

Wayland, Joshua

From: Fawal, Margaret K. <MKFawal@Venable.com>
Sent: Friday, September 18, 2020 5:20 PM
To: Tabachnick, Alan
Cc: Wayland, Joshua; mmckee; mikenna.wolff@icf.com; Floyd, Kathryn K.
Subject: Uinta Basin Railway Project Draft Programmatic Agreement
Attachments: Cover Letter to Draft PA Comments(49984634.1).pdf; Draft PA - SCIC Comments(49884462.4).docx

Hi Alan,

Please find attached the Seven County Infrastructure Coalition's comments on the draft PA. Thank you for all of the hard work that went into developing this document. We appreciate the opportunity to review and comment.

Please don't hesitate to reach out if you have any questions or require clarification on any of the Coalition's comments.

Best,

Maggie

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September 18, 2020

Mr. Alan Tabachnick
Historic Preservation Specialist
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423
Alan.tabachnick@stb.gov

Re: Uinta Basin Railway Project Draft Programmatic Agreement

Mr. Tabachnick,

Please find attached the Seven County Infrastructure Coalition's comments on the draft Section 106 Programmatic Agreement (PA) for the Uinta Basin Railway project, which was circulated to the Consulting Parties on August 21, 2020. Below is a summary of the main points the Coalition raises in its comments:

- Because it governs a number of sequential steps, the PA should provide a clear process and timeframe for completing each of these steps. In the attached comments, the Coalition has noted where specific processes or timeframes could be clarified.
- The PA should provide one clear definition of the Area of Potential Effects (APE). As currently drafted, the PA contemplates a potential revision to the APE based on visual effects, if any. The Coalition believes a different approach could be for the PA to distinguish between the existing APE and the establishment of a visual APE following selection of the Action Alternative (if any). This would avoid any confusion over whether certain provisions of the PA are referring to the existing APE or a revised APE that has been amended to take into account visual effects.
- The Coalition supports the development of a Tribal Participation Plan, which it understands is intended to govern coordination with the Ute Indian Tribe outside its formal role under the PA as a Signatory. The Coalition has suggested certain edits to the PA to make this clearer, and to make sure that the Tribal Participation Plan does not conflict with or duplicate other stipulations of the PA.

Mr. Alan Tabachnick

September 18, 2020

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The Coalition thanks you for your hard work on developing the draft PA, and it appreciates the opportunity to review and provide comments on the draft. Please let me know if you have any questions or if you would like clarification on any of the Coalition's comments.

Sincerely,

A handwritten signature in black ink, reading "Kathryn K. Floyd". The signature is written in a cursive, flowing style.

Kathryn K. Floyd

cc: Joshua Wayland, STB (joshua.wayland@stb.gov)
Mikenna Wolff, ICF (mikenna.wolff@icf.com)
Mike McKee, SCIC (mmckee@7county.utah.com)

PROGRAMMATIC AGREEMENT

AMONG

**THE SURFACE TRANSPORTATION BOARD,
UTAH STATE HISTORIC PRESERVATION OFFICE, THE ADVISORY COUNCIL ON
HISTORIC PRESERVATION, AND
THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION**

REGARDING

**SEVEN COUNTY INFRASTRUCTURE COALITION CONSTRUCTION AND
OPERATION OF THE PROPOSED UINTA BASIN RAILWAY PROJECT IN CARBON,
DUCHESNE, UINTAH, AND UTAH COUNTIES, UTAH**

Commented [A1]: ACHP should not be listed if it is not participating/not signing the PA

Commented [A2]: Consider whether it is appropriate to include the invited signatories in this list (see Northern Rail Extension and Tongue River PAs for examples of this).

August 2020

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WHEREAS, the Surface Transportation Board (Board) administers the Interstate Commerce Act, as amended by the ICC Termination Act and other laws, and is responsible for granting authority to construct and operate new rail lines; and

WHEREAS, the Seven County Infrastructure Coalition (Coalition), an independent political subdivision of the state of Utah comprising the member counties of Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah Counties, filed a petition for exemption with the Board on May 29, 2020, pursuant to 49 U.S.C. § 10502, in Docket No. FD 36284, seeking authority to construct and operate an approximate 85-mile rail line between Kyune, Utah, and two terminus points in the Uinta Basin near Myton, Utah, and Leland Bench, Utah (Project); and

WHEREAS, the Board is responsible for complying with the National Environmental Policy Act (NEPA) and other applicable environmental laws, with respect to the Project; and

WHEREAS, the Board is the lead federal agency for the purposes of NEPA compliance; and

WHEREAS, the Board's Office of Environmental Analysis (OEA) is preparing an Environmental Impact Statement (EIS) in accordance with the requirements of NEPA to address the potential impacts of the Project on the environment, including on cultural resources; and

WHEREAS, OEA identified three Action Alternatives for study in the EIS: the Indian Canyon Alternative, the Wells Draw Alternative, and the Whitmore Park Alternative; and

WHEREAS, the three Action Alternatives traverse multiple federal, tribal, state, and local jurisdictions, as specified in Appendix A, *Land Status by Action Alternative*; and

WHEREAS, the Project would require that the Coalition own, control, or obtain permission to use the land needed to construct and operate the Project; and

WHEREAS, the U.S. Army Corps of Engineers, Sacramento District (USACE), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and United States Forest Service (Forest Service) are cooperating agencies with respect to NEPA compliance (Federal Cooperating Agencies); and

WHEREAS, Public Land Policy Coordinating Office (PLPCO) is a cooperating agency representing Utah state agencies, including State of Utah School and Institutional Trust Lands Administration (SITLA), with respect to NEPA compliance (State Cooperating Agency); and

WHEREAS, in addition to compliance with this Programmatic Agreement (PA), construction and operation of any of the Action Alternatives would require permits and approvals from federal, tribal, and state agencies; and

WHEREAS, construction and operation of the Indian Canyon Alternative would require permits or easements from the Ute Indian Tribe, BLM, Forest Service, and SITLA; and

WHEREAS, construction and operation of the Wells Draw Alternative would require easements from BLM and SITLA, and may require permits and approvals from the Ute Indian Tribe;

WHEREAS, construction and operation of the Whitmore Park Alternative would require permits or easements from the Ute Indian Tribe, Forest Service, and SITLA; and **WHEREAS**, the Board, as the lead federal agency pursuant to 36 Code of Federal Regulations (C.F.R.) Section 800.2(a), determined that a Decision by the Board granting authority for the Project triggers the requirements

Commented [A3]: Consider whether these clauses are necessary. NEPA is separate from Section 106 process and it is a bit confusing to reference NEPA compliance in a section 106 PA.

Commented [A4]: State agencies have no NEPA compliance obligations.

Commented [A5]: Consider whether reference to the NEPA process and the use of the terms Federal and State Cooperating Agencies is appropriate or necessary. The NEPA process is separate from the Section 106 process. If these clauses are kept, we suggest deleting the terms Federal and State Cooperating Agencies because those terms are not necessary for the PA (and do not seem to be used anywhere else).

