

From: Starzak, Richard
Sent: Thursday, October 10, 2014 12:53 PM
To: Starzak, Richard; brhodd1@yahoo.com; Betsy Merritt (emerritt@savingplaces.org); Jenkins, Paul C (Chris) NWS (Paul.C.Jenkins@usace.army.mil); 'conrad.fisher@cheyennation.com'; Conrad Fisher (esevone1@yahoo.com); dcoburn@steptoe.com; doug_melton@blm.gov; 'swilmoth@mt.gov'; tclouthier@standingrock.org; Catherine.Nadals@stb.dot.gov; Vicki.Rutson@stb.dot.gov; Summerville, Alan; Mello, Sarah; Diller, Elizabeth
Subject: Tongue River PA working group, 2nd session, Identification and Evaluation

Hi everyone,
Attached is a file we can work from today. It takes puts the content from the draft PA into the "process PA" format the ACHP asked us to use. The two stipulations we'll be looking at today focus on the APE and Identification/Evaluation of historic properties.

Please also look out for an e-mail from Sarah Mello from ICF. She'll be sending you a link to Google Docs to see if it is an easier method for us to review the same document in real time.
Thanks, and looking forward to your comments during the call.



[Stipulations_010_1011.docx](#)

Rick

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-----Original Appointment-----

From: Starzak, Richard
Sent: Thursday, October 09, 2014 4:50 PM
To: Starzak, Richard; brhodd1@yahoo.com; Betsy Merritt (emerritt@savingplaces.org); Jenkins, Paul C (Chris) NWS (Paul.C.Jenkins@usace.army.mil); 'conrad.fisher@cheyennation.com'; Conrad Fisher (esevone1@yahoo.com); dcoburn@steptoe.com; doug_melton@blm.gov; 'swilmoth@mt.gov'; tclouthier@standingrock.org; Catherine.Nadals@stb.dot.gov; Vicki.Rutson@stb.dot.gov; Summerville, Alan; Mello, Sarah; Diller, Elizabeth
Subject: Tongue River PA working group, 2nd session, Identification and Evaluation
When: Friday, October 10, 2014 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 1-877-423-6338, Passcode: 364456#

Hi Ben, Betsy, Chris, Conrad, David, Doug, Stan, and Terry,

We look forward to your participation in Friday's PA working group call at 1 PM EST. (Call in information is: 1-877-423-6338, Passcode: 364456#)

Last session, we worked on the two stipulations the ACHP asked us to add to the PA. (Roles and responsibilities and Review of Alternatives)

This session, we will be working on the Identification and Evaluation of Historic Properties.

Tomorrow morning, I'll be sending you the relevant current sections of the draft PA, and we can brainstorm on how to revise the information. This time, we plan to try "Google Docs" to review the file on the screen. It is supposed to be more user friendly than the Lync meeting we tried last time.

We understand everyone has busy schedules, and we truly appreciate your participation.

Thank you very much,
Rick (in support of Cathy)

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STIPULATIONS

STB has a statutory obligation as the lead federal agency to fulfill the NHPA requirements of Section 106; therefore, STB will ensure that the measures in the following parts are carried out.

I. ROLES AND RESPONSIBILITIES (09/26/2014 session)

II. REVIEW OF ALTERNATIVES (09/26/2014 session)

III. AREA OF POTENTIAL EFFECTS (APE)

[The text below takes portions of the draft PA from 2011, and puts it within the framework of a “process PA” requested by the ACHP. It is organized by what was completed during the first phase of TRRR-the review of alternatives, followed by what would need to be completed if the STB approves a build alternative.]

A. First Phase-APE for Review of Alternatives

STB defined two APEs during the effort to identify historic properties as alternatives were being reviewed. The APE for tribal and archaeological resources was the right-of-way for each build alternative plus a 200-foot-wide buffer zone on either side of the right-of-way edge. STB limited the APE for built resources (historic buildings, structures, objects, and districts) to the right-of-way with a maximum 1,500-foot buffer measured from the outer edges of both sides of the proposed right-of-way.

