



Agenda for Section 106 Consulting Party Meeting in Lame Deer , MT

Catherine Nadals to: cvaughn, ngabriel, wdancingfeather,
dlanders, swilmoth, msant, sfindlay,
d1melton, dcoburn, Matthew.Jones,
Cc: rutsonv, Gosselind, blodgettk, huntt, Richard.Starzak,
Alan.Summerville, Jamie Rennert

04/11/2013 08:02 AM

Dear Consulting Party,

I have attached an agenda for our first face-to-face Section 106 Consulting Party Meeting for the Tongue River Railroad Construction Project to be held in Lame Deer, MT, April 16 - April 18. The agenda is based on discussions I have had with Conrad Fisher, THPO for the Northern Cheyenne Tribe, and other consulting parties. The agenda is not set in stone and is subject to change depending on concerns or last minute needs expressed by the meeting participants. The meeting itself will be held in the Tribal Council Chambers on the Northern Cheyenne Reservation.

The meeting includes a field visit of the project area on the second day (April 17th). We will have limited space for the tour, thus it is paramount that you notify us ASAP if you intend to participate in the tour. This is not necessary for those of you that have already informed us of your intent to go. Rick is handling the trip logistics, so please contact him directly. Rick's contact information is shown below:

RICHARD STARZAK | Senior Architectural Historian/Technical Director | +1.213.312.1751 direct | richard.starzak@icfi.com | icfi.com

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For those of you calling in, we will be handing out various materials at the meeting. These include: copies of the [Final Scope](#), [maps of the alternatives](#), and the draft Section 106 methodology (as attached). I urge you to go to the [Tongue River EIS website](#) for additional project information that you may want to review prior to the meeting. The call-in (toll-free) number is: **1-877-423-6338; Passcode: 364456#**.

I look forward to seeing you next week. Safe travels!

-Cathy

Catherine Nadals
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Surface Transportation Board
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Agenda.doc



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AGENDA

Section 106 Meeting for Tongue River Railroad Construction Project



Tuesday, April 16 - Thursday April 18, 2013
Northern Cheyenne Reservation: Lame Deer, MT

Call-in Information: Toll-free number: 1-877-423-6338; Passcode: 364456#

Tuesday, April 16

8:30 a.m. – 9:00 a.m. Registration

9:00 a.m. – 10:00 a.m. Welcome by Northern Cheyenne Tribe

- Prayer
- Welcome
- Color Guard
- Presentations

*President John Robinson
Vice President Winfield
Russell
Tribal Council
Other delegates*

10:00 a.m. – 10:30 a.m. Overview and Purpose of Meeting

- Introductions, Meeting Purpose
- Ground Rules for Meeting

Cathy Nadals (STB)

10:30 a.m. – 11:00 a.m. Break

11:00 a.m. – 11:45 a.m. Update on EIS Process

- Overview of Project
- Alternatives
- Questions

*Ken Blodgett (STB)
Alan Summerville (ICF)
Everyone*

11:45 am – 1 p.m. Lunch

1 p.m. – 2 p.m. Proposed Section 106 Methodology

*Rick Starzak and other
ICF staff)*

2 p.m. – 3:30 p.m. Tribal Caucus

Tribal Representatives



Section 106 Meeting for Tongue River Railroad Construction Project



Wednesday, April 17

TOUR OF PROJECT AREA

8:30 a.m. – 9:00 a.m.

**Gathering (location TBD-Lame Deer or
Sheridan)**

- Tour Vehicle Sign-In

*Cathy Nadals (STB)
Rick Starzak (ICF)*

9:00 a.m. – 9:15 a.m.

Welcome

- Opening Prayer
- General Tour Plan

*Tribal Elder
Conrad Fisher (NCT)*

9:15 a.m. – 4:00 p.m.

**Tour of Project Area Pending Weather
Constraints**



Section 106 Meeting for Tongue River Railroad Construction Project



Thursday, April 18

9:00 a.m. – 9:15 a.m.

Welcome

- Opening Prayer
- General Tour Plan

*Tribal Elder
Catherine Nadals*

9:15 a.m. – 10:15 a.m.

Field Work/Methodology

- Result of Background Research
- Proposed Field Studies/Schedule
- Model/Land Access Issues

*Rick Starzak and other
ICF Staff*

10:15 a.m. – 10:30 a.m.

BREAK

10:30 a.m. – 12:00 p.m.