We suggest referring to these agencies using NHPA terminology only (signatories, invited signatories, consulting parties, etc.)

of the National Historic Preservation Act of 1966 as amended (NHPA), specifically Section 106 of the NHPA (Section 106); and

WHEREAS, the Board determined that granting authority to construct and operate a rail line is an Undertaking in accordance with the definition provided at 36 C.F.R. Section 800.16(y); and

WHEREAS, the Board determined that the Project may affect properties included in the National Register of Historic Places (NRHP) or eligible for inclusion in the NRHP (historic properties); and

WHEREAS, USACE intends to consider the Coalition's application for a USACE permit under Section 404 of the Clean Water Act; and

WHEREAS, BIA intends to consider the Coalition's request for a right-of-way allowing the Coalition to cross Tribal Trust Lands in the Uintah and Ouray Indian Reservation, if needed, to construct the Project; and

WHEREAS, BLM intends to consider the Coalition's request for a right-of-way allowing the Coalition to cross lands administered by BLM, if needed, to construct the Project; and

WHEREAS, the Forest Service intends to consider the Coalition's request for approval for permitting the rail line right-of-way across Ashley National Forest lands, if needed, to construct the Project; and

WHEREAS, USACE, BIA, BLM, and the Forest Service have each determined that the actions they intend to take related to the Project constitute a Section 106 Undertaking; and

WHEREAS, USACE, BIA, BLM, and the Forest Service intend to adopt the Board's Section 106 compliance effort to satisfy their responsibilities under Section 106; and

WHEREAS, OEA invited public input regarding the potential presence of cultural resources and the likelihood of impacts through a June 19, 2019 Notice of Intent to Prepare an EIS and during July 2019 public scoping meetings; and

WHEREAS, OEA invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation pursuant to 36 C.F.R. Section 800.2(b), and ACHP declined to enter consultation in accordance with 36 C.F.R. Section 800.2(b)(1). ACHP remains available to all Section 106 participants to advise, assist, and guide the process, and to resolve disagreements in accordance with 36 C.F.R. Section 800.2(b)(2); and

WHEREAS, pursuant to 36 C.F.R. Section 800.2(c)(1)(i), OEA initiated consultation with the Utah State Historic Preservation Officer (SHPO); and

WHEREAS, construction and operation of any of the Action Alternatives could affect cultural resources within the Ute Indian Tribe's Uintah and Ouray Reservation, OEA recognizes the tribe as having Section 106 consultation status pursuant to 36 C.F.R. Section 800.2(c)(2)(i)(B); and

WHEREAS, *Tribal lands* as defined in the NHPA Section 106 regulations means "all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities" (36 C.F.R. § 800.16(x)). This definition of tribal lands applies throughout this PA; and

WHEREAS, OEA recognizes the Ute Indian Tribe's ancestral ties to the project area, the likely presence of properties with religious and cultural significance to the tribe throughout the [Area of Potential Effects \(APE\)](#), as delineated in [Appendix C, Area of Potential Effects](#), and the tribe's unique ability to identify such properties; and

WHEREAS, OEA recognizes the role of the Ute Indian Tribe through the Ute Indian Tribe Business Committee and the Ute Indian Tribe Cultural Rights and Protection Department (UITCRPD) to participate fully in the identification, mitigation, and monitoring of culturally sensitive resources associated with the Project in accordance with this PA on tribal lands of the Ute Indian Tribe; and

WHEREAS, OEA initiated consultation with the Ute Indian Tribe, including both the Ute Tribe Business Committee and the UITCRPD, and the tribe accepted Consulting Party status; and

WHEREAS, because additional tribes may attach religious and cultural significance to historic properties affected by the Project outside of the Ute Indian Tribe's Uintah and Ouray Reservation, OEA initiated consultation with the tribes listed in Appendix B, *List of Invited Consulting Parties*, to consult pursuant to 36 C.F.R. Section 800.2(c)(2)(ii); and

WHEREAS, the Hopi Tribe of Arizona agreed to be a consulting party; and

WHEREAS, the remaining invited tribes declined or did not respond to OEA's consultation initiation (Appendix B, *List of Invited Consulting Parties*); and

WHEREAS, OEA consulted with the Cooperating Agencies; and

WHEREAS, OEA initiated consultation with representatives of local governments as described in Appendix B, *List of Invited Consulting Parties*, pursuant to 36 C.F.R. Section 800.2(C)(3); and

WHEREAS, PLPCO, SITLA, Utah Department of Transportation, Carbon County, Duchesne County, and Uintah County accepted OEA's consultation invitation; and

WHEREAS, OEA consulted with the Coalition pursuant to 36 C.F.R. Section 800.2(c)(4); and

WHEREAS, OEA initiated consultation with organizations that may have an interest in historic properties potentially affected by the Project, as specified in Appendix B, *List of Invited Consulting Parties*, pursuant to 36 C.F.R. Section 800.2(c)(5); and

WHEREAS, Nine Mile Canyon Coalition, Colorado Plateau Archaeological Alliance, and Utah Rock Art Research Association agreed to consult; and

WHEREAS, the parties that agreed to consult are referred to collectively herein as Consulting Parties; and

WHEREAS, OEA has actively consulted with the Consulting Parties, including holding monthly teleconferences for all Consulting Parties; convening topic-specific group teleconferences; and conducting consultation with individual Consulting Parties during in-person meetings and teleconferences; and

WHEREAS, OEA, on behalf of the Board, has conducted government-to-government consultation with the Ute Indian Tribe, including participating in in-person meetings with members of the Tribal Business Committee; and

WHEREAS, OEA delineated an Area of Potential Effects (APE) described in Appendix C, *Area of Potential Effects*, and the APE definition is appropriate for and applicable to the design and engineering requirements of a freight rail line in the Uinta Basin area; and

WHEREAS, the APE, as shown on the maps provided in Appendix C, *Area of Potential Effects*, is based on the project engineering in OEA's possession as of February 12, 2020 and accounts for potential physical, auditory, vibration, and atmospheric effects; and

Commented [A6]: See comment above regarding use of NHPA vs. NEPA terms.

In addition, close attention should be paid to consistent use of "signatory" "invited signatory" and "consulting parties" throughout the document.

Commented [A7]: The PA should provide one clear definition of the APE. To accomplish this, we suggest referencing Appendix C as the appropriate APE definition.

In addition, to avoid confusion, we are suggesting that the PA distinguish between the current APE and the visual APE that will be defined in the future.

~~WHEREAS, the Project has the potential to change the setting of historic properties in the APE, and~~

~~WHEREAS, the APE accounts for potential physical, auditory, vibration, and atmospheric effects; and~~

~~WHEREAS, following selection of the Action Alternative, if any, a visual APE will be established to account for visual effects the APE may require future revision to fully account for visual effects related to the setting of historic properties present in the APE, following final design of the Project; and~~

WHEREAS, the Action Alternatives consist of corridors encompassing large land areas where access to land is restricted or impractical, and OEA is unable to identify and evaluate all historic properties within the APE prior to the Board's licensing decision; and

WHEREAS, OEA opted to use a program alternative, described at 36 C.F.R. Section 800.14(b)(1)(ii), to satisfy its obligations under Section 106, and OEA selected the Phased Identification Process described at 36 C.F.R. Section 800.4(b)(2) as appropriate for its Section 106 compliance; and

WHEREAS, the Phased Identification Process obligates OEA to develop an agreement document setting forth its methodology for satisfying its Section 106 obligations, including completing the identification and evaluation of historic properties, assessing effects on historic properties, and developing methods for avoiding, minimizing, or mitigating any adverse effects on historic properties; and

WHEREAS, in consultation with SHPO, OEA opted to develop a PA pursuant to 36 C.F.R. Section 800.14 (b); and

WHEREAS, the Phased Identification Process obligates OEA to establish the "likely presence" of historic properties prior to granting any authority for the Project; and

WHEREAS, ~~after coordinating with OEA~~, the Coalition, ~~through its consultants~~, conducted field investigations in selected portions of the APE and memorialized the results in technical reports titled *Selective Reconnaissance-Level Survey of Archaeological Resources Along Proposed Routes for the Uinta Basin Railway Project in Carbon, Duchesne, Uinta, and Utah Counties, Utah (2020)* and *Selective Reconnaissance-Level Survey of Historic Architectural Resources Along Proposed Routes for the Uinta Basin Railway Project in Utah, Carbon, Duchesne, and Uinta Counties, Utah (2020)* (collectively, the Coalition Technical Reports); and

