

Appendix O  
**Draft Programmatic Agreement**

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**PROGRAMMATIC AGREEMENT**

**AMONG**

**THE SURFACE TRANSPORTATION BOARD,  
UTAH STATE HISTORIC PRESERVATION OFFICER,  
UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, BUREAU OF  
INDIAN AFFAIRS, BUREAU OF LAND MANAGEMENT, SEVEN COUNTY  
INFRASTRUCTURE COALITION, STATE OF UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION, U.S. ARMY CORPS OF ENGINEERS, U.S. FOREST  
SERVICE ASHLEY NATIONAL FOREST, AND UTAH PUBLIC LANDS POLICY  
COORDINATING OFFICE**

**REGARDING**

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

October 2020



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**WHEREAS**, the Surface Transportation Board (Board) administers the Interstate Commerce Commission (ICC), 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 United States Code (U.S.C.) § 10502, in Docket No. FD 36284. The petition, requests Board authority to construct and operate a new line of railroad in Carbon, Duchesne, Uintah, and Utah Counties, Utah. The proposed rail line would extend approximately 85 miles from terminus points in the Uinta Basin near Myton, Utah and Leland Bench, Utah, to an existing Union Pacific rail line near Kyune, Utah (Project); and

**WHEREAS**, the Board is the lead federal agency responsible for complying with the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*), the National Historic Preservation Act of 1966 as amended (NHPA) and other applicable environmental laws, with respect to the Project; and

**WHEREAS**, the Board's Office of Environmental Analysis (OEA) is responsible for carrying out its responsibilities under NEPA and NHPA; and

**WHEREAS**, 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, Wells Draw Alternative, and Whitmore Park Alternative, that 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, (Corps), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and U.S. Forest Service (Forest Service) are cooperating agencies with respect to NEPA compliance (Federal Cooperating Agencies); and

**WHEREAS**, the 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**, Utah Department of Transportation (UDOT) is the state transportation agency to which the Federal Highway Administration delegates NEPA authority with expertise and jurisdiction relevant to the Project; 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, UDOT and SITLA; and

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

**WHEREAS**, construction and operation of the Whitmore Park Alternative would require permits or easements from the Ute Indian Tribe, Forest Service, UDOT, and SITLA; and

**WHEREAS**, the Board, as the lead federal agency, pursuant to 36 Code of Federal Regulations (C.F.R.) § 800.2(a), determined that a decision by the Board granting authority for the Project triggers the requirements of the NHPA (54 U.S.C. § 300301 *et seq.*), specifically Section 106 of the NHPA (Section 106) (54 U.S.C. § 306108) and its implementing regulations (36 C.F.R. Part 800); and

**WHEREAS**, OEA 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. § 800.16(y); and

**WHEREAS**, OEA 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**, the Corps intends to consider the Coalition's application for a Corps permit under Section 404 (33 U.S.C. § 1344) of the Clean Water Act (33 U.S.C. §§ 1251—1387); and

**WHEREAS**, BIA intends to consider the Coalition's request for a right-of-way allowing the Coalition to cross Tribal trust lands within 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**, the Corps, BIA, BLM, and the Forest Service each determined that the actions they intend to take related to the Project constitute a Section 106 Undertaking as defined at 36 C.F.R. § 800.16(y); and

**WHEREAS**, the Corps, 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**, UDOT intends to consider the Coalition's request for authority to construct the rail right-of-way across land it administers; and

**WHEREAS**, SITLA intends to consider the Coalition's request for Utah State permits and easements in order for the rail right of way to cross SITLA lands; and

**WHEREAS**, PLPCO, SITLA, and UDOT determined that their actions trigger responsibilities under Utah State Code 9-8-404 and SITLA, and UDOT may adopt the conclusions made under this PA to fulfill their obligations under Utah State Code 9-8-404; 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. § 800.2(b), and ACHP declined to enter consultation, in accordance with 36 C.F.R. § 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. § 800.2(b)(2); and

**WHEREAS**, pursuant to 36 C.F.R. § 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. § 800.2(c)(2)(i)(B); and

**WHEREAS**, *Tribal lands*, as defined in 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 and the tribe's unique ability to identify properties with religious and cultural significance to the tribe; 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, to participate fully in the identification, mitigation, and monitoring of culturally sensitive resources associated with the Project, in accordance with this PA; and

**WHEREAS**, OEA initiated consultation with the Ute Indian Tribe 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, OEA initiated consultation with the tribes listed in Appendix B, *List of Invited Consulting Parties*, to consult pursuant to 36 C.F.R. § 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. § 800.2(C)(3); and

**WHEREAS**, PLPCO, SITLA, UDOT, 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. § 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. § 800.2(c)(5); and

**WHEREAS**, the 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 Ute Indian Tribe 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

**WHEREAS**, the Project has the potential to change the setting of historic properties within the APE; and

**WHEREAS**, the APE may require future revision to fully account for visual effects related to the setting of historic properties present within 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 authorizing decision; and

**WHEREAS**, OEA has opted to use a program alternative, described at 36 C.F.R. § 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. § 800.4(b)(2) as appropriate for its Section 106 compliance; and

**WHEREAS**, the Phased Identification Process allows OEA to develop an agreement document setting forth its method 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**, the Phased Identification Process stipulates that OEA establish the "likely presence" of historic properties prior to granting any authority for the Project; and

**WHEREAS**, the Coalition, 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**, 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 *potentially* 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, as defined at 36 C.F.R. § 800.5(d)(2) and 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 Consulting Parties invited their comments, and SHPO concurred with the preliminary determinations of eligibility and assessment of effects presented in OEA's Technical Memorandum; and

**WHEREAS**, OEA's Technical Memorandum established 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 this 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 this PA; and

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

**WHEREAS**, Invited Signatories have specific responsibilities under this PA; and

**WHEREAS**, BLM, BIA, the Forest Service, the Corps, 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 investigations related to the 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

**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 comply with the terms of this PA in any decision authorizing the Project; and

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

**WHEREAS**, the Consulting Parties have considered requirements of NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 *et. Seq.* (AIRFA), the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et. Seq.* (NAGPRA), Executive Order 13007 – Indian Sacred Sites, Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, the Archaeological Resources Protection Act of 1979 (ARPA) in the course of consultation; and

**WHEREAS**, the Concurring Parties have agreed to participate in the consultation process as outlined in this PA; OEA understands that participation by 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. The decision not to sign shall not preclude their continued consultation pursuant to 36 C.F.R. Part 800 or future participation as Consulting Parties.

**NOW, THEREFORE**, the Signatories<sup>1</sup> 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**

### **I. OEA Oversight of the Coalition for the Project**

- A. OEA has responsibility for ensuring that the terms of this PA are carried out.

### **II. Change of Status**

- A. If OEA determines that a change to the status of any Signatory under this PA is appropriate based on the Board’s decision authorizing a final Action Alternative, then
1. OEA shall notify the Signatories of the appropriate status change by completing the Notice of Status Change form found in Appendix F, *Notice of Status Change*, and providing it to the Signatories within 30 calendar days of the Board’s decision.
  2. Signatories shall sign the Notice of Status Change and return it to OEA within 14 calendar days of receipt. Signature in counterpart will be acceptable.
  3. The status change shall be effective once all Signatories acknowledge and agree to the change by signing the Notice of Status Change form and providing it to OEA, who shall then sign the document.
  4. OEA shall append the Notice of Status Change to this PA.

### **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 NHPA, NAGPRA, Executive Order 13007 (Indian Sacred Sites; 61 Federal Register 26771—2), and their implementing regulations.

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<sup>1</sup> In all the Stipulations, the term “Signatory” includes both Signatories and Invited Signatories that sign the agreement.

