

**MEMORANDUM OF AGREEMENT
BETWEEN THE U.S. DEPARTMENT OF ENERGY, RICHLAND OPERATIONS
OFFICE, THE WASHINGTON STATE HISTORIC PRESERVATION OFFICE, AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING THE
REMEDICATION OF THE 100-N 96 WASTE SITE (HCRC#2010-100-111a)**

The purpose of this memorandum of agreement (MOA) is to establish mitigation stipulations and actions through consultation with the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Wanapum (hereafter described as Tribes) the Department of Archaeology and Historic Preservation (DAHP) and the Advisory Council on Historic Preservation (ACHP) for adverse effects to National Register eligible archaeological site 45BN1424, the *Mooli Mooli* Traditional Cultural Property and adverse effects to the contributing components (Test Pits 3 and 6) of historic site 45BN755 (located within the boundary of 45BN1424) in association with undertakings defined in HCRC# 2010-100-111a in the 100-N Area of the Hanford Site, Benton County, Washington.

WHEREAS the U.S. Department of Energy, Richland Operations Office (RL) is required by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Hanford Federal Facilities Agreement and Consent Order (Tri-Party Agreement) to complete remedial actions that may include plume chasing as defined by the Remedial Action Work Plan (DOE/RL-2005-93) for Test Pits 3 and 6 at the 100-N-96 Waste Site; and

WHEREAS, remedial actions include the following activities that have the potential to affect historic properties; excavation of waste using a tracked back hoe or other heavy equipment and plume chasing which is defined as the continuation of excavation in the direction of visible or measured contamination in order to meet remedial action requirements.

WHEREAS RL requires that the remedial actions including plume chasing be performed in accordance with laws, regulations and CERCLA identified Applicable or Relevant and Appropriate Requirements (ARARs), including those pertaining to the protection of cultural resources and worker safety and health; and

WHEREAS those laws, regulations and ARARs require the remedial actions to be performed in a manner that minimizes and mitigates impacts to both archaeological resources and the on-site workers as feasible; and

WHEREAS RL will provide that the undertaking is consistent with its responsibilities under the CERCLA Record of Decision to complete remedial actions as defined in HCRC#2010-100-111a. Any alteration to the scope of this undertaking will require a new section 106 review; and

WHEREAS nothing in this MOA expands or diminishes rights reserved in the Treaties with the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation and the Nez Perce Tribe (henceforth, Tribes); and

WHEREAS RL will provide that the undertaking is in accordance with requirements and processes in the National Historic Preservation Act (NHPA), Archaeological Resources Protection Act, American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, Executive Order 13007, and its government-to-government relationship with the Tribes; and

WHEREAS RL has established the 21 acre Undertaking area of potential effects, (APE) in accordance with Section 106 of the NHPA, 16 U.S.C. § 470 under implementing regulations at 36 CFR 800.4 (a), at the Hanford Site in Benton County, Washington, in the 100-N Area as defined in HCRC#2010-100-111a; and

WHEREAS the DAHP/SHPO has concurred in the delineation of the APE and concurs that Test Pits 3 and 6 are contributing components of the recommended eligible archaeological site 45BN755. Additionally, 45BN1424, the *Mooli Mooli* Traditional Cultural Property, is also eligible for listing in the National Register of Historic Places; and

WHEREAS RL has determined that the undertaking will have an adverse effect on 45BN1424 and adverse effect on Test Pits 3 and 6 of 45BN755 (located within the boundary of 45BN1424) as defined in 36 CFR Part 800.5 (d)(2); and

WHEREAS RL has consulted with the Advisory Council on Historic Preservation (ACHP). The ACHP has elected to participate with the DAHP/SHPO and Tribes pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the NHPA (16 U.S.C. § 470f) to resolve the adverse effects of the Undertaking on 45BN755 and 45BN1424; and

WHEREAS RL has consulted with the Tribes for which the *Mooli Mooli* (45BN1424) boundaries are currently being revised. RL recognizes that *Mooli Mooli* has religious and cultural significance for affected Tribes; and

