



**United States Department of Agriculture
Rural Development**

Rural Housing Service, Program Support Staff
1400 Independence Avenue, SW
Stop 0761, Room 6900
Washington, DC 20250

**Supplement to the Environmental Assessment for
Construction and Operation of a Proposed Cellulosic Ethanol Biorefinery,
ZeaChem Boardman LLC
Morrow County, Oregon**

**Prepared by
USDA Rural Business-Cooperative Service
June 18, 2015**

ZeaChem has updated its proposed action for constructing and operating a Cellulosic Ethanol facility in Morrow County, Oregon. The project has been amended to reflect a change of scope and alteration of the Area of Potential Effect (APE). Original project design included construction of a 1900-foot buried pipeline from the refinery site to an existing bulk loading dock on the Columbia River. The location of the proposed pipeline was included in the original APE for the project and was part of the archeological survey and shovel tests conducted in 2012. Since that time, ZeaChem has opted not to construct this pipeline. Instead, ZeaChem plans to transport its product to the existing Pacific Ethanol plant located adjacent to the ZeaChem project site. To accomplish this, ZeaChem will install a pipeline between these two facilities. This pipe will be six inches in diameter and will be primarily above ground with very little ground disturbance. After this pipe exits the ZeaChem property, it will travel underground at a depth of five feet through the berm supporting the railroad track and will re-emerge into the road cut adjacent to the Pacific Ethanol plant. Approximately 115 feet of the pipe will be underground as it transverses the railroad berm. As it enters the Pacific Ethanol facility, the pipe will be installed above ground and will remain within the fenceline of Pacific Ethanol until it reaches its terminus at the existing Pacific Ethanol holding tanks.

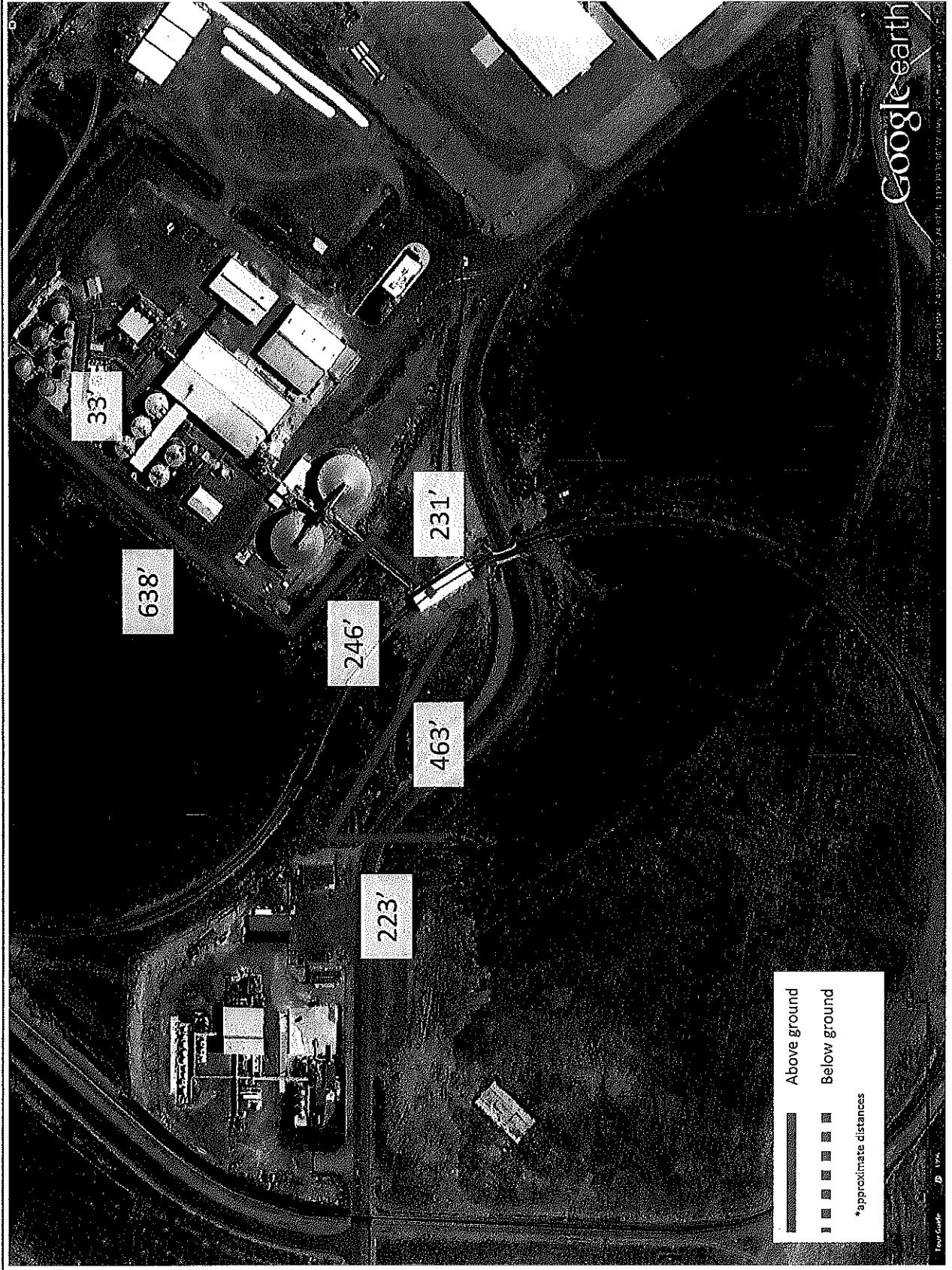
This 115-foot section is outside of the original APE and thus was not subject to the pedestrian survey or probes during the previous archeological survey. (See attached diagrams.)

This change in scope will avoid the earth disturbance associated with construction of the original 1900-foot pipeline and will instead impact approximately 115 linear feet, and will be entirely located with an industrial site on previously disturbed ground. The site was previously disturbed during initial construction of the ZeaChem demonstration plant, the Pacific Ethanol facility, railroad track, and access road. In addition, the completed archeological survey evaluated shovel tests done adjacent to the proposed new underground pipeline site and concluded that the biorefinery area is highly disturbed and no cultural material was identified on the parcel. USDA-RBS will ensure adequate consideration for inadvertent discoveries by requiring ZeaChem to comply with the provisions outlined in the Inadvertent Discovery Plan for this undertaking (attached).

