

## **Appendix I**

### **PROGRAMMATIC AGREEMENT**

The Bureau of Land Management (BLM), in consultation with the State Historic Preservation Offices (SHPOs) of Idaho and Oregon, agreed to develop a Programmatic Agreement among the various state and federal agencies and consulting parties with an interest in the Boardman to Hemingway Transmission Line Project (B2H Project). The Programmatic Agreement is a legally binding document among the involved state and federal agencies, tribes, the ACHP, and consulting parties, that records the terms and conditions agreed upon to resolve the potential adverse effects of a complex undertaking in accordance with 36 Code of Federal Regulations 800.14(b) and in compliance with Section 106 of the National Historic Preservation Act. The Programmatic Agreement outlines the stipulations that would be followed concerning the identification, assessment, and treatment of cultural resources for the Project. Signatories agree that the Project will be administered in accordance with the stipulations set forth in the Programmatic Agreement.

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# Boardman to Hemingway Programmatic Agreement

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**FINAL  
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  
NATIONAL PARK SERVICE  
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), as amended (54 USC §306108), 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 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

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**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 and the protection of cultural resources on federal public lands 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 (54 USC §306108) and is a Signatory to this PA; and

**WHEREAS**, portions of this Undertaking will occur on lands managed by the Bureau of Reclamation (Reclamation) and the Reclamation 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 and is a Signatory to this PA; and

**WHEREAS**, the Bonneville Power Administration (BPA), owner of the Boardman to Lone transmission line and proposed Longhorn substation, may 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, may participate in the construction of the line, 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 and Walla Walla Districts, U.S. Army Corps of Engineers (USACE), with the Portland District serving as the lead district per a Memorandum of Agreement with the Walla Walla District, 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 USACE has designated that the BLM will serve as lead federal agency for Section 106 of the NHPA compliance pursuant to 36 CFR 800, 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

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**WHEREAS**, the BLM has notified the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the NHPA and the 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 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 National Park Service (NPS) has been invited to participate in this consultation in its capacity as administrator of the Oregon National Historic Trail and the Lewis and Clark National Historic Trail, as this Undertaking may affect segments of the Oregon National Historic Trail and the Lewis and Clark National Historic Trail, and is an Invited Signatory to this PA; and

**WHEREAS**, the APE for indirect effects extends onto the Umatilla Indian Reservation (UIR), and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) THPO is an Invited Signatory to this PA; and

**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**, the Undertaking may have an adverse effect under NHPA Section 106 on the Oregon National Historic Trail, 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 (NHT) 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 does not physically cross into Washington but the 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 concurring parties to this PA: The CTUIR; Shoshone-Paiute Tribes of the Duck Valley Indian Reservation; Nez Perce Tribe;

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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. These Tribes understand that, notwithstanding any decision by these tribes, the BLM will continue to consult with them throughout the implementation of this PA pursuant to 36 CFR 800.2(c); and

**WHEREAS**, the BLM recognizes that historic properties may also include Traditional Cultural Properties (TCPs). Per NPS Bulletin 38, a TCP is defined as a type of historic property that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. A community may include a Native American tribe, a local ethnic group, or the people of the nation as a whole. TCPs may include historic properties that Native American communities consider to be traditional ecological knowledge properties or of traditional religious and cultural importance; 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; 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 OAR 345-022-0090 during its review of the site certificate application for the Undertaking; and ODOE is a Concurring Party to this PA; and

**WHEREAS**, the project does not physically cross into Washington but the APE for indirect effects on one of the alternatives extends into Washington and the Undertaking may be visible from Lewis and Clark Historic Trail in both Oregon and Washington and the Lewis and Clark Heritage Trail Foundation Washington and Oregon state chapters have been invited to consult on this PA and are Concurring Parties to this PA; and

**WHEREAS**, the Navy was invited to be a Concurring Party to this PA and has opted not to sign this PA, and should any portion of the undertaking be proposed to occur on Naval Weapons Systems Training Facility (NWSTF) Boardman in Morrow County, Oregon, the U.S. Navy will serve as the lead federal agency for that portion of the Undertaking for Section 106 of the NHPA compliance pursuant to 36 CFR 800, the regulations implementing Section 106 of the NHPA; and

**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 sign this document; however, the decision not to sign shall not preclude their continued or future participation as consulting parties to this Undertaking; and

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**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

**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 NHPA Section 106 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 on 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 on 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.

