



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

ED-1506

KB

Office of Environmental Analysis

September 16, 2010

Ms. Valerie Hauser
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 803
Washington, DC 20004

**SUBJECT: Finance Docket 30186 (Sub-No. 3), Tongue River Railroad Company, Inc. –
Construction and Operation of the Western Alignment; Extension of
Expiration Date for Programmatic Agreement**

Dear Ms. Hauser,

I am writing to inform you that the Programmatic Agreement (PA) referenced above will expire on November 1, 2010. I am initiating consultation on the PA with the intention of extending the terms of the PA for an additional ten years, or until November 1, 2020.

The Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) prepared the attached PA for the Tongue River Railroad Company's (TRRC) application to construct and operate a rail line in southeastern Montana, known as Tongue River III. The PA was prepared in consultation with the PA signatory and concurring parties. For reasons explained below, no work has been undertaken yet in implementation of the PA. The PA is scheduled to expire on Nov. 1, 2010, after a term of five years from its date of execution. OEA recommends that we extend the terms of the PA for an additional ten year period ending November 1, 2020.

The Board's final decision granting TRRC authority to construct the rail line was issued on October 9, 2007. There have been numerous legal proceedings at the Board as a result of petitions for reconsideration filed by several parties following the Board's October 2007 final decision. Final briefs in the judicial review proceedings are due in December 2010. None of the issues currently being litigated involve historic preservation.

While the legal proceedings have been ongoing, TRRC has been working with interested parties to further develop plans for financing and construction of the rail line. TRRC has also been engaged in discussions with the Montana Department of Fish Wildlife and Parks (MFWP) to complete work on an easement that will allow TRRC access to MFWP property at the Miles City Fish Hatchery. Those discussions are continuing.

On March 18, 2010, the Montana Land Board approved leases of certain state-owned properties that contain coal that might be transported by the TRRC rail line. TRRC anticipates

that it will be moving forward with land procurement and surveying work in the next several years so that the railroad will be in place once mining commences.

Attached is OEA's recommended Amendment to the PA which addresses the expiration of the PA. Execution of the Amendment will indicate that signatories agree that the PA will remain in effect for an additional ten year period to ensure completion of all tasks and products required under its terms. This package is being sent to all signatory and concurring parties to the PA, including the Northern Cheyenne Tribe, the Crow Tribe, and the Northern Plains Resource Council.

Please feel free to contact me at (202) 245-0305 or blodgettk@stb.dot.gov with any questions or concerns you may have about the Amendment. Written correspondence can be addressed to:

Surface Transportation Board
Office of Environmental Analysis
395 E Street, SW
Washington, DC 20423
Attn: Kenneth Blodgett

I will be contacting you shortly to confirm your receipt of this package and to address the next steps in the execution of the PA Amendment. Thank you in advance for your assistance. I look forward to working with you on extending the PA.

Sincerely,

A handwritten signature in black ink that reads "Ken H. Blodgett". The signature is written in a cursive, slightly stylized font.

Kenneth H. Blodgett
Environmental Protection Specialist

**Extension of the Programmatic Agreement Regarding
Construction and Operation by the Tongue River Railroad
Company of a Rail Line From Miles City to Decker in Custer,
Rosebud, Powder River and Big Horn Counties, Montana
STB Finance Docket No. 30186 (Sub-No. 3)**

WHEREAS, the Programmatic Agreement (PA) regarding the Tongue River Railroad construction and operation, STB Finance Docket No. 30186 (Sub-No. 3), was executed on November 1, 2005; and

WHEREAS, the PA is scheduled to expire on November 1, 2010, after a term of five years from its date of execution; and

WHEREAS, the signatories to the PA desire to extend its terms for an additional ten year period ending November 1, 2020;

NOW, THEREFORE, the Signatories to the PA agree that the PA will remain in effect for the additional ten year period to ensure completion of all tasks and products required under its terms, provided that any Signatory may exercise his or her right to amend or terminate it in accordance with Stipulations XV and XVI of the PA.

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____

MONTANA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____

U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

By: _____ Date: _____

U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE

By: _____ Date: _____

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: _____ Date: _____

TONGUE RIVER RAILROAD COMPANY, INC.