**Continue after
Lunch, as needed**

Open Discussion Regarding Project

Everyone

12:00 p.m. – 1:00 p.m.

Lunch

**End of Meeting
(time to be decided
by all)**

Next Steps

*Cathy Nadals, Conrad
Fisher*

Adjourn

**Surface Transportation Board
Office of Environmental Analysis**

**Draft Preliminary Methodology for the Identification
of Historic Properties under Section 106 of the
National Historic Preservation Act**

**Tongue River Railroad Company's
Proposed Rail Construction and Operation
Custer, Powder River, Rosebud, and Big Horn Counties, Montana
Docket No. FD 30186**

Introduction

The following preliminary draft methodology for identifying historic properties is organized according to the steps and requirements of Section 106 of the National Historic Preservation Act (NHPA), described at 36 CFR Part 800 -- Protection of Historic Properties. All identification work shall be conducted by archaeologists, historians, and architectural historians who meet the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61). Tribal elders and cultural resources experts would be involved in the identification effort when a Tribe attaches religious and cultural significance to cultural features and places that may be affected by the undertaking.

The Surface Transportation Board (Board) received a revised application from the Tongue River Railroad Company (TRRC) on October 16, 2012 for the construction and operation of an approximately 80-mile rail line from Miles City, Montana, to two ending points, one near the site of the previously planned Montco mine near Ashland, Montana, and the other at the proposed Otter Creek mine east of Ashland, Montana. On December 17, 2012, TRRC modified the scope of the proposed project in a supplementary application, which supersedes the October 16, 2012 revised application. As discussed in the supplemental application, TRRC's preferred routing for the proposed line would be the Colstrip Alternative between Colstrip, Montana, and Ashland/Otter Creek, Montana, the southern portion of which was previously approved by the Board's predecessor, the Interstate Commerce Commission (ICC) on March 27, 1986. The purpose of the proposed line is to transport low sulfur, sub-bituminous coal from proposed mine sites in Rosebud and Powder River Counties, Montana.

Step 1: Initiate Section 106 process (§ 800.3)

Time frame: November 2012 - February 2013

§ 800.3(a) Establish undertaking.

The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

The Board is the Federal agency responsible for granting authority for the construction and operation of the proposed rail line by TRRC, and the Board's potential licensing is a Section 106 undertaking. Construction of a rail line has the potential to directly affect historic properties and operation of a rail line has the potential to indirectly affect historic properties. One of the potential alternative routes for the rail line is close to the Northern Cheyenne Indian Reservation, but would not enter the reservation.

§ 800.3(b) Coordinate with other reviews.

The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as [National Environmental Policy Act (NEPA), Native American Graves Protection and Repatriation Act, American Indian Religious Freedom Act, Archaeological Resources Protection Act, and Section 4(f) of the U.S. Department of Transportation (USDOT) regulation]...

The Board's Office of Environmental Analysis (OEA) is coordinating the Section 106 process with the Environmental Impact Statement (EIS) that OEA is preparing under NEPA, and other laws and authorities. OEA sent letters initiating Section 106 during the scoping process for the EIS to the Montana State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), the Northern Cheyenne Tribe, twenty other federally recognized tribes with ancestral ties to the Tongue River Valley, and nine other potential consulting parties including Federal and state agencies, TRRC, and historic preservation organizations.

§ 800.3(c) Identify the appropriate SHPO and/or THPO.

As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer[s]...

The undertaking is located entirely within the State of Montana, therefore the Montana SHPO is the only SHPO involved in the Section 106 process. OEA sent a letter to SHPO initiating Section 106 consultation on October 22, 2012. The undertaking is not located on any tribal lands; therefore, no Tribal Historic Preservation Officer (THPO) has assumed the duties of the SHPO.

§ 800.3(e) Plan to involve the public.

In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

OEA's EIS process includes an extensive public outreach effort. Thus far it has included a series of scoping meetings held in multiple locations in the project vicinity from November 12-16, 2012. These EIS scoping meetings allowed for public comments on many environmental topics, including cultural resources and historic properties. The project website, available to the general public at www.tonguerivereis.com, is updated regularly, and a page devoted entirely to Section

106 is being added to the project website. Other opportunities to involve the public will occur as a result of the research and field investigations planned to identify historic properties.

§ 800.3(f) Identify other consulting parties.