NOW, THEREFORE, RL, the DAHP/SHPO and the ACHP agree that RL shall ensure that the undertaking is carried out in accordance with this MOA. The executed and implemented MOA evidences the agency official's compliance with Section 106 of the NHPA and shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

I. UNDERTAKING STIPULATIONS

A. RL will establish administrative and engineered controls for project activities located within 45BN755 and 45BN1424 including:

1. RL will require that all project activities and vehicle access including laydown and staging areas be confined to access roads and the immediate work area around the waste sites, to the extent feasible. The number of vehicles to support remediation activities will be kept to a minimum.
2. Construction of the access road to support this project will be bladed to approximately 6 m (20 ft) in width by about 300 m (1,000 ft) in length and up to 30 cm (12 in) below grade.

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3. The Project work area boundaries will be defined using an engineered system such as "T" posts and rope, cones, pin flags, stakes, railroad ties or other suitable application. Project personnel will be directed to remain within the engineered system for the duration of the project.
 4. RL will provide cultural sensitivity training for all personnel involved with the undertakings outlined in this MOA and prior to any work under this stipulation. The training will be customized to focus on the unique sensitivity of the specific project area.
 5. RL will provide the consulting parties an initial seven-day calendar advance notice in accordance with the Tribal Notification Matrix prior to commencement of project remediation activities.
 6. RL will provide that all defined work area boundaries will be professionally archaeologically monitored according to the monitoring plan in HCRC#2010-100-111a. The monitor will inspect each avoided area to ensure it remains intact at the end of the work day. Monitor will report findings to the Field Remediation Manager.
 7. RL will provide that all defined work area boundaries for plume chasing will be professionally archaeologically monitored according to the monitoring plan in HCRC#2010-100-111a. The monitor will inspect each avoided area to ensure it remains intact at the end of the work day. Monitor will report findings to the Field Remediation Manager. If at any time cultural resources are encountered the State Historic Preservation Officer and the Tribes will be notified immediately.
 8. RL will provide weekly summaries to consulting parties of the remediation work accomplished during remediation activities.
 9. If at any time archaeological resources are damaged, the State Historic Preservation Officer and the Tribes will be notified immediately. RL shall undertake a professional archaeological damage assessment using the Federal guidelines. The professional archaeologist tasked with undertaking the damage assessment shall not include the archaeologist involved in the original survey or site monitoring in order to assure an independent investigation. RL shall provide the damages assessment scope of the investigations and draft reports to SHPO, and Tribes for a 30 day review. Following the finalization of any damage assessment RL shall consult with the SHPO and Tribes regarding the site restoration and mitigation.
- B. RL will ensure the following actions are taken in the event of a discovery;
1. RL will follow 36 CFR 800.13(b).
 2. Should the remediation contractor encounter previously unknown historic properties, or find that an action or activity is having an adverse effect that was not anticipated, or find artifacts or features or other archaeological or burial remains are found that may, in the opinion of the cultural resource monitor, be the remains of an historic property, grave, or cemetery, The remediation contractor must immediately stop all work activity within a thirty (30) meter buffer zone around the previously

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unknown or newly discovered historic property. The cultural resource monitor will follow the construction-related discoveries process in the monitoring plan and/or the Hanford Cultural Resources Management Plan, Section 5.4.2.1.

3. In the event that human remains are encountered during remediation activities, all work will stop within thirty (30) meters of the discovery, the cultural resource monitor will follow the protocol as outlined in the Hanford Cultural Resources Management Plan, Section 5.4.2.1. Work will stop in the area of the discovery and the discovery will be protected and treated with respect by all present.