By: _____ Date: _____

Concurrence:

NORTHERN CHEYENNE TRIBE

By: _____ Date: _____

CROW TRIBE

By: _____ Date: _____

NORTHERN PLAINS RESOURCE COUNCIL

By: _____ Date: _____

**PROGRAMMATIC AGREEMENT AMONG
THE SURFACE TRANSPORTATION BOARD,
THE MONTANA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, U.S. ARMY CORPS OF
ENGINEERS, THE U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND
MANAGEMENT, THE U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL
RESEARCH SERVICE, THE MONTANA DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION, AND THE TONGUE RIVER RAILROAD COMPANY, INC.
REGARDING CONSTRUCTION AND OPERATION
BY THE TONGUE RIVER RAILROAD COMPANY, OF A RAIL LINE
FROM MILES CITY TO DECKER IN CUSTER,
ROSEBUD, POWDER RIVER AND BIGHORN COUNTIES, MONTANA**

WHEREAS, the Surface Transportation Board (Board),¹ the lead Federal agency, has determined that construction and operation of a rail line by the Tongue River Railroad Company, Inc. (TRRC, Inc.) from Miles City to Decker in Custer, Rosebud, Powder River and Bighorn Counties, Montana (Finance Docket No, 30186) may have an effect upon historic properties included on or eligible for inclusion on the National Register of Historic Places (National Register), and has consulted with the Montana State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (Council), the U.S. Army Corps of Engineers (COE), the U.S. Department of the Interior Bureau of Land Management (BLM), the U.S. Department of Agriculture Agricultural Research Service (ARS), the Montana Department of Natural Resources and Conservation (MT DNRC), and the TRRC, Inc. pursuant to Section 800.14 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (NHPA), 16. U.S.C. 470f; and,

WHEREAS, the Northern Cheyenne and Crow tribes, and the Northern Plains Resource Council have been invited to participate in development of, and concur in, this Agreement; and,

WHEREAS, the Board has contacted the Arapaho Business Council, Oglala Sioux Tribal Council, Shoshone Business Council and Standing Rock Sioux Tribal Council and invited them to concur in this Agreement and each tribe has either not responded to Board's invitation or decided not to participate in the development of, or concur in, this Agreement; and,

WHEREAS, this Agreement embraces and replaces all earlier proposed agreements in this rail line construction and operation proceeding; and,

WHEREAS, the definitions of 36 CFR Part 800, and those attached in Appendix 1 are applicable through this Programmatic Agreement as well as any subsequent attachments to the PA; and

¹ The Surface Transportation Board (Board) was created with the passage of the Interstate Commerce Commission Termination Act of 1995 (Pub. L. No. 104-88). The Board, an independent body within the U.S. Department of Transportation, is responsible for administering rail, pipeline, and certain adjudicatory functions involving motor and water carriers. These responsibilities are similar to those duties formerly administered by the Interstate Commerce Commission. The Board is the lead agency under NEPA for the Tongue River Railroad Project.

WHEREAS, the consulting parties to this agreement have considered the applicable requirements of NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq. (AIRFA), the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. (NAGPRA), Executive Order 13007 – Indian Sacred Sites, and the Archaeological Resources Protection Act of 1979 (ARPA) in the course of consultation; and,

WHEREAS, a Class I Inventory² has been conducted for a 1500 foot area on either side of the proposed centerline and the reports on the results of the Class I Inventory have been provided to the Board through submission of various documents by TRRC, Inc., and,

WHEREAS, the Board has provided the relevant Class I Inventory documents to the signatory and concurring parties.

NOW, THEREFORE, the Board, SHPO, the Council, BLM, COE, ARS, MT DNRC, TRRC, Inc., Northern Cheyenne and Crow tribes agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties and to satisfy the Section 106 NHPA responsibilities for the project.

STIPULATIONS

The Board has a statutory obligation as the lead Federal agency to fulfill the requirements of Section 106, therefore the Board shall ensure that the measures in the following parts are carried out.