B. Second Phase-APE if a Build Alternative is Approved

1. Defining the APE

The STB, in consultation with the SHPO and other consulting parties, has defined and documented the APE based on direct, indirect, and cumulative effects in the event the STB approves a build alternative. The APE will apply to federal, state, tribal and private lands that may be affected by the construction and operation of this undertaking.

a. Direct Effects

The APE for direct effects is the area within which historic properties may sustain physical alteration, damage, or destruction as a result of the construction of the undertaking. The APE for direct effects includes all areas where the ground will be disturbed such as staging areas, work camps, cut and fill areas, material sources/gravel quarries, overburden disposal areas, associated buildings/structures (e.g., sidings, bridges etc.) and associated infrastructure (e.g., communication towers, power lines etc.). This includes up to 200 feet on either side (up to a total of 400 feet) of the authorized construction right-of-way (ROW), to include a twenty-foot buffer on either side of the fenced construction ROW along the entire route, with the exception of the Wolf Mountains Battlefield NHL site. If the Decker Alternative is approved by STB, the NPS would be consulted to expand the APE for consideration of moving the alignment in order to avoid or minimize, to the extent feasible, adverse impacts on identified historic properties within the NHL.

b. Indirect Effects

The APE for indirect effects includes areas outside the construction or ground disturbance ROW where there is the potential for the Undertaking to have an indirect effect, including visual, vibration and noise effects, on historic properties, as defined in 36 C.F.R § 800.5. Sensitive sites outside the field survey area, line of sight, water, plant life, and association should also be considered for inclusion in the APE for indirect effects. If a build alternative is approved, consultation with the MT SHPO, tribes and other consulting parties will be undertaken to determine if there are any locations where the APE should be extended beyond

Commented [rs1]: From 2/2014 CP meeting

the buffer zones beyond the right-of-way established during the first phase: 200 feet for archaeological and tribal resources and 1,500 feet for built resources.

c. Cumulative Effects

For the purposes of this PA, the APE for cumulative effects is the same as that for direct and indirect effects. [This is consistent with the PAs the ACHP provided as templates.]

2. Amending the APE

[Add a process to amend the APE in the event a build alternative is approved and the alignment changes, similar to that provided by the ACHP PA templates.]

IV. IDENTIFICATION AND EVALUATION (from 08/28-2014 draft PA)

A. First Phase-APE for Review of Alternatives

In 2013 and 2014, as STB was reviewing the five alternative routes and two variations being considered for this undertaking, it completed the following tasks:

1. Phase I Inventory: The Phase I Inventory is a professionally prepared study of existing cultural resource data from published and unpublished documents, SHPO and BLM cultural resource inventory records, archival records, geomorphological and soil studies, institutional site files, state and National registers, informant or ethnographic interviews and other information sources. The purpose of the Phase I Inventory was to obtain sufficient information about the existing or known prehistoric and historic properties, cultural landscapes, and properties of religious and cultural significance located within the project area and to inventory those properties. The Phase I Inventory, which encompassed a mile from the alternatives, also assisted in determining the potential for previously unidentified historic properties to be located within the project area. [Should we include the results tables of the records search here?]
2. Alternatives surveys: Pedestrian transect field surveys were conducted by an equal number of tribal resource experts and STB archaeologists of accessible portions of the direct and indirect APE for the alternatives being considered for this undertaking. Vehicular and pedestrian survey was conducted by historians and architectural historians of the direct and indirect APE. For areas that were not accessible, satellite imagery was used to determine the likely presence or absence of built resources. [Should we include the results tables here?]

B. Second Phase-Field Surveys if a Build Alternative is Approved

1. The second phase of the identification and evaluation effort would be implemented if the STB approves a build alternative, and it would involve the following two steps:
 - a. Completing the first phase field surveys that were conducted in 2013 and 2014 for any portions of the approved alignment that were inaccessible or where surveys were not previously completed; and
 - b. Conducting Phase II testing and evaluation of identified sites to determine those that qualify for listing on the National Register of Historic Places (National Register).
2. Prior to TRRC initiating construction of any portion of the rail line, STB will retain a Cultural Resources Contractor (Contractor). The Contractor shall meet the professional qualifications standards provided in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, 48 Fed. Reg. 44716-44742 and 48 C.F.R §§ 44720-44723. The Contractor shall work under the STB's sole direction, control

and supervision but will be paid by TRRC. The Contractor will conduct the additional Phase I Surveys, conduct Phase II Testing and National Register Evaluations, and prepare the Identification Reports (Phase I ID Report) and Evaluation Reports (Phase II Evaluation Report). The Contractor will obtain any needed federal or state agency permits necessary to conduct the required work. The Contractor must have experience working in the field with tribal members.