For the reasons stated above, USDA-RBS has made a determination of “**no historic properties affected**” for the proposed change in scope of the project. USDA-RBS informed the Oregon State Historic Preservation Officer of the change in scope and resultant change in APE for this project. The Oregon SHPO concurred in USDA-RBS change of APE and our finding of no historic properties affected. USDA-RBS did not re-open tribal consultation on the change in scope and APE for this project since the change reduces the amount of ground disturbance to 115 linear feet of highly disturbed ground.

The USDA-RBS has determined that the proposed changes in the project description, as described in this supplement to the EA, will result in no significant impact to the human environment and that the Finding of No Significant Impact (FONSI) for the original EA remains valid.

Ethanol Pipeline From ZBB To Pacific Ethanol





Oregon

Kate Brown, Governor

Parks and Recreation Department

State Historic Preservation Office

725 Summer St NE Ste C

Salem, OR 97301-1266

Phone (503) 986-0690

Fax (503) 986-0793

www.oregonheritage.org

June 8, 2015

Ms. Juliet Bochicchio
USDA AG Rural Development
1400 Independence Ave SW Rm 6900
Washington, D.C. 20250



RE: SHPO Case No. 11-0833
USDA Rural Dev Proj ZeaChem Boardman Biorefinery
DOE/FOE/vacant lot development/final report on archeo probing
71099 Rial Loop Dr, Boardman, Morrow County

Dear Ms. Bochicchio:

Our office received a letter from your agency requesting concurrence regarding the updated Area of Potential Effect (APE) for the project referenced above. After review, Oregon SHPO concurs with the updated APE.

Under federal and state law archaeological sites, objects, and human remains are protected on both public and private lands in Oregon. If you have not already done so, be sure to consult with all appropriate Indian tribes regarding your proposed project. If you have any questions or comments regarding this letter, please do not hesitate to contact me. In order to help us track your project accurately, please be sure to reference the SHPO case number above in all correspondence.

Sincerely,

John Pouley, M.A., RPA
Assistant State Archaeologist
503-986-0675
john.pouley@oregon.gov



United States Department of Agriculture
Rural Development
Rural Business-Cooperative Service, Program Support Staff
1400 Independence Avenue, SW
Stop 0761, Room 6900
Washington, DC 20250

February 9, 2015

Dennis Griffin, Ph.D., RPA
Oregon SHPO State Archaeologist
Parks and Recreation Department
725 Summer St NE, Ste C
Salem, OR 97301-1266

RE: SHPO Case 11-0833, USDA Rural Dev Proj ZeaChem Boardman Biorefinery

Dear Dr. Griffin,

On June 22, 2012, after consultation with your office, interested tribes including the Nez Perce Tribe and the Confederated Tribes of the Umatilla Indian Reservation, the Rural Business Service (RBS) of the United States Department of Agriculture (USDA) made a determination that no historic properties will be affected by the ZeaChem Boardman Biorefinery project located in Morrow County, Oregon. Prior to this determination, on October 7, 2011, a Programmatic Agreement (PA) was executed between your office, USDA-RBS and ZeaChem. Note that while two of the tribes mentioned above consulted on development of the PA, no tribes elected to be signatory to it. Your office concurred on this determination on April 17, 2012. Copies of our determination letter, the fully executed PA and your concurrence letter are attached.

USDA-RBS wishes to inform you of a change of scope to the project and alteration of the Area of Potential Effect (APE). Original project design included construction of a 1900-foot buried pipeline from the refinery site to an existing bulk loading dock on the Columbia River. The location of the proposed pipeline was included in the original APE for the project and was part of the archeological survey and shovel tests conducted in 2012. Since that time, ZeaChem has opted not to construct this pipeline. Instead, ZeaChem plans to transport its product to the existing Pacific Ethanol plant located adjacent to the ZeaChem project site. To accomplish this, ZeaChem will install a pipeline between these two facilities. This pipe will be six inches in diameter and will be primarily above ground with very little ground disturbance. After this pipe exits the ZeaChem property, it will travel underground at a depth of five feet through the berm supporting the railroad track and will re-emerge into the road cut adjacent to the Pacific Ethanol plant. Approximately 115 feet of the pipe will be underground as it transverses the railroad berm. As it enters the Pacific Ethanol facility, the pipe will be installed above ground and will

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remain within the fenceline of Pacific Ethanol until it reaches its terminus at the existing Pacific Ethanol holding tanks.

This 115-foot section is outside of the original APE and thus was not subject to the pedestrian survey or probes during the previous archeological survey. (See attached diagrams.)

This change in scope will avoid the earth disturbance associated with construction of the original 1900-foot pipeline and will instead impact approximately 115 linear feet, and will be entirely located with an industrial site on previously disturbed ground. The site was previously disturbed during initial construction of the ZeaChem demonstration plant, the Pacific Ethanol facility, railroad track, and access road. In addition, the completed archeological survey evaluated shovel tests done adjacent to the proposed new underground pipeline site and concluded that the biorefinery area is highly disturbed and no cultural material was identified on the parcel. USDA-RBS will ensure adequate consideration for inadvertent discoveries by requiring ZeaChem to comply with the provisions outlined in the Inadvertent Discovery Plan for this undertaking (attached).

For the reasons stated above, USDA-RBS has made a determination of **“no historic properties affected”** for the proposed change in scope of the project. By issuance of this letter, RBS requests formal concurrence from the SHPO.

Please feel free to contact me if I may provide additional information regarding this request at peggy.wade@wdc.usda.gov or 202-720-9653.

Sincerely,



Peggy Wade
Environmental Protection Specialist
Rural Business-Cooperative Service, Program Support Staff

Attachment:

- 1- USDA “no effect” letter dated June 22, 2012
- 2- Executed PA dated October 7, 2011, including Inadvertent Discovery Plan
- 3- SHPO concurrence letter dated April 17, 2012
- 4- Project diagram/original APE diagram

Wade, Peggy - RD - Washington, DC

From: ALLEN Jason * OPRD <Jason.Allen@oregon.gov>
Sent: Thursday, April 16, 2015 7:48 PM
To: Wade, Peggy - RD - Washington, DC
Cc: POULEY John * OPRD
Subject: RE: Concurrence on Change of APE/No Effect to Project 11-0833

Hello Peggy,

Thanks for getting in touch. I've had a look at the case history, as well as the new APE definition that you've provided, and we have no concerns for this project regarding possible effects to historic, built resources. Because the project location is raw land, and adjacent facilities (including that to which the new pipeline will connect – Pacific Ethanol) are all built within the last several years, we believe that the project will not affect any built, historic resources. Therefore, you should not expect official comments, unless you would prefer such for your records. Let me know, and I will provide that for you. The above only regards the historic, built environment, which is separate from archaeological review. In Mr. Churchill's absence, the case has been given to John Pouley (Asst. State Archaeologist) for archaeological review. The case is on his desk, and I have copied him on this email.