I. Identification Plan

a. The Identification Plan (ID Plan), Attachment A to this PA, describes the Area of Potential Effect (APE), the methodology for the location, inventory, identification, recording, and evaluation of all historic properties that have surface and exposed profile indications along the approved alignment for construction. The ID Plan involves two steps: 1) Updating the Class I Inventory and conducting a windshield survey of the approved rail alignment to identify

² The Class I inventory has been published by the Board in the following documents: The draft and final Environmental Impact Statements (EIS) for Tongue River I, (Tongue River Railroad Company Rail Construction and Operation In Custer, Powder River and Rosebud Counties, Montana, Finance Docket No. 30186 (Miles City to Ashland) (not printed) (served Sept. 4, 1985), modified, (not printed) (served May 9, 1986)), the draft EIS for Tongue River II (Tongue River Railroad Company Rail Construction and Operation Of An Additional Line from Ashland to Decker, Montana, Finance Docket No. 30186 (Sub. No. 2) (not printed) (served Nov. 8, 1996)), the Environmental Report submitted with the application for the Western Alignment (Tongue River Railroad Company Rail Construction and Operation Western Alignment In Rosebud and Big Horn Counties, Montana, Finance Docket No. 30186 (Sub. No. 3)), Analysis of Potential Changed Circumstances Related to the Environment and Proposed Action Along Original 89 Miles of the Tongue River Railroad Approved in 1989: 1985 to 1998 and Analysis of Potential Changed Circumstances Related to the Environment and Proposed Action along the Northern 21 Miles of the Proposed Tongue River Railroad Extension: 1996 to 1998, Exhibits 2 and 1 respectively to the Reply of Tongue River Railroad Company to Comments on the Scope of the Supplement to the Final EIS, Finance Docket No. 30186 (Sub. No. 3) (filed with the Board Sept. 8, 1998); and the draft Supplement to the Final EIS, (Tongue River Railroad Company Rail Construction and Operation Western Alignment In Rosebud and Big Horn Counties, Montana (Finance Docket No. 30186 (Sub. No. 3))).

previously recorded sites; and 2) a Class III Inventory for identification and evaluation of cultural resources. This second step will be performed for the entire rail alignment; however, it may be performed on portions of the rail line, such that once TRRC, Inc. has access to a portion of the rail line, the intensive survey for that portion can be completed.

b. The Signatories and Concurring Parties to this Agreement consent that historic properties will be identified in accordance with the ID Plan which was developed for this project in coordination with the Federal agencies, SHPO, and consulting tribes.

c. Prior to construction TRRC, Inc. will retain a Cultural Resource Use Permittee who has or will obtain a BLM-approved permit, or any other state or federal agency permits necessary to conduct the inventories required to prepare the Identification Plan, (hereafter Permittee) and who meets the professional qualifications standards provided in the Secretary of the Interiors Standards and Guidelines for Archaeology and Historic Preservation, 48 FR 44716-44742 and 48 CFR 44720-44723. Permittee will comply with the conditions of the Cultural Resource Use Permit. The Permittee will conduct surveys, identifications and evaluations and prepare Identification Reports in accordance with the attached ID Plan.

d. Representatives of the Northern Cheyenne and Crow tribes (The tribes) will be invited by the Board to participate in the inventories (Class I and Class III) to help identify, document, and evaluate properties to which they attach traditional religious and cultural significance within the APE. Traditional religious and cultural significance will include all aspects of significance as outlined in National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties (National Park Service 1990) and those identified by the tribe or other groups. Each tribe will designate a representative(s), to accompany the cultural resources inventory crew. In addition, during the Class III Inventory, the Tribal representative(s) will be invited by the Board to work with the Permittee to identify and compile a list of traditionally-important plants that occur in the APE as well as the gathering sites and access points for these plants. The tribes may require the assistance of a Tribal cultural expert(s) to participate in the inventories and evaluations required under this PA. If so, the tribes shall identify to the Board the Tribal cultural expert(s) that will be assisting the tribes so that appropriate documents can be provided to the Tribal cultural expert(s). TRRC, Inc. shall provide reasonable financial reimbursement for professional services³ provided by the designated Tribal cultural expert(s).

e. The Board shall review each report prepared pursuant to the ID Plan and provide copies to the signatory and concurring parties to this Agreement for their review and comment within 15 calendar days of receipt from the Permittee.

1. The signatory and concurring parties will have 15 calendar days after receipt to notify the Board in writing if information is missing from the report and recommendations.