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- 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 APEs described in a.-f. above and within the area of the ROW grant.

## 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 electromagnetic 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 electromagnetic fields will be limited to within the inventoried indirect effects APE.
- d. Where the indirect APE includes TCPs, 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

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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.

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.

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- 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).

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

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

1. Class II Sample Inventory—The Proponent will undertake a Class II pedestrian inventory to document cultural resources within the 15 percent sample area of the direct effects APE for the Proponent's proposed alignment and analyzed DEIS alternatives. The 15 percent sample survey will consist of a series of one-mile long by 500-foot-wide units, centered on the centerline of the Proponent's proposed alignment and DEIS alternatives. The Class II 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.
2. Indirect Effects APE Inventory—The Proponent will identify cultural resources, within the indirect APE that may be affected by the visual, atmospheric and audible elements of the Undertaking.

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

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A reconnaissance level survey will be conducted to identify potential historic properties, including cultural landscapes. The preliminary results report will be distributed to the federal agencies that are parties to this agreement, SHPOs, THPO and tribes for consultation on eligibility as per stipulations V. and VIII. At their discretion, any federal agency may decline receipt and review of the report by notifying the BLM in writing prior to report distribution. Intensive level surveys (VAHP) will be 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 (VAHP) will be documented in reports.

Once historic properties are identified, the BLM will seek additional information from relevant technical studies (such as the noise and electromagnetic field studies) as well as consult with 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)).

3. Initial Class III Intensive Level Inventory—The Proponent will complete a 100 percent Class III inventory to document cultural resources within the direct effects APE of the BLM-final selected 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.
4. 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.
5. Preconstruction Class III Intensive Level Inventory—The BLM shall ensure that Class III inventory is completed by the Proponent for areas within the direct effects APE that have not been subject to previous Class III inventories. See stipulation XII. 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. Prior to conducting this Class III inventory, a record search will be conducted to obtain currently available data.
6. Subsurface Investigations for Purposes of Identifying Cultural Resources—The BLM will employ reasonable and good faith efforts to identify historic properties, in accordance with ACHP guidance titled *Meeting the "Reasonable and Good Faith" Identification Standard in Section 106 Review*. 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 and professional judgment will prevail in an effort to be efficient, pragmatic and protect the resources during the identification of historic properties. A sampling strategy model, including a provision for reporting the results and

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validity of the methods, may be employed. The sampling strategy will be tailored to account for results of previous strategies employed in the region.

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, 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 consultation with the Proponent, and parties to this agreement, prior to undertaking any such investigation. The details of the research design and 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 potential areas proposed for this testing.

7. 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 appropriate parties to this agreement in each state, will determine the NRHP eligibility of cultural resources within the APEs, pursuant to 36 CFR 800.4(c)(1), and 36 CFR 60.4 NRHP evaluations may be conducted in phases as project plans are refined. Initial evaluations may be followed by more thorough evaluations using NRHP Criteria A-D and NPS Bulletin 15 as the APEs become better defined. Cultural resources may remain unevaluated if there is no potential for effect from the Undertaking. Cultural resources that possess some or all of the characteristics of both archaeological and built environment

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resources, such as cultural landscapes and trails, shall be evaluated according to the provisions of stipulations C. through G. of this section.

B. Determinations of eligibility will be consistent with applicable SHPO/THPO guidelines in each respective jurisdiction, in effect at the time of the signing of this PA. Determinations of eligibility require concurrence by the SHPO/THPO as detailed in stipulation III.H.

C. 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. Determinations of eligibility will be based on reasonable and good faith efforts using available knowledge and data such as existing surface manifestations of the site and cultural context from other site investigations, as well as the environmental and 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.E.7 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.
3. 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 stipulation VII.C.2.

Subsurface investigation strategy shall be subject to review and consultation per the terms of stipulations V. and VI. of this agreement.

4. 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.

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## D. 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 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.

## E. Historic Trails

The BLM, in consultation with the parties to this agreement, will determine the National Register eligibility of historic trails, trail segments and associated sites 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.

## F. Traditional Cultural Properties

Like all historic properties, to be considered eligible a Traditional Cultural Property (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

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information from literature reviews, ethnographies, traditional use studies, field inventories, oral histories, interviews, and other forms of research.