Feel free to give me a call if you have any questions.

Cheers,
-Jason

Jason M. Allen, M.A.
Historic Preservation Specialist
Oregon State Historic Preservation Office
725 Summer St. NE Ste C
Salem, OR 97301
503.986.0579
Jason.allen@oregon.gov

****My email address has changed! Please note the new email address in your email contacts list****

From: Wade, Peggy - RD - Washington, DC [<mailto:Peggy.Wade@wdc.usda.gov>]
Sent: Wednesday, April 15, 2015 12:53 PM
To: ALLEN Jason * OPRD
Subject: Concurrence on Change of APE/No Effect to Project 11-0933?

Mr Allen,

On February 9th, USDA-Rural Development sent a notice to the SHPO (via letter to Thomas Churchill) requesting concurrence on a change of APE and subsequent "no effect" finding for a previously approved project, SHPO Case 11-0833, USDA Rural Dev Proj ZeaChem Boardman Refinery.

Because we've not received concurrence from the SHPO's office yet, and because my follow-up email to Mr. Churchill bounced back as undeliverable, I wanted to be sure the letter had been received and ask if there is any additional information needed to facilitate a decision from your office. I've attached a copy of the letter to this email, with the attachments (which would make the size of the file cumbersome).

My apologies if you are not the right person for this inquiry; perhaps you could pass this along to them and inform me of the correct contact person.

Many thanks,
-Peg

Senior Environmental Protection Specialist
US Department of Agriculture – Rural Development
Program Support Services, Mail Stop 0761
1400 Independence Avenue, SW
Washington, DC 20250
202-720-9653



United States Department of Agriculture
Rural Development
Rural Business-Cooperative Service, Program Support Staff
1400 Independence Avenue, SW
Stop 0761, Room 6900
Washington, DC 20250

June 22, 2012

Dennis Griffin, Ph.D., RPA
Oregon SHPO State Archaeologist
Parks and Recreation Department
725 Summer St NE, Ste C
Salem, OR 97301-1266

Dear Dr. Griffin,

In consultation with the Oregon State Historic Preservation Office (SHPO), the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe, Rural Development, Rural Business-Cooperative Service (RBS) has made a determination of **“no historic properties affected”** for the proposed undertaking. By issuance of this letter, RBS requests formal concurrence from the SHPO on this determination and hereby gives notice of this determination to all consulting parties.

Undertaking

The proposed undertaking is the issuance of a guaranteed loan from RBS to Silicon Valley Bank for ZeaChem, LLC to construct and operate a Cellulosic Biorefinery to be located outside of the city of Boardman, Morrow County, Oregon. Construction and operation of the biorefinery would include disturbance of a 10.2-hectare (25.22-acre) proposed biorefinery site as well as an approximately 588 meter long by 1.0 meter wide corridor (0.0588-hectare area) for installation of pipes which would pipe fuel/products to an existing loading dock on the Columbia River. Please refer to **Attachment 1** which shows the proposed location for the biorefinery and associated utilities. The 10.2-hectare biorefinery site is a leased area located within the Port of Morrow Industrial Park. The pipeline would hook up to an existing pipe owned and operated by the load out facility. The proposed 25-acre location for the new facility is located alongside ZeaChem's 250,000 gallon/year integrated demonstration plant which is currently under construction.

Programmatic Agreement

A Programmatic Agreement (PA) was executed on October 7, 2011 to ensure completion of the required Section 106 review (**Attachment 2**). RBS notified the following Indian Tribes (Tribes) during initial consultation for this undertaking: The Confederated Tribes of the Umatilla Indian Reservation, The Confederated Tribes of the Warm Springs Reservation of Oregon, The

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Confederated Tribes and Bands of the Yakama Indian Nation, and The Nez Perce Tribe and invited them to assist in identifying and evaluating historic properties that may be of religious and cultural significance to them and invited them to participate as a consulting party in the Section 106 consultation for this undertaking.

The Confederated Tribes of the Umatilla Indian Reservation and the Nez Perce Tribe accepted invitations to participate in the Section 106 consultation for this undertaking, but they declined to be a signatory to the PA or sign as concurring parties.

Area of Potential Effect (APE)

RBS consulted with the SHPO and participating Tribes to identify the Area of Potential Effect (APE) for this undertaking. Based on the information obtained with respect to the existence of historic properties, including traditional and cultural properties, in the area of the undertaking, RBS determined that the APE for direct and indirect effects from this undertaking would include the 10.2-hectare (25.22-acre) project site and the 588 meter long by 1.0 meter wide (0.0588-hectare) pipeline corridor.

Assessment of Effects

An Archaeological Investigation plan was approved by the SHPO and the archaeological investigation completed for this undertaking as outlined in the attached report dated June 2012 (Revised) included as **Attachment 3**. The archaeological report concluded the following: *“The Biorefinery Area is highly disturbed and no cultural material was identified on the parcel. The fuel line will pass through a road cut and run along a road fill prism avoiding intact deposits along its entire length. The ZeaChem Biorefinery development will result in no historic properties affected. No further cultural resource work is recommended”*.

In accordance with the PA, the results of this archeological survey proposal were forwarded to the SHPO and participating tribes for review and comment. RBS received comments from the Umatilla Tribe in an email dated May 23, 2012 and responded to these comments in an email dated June 6, 2012 (as well as sent as hardcopies via regular mail) (**Attachment 4**).

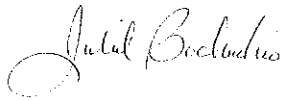
Inadvertent Discoveries

In order to ensure adequate consideration for potential inadvertent discoveries, including unknown adverse effects on National Register eligible properties, RBS will ensure that ZeaChem complies with the provisions outlined in the attached Inadvertent Discovery Plan for this undertaking. The inadvertent discovery plan is composed of two documents entitled “Tribal Position Paper” and “Inadvertent Discovery Guidelines” (**Attachment 5**). RBS has included these documents to serve as the.

In conclusion, and as stated above, based on this documentation performed in accordance with the PA for this undertaking, RBS has made a determination of “**no historic properties affected**” for the proposed undertaking and requests formal concurrence from the SHPO on this determination.

Please feel free to contact me if I may provide additional information regarding this request at juliet.bochicchio@wdc.usda.gov or 202-205-8242.

