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SURFACE TRANSPORTATION BOARD

395 E. Street, SW

Washington, DC 20423

Section of Environmental Analysis

October 28, 2008

Mr. Herb Jones
Director, Government Affairs
Dakota, Minnesota & Eastern Railroad Corporation
140 North Phillips Avenue
Sioux Falls, SD 57104

Re: STB Finance Docket No. 33407, Dakota Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin: Review Comments, A Level III Cultural Resource Inventory of the Dakota, Minnesota and Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor, PRC Segment 1, Haakon, Jones, and Stanley Counties, South Dakota Addendum 1-SWCA (SD3a_Ad1)

Dear Mr. Jones:

The Surface Transportation Board's Section of Environmental Analysis (SEA) has completed its follow up review of your sub-consultants responses to our initial review comments dated 9/19/2008. We have attached an updated copy of our written comments to this letter and will be providing you with an interactive spreadsheet (MS Excel format) via email that includes columns for comment location, reviewer's comments, action taken, and review. Please address each comment provided and specify any textual changes to the report in your response to us by providing an electronic copy of the revised report with "track changes" activated.

Should you have questions as you review the attached comments, please feel free to contact me (Catherine.Glidden@stb.dot.gov; 202-245-0293) or Randy Withrow of the Louis Berger Group (rwithrow@louisberger.com; 319-373-3043). We look forward to working with you on the review of this document.

Sincerely,

Cathy Glidden
Environmental Protection Specialist
Section of Environmental Analysis

Enclosure: Comment Response Form

Corridor, PRC Segment 1, Haakon, Jackson, and Pennington Counties, South Dakota - (SD3a Ad1) 10/28/08

Comment #	Chapter	Section	Page	Paragraph	Line	Comment Location in Document	LBG Comment	Name of Reviewer	Action Taken by DME to Address Comment	LBG Response	Name of Reviewer
1	General						STB will not accept reports that list sites located within the APE as "unevaluated" (i.e., 39JUN39). Sites may be recommended "eligible", "not eligible", or "potentially eligible". We recognize that complete evaluations may not be possible for all sites due to lack of access or other restrictions imposed on subsurface testing; therefore, if further work is needed to fully establish NRHP eligibility, then the consultant should recommend that the site be considered "potentially eligible" pending completion of additional work. The scope of that additional work should also be clearly defined and stated in the form of recommendations. Please revise the report as necessary.	Withdraw	Please clarify why the term "potentially eligible" is so meaningful as compared to "unevaluated" to merit rejection of this and other reports. We find no basis in ACHP, Keeper, or NPS guidance to indicate that "potentially eligible" is a preferred term of art or that it imparts greater meaning than to simply state that a site is unevaluated; meaning that the National Register criteria for evaluation have not been applied. Would it be equally meaningful to label sites as "potentially ineligible"?	