- B. OEA shall consult with the Ute Indian Tribe regularly throughout the process of carrying out the PA's stipulations. Specific points of consultation are described in the PA under the following Stipulations:
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.D.1).
  5. Permission to enter tribal lands for field survey (Stipulation VI.C.6).
  6. Sharing of relevant data from any field survey the tribe undertakes within the APE (Stipulation VI.C.7).
  7. Tribal participation in field surveys (Stipulation VI.C.8.p).
  8. Tribal input on evaluations of properties with religious and cultural significance to the tribe (Stipulation VI.E.2.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 on those historic properties (Stipulation VIII.D.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.D.6).
  11. Development and formal comment on the Historic Properties Treatment Plan (Stipulations IX.A and IX.E.4).
  12. Concurrence related to Historic Properties Treatment Plan (Stipulation IX.E.7).
  13. Potential modifications to the Programmatic Agreement (Stipulation XIII.F).
  14. Development and delivery of sensitivity training (Stipulation X.A).
  15. Review of training materials (Stipulation X.E).
  16. Participation in training conducted by Coalition (Stipulation X.F.3).
  17. Distribution of information related to historic properties of religious and cultural significance (Stipulations IV.A.3 and Stipulation VIII.A.9).
- A. The Ute Indian Tribe's participation in consultation and involvement in field investigation shall be memorialized in a Tribal Participation Plan acceptable to the OEA and the Ute Indian Tribe. The Tribal Participation Plan's content shall include, but not be limited to the topics listed in Stipulation III.B, parameters for in-person meetings and teleconferences, and the Coalition's financial responsibility regarding tribal participation in consultation. (See Appendix G, *Reports*, for a full list of reports produced in fulfillment of this PA.)
- B. Within 30 days of execution of the PA, the Coalition shall submit a draft plan to OEA for review. OEA shall determine, in consultation with the Ute Indian Tribe, whether any revisions to the

draft plan are appropriate. OEA shall direct the Coalition to make revisions to the draft plan. OEA shall notify the Coalition that the plan has been accepted.

#### **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. § 800.4(d) and 36 C.F.R. § 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, NAGPRA, Executive Order 13007, 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, in accordance with 36 C.F.R. § 800.2.

#### **V. Protection of Confidential Information**

To the extent consistent with NHPA Section 304 (54 U.S.C. § 307103) all Consulting Parties shall treat the data collected under this PA 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 shall be respected, and information related to those properties shall remain confidential to the fullest extent permitted by law.

#### **VI. Identification and Evaluation**

##### **A. General Provisions**

1. Coalition staff, carrying out the Coalition's responsibilities under this 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. The principal investigator or co-principal investigator shall possess a PLPCO-issued Principal Investigator Permit to Conduct Archaeological Surveys to direct archaeological surveys on SITLA lands and access the Utah Division of State History's geographic information system (GIS) program and database.

3. Under OEA's direction, the Coalition shall conduct a Class III intensive level pedestrian cultural resource survey encompassing only the APE associated with the Action Alternative (if any) authorized by the Board.
4. 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/>.
5. For survey work carried out on land under the jurisdiction of the Forest Service, the Coalition shall design its surveys and prepare reports in accordance with the following requirements: the Forest Service Manual for Heritage Resources (FSM 2360), Forest Service Handbook for Heritage Resources (FSH 2309.12), and USDA Forest Service Guidelines for Consultants for Identifying, Recording, & Evaluating Archaeological Resources in Utah.
6. For survey work carried out on land under the jurisdiction of BLM, SITLA, UDOT, 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.
7. In any communication with federal agencies, state agencies, or federally recognized Indian 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 federally recognized tribes.

B. Expanding the APE Based on Potential for Visual and Hydrological Effects

Not less than 90 days 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, the Coalition shall conduct a GIS-based viewshed analysis, or other method 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.
  - a. Based on topography and the presence of vegetation, the Coalition shall identify those parts of the 0.5-mile buffer area from which the Project would be visible.
  - b. The Coalition shall provide detailed results of the viewshed analysis to OEA for its review.
4. To account for potential effects on historic properties associated with changes to water movement caused by construction and operation of the Project, the Coalition shall develop a method approved by OEA for analyzing this potential effect.
  - a. The Coalition shall identify areas where changes to water movement have the potential to affect historic properties.
  - b. The Coalition shall provide detailed results of the hydrology analysis to OEA for its review.

5. Within 30 calendar days of receiving the visual and hydrological analyses, OEA shall determine whether any revisions to the analyses are necessary. The Coalition shall revise the analyses based on OEA's direction within 7 calendar days.
6. Within 7 calendar days of receiving acceptable visual and hydrological analyses, OEA shall share the results of those analyses with SHPO and federal, state, and tribal agencies that manage lands crossed by any Action Alternative that have been authorized by the Board (Land-Managing Agencies). Within 30 calendar days, SHPO and Land-Managing Agencies shall provide their comments, if any. OEA shall consider SHPO and Land-Managing Agency comments. Within 7 calendar days of receiving their comments, OEA shall direct the Coalition to make revisions based on those comments, as appropriate. The Coalition shall revise the analyses based on OEA's direction within 7 calendar days.
6. OEA shall share the results of the visual and hydrological analyses with the Consulting Parties. Within 30 calendar days, Consulting Parties shall provide their comments, if any. Within 7 calendar days of receiving Consulting Party comments, OEA shall direct the Coalition to make revisions, as appropriate. The Coalition shall revise the analyses based on OEA's direction within 7 calendar days.
7. Based on the results of the analyses and consultation, OEA may revise the APE. OEA shall share its decision regarding the APE with SHPO and Land-Managing Agencies. SHPO and Land-Managing Agencies shall provide their comments regarding the APE within 30 calendar days. OEA may revise the APE based on their comments.
8. Within 30 calendar days of receiving SHPO and Land-Managing Agency comments, OEA shall share its decision regarding the APE with Consulting Parties. Within 30 calendar days of receiving their comments, OEA shall decide whether to revise the APE.
9. OEA shall share its final decision regarding the APE with Signatories and Consulting Parties.
10. If there are disagreements between OEA and any of the Consulting Parties regarding the results of the visual and hydrological analyses and/or whether to make any changes to the APE, OEA shall consult with the Consulting Parties, as appropriate, to resolve the disagreement. Disputes that cannot be resolved informally shall be addressed pursuant to Stipulation XIV.
11. APE expansion 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. The Coalition shall recommend additional background research, as appropriate, including but not limited to, supplemental literature review and file searches, if necessary to support the Class III field survey.

4. The Coalition shall seek permission to access property in the APE, in accordance with the requirements of the land owner or manager.
5. The Coalition shall obtain permission from BLM, the Forest Service, UDOT, and SITLA, as appropriate, to access land under those agencies' management for the purposes of conducting field investigations.
6. The Coalition and OEA shall coordinate communications with the Ute Indian Tribe regarding requirements for field surveys on Tribal trust lands, including communications regarding access. The Coalition shall obtain permission from the Ute Indian Tribe to enter Tribal trust lands for the purposes of conducting field investigations.
7. 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 significance conclusions and effects recommendations for historic properties identified within the reservation.
8. The Coalition shall prepare a Research and Survey Plan and submit it to OEA for review and approval. OEA shall provide comments within 30 calendar days. The Coalition shall revise this plan in accordance with OEA's comments. This plan will meet the requirements of 36 CFR 800.4(b) and will follow the *Secretary's Standards and Guidelines for Identification*. 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.
  - b. Any need for additional literature review.
  - c. Research methods, including details regarding anticipated research sources.
  - d. Additional research sources available to support historic property evaluations, such as aerial photography, General Land Office maps, other early maps, local histories, ethnographic information, previous studies, and GIS data.
  - e. Preliminary descriptions of historical contexts for the historic property types that the Coalition anticipates encountering during field investigations, building on the research that has been conducted to date, as reported in the Coalition's Technical Reports and OEA Technical Memorandum.
  - f. Survey methods for identifying archaeological resources.
  - g. Methods for identifying burial sites during field survey and for immediately notifying OEA and the Ute Indian Tribe of such discoveries.
  - h. Survey methods for above-ground resources.
  - i. Approach to analyzing properties listed in Appendix D, *Historic Properties and Potential Historic Properties*, Category 1: National Register-listed and determined as eligible properties included in the OEA 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 the OEA 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 Traditional Cultural Properties and other resources that hold religious or cultural significance to the tribe.
  - m. Composition of field survey crews.
  - n. Identification of necessary access permits and associated requirements for conducting surveys on Tribal trust lands in the Uintah and Ouray Reservation.
  - o. Coordination with OEA, related to OEA monitoring of 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 permit eligibility recommendations and assess effects on historic properties.
  - s. Other information OEA determines is necessary to comply with the Section 106 requirements.
9. OEA shall share the Research and Survey Plan with SHPO and the Land-Managing Agencies for their review and comment. Within 30 calendar days, SHPO and Land-Managing Agencies shall provide their comments. OEA shall consider SHPO and Land-Managing Agency comments. Within 7 calendar days of receiving their comments, OEA shall direct the Coalition to make revisions based on SHPO and Land-Managing Agency comments, as appropriate. The Coalition shall revise the plan based on OEA's direction within 7 calendar days.
10. OEA shall share the Research and Survey Plan with the Consulting Parties for their review and comment. Within 30 calendar days, Consulting Parties shall provide their comments. OEA shall consider Consulting Party comments. Within 7 calendar days of receiving their comments, OEA shall direct the Coalition to make revisions based on Consulting Party comments, as appropriate. The Coalition shall revise the plan based on OEA's direction within 7 calendar days.
11. If there are disagreements between OEA and any of the Consulting Parties regarding 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 XIV.