³ Reasonable financial reimbursement shall include payment for professional services (based on an agreed upon hourly rate), travel and miscellaneous expenses incurred by the Tribal cultural expert(s) during participate in the inventories and evaluations required under this PA.

2. The Board will then have five calendar days to supply the missing information or to determine that such information is not necessary to complete National Register evaluation and effect determinations
3. The Board shall require the return of comments within 45 calendar days of receipt of the additional information or the determination that additional information is not required.
4. If no additional information is requested, the parties have 60 calendar days from the receipt of the initial report to submit comments. A copy of the comments sent to the Board should be sent simultaneously to the SHPO.

In consultation with the SHPO and federally-designated tribes that attach traditional religious and cultural significance to identified historic properties, the Board shall seek to reach concurrence on the National Register eligibility of all historic properties identified in the project area within 45 calendar days of receipt of comments. The Board will finalize determinations of eligibility in a manner consistent with 36 CFR Part 800.4(c) and pertinent guidelines of the National Park Service, Council, and SHPO. Once the Board has finalized its determinations of eligibility, it shall then consult with SHPO regarding the effects of the undertaking on any properties determined eligible for listing in the National Register, pursuant to 36 CFR Part 800.5(a), within 40 calendar days of receipt of comments. The Board, in consultation with the SHPO, shall direct the Permittee to make any required revisions to the reports prepared pursuant to the ID Plan.

f. Within 15 calendar days of its receipt of a final report prepared pursuant to the ID Plan from the Permittee, the Board may approve the final report, send a copy of the final report to the signatory and concurring parties to this Agreement, or require additional changes as necessary to ensure acceptability of the report.

II. Consultation on Treatment (to prepare a Treatment Plan)

a. The Board, in consultation with the SHPO, shall consult with the signatory and concurring parties to this Agreement to develop measures that avoid minimize or mitigate adverse effects identified in Stipulation I.e, in a Treatment Plan. The Board shall invite representative(s) of the Arapaho and Sioux, as well as any other tribe that has expressed interest in participating in the inventory process, to meet with the Board, the Permittee, and Cheyenne and Crow tribal representative(s) who participated in the inventory to discuss the inventory results and define how properties of traditional religious and cultural significance can most respectfully be managed as part of the Treatment Plan. If requested by the SHPO, this consultation will include a meeting with SHPO representatives, the managing Federal agency (for sites on Federal land), and others the SHPO may deem appropriate, to further review the framework for how treatment plans will be developed, and to review opportunities and alternatives that could avoid or minimize adverse effects to a historic property, group of closely related historic properties, or category of historic properties. The Board shall notify parties of the proposed treatment options within 45 calendar days of the date of a final ID Report.

b. Nothing in this Agreement shall preclude any signatory or concurring party from consulting with any other signatory or concurring party, or with any other person or entity, during any period of consultation specified in this Agreement or at any other time.

c. Copies of all reports and notices distributed by the Board to signatory and concurring parties under the terms of this Agreement shall in all cases be transmitted by overnight courier, U.S. Express Mail or more expeditious means which provides for verification of delivery.

III. Treatment Plan (for Eligible Resources--Native American and Non-Native American)

a. The Board will ensure that the Permittee prepares, and TRRC, Inc. implements, a Treatment Plan(s) that will address the adverse effects of the proposed undertaking on historic properties. More than one Treatment Plan may be prepared for the railroad. A Treatment Plan may be prepared for a portion of the line provided that the ID Report for that portion has been completed and approved in accordance with Stipulation I. The Treatment Plan shall be amended, if necessary, after the finalization of any supplemental Identification Report(s) (hereafter "Treatment Plan Amendment"). The plan shall (1) identify all eligible historic properties in the APE or portion thereof, (2) identify the nature of the effects to which each property will be subjected, and (3) identify the treatment strategies proposed to avoid, minimize or mitigate the effects of the undertaking. To the extent practicable, the Treatment Plan(s) will incorporate measures identified by tribal representatives as necessary for mitigation of adverse effects to properties that are determined to be significant for their traditional cultural values and protection of and continuing access to the gathering sites and access points of traditionally-important plants. If appropriate, TRRC, Inc. may attempt to negotiate access to public or private lands that are not currently accessible. The Treatment Plan(s) will conform to the principles of the Council's Treatment of Archaeological Properties: A Handbook, Parts I and II, the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation" (Federal Register, Vol. 48 No. 190, September 29, 1983, pp. 44716-44742) and appropriate SHPO guidelines.