Sincerely,

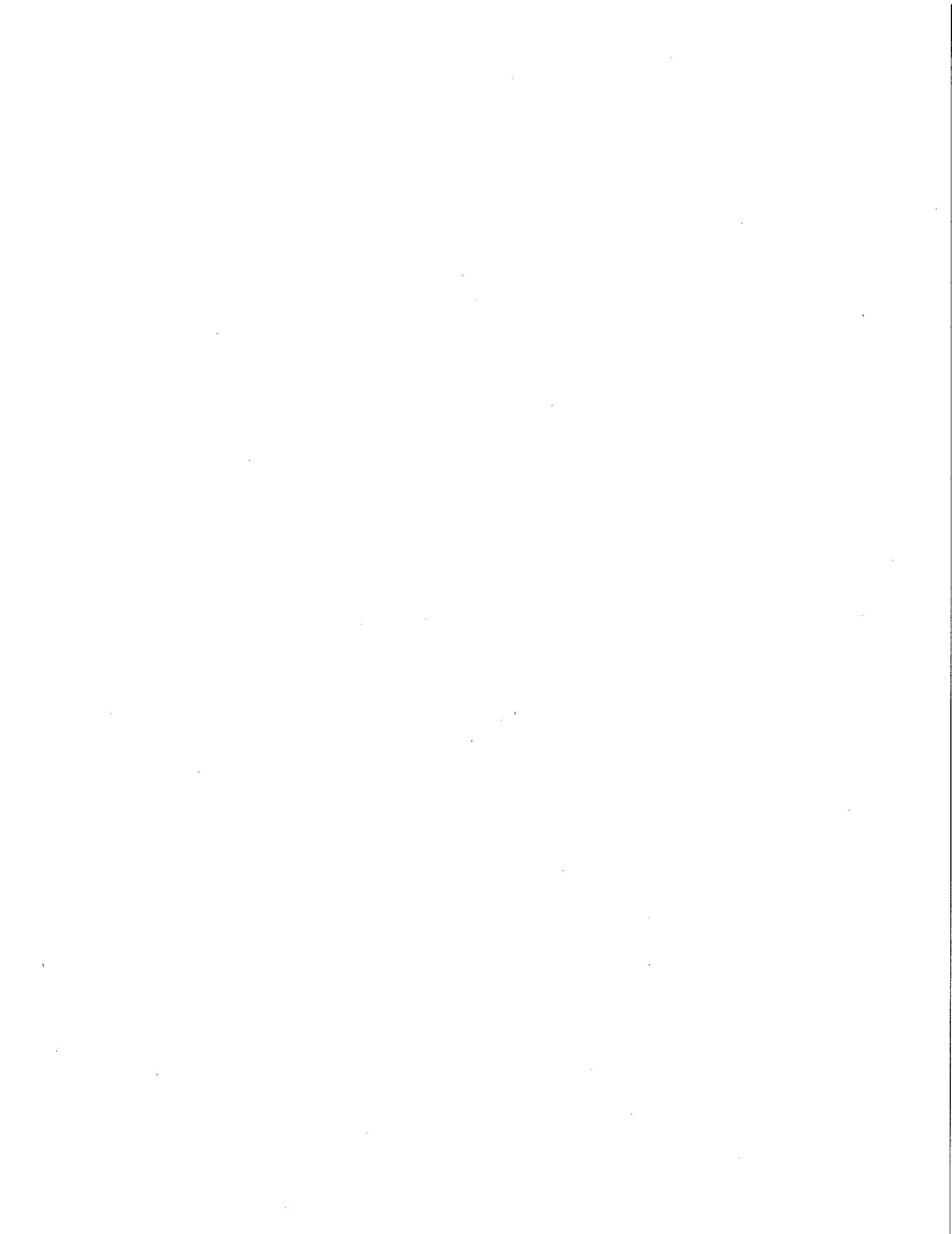


Juliet Bochicchio
Environmental Protection Specialist
Rural Business-Cooperative Service, Program Support Staff

- cc: 1- Catherine E. Dickson
Principal Investigation
Cultural Resources Protection Program
Confederated Tribes of the Umatilla Indian Reservation
- 2- Patrick Baird
Tribal Historic Preservation Officer/ Archaeologist
Cultural Resource Program
Nez Perce Tribe
- 3- Jaime Loichinger
Federal Permitting, Licensing and Assistance Section
Office of Federal Agency Programs
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW Suite 809
Washington, DC 20004

Attachment:

- 1- Executed PA dated October 7, 2011 ZeaChem Boardman Biorefinery
Archeological Survey Proposal
- 2- Inadvertent Discovery Plan





Preserving America's Heritage

October 6, 2011

Ms. Juliet Bochicchio
USDA-Rural Business-Cooperative Service
1400 Independence Avenue, SW
Stop 0761
Washington, DC 20250

Ref: *Programmatic Agreement for the ZeaChem Boardman Biorefinery
City of Boardman, Morrow County, Oregon*

Dear Ms. Bochicchio:

Enclosed is your copy of the fully executed Programmatic Agreement for the referenced project. By carrying out the terms of the Agreement, you will fulfill your responsibilities under Section 106 of the National Historic Preservation Act and the regulations of Advisory Council on Historic Preservation, "Protection of Historic Properties" (36 CFR Part 800). The original Agreement will remain on file at our office.

We commend the Rural Business-Cooperative Service for working closely with the ZeaChem Boardman Biorefinery, LLC and the Oregon State Historic Preservation Officer toward the resolution of adverse effects for this undertaking.

If we may be of further assistance as the Agreement is implemented, please contact Ms. Jaime Loichinger at (202) 606-8529, or via e-mail at jloichinger@achp.gov.