#### 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 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.C). 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 field investigations, in accordance with direction from OEA.
5. The Coalition shall provide weekly reports to OEA detailing field investigation progress.
6. OEA shall notify the Consulting Parties of field investigation completion within 2 calendar days of receiving notice of completion from the Coalition.

#### E. National Register Evaluation

1. The Coalition shall conduct a National Register evaluation of all properties identified during field investigations. National Register evaluation categories are defined as follows:

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and

- a. That are associated with events that have made a significant contribution to the broad patterns of our history; or
  - b. That are associated with the lives of significant persons in or past; or
  - c. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
  - d. That have yielded or may be likely to yield, information important in history or prehistory.
2. For each evaluation, the Coalition shall perform the following tasks:
    - a. Perform research as specified in the Research and Survey Plan (Stipulation VI.C.8) and develop context(s), 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 National Register-eligibility criteria (36 C.F.R. Part 60) to potential historic properties recorded in the field.
    - d. At OEA's direction, the Coalition shall coordinate with the Ute Indian Tribe to obtain tribal input on the evaluation of properties. As appropriate and consistent with confidentiality provisions provided at 36 C.F.R. § 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 National Register-eligible (historic properties), identify the age/period or year built, relevant historic contexts, applicable eligibility criteria, level and period of significance, historic property boundaries, character-defining features, alterations, and integrity. Discussion of character-defining features shall include aspects of setting, if applicable.
  - f. For properties recommended as NRHP-ineligible (ineligible properties), identify year built or age/period, 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 historic property extends onto tribal lands, the Coalition shall support OEA's consultation with the Ute Indian Tribe regarding the tribe's input regarding the property and its potential boundary.
3. If the Coalition is unable to provide a preliminary eligibility recommendation 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. Within 30 days of the Coalition's presentation, OEA's actions may include, but need not be limited to, the following:
    - 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-Managing Agencies.
    - v. Determine eligibility or ineligibility based on the additional information gathered in Items ii, iii, or iv, above.
    - vi. Direct the Coalition to assume eligibility.
4. The Coalition shall document the results of all recommendations of eligibility or ineligibility in accordance with Stipulation VIII.

## **VII. Assessment of Effects**

- A. In coordination with the Coalition, OEA shall regularly consult with the Ute Indian Tribe to obtain tribal input on the assessment of effects, as specified in the Tribal Participation Plan (Stipulation III.C).
- B. The Coalition shall apply the criteria of adverse effect (36 C.F.R. § 800.5(a)(1)) to all historic properties identified in the APE.

- C. The Coalition shall clearly describe its effects recommendation regarding each historic property in the APE.
- D. The Coalition shall document the results of all effects recommendations 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 conducted by the Coalition on tribal 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 calendar 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 within or attached to the Technical Reports: boundary of the APE, previously recorded resources, literature search results, field investigation results, interpretive historical contexts, and property evaluation summaries, including the details specified in Stipulation VI.E.2, inventory forms, maps, and effects assessments.
4. The Coalition shall document archaeological resources recorded during field investigations on 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) from the *Intensive Level Survey Standard Operating Procedures* (SHPO 2015) to the same level of detail as the information provided on archaeological resources.
6. The Coalition shall attach completed 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 shall include sufficient detail to communicate significance and justify the recommendations regarding eligibility, including, but not limited to, resource description, site history, alterations, and integrity.
  - b. For resources recommended as NRHP eligible, the Coalition shall identify the period of significance and character-defining features and assess integrity.
8. In the Technical Reports, the Coalition shall include recommendations 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 UASF 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. The Ute Indian Tribe shall determine appropriate distribution of confidential information related to historic properties of religious and cultural significance to the tribe.

B. OEA Technical Reports Review

1. The Coalition shall submit Technical Reports to OEA for review and comment within 90 calendar days of field investigation completion.
2. OEA shall provide comments to the Coalition within 30 calendar 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 within 30 days.

C. SHPO and Land-Managing Agency Technical Report Review

1. OEA will provide the Technical Reports to SHPO and Land-Managing Agencies.
2. SHPO and Land-Managing Agencies shall provide comments to OEA within 30 days of receipt of the Technical Reports.
3. If needed, OEA and the Coalition shall revise the Technical Reports and address any Land-Managing Agency or SHPO concerns on eligibility and effects.
4. Upon receipt of the revisions the Technical Reports shall be submitted to the Consulting Parties.

D. Consulting Party Technical Report Review

1. Within 7 calendar days of receipt of acceptable Technical Reports, OEA shall submit the Technical Reports to the other Consulting Parties for review and comment. OEA shall include inventory forms in accordance with confidentiality provisions.
2. The Consulting Parties shall provide comments within 30 calendar days.
3. Within 7 calendar 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 Consulting Party regarding determinations of eligibility or effects assessments shall be adjudicated in accordance with the general provisions set forth in 36 C.F.R. § 800.4, 36 C.F.R. § 800.5, and Stipulation XIV.
5. Once OEA makes its final determinations of eligibility and effects assessments, it 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. OEA shall provide the accepted revised Technical Reports to the Consulting Parties within 7 calendar days and shall request concurrence from the SHPO and Ute Indian Tribe and agreement from the Land-Managing Agencies.
7. SHPO and the Ute Indian Tribe shall respond to OEA's concurrence request within 30 calendar days. Land-Managing Agencies shall respond to OEA's agreement request within 30 calendar days.

## **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 calendar days of receiving OEA's approval of the Technical Reports, specifically on a finding 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 identifier (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 are not limited to, the following:
    - a. Modifications to the Project.
    - b. Description of treatment measures that conform to 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. The proposed mitigation plan may include, but would not be limited to, the following:
    - a. Data recovery for historic properties outside of Tribal trust 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 (e.g., brochure, book).
    - d. Digital media publication (e.g., website, podcast, video).
    - e. Identification of parties tasked with carrying out each measure.
    - f. Schedule for complete resolution of adverse effect.

- g. Method for verifying compliance with the resolution of adverse effects.
- 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 Monitoring and Discovery Plan addressing the following:
    - 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, including a Plan of Action and procedures for curation and repatriation.
- D. SHPO and Land-Managing Agency Review shall consist of the following actions:
  - 1. OEA shall provide the HPTP to SHPO and Land-Managing Agencies.
  - 2. SHPO and Land-Managing Agencies shall provide comments to OEA within 30 days of receipt of the HPTP.
  - 3. If needed, OEA and the Coalition shall revise the HPTP and address any Land-Managing Agency or SHPO concerns on the HPTP.
  - 4. Upon receipt of the revisions, the HPTP shall be submitted to Consulting Parties.
- E. Consulting Party Review shall consist of the following actions:
  - 1. OEA shall review the HPTP and provide comments to the Coalition within 30 calendar days of receipt.
  - 2. The Coalition shall revise the HPTP in accordance with OEA comments.
  - 3. Within 7 calendar days of receiving an acceptable HPTP, OEA shall distribute the HPTP to the Consulting Parties for review and comment.
  - 4. The Consulting Parties shall provide their comments within 30 calendar days.
  - 5. Within 7 calendar 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 direction within 30 calendar days.

7. Within 7 calendar days of deeming the HPTP acceptable, OEA shall submit the final HPTP to all Consulting Parties and request concurrence from SHPO and the Ute Indian Tribe, and agreement from the Land-Managing Agencies.
8. SHPO and the Ute Indian Tribe shall respond to OEA's concurrence request within 30 calendar days. Land-Managing Agencies shall respond to OEA's agreement request within 30 calendar days.

## **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 providing 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. The Coalition shall draft the training materials based on direction from the Ute Indian Tribe.
  - 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.
  - 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 ongoing training to ensure that personnel who begin work after construction starts will receive training.

### **B. Development of Curriculum and Job Aids**

1. The Coalition shall develop job aids and training materials.
  - a. The Coalition shall develop curricula 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 and 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 "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 curricula and job aids to OEA for review not less than 120 calendar days prior to beginning Project-related construction.
- 2. OEA shall provide comments to the Coalition within 30 calendar days of receiving the curricula and job aids.
- 3. The Coalition shall revise the curricula and job aids in accordance with OEA's comments and submit the revised materials to OEA within 30 calendar days.

D. SHPO and Land-Managing Agency Review

- 1. OEA will provide the curricula and job aids to SHPO and Land-Managing Agencies.
- 2. SHPO and Land-Managing Agencies shall provide comments to OEA within 30 days of receipt of the curricula and job aids.
- 3. If needed, OEA and the Coalition shall revise the curricula and job aids and address any SHPO or Land-Managing Agency concerns on the HPTP.
- 4. Upon receipt of the revisions the curricula and job aids shall be submitted to the Consulting Parties.