## G. 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 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.

## H. Reporting on Initial and Final Recommendations of NRHP Eligibility

1. The BLM will distribute recommendations of initial NRHP eligibility to the appropriate parties to this agreement in each state 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 appropriate parties to this agreement in each state.
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.

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## 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) for those properties determined to have the potential to be adversely affected by the Undertaking.
- B. The BLM will consult with the parties to this agreement 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 effects 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 undertaken through subsurface investigation to aid in developing alternative design and/or mitigation strategies. If adverse effects cannot be avoided, the BLM will consult with the parties to this agreement to determine appropriate mitigation measures to be detailed in the HPMP.
- C. The Proponent has developed a VAHP Study Plan, (Appendix B) in consultation with federal agencies party to this agreement, SHPOs, THPO and tribes, to assess whether the Undertaking will introduce visual effects that may alter the characteristics that qualify the historic property for the NRHP or that may diminish the integrity of the property's setting, feeling and/or association. The guidelines for conducting the assessment of visual effects of the Undertaking are located in the VAHP. The inventory will focus on indirect visual effects. Other potential indirect effects, including but not limited to atmospheric and audible elements, will be addressed as per stipulation IV.A. above.
- D. The Proponent will prepare maps indicating the extent of electromagnetic fields, corona and noise generated by the proposed Undertaking as well as the distribution of identified historic properties in the APE. The BLM will employ these maps in the agency's assessment of effects and will consult with parties to this agreement per the procedures outlined in stipulation V.
- E. The BLM, in consultation with the parties to this agreement, will broadly assess cumulative effects under Section 106 in order to identify all reasonably foreseeable, potentially adverse effects, such as effects due to increased access, 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 HPMP.
- F. The BLM will provide all assessments of effect to historic properties in writing to the parties to this agreement. Review will proceed according to the procedures and timeframes established in stipulation V.
- G. Disagreement regarding assessments of effect will be handled according to the procedures established in stipulation XIV.

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## V. Reporting and Review of Documentation

- A. Consistent with the terms and conditions of this PA, the Proponent will prepare reports of cultural resource activities (inventory, evaluation, mitigation/treatment, monitoring and related cultural resource actions) including associated site records and organize them for distribution and review following these general guidelines:
1. Organization of reports by geographic/administrative boundaries: The Proponent will prepare separate reports, as applicable, for those cultural resource inventories and evaluations involving cultural resources and/or historic properties and the built environment (a) within the state of Oregon (excluding lands within the Umatilla Indian Reservation); (b) within the state of Idaho; and (c) on lands within the Umatilla Indian Reservation, utilizing the guidelines in the respective jurisdictions in effect at the time of the signing of this PA.
    - 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 CTUIR tribal lands 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, as well as any variances undertaken, as described in stipulation VII.C.4.c, 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 that are in effect at the time of the signing of this PA. 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. Additional time may be necessary depending on the extent of the revisions.
- E. Comments received by the BLM within 30 calendar days of receipt of the report will be considered. Comments may address issues such as the adequacy of inventory, methods of

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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 and request an extension from the BLM. 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.

- F. For reports that are not time sensitive or are in excess of 200 pages, the BLM may expand review times beyond 30 calendar days.
- G. The BLM will submit revised reports to the appropriate agencies, SHPOs/THPO, tribes and parties to this agreement for their records.
- 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, who do not fall under the 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) for review and comment.
- I. The BLM 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 provide a state specific, final summary report for each respective SHPO/THPO documenting all changes to previous report findings and additional cultural resources-related work not included in the pre-construction reports. The report format will be identified in the HPMP. A summary report may also be provided to parties to this agreement in accordance with stipulation VIII. The summary report will be produced no later than three years after the final surveys and will be considered the final Class III inventory report(s).

## **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.

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- 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 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 BLM 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.
- 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. A range of resource-specific (e.g. historic trails) strategies, will include but not be limited to, mitigation and monitoring, to address reasonably foreseeable direct, indirect and/or cumulative adverse effects that may be caused by the Undertaking. The mitigation measures will be commensurate with the nature of the effect and the significance of the resource, and shall take into account the views of the parties to this agreement and the public. The BLM will consult with the parties to this agreement to obtain written comments and recommendations for proposed treatment measures to be included in the HPMP per the procedures established in stipulations V. and VI. BLM, in consultation with the parties to this agreement, will develop a process for review and acceptance of mitigation to be outlined in the HPMP.
- 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

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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.
- 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

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- 3) Purchase of land for long-term protection of historic properties
- 4) Partnerships and funding for public archaeology projects
- 5) Partnerships and funding for Historic Properties interpretation
- 6) Print or media publication

## 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.
- 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 contained within 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.