C. RL will ensure that the following actions are taken to mitigate adverse effects on 45BN755 and 45BN1424.

1. Compensatory mitigation (historical research) will be conducted to mitigate the adverse effect of remediation activities at 45BN755 within 1 year of remediation completion. Remediation personnel, work areas, and equipment will be held to a minimum within the boundary of 45BN1424.
2. The equipment operator will remediate the waste site (45BN755) using shallow scoops (defined as 12-18 inches in depth) during remediation. Backfilling will be completed for Test Pits 3 and 6 and any other areas that may require ground disturbance in an effort to reestablish the natural topography.
3. A restoration plan for the undertaking will be drafted, finalized, and implemented in consultation with the Tribes. The plan will follow the guidelines from the Hanford Site Biological Resources Management Plan. The restoration plan for the undertaking will be monitored for success for a period of 5 years from final signature. An annual report will be provided to the Tribes and DAHP identify if additional or restoration actions are necessary to assure success.
4. Conduct historical research to document the everyday lives of the soldiers and items they used while stationed at the AAA sites associated with 45BN755. Information gathered will be compiled into a draft report, submitted to RL for internal review, revised as necessary and distributed to consulting parties upon finalization.
5. Military-related artifacts will be collected as recommended during remediation from Test Pits 3 and 6 associated with 45BN755.
6. Deliver collected military related artifacts for curation by RL in accordance with 36 CFR Part 79.
7. Provide historical research information collected for 45BN755 to the public via the RL website within 1 year of remediation completion.
8. Update the site form for 45BN755, as needed within 1 year of remediation completion.
9. Update the site form for 45BN1424, as needed within 1 year of remediation.

III. ADMINISTRATIVE PROVISIONS

Submission of this executed MOA to the ACHP provides evidence that RL has afforded the ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, and that RL has adequately taken into account the effects of the Undertaking on historic properties prior to approving the Undertaking in order to meet the requirements of Section 106 of the NHPA.

A. Dispute Resolution

RL, the SHPO, and the ACHP will work together, in consultation with the Tribes, to collaborate and resolve any differences or disputes informally. If necessary, RL, the SHPO, and the ACHP will elevate significant disputes to the appropriate management levels of the organization for resolution. At this point the following steps will be followed:

1. Should the ACHP or the SHPO raise an objection to an action taken under the MOA, or have a dispute regarding fulfillment of the terms of this MOA, the ACHP or the SHPO will file a written notice with RL.
2. Upon receipt of a written notice from the ACHP or the SHPO, RL will consult with the party filing the notice to resolve the dispute.
3. If RL cannot resolve the objection or dispute within 30 calendar-days of receipt of the written notice, RL will forward to the ACHP documentation of the dispute, a written proposal for its resolution and request the ACHP's comment.
4. Within 30 calendar-days of receipt of the written submittal, the ACHP shall either:
 - a) Notify RL that it will not consider the dispute or provide recommendations, in which case the Agency may proceed with the proposed action, or
 - b) Concur with RL's proposed response to the dispute, whereupon RL may proceed with the agreed-upon response, or
 - c) Provide RL with recommendations, which RL will consider in good faith in reaching a final decision regarding a response to the dispute.
5. RL shall take into account any signatory or ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection or dispute; RL's responsibility to carry out all actions under this MOA that are not the subject(s) of the objection or dispute shall remain unchanged. While the dispute is being resolved, the MOA continues in effect without change or suspension.
6. If the ACHP or SHPO is contacted by a member of the public to discuss a significant concern or objection about implementation of the terms of this MOA, the contacted entity will notify RL of the issue.
7. RL will keep the ACHP, the SHPO, the Tribes, and the public, as appropriate, apprised of any concerns or objections raised and how the concern is resolved.

B. Amendments

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The signatories may propose, in writing, and will consider amendments to this MOA. This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

C. Effective Date and Termination

This MOA will become effective on the date that it is signed by all signatory parties. This MOA will terminate when all stipulations are met. Any signatory party who wishes to terminate the MOA must do so in accordance with the regulations at 36 CFR 800.6 (c)(8).

D. Coordination

RL will ensure that each signatory and consulting party is provided a copy of the signed MOA.

Execution of this MOA by RL, the ACHP and the SHPO shall be considered to be an agreement on how the adverse effects will be resolved in accordance with 36 CFR part 800.6(b)(2).