3. The STB shall invite tribal members to help plan and participate in the field surveys to identify, document, and evaluate properties within the APE to which they attach traditional religious and cultural significance. The STB will invite such tribal representative(s) to work with the Contractor to identify and compile a list of traditionally-important plants that occur in the APE, and identify gathering sites and access points for the plant gathering areas. TRRC will provide reasonable financial reimbursement¹ for professional services provided by the designated tribal members(s).
4. STB will review each Phase I ID Report prepared by the Contractor and provide copies to the PA consulting parties for their review and comment. Each Phase I ID report provided by the Contractor will include the results of identification, preliminary National Register eligibility recommendations and summarize potential adverse effects. The timeline for PA consulting party review of each Phase I ID report will be as follows:
 1. The PA consulting parties will have 15 days after receipt of each Phase I ID Report to notify STB in writing if information is missing and/or provide any recommendations.
 2. STB will have five days to provide any missing information to the PA consulting parties, or to determine that additional information is not needed to complete National Register evaluations included in a given Phase I ID Report.
 3. STB will provide a 45-day comment period to the PA consulting parties beginning from their receipt of the additional information or STB's determination that additional information is not needed.

C. Second Phase-Determinations of Eligibility if a Build Alternative is Approved

1. For each property identified in the Phase I ID Report, the STB, in conjunction with the Signatories, Invited Signatories, and Concurring Parties, will determine eligibility for inclusion in the National Register pursuant to 36 CFR 800.4(c)(1) for each property, including properties of religious and cultural significance to tribes.
2. Some archaeological sites may be evaluated for National Register eligibility based purely on observed surface characteristics, e.g. a lithic scatter on bedrock. Many other archaeological sites will require test excavations to evaluate the NRHP eligibility of identified historic properties. Specific information should be recovered during a Phase II investigation, including determination of the horizontal and vertical limits of an archaeological site, location of areas of moderate and high artifact densities, if features are present,

¹ Reasonable financial reimbursement shall include payment for professional services (based on an agreed upon hourly rate), travel and expenses incurred by the tribal member(s).

determining the vertical limits of the site, the presence of intact, sub-surface, and/or stratified deposits, site structure, and site formation processes.

3. Phase II Testing and Evaluation procedures and a summary of the results will be presented in a combined Phase I Survey/Phase II Testing and Evaluation Report. In the Phase II Evaluation Reports, STB will make its National Register eligibility determinations in consultation with the MT SHPO and federally recognized tribes that attach traditional religious and cultural significance to identified historic properties. STB will seek to reach concurrence on the NRHP eligibility of all historic properties identified in the project area within 45 days of receipt of comments. STB will finalize determinations of eligibility in a manner consistent with 36 CFR § 800.4(c) and pertinent guidance of the National Park Service, ACHP, and MT SHPO.
4. STB will rely on the special expertise of tribes to determine the eligibility of tribal sites of significance as these may or may not meet the eligibility criteria of the National Register.
5. For built resources, STB will rely on research and analysis by historians and architectural historians, and the views of consulting parties with an interest or knowledge of built resources.
6. Once STB has finalized its determinations of eligibility, and within 40 days of receipt of comments from the MT SHPO and tribes, it will apply the criteria of adverse effect (36 CFR § 800.5(a)) to any tribal sites of significance or properties determined eligible for listing in the National Register. STB will direct the Contractor to make any required revisions and finalize the Phase II Evaluation Report per the ID Plan.
7. Within 15 days of receipt of a final Phase II Evaluation Report from the Contractor, STB will send approved Final Phase II Evaluation Reports to the PA consulting parties.
8. The PA Consulting Parties will have 15 days to provide any final comments to the STB.

