the APEs for direct and indirect effect and be addressed in the Treatment Plan(s) according to the procedures in Stipulation VI.
- g. The STB will provide all assessments of effect to historic properties in writing to the parties to this agreement. This will be done concurrently with the distribution of the Phase II Evaluation Reports described in Stipulation IV. Reviews will proceed according to the procedures and timeframes established in Stipulation IV.
- h. Disagreement regarding assessments of effect will be handled according to the procedures established in Stipulation (TBD).

VI. **TREATMENT PLANS/RESOLUTION OF ADVERSE EFFECTS**

a.A. The STB will consult with the PA consulting parties to seek ways to avoid or minimize adverse effects to historic properties. If historic properties cannot be avoided, subsurface investigation may be necessary for archaeological sites within the direct effect APE which may be adversely affected. Determination of the site boundaries in relation to the direct effect APE, and actual area of ground disturbance, may be analyzed to aid in developing alternative design and or mitigation strategies. If adverse effects cannot be avoided the STB will consult with the parties to this agreement to determine appropriate measures to resolve adverse effects to be detailed in the Treatment Plan(s).

Comment [MS60]: Per Najah Gabriel's request during the 11/7/14 Working Group meeting, Stipulation VI was renamed

Comment [SR61]: This Stipulation based on the 2011 PA.

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~~A.B.~~ Consultation on Developing Treatment Plans

1. STB will consult with the MT SHPO, consulting tribes and other PA consulting parties to develop measures that would avoid, minimize or mitigate adverse effects to tribal sites of significance or identified National Register-eligible or -listed historic properties and memorialize such measures in a Treatment Plan(s). The STB will meet with the MT SHPO, TRRC, the managing federal agency (for sites on federal land), and consulting tribes to further review the framework for how individual treatment plans will be developed, and to consider ways to avoid or minimize adverse effects to tribal sites of significance, individual historic properties, groups of closely related historic properties, or category of historic properties including traditional cultural properties and historic or tribal landscapes. STB will notify the PA consulting parties and participating tribes of the proposed treatment options within 45 days of the date of issuance of complimentary Final Phase II Evaluation reports.

B. Development of the Treatment Plan(s)

1. The STB will ensure that the Contractor prepares a Treatment Plan(s) that will address the adverse effects of the proposed Undertaking on historic properties, including direct and indirect impacts (visual, noise, aesthetic, etc.). A separate Treatment Plan will be developed for the Wolf Mountains Battlefield NHL if the Decker Alternative is approved; and one or more Treatment Plans may be prepared for other sections of the APE affected by the Undertaking. A Treatment Plan may be prepared for a portion of the line provided that the Phase I ID Report for that portion has been completed and approved in accordance with Stipulation IV. Each Treatment Plan will be amended, if necessary, after the finalization of any supplemental Phase II Evaluation Report(s).
2. Each Treatment Plan will do the following:
 - a. identify tribal sites of significance and National Register-eligible historic properties in the APE or portion thereof;
 - b. identify the nature of the effects to which each property will be subjected; and

Comment [SR62]: From ACHP letter, 9/8/2014: "*Development of Treatment Plans* Further explanation is needed in this stipulation regarding how the applicant, TRRC, will consult with consulting parties to develop treatment plans. The timing of the development of these plans is unclear. Will this occur during the analysis of alternatives or after the selection of the preferred alternative? Will the Contractor have sole discretion to carry out this task or will it be done in consultation with STB? The Stipulations section should be explicit in encouraging the Contractor to give priority consideration to measures that would avoid adverse effects to historic properties. We also are concerned about the notion that a treatment plan can be prepared for a portion of the line. This concept needs to be better explained in the PA, and have agreement of affected consulting parties. Finally, the treatment of the Wolf Mountain Battlefield, a National Historic Landmark (NHL) must adhere to Section 110(f) of the NHPA and Section 800.10 of the ACHP's regulations, which requires a higher consideration of alternatives to minimize harm to the NHL."

c. identify the treatment strategies proposed to avoid, minimize or mitigate the effects of the Undertaking on the historic properties.