E. Consulting Party Review

- 1. Within 7 calendar days of receiving acceptable curricula and job aids from the Coalition, OEA shall submit the material to the Consulting Parties.
- 2. The Consulting Parties shall provide comments on the curricula and job aid material within 30 calendar days of receipt.
- 3. Within 7 calendar days, OEA shall direct the Coalition to revise the curricula and job aid material in response to Consulting Party comments, as appropriate.

F. Training Delivery

- 1. The Coalition shall deliver the revised curricula during trainings attended by all personnel involved in construction activities prior to their first day of fieldwork on the Project.
- 2. The Coalition shall provide ongoing 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 and observe its trainings.

G. Training Verification



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

## **XI. Post-Review Discoveries**

- A. As provided in Stipulation IX.C.4, the Coalition shall include in the HPTP provisions for unanticipated discoveries of potential historic properties during construction.
- B. If potential historic properties or known historic properties are inadvertently impacted, the Coalition, in coordination with OEA, shall implement the discovery plan portion of the HPTP.

## **XII. Discovery of Human Remains**

If human remains are discovered, the Coalition shall follow the provisions of applicable state and local laws and NAGPRA (25 U.S.C. § 3001), pursuant to a Plan of Action that will be included in the HPTP. All work within 200 feet of the discovery shall cease, and the Coalition shall protect the discovery, as directed by the Plan of Action. Procedures for the discovery of human remains shall be developed in consultation with the Consulting Parties. The procedures shall also address curation and repatriation.

### **A. Private Land**

1. If human remains or suspected human remains are encountered at any time during construction or operation of the Project (see Utah Code Annotated 76-9-704 for the “Abuse or desecration of a human body”) OEA shall contact local law enforcement, who should in turn contact the Utah Division of State History to assist in identification, recovery, and analysis of the human remains if they are determined to be Ancient Human Remains pursuant to Utah Code Annotated 9-8-309.
2. As appropriate, based on the cultural association of the remains, OEA shall consult with Native American Tribes who have ancestral connections to the region, or with any other groups or individuals who may have a historical association with the remains.
3. In consultation with SHPO, OEA shall ensure that, if necessary, the Coalition shall engage a qualified archaeologist to survey the site to do additional fieldwork on the environs of the post-review discovery, anticipated to be within 72 hours of the initial notification, or as soon as practicable.
4. Based on that verbal or written assessment and through consultation, and in consultation with Native American Tribes, OEA and SHPO shall agree upon the appropriate treatment of the discovery prior to resumption of construction activities in the area of discovery.

## **XIII. 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, but not be limited to, an updated schedule, project status, training, tasks completed, monitoring, mitigation, discoveries, and 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 the following year, for the duration of this PA.
- D. Within 30 calendar days of receipt, OEA shall provide comments to the Coalition. Within 7 calendar days, the Coalition shall revise the PAAR in accordance with any OEA comments.
- 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 this PA that should be made based on the PAAR.

#### **XIV. Dispute Resolution**

Should any Signatory 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 ACHP. ACHP shall provide OEA with advice on the resolution of the objection within 30 calendar days 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 comments regarding the dispute from the ACHP and Signatories and provide them with a copy of the written response. OEA shall then proceed according to its final decision.
- B. If ACHP does not provide its advice regarding the dispute within the 30 calendar-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 and provide the Consulting Parties and 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.

#### **XV. 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 ACHP. Signature in counterpart will be acceptable.

#### **XVI. Termination**

- A. If any Signatory determines that the terms of this PA shall not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation XV. If within 30 calendar days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate this PA upon written notification to the other Signatories.
- B. In the event of a termination, before work can continue on the Project, the Signatories must either execute another PA pursuant to 36 C.F.R. § 800.6 or request or take into account and respond to the comments of the ACHP under 36 C.F.R. § 800.7.
- C. OEA shall notify the Signatories as to the course of action it will pursue.

## **XVII. 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 XVI or subsection D below.
- B. If construction is expected to extend beyond this timeframe, the Coalition shall notify OEA 6 months prior to this PA's expiration that more time is needed for Project completion. OEA shall consult to develop an amendment to this PA with Signatories in accordance with Stipulation XV.
- 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, it shall notify the Consulting Parties in writing of this determination. The Consulting Parties will have 30 days to disagree or object. If no Consulting Parties object, this PA shall terminate 30 days after the OEA so notifies the Consulting Parties. If the Consulting Parties disagree that the terms of this PA have been fulfilled, they will provide specific information on those stipulations that have not been fulfilled.

## **XVIII. 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 this 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.

**PROGRAMMATIC AGREEMENT**

**AMONG**

**THE SURFACE TRANSPORTATION BOARD,  
UTAH STATE HISTORIC PRESERVATION OFFICER,  
UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, BUREAU OF  
INDIAN AFFAIRS, BUREAU OF LAND MANAGEMENT, SEVEN COUNTY  
INFRASTRUCTURE COALITION, STATE OF UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION, U.S. ARMY CORPS OF ENGINEERS, U.S. FOREST  
SERVICE ASHLEY NATIONAL FOREST, AND UTAH PUBLIC LANDS POLICY  
COORDINATING OFFICE**

**REGARDING**

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

**SIGNATORY**

***Surface Transportation Board***

By: \_\_\_\_\_  
Victoria Rutson, Director, Office of Environmental Analysis

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

**PROGRAMMATIC AGREEMENT**

**AMONG**

**THE SURFACE TRANSPORTATION BOARD,  
UTAH STATE HISTORIC PRESERVATION OFFICER,  
UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, BUREAU OF  
INDIAN AFFAIRS, BUREAU OF LAND MANAGEMENT, SEVEN COUNTY  
INFRASTRUCTURE COALITION, STATE OF UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION, U.S. ARMY CORPS OF ENGINEERS, U.S. FOREST  
SERVICE ASHLEY NATIONAL FOREST, AND UTAH PUBLIC LANDS POLICY  
COORDINATING OFFICE**

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

**SIGNATORY**

*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: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT**

**AMONG**

**THE SURFACE TRANSPORTATION BOARD,  
UTAH STATE HISTORIC PRESERVATION OFFICER,  
UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, BUREAU OF  
INDIAN AFFAIRS, BUREAU OF LAND MANAGEMENT, SEVEN COUNTY  
INFRASTRUCTURE COALITION, STATE OF UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION, U.S. ARMY CORPS OF ENGINEERS, U.S. FOREST  
SERVICE ASHLEY NATIONAL FOREST, AND UTAH PUBLIC LANDS POLICY  
COORDINATING OFFICE**

**REGARDING**

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

**SIGNATORY**

*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

Utah Public Lands Policy Coordinating Office

Utah Department of Transportation

**PROGRAMMATIC AGREEMENT**

**AMONG**

**THE SURFACE TRANSPORTATION BOARD,  
UTAH STATE HISTORIC PRESERVATION OFFICER,  
UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, BUREAU OF  
INDIAN AFFAIRS, BUREAU OF LAND MANAGEMENT, SEVEN COUNTY  
INFRASTRUCTURE COALITION, STATE OF UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION, U.S. ARMY CORPS OF ENGINEERS, U.S. FOREST  
SERVICE ASHLEY NATIONAL FOREST, AND UTAH PUBLIC LANDS POLICY  
COORDINATING OFFICE**

**REGARDING**

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

**INVITED SIGNATORY**

*United States Forest Service*

\_\_\_\_\_  
Susan Eickhoff, Forest Supervisor, Ashley National Forest

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



**PROGRAMMATIC AGREEMENT**

**AMONG**

**THE SURFACE TRANSPORTATION BOARD,  
UTAH STATE HISTORIC PRESERVATION OFFICER,  
UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, BUREAU OF  
INDIAN AFFAIRS, BUREAU OF LAND MANAGEMENT, SEVEN COUNTY  
INFRASTRUCTURE COALITION, STATE OF UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION, U.S. ARMY CORPS OF ENGINEERS, U.S. FOREST  
SERVICE ASHLEY NATIONAL FOREST, AND UTAH PUBLIC LANDS POLICY  
COORDINATING OFFICE**

**REGARDING**

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

**INVITED SIGNATORY**

***Bureau of Indian Affairs***

\_\_\_\_\_  
Bryan Bowker, Regional Director, Western Regional Office

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

**PROGRAMMATIC AGREEMENT**

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**INVITED SIGNATORY**

***Bureau of Land Management***

\_\_\_\_\_  
Anita Bilbao, Acting State Director

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

**PROGRAMMATIC AGREEMENT**

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**INVITED SIGNATORY**

***U.S. Army Corps of Engineers, Sacramento District***

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Jason Gipson, Nevada-Utah Section, Regulatory Division