WHEREAS, the Coalition employed a hybrid of Class II and Class III methodology, as defined in the SHPO's guidance document titled, *Archaeological Compliance Guidance (2020)*, for their field investigations; and

WHEREAS, OEA reviewed the Coalition Technical Reports and made them available for public and Consulting Party review on the Board's website for the Project at www.UintaBasinRailwayEIS.com; and

WHEREAS, based on information presented in the Coalition Technical Reports, background research, and consultation, OEA determined that properties included in the NRHP ~~and~~ eligible for inclusion in the NRHP are present in the APE. These properties are listed in Appendix D, *Historic Properties and Potential Historic Properties*, Category 1; and

WHEREAS, OEA also determined that other specific properties present in the APE are *likely* eligible for inclusion in the NRHP and that additional field investigation, research, and analysis would be needed to establish whether these properties meet the criteria for NRHP listing. These properties are listed in Appendix D, *Historic Properties, Potential Historic Properties, and Property Types*, Category 2; and

WHEREAS, OEA further determined that certain property types, including, but not limited to, rural historic districts and Traditional Cultural Properties, including tribal Traditional Cultural Properties, may be present in the APE; and

WHEREAS, OEA preliminarily found that the Project would result in adverse effects on historic properties; and

WHEREAS, OEA memorialized its preliminary identification and evaluation effort and assessment of effects in a technical memorandum (Technical Memorandum); and

WHEREAS, OEA provided its Technical Memorandum to the SHPO with a request for concurrence; and

WHEREAS, OEA provided its Technical Memorandum to the Consulting Parties and invited their comments; and

WHEREAS, SHPO concurred with the preliminary determinations of eligibility and assessment of effects presented in OEA's Technical Memorandum; and

WHEREAS, OEA's Technical Memorandum satisfied its obligation to establish the likely presence of historic properties pursuant to 36 C.F.R. Section 800.4 (b)(2); and

WHEREAS, OEA invited the Consulting Parties to participate in development of the PA; and

WHEREAS, OEA also invited tribes that did not respond to OEA's initial invitation to participate in Section 106 consultation to participate in the development of the PA; and

WHEREAS, the Board, the SHPO, and the Ute Indian Tribe are Signatories to this PA; and

WHEREAS, Invited Signatories have specific responsibilities under the PA; and

WHEREAS, BLM, BIA, the Forest Service, USACE, SITLA, and PLPCO are Invited Signatories to this PA; and

WHEREAS, the Coalition would need to obtain permits from BLM, the Forest Service, PLPCO, and the Ute Indian Tribe to conduct field investigation related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under this PA on land managed by those parties; and

WHEREAS, the Coalition has specific responsibilities under this PA and is an Invited Signatory; and

WHEREAS, depending on which Action Alternative (if any) the Board authorizes, the Signatories and Invited Signatories to this PA may be amended; and

WHEREAS, specific roles and responsibilities of Signatories and Invited Signatories are detailed in Appendix E, *Roles and Responsibilities*; and

Commented [A8]: As invited signatories, the PA stipulations should more clearly define the specific responsibilities these parties have under the PA.

WHEREAS, OEA invited all Consulting Parties without specific responsibilities under this PA to serve as Concurring Parties; and

WHEREAS, OEA is recommending that the Board impose a condition requiring the Coalition to comply with the terms of this PA in any Decision authorizing the Project; and

WHEREAS, only the Board-licensed Action Alternative (if any) is subject to the stipulations in this PA; and

WHEREAS, the Board may have responsibilities under the Native American Graves Protection and Repatriation Act (25 U.S.C. §§ 3001 *et seq.*) related to the Project; and

WHEREAS, the Board may have responsibilities under the American Indian Religious Freedom Act (42 U.S.C. § 1996) related to the Project; and

WHEREAS, the Board may have responsibilities under the Archaeological Resources Protection Act (16 U.S.C. §§ 470aa *et seq.*) related to the Project; and

WHEREAS, reference to “Consulting Parties” shall be taken to include Signatories, Invited Signatories, and Concurring Parties.

WHEREAS, Concurring Parties have only agreed to participate in the consultation process as outlined in the PA; OEA understands that participation by the Concurring Parties does not necessarily imply an endorsement of the Project in part or as a whole. Indian tribes and other parties consulting under Section 106 may decline to sign this document; however, the decision not to sign shall not preclude their continued or future participation as Consulting Parties;

NOW, THEREFORE, the Board, SHPO, and the Ute Indian Tribe agree that the Project shall be implemented in accordance with the following stipulations to take into account the effect of the Project on historic properties and to satisfy all NHPA Section 106 responsibilities of the federal agencies for all aspects of the Project.

STIPULATIONS

For the licensed Action Alternative, the Signatories¹ shall carry out the following stipulations as follows.

I. Board Oversight of the Coalition for the Project Responsibility

- A. The Board has responsibility for ensuring that the Coalition carries out its responsibilities under terms of this PA are carried out for the Project in accordance with the Board's direction.

II. Change of Status

- A. If any Signatory determines that it would be appropriate to change its signatory status under this PA as a result of the Board's Decision authorizing a final Action Alternative, then the following steps shall be followed.

Commented [A9]: Check document for consistency – “Board-licensed” vs “authorized”

Commented [A10]: Should these clauses also reference BLM and FS?

Commented [A11]: This doesn't seem accurate, as consulting parties may include parties that are not signatories, invited signatories or concurring parties.

Commented [A12]: Does this footnote mean to say “stipulations”? and not “provisions”?

Commented [A13]: The stipulations switch back and forth between “Board” and “OEA”. We suggest making clear that OEA is responsible for fulfilling the Board's obligations under the PA.

Commented [A14]: The Board's responsibility extends beyond oversight of the Coalition. Because federal agencies are responsible for complying with Section 106, a clear statement is needed that the Board is responsible for ensuring the terms of the PA are carried out.

Commented [A15]: This ties into the comment above regarding the need to more clearly define the responsibilities under the PA for the invited signatories. Depending on the final Action Alternative, if a party does not end up having any specific responsibilities under the PA, then it should no longer be an invited signatory.

This provision should be drafted to make that more clear.

¹ In the Provisions section of this document, the term “Signatory” includes both Signatories and Invited Signatories.

1. Within 30 days of the Board's Decision, the party requesting a status change shall notify ~~OEA~~ the Signatories of its changed status by completing and executing the Notice of Status Change form found in Appendix F, *Notice of Status Change*, and providing it to OEA.
2. OEA shall provide the signed Notice of Status Change to the Signatories.
3. OEA shall notify the Concurring Parties and Consulting Parties, of the status change notification.
4. Signatories shall sign the Notice of Status Change and send it to OEA within 14 days of receipt. Signature in counterpart will be acceptable.
5. The status change will be effective once all Signatories acknowledge and agree to the change by signing the Notice of Status Change form and providing it to OEA, which shall then sign the document.
6. OEA shall append the Notice of Status Change to this PA.

Commented [A16]: Effectiveness should not be held up if a signatory fails to send the signed notice of status change back. This should specify that it becomes effective even if all signatories do not respond in the 14 day window.