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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.

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, in consultation with parties to this agreement, and BLM approves the variance.

Additional inventory and evaluation undertaken for these variances will be reported as soon as feasible and sent to the BLM for review in accordance with stipulation V.B, as part of the Class III inventory. Any variance reports will also be included in the comprehensive report outlined in stipulation V.L. 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.

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.

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

The POD will contain a stipulation to develop a decommissioning plan to address the potential effects of decommissioning on historic properties. Prior to decommissioning, 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 and to seek ways to avoid, minimize or mitigate adverse effects under the plan.

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## B. 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.

## C. HPMP and Mitigation Plans Review

1. The BLM shall submit the draft HPMP to the consulting parties 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.

D. 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.

E. 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.

F. 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 on the amendment. An amendment to the HPMP will not require an amendment to the PA. After consultation with the parties to the agreement, the BLM will determine if an amendment will be incorporated into the HPMP by the Proponent.

## 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 under NHPA (54 USC §307103), 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

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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, unless the party receiving the documents has an executed data sharing agreement with BLM. 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.

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

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

The BLM in consultation with federal agencies that are a party to this agreement, SHPOs, THPO and tribes has prepared an IDP for the HPMP to include cultural resources and human remains, that establishes procedures for immediate work stoppage and site protection to be followed in the event that previously unreported and unanticipated cultural resources or human remains are found on state or private lands during the Undertaking in accordance with 36 CFR 800.13(a)(2)(b) and appropriate state laws.

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

- A. The BLM in consultation with federal agencies party to this agreement, SHPOs, THPO and tribes has prepared an IDP for the HPMP, to include cultural resources and human remains, that establishes procedures for immediate work stoppage and site protection to be followed in the event that previously unreported and unanticipated cultural resources or human remains are found on federal lands during the Undertaking.
- B. Discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony on federal lands shall be subject to 25 USC §3001 et seq., the Native American Graves Protection and Repatriation Act (NAGPRA), and its implementing regulations, 43 CFR 10 et. seq. The BLM will prepare a NAGPRA Plan of Action (POA) in consultation with federal agencies party to this agreement and in consultation with Native American tribes party to this agreement. The POA will describe the procedures for the treatment and disposition of Native American human remains, funerary objects, sacred objects or objects of cultural patrimony for intentionally excavated and inadvertent

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discoveries during construction and planned, if any, excavation of sites located within the Project APE on federal lands. The POA will be completed prior to any ground disturbing activities associated with the Undertaking.

## **XI. Curation**

- A. The BLM will ensure curation and other disposition of cultural materials and associated records not subject to the provisions of NAGPRA resulting from implementation of this PA on federal land is completed in accordance with 36 CFR 79. Documentation of the curation of these materials will be provided to the BLM and the appropriate SHPOs/THPO within 30 days of acceptance of the final cultural resource report for the Undertaking. Cultural materials not subject to the provisions of NAGPRA found on BLM and USFS lands will remain federal property when curated. Curation will be undertaken in a manner consistent with and 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 10.3-10.7, the regulations implementing NAGPRA.
- C. Collections made on state land in the State of Oregon, will comply with ORS 390.235 and ORS 97.745. 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 rebury or 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

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collected items be reburied. Any arrangements for reburial will be negotiated with the tribe(s) outside of the Section 106 process.