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

**PROGRAMMATIC AGREEMENT**

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**INVITED SIGNATORY**

*State of Utah, School and Institutional Trust Lands Administration*

\_\_\_\_\_  
David Ure, Director

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

**PROGRAMMATIC AGREEMENT**

**AMONG**

**THE SURFACE TRANSPORTATION BOARD,  
UTAH STATE HISTORIC PRESERVATION OFFICER,  
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**INVITED SIGNATORY**

*Utah Public Lands Policy Coordinating Office*

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Kathleen Clarke, Director

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

**PROGRAMMATIC AGREEMENT**

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DUCHESNE, UINTAH, AND UTAH COUNTIES, UTAH**

**INVITED SIGNATORY**

*Seven County Infrastructure Coalition*

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed

Title: \_\_\_\_\_

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

**PROGRAMMATIC AGREEMENT**

**AMONG**

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UTAH STATE HISTORIC PRESERVATION OFFICER,  
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**INVITED SIGNATORY**

*Utah Department of Transportation*

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed

Title: \_\_\_\_\_

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

**PROGRAMMATIC AGREEMENT**

**AMONG**

**THE SURFACE TRANSPORTATION BOARD,  
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DUCHESNE, UINTAH, AND UTAH COUNTIES, UTAH**

**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

By: \_\_\_\_\_

Signature

\_\_\_\_\_

Printed

Title: \_\_\_\_\_

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



Appendix A

## **Land Status by Action Alternative**

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This appendix includes tables, by Action Alternative, showing Land Status for the project footprint<sup>1</sup> and Area of Potential Effects.

**Table A-1. Indian Canyon Alternative**

	Land Status (Acres)						Total
	BLM	Private	SITLA	Tribal	UDOT	Forest Service	
<b>Project Footprint</b>							
Rail Line Footprint	46.3	847.3	158.5	121.2	0.3	166.9	1,340.5
Temporary Footprint	72.8	1,613.9	285.4	257.3	4.3	234.1	2,467.8
Project Footprint (Total)	119.1	2,461.1	443.9	378.5	4.5	401.1	3,808.2
<b>Area of Potential Effects</b>							
<i>Below ground portion</i> (includes project footprint plus 50-foot buffer)	152.3	3,214.1	501.7	489.2	8.2	645.3	5,010.8
<i>Above-ground portion</i> (1,500-foot buffer beyond below-ground portion)	1,262.8	18,014.8	999.4	4,235.1	35.3	4,453.9	29,001.3
Total APE	1,415.2	21,228.9	1,501.1	4,724.2	43.5	5,099.2	34,012.1

Notes:

BLM = Bureau of Land Management; SITLA = School and Institutional Trust Lands Administration; UDOT = Utah Department of Transportation; Forest Service = U.S. Forest Service

<sup>1</sup> The *rail line footprint* is defined as the area where rail line operations and maintenance would occur. The rail line footprint would be permanently disturbed. It includes the location of the railbed itself, the full width of the area cut, cleared, or filled, and includes a buffer of approximately 25 feet beyond what the Coalition anticipates would be necessary for operation of the rail line. The rail line footprint also includes other physical structures installed as part of the proposed rail line, such as fence lines, communications towers, siding tracks, new access roads or relocated roads, tunnels, and power distribution lines. The width of the rail line footprint varies depending on site-specific conditions, such as topography, soil slope stability, and other geotechnical conditions.

The *temporary footprint* is the area that would be temporarily disturbed during construction, including areas for temporary material laydown, staging, and logistics. This includes construction of temporary access roads that would provide access to the rail embankment, tunnel portals, and bridge and drainage structure locations during construction. Similar to the rail line footprint, the width of the temporary footprint varies based on site-specific conditions.

The *project footprint* is the total combined area of the rail line footprint and temporary footprint, both of which would be disturbed during construction. All temporary and permanent construction and operational activities for the proposed rail line would be within the overall project footprint. As described above, the project footprint is irregular in size and shape. On average, the project footprint extends 240 feet on each side of the centerline.

**Table A-2. Wells Draw Alternative**

	Land Status (acres)						Total
	BLM	Private	SITLA	Tribal	UDOT	Forest Service	
<b>Project Footprint</b>							
Rail Line Footprint	1,571.1	662.2	326.7	--	0.0	--	2,560.1
Temporary Footprint	3,246.2	1,293.2	554.4	--	1.5	--	5,095.2
Project Footprint (Total)	4,817.3	1,955.4	881.1	--	1.5	--	7,655.3
<b>Area of Potential Effects</b>							
<i>Below ground portion</i> (includes project footprint plus 50-foot buffer)	5,725.6	2,562.5	1,004.8	1.0	3.5	0.1	9,297.6
<i>Above-ground portion</i> (1,500-foot buffer beyond below-ground portion)	17,607.8	12,638.3	2,238.2	703.5	11.4	222.9	33,422.1
Total APE	23,333.4	15,200.8	3,243.1	704.5	14.9	223.0	42,719.7

Notes:

BLM = Bureau of Land Management; SITLA = School and Institutional Trust Lands Administration; UDOT = Utah Department of Transportation; Forest Service = U.S. Forest Service

**Table A-3. Whitmore Park Alternative**

	Land Status (acres)						Total
	BLM	Private	SITLA	Tribal	UDOT	Forest Service	
<b>Project Footprint</b>							
Rail Line Footprint	--	1,042.4	102.5	118.4	0.2	167.1	1,430.6
Temporary Footprint	--	2,312.4	283.0	254.9	3.6	233.8	3,087.7
Project Footprint (Total)	--	3,354.8	385.5	373.3	3.8	400.9	4,518.3
<b>Area of Potential Effects</b>							
<i>Below ground portion</i> (includes project footprint plus 50-foot buffer)	10.4	4,226.3	443.3	482.7	6.7	645.3	5,814.7
<i>Above-ground portion</i> (1,500-foot buffer beyond below-ground portion)	612.7	20,400.4	1,248.2	4,244.3	36.8	4,453.9	30,996.4
Total APE	623.1	24,626.7	1,691.6	4,727.0	43.5	5,099.2	36,811.0

Notes:

BLM = Bureau of Land Management; SITLA = School and Institutional Trust Lands Administration; UDOT = Utah Department of Transportation; Forest Service = U.S. Forest Service

Appendix B

## **List of Invited Consulting Parties**

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## Section 106 Consulting Parties

Table B-1 lists each agency, tribe, or entity invited to be a Consulting Party in the Section 106 process. OEA initiated consultation with 37 potential consulting parties. Of those 37 parties, 21 have accepted Consulting Party status, and five have declined. At the time of development of this draft Programmatic Agreement, 11 parties have not yet responded to the Section 106 consultation initiation. Additionally, OEA initiated consultation with five parties with interests in Colorado; those five parties expressed that they had no interest in continued Section 106 consultation when the Craig Route was removed from consideration as an alternative for analysis in the EIS and are not included in Table B-1.

**Table B-1. Invited Consulting Parties**

<b>Name</b>	<b>Accepted</b>	<b>Declined</b>
Advisory Council on Historic Properties	X	--
Apache Tribe of Oklahoma	NR	NR
BLM Price Field Office	X	--
BLM Vernal Field Office	X	--
Bureau of Indian Affairs, Uintah and Ouray Agency	X	--
Bureau of Indian Affairs, Western Region	X	--
Carbon County	X	--
Colorado Plateau Archaeological Alliance	X	--
Confederated Tribes of the Goshute Reservation, Nevada and Utah	NR	NR
Duchesne County	X	--
Eastern Shoshone Tribe of the Wind River Reservation, Wyoming	NR	NR
Federal Highway Administration	--	X
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana	NR	NR
FRA Office of Program Delivery	NR	NR
National Trust for Historic Preservation	--	X
Navajo Nation, Arizona, New Mexico, and Utah	--	X
Nine Mile Canyon Coalition	X	--
Paiute Indian Tribe of Utah	--	X
Preservation Utah	NR	NR
Public Lands Policy Coordinating Office	X	--
Seven County Infrastructure Coalition	X	--
Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho	--	X
Skull Valley Band of the Goshute Indians	NR	NR
Southern Utah Wilderness Alliance	NR	NR
State Institutional Trust Lands Administration	X	--

<b>Name</b>	<b>Accepted</b>	<b>Declined</b>
The Hopi Tribe of Arizona	X	--
The Northwestern Band of the Shoshone Nation, Utah	NR	NR
U.S. Army Corps of Engineers, Sacramento District	X	--
U.S. Environmental Protection Agency	X	--
U.S. Forest Service, Ashley National Forest, Duchesne/Roosevelt Ranger District	X	--
Uintah County	X	--
Utah County	NR	NR
Utah Department of Transportation	X	--
Utah Division of State History	X	--
Utah Rock Art Research Association	X	--
Ute Indian Tribe of the Uintah and Ouray Reservation	X	--
White Mesa / Ute Mountain Ute Tribe, Utah and Colorado	NR	NR

**Notes:**

Colorado parties that expressed no further interest in consultation after the removal of the Craig route include the Colorado Department of Transportation, Colorado Office of Archaeology and Historic Preservation, Colorado Preservation Inc., Moffat County, and Rio Blanco County.