IV. SIGNATORY PARTIES:

U.S. Department of Energy, Richland Operations Office

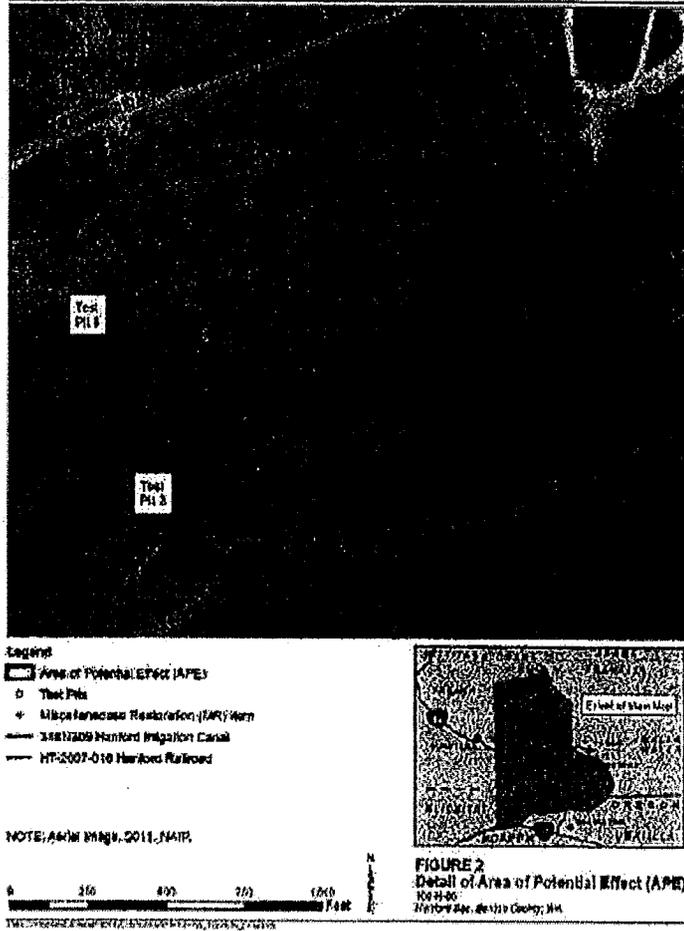
By: Stacy Charbonneau for Date: 7/16/14
Doug S. Shoop
Acting Site Manager

Washington State Department of Archaeology and Historic Preservation

By: [Signature] Date: 8/6/14
Dr. Allyson Brooks
Washington State Historic Preservation Officer/Director

Advisory Council on Historic Preservation

By: John M. Fowler Date: 8/14/14
John M. Fowler
Executive Director
Advisory Council on Historic Preservation



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Project activities include remediation on Test Pit 3 and Test Pit 6, hand removal of a 17-oz glass jar with small amount of black substance (MR 100N-066), and brick, metal siding, electrical cable, and an empty drum (MR 100N-071).

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APPENDIX C

The Cultural Resources Review conducted for the 100-N-96 waste site recommended cultural resources monitoring during field work activities. This monitoring plan was designed as a mitigation measure to ensure no impacts occur to archaeological resources and provides guidelines to be implemented during remediation-related activities.

Cultural Resource Monitor

The Cultural Resources Monitor (Monitor) will have at a minimum an undergraduate degree in anthropology, archaeology, historic archaeology, or a related field and at least 1 year of professional archaeological experience or equivalent specialized training. The Monitor will work closely with the project managers to provide status updates on a daily basis. The Monitor will provide a Cultural Resources Awareness Training briefing to all project field personnel on the role and responsibility of the Monitor and the procedures to be followed in the event of a cultural resource discovery.

The Monitor will be present during ground-disturbing activities to watch and inspect cleared ground and excavated areas for signs of previously undiscovered archaeological resources. The Monitor will observe activities involving native soil disturbance in areas where subsurface deposits may exist. The Monitor will prepare a daily monitoring log briefly describing the field conditions, type of construction equipment being used, construction progress, and activities and record any finds of archaeological material. If the Monitor or other construction personnel discover archaeological materials during construction, the Monitor will have authority to halt construction and will notify the designated cultural resource contacts. If archaeological materials are discovered, all work will stop and the area of discovery will be fenced off to prevent access and protect further disturbance to materials.

