



Preserving America's Heritage

September 3, 2014

Ms. Victoria Rutson  
Surface Transportation Board  
Office of Environmental Analysis  
395 E Street, SW  
Washington, DC 20423

**Ref: *Proposed Tongue River Railroad Project, Analysis of Alternatives to Resolve Adverse Effects Custer, Rosebud, Powder River and Bighorn Counties, Montana***

Dear Ms. Rutson:

On August 11, 2014, the Advisory Council on Historic Preservation (ACHP) participated in the Surface Transportation Board's (STB's) consulting party meeting via teleconference for the referenced undertaking. During the teleconference, the National Trust for Historic Preservation (NTHP) raised a concern regarding the proposed language in the Whereas Clauses regarding how STB intends to involve consulting parties in the analysis of alternatives to the proposed undertaking. Although STB has indicated that it will consider the effects of each of the alternative routes on historic properties, such analysis should not be conducted in a vacuum. Accordingly, the inquiry made by the NTHP is relevant to the STB Section 106 consultation, and should be addressed in future consulting party meeting teleconferences.

During the teleconference on July 25, 2014, the ACHP recommended that STB develop a process Programmatic Agreement (PA) which would outline the procedures to be followed prior as STB selects the preferred alternative for the Tongue River Project. We understood that we were proposing an approach that differs from that recommended by the Tongue River Railroad. However, the ACHP believes that in this particular undertaking, it is critical that STB have transparency and stakeholder engagement in all aspects of decision making. Therefore, we urge STB to take appropriate measures to engage consulting parties as each alternative is considered so that issues related to the APE, scope of work for identification and evaluation and assessment of effects are considered in a timely manner. Section 800.6(a) of our regulations, "Protection of Historic Properties" (36 CFR Part 800) states:

*The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications that could avoid, minimize, or mitigate adverse effects to historic properties.*

Since STB has not yet selected a preferred alternative for the Tongue River Project, the evaluation of alternatives must be incorporated in any PA that will be used by the agency to fulfill the requirements of Section 106. We have recommended to STB during previous teleconferences that it develop a PA that outlines the procedure to be followed for each step of the Section 106 process that will not have been completed prior to executing the PA. The analysis of alternatives would be done under the Resolution of Adverse Effects in Step IV. We are providing STB with an example of a processed PA that the ACHP

was involved in developing (see enclosed). We recommend that STB share this sample PA with other consulting parties so that we can discuss this issue further.

Since the last teleconference held on August 11, 2014, ended without a discussion regarding the analysis of alternatives, we request that STB include this topic on the next meeting agenda. Other consulting parties may want to share their views regarding the analysis of alternatives as well. Moreover, we believe that STB's position on this issue be resolved before consulting parties negotiate the avoidance, minimization, and mitigation stipulations.

If you have any questions, please contact Najah Duvall-Gabriel at (202) 517-0120, or via email at [ngabriel@achp.gov](mailto:ngabriel@achp.gov).

Sincerely,

A handwritten signature in cursive script that reads "Charlene Dwin Vaughn". The signature is written in black ink and is positioned above the typed name and title.

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