The terms "unevaluated" and "potentially eligible" are both widely used. We prefer terms such as "eligible", "not eligible", or "potentially eligible" because they convey a sense of value or meaning with relevance to the NRHP criteria. By comparison, the term "unevaluated" merely denotes status. Rather than debate the matter further, we will accept use of the term "unevaluated", but with the condition that the consultant provide clear and specific recommendations regarding the nature and scope of additional work needed to resolve eligibility under all NRHP criteria. For sites that remain unevaluated under Criterion D due to the fact that they extend outside the project ROW, we recommend that they be considered "eligible" and that the portion located within the ROW be evaluated as either "contributing" or "non-contributing" to the eligible resource as a whole.	Withdraw
2	General						The SAA Style Guide states that simple citations in text should be as follows: Smith 2008. Please delete the comma between the author and the year (e.g., Smith, 2008) throughout the report.	L. Bambrey	DME style guide requires comma in citations.	Okay.	C. Schoen
3	General						Reassigning feature numbers at a previously investigated site can be very confusing (e.g. 39JUN041). Why didn't SWCA simply build on the feature numbers that were already assigned instead of renumbering them?	C. Schoen	Will change feature numbers to match ALAC's recording	Okay. Please revise report.	C. Schoen
4	Abstract	i	2				Add: "Eight areas remain to be surveyed for cultural resources." at the end of the paragraph.	C. Schoen	Will add	Okay. Please revise report.	C. Schoen
5	Abstract	i	3	1			For clarity, please include site numbers in parentheses when introducing the new site, three isolated finds, and revisited sites investigated during 2008 fieldwork.	C. Schoen	Will add	Okay. Please revise report.	C. Schoen
6	Abstract	i	3	2			The Bridge (JN000000001) is a structure, not a "site". Change references to be consistent throughout report. Would also be helpful to clarify that this is not a railroad bridge.	C. Schoen	Will change call outs from "site" to "structure" where appropriate	Okay. Please revise report.	C. Schoen
7	1.0	1.0	1-1	2			Add: "Eight areas remain to be surveyed for cultural resources." at the end of the paragraph.	C. Schoen	Will add	Okay. Please revise report.	C. Schoen
8	1.0	1.0	1-1	3			Rather than refer to the area surveyed by B&M as the "existing ROW", why not refer to the B&M survey area as the "previous ROW" versus your newly revised "expanded ROW"? Seems like this would be less confusing for the reader.	Withdraw	We used the terms that are used by the DME and their engineers.	The DME usage is clearly defined in the report. Our comment was intended to minimize potential confusion for primary reviewers of the report who are not project engineers. No change is required, but it still seems counter intuitive to have the term "existing ROW" refer to only a portion of the project ROW.	Withdraw