Sincerely,

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

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

**PROGRAMMATIC AGREEMENT
AMONG
THE USDA RURAL BUSINESS-COOPERATIVE SERVICE,
THE OREGON STATE HISTORIC PRESERVATION OFFICER, AND
ZEACHEM BOARDMAN BIOREFINERY, LLC
REGARDING A LOAN GUARANTEE FOR THE
CONSTRUCTION OF A NEW CELLULOSIC BIOREFINERY
IN BOARDMAN, MORROW COUNTY, OREGON**

WHEREAS, ZeaChem Boardman Biorefinery LLC (ZeaChem) has applied for a guaranteed loan from the United States Department of Agriculture Rural Business-Cooperative Service's (RBS) Section 9003 of the Food, Conservation, and Energy Act of 2008 received from Silicon Valley Bank for ZeaChem, LLC to construct and operate a Cellulosic Biorefinery to be located outside of the city of Boardman, Morrow County, Oregon; and

WHEREAS, the undertaking is defined as providing financial assistance to ZeaChem for the development of a 25 million gallon per year commercial-scale cellulosic biorefinery; and

WHEREAS, ZeaChem has executed an option to lease a 25-acre site with the Port of Morrow (Boardman, OR) within their existing Industrial Park for the location of the new Biorefinery (Attachment I); and

WHEREAS, This proposed 25-acre location for the new facility is located alongside ZeaChem's 250,000 gallon/year integrated demonstration plant which is currently under construction; and

WHEREAS, RBS must review this proposed undertaking in compliance with Section 106 of the National Historic Preservation Act, and execute this Programmatic Agreement (PA) to ensure completion of the required Section 106 review; and

WHEREAS, RBS has determined that the implementation of this undertaking may affect properties included or eligible for inclusion in the National Register of Historic Places (National Register) and has initiated consultation with the Oregon State Historic Preservation Officer (Oregon SHPO) pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and

WHEREAS, the area of potential effects for this undertaking has not yet been established, but will include the 25-acre project site and other areas negotiated with the Oregon SHPO and the Tribes; and

WHEREAS, in this specific case, any potential effects of the undertaking on historic properties cannot be fully determined prior to obligation of funds for the undertaking and therefore a PA will be utilized pursuant to §36 CFR Section 800.14(b)(1)(ii) to confirm that Section 106 review will be completed after obligation of funds, but before distribution of funds and before initiating any construction or demolition on the site. In this case, other circumstances warrant a departure from the normal Section 106 process §36 CFR Section 800.14(b)(1)(v); and

WHEREAS, RBS has notified the following Indian Tribes (Tribes): The Confederated Tribes of the Umatilla Indian Reservation, The Confederated Tribes of the Warm Springs Reservation of Oregon, The Confederated Tribes and Bands of the Yakama Indian Nation, and The Nez Perce Tribe, that it was conducting Government to Government consultation as part of Section 106 consultation and invited them to assist in identifying and evaluating historic properties that may be of religious and cultural significance to them and may be eligible for listing in the National Register, invited them to participate as a consulting party in the Section 106 consultation for this undertaking; and

WHEREAS, the Confederated Tribes of the Umatilla Indian Reservation and the Nez Perce Tribe have accepted invitations from RBS to participate in the Section 106 consultation for this undertaking, but they have declined to be a signatory to the PA and sign as concurring parties; and

WHEREAS, RBS will defer final identification and evaluation of historic properties associated with this undertaking, pursuant to §36 CFR Section 800.4(b)(2), until after obligation of funds for ZeaChem, and to continue conducting ongoing consultation with Tribes; and

WHEREAS, in accordance with §36 CFR Section 800.6(a)(1), RBS has notified the Advisory Council on Historic Preservation (Advisory Council) of its potential to adversely effect historic properties with specified background documentation, and the Advisory Council has decided to participate in the consultation pursuant to §36 CFR Section 800.6(a)(1)(iii); and

NOW, THEREFORE, RBS, Advisory Council, the Oregon SHPO, and ZeaChem agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

RBS, in coordination with ZeaChem, shall ensure that the following measures are carried out.

I. COORDINATION OF REVIEWS

- A. RBS will ensure that ZeaChem initiates the activities set forth in this PA within 90 days following its execution.
- B. RBS shall involve and consult with consulting parties in the identification and evaluation of historic properties, assessment of effects on historic properties, if present, and development of treatment and mitigation plans to avoid or resolve adverse effects, if any.
- C. RBS will require that ZeaChem refrain from all ground breaking, earth disturbance, demolition or construction on the 25-acre project site, or adjacent property associated with this undertaking, with the exception of earth disturbance associated with identification and evaluation of effects on historic resources, such as archeological surveys, until the terms of this PA have been fulfilled for the proposed undertaking.

II. IDENTIFICATION AND EVALUATION

- A. RBS will continue to consult with the Oregon SHPO and affected Tribes to identify the Area of Potential Effect (APE) for this undertaking. The survey work for archaeological resources (with exception of pedestrian survey, which has already been completed) will not commence until consultation with the SHPO, affected Tribes, and other consulting parties, as appropriate, regarding the APE is completed. Documentation with respect to identifying the APE shall be submitted to RBS within 30 days of RBS providing the Oregon SHPO and Tribes with adequate information to make an assessment of direct and indirect effects, in order for ZeaChem to meet the obligations of this PA along with the schedule of the proposed undertaking. The Oregon SHPO, in consultation with consulting parties, shall concur in writing with the geographic boundaries established for direct and indirect effects on all types of historic properties prior to the initiation of surveys or the approval of contracts. RBS will ensure that ZeaChem is advised accordingly.
- B. The views of consulting parties, including Tribes, shall be taken into consideration when developing the scope of work for surveys for both direct and indirect effects. The consulting parties should provide timely information to RBS. If no comments are received within 30 days, RBS will continue with that aspect of the undertaking.
- C. RBS and the Oregon SHPO shall concur in writing within 30-days following receipt of documentation regarding the eligibility or ineligibility of properties for listing in the National Register based upon consultation with Tribes, the information included in approved surveys, and other information available at the SHPO or from consulting parties.
 - a. Should RBS and the Oregon SHPO disagree regarding the eligibility of a property, RBS shall request a formal determination of eligibility from the Keeper of the National Register in accordance §36 CFR Section 800.4(c)(2).
- D. Should RBS, in consultation with the Oregon SHPO and affected Tribes, determine that no historic properties will be affected during the implementation of the ZeaChem Biorefinery Proposal, RBS shall request the formal concurrence of the Oregon SHPO on this effect determination and notify all consulting parties.
 - a. Should the Oregon SHPO object to this determination, RBS shall request the Advisory Council's opinion on this dispute in accordance with Stipulation VII.

III. ASSESSMENT OF EFFECTS

- A. RBS, in consultation with ZeaChem, the Oregon SHPO and other consulting parties, shall apply the Advisory Council's criteria of adverse effect to the activities included in the ZeaChem Biorefinery Proposal.
 - a. Should RBS, in consultation with the Oregon SHPO and other consulting parties,

determine that the ZeaChem Biorefinery will not adversely affect historic properties; RBS shall document this determination and notify all consulting parties.