NR = No response

Appendix C  
**Area of Potential Effects**

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## Area of Potential Effects Definition

The Surface Transportation Board (Board)'s Office of Environmental Analysis (OEA) defined the draft Area of Potential Effects (APE) to accommodate potential physical changes to historic properties from construction and operation of the proposed rail line as well as those resulting from changes to existing conditions related to noise, vibration, visual, hydrology (water movement), and air quality (fugitive dust). OEA's delineation of the APE incorporates the guidance provided by the Advisory Council on Historic Preservation (ACHP) in June 2019 clarifying the definitions of direct and indirect effects. More information on this guidance is available at <https://www.achp.gov/news/court-rules-definitions-informs-agencies-determining-effects>.

In the past, a direct effect was often considered to relate to the potential for physical effects. The new guidance provides that the term *direct* refers to the causality of potential effect, not just its physicality. A direct effect, therefore, encompasses physical, visual, auditory or other effects as long as those effects occur in the same time and place as the undertaking and are caused by the undertaking.

Formerly, an indirect effect was thought to refer to effects other than physical effects, such as visual or auditory effects. Under the new guidance, *indirect* should be used to characterize effects that occur later in time or further away.

For this reason, and in keeping with the most current ACHP guidance, OEA defined the APE based on the location of resources (below- or above-ground) rather than the potential for direct or indirect effects as many agencies have done in the past. The term *below-ground* is inclusive of archaeological resources located on the surface of the ground and subsurface.

## Definitions of Terms

OEA has defined the following terms to describe the areas where construction and operation of the rail line would occur.

The *rail line footprint* is defined as the area where rail line operations and maintenance would occur. The area would be permanently disturbed. It includes the location of the railbed itself, the full width of the area cut, cleared, or filled, and includes a buffer of approximately 25 feet beyond what the Coalition anticipates would be necessary for operation of the rail line. The rail line footprint also includes other physical structures installed as part of the proposed rail line, such as fence lines, communications towers, siding tracks, new access roads or relocated roads, tunnels, and power distribution lines. The width of the rail line footprint varies depending on site-specific conditions, such as topography, soil slope stability, and other geotechnical conditions.

The *temporary footprint* is the area that would be temporarily disturbed during construction, including areas for temporary material laydown, staging, and logistics. This includes construction of temporary access roads that would provide access to the rail embankment, tunnel portals, and bridge and drainage structure locations during construction. Similar to the rail line footprint, the width of the temporary footprint varies based on site-specific conditions.

The *project footprint* is the total combined area of the rail line footprint and temporary footprint, both of which would be disturbed during construction. All temporary and permanent construction



and operational activities for the proposed rail line would be within the overall project footprint. As described above, the project footprint is irregular in size and shape. On average, the project footprint extends 240 feet on each side of the centerline.

## Anticipated Construction and Operation Activities

OEA's delineation of the APE considered anticipated activities associated with construction and operation of the proposed rail line, potential for adverse effects, and potentially affected property types as described in Tables C-1 and C-2.

**Table C-1. Typical Rail Construction Activities and Potential for Adverse Effect**

<b>Section 106 Criteria for Adverse Effect</b>	<b>Construction Activity</b>	<b>Potentially Affected Resource Types</b>
Physical destruction of or damage to all or part of the property	<ul style="list-style-type: none"> <li>Clearing rail line footprint for staging and construction grading, cuts, excavating earth and rock on previously undisturbed land</li> <li>Excavating footings for structures including communications towers, bridges, and tunnels</li> </ul>	All types that are in the path of construction or staging
Alteration of a property that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 C.F.R. Part 68) and applicable guidelines	<ul style="list-style-type: none"> <li>Railbed construction and staging</li> <li>Access roads</li> </ul>	All types that can be altered by compression or spreading of fill including but not limited to districts and linear features that need to be re-routed (e.g., roads, trails)
	Re-routing of irrigation or drainage	All types in the path of re-routing, e.g. water related features
Removal of the property from its historic location	<ul style="list-style-type: none"> <li>Clearing the rail line footprint for construction</li> <li>Existing road relocation</li> </ul>	All historic properties in the path of construction or staging that can be moved/relocated
Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance	Existing road relocation	Properties whose setting contributes to its significance
Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features	<ul style="list-style-type: none"> <li>Pile driving or heavy construction equipment that generates temporary noise or vibration</li> <li>Fugitive dust</li> </ul>	All types sensitive to temporary visual, noise, vibration, or atmospheric elements
Transfer, lease or sale out of Federal ownership or control.	Property acquisition, lease, or easement	All types on federal lands, e.g., BLM and Forest Service

**Table C-2. Typical Operational Activities and Potential for Adverse Effect**

<b>Section 106 Criteria for Adverse Effect</b>	<b>Operational Activity</b>	<b>Potentially Affected Resource Types</b>
Physical destruction of or damage to all or part of the property	Changes in water flow from culverts, and other drainage structures may lead to erosion or flooding	All property types that could be damaged by erosion or flooding
Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features	<ul style="list-style-type: none"> <li>• Atmospheric elements- (engine emissions, dust)</li> <li>• Long-term railroad noise</li> </ul>	All property types sensitive to visual, noise, vibration, or atmospheric elements
Neglect of a property which causes its deterioration	<ul style="list-style-type: none"> <li>• Change in land use that results in abandonment</li> <li>• Access limitation that results in abandonment</li> </ul>	Ranches, buildings or structures if their continued use becomes no longer practical

## Study Areas for Relevant Impact Categories

OEA identified impact categories relevant to the potential adverse effects identified in Tables C-1 and C-2. To determine an adequate APE based on the anticipated construction and operational activities and potential for adverse effects posed by those activities, OEA consulted subject matter experts in those impact categories to review the study area for each impact area. Table C-3 describes the study areas for each relevant impact category.

**Table C-3. Study Areas**

<b>Impact Category</b>	<b>Expected Extent of Effects</b>	<b>Description</b>
Noise	650 feet from centerline	OEA identified noise impacts based on where train noise would exceed 65 day-night average noise level and increase by 3 A-weighted decibels, consistent with the Board's environmental regulations. Within the noise study area, noise impacts would generally not extend beyond 650 feet from centerline.
Vibration	100 feet from centerline	OEA used Federal Transit Administration thresholds for building damage to evaluate construction and vibration impacts, which are not anticipated to extend beyond 100 feet of centerline. Based on OEA's analysis, there would be no vibration impacts on sensitive receptors from construction of the proposed rail line. The nearest sensitive receptors are located over 300 feet from centerline and at that distance vibration would be well below thresholds for cosmetic or structural damage. Vibration impacts from operations would not extend beyond 5 feet from centerline. The APE is 1,500 feet, which exceeds the expected extent of vibration effects.
Hydrology (water movement)	500 feet from centerline	The water resources study area generally corresponds to where the Coalition conducted field surveys for surface water and wetlands. The study area encompasses the entire project footprint where permanent and temporary impacts on surface water resources could occur. The study area accounts for impacts on hydrology and floodplains. The Coalition has stated that bridges and culverts would be designed so that a predicted 100-year flood event would cause no more than a 1-foot backwater increase, which would be well within the study area. The APE is 1,500 feet, which exceeds the expected extent of hydrology effects.
Visual	0.5 mile	OEA based the study area for visual resources on the project viewshed, which is the area that is visible from a particular location (e.g., scenic vista). The area within 0.5 mile of the proposed rail line corresponds to the viewshed foreground, where the rail line would be most prominent to viewers.
Air Quality (fugitive dust)	1,000 feet from centerline	OEA evaluated localized air quality impacts within approximately 1,000 feet from centerline (air quality local study area), including fugitive dust generated by construction vehicles and equipment. Fugitive dust emissions would generally not extend much beyond the project footprint where construction activity occurs, and any related atmospheric impacts would be well within the air quality local study area.

## Area of Potential Effects

OEA defined the APE to be inclusive of potential effects to below-ground resources and above-ground resources.