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

## **XII. Initiation of Construction Activities**

- A. Construction will only occur after issuance of a federal ROW grant, Special Use Authorization and specific NTP or any other federal or state authorization to the Proponent which will occur after the ROD.
- B. The BLM will ensure that mitigation for adversely affected historic properties is implemented to the degree required in the mitigation plans prior to issuance of NTPs. The BLM will authorize construction to begin once the parties to this agreement have been provided with documentation of mitigation activities and consultation has occurred pursuant to stipulation V. Disagreements regarding the adequacy of the implementation of mitigation plans are subject to resolution as described in stipulation XIV. NTPs may be issued to the Proponent for individual construction segments under the following conditions:
  - 1. Construction of the segment will not restrict subsequent rerouting of the ROW corridor or affiliated ancillary feature locations to avoid, minimize, or mitigate the Undertaking's adverse effects on historic properties; and
  - 2. The permitting agencies, in consultation with parties to this agreement, determine that all surveys have been completed and no cultural resources have been identified through Class III inventories and there are no historic properties within the APEs for the construction segment; or
  - 3. The permitting agencies, in consultation with the SHPOs/THPO, have implemented the procedures described in the HPMP within the construction segment; and
    - a. The fieldwork phase of the treatment option has been completed;
    - b. The federal agencies that are a party to this agreement have accepted a summary description from the Proponent of the fieldwork performed and a reporting schedule for that work;
    - c. The permitting agencies have provided the parties to this agreement with a summary description of the fieldwork performed and a reporting schedule for that work; and
    - d. The permitting agencies, in consultation with the parties to this agreement, have determined that all preconstruction fieldwork is complete and adequate.

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## C. Changes in Ancillary Areas/Construction ROW

1. The BLM will notify the parties to this agreement of proposed changes in ancillary areas or the ROW. The BLM will ensure that the APE of the new ancillary area or reroute is inventoried and evaluated in accordance with stipulation II, and will consult with the parties to this agreement on the proposed APE and the determination of eligibility and effect in accordance with stipulations III. and IV. The reports addressing these areas will be reviewed in accordance with stipulation V. of this PA.
2. The BLM will provide the tribes, and parties to this agreement with the revised addendum reports and findings on eligibility and effects for a 30 day review and comment period. The BLM will seek consensus determinations of eligibility for all properties identified in the APEs. If consensus cannot be reached, the process articulated in stipulation III. for seeking a determination of eligibility from the Keeper of the NRHP will be followed.

## XIII. PA Evaluation

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

## XIV. Dispute Resolution

- A. Any party to this agreement may object at any time to any actions proposed or the manner in which the terms of this PA 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 objecting party and all parties to this agreement to resolve the objection within 30 days. If the BLM determines that such objection cannot be resolved, the BLM will:
  1. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP within 30 days after the BLM's initial determination that the objection cannot be resolved. The ACHP will provide the BLM with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final determination on the dispute, the BLM will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP

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and parties to this agreement, and provide them with a copy of this written response within 30 days of receiving advice from the ACHP. The BLM will then proceed according to its final determination.

2. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, the BLM may make a final determination on the dispute and proceed accordingly. Prior to reaching such a final determination, the BLM will prepare a written response that takes into account any timely comments regarding the dispute from the parties to this agreement to the PA, and provide to all parties to this agreement with a copy of such written response within 30 days.
3. The BLM's responsibilities to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

## **XV. Review of Public Objection**

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**

Signatories and Invited Signatories of this PA may request an amendment to the PA by providing proposed changes in writing. 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 reinitiate 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

## Boardman to Hemingway Programmatic Agreement

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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 ACHP comments, in accordance with 800.7 BLM must either (a) execute a PA pursuant to 36 CFR 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. If a withdrawal occurs, the BLM will notify all parties to this agreement as to the course of action it will pursue for Section 106 compliance for the Undertaking.

### **XVIII. Duration of This PA**

- A. Until the Undertaking has been initiated, the BLM shall convene a meeting of the Signatories and Invited Signatories five years after execution of the PA, and every five years following, to review the status of the Undertaking and the ROW, and to determine whether any amendments to the agreement are needed. This PA will expire if the Undertaking has not been initiated within 15 years of the execution of this PA, or the BLM ROW grant is terminated or is withdrawn. At that time, the BLM will notify, in writing, the parties to this agreement of this determination, whereupon this PA will be null and void.
- 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 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 15 years. Upon a determination by BLM that implementation of all aspects of the Undertaking have been completed and that all terms of this Agreement and any subsequent tiered agreements have been fulfilled in a satisfactory manner, BLM will notify the parties to this agreement in writing of the agency's determination. The duration of the PA may be extended through an amendment as per stipulation XVI, through consultation with the parties to this agreement.
- C. Parties to this agreement shall meet at least one year prior to the expiration of the PA 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.