In consultation with the [SHPO], the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the Section 106 process. The agency official may invite others to participate as consulting parties as the Section 106 process moves forward. [Including:]

- local governments
- applicants
- Indian Tribes
- Consider all written requests
- [See also the list of consulting party categories in §800.2(c)]

In December 2012 and January 2013, OEA sent letters regarding the Section 106 process for this undertaking to the Northern Cheyenne Tribe, twenty other federally recognized tribes with ancestral ties to the Tongue River Valley, and nine other potential consulting parties. OEA's third party consultant, ICF International, made follow-up calls to make sure the letters were received. Each letter contained a simple post card that could be returned by the recipient to OEA. This postcard provided room for comments and allowed the recipient to indicate the method by which their agency, tribe, or group chose to consult. These options were presented as follows:

_____ *We have no interests associated with TRRC's proposed rail line and further consultation with our organization is not required.*

_____ *We want to continue to receive project information by mail and participate in the public involvement process.*

_____ *We have an interest in TRRC's proposed rail line and want to participate as a "Consulting Party" in the Section 106 of the NHPA process.*

OEA is continuing to compile responses from the invited consulting parties, and will remain open to consider other parties who have a demonstrated interest in or concern about historic properties that may be affected by the proposed undertaking as the Section 106 process moves forward. OEA has scheduled monthly Section 106 calls, occurring the 2nd Monday of each month, beginning on February 11, 2013.

The initial list of consulting parties and points of contact invited to participate in the Section 106 process include the following:

800.2(a) Other Federal Agencies

Douglas Melton, Archaeologist, Bureau of Land Management
Shannon L. Johnson, Billings Regulatory Office, U.S. Army Corps of Engineers
Erica Jones, Realty Specialist, Agricultural Research Service, U.S. Department of Agriculture
Christine Whitacre, Program Manager, Heritage Partnerships Program, National Park Service

800.2(c)(1) Montana SHPO

Mark Baumler, Ph.D., SHPO
Stan Wilmoth, Ph.D., State Archaeologist

800.2(c)(2) Indian Tribes

Conrad Fisher, THPO, Northern Cheyenne Tribe
Burton Pretty On Top, THPO, Director, Cultural Department, The Crow Tribe of Indians
Clair S. Green, Cultural Resource Manager, Lower Brule Sioux Tribe
Wilmer Mesteth, THPO, Oglala Sioux Tribe
Waste'Win Young, THPO, Standing Rock Sioux Tribe
Steve Vance, THPO, Cheyenne River Sioux Tribe
Lana M. Gravatt, THPO, Yankton Sioux Tribe
Dianne Desrosiers, THPO, Sisseton-Wahpeton Oyate
James B. "JB" Weston, THPO, Flandreau Santee Sioux
Russell Eagle Bear, THPO, Rosebud Sioux Tribe of Indians
Rick Thomas, THPO, Santee Sioux Nation (Santee Sioux Tribe of Nebraska)
Lynette Gray, THPO, Planning & Development, Cheyenne & Arapaho Tribes
Darlene Conrad, THPO, Northern Arapaho Tribe
Wanda Wells, THPO, Crow Creek Sioux Tribe
Leonard Wabasha, Cultural Committee, Shakopee Mdewakanton Sioux
Curley (Darrell) Youpee, Ft. Peck Assiniboine and Sioux Tribes
Elgin Crows Breast, THPO, Three Affiliated Tribes: Mandan, Hidatsa & Arikara Nation
Anthony Morse, THPO, Lower Sioux Indian Community
Marlow LaBatte, THPO, Upper Sioux Community
John Murray, THPO, The Blackfeet Nation
Wilfred Ferris, THPO, Shoshone Tribe of the Wind River Reservation

800.2(c)(3) Representatives of local governments

Lisa Axline, Right-of-Way Specialist, Montana Department of Natural Resources & Conservation
Connie Muggli, Historic Preservation Officer, Miles City Historic Preservation Office

800.2(c)(4) Applicants for Federal assistance, permits, licenses and other approvals

David Coburn, Steptoe & Johnson, representing TRRC
Barbara Ranf, Director, Government Affairs, BNSF Railway

800.2(c)(5) Additional consulting parties

National Trust for Historic Preservation

Betsy Merritt, Deputy General Counsel,
Amy Cole, Regional Attorney/Sr. Program Officer
The Montana Preservation Alliance was added as a consulting party as a result of the first monthly
Section 106 call. The contacts are Chere Jiusto and Jim Jenks.