9	2.0	2.1	2-1	2		The authors quote SD SHPO report requirements for Level III survey: "the report must explain survey methods and the rationale for their use, for instance, why the archaeologist did or did not conduct subsurface testing". It appears that subsurface testing was only used to investigate site areas identified on the basis of surface finds; however, most of the project corridor described in this report traverses alluvial landforms that appear likely to contain buried land surfaces that may have provided attractive locations for prehistoric settlement. The original survey report for this segment (Burns & M&D) did not address buried site potential within this drainage and I find no statement in this addendum that explains how SWCA's current investigation has accounted for this. In fact, the survey methods employed by SWCA seem premised on an assessment that these areas lack the potential for buried archaeological sites, i.e., sites too deep to be expressed at the ground surface. What is the consultant's rationale for not conducting subsurface testing in these alluvial settings? Does buried site potential exist in these survey areas or not?	Withdraw	Please see DM&E's Position Paper for Subsurface Geomorphology Examinations for Cultural Deposits Along the New Build Portion of the DM&E Powder River Basin Project. This document explains the phased approach employed for identification and consideration of buried cultural deposits within the ROW. The actions described in this report are consistent with the SOW and with the PA and Identification Plan, as well as with ACHP guidance on matters pertaining to buried cultural remains.	We do not share the respondent's certainty in stating that the actions described in this report are consistent with the PA and ID Plan. In STB's view, this portion of the project APE has geologic potential for buried archaeological sites and neither this potential nor the phased identification approach cited in the consultant's response are addressed in either the baseline report by Burns & McDonnell or in this addendum prepared by SWCA. However, STB understands that it is DM&E's intention to provide reviewers with a supplemental work plan that addresses this deficiency. STB accepts this report with the condition and understanding that DM&E's position paper and proposed work plan will be included with the report when it is distributed to the consulting parties for review and comment.	Withdraw
10	2.0	2.1	2-1	3	4-5	Cutbanks, blowouts, ditches, slopes, animal/vehicle trails, and rodent burrows are not "areas possessing higher site location potential". Rather they are areas with exposures that increase the potential for observing artifacts and archaeological features. Please revise.	C. Schoen	Will change to clarify	Okay. Please revise report.	C. Schoen
11	2.0	2.2	2-1	2		Should note that subsurface tests were made where "the surface evidence was inadequate to assess the potential of the site" and refer the reader to Section 2.5 of this report.	C. Schoen	This is addressed in Section 2.5	Please include a cross-reference in the text for clarification.	C. Schoen
12	2.0	2.3	2-1	1	1	"SWCA recorded all archaeological sites and IFs..." Statement creates false distinction, since isolated finds are considered archaeological sites. Please revise to avoid confusion. Also see Section 2.6, Line 1.	C. Schoen	Sites and Ifs are not the same and have different GIS requirements	Okay.	C. Schoen
13	2.0	2.3	2-2	2	10	Change the word "was" to "were."	L. Bambrey	Will change	Okay. Please revise report.	C. Schoen
14	2.0	2.4	2-2	4	2	Collection is discouraged by whom? (Agree, just want a general source.)	L. Bambrey	SD SHPO, because of limited curation space.	Please add this clarification to the text.	C. Schoen
15	2.0	2.5	2-3	1	6-7	Were not Munsell Soil Charts used to record soil colors?	C. Schoen	No.	Please clarify in the methodology section that soil colors are described without reference to the Munsell Soil Color chart.	C. Schoen
16	2.0	2.5	3-3	2		Simpler to just state that additional shovel tests were excavated to define a site's horizontal and vertical boundaries. Please revise.	C. Schoen	This is stated in that paragraph.	Yes, it is stated in the paragraph, but it is not clear as written. Please revise to clarify.	C. Schoen
17	2.0	2.7	2-6	1	4	Need to add "Traditional Cultural Property" before "TCP" when it is first used and place "TCP" in parens.	C. Schoen	Will clarify statement but can not make an eligibility recommendation as the site is unevaluated.	See Comment #1 regarding unevaluated sites.	C. Schoen
18	2.0	2.7.2	2-6	1		I would recommend using the general term "Non-archaeological Historic Resources" rather than "Non-archaeological Historic Sites". Avoids having to clarify the whole site/non-site distinction. Beyond this, it is always good practice to adhere to the property types recognized by the NRHP: districts, sites, buildings, structures, & objects.	Withdraw	Will change.	Okay. Please revise report.	Withdraw
19	3.0	3.0	3-4	1	3	"...one site (39JN0041) is located outside of the expanded ROW but was revisited as its boundaries were encompassed into the expanded ROW." Is it accurate to say that both JN4 and JN41 are located within the "expanded ROW"? If so, then please revise to simplify this statement.	C. Schoen	Will reword to clarify	Okay. Please revise report.	C. Schoen
20	3.0	3.0	3-4	1	7	Please revise to clearly state which resources are within the APE and which resources are entirely outside the project APE.	C. Schoen	Will address in table.	Okay. Please revise report.	C. Schoen

