



Catherine Glidden/STB

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To Brenda_Shierts@blm.gov, Alice_Tratabas@blm.gov,
Conrad.Fisher@Cheyennenation.com,
reaglebear@yahoo.com, dyandancer@yahoo.com,
cc rwithrow@louisberger.com, Vicki Rutson/STB@STB

bcc

Subject Re: Meeting Follow-up/Notes: DM&E Project and Site Form
Information Requirements 

Hello Everyone:

Thanks to those of you that attended the August 3rd Meeting in Rapid City. I think the meeting went well and I am pleased that we appear to have come to a consensus about the site form issue as follows:

- STB will add archaeological/descriptive information about new features identified by tribes at stone features sites.
- STB will expand site boundaries to encompass new features identified by tribes.
- STB will state on the site form which tribes visited the site and provided additional information regarding eligibility.
- STB will include updated eligibility determinations for each site based on tribal input.
- STB will withhold information regarding the tribal/spiritual significance of the features from site forms.

I have attached meeting notes below (along with the agenda and timeline again). Please review these carefully and let me know if they do (or don't) characterize what was said. I will need your edits/comments to the notes, if any, by August 21. Also, let me know if you do not agree with the bulleted consensus points above.

Thanks so much for all your hard work and input on this sensitive issue!

Best Regards,

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Agenda.doc Time Line.doc STB Consultation - Rapid City SD - Aug 3 2010 - Meeting Notes.doc

Participants

Richard Currit, WYSHPO
Buck Damone, BLM-Buffalo
Chris Durham, BLM-Buffalo
Russell Eagle Bear, Rosebud Sioux Tribe
Conrad Fisher, Northern Cheyenne Tribe
Cathy Glidden, STB
Lana Gravatt, Yankton Sioux Tribe
Paige Hoskinson-Olson, SDSHPO
Kim Johnson, SDSHPO
Herb Jones, CP/DM&E
Rick Miller, BLM-Newcastle
Ben Rhodd, Rosebud Sioux Tribe contract archaeologist
Alan Stanfill, HDR
Alice Tratebas, BLM-Newcastle
Jim Whitted, Sisseton Wahpeton Oyate
Randy Withrow, LBG

Notes recorded by Withrow and Glidden

Opening prayer offered by Ben Rhodd

Meeting began at approximately 9:20 AM

GLIDDEN: Explained that the purpose of the meeting was to discuss the WY SHPO requirement that STB update site forms for 21 stone features sites located within the Wyoming New Build segment of the DM&E Project with information contributed by tribes and tribal concerns about this requirement. Glidden summarized the series of events that led to the current impasse and referred the participants to a timeline of events beginning with tribal visits to the 21 stone features sites in September 2009 (see timeline attached). She noted, in particular, the concerns that had been expressed to STB by some participating tribes on October 27, 2009 (principally the Rosebud Sioux Tribe and the Sisseton Wahpeton tribes) about the distribution of tribal cultural information, and their concerns that their confidential information not be included on site forms. STB agreed to this requirement, but WY SHPO balked at this.

Glidden requested that the meeting begin by going around the room to each tribal representative first so each could provide his/her opinion on the issue (Mr. Eagle Bear began).

EAGLE BEAR: Stated that he is tired of having to explain information to archaeologists and others. Eagle Bear expressed concern that sharing confidential site information with the WY SHPO could encourage people to visit sacred areas. He said that information that they provided about the stone feature sites was their information and that it was necessary to keep it confidential.

RHODD: Cited similar concerns about the confidentiality of site form information in North Dakota and Colorado. He said that overall, tribes have concerns about site information and tribal knowledge becoming public. He explained that this knowledge belongs to tribes, needs protection and does not belong to others for purposes of research or to further academic careers. He asked, “Who will have access to the information they provide?”; “Who Owns the Past?”; “Who has the right to manage this (our) past?” Finally, he stated that he wants to see resolution regarding the management of these resources.

WHITTED: Cautioned that state laws are not always able to provide adequate security of information such as in North Dakota where all site information is made available to the public. He therefore cautioned about the current scenario whereby confidential tribal information could be released if a similar law was enacted in WY.

FISHER: He wondered why tribes need to provide details about their sites to SHPOs. He said he was not sure if this is even required under state or federal law. Fisher stated that it would be wise to deconstruct the entire issue and look at each layer and then determine how we can best approach the issue.

GRAVATT: She said that tribes have a feeling about the world in terms of “oneness” and that picking apart features and sites negates this concept. She said that in the past, tribes have been taken advantage of and that Yankton is still reeling from past genocides. She said that it is important that tribes have equal standing with regard to ownership or control of information about sites of traditional importance. She suggested only including descriptive information on the site forms along with tribal contact information so that agencies with concerns would know whom to contact for further details or information.