B. If prior to the Board's Decision authorizing a final Action Alternative, the Board grants a petition filed by the Coalition to substitute a third party on its pending application for authority to construct and operate the Project, or if following the Board's Decision authorization a final Action Alternative, the Board grants a petition to transfer to a third party the Coalition's authority to construct and operate the Project, the following steps shall be followed:

- a. Within 7 days of the substitution of third party or transfer of authority to a third party, the Coalition shall notify OEA that a third party will be assuming its role and responsibilities under this PA by completing and executing the Notice of Party Substitution form found in Appendix , *Notice of Party Substitution*, and providing it to OEA.
- b. OEA shall provide the signed Notice of Party Substitution to the Signatories.
- c. OEA shall notify the Concurring Parties and Consulting Parties, of the party substitution notification.
- d. Signatories shall sign the Notice of Party Substitution and send it to OEA within 14 days of receipt. Signature in counterpart will be acceptable.
- e. The party substitution will be effective once all Signatories acknowledge and agree to the change by signing the Notice of Party Substitution form and providing it to OEA, which shall then sign the document. If a Signatory does not respond within 14 days, OEA shall sign the document and the party substitution will be effective.
- a.f. OEA shall append the Notice of Party Substitution to this PA.

Commented [A17]: It is anticipated that the Coalition will transfer the Project to the private third party at the appropriate time in the future. The PA should contain a provision allowing the Coalition to substitute that third party in its place.

III. Ongoing Consultation with the Ute Indian Tribe

- A. OEA shall continue to consult with the Ute Indian Tribe regarding historic properties of religious and cultural significance to the tribe in accordance with the NHPA, the Native American Graves Protection and Repatriation Act (NAGPRA), Archaeological Resources Protection Act of 1979 (ARPA), American Indian Religious Freedom Act of 1978 (AIRFA), Executive Order 13007 – Indian Sacred Sites, and their implementing regulations.

- B. ~~The Coalition shall develop a Tribal Participation Plan acceptable to OEA and the Ute Indian Tribe. The Coalition will ensure that the Tribal Participation Plan includes provisions for the Ute Indian Tribe to participate in any field surveys conducted by the Coalition; monitoring of archaeological excavations associated with data recovery for historic properties of traditional religious and cultural significance throughout the Undertaking; cultural resource monitoring of construction activities; participation of the Ute Indian Tribe in reviewing the draft technical reports and Historic Properties Treatment Plan before submission to OEA; parameters for in-person meetings and teleconference; and the Coalition's financial responsibility regarding tribal participation, that memorializes specifics related to the following: (See Appendix G, Reports, for a full list of reports to be produced in fulfillment of this PA.)~~

- ~~1. Ute Indian Tribe Confidentiality Requirements (Stipulations VIII.A.2.a)~~
- ~~2. Potential Expansion of the APE (Stipulation VI.B.8)~~
- ~~3. Development of Research and Survey Plan (Stipulation VI.C.8)~~
- ~~4. Report requirements related to properties of cultural and religious significance to the tribe (Stipulation VIII.C.1)~~
- ~~5. Permission to enter tribal lands for field survey (Stipulation VI.C. 6)~~
- ~~6. Provision of relevant data from any field survey the tribe undertakes within the APE (Stipulation VI. C. 7)~~
- ~~7. Tribal participation in field surveys on tribal land (Stipulation VI.C.8.p)~~
- ~~8. Tribal input on evaluations of properties with religious and cultural significance to the tribe (Stipulation VI.E.1.d) and assessment of effects on such properties (Stipulation VII.A)~~
- ~~9. Formal comment on OEA's technical reports identifying and evaluating historic properties, and assessing effects to those historic properties (Stipulation VIII.C.1)~~
- ~~10. Concurrence related to technical reports identifying and evaluating properties of cultural and religious significance to the tribe and assessing effects on those properties (Stipulation VIII.C.6)~~
- ~~11. Development and formal comment on the Historic Properties Treatment Plan (Stipulations IX.A & IX.D.4)~~
- ~~12. Concurrence related to Historic Properties Treatment Plan (Stipulation IX.D.7)~~
- ~~13. Potential modifications to the Programmatic Agreement (Stipulation XII.F)~~
- ~~14. Development and delivery of sensitivity training (Stipulation X.A)~~
- ~~15. Review of training materials (Stipulation X.D)~~
- ~~16. Participation in training conducted by Coalition (Stipulation X.E.3)~~
- ~~17. Distribution of information related to historic properties of religious and cultural significance (Stipulation IV.A.3 & Stipulation VIII.A.9)~~
- ~~18. Parameters for in-person meetings and teleconferences~~

Commented [A18]: The Coalition's understanding is that the TPP is intended to govern the participation/role of the Ute Tribe outside the provisions of the PA/its formal role as a signatory. However, many of the items listed are already governed by a specific process in the PA. This has the potential for inconsistencies between the TPP and the PA. The Coalition suggests that this be redrafted to make this clearer and avoid any duplications/inconsistencies with the PA provisions. We have suggested some language based on the PA for Gateway South.

~~Coalition's financial responsibility regarding tribal participation.~~

- C. ~~Within thirty days of execution of the PA, the Coalition will submit a draft plan to OEA and the Ute Indian Tribe for review. OEA will coordinate with the Ute Indian Tribe to determine whether any revisions to the draft plan are appropriate. OEA will notify the Coalition that the plan has been accepted.~~

Commented [A19]: There should be a clear process governing the development of the TPP.

IV. Ongoing Consultation

A. General Provisions

1. OEA anticipates engaging the Consulting Parties as described in this PA and consistent with 36 C.F.R. Section 800.4(d) and 36 C.F.R. Section 800.5(c).
2. OEA shall continue to consult with appropriate Indian tribes regarding historic properties of religious and cultural significance, in accordance with the NHPA, the Native American Graves Protection and Repatriation Act (NAGPRA), Archaeological Resources Protection Act of 1979 (ARPA), American Indian Religious Freedom Act of 1978 (AIRFA), Executive Order 13007 – Indian Sacred Sites, and their implementing regulations.
3. ~~With the exception of reports relating to historic properties of religious and cultural significance to the Ute Indian Tribe, OEA shall provide copies of any reports or studies developed pursuant to this PA to those Tribes that have expressed a desire for information as it is gathered for the Project.~~
4. As appropriate, OEA may consult with the Consulting Parties on other topics necessary to meet its Section 106 obligations.
5. Upon request, OEA shall grant Consulting Party status to any party that previously declined or did not respond to OEA's original consultation invitation.
6. As circumstances warrant and at its discretion, OEA shall invite additional parties to consult.
7. OEA shall consider requests to participate in consultation from additional parties and grant such requests where appropriate.

V. Protection of Confidential Information

To the extent consistent with NHPA Section 304 (53 U.S.C. § 300310), and ARPA Section 9(a), all Consulting Parties shall treat the cultural resources data from this Project as confidential and shall not release it to any person, organization, or agency not a party to this PA. If necessary, OEA may require data-sharing agreements with Consulting Parties to this PA who are interested in obtaining specific confidential information. Confidentiality concerns for properties that have traditional religious and cultural significance to tribes will be respected and information related to those properties will remain confidential to the fullest extent permitted by law.

Commented [A20]: Suggest either defining "cultural resources data" or being more specific about what information this is intended to include.

VI. Identification and Evaluation

A. General Provisions

1. Coalition staff including its consultants, carrying out the Coalition's responsibilities under the PA, including any cultural resources consultants or contractors working on behalf of the

Coalition, shall meet the Secretary of the Interior's Professional Qualification Standards (36 C.F.R. Part 61) for the discipline appropriate to the work undertaken.

2. Under OEA's direction, the Coalition shall conduct a Class III survey encompassing only the APE associated with the Action Alternative (if any) authorized by the Board.
3. The Coalition shall design its surveys and prepare reports in accordance with SHPO requirements detailed in guidance documents titled, *Archaeological Compliance Guidance*, and Intensive Level Survey Standard Operating Procedures available at <https://history.utah.gov/shpo/shpo-compliance/>.
4. For survey work carried out on land under the jurisdiction of the Forest Service, BLM, SITLA, or the Ute Indian Tribe, the Coalition shall additionally design its surveys and prepare reports in accordance with the requirements of the relevant agency or tribe.
5. In any communication or consultation with federal agencies, state agencies, or federally recognized tribes, the Coalition shall acknowledge that the Board retains authority and responsibility for formal Section 106 consultation under the terms of this PA, as the lead federal agency, and for government-to-government consultation with the federally recognized tribes.