For *below-ground resources*, OEA defined the APE to include the project footprint described above plus an additional 50-foot buffer. In some areas, it is not possible to add the additional 50-foot buffer to the construction easement due to topographical constraints such as cliffs. Due to the irregular size and shape of the construction easement, it is not possible to provide a uniform width for the below-ground APE. Because the project footprint is equal to the combined area of the rail line and temporary footprints, and because the below-ground APE adds a 50-foot buffer beyond the project footprint, the below ground portion of the APE incorporates a buffer of 75 feet beyond the anticipated area of ground disturbance. OEA anticipates that physical impacts on historic properties are likely within this portion of the APE.

For *above-ground resources*, OEA also defined the APE to include the average width of the project footprint (240 feet), plus an additional 1,500-foot buffer on each side of centerline to conservatively accommodate any of the potential impacts described in Table C-1 and Table C-2. This 1,500-foot buffer takes into consideration the study areas for relevant impact categories described in Table C-3. The above-ground APE, therefore, extends 1,740 feet on each side of the centerline for a total width of 3,480 feet. Although OEA does not anticipate physical changes on historic properties within this portion of the APE, changes to their settings are possible.

## Area of Potential Effects Map Book

The APE map book is posted on the Project Website at <http://www.uintabasinrailwayeis.com/>. The map book can be accessed through the National Historic Preservation Act tab.

Appendix D

## **Historic Properties and Potential Historic Properties**

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# Historic Properties and Potential Historic Properties

**Table D-1. Category 1 Historic Properties**

<b>Listed in the National Register</b>	
42465/42DC348	Indian Canyon Ranger Station
<b>Determined National Register Eligible with SHPO concurrence</b>	
2A-0313-0000	Corral
00-0009-9329 (24191)	Cabin
42DC328	Indian Canyon Road segment
42DC3802	Indian Canyon Road segment
42UT1124	U.S. Highway 6
42UT1370	Denver and Rio Grande Railroad segment
42UN2787	Myton Canal
28063	Smith's Well
2A-0425-0000	Cabin
00-0001-0373	National Folk-style dwelling
00-0009-9287	Cabin
170720004/42UN8923	Cabin
150310001B	Cabin
42DC4128	Rock are and artifact scatter
00-0010-7965	National Folk-style dwelling

**Table D-2. Category 2 Potential Historic Properties Requiring Additional Analysis**

<b>Potential Uinta Basin Rural Historic District Contributors</b>	
No Parcel No. 3 BLM	Cairn
No Parcel No. 4 BLM	Corral
No Parcel No. 8 BLM	Corral
No Parcel No. 7 BLM	Cairn
No Parcel No. 6 BLM	Cairn
2A-0312-0001	Corral
2A-0344-0000	Cabin
330840001	Corral
00-0010-7882	Loafing shed
<b>Potential Emma Park Road Linear Historic District Contributors</b>	
42CB1871	Emma Park Road segment
42UT1085	Emma Park Road segment
330970002	Bridge
330970001	Bridge
<b>Potential Indian Canyon Linear Historic District Contributor</b>	
00-0009-9154	Bridge

Appendix E  
**Roles and Responsibilities**

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# Indian Canyon Alternative

**Table E-1. Roles and Responsibilities under the Indian Canyon Alternative**

<b>Agency</b>	<b>Programmatic Agreement Responsibility</b>	<b>Construction/Operation Responsibility</b>
U.S. Army Corps of Engineers	No specific responsibilities under the PA.	If the Board were to authorize any alternative, Coalition would need to obtain a Corps permit under Section 404 of the Clean Water Act.
Bureau of Indian Affairs	If the Board were to authorize this alternative, the Coalition would have to seek approval from the Ute Indian Tribe to access Tribal trust land to conduct field investigation related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA.	If the Board were to authorize this alternative, the Coalition would have to seek a consent resolution from the Ute Indian Tribe and a grant of easement for rights-of-way grant or leases from BIA in order to proceed with construction on Tribal trust land.
Bureau of Land Management	If the Board were to authorize this alternative, the Coalition would have to obtain BLM permits in order to access BLM land to conduct field investigation related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA.	If the Board were to authorize this alternative, the Coalition would have to obtain a right-of-way from BLM to cross public lands under BLM's management, pursuant to 43 C.F.R. Part 2800.
U.S. Forest Service	If the Board were to authorize this alternative, the Coalition would have to seek a Forest Service permit to conduct field investigation on Forest Service land related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA.	If the Board were to authorize this alternative, in order for the Coalition to proceed with construction and operation, the Coalition would have to seek a Forest Service permit for the rail line right-of-way, which could include amending the Ashley Forest Plan in the areas of visual quality and scenery management, pursuant to the requirements of the 2012 Planning Rule (36 C.F.R. Part 219). Because this alternative would cross through roadless areas in the Ashley National Forest, review and approval by the Regional Forester would have to be completed to ensure consistency with the 2001



Agency	Programmatic Agreement Responsibility	Construction/Operation Responsibility
		Roadless Area Conservation Rule (36 C.F.R., Part 294, Subparts A and B).
Ute Indian Tribe of the Uintah and Ouray Reservation	If the Board were to authorize this alternative, the Ute Indian Tribe would be required to issue permits on land under their management to allow field investigation related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under this PA.	If the Board were to authorize this alternative, the Coalition would be responsible for obtaining the necessary rights to construct and operate a new rail line on tribal trust lands.
State Institutional Trust Lands Administration	If the Board were to authorize any alternative, the Coalition would need to obtain State permits from PLPCO to conduct field investigation on State land related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA. The Coalition would need to coordinate with SITLA regarding field investigation on SITLA land.	If the Board were to authorize this alternative, the Coalition would need to obtain State permits and easements from SITLA in order to cross SITLA lands.
Public Lands Policy Coordinating Office	If the Board were to authorize any alternative, the Coalition would need to obtain State permits from PLPCO to conduct field investigation on State land related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA. The Coalition would need to coordinate with SITLA regarding field investigation on SITLA land.	None
Utah Department of Transportation	None	If the Board were to authorize any alternative, the Coalition would need to obtain permission from UDOT for authority to construction the rail right-of-way across land it administers.

Notes:

PA = Programmatic Agreement; Corps = U.S. Army Corps of Engineers; BIA = U.S. Bureau of Indian Affairs; C.F.R. = Code of Federal Regulations; SITLA = State Institutional Trust Lands Administration; PLPCO = Public Lands Policy Coordinating Office; UDOT = Utah Department of Transportation

## Wells Draw Alternative

**Table E-2. Roles and Responsibilities under the Wells Draw Alternative**

<b>Agency</b>	<b>Programmatic Agreement Responsibility</b>	<b>Construction/Operation Responsibility</b>
U.S. Army Corps of Engineers	No specific responsibilities under the PA.	If the Board were to authorize any alternative, Coalition would need to obtain a Corps permit under Section 404 of the Clean Water Act.
Bureau of Indian Affairs	None	None
Bureau of Land Management	If the Board were to authorize this alternative, the Coalition would have to obtain BLM permits in order to access BLM land to conduct field investigation related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA.	If the Board were to authorize this alternative, the Coalition would have to obtain a right-of-way from BLM to cross public lands under BLM's management, pursuant to 43 C.F.R. Part 2800. This would require amending the Vernal Resource Management Plan in the areas of Visual Resource Management Class II, Right-of-Way Avoidance Areas (identified as areas of No Surface Occupancy), and Closed to OHV Areas (Lears Canyon ACEC) pursuant to the requirements of 43 C.F.R. Part 1600. Because this Alternative would cross through Lears Canyon ACEC, impacts to the relevant and important values (relict vegetation) will have to be assessed and a plan amendment may be necessary to allow those impacts.
U.S. Forest Service	None	None
Ute Indian Tribe of the Uintah and Ouray Reservation	None	None
State Institutional Trust Lands Administration	If the Board were to authorize any alternative, the Coalition would need to obtain State permits to conduct field investigation on State land related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA. The Coalition would need to coordinate with SITLA regarding field investigation on SITLA land.	If the Board were to authorize this alternative, the Coalition would need to obtain State permits and easements from SITLA in order to cross SITLA lands.

<b>Agency</b>	<b>Programmatic Agreement Responsibility</b>	<b>Construction/Operation Responsibility</b>
Public Lands Policy Coordinating Office	If the Board were to authorize any alternative, the Coalition would need to obtain State permits to conduct field investigation on State land related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA. The Coalition would need to coordinate with SITLA regarding field investigation on SITLA land.	None
Utah Department of Transportation	None	If the Board were to authorize any alternative, the Coalition would need to obtain permission from UDOT for authority to construction the rail right-of-way across land it administers.