## Boardman to Hemingway Programmatic Agreement

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D. Upon termination of the PA, the instrument for addressing cultural resource concerns will be the POD within the ROW grant. The POD will contain the HPMP which outlines the management of historic properties through construction as well as operations and maintenance and decommissioning. 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. Financial Security**

The proponent will post a financial instrument approved under the ROW regulations (43 CFR 2800) with the BLM in an amount sufficient to cover all post-fieldwork costs associated with implementing the HPMP, or other mitigative activities such as data recovery, curation, and report completion, as negotiated by the Proponent where they contract for services in support of this PA. Details regarding the instrument will be developed in the HPMP and posted prior to issuance of any NTP.

### **XX. Failure to Carry Out the Terms of this PA**

In the event that the Proponent fails to follow the terms of this PA, 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, Reclamation, OR SHPO, ID SHPO, WA SHPO, and CTUIR THPO, as Signatories to this PA, 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.

This PA 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. The BLM may consolidate the original signature pages to produce the final copies. The BLM will distribute copies of all pages to all Consulting Parties once the PA is signed.

# Boardman to Hemingway Programmatic Agreement

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## SIGNATURE PAGES – REQUIRED SIGNATORIES

### **BUREAU OF LAND MANAGEMENT**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Donald Gonzalez, Authorized Officer

### **U.S.D.A. FOREST SERVICE**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Tom Montoya, Wallowa Whitman National Forest Supervisor

### **BONNEVILLE POWER ADMINISTRATION**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
F. Lorraine Bodi, Vice President, Environment, Fish and Wildlife

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Jose L. Aguilar, Colonel, District Commander

### **BUREAU OF RECLAMATION**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Jerrold D. Gregg, Area Manager

### **OREGON STATE HISTORIC PRESERVATION OFFICER**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Christine Curran, Deputy SHPO

### **IDAHO STATE HISTORIC PRESERVATION OFFICER**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Janet Gallimore, SHPO

### **WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION (SHPO)**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Allyson Brooks, SHPO

# Boardman to Hemingway Programmatic Agreement

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*SIGNATURE PAGES – REQUIRED SIGNATORIES*

## **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

John M. Fowler, Executive Director

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# Boardman to Hemingway Programmatic Agreement

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*SIGNATURE PAGES – INVITED SIGNATORIES*

**IDAHO POWER COMPANY**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Adam Richins, General Manager of Customer Operations, Engineering and Construction

**NATIONAL PARK SERVICE**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Aaron Mahr, Superintendent for National Trails, Intermountain Region

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Carey Miller, Tribal Historic Preservation Officer

# Boardman to Hemingway Programmatic Agreement

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## SIGNATURE PAGES – CONCURRING PARTIES

### OREGON DEPARTMENT OF ENERGY

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael Kaplan, Director

### SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Lindsey Manning, Chairman

### CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Gary Burke, Chair, Board of Trustees

### SHOSHONE-BANNOCK TRIBES OF THE FORT HALL INDIAN RESERVATION

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Blaine Edmo, Chairman

### NEZ PERCE TRIBE

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Anthony D. Johnson, Chairman

### CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Dr. Michael E. Marchand, Chairman

### BURNS PAIUTE TRIBE

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Jose DeLaRosa Jr., Chairperson

### FORT MCDERMITT PAIUTE AND SHOSHONE TRIBE

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Brad Crutcher, Chairperson

### CONFEDERATED TRIBES OF THE WARM SPRINGS INDIAN RESERVATION

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Eugene Austin Greene Jr., Chair

# Boardman to Hemingway Programmatic Agreement

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*SIGNATURE PAGES – CONCURRING PARTIES*

**CONFEDERATED TRIBES OF THE YAKAMA NATION**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

JoDe L. Goudy, Chairman

**OREGON-CALIFORNIA TRAILS ASSOCIATION**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

William Symms, NW Chapter Preservation Officer

**OREGON HISTORIC TRAILS ADVISORY COUNCIL**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Glenn Harrison, Oregon Historic Trails Advisory Council representative

**U.S. FISH AND WILDLIFE SERVICE**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Lamont Glass, Manager, USFWS Umatilla National Wildlife Refuge

**LEWIS AND CLARK HERITAGE TRAIL FOUNDATION**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Robert Heacock, Director Washington State Chapter

# Boardman to Hemingway Programmatic Agreement

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## *APPENDICES*

Appendix A: Archaeological Survey Plan

Appendix B: Visual Assessment of Historic Properties Study Plan