Commented [A21]: These requirements should be specified in the PA to avoid any confusion later.

B. ~~Expanding Amendment to~~ the APE Based on Potential for Visual Effects

If the Board authorizes an Action Alternative, and before the commencement of field investigations,

1. The Coalition shall provide the most up-to-date project footprint to OEA.
2. The Coalition shall apply the APE definition provided in Appendix C, *Area of Potential Effects*, to any change to the project footprint.
3. To account for potential effects associated with changes to the visual setting or viewshed of a historic property, ~~based on the final design~~, the Coalition shall conduct a geographic information system (GIS)-based viewshed analysis, ~~or other methodology approved by OEA~~, to determine the visibility of the Project between the outer limit of the APE and 0.5 mile from either side of the centerline.
4. Based on topography and the presence of vegetation, the Coalition shall identify those areas where the Project would and would not be visible beyond the ~~existing~~ APE.
5. The Coalition shall provide detailed results of this analysis to OEA for its review.
6. ~~Within seven days of receiving the analysis, OEA shall determine whether any revisions are necessary to meet the requirements of Section 106.~~ The Coalition shall revise the analysis based on OEA's direction.
7. ~~OEA shall share the results of the draft analysis with the Consulting Parties and incorporate their input into the analysis; take their comments into consideration as OEA deems appropriate.~~
8. ~~Based on the results of the analysis, OEA may decide to draft a revised APE for review by the Consulting Parties will establish the visual APE.~~
9. OEA shall share the results of the visual analysis and its decision regarding the ~~visual~~ APE with the Consulting Parties.

Commented [A22]: Not appropriate to use "final design". This section makes clear that these provisions will be based on the up-to-date project footprint.

Commented [A23]: Provide time period for OEA's review.

Commented [A24]: If this step is not removed, the PA should provide a timeframe for the consulting parties to provide comments. Other sections provide 30 days for similar consulting party review and comment.

Commented [A25]: This step seems unnecessary. The Coalition suggests a more streamlined process, where OEA reviews the Coalition's analysis and determines the visual APE. Then shares that determination with the consulting parties for their input.

10. The Consulting Parties shall provide their comments on the visual APE within 30 days.
11. OEA shall consider Consulting Party comments and revise the visual APE, as appropriate.
12. If there are disagreements between OEA and any of the Signatories regarding the ~~results of the visual analysis and whether to make any changes to the visual~~ APE, OEA shall consult with the ~~Consulting Parties~~ Signatories, as appropriate, to resolve the disagreement. Disputes that cannot be resolved informally shall be addressed pursuant to Stipulation XIII.
13. ~~Neither the APE expansions amendments application of the APE to the updated project footprint nor the establishment of the visual APE made pursuant to this stipulation shall not~~ require a PA amendment.

C. Survey Preparation Activities

Prior to the commencement of field investigations, the following shall be completed:

1. The Coalition and OEA shall coordinate to finalize the APE in accordance with Stipulation VI.B.
- ~~2. The Coalition shall identify which sections of the APE it previously surveyed according to Class III standards and which sections require Class III field survey in order to carry out the stipulations in this PA.~~
- ~~3.2. The Coalition shall recommend additional background research as appropriate, including but not limited to supplemental literature review and file searches, is as necessary to support the Class III field survey.~~
- ~~4.3.~~ The Coalition shall seek permission to access property within the APE in accordance with the requirements of the land owner or manager.
- ~~5.4.~~ The Coalition shall obtain permission from ~~After receipt of the appropriate application from the Coalition~~, BLM, the Forest Service, and SITLA ~~shall grant the Coalition permission~~, as appropriate, ~~for the Coalition~~ to access land under those agencies' management for the purposes of conducting field investigations.
- ~~6.5.~~ The Coalition and OEA shall coordinate communications with the Ute Indian Tribe regarding requirements for field surveys on Tribal trust land, including communications regarding access. The Coalition shall ~~coordinate with the Ute Indian Tribe to~~ obtain permission from the Ute Indian Tribe to enter Tribal Trust Land for the purposes of conducting field investigations.
- ~~7.6.~~ If the Ute Indian Tribe decides to conduct its own field investigations within the Uintah and Ouray Reservation, the Ute Indian Tribe shall provide OEA with ~~the relevant conclusions regarding~~ the locations and characteristics of ~~potential~~ historic properties identified within the reservation.
- ~~8.7.~~ The Coalition shall prepare, and submit to OEA, a Research and Survey Plan for review and approval. ~~The Coalition shall revise this plan in accordance with OEA's comments. This plan shall include, but not be limited to, the following.~~
 - a. GIS files and map books detailing areas previously surveyed to Class III standards and the areas planned for survey.

Commented [A26]: These items are included in the Research Survey Plan below. Suggest deleting here.

Commented [A27]: Won't the process for this be included in the TPP? This seems duplicative and potentially inconsistent with what ends up in the TPP.

Commented [A28]: This appears to be out of place and fits in better with the field survey activities. In addition, a timeframe for making a decision on whether to complete the field investigations and completing this work should be provided.

Commented [A29]: The PA should provide a timeframe for OEA to provide comments to the Coalition.

- b. The need for additional literature review.
- c. Research methodology including details regarding anticipated research sources.
- d. Preliminary identification of additional research and sources available to support historic property evaluations, such as aerial photography, Government Land Office maps, other early maps, local histories, ethnographic information, existing studies, and GIS data.
- e. Preliminary descriptions of the historical contexts for the historic property types that the Coalition anticipates identifying during field investigations, building on the research that has been conducted to date as reported in the Coalition's Technical Reports and OEA's Technical Memorandum.
- f. Survey methodology for identifying archaeological resources.
- g. Methodology for identifying burial sites during field survey and for immediately notifying OEA and the Ute Indian Tribe of such discoveries.
- h. Survey methodology for above-ground resources.
- i. Approach to analyzing properties listed in Appendix D, *Historic Properties and Potential Historic Properties*, Category 1: OEA determined-eligible properties included in OEA's Technical Memorandum that require additional documentation in accordance with Stipulation VIII.A.5.
- j. Approach to analyzing the properties listed in Appendix D, *Historic Properties and Potential Historic Properties*, Category 2: Properties OEA identified as potentially eligible in OEA's Technical Memorandum as needing additional study to determine eligibility.
- k. Approach to identifying and analyzing rural historic districts, rural historic landscapes, and Traditional Cultural Properties.
- l. Approach to coordinating with the Ute Indian Tribe to develop methods for identifying properties of religious and cultural significance to the tribe and tribal Traditional Cultural Properties.
- m. Composition of field survey crews.
- n. Identification of necessary access permits and associated requirements for conducting surveys on tribal lands within the Uintah and Ouray Reservation.
- o. Coordination with OEA related to OEA's monitoring of the field investigations.
- p. Coordination with OEA and the Ute Indian Tribe regarding tribal monitoring of field investigations.
- q. Methods for recording potential historic properties in the field.
- r. Methods for collecting field data sufficient to assess effects on historic properties.
- s. Other information OEA determines is necessary to comply with the Section 106 requirements, as directed by OEA.

Commented [A30]: Notification should be to Ute Indian tribe on Ute tribal trust lands, but it should be all tribes on non-tribal trust lands.

Should there be a stipulation in the PA governing the process that occurs following such discoveries?