Step 2: Identification of Historic Properties (§800.4)

Time Frame: November 2012 – November 2013 Publication of draft EIS

§ 800.4(a) Determine scope of identification efforts.

In consultation with the [SHPO], the agency official shall:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

The Area of Potential Effects (APE) will be based on the most current engineering available and will be documented on maps using GIS. The study area for the records search will extend one mile out from both sides of the centerline of each route alternative. The APE will include alternatives that the EIS will consider as part of the final scope.

The SHPO will be consulted on the APE, and the following initial assumptions could change after consultation with the SHPO. The APE should be based on sensitivity levels for three types of potential historic properties:

1. For archaeological sites and objects that may be directly affected by railroad construction, the direct APE is assumed to be limited to 300 feet on both sides of the center line of the proposed alignment, for a total width of 600 feet.
2. For historic buildings, structures and objects that may be directly affected by railroad construction and indirectly affected by railroad operations, the indirect APE will be limited to the railroad right-of-way (ROW) with a 1,500-foot buffer on both sides of the center line of the proposed alignment, as well as temporary construction easements, plus any properties near the ROW that may be sensitive to the introduction of visual, audible, or atmospheric elements resulting from railroad operations.
3. For traditional cultural properties (TCPs), historic districts, and rural historic landscapes whose significant characteristics could be adversely affected by the introduction of a railroad into their setting, the APE could extend much further than 1,500 feet to include the entire historic property.

After the Final Scope of Study is issued, OEA will determine whether Wolf Mountain Battlefield National Historic Landmark (NHL) or Rosebud Battlefield NHL are in the APE and whether specific consultation procedures and requirements are necessary under Section 110 of the NHPA.

§ 800.4(a) Determine scope of identification effort (continued).

In consultation with the [SHPO], the agency official shall:

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

Existing information on historic properties within the study area within one-mile of each alternative will be reviewed, including:

- Inventories of National Register properties maintained by the National Park Service
- Previous OEA Tongue River Railroad surveys for proposed actions
- Records and inventories currently on file at the Montana SHPO
- GIS data on historic properties maintained by the BLM
- Historic contexts prepared by or on behalf of BLM
- Historic contexts prepared by or on behalf of United States Forest Service
- Studies being prepared by the USDA Agricultural Research Station
- Historic contexts and data maintained by the Montana Preservation Alliance
- Records of the Miles City Historic Preservation Office
- Historic maps showing historic battlefields, trails, ranches, and homesteads
- References included in the Bibliography in Attachment A

§ 800.4(a) Determine scope of identification efforts (continued).

In consultation with the [SHPO], the agency official shall:

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties.

OEA will seek information from local property owners, local historians, amateur archaeologists, museums, historical societies, and preservation organizations on resources that may be historic properties. Consulting parties will be asked for recommendations of groups and individuals who may have such information.

OEA will host monthly conference calls to provide the consulting parties with project updates, solicit comments and information, and join in a discussion about Section 106 activities.

- The monthly meetings will be held on the 2nd Monday of each month.
- The first meeting was held on February 11, 2013.

800.4(a) Determine scope of identification efforts (continued).

(4) Gather information from any Indian tribe...identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe...may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

OEA will hold in-person meetings with tribes to discuss information about TCPs, archaeological sites, and other issues.

- On November 16, 2012, a meeting was held with the Northern Cheyenne THPO, where OEA and consulting staff reviewed maps and had preliminary discussions about historic properties.
- The first in-person meeting that will involve multiple Tribes is tentatively scheduled within the period of April 15-19, 2013.

OEA has invited the tribes to participate in the monthly conference calls.

- The monthly meetings will be held on the 2nd Monday of each month.
- The first meeting was held on February 11, 2013.

OEA will contact the tribes to obtain information on archaeological sites, objects and TCPs, and to learn if any tribes have developed a model to predict the areas of sensitivity for encountering sites, artifacts, and TCPs.

THPOs, tribal cultural resources experts, and elders, as appropriate, will be invited to join in field work where property access is granted and where TCPs or important archaeological sites may be located.

Sensitive information shall be held in the strictest confidence, shared only with the SHPO and relevant landowners and shall not be made available to other non-tribal parties or the public.

800.4(b) Identify historic properties.

Based on the information gathered under paragraph (a) of this section, and in consultation with the [SHPO] and any Indian tribe...that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) Level of effort. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey...