21	4.0	4.0	4-1	1	1	Report which resources were previously recorded and which are the newly recorded sites (including the isolated find sites).	C. Schoen	Will add site numbers in parentheses here after each call out	Okay. Please revise report.	C. Schoen
22	4.0	4.0	4-1	1	4	Please make an eligibility recommendation on the unevaluated site.	L. Bambrey	Will clarify statement but can not make an eligibility recommendation as the site is unevaluated.	See Comment #1 regarding unevaluated sites.	C. Schoen
23	4.0	4.0	4-1	1		Recommend listing which site is recommended eligible, which is currently listed, which is recommended not eligible, etc.	C. Schoen		Please provide response to comment.	C. Schoen
24	4.1	4.1	4-1.1 4-3	3		Author states that the 1982 SARC survey observed site materials at 39JUN04 exposed in a "graded cut". Did the survey team observe any evidence of this type of previous disturbance in the vicinity of the recorded site boundary?	Withdraw	No, the disturbance was from 1982 and was no longer visible nor was the graded cut plotted on the map.	Understood, but please add this to text for clarification.	Withdraw
25	4.0	4.1.1	4-6			We disagree with the recommendation that Site 39JUN04 is not eligible. How does one evaluate a site that has not been successfully relocated? Based on the site map, the cited disturbances are all outside the recorded site boundary, and none of SWCA's shovel tests show obvious evidence for ground disturbance; therefore, I don't think reviewers will be convinced by this line of reasoning. Assuming the site location is accurate, then the absence of site materials in 5 shovel tests excavated within the site boundary is clearly a more appropriate basis for judging the site's research potential. The problem here is that, absent finding any material whatsoever, one has to wonder whether the site was misplotted back in 1982. Without confirmation of the site's location, a recommendation that the site be considered "potentially eligible" is warranted pending additional systematic subsurface testing in the immediate area sufficient to confirm its location and eligibility status. If the site cannot be relocated and properly evaluated, then the reported site location should either be avoided or monitored during construction.	Withdraw	We can change the eligibility from Not Eligible to Unevaluated. Burns & McDonnell excavated 20 shovel tests within the existing ROW north of the plotted site. They found no evidence of the site within the existing ROW. Based on SARC's 1982 recording, the site area is not misplotted. We excavated 5 shovel tests within this boundary we found no evidence of the site. Again, we can change the site to Unevaluated and say we did not relocate the site.	Okay. Please revise status to "unevaluated" due to the fact that the site could not be relocated in the field despite subsurface testing. If the site cannot be relocated and properly evaluated, then the reported site location should either be avoided or monitored during construction. Please revise recommendations accordingly.	Withdraw
26	4.0	4.1.2	4-9	1	1	Add "the Archeology Laboratory at Augustana College" before "ALAC" for clarity.	C. Schoen	Will add	Okay. Please revise report.	C. Schoen
27	4.0	4.1.2	4-10	2		Add at end of last sentence "which lies about 120 meters north of Site 39JUN0041".	C. Schoen	Will add	Okay. Please revise report.	C. Schoen
28	4.0	4.1.2	4-10	3		Need to make clear whether the feature numbers used are SWCA's feature numbers or ALAC's feature numbers. Unless SWCA changes its feature numbering to be compatible with ALAC's numbering, the original ALAC feature number needs to be reported in parents.	C. Schoen	Will add ALAC's feature numbers to discussion	Okay. Please revise report.	C. Schoen
29	4.0	4.1.2	4-11	1		Does the chicken wire and plaster suggest a stucco exterior or is it from an interior plaster (which would be unusual, I would think)?	C. Schoen	It is hard to tell as the structure had collapsed into a hole.	Okay.	C. Schoen
30	4.0	4.1.2	4-12	2	2	39JUN0041: Is there a reason the features were renumbered, if the old features were relocated, it would be less confusing if the original feature numbers are used in this report. The original recording was not that long ago (2007).	L. Bambrey	Will change	Okay. Please revise report.	C. Schoen
31	4.0	4.1.2	4-12			39JUN0041: There was a piece of crockery or ceramic found with a makers mark. Has this been identified?	L. Bambrey	Will address	Okay. Please revise report.	C. Schoen
32	4.0	4.1.2	4-14	3	5	Add "Only the northern margin of the townsite has been surveyed."	C. Schoen	Will address	Okay. Please revise report.	C. Schoen