- b. Should RBS, in consultation with the Oregon SHPO and other consulting parties, determine that the ZeaChem Biorefinery may adversely affect historic properties present within the undertaking's APE; RBS may prepare a mitigation plan which would avoid, minimize, or mitigate, adverse effects, and evaluate alternative sites which would not result in adverse effects. RBS would complete the Section 106 consultation on the alternative site as part of project planning.
- c. Should ZeaChem propose to move forward with any activity that may result in an adverse effect including visual effects on historic properties and access and use of properties of religious and cultural significance to Tribes, RBS shall consult with the Oregon SHPO and consulting parties to develop a formal written mitigation plan pursuant to §36 CFR Section 800.6.
 - i. Once all signatures are obtained on the mitigation plan, a copy shall immediately be submitted to the Advisory Council for its records.
 - ii. RBS shall ensure that ZeaChem shall submit bi-annual reports to all signatories and consulting parties, commencing 6 months after finalization of the mitigation plan, that summarizes the activities taken by ZeaChem to comply with the terms of the mitigation plan and the PA. Using a report format approved by SHPO, the report shall be a narrative description including tabular data/figures as necessary to summarize activities.

IV. TRIBAL CONSULTATION

RBS has initiated, and will continue, tribal consultation through discussions, emails, letters and materials sent to interested Tribes commencing on July 12, 2011 for the proposed undertaking. In consultation with the interested Tribes, the Confederated Tribes of the Umatilla Indian Reservation and the Nez Perce Tribe, RBS has negotiated the process by which tribal consultation will be conducted to conclude the Section 106 review process. RBS believes the views of the interested Tribes are reflected in this PA and intends to consult further should effects be proposed on sites identified by Tribes to be of religious and cultural significance to them.

V. DEVELOPMENT OF MITIGATION PLANS

- A. RBS, in consultation with ZeaChem, shall ensure that all mitigation plans, if applicable, are carried out as outlined in written documents concurred in by the Oregon SHPO, and in consultation with consulting parties.

If applicable, RBS shall require ZeaChem to submit preliminary and final mitigation plans to the Oregon SHPO and other consulting parties for review and comment, as

appropriate, prior to initiation of project activities. ZeaChem shall refrain from construction activities on the project until after the review and approval of mitigation plans.

VI. INADVERTENT DISCOVERIES

In order to ensure adequate consideration for potential inadvertent discoveries, including unknown adverse effects on National Register eligible properties, RBS will ensure that ZeaChem complies with the provisions outlined in the attached "Tribal Position Paper" (Attachment 1) and of the attached "Inadvertent Discovery Guidelines"(Attachment 2). RBS will also develop an Inadvertent Discovery Plan in cooperation with the SHPO and affected Tribes, prior to any ground disturbance to comply with the stipulations of this Plan. If any National Register eligible sites are located in close proximity to the proposed undertaking and will be affected by the proposed undertaking, appropriate measures will be taken to avoid or preserve the site, including access and use by affected Tribes that have identified the sites as being of religious and cultural significance to them.

VII. PUBLIC OBJECTIONS

- A. RBS shall ensure that the public is made aware of the activities carried out under the terms of this PA. Pursuant to Section 304 of the NHPA, RBS will protect the confidentiality of the location of sensitive historic resources, of any adverse effect determinations made under the terms of this PA. The public will be afforded an opportunity to participate in the review of actions associated with this undertaking upon request and subject to Section 304 of NHPA.
- B. Should the public object to the determinations of effects, or mitigation plan negotiated by RBS pursuant to the terms of the PA, RBS shall review the objection to determine the basis, and consult with the objecting party, as appropriate and pursuant to Section 304 of the NHPA, in order to resolve the issue.
- C. In the event RBS cannot resolve the objection to the satisfaction of the objecting party, RBS shall consult with the Oregon SHPO, the Advisory Council, and Tribes, as appropriate.

VIII. DISPUTE RESOLUTION

Should any consulting party or party to this agreement object at any time to any actions proposed or the manner in which the terms of this PA are implemented, RBS shall consult with the objecting party(ies) and consulting parties to resolve the objection. If RBS determines, within 30 days, that such objection(s) cannot be resolved, RBS will:

- A. Forward all documentation relevant to the dispute to the Advisory Council in accordance with §36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Advisory Council shall review and advise RBS on the resolution of the objection within 30 days. Any comment provided by the Advisory Council, and all comments from the

parties to the PA, will be taken into account by RBS in reaching a final decision regarding the dispute.

- B. If the Advisory Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, RBS may render a decision regarding the dispute. In reaching its decision, RBS will take into account all comments regarding the dispute from the parties to the PA.
- C. RBS responsibilities to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged. RBS will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. RBS's decision will be final.

IX. DURATION

This agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution unless an extension is requested prior to the termination date. Prior to such time, RBS may consult with the other signatories to review the terms of the PA and amend it in accordance with Stipulation X. This agreement will be null and void should ZeaChem be unable to secure the financing necessary to complete this undertaking, or if RBS does not guarantee the loan for ZeaChem.

X. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this PA, including invited signatories, determines that the terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the consulting parties and signatories to develop an amendment to this PA pursuant to §36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Advisory Council. If the signatories cannot agree to appropriate terms to amend the PA, any signatory may terminate the agreement in accordance with Stipulation XI below.


XI. TERMINATION

If the PA is not amended following the consultation set out in Stipulation IX, it may be terminated by any signatory or invited signatory. ZeaChem shall consult with RBS, however, before it can propose the termination of the PA. Within 30 days following termination, RBS shall notify the signatories if it will initiate consultation to execute a new PA with the signatories under §36 CFR Section 800.6(c)(1) or request the comments of the Advisory Council under §36 CFR Section 800.7(a) and proceed accordingly.

NOW THEREFORE, Execution and implementation of this Programmatic Agreement by RBS prior to its obligation of funds evidences that RBS has taken into account the effects of this undertaking on historic properties, and that RBS has afforded the Advisory Council a reasonable opportunity to comment on this undertaking.