Commented [A31]: Is this intended to be part of the TPP? Does not seem necessary (and could potentially create inconsistencies) to include in both the TPP and RSP.

Commented [A32]: It is not clear what is meant by this. Does this mean specific individuals, qualification standards, or roles?

Commented [A33]: To the extent that the Ute Tribe does not conduct these surveys.

Commented [A34]: This should be included in the TPP. It does not seem necessary (and could potentially create inconsistencies) to include in both the TPP and RSP.

~~9.8.~~ OEA shall share the Research and Survey Plan with the Consulting Parties for their review and comment.

~~10.9.~~ The Consulting Parties shall provide their comments within 30 days.

~~11.10.~~ Within seven days of the end of the comment period, OEA shall consider Consulting Party comments and shall direct the Coalition to revise the Research and Survey Plan as appropriate.

~~12.11.~~ If there are disagreements between OEA and any of the Signatories regarding changes to the Research and Survey Plan, OEA shall meet with the Signatories ~~and Consulting Parties~~, as appropriate, to resolve the disagreement. Disputes that cannot be addressed informally shall be addressed pursuant to Stipulation XIII.

D. Field Surveys

1. The Coalition shall carry out the steps outlined in the final Research and Survey Plan.
2. The Coalition shall provide monthly reports to OEA on the status of the field investigations and shall coordinate with OEA to verify that surveys are being carried out in accordance with the terms of the final Research and Survey Plan. (See Appendix G, *Reports*, for a full list of reports to be produced in fulfillment of this PA.)
3. The Coalition and OEA shall consult regularly with the Ute Indian Tribe regarding the status of field investigations, as specified in the Tribal Participation Plan (Stipulation III.B). As appropriate, this consultation may take the form of monthly conference calls, in-person meetings, or other approaches that are acceptable to the Tribe.
4. The Coalition shall make appropriate adjustments to survey approaches during the field investigations in accordance with direction from OEA.
5. The Coalition shall notify OEA of field investigation completion within two days of completion.
6. OEA shall notify the Consulting Parties of field investigation completion within two days of receiving notice of completion from the Coalition.

E. Evaluation

1. The Coalition shall conduct an evaluation of all properties identified during field investigations. The evaluation shall include the following tasks.
 - a. Perform research as specified in the Research and Survey Plan (Stipulation VI.C.8) and develop context as needed to evaluate potential historic properties recorded in the APE.
 - b. Perform site-specific research as specified in the Research and Survey Plan (Stipulation VI.C.8) as needed to evaluate NRHP-eligibility for each potential historic property recorded in the APE.
 - c. Apply NRHP-eligibility criteria to potential historic properties recorded in the field.
 - d. In ~~consultation with OEA~~ accordance with the Tribal Participation Plan, the Coalition shall coordinate with OEA and the Ute Indian Tribe to get tribal input on the evaluation of properties. As appropriate and consistent with confidentiality provisions provided at

36 C.F.R. Section 800.11(c), OEA shall communicate information regarding historic properties of religious and cultural significance to the Coalition for the purpose of carrying out Stipulations VI and VII.

- e. For properties recommended as NRHP-eligible (historic properties), identify year built, relevant historic contexts, eligibility criteria, level of significance, period of significance, historic property boundaries, character-defining features, and alterations. Discussion of character-defining features shall include aspects of setting, if applicable.
 - f. For properties recommended as NRHP-ineligible (ineligible properties), identify year built, relevant historic contexts, and alterations. The Coalition shall perform research and develop the property's historical background sufficient to establish ineligibility.
 - g. For large or linear properties whose boundaries may extend beyond the APE, note the likely property boundary based on research and professional judgment but evaluate only the portion within the APE, except as provided by SHPO guidance (Archaeological Compliance Guidance 2020). If the boundary of a resource extends onto tribal lands, consultation will be undertaken between OEA, the Coalition, and the Ute Tribe to solicit the Tribe's input on the resource and the potential boundary.
2. If the Coalition is unable to recommend a preliminary eligibility determination based on field investigation and research:
 - a. The Coalition shall prepare a presentation summarizing the existing field data, context, available research, and other pertinent information for each property in this category.
 - b. The Coalition shall schedule a teleconference with OEA to review the presentation. OEA's actions following the presentation may include, but not be limited to, the following actions:
 - i. Determine eligibility or ineligibility based on the information presented.
 - ii. Direct the Coalition to perform additional research.
 - iii. Consult with the Ute Indian Tribe to obtain tribal input on eligibility determinations for properties of cultural or religious significance to the tribe.
 - iv. Consult with appropriate land-management agencies;
 - iv-v. Determine eligibility or ineligibility based on the additional information gathered in subsections ii., iii., or iv., above; or
 - v-vi. Direct the Coalition to assume eligibility.
 3. The Coalition shall document the results of all determinations of eligibility or ineligibility in accordance with Stipulation VIII.

Commented [A35]: The PA should provide a specific timeframe for OEA to take these actions following the teleconference. The Coalition suggests 14 days.

Commented [A36]: This is intended to make clear that STB can make a determination of eligibility or ineligibility once it gathers the information from the three items listed above it.

VII. Assessment of Effects

- A. In coordination with the Coalition, OEA shall regularly consult with the Ute Indian Tribe to get tribal input on the assessment of effects, as specified in the Tribal Participation Plan (Stipulation III.B).

- B. The Coalition shall apply the criteria of adverse effect (36 C.F.R. Section 800.5(a)(1)) to all historic properties identified within the APE.
- C. The Coalition shall clearly describe its recommendation as to whether the Project would result in no effect, no adverse effect, or adverse effect on each historic property listed in or eligible for listing in the NRHP within the APE.
- D. The Coalition shall document the results of all effects assessments in accordance with Stipulation VIII.A.

VIII. Documentation and Reporting

A. Technical Report Production

1. The Coalition shall create separate reports documenting archaeological and historic architectural resources (Technical Reports) to document field investigations *outside* of tribal trust lands within the Uintah and Ouray Reservation. (See Appendix G, *Reports*, for a full list of reports to be produced in fulfillment of this PA.)
2. The Coalition shall create standalone Technical Reports for any field investigations on tribal trust lands within the Uintah and Ouray Reservation. (See Appendix G, *Reports*, for a full list of reports to be produced in fulfillment of this PA.)
 - a. Within 30 days of field investigation completion, the Ute Indian Tribe shall communicate confidentiality requirements and preferences regarding report format and content to OEA.
3. The Coalition shall include the following information in or attached to the Technical Reports: boundaries of the APE, previously recorded resources, literature search results, field investigation results, contexts, property evaluation summaries including the details specified in Stipulation VI.E.1, inventory forms, maps, and effects assessments.
4. The Coalition shall document archaeological resources recorded during field investigations on the Utah Archaeology Site Forms (UASF).
5. The Coalition shall document all historic architectural resources, including the resources previously recorded in the Coalition Technical Reports, on the Historic Site Form (HSF) attached to the SHPO's *Intensive Level Survey Standard Operating Procedures* (2015) to the same level of detail as the information provided on archaeological resources.
6. The Coalition shall attach UASF and HSFs to the appropriate Technical Report as an appendix.
7. The Coalition shall list historic properties in the Technical Reports and summarize the information provided in the UASF or HSF for each property.
 - a. The summary in the Technical Report shall include sufficient detail to communicate and justify the determinations of eligibility including, but not limited to, architectural/site description, site history, alterations, and integrity.
 - b. For eligible historic properties, the Coalition shall identify the period of significance and character-defining features and assess integrity.

Commented [A37]: Specify that separate reports can be (but do not have to be) developed for separate segments of the route.

Commented [A38]: If the Ute tribe decides to produce its own reports, is the Coalition responsible for preparing the report for those surveys? This should be made clear in the PA.