CURRIT: He said rules and regulations need to be followed and that it is hard to assess sites important to tribes within the current regulatory framework. However, the SHPO needs to have STB include appropriate information on its site forms in order to meet its reporting requirements to other agencies like the National Park Service. He said he only needed archaeological/descriptive information regarding each new feature identified by tribes (i.e: size, shape, location). He said that the WYSHPO protects site confidentiality by limiting the use of such information through a password protected database.

When asked by Conrad Fisher what information the SHPO needed from tribes to determine eligibility, Currit stated that “Tribes are considered cultural experts with regard to the eligibility of sites.” Currit also noted that it is a Federal agency responsibility to determine eligibility.

RHODD: Raised concerns about possible changes to federal laws. He asked, “What happens to the information if the laws that currently provide protection are changed?” “How will this information be protected?”

OLSON: Stated that SD law exempts site forms from open records law/requirements. She said that the SD SHPO (like the WY SHPO) would only require descriptive information to be

included on its site forms (for stone features identified in SD). Olson said that (unlike the WY SHPO) the SD SHPO views the decision regarding eligibility of sites under Criterion A (for their tribal value) as a determination made between tribes and the federal agency in question (not the SHPO).

FISHER: Asked Currit where site form requirements come from in the first place. He asked whether this was really a legal requirement under state or federal laws.

CURRIT: He said that the DM&E Project Programmatic Agreement requires that site forms be prepared and updated with new information. He also stated that WY recently updated its site forms in a process that included opportunities for tribes to provide input and comment.

EAGLE BEAR: Wanted to know what issues the WY SHPO has with STB's determination of eligibility for stone feature sites? He said that concerns tribes have about confidentiality is not simply a question of security but about maintaining ownership and control of their knowledge.

WHITTED: Stated that it is difficult to evaluate sites holistically when field surveys (such as those conducted here) are confined to a narrow right-of-way. Whitted cited examples where associations between features covering many hundreds of acres could only be understood within a broad visual context.

CURRIT: Reiterated that tribes are considered cultural experts in interpreting stone feature sites. He said that this information does not need to be included in site forms and SHPO will accept tribes' recommendations on eligibility.

[Tribal representatives exit meeting for break (10:50AM)]

WITHROW: Withrow stated that STB has revised its letter report to comply with SHPO guidelines for survey reports but asked for clarification about a section of the WY site form that calls for a feature inventory and only provides a list of identified features. Withrow asked if it would be acceptable for the STB to simply list the identified features in this section of the site form and provide only basic descriptive information about each one, e.g., "stone ring, 3 meter diameter, etc."

CURRIT: Stated that it would be acceptable to update site forms in the above manner. Currit said he recognized that the tribal visits were not intended to be formal surveys of the 21 stone feature sites (which had already been completed) and did not expect STB to return to gather and include more detailed information for individual features. [Rest of participants exit meeting for break (11:00AM)]

[All participants return to resume discussion. (11:25AM)]

GLIDDEN: Stated that it appeared consensus regarding the site form issue could be resolved with an agreement that site forms for stone features sites would be updated as follows:

- STB will add archaeological/descriptive information about new features identified by tribes at stone features sites.
- STB will expand site boundaries to encompass new features identified by tribes.
- STB will state on the site form which tribes visited the site and provided additional information regarding eligibility.
- STB will include updated eligibility determinations for each site based on tribal input.
- STB will withhold information regarding the tribal/spiritual significance of the features from site forms.

The group nodded in agreement to the above.

CURRIT: Stated that STB should include all information required for determination of eligibility in its reformatted DOE report (for the stone feature sites) including findings of effect. Currit said he would return all the confidential tribal reports previously sent to him by the STB.

TRATEBAS: Federal agencies can exempt site information from Freedom of Information Act requests; requested that STB share the site information it has received from tribes with the BLM.

FISHER: Tribes would not mind meeting directly with BLM to discuss some of these issues.

[general discussion among tribal representatives and BLM representatives regarding potential meeting arrangements].

GLIDDEN: STB will be returning supporting information to tribes.

STANFILL: When will this information be returned?

JONES: Recommended that STB retain this information until decisions regarding effect and treatment have been made.

GLIDDEN: Said that we could decide this later on.

GRAVATT: Will there be tribal monitors during construction?

JONES: Yes, this is provided for in the PA.

RHODD: Emphasized the importance of having tribal monitors during construction; cited unresolved issues concerning the potential for buried sites and inadvertent discoveries during construction. He said that there are many terrace formations in the New Build Section that could contain buried sites.

GLIDDEN: Asked for additional comment (none provided) and thanked everyone for their participation.

Closing prayer by Russell Eagle Bear

Meeting adjourned at noon.