SIGNATORY 1 of 3:

USDA Rural Business-Cooperative Service

 Date 9/27/11

Judith A. Canales, Administrator

SIGNATORY 2 of 3:

Oregon State Historic Preservation Office

 Date 10-4-11

Roger Roper, Deputy State Historic Preservation Officer

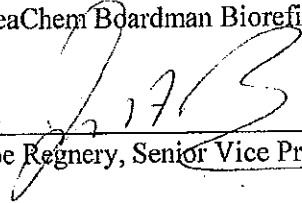
SIGNATORY 3 of 3:

Advisory Council on Historic Preservation

For Jim Hinkle Date 10/7/11
John Fowler, Executive Director

INVITED SIGNATORY 1 of 1:

ZeaChem Boardman Biorefinery LLC

 Date 9-26-11

Joe Regnery, Senior Vice President

ATTACHMENT 1

GUIDELINES FOR CONDUCTING FIELD ARCHAEOLOGY IN OREGON

Oregon State Historic Preservation Office

Salem, Oregon

April 2007

TREATMENT OF INADVERTENT DISCOVERIES & SITE PRESERVATION

Inadvertent Discovery in the Course of Project Construction

No matter how thorough a pedestrian survey has been, there is always the chance that a site will be inadvertently discovered during the course of project construction. For projects affecting nonfederal lands, the final report should include a plan that specifically addresses the process to be followed in the event of an inadvertent discovery. The intent of such a plan is to have a process in place to expeditiously deal with such discoveries. On federal lands, an inadvertent discovery plan has generally already been established by the federal land managing agency's specialists, in consultation with SHPO, either for the project or through a prior programmatic agreement. Federal projects are subject to different laws and regulations (e.g., NAGPRA) with each land managing agency often having their own procedures regarding how fieldwork is conducted, sites recorded, need for excavation permits, and notification procedures for inadvertent discoveries. Due to the diversity of procedures among federal agencies, such procedures are not addressed in these Guidelines. All archaeologists working on projects that affect federal lands need to work closely with the federal land managing agency's archaeologist to become aware of what steps need to be followed when working on federal lands.

For projects on nonfederal land, the Discovery Plan should include the following procedures:

1. The project will stop immediately if previously unidentified archaeological materials, sites or human remains are discovered during project construction.
2. If human remains are discovered, the Oregon State Police, Commission on Indian Services, SHPO, and appropriate tribes will be contacted at the time of discovery.
3. The project sponsor/client, developer, construction company, or project engineer, as appropriate, shall immediately notify a professional archaeologist.
4. The consulting archaeologist shall make a preliminary assessment of whether the cultural material or site is potentially significant and recommend additional steps to mitigate effect. This assessment and recommendation must be sent to Oregon SHPO for concurrence prior to commencement of any ground-disturbing activities. Depending on the project, the nature of the discovery, and the statutory jurisdiction, Oregon SHPO may ask the project sponsor to retain a consulting archaeologist to assist in development of a treatment plan. It is important that archaeologists are aware of state permit laws when working on nonfederal public or private lands in Oregon.
5. Depending on the statutory jurisdiction of the project (state law or federal law), the appropriate jurisdictional agency may need to get involved in discussions to resolve the matter in accordance with their respective authorities.
6. If the project falls under federal Section 106 jurisdiction, the process set out in 36 CFR 800.11 and 800.13 must be followed.

Treating an Unanticipated Site Once Discovered

- The project's consulting archaeologist will conduct a field assessment of the site to determine the site's potential State or National Register eligibility and the project's potential effects to such sites.
- The project sponsor/client may need to hire an archaeological consultant if additional information is necessary to determine significance, site boundaries, and State Register or National Register eligibility. Concurrence of all eligibility determinations should be sought from Oregon SHPO.
- If the site meets State or National Register criteria, the preferred treatment is avoidance and protection in place.
- Site significance and treatment options based on the nature of the site and the situation should be discussed and documented with the appropriate interested public parties.
- If site avoidance of a significant site is not possible, then archaeological data recovery of the site may need to be completed if other treatment options are not more appropriate.
- If the project falls under federal Section 106 jurisdiction, construction in the site area will not proceed until it has been reviewed and documented according to 36 CFR 800.11 and 800.13.
- If the project is located on nonfederal public or private land, an expedited archaeological permit must be applied for by the consulting archaeologist and received prior to any ground disturbing activities.
- All data recovery plans should be coordinated through the federal land manager's archaeologist (federal land) or Oregon SHPO (nonfederal public and private land).
- See Treatment of Human Remains Policy (later in this Section) if burials are discovered.

ATTACHMENT 2

Treatment of Native American Human Remains Discovered Inadvertently or Through Criminal Investigations on Private and Public, State-Owned Lands in Oregon

Native American burial sites are not simply artifacts of the tribe's cultural past, but are considered sacred and represent a continuing connection with their ancestors. Native American ancestral remains, funerary objects, sacred objects and objects of cultural patrimony associated with Oregon Tribes are protected under state law, including criminal penalties (ORS 97.740-.994 and 358.905-.961). The laws recognize and codify the Tribes' rights in the decision-making process regarding ancestral remains and associated objects. Therefore both the discovered ancestral remains and their associated objects should be treated in a sensitive and respectful manner by all parties involved.