Remnants of Attachment B-Identification Plan (from 2011 Draft PA)

3. IDENTIFICATION AND EVALUATION

[Additional detail in the ID Plan from the 2011 PA that is more detailed than the ACHP templates.]

The Phase I Inventory will be performed for the entire approved alignment within the ROW; however, the Phase I Inventory may be performed for a portion of the alignment at one time, such that once TRRC has access to a portion of the alignment TRRC may direct the Contractor to perform a Phase I Inventory for that portion and prepare the Phase I Inventory Report for that portion. If the Decker Alternative is approved, the Phase I Inventory will be extended to 400 feet on either side of the ROW for sections of the alignment located within the Wolf Mountains Battlefield NHL. TRRC will provide the PA consulting parties with a map of the area to be inventoried prior to performing each Phase I Inventory. Representatives of the tribes will be invited by STB to participate in the Phase I Inventory to help identify, document, and evaluate properties within the APE to which they attach traditional, religious, and cultural significance.

The Phase I Inventory will include the following activities:

1. An intensive pedestrian survey of the construction ROW plus 20 feet on either side of the fenced construction ROW.
2. An intensive pedestrian survey of all the lateral areas, borrow areas, haul roads (new and upgraded), staging areas, and other ancillary areas related to the Undertaking.
3. A geomorphological survey of the construction ROW will be conducted to identify areas where buried historic properties may exist and where deep testing, as identified by the geomorphologist, may be necessary to identify cultural resources. The geomorphologist will also recommend construction monitoring areas and assist in evaluating the National Register eligibility of any newly identified buried historic properties by providing identification of the soil(s), soil characteristics, soil dating, and analysis of the probability of the soils to contain cultural material.
4. An intensive pedestrian survey of the construction ROW using transects no more than 30 meters apart to complete the Phase I effort. If necessary, Phase II testing and evaluation excavations will be conducted to locate, record, and evaluate the National Register eligibility of any identified historic properties within the APE of the approved alternative route and only when tribal members do not consider such properties sensitive to testing. Test Phase II Testing and Evaluation excavations may include shovel testing, augering, 1 x 1m or 50 x 50 cm test units, and use of heavy equipment such as backhoes in certain cases. Tribal input will be sought when assessing the National Register eligibility of any properties of traditional religious and cultural significance to tribes. If, in the opinion of the Contractor and the cultural resource representative designated by the tribes, an historic property is eligible for the National Register as a traditional cultural property,² sufficient information to formulate Treatment Plan(s) will be obtained.
5. A reconnaissance level survey of those areas outside the ground disturbance area where there is the potential for the Undertaking to have an adverse effect, as defined in 36 C.F.R 800.5, on historic properties. A reconnaissance survey is an on the ground or pedestrian examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present. Identification of these areas will include consultation with the MT SHPO, THPO/cultural

Commented [MCR2]: This is out of order, but in the interests of light editing, is left in place.

Commented [rs3]: This phrase was added to include the areas where the Class II survey area was already completed in 2013-2014, as well as areas where landowner access won't be granted until after there is an approved alternative.

The additional text also makes it clear that testing not be done if tribal members consider them sensitive to testing.

² See National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties.

resource representative designated by the tribes, TRRC, other identified consulting parties, and federal agencies.

Contractor will use GPS units that meet BLM requirements when conducting Phase I Inventory surveys. The resulting shapefiles will be made available to the PA consulting parties.

Any areas not originally identified within the APE, but potentially affected by the Undertaking, will be identified by STB in consultation with the MT SHPO, THPO/cultural resource representative designated by the tribes, TRRC, other identified consulting parties, and federal agencies. STB will consult with the MT SHPO, THPO/cultural resource representative designated by the tribes, TRRC, other identified consulting parties (as defined in 36 C.F.R 800.2(c)), and federal agencies to address their concerns.

Phase II Testing and Evaluation procedures and a summary of the information to be presented in the combined Phase I Survey/Phase II Testing and Evaluation Report is presented below.