The Monitor's actions and activities will be reviewed on a daily or as needed basis by a cultural resource professional meeting the Secretary of Interior Standards of professional archaeology.

Construction-Related Discoveries

It is the Monitor's responsibility to ensure that the appropriate cultural resource protections are in place before construction work begins on this project. The necessary protections may include delimiting the work area with railroad ties or other objects. The Monitor will photograph the work area and any cultural resources in the immediate area before work begins to establish a record of baseline conditions in the proposed project area.

In the event archaeological materials are encountered during monitoring, the Monitor will stop remediation-related activities within the immediate vicinity of the discovery. The Monitor will evaluate whether significant cultural resources are present and, if so, whether or not they will be adversely affected by continuing operations. The types of cultural resources that may be encountered include prehistoric artifacts such as grinding stones, fire-cracked rock, shell fragments, projectile points, lithic materials, bone, cobble tools, or other indicators. Historic artifacts may include glass bottles, ceramic objects, metal objects, building foundations, bricks, concrete, or other indicators. The Monitor will be responsible for directing project-related activities away from the newly identified cultural resources.

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Cultural Resources Review for the Remediation of the 100-N-96 Waste Site and Miscellaneous Restoration Items N-066 and N-071 in the 100 Area of the Hanford Site, Benton County, Washington (HCRC#2010-100-111a)
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The area of the discovery will be delineated using flagging tape, rope, or some other means to ensure project activities do not continue in the area of the discovery. The Monitor will notify the field construction manager and contact the U.S. Department of Energy, Richland Operations Office (DOE-RL) Tribal Affairs and Cultural Resources Program Manager or designee. Sampling in the immediate vicinity of the discovery will remain stopped to avoid any additional impacts to the discovery until significance is determined and an appropriate treatment can be identified and implemented through consultation between DOE-RL, Washington State Historic Preservation Office (SHPO), and the Tribes. During this period, sampling activities outside the find area will continue.

If the newly identified cultural resources are determined to be either an isolate or a site, the Monitor or designated Cultural Resources Specialist will document the discovery and prepare an isolate or site form and request a Smithsonian trinomial from SHPO. Isolate discoveries will be collected and sampling will continue. Isolate finds will be reported in a final project monitoring report. If the discovery is a site, an evaluation will be conducted to determine if it requires further testing or other mitigation measures. Site avoidance will be the preferred method of dealing with cultural resources during sampling activities. Site avoidance will include the placement of fencing around the site to maintain a physical boundary.

Evaluation of the site will consist of assessing the integrity of the site, inventorying artifacts, conducting test investigations either by shovel test units or test excavation units to determine whether the site is eligible for listing in the National Register of Historic Places. If the site is determined to be not eligible, then sampling may proceed. If the site is determined to be eligible, mitigation may be necessary. Mitigation measures will be determined through consultation with DOE-RL, SHPO, and the Tribes.

Discovery of Human Remains

In the event human skeletal remains are discovered during remediation activities, the project Cultural Resources Specialist will follow the protocol as outlined in the *Hanford Cultural Resources Management Plan* (U.S. Department of Energy, Richland Operations Office [DOE-RL] 2003) implementing the *Native American Graves Protection and Repatriation Act*. All work will stop in the area of the discovery and the area will be protected. The DOE-RL will be notified of the discovery. The remains will be treated with respect by all present.

Monitoring Documentation

Cultural resource monitoring will be documented in daily field notes and photographs. Documentation will follow the guidelines in the *Hanford Cultural Resource Management Plan* (DOE-RL 2003). Photographic documentation will be collected by the Monitor before the project starts, during remediation-related activities within the boundaries of the *Mooli Mooli*, and after all work is complete.

Monitoring Report

A monitoring report will be prepared by the Monitor following the completion of monitoring. The monitoring report will include text and photographs of activities within the boundaries of the *Mooli Mooli*. The monitoring report will be submitted to DOE-RL upon completion of the field work.

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References

Native American Graves Protection and Repatriation Act. 1990. Public Law 101-601; 25 U.S. C. 3001 et seq. November 16, 1990 (Source: <http://www.nps.gov/history/nagpra/>).