33	4.0	4.1.2	4-17	2	4	Add the words "and complete boundaries are defined" after the word "inventoried." The current investigations at JN41 have determined that the site is eligible under Criteria A and D. Because this site appears to extend into both the "existing ROW" and the "expanded ROW", the site boundaries need to be established with confidence so that it can be determined whether the site - or at least significant portions of the site - can be included.	L. Bambrey	Will elaborate management recommendation	Okay. Please revise report.	C. Schoen
34	4.0	4.1.2	4-17	2	5	Please include specific recommendations regarding the nature and scope of the "additional cultural resource inventory" that is required at this site.	Withdraw	See reply #33	Okay. Please revise report.	Withdraw
35	4.0	4.2.1	4-20	4	2	Change the word "Twentieth" to lower case.	L. Bambrey	Will change	Okay. Please revise report.	C. Schoen
36	4.0	4.3.1	4-21	1	1	Recommend amending first sentence to read "Site 39HK1033 is an isolated find consisting of ten prehistoric artifacts measuring" Note: Doesn't SD SHPO define an isolated find as less than ten artifacts? Does this site meet the IF requirements?	C. Schoen	will revise first sentence. We did not count the 8 pieces of FCR as separate artifacts up to 10.	In our opinion, this is not in accordance with state guidelines for defining isolated finds.	C. Schoen
37	4.0	4.3.1	4-22	1	7	Wouldn't the native A horizon and AB horizon need to be completely absent to support the conclusion that "there is little to no potential for intact buried cultural material". How does the soil survey classify this area? I know the area was tilled, but wouldn't excavating a single shovel test or checking soil profiles with a soil probe to confirm your suspicions about soil conditions seem reasonable in these situations.	C. Schoen	Does the STB require testing at this location?	Yes.	C. Schoen
38	4.0	4.3.2	4-22	2		Recording a piece of abandoned farm machinery as an archaeological site seems ridiculous to me (39JN0048). Are we sure that this is consistent with the intent of state guidelines for recording isolated finds? Please verify with SHPO and SARC and revise as appropriate.	C. Schoen	It is consistent with state guidelines.	Did you receive this confirmation from SHPO or from SARC? Please clarify.	C. Schoen
39	4.0	4.3.3	4-23			Did previous survey by B&M detect any evidence of Site 39JN0049 north of the expanded ROW?	C. Schoen	Site 39JN49 is a newly recorded site and the file search does not show any recorded sites north of the expanded ROW	Okay.	C. Schoen
40	4.0	4.3.3	4-27	1	1	"Site 39JN0049 is a sparse lithic procurement site..." The debitage assemblage and presence of abandoned tools suggests lithic reduction and other on-site activities. Why is this a procurement site?	C. Schoen	will change	Okay. Please revise report.	C. Schoen
41	4.0	4.3.3	4-27	1	6-7	Please revise eligibility recommendation for 39JN49 per comment #1. Include specific recommendations regarding the nature and scope of the "additional survey and subsurface testing" that is required.	Withdraw	Please see Action Taken to Address Comment #1.	Okay. Please revise report in accordance with comment #1.	Withdraw
42	4.0	4.3.4	4-28	2		Site 39TO368 includes 11 artifacts (3 flakes, 7 historic glass, and 1 burned and crushed animal bone). Doesn't this preclude it being classified as an isolated find (less than 10 artifacts)?	C. Schoen	There are only 6 glass (4 clear, 1 purple, and 1 white). So there are 10 artifacts and the four pieces of clear glass appear to be from the same bottle. We will state this in the report for clarification.	Nonetheless, there are still ten artifacts and the SD guidelines state an Isolated Find is less than ten artifacts. Thus, 39TO368 is not an Isolated Find. Please revise report accordingly.	C. Schoen
43	4.0	4.3.4	4-28	2		What is the geomorphic context for the site materials found at 39TO368? Author states that cutbank profiles in the vicinity exhibit homogenous alluvial deposits. Does this mean there is absence of soil development and differentiation of soil horizons suggesting this is a recent alluvial deposit? What is the site's proximity to this cutbank exposure? Is it possible that the near channel deposits could be different from those where the site is located? Geomorphological assessment seems appropriate to properly evaluate this site.	C. Schoen	Outside our scope of work	See our response to Comment #9. The status of this site as an isolated find is based on material recovered from surface contexts only. The discovery of these artifacts on the surface of an alluvial landform with potential for additional material in subsurface context indicates that subsurface testing should have been performed in order to properly define the site. Site 39TO368 should be considered unevaluated pending clarification of the area's potential to contain additional archaeological materials in buried context, i.e., geomorph assessment and/or subsurface archaeological testing.	Withdraw

44	4.0	4.3.4	4-28	3	Given that Site 39TO368 has more than the maximum artifacts appropriate for an isolated find and the site need geomorphological assessment, the conclusion that this site is not eligible since it is an IF and "not likely to yield any further information to the prehistory or history of the area" is not valid.	C. Schoen	This is an IF	See comment #43.	C. Schoen
45	5.0		5-1		Change the conclusions to match the changes in previous chapters.	L. Bambrey	Will update accordingly	Okay. Please revise report.	C. Schoen
46	5.0	5.0	5-1	2	List the new site, three isolated finds, and revisited sites in the 2008 fieldwork for clarity.	C. Schoen	Will add	Okay. Please revise report.	C. Schoen
47	Appendix B	site forms			Make changes accordingly.	Bambrey	Will update accordingly	Okay. Please revise report.	C. Schoen