In addition, should this requirement also apply to tribal lands outside the formal boundaries of the reservation (e.g. allotted lands)?

8. In the Technical Reports, the Coalition shall report its recommended conclusions regarding effects on each historic property.
 9. The Coalition shall omit confidential information from the Technical Reports. The Coalition shall include any necessary confidential information on USAFs that can be detached from the Technical Reports to permit public posting of the Technical Reports. OEA shall provide confidential information related to the Technical Reports produced in accordance with Stipulation VIII.A.1 to Signatories and Invited Signatories. The Ute Indian Tribe shall determine appropriate distribution of confidential information related to historic properties of religious and cultural significance to the Ute Indian Tribe.
- B. OEA Technical Reports Review
1. The Coalition shall submit Technical Reports to OEA for review and comment within 90 days of field investigation completion.
 2. OEA shall provide comments to the Coalition within 30 days of receipt of the Technical Reports.
 3. The Coalition shall revise the Technical Reports in accordance with OEA's comments and submit revised reports to OEA.
- C. Consulting Party Technical Report Review
1. Within seven days of receipt of the Technical Reports it deems acceptable, OEA shall submit the Technical Reports to the Consulting Parties for review and comment. OEA shall include inventory forms with confidential information to Consulting Parties in accordance with confidentiality provisions.
 2. The Consulting Parties shall provide comments within 30 days.
 3. Within seven days of the close of the comment period, OEA shall consider comments received from the Consulting Parties and engage in consultation to resolve any disagreements.
 4. Disputes between OEA and any of the Signatories regarding determinations of eligibility or effects assessments shall be adjudicated in accordance with the general provisions set forth in 36 C.F.R. Section 800.4 and/or 36 C.F.R. Section 800.5, and Stipulation XIII.
 5. Once OEA makes its final determinations of eligibility and effects assessments, OEA shall direct the Coalition to make appropriate revisions to the Technical Reports and the Coalition shall revise the Technical Reports in accordance with OEA's direction.
 6. Within seven days of deeming the revised reports acceptable, OEA shall provide the revised Technical Reports to the Consulting Parties and shall request concurrence from the SHPO and Ute Indian Tribe.
 7. SHPO and the Ute Indian Tribe shall respond to OEA's concurrence request within 30 days.

Commented [A39]: The PA should provide a timeline for OEA's final determinations. The Coalition suggests thirty days.

Commented [A40]: The PA should provide clarity on what happens if SHPO and/or the Tribe do not respond within 30 days. Failure to respond within the appropriate time period should be assumed concurrence.

IX. Resolution of Adverse Effects

- A. OEA shall consult with the Consulting Parties to develop and memorialize adverse effect resolutions in a Historic Properties Treatment Plan (HPTP). (See Appendix G, *Reports*, for a full list of reports to be produced in fulfillment of this PA.)
- B. Within 30 days of receiving OEA's approval of the Technical Reports, specifically on findings of adverse effect, the Coalition shall develop an HPTP and submit it to OEA.
- C. The HPTP shall include, but not be limited to, the following.
 1. A list of known historic properties adversely affected by the Project. This list shall include but not be limited to the following.
 - a. Unique locator (resource name or number).
 - b. Locational information.
 - c. Photographs.
 - d. Description including character-defining features.
 2. Description of measures to avoid or minimize identified adverse effects on known historic properties. Such measures could include but not be limited to the following.
 - a. Modifications to the Project.
 - b. Description of treatment measures that conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties (<https://www.nps.gov/tps/standards.htm>).
 3. Mitigation measures to resolve adverse effects on known historic properties when avoidance or minimization is not ~~practicable~~possible. The proposed mitigation plan may include, but not be limited to, the following.
 - a. Data recovery for historic properties outside of tribal lands (including curation).
 - b. Documentation in accordance with Historic American Buildings Survey, Historic American Engineering Record, or Historic American Landscape Survey standards.
 - c. Print publication (brochure/book).
 - d. Digital media publication (website/podcast/video).
 - e. Identification of party tasked with carrying out each measure.
 - f. Schedule for completing adverse effect resolutions.
 - g. Method for verifying compliance with the adverse effect resolutions.
 4. Methods for addressing post-review discoveries of historic properties. Methods shall include, but need not be limited to, the following.
 - a. Development of a Discovery Plan addressing
 - i. Construction personnel training

- ii. Construction monitoring
 - iii. Stop-work provisions
 - iv. Identification and evaluation procedures
 - v. Effects-assessment procedures
 - vi. Adverse effect resolutions
 - vii. Notification and consultation procedures and timelines
5. Procedures for the discovery of human remains and compliance with NAGPRA.
- D. Consulting Party Review
- 1. OEA shall review the HPTP and provide comments to the Coalition within 30 days of receipt.
 - 2. The Coalition shall revise the HPTP in accordance with OEA's comments.
 - 3. Within seven days of receiving an HPTP that it deems acceptable, OEA shall distribute the HPTP to the Consulting Parties.
 - 4. Consulting Parties shall provide their comments within 30 days.
 - 5. Within seven days of the end of the comment period, OEA shall consider comments received from the Consulting Parties and direct the Coalition to make revisions to the HPTP, as appropriate.
 - 6. The Coalition shall revise the HPTP in accordance with OEA's direction within 30 days.
 - 7. Within seven days of deeming the HPTP acceptable, OEA shall submit the final HPTP to all Consulting Parties and request for concurrence from SHPO and the Ute Indian Tribe.
 - 8. The SHPO and Ute Indian Tribe shall respond to OEA's concurrence request within 30 days.

Commented [A41]: See note above. Clarify that if response is not given in 30 days, OEA can assume concurrence.

X. Construction Personnel Training

As provided in Stipulation X.B.1.a, the Coalition, in coordination with the Ute Indian Tribe, shall develop and deliver training and materials designed to familiarize construction personnel with the identification and appropriate treatment of historic properties they are likely to encounter during the performance of their work. (See Appendix G, *Reports*, for a full list of reports to be produced in fulfillment of this PA.)

A. Cultural Sensitivity Training

- 1. OEA shall facilitate coordination between the Coalition and the Ute Indian Tribe regarding the provision of cultural sensitivity training to all personnel on the Project site including but not limited to construction workers, contractors, inspectors, and monitors.
 - a. The Ute Indian Tribe shall determine the content of the cultural sensitivity training.
 - b. The Ute Indian Tribe shall be given the opportunity to provide or approve personnel to deliver in-person cultural sensitivity training to personnel at the construction site.

Commented [A42]: Should this provision specify that the Coalition can draft the content of the cultural sensitivity training after coordination?

- c. The Coalition shall ensure that all on-site personnel participate in cultural sensitivity training provided or approved by Ute Indian Tribe.
 - d. The Coalition shall provide for on-going training to ensure that personnel who begin work after construction starts receive training.
- B. Development of Curriculum and Job Aids
 - 1. Job Aids and Training Materials Development
 - a. The Coalition shall develop curriculum and job-aids designed to assist construction workers in identifying the locations of known historic properties, appropriately treating known historic properties, recognizing potential but yet-to-be-identified historic properties, treating unanticipated discoveries, and maintaining confidentiality.
 - b. These materials shall include (but not be limited to) the following:
 - i. Geospatial data layer identifying the specific locations of known historic properties available via a cellular telephone application. For archaeological historic properties, the data layer would not identify the specific locations or boundaries of archaeological sites but would include a polygon labelled an "Environmentally Sensitive Area" that includes a buffer around the site.
 - ii. Specific instructions for the treatment of specific historic properties in the attributes of the data provided in the geospatial data layer.
 - iii. Visual examples of property types that construction personnel may encounter.
 - iv. Information regarding laws and regulations concerning the treatment of historic properties and cultural resources, including penalties for violation.
- C. OEA Job Aids and Training Materials Review
 - 1. The Coalition shall provide the curriculum and job aids to OEA for review not less than 120 days prior to beginning Project-related construction.
 - 2. OEA shall provide comments to the Coalition within 30 days of receipt of curriculum and job aids.
 - 3. The Coalition shall revise the curriculum and job aids in accordance with OEA's comments and submit revised materials to OEA within 30 days.
- D. Consulting Party Job Aids and Training Materials Review
 - 1. Within seven days of receipt of curriculum and job aids from the Coalition that it deems acceptable, OEA shall submit the material to the Consulting Parties.
 - 2. The Consulting Parties shall provide comments on the curriculum and job aid material within 30 days of receipt.
 - 3. OEA shall direct the Coalition to revise the curriculum and job aid material in response to Consulting Party comments, as appropriate.
- E. Training Delivery

Commented [A43]: The PA should specify a timeframe for OEA to provide such direction to the Coalition.