## Notes:

PA = Programmatic Agreement; Corps = U.S. Army Corps of Engineers; BLM = U.S. Bureau of Land Management; C.F.R. = Code of Federal Regulations; ACEC = Area of Critical Environmental Concern; SITLA = State Institutional Trust Lands Administration; PLPCO = Public Lands Policy Coordinating Office; UDOT = Utah Department of Transportation

## Whitmore Park Alternative

**Table E-3. Roles and Responsibilities under the Whitmore Park Alternative**

<b>Agency</b>	<b>Programmatic Agreement Responsibility</b>	<b>Construction/Operation Responsibility</b>
U.S. Army Corps of Engineers	No specific responsibilities under the PA.	If the Board were to authorize any alternative, Coalition would need to obtain a Corps permit under Section 404 of the Clean Water Act.
Bureau of Indian Affairs	If the Board were to authorize this alternative, the Coalition would have to seek approval from the Ute Indian Tribe to access Tribal trust land to conduct field investigation related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA.	If the Board were to authorize this alternative, the Coalition would have to seek a consent resolution from the Ute Indian Tribe and a grant of easement for rights-of-way grant or leases from BIA in order to proceed with construction on Tribal trust land.
Bureau of Land Management	None	None

Agency	Programmatic Agreement Responsibility	Construction/Operation Responsibility
U.S. Forest Service	If the Board were to authorize this alternative, the Coalition would have to seek a Forest Service permit to conduct field investigation on Forest Service land related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA.	If the Board were to authorize this alternative, the Coalition would have to seek a Forest Service permit for the rail line right-of-way, which could include amending the Ashley Forest Plan in the areas of visual quality and scenery management, pursuant to the requirements of the 2012 Planning Rule (36 C.F.R. Part 219). Because this alternative would cross through roadless areas in the Ashley National Forest, review and approval by the Regional Forester would have to be completed to ensure consistency with the 2001 Roadless Area Conservation Rule (36 C.F.R., Part 294, Subparts A and B).
Ute Indian Tribe of the Uintah and Ouray Reservation	If the Board were to authorize this alternative, the Ute Indian Tribe would be required to issue permits on land under their management to allow field investigation related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under this PA.	If the Board were to authorize this alternative, the Coalition would be responsible for obtaining the necessary rights to construct and operate a new rail line on tribal trust lands.
State Institutional Trust Lands Administration	If the Board were to authorize any alternative, the Coalition would need to obtain State permits to conduct field investigation on State land related to identification and evaluation of historic properties, effects assessment, and adverse effects resolution under the PA. The Coalition would need to coordinate with SITLA regarding field investigation on SITLA land.	If the Board were to authorize this alternative, the Coalition would need to obtain State permits and easements from SITLA in order to cross SITLA lands.
Public Lands Policy Coordinating Office	If the Board were to authorize any alternative, the Coalition would need to obtain State permits to conduct field investigation on State land related to identification and evaluation of historic properties, effects assessment,	None

<b>Agency</b>	<b>Programmatic Agreement Responsibility</b>	<b>Construction/Operation Responsibility</b>
	and adverse effects resolution under the PA. The Coalition would need to coordinate with SITLA regarding field investigation on SITLA land.	
Utah Department of Transportation	None	If the Board were to authorize any alternative, the Coalition would need to obtain permission from UDOT for authority to construction the rail right-of-way across land it administers.

Notes:

PA = Programmatic Agreement; Corps = U.S. Army Corps of Engineers; BIA = U.S. Bureau of Indian Affairs; C.F.R. = Code of Federal Regulations; ACEC = Area of Critical Environmental Concern; SITLA = State Institutional Trust Lands Administration; PLPCO = Public Lands Policy Coordinating Office; UDOT = Utah Department of Transportation

Appendix F  
**Notice of Status Change**

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## Notice of Status Change

**Re:** Programmatic Agreement among the Surface Transportation Board (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 (PA).

To: Signatories, Invited Signatories (listed below)

Cc: Concurring Parties, Consulting Parties (listed below)

[Name of party] currently serves as [name of role] with respect to the above-referenced PA.

Because the Board authorized construction and operation of the [name of alternative] Alternative, land under the management or control of [name of party] will not be crossed by the Uinta Basin Railway project.

[Name of party], therefore, no longer functions in its former role as [name of role] under this PA.

[Name of party] now functions as a [name of role] under this PA.

As to all parties, the Board requests your acknowledgement of this change.

As to Signatories and Invited Signatories, the Board requests your agreement with this change.

Respectfully,

Surface Transportation Board, Office of Environmental Analysis, by [Authorized Individual]

Acknowledged and agreed:

[Agency/Organization], by [Authorized Individual]

Appendix G  
**Reports**

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## Required Reports

**Table G-1. List of Reports**

<b>Title</b>	<b>Stipulation</b>	<b>Author</b>	<b>Reviewing Parties and Responsibilities</b>
Notice of Status Change	II	OEA	<ul style="list-style-type: none"> <li>• Signatories and Invited Signatories to approve.</li> </ul>
Visual and Hydrological Analyses	t.b.d.	Coalition	<ul style="list-style-type: none"> <li>• OEA to review and approve.</li> <li>• OEA to distribute to SHPO and Land-Managing Agencies.</li> <li>• Land-Managing Agencies to review, comment, and approve.</li> <li>• OEA to distribute to Consulting Parties.</li> <li>• Consulting Parties to review and comment.</li> </ul>
Tribal Participation Plan	III.B	Coalition	<ul style="list-style-type: none"> <li>• OEA and Ute Indian Tribe to review and approve.</li> </ul>
Research and Survey Plan	VI.C.8	Coalition	<ul style="list-style-type: none"> <li>• OEA to review and approve.</li> <li>• OEA to distribute to SHPO and Land-Managing Agencies.</li> <li>• Land-Managing Agencies to review, comment, and approve.</li> <li>• OEA to distribute to Consulting Parties.</li> <li>• Consulting Parties to review and comment.</li> </ul>
Monthly Reports	VI.D.2	Coalition	<ul style="list-style-type: none"> <li>• OEA to review.</li> </ul>
Archaeological Technical Report (non-tribal land)	VIII. A.1	Coalition	<ul style="list-style-type: none"> <li>• OEA to review and approve.</li> <li>• OEA to distribute to SHPO and Land-Managing Agencies.</li> <li>• Land-Managing Agencies to review, comment, and approve.</li> <li>• OEA to distribute to Consulting Parties.</li> <li>• Consulting Parties to review and comment.</li> <li>• SHPO to review, comment, and concur.</li> </ul>
Historic Architectural Technical Report (non-tribal land)	VIII.A.1	Coalition	<ul style="list-style-type: none"> <li>• OEA to review and approve.</li> <li>• OEA to distribute to SHPO and Land-Managing Agencies.</li> <li>• Land-Managing Agencies to review and approve.</li> </ul>

Title	Stipulation	Author	Reviewing Parties and Responsibilities
Technical Reports for Tribal Lands of the Ute Indian Tribe of the Uintah and Ouray Reservation	VIII.A.2	Coalition	<ul style="list-style-type: none"> <li>• OEA to distribute to Consulting Parties.</li> <li>• SHPO to review, comment, and concur.</li> </ul>
Historic Properties Treatment Plan	IX.A	Coalition	<ul style="list-style-type: none"> <li>• Ute Indian Tribe to revise, comment, and approve.</li> <li>• OEA to review and approve.</li> <li>• OEA to distribute to Consulting Parties.</li> <li>• Consulting Parties (including SHPO) to review (as permitted by and in accordance with Ute Indian Tribe confidentiality provisions).</li> <li>• Ute Indian Tribe to concur.</li> <li>• OEA to review and approve.</li> <li>• OEA to distribute to Ute Indian Tribe, SHPO and Land-Managing Agencies.</li> <li>• Ute Indian Tribe and Land-Managing Agencies to review, comment, and approve.</li> <li>• OEA to distribute to Consulting Parties.</li> <li>• SHPO and Ute Indian Tribe to concur.</li> </ul>
Construction Personnel Curriculum and Job Aids	X.B	Coalition	<ul style="list-style-type: none"> <li>• OEA to review and approve.</li> <li>• OEA to distribute to Ute Indian Tribe and Land-Managing Agencies.</li> <li>• Ute Indian Tribe and Land-Managing Agencies to review, comment, and approve.</li> <li>• OEA to distribute to Consulting Parties.</li> <li>• Consulting Parties to review and provide comments.</li> </ul>
Programmatic Agreement Annual Reports	XII	Coalition	<ul style="list-style-type: none"> <li>• OEA to review, approve, and distribute to Consulting Parties.</li> </ul>

Notes:

OEA = Office of Environmental Analysis; SHPO = State Historic Preservation Officer