U.S. Department of Energy, Richland Operations Office (DOE-RL)
2003, *Hanford Cultural Resources Management Plan*. DOE/RL-98-10, U.S. Department of Energy, Richland Operations Office, Richland, Washington.

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5.4.2.1 Discovery

All inadvertent discoveries of recognized or potential human skeletal remains will be immediately reported to the responsible manager or supervisor. Depending on the circumstances of the discovery, an inadvertent discovery could be made through any one of several situations—during cultural resources monitoring of construction activities; chance discoveries by workers during non-measured construction; or a report of possible human skeletal materials from any non-construction area within the site.

Until a final evaluation can be made, all reports of potential NAGPRA discoveries will be taken seriously and dealt with expeditiously by all personnel involved in the discovery.

If applicable, e.g., the inadvertent discovery occurs in conjunction with an ongoing activity, responsible personnel will take measures to cease activity in the area where the discovery is made. Work will not proceed until proper notifications have been made, and a full professional evaluation of the nature of the discovery has been completed.

Securing and providing protection to the discovered remains is initially the responsibility of the discoverer, if during an on-going activity. In addition to stopping the activity in the area of the inadvertent discovery, on-site workers will provide initial security by both avoiding the discovery site proper, and by ensuring that other personnel do not invade on to the discovery site. All cultural items are to be left in place, without further disturbance, and a temporary perimeter (flagging tape, stakes, etc.) may be established. If appropriate, such notifications have been made and a cultural resources professional has appeared. Covering the exposed remains with some type of natural material may be appropriate.

Depending on the outcome of the professional evaluation and the sensitivity of the discovery, longer-term protection may be required in the form of onsite guards and/or periodic patrols. It may also be necessary to establish additional security perimeters and access control to the area.

Depending on the circumstances of the discovery, notification may take several avenues. For example, if made during monitoring of construction, either by an archaeologist or a site worker, the initial notification will be to the appropriate contractor cultural resource manager, who will then notify the DOE-RL Hanford Cultural and Historic Resources Program Manager. Other feasible avenues of notification include a site worker notifying their supervisor or site security or a member of the public notifying the sheriff's department or the county coroner.

Because the DOE owns the land, however, the key notification is to the responsible manager of DOE-RL, the DOE-RL Hanford Cultural and Historic Resources Program Manager, who will coordinate subsequent notifications, as necessary, following the professional evaluation of the discovery.

As soon as possible following the discovery and initial notification, the discovery will be evaluated to verify that the remains are human and that they are not a crime scene. Following this determination will be made on whether the remains are Native American. This will be accomplished by technical staff from the DOE-RL Hanford Cultural and Historic Resources Program in consultation with Native American representatives. If a clear determination can not be made, additional expertise will be obtained. If the skeletal remains are not determined to be Native American, disposition will be determined by the DOE-RL Hanford Cultural and Historic Resources Program Manager in consultation with interested parties.

If the discovery is determined to be Native American, and therefore subject to NAGPRA, the DOE-RL Hanford Cultural and Historic Resources Program Manager will initiate consultation and additional notifications as per requirements in 43 CFR 10, Section 10.4. Notifications include the DOE Federal Preservation Officer and the State Historic Preservation Officer. Within 24 hours, the DOE-RL Cultural and Historic Resources Program Manager will telephonically notify tribal technical contacts and within 3 working days will provide written notification, which may be provided by fax or certified mail, to the designated tribal NAGPRA points of contact. As soon as practicable, an emergency meeting with

designated tribal personnel will be held to continue NAGPRA formal consultation, and to develop a confirmed plan of action for disposition of the inadvertent discovery.

If the inadvertent discovery occurred as a result of an ongoing activity such as construction, resumption of the activity will depend on the consultation process and the overall significance of the discovery. NAGPRA and 43 CFR 43 provide for resumption of the activity 30 days after the certified notification of the discovery. However, resumption may occur at an earlier date if a written, binding agreement is executed between DOE-RL and the affected Indian tribes for the mitigation of the impacts to the remains.