1. The Coalition shall deliver the revised curriculum during trainings attended by all personnel involved in construction activities prior to their first day of field work on the Project.
2. The Coalition shall provide for on-going training to ensure that personnel who begin work after construction starts receive training
3. The Coalition shall invite representatives of the Ute Indian Tribe to participate in or observe its trainings.

F. Training Verification

The Coalition shall maintain records verifying that it has carried out the above described personnel training for all on-site construction workers. The Coalition shall include these details in the Stipulation XII Programmatic Agreement Annual Report

XI. Post-Review Discoveries

- A. As provided in Stipulation IX.C.4, the Coalition shall include provisions for unanticipated discoveries of potential historic properties during construction in the HPTP.
- B. If properties are discovered that may be historically significant, or unanticipated effects occur on historic properties, the Coalition, in coordination with OEA, shall implement the discovery plan to be developed in the context of the HPTP.

XII. Programmatic Agreement Annual Report and Review

- A. The Coalition shall prepare a Programmatic Agreement Annual Report (PAAR) of activities conducted in fulfillment of this PA. (See Appendix G, Reports, for a full list of reports to be produced in fulfillment of this PA.)
- B. The PAAR shall include an update on schedule, status, training, tasks completed, and any ongoing historic property monitoring or mitigation activities, discovery situations, or outstanding tasks to be completed under this PA or the HPTP.
- C. The Coalition shall provide the PAAR for each year's activity for OEA's review and comment by January 31 of each the following year for the duration of this PA.
- D. The Coalition shall revise the PAAR in accordance with OEA's comments as OEA deems necessary to carry out the requirements of this PA.
- E. OEA shall distribute the PAAR to the Consulting Parties.
- F. OEA shall consult with the Consulting Parties regarding any recommended modifications or amendments to the PA that should be made based on the PAAR.

XIII. Dispute Resolution

Should any Signatory or concurring party to this PA object at any time, to any actions proposed or the manner in which the terms of this PA are implemented, OEA shall consult with such party to resolve the objection. If OEA determines that such objection cannot be resolved, OEA shall do the following.

- A. Forward all documentation relevant to the dispute, including OEA's proposed resolution, to the ACHP. The ACHP shall provide OEA with advice on the resolution of the objection within 30 days

Commented [A44]: Recommend including a timeframe for these steps.

Commented [A45]: Make clear that OEA is the ultimate decisionmaker on whether any amendments are needed.

Commented [A46]: Other provisions indicate that only Signatories can use the dispute resolution process.

of receiving adequate documentation. Prior to reaching a final decision on the dispute, OEA shall prepare a written response that takes into account any advice received from ACHP and any timely advice or comments regarding the dispute from the Signatories Consulting Parties and provide them with a copy of the written response. OEA shall then proceed according to its final decision.

Commented [A47]: What is considered timely?

- B. If the ACHP does not provide its advice regarding the dispute within the 30-day time period, OEA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, OEA shall prepare a written response that takes into account any timely comments regarding the dispute from the Consulting Parties Signatories and provide them and the ACHP with a copy of the written response.
- C. OEA's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

Commented [A48]: Same comment. What is considered timely?

XIV. Amendment

This PA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment shall be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

XV. Termination

- A. If any Signatory determines that the terms of the PA will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation XIV. If within 30 days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the PA upon written notification to the other Signatories.
- B. ~~Once the PA is terminated, and prior to work continuing on the Project, OEA must either~~In the event of a termination, the Board either (a) ~~execute another PA pursuant to 36 C.F.R. Section 800.14(b)(1) comply with 36 CFR Part 800.4 through 800.6 with regard to the Project~~ or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. Section 800.7. OEA shall notify the Signatories as to the course of action it will pursue.

XVI. Duration of this Programmatic Agreement

- A. This PA shall expire 10 years from the date of the Board's decision granting authority unless terminated earlier pursuant to Stipulation XV or subsection D below.
- B. If construction is expected to extend beyond this timeframe, the Coalition shall notify OEA six months prior to this PA's expiration that more time is needed for Project completion, and develop an amendment to the PA with Signatories in accordance with Stipulation XIV.
- C. The Coalition shall notify OEA when construction ends and operations begin.
- D. If OEA determines that all terms of this PA have been fulfilled in a satisfactory manner, OEA shall notify the Consulting Parties in writing of this determination. This PA shall terminate on the day that OEA so notifies the Consulting Parties.

XVII. General Provisions

- A. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. OEA shall distribute copies of all signed pages to the Consulting Parties once the PA is executed in full.
- B. All notices, requests, and other communications required or permitted hereunder between OEA and the Consulting Parties shall be in writing and delivered via email.

EXECUTION of this PA by OEA, SHPO, and the Ute Indian Tribe and implementation of its terms evidence that OEA has taken into account the effects of this undertaking on historic properties.

SIGNATORIES

Surface Transportation Board

By: _____

Vicki Rutson, Director, Office of Environmental Analysis

Date: _____

Ute Indian Tribe of the Uintah and Ouray Reservation

Betsy Chapoose, Ute Indian Tribe Cultural Rights and Protection Department

Date: _____

Luke Duncan, Chairman, Ute Indian Tribe Business Committee

Date: _____

Utah State Historic Preservation Officer

By: _____

Chris Merritt, State Historic Preservation Officer

Date: _____

INVITED SIGNATORIES

Bureau of Indian Affairs

Bureau of Land Management

Seven County Infrastructure Coalition

State of Utah, School and Institutional Trust Lands Administration

U.S. Army Corps of Engineers, Sacramento District

U.S. Forest Service – Ashley National Forest

United States Forest Service

Susan Eichhoff, Forest Supervisor, Ashley National Forest

Date: _____

Bureau of Indian Affairs

Bryan Bowker, Regional Director, Western Regional Office

Date: _____

Bureau of Land Management

Anita Bilbao, Acting State Director

Date: _____

U.S. Army Corps of Engineers, Sacramento District

Jason Gipson, Nevada-Utah Section, Regulatory Division

Date: _____

State of Utah, School and Institutional Trust Lands Administration

David Ure, Director

Date: _____

Utah Public Lands Policy Coordinating Office

Kathleen Clarke, Director

Date: _____

Seven County Infrastructure Coalition

By: _____
Signature

Printed

Title: _____

Date: _____

CONCURRING PARTIES (INVITED)

Carbon County, Utah

Colorado Plateau Archaeological Alliance

Duchesne County, Utah

Hopi Tribe of Arizona

Nine Mile Canyon Coalition

Uintah County, Utah

U.S. Environmental Protection Agency

Utah Rock Art Research Association

Utah Department of Transportation

By: _____

Signature

Printed

Title: _____

Date: _____