3. Each Treatment Plan will incorporate, to the extent feasible, measures identified by tribal representatives to resolve adverse effects to properties significant for their traditional cultural values and, if possible, the protection and continuing access to gathering sites of traditionally-important plants. If appropriate, TRRC may attempt to negotiate tribal access to public or private lands that are not currently accessible to tribes for plant gathering purposes. The Treatment Plan(s) will conform to the principles of the Council's Treatment of Archaeological Properties: A Handbook, Parts I and II, the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation" (48 Fed. Reg. pp. 44716-44742), and appropriate MT SHPO guidelines. Each finalized Treatment Plan will be implemented by TRRC prior to the onset of construction activities.

4. Each Treatment Plan will examine the feasibility of avoiding National Register-listed or -eligible historic properties, or tribal sites of significance. These measures may include modifications to the rail alignment, to the extent feasible, to avoid adverse impacts.

5. If avoidance is not possible, in-place preservation will be the preferred option. TRRC will work with the consulting parties to develop specific procedures to preserve historic properties and sites of significance in-place and minimize visual and noise impacts to such resources as well as impacts to tribal, historic and rural landscapes. These procedures may include minor changes to the rail alignment or construction methods, to the extent feasible, to reduce impacts, and/or monitoring of historic properties by historians, archaeologists and tribal members for sites of significance during construction.

C. Finalization of Treatment Plan(s)

1. STB will submit the draft Treatment Plan(s) to the PA consulting parties for review. Within ~~15 days~~ 30 days of receipt of the Treatment Plan(s), a PA consulting party must notify STB in writing of any informational deficiencies in the Treatment Plan(s). STB will then have 10 days to provide the additional information or to determine that such information is not required. The PA consulting parties will have 45 days from the receipt of the complete information, or the determination that additional information is not required, to comment on the Treatment Plan(s). If no additional information is requested, the PA consulting parties will have 60 days from receipt of the initial Treatment Plan(s) to submit comments. A copy of any comments sent to STB will be sent simultaneously to the MT SHPO. If any PA consulting party fails to submit its comments within 45 days of the receipt of the complete information, or 60 days of receipt of the initial Treatment Plan(s) if it is complete, STB may assume that party's concurrence with the Treatment Plan(s). STB will make any required revisions to the Treatment Plan(s), as appropriately, within 45 days of the close of the comment period, taking into consideration the comments received during this review period.

Comment [SR63]: From ACHP 9/8/2014 letter: "*Consultation on Developing Treatment Plans*

During the analysis of alternatives, consulting parties should understand the extent to which STB has considered measures to avoid adverse effects on historic properties on the particular alternative. It is our understanding that once the rail alignment is selected, the planning process will not be very flexible. Thus, once a preferred STB alignment is chosen, consulting parties will be limited in requesting modifications. It is therefore important that the consulting parties be able to share their comments on alternatives during the evaluation of an alternative and in advance of the Board's decision. The Stipulations section, therefore, needs to emphasize that the identification and evaluation process will be coordinated with the State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officers (THPOs) to ensure that adequate baseline information is prepared for below ground historic properties, cultural landscapes, and traditional cultural properties associated with each alternative."

Comment [SR64]: Per 9/30/2104 comment letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group: "The 15-day timeline for PA consulting party responses on informational deficiencies is inadequate. To ensure the Landowners' ability to participate meaningfully, the minimum turn-around for their response should be 45 days. The Landowners will require expert assistance to review the sufficiency and quality of the Treatment Plans for their property. We request reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review.

The Landowners are not willing to be bound by any clause that interprets their failure to comment as concurrence."

2. The final decision on the acceptability of the Treatment Plan(s) will be made by STB, in consultation with the MT SHPO. A copy of the final Treatment Plan(s) will be provided by STB to the PA consulting parties.