Initial letters to property owners to obtain access for field surveys by archaeologists, historians, architectural historians, and tribal representatives were sent out on February 8, 2013. The field survey methodology is dependent on the extent of property access granted. For example, if very

little access is granted, the field survey effort should include pedestrian transect surveys by archaeologists for the entire direct APE on accessible property. If a large number of property owners grant access, however, it would be prudent to develop a predictive model that focuses the survey effort on those areas most likely to contain significant archaeological sites.

In consultation with the SHPO and Tribes, a work plan and scope will be developed for cultural resources surveys and TCP surveys. If SHPO approves development of a model for the undertaking, it will supplement work already begun by the SHPO and the Northern Cheyenne Tribe. Such a model could identify areas of high or moderate sensitivity for the presence of significant archaeological sites and artifacts. OEA proposes that in areas where there is property access, these high and moderate sensitivity areas be surveyed in their entirety for archaeological resources. Depending on consultation with the SHPO and the Tribes, it is proposed that a 10 percent sample of areas predicted to be low sensitivity be surveyed to field check the model. Such a model could also be used to compare alternatives for their potential effect on historic properties at an equivalent level of detail, even if some alternatives have much less accessible property than others.

Attachment B includes some background context about the property types that may be present in the APE, and a summary table that estimates which property type would be affected by each alternative.

Archaeological surveys: OEA proposes to conduct field surveys sometime between May and August 2013 on accessible property in the direct APE for all alternatives out to 300 feet on both sides of the centerline. Field teams for surveys will consist of qualified professional archaeologists and tribal archaeologists.

Historic/architectural surveys: As a result of the November 2012 consultation with the SHPO, BLM, United States Forest Service and the USDA, OEA learned that the Agricultural Research Station, numerous historic homesteads, and historic ranches along the Tongue River, are being considered under historic contexts that others are developing. OEA will need to evaluate those types of properties for National Register eligibility. Qualified architectural historians or historians will conduct field visits on accessible property of the indirect APE (approximately 1,500 feet from both sides of the centerline). These will be done independently of the archaeological surveys, but in the same time-frame, sometime between May and August 2013.

TCP surveys: In the same time frame, May - August 2013, but independent from the archaeological surveys, OEA and ICF Tribal consultation expert and/or an ethnographer, will work with the Northern Cheyenne and other tribes to identify TCPs. The approach to identifying TCPs will be suggested by the tribes, and it is expected to be more direct site-specific than the systematic alternative alignment surveys described above.

800.4(b)(2) Phased identification and evaluation.

Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts....

Where access on properties is restricted, or where archaeological sites require more extensive testing, the identification and evaluation efforts may not be completed during the EIS process. If the Tongue River Railroad project is licensed, the identification and evaluation efforts may be completed when property access becomes granted for the selected alternative. A Section 106 Programmatic Agreement or Memorandum of Agreement would be developed among the SHPO, tribe(s) and appropriate consulting parties, which would stipulate the efforts needed to complete the identification and evaluation effort for the selected alternative, and to avoid, minimize, or mitigate the effects on those historic properties identified.

800.4(c) Evaluate historic significance.

(1) Apply National Register criteria. In consultation with the SHPO...and any Indian tribe...that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility....

The properties identified in the field will be recorded on State of Montana cultural resources information system forms and historic property site forms by archaeologists, architectural historians, and historians who meet the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61). The National Register criteria for eligibility will be applied, and OEA will make determinations of eligibility. A Cultural Resource Inventory Report prepared according to SHPO guidelines at <http://mhs.mt.gov/shpo/archaeology/consultingwith.asp> will be submitted to the SHPO for review and concurrence and to other appropriate consulting parties for review and comment. OEA will take all comments into consideration.

Step 3: Assessment of adverse effects (§ 800.5)

§ 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO...and any Indian tribe ... that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

For properties listed in or determined eligible for listing in the National Register, the Section 106 *Criteria for Adverse Effect* will be applied and submitted to SHPO for review and concurrence and to other appropriate consulting parties for review and comment.

Step 4: Resolution of adverse effects (§ 800.6)

If adverse effects on identified historic properties would occur by construction and operation of the selected alternative, they will be avoided, minimized or mitigated in the EIS through continuing consultation, notification of the ACHP and through a Section 106 Memorandum of Agreement or Programmatic Agreement.