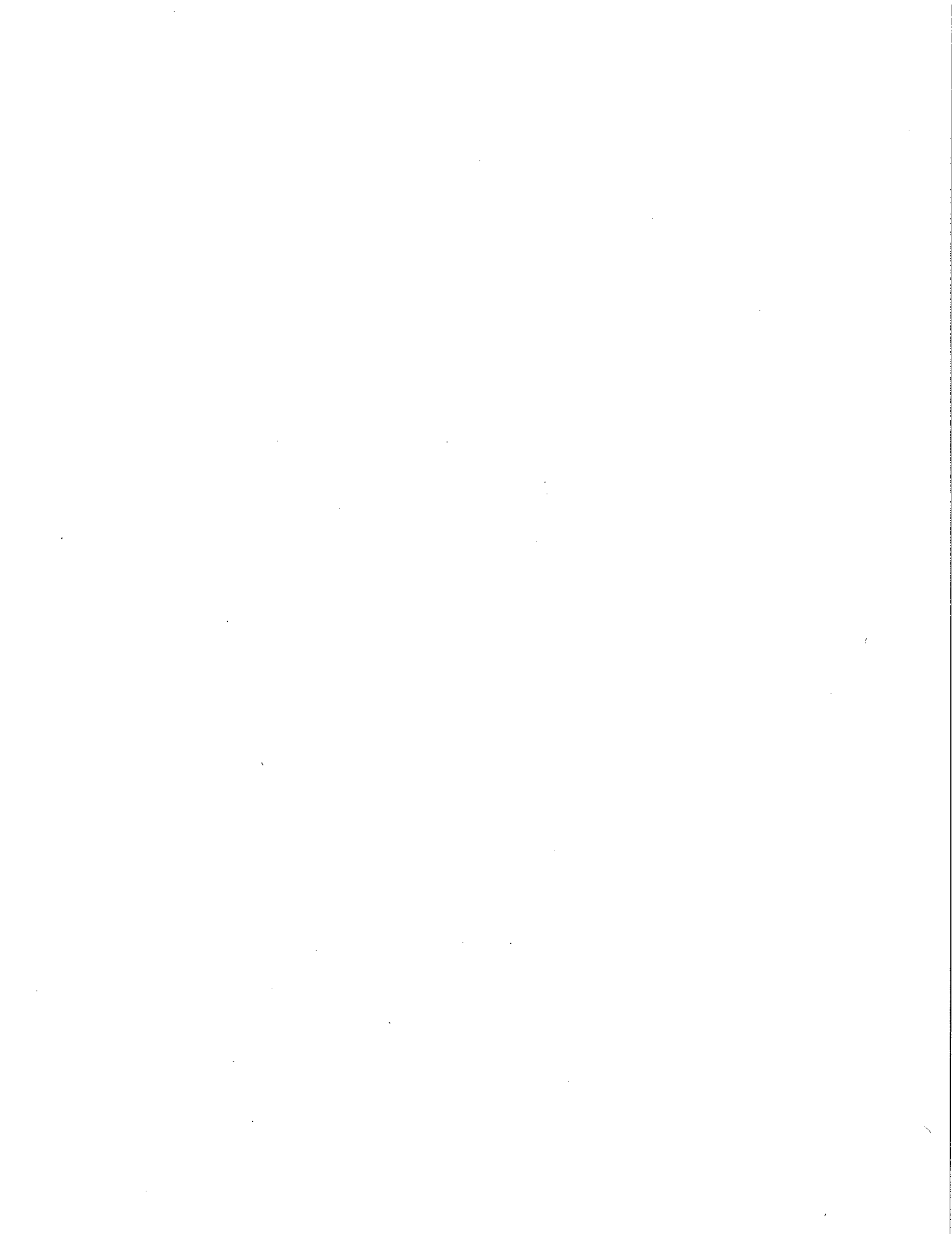
Identification of Human Remains

- Oregon laws (ORS 146.090 & .095) outline the types of deaths that require investigation and the accompanying responsibilities for that investigation. The law enforcement official, district medical examiner, and the district attorney for the county where the death occurs are responsible for deaths requiring investigation. Deaths that require investigation include those *occurring under suspicious or unknown circumstances*.
- If human remains that are inadvertently discovered or discovered through criminal investigations **are not clearly modern**, then there is high probability that the remains are Native American and therefore ORS 97.745(4) applies, which requires immediate notification with State Police, State Historic Preservation Office, Commission on Indian Services, and all appropriate Native American Tribes. To determine who the "appropriate Native American Tribe" the responsible parties should contact the Legislative Commission on Indian Services (CIS). To determine whether the human remains are Native American the responsible parties should contact the appropriate Native American Tribes at the initial discovery. It should be noted that there may be more than one appropriate Native American Tribe to be contacted.
- If the human remains are possibly Native American then the area should be secured from further disturbance. The human remains and associated objects **should not be disturbed, manipulated, or transported from the original location until a plan is developed in consultation with the above named parties**. These actions will help ensure compliance with Oregon state law that prohibits any person willfully removing human remains and/or objects of cultural significance from its original location (ORS 97.745).
- All parties involved and the appropriate Native American Tribes shall implement a culturally sensitive plan for reburial.

Notification

- State law [ORS 97.745 (4)] requires that any discovered human remains suspected to be Native American shall be reported to-
 1. State Police (current contact Sgt. Chris Allori, Department of State Police, office phone 503-731-4717, cell 503-708-6461)
 2. State Historic Preservation Office (SHPO)

- Primary contact= Dennis Griffin, State Archaeologist, office phone 503-986-0674, cell phone 503-881-5038
 - Secondary contact= John Pouley, Asst. State Archaeologist, office phone 503-986-0675, cell phone 503-480-9164.
3. Commission on Indian Services (CIS)
 - Current contact= Karen Quigley, Director, office phone 503-986-1067. Karen will provide the list of appropriate Native American Tribes.
 4. All appropriate Native American Tribes provided by CIS.
 - Burns Paiute Tribe- Theresa Peck 541-573-1375
 - Confederated Tribes of Coos, Lower Umpqua and Siuslaw- Agnes Castronuevo 541-888-9577 X4574
 - Confederated Tribes of Grand Ronde- Eirik Thorsgard 503-879-1630
 - Confederated Tribes of Siletz- Robert Kentta 541-444-2532
 - Confederated Tribes of the Umatilla Indian Reservation- Teara Farrow 541-276-3629, secondary contact; Catherine Dickson 541-966-2338
 - Confederated Tribes of Warm Springs- Sally Bird 541-553-3555
 - Coquille Indian Tribe- Nicole Norris 541-756-0904
 - Cow Creek Band of Umpqua Indians- Jessie Pluard 541-677-5575 X5577
 - Klamath Tribes- Perry Chocktoot 541-783-2219 X159





Oregon

John A. Kitzhaber, MD, Governor

Parks and Recreation Department
State Historic Preservation Office
725 Summer St NE, Ste C
Salem, OR 97301-1266
(503) 986-0671
Fax (503) 986-0793
www.oregonheritage.org

April 17, 2012

Ms. Juliet Bochicchio
USDA AG Rural Development
1400 Independence Ave SW Rm 6900
Washington, D.C. 20250



RE: SHPO Case No. 11-0833

USDA Rural Dev Proj ZeaChem Boardman Biorefinery
Archaeological Probing for the ZeaChem Biorefinery Development, Morrow County, Oregon
SHPO Report No. 25011

Dear Ms. Bochicchio:

Our office recently received Plateau Archaeological Investigations, LLC report about the project referenced above. I have reviewed their report, given it SHPO Report Number 25011, and agree that the project will have no effect on any known cultural resources. No further archaeological research is needed with this project.

Please be aware, however, that if during development activities any cultural material (i.e., historic or prehistoric) is located, all activities should cease immediately and an archaeologist should be contacted to evaluate the discovery. Under State law (ORS 358.905-955) it is a Class B misdemeanor to impact an archaeological site on public or private land in Oregon. Impacts to Native American graves and cultural items are considered a Class C felony (ORS 97.740-760). If you have any questions regarding any future discovery or my letter, feel free to contact our office at your convenience.

Sincerely,

Tom Churchill, MAIS, RPA

SHPO Archaeologist

(503) 986-0676

thomas.churchill@state.or.us

cc: David Harder, Plateau Investigations