Per 9/30/2104 comment letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group: "The language of this stipulation represents the first notice the Landowners have had that there are plans for staging areas or work camps. Such facilities represent many potential impacts that have not yet been considered at all in the planning process, such as damage to roads and other infrastructure, and law enforcement needs. We are very concerned that STB would propose to consider these impacts, along with those created by construction access routes and completely unknown "changes to the alignment," after selecting an alternative. These impacts are completely knowable in advance if the agency makes the effort to acquire the information. Again we object to any plan to postpone collection of this vital data until after an alternative is chosen."

"As above, the Landowners will require expert assistance to review the sufficiency and quality of supplemental reports. We request reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review. The Landowners request at least 45 days to provide comments."

A. The Boardman to Hemingway PA provided by ACHP has the following text for the WG to consider: "Modifications to the APE

1. *An APE may be modified where tribal consideration, additional field research or literature review, consultation with parties to this agreement, or other factors indicate that the qualities and values of historic properties that lie outside the boundaries of the APEs may be affected directly, indirectly and/or cumulatively.*
2. *Any party to this agreement may propose that the APEs be modified by submitting a written request to the BLM providing a description of the area to be included, justification for modifying the APE(s), and map of the area to be included. The BLM [change to STB] will notify the parties to this agreement of the proposal with a written description of the modification requested within 15 days of receipt of such a request. From the date of notification, the BLM [change to STB] will consult with the parties to this agreement for no more than 30 days to reach consensus on the proposal.*
3. *If the parties to this agreement cannot agree to a proposal for the modification of the APEs, then the BLM [change to STB] will consider their concerns and will render a final decision within 30 days after the consultation period closes.*
4. *For all modifications to the APE(s) the BLM [change to STB] will provide a written record of the decision to the parties to this agreement.*
5. *Amending the APEs will not require an amendment to the PA.*
6. *[insert On BLM lands], minor changes to the APE during construction of the Undertaking that may require additional fieldwork, regardless of land ownership, may be handled through the BLM ROW grant variance process."*

Colstrip Alternative Landowners Group letter dated 9/30/2014:

Many of the Landowners have long family relationships with the land to be crossed and personal knowledge of historically and culturally significant sites that may be affected by the rail line. Most have had little or no opportunity to share this information. The oral history surveys prescribed in National Register Bulletin 24 have not taken place. There is no barrier to collecting this information immediately. Participants with relevant knowledge

should receive reasonable financial reimbursement for their time.

Page 10: [4] Comment [SR31]	Starzak, Richard	10/31/2014 1:07:00 PM
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For WG consideration, suggest replacing with: “The Phase I Inventory, completed for an area one mile wide on either side of the centerline for each alternative (2 miles total), also helped...”

Page 10: [5] Comment [SR32]	Starzak, Richard	10/14/2014 9:01:00 AM
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Based on PA working group comments, 10/10/2014, a summary of the records search and literature search would be included as an attachment to the draft PA. This information was included in the letter to SHPO dated 03/12/2014.

Page 10: [6] Comment [SR33]	Starzak, Richard	10/14/2014 9:03:00 AM
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Based on PA working group comments, 10/10/2014, a summary of the field survey results, including the sessions from 2014, would be included as an attachment to the draft PA. The next letter to the MT SHPO would include a summary of the field results.

Page 10: [7] Comment [SR34]	Starzak, Richard	10/31/2014 1:41:00 PM
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ACHP in their letter dated 9/08/2014: “The draft PA starts with the assumption that an alignment will be chosen. The ACHP has previously advised the STB that it may be premature to make this assumption. Given STB’s ability to recommend a “no-build” option, we need to recognize that this option could be selected as the “preferred alternative.” We, therefore, suggest that the PA outline specific measures that will be taken once the analysis of alternatives is completed and STB makes a decision. Accordingly, STB should clarify in the draft PA how the four-step Section 106 review process will be coordinated during the analysis of alternatives, and what role the consulting parties will have as determinations and findings are made. To defer involvement of consulting parties in findings and determinations until the preferred alternative is selected would be imprudent. Moreover, it would likely leave STB open to challenges regarding the preferred alternative and questions about whether other alternatives may have avoided adverse effects of concern to consulting parties.”