b. Whenever possible, in-place preservation shall be the preferred alternative. In consultation with the signatory and concurring parties to this Agreement, TRRC, Inc. shall develop specific procedures to preserve historic properties in-place. These procedures may include minor changes to the rail alignment or construction methods, to the extent feasible, to avoid or reduce impacts, and/or monitoring of historic properties by historians, archaeologists and tribal representatives during construction.

c. Where avoidance is not feasible and data recovery is determined by the Board in consultation with the signatories and concurring parties to this Agreement to be the most prudent and feasible treatment option, the research design proposed in the Treatment Plan(s) shall specify, at a minimum:

1. the historic properties to be affected and the nature of those effects;
2. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;

3. The data needed to address specific research questions, the likelihood that this data can be recovered and how the data will be analyzed;
4. the fieldwork and analytical strategies to be employed, with an explanation of their relevance to the research question;
5. proposed methods of dealing with individual discovery situations;
6. methods to be used in data management and dissemination of data, including a schedule;
7. how findings will be presented to support the research design;
8. the proposed repatriation of recovered materials and records including the disposition of Native American sacred items, human remains and funerary items;
9. proposed methods for disseminating results of the work to the public;
10. proposed methods by which tribal representatives will be kept informed of the work and afforded an opportunity to participate; and
11. a proposed schedule for the submission of progress reports to the Board; and,
12. proposed approach for the disposition and curation of data and materials (other than Native American items, human remains and funerary items as discussed under item 8 above) upon completion of data collection.

d. The data recovery plan shall be incorporated as part of the Treatment Plan(s) and shall be consistent with the Secretary's Standards for Archaeological Documentation (48 FR 44734-37) and take into account the Council's publication, Treatment of Archaeological Properties: A Handbook (Advisory Council on Historic Preservation 1980), subject to any pertinent revisions the Council may make in the publication prior to completion of the data recovery plan, and SHPO guidance. Permittee shall obtain all necessary cultural resource permits for data recovery including an excavation permit from BLM for any data recovery on BLM land, appropriate ARS permits for any recovery on ARS lands and appropriate State permits for any recovery on State lands.

IV. Review of Treatment Plan

a. Within 15 calendar days of receipt from the Permittee, the Board will submit the Treatment Plan(s) to the signatory and concurring parties to this Agreement for concurrent review. Within 15 calendar days of its receipt a signatory or concurring party must notify the Board in writing of any deficiencies in the Treatment Plan. The Board then has 10 calendar days to provide the additional information or to determine that such information is not required. The signatory or concurring parties then have 45 calendar days from the receipt of the complete information or the determination that additional information is not required to comment on the Treatment Plan. If no additional information is requested, the parties have 60 calendar days from receipt of the initial plan to submit comments. A

copy of any comments sent to the Board shall be sent simultaneously to the SHPO. If any party fails to submit their comments within 45 calendar days of the receipt of the complete information or 60 calendar days of receipt of the initial plan if it is complete, the Board shall assume that party's concurrence with the Treatment Plan. Based on the comments received during this review, the Board will direct Permittee to make any required revisions within 45 calendar days of the receipt of comments. The final decision on the acceptability of the Treatment Plan will be made by the Board, in consultation with the SHPO within 45 calendar days of receipt of the comments. A copy of the final Treatment Plan will be provided by the Board to the signatories and concurring parties to this Agreement within 15 calendar days of receipt from the Permittee.

V. Review of Data Recovery Reports

a. Reports resulting from the implementation of data recovery in accord with Stipulation III.c, will be submitted by the Permittee to the Board for review. Within 15 calendar days of receipt of the draft report(s), the Board shall provide a copy(s) to the signatory and concurring parties to this Agreement for their review and comment. Within 15 calendar days of its receipt a signatory or concurring party must notify the Board in writing of any deficiencies in the Data Recovery Report. The Board then has 10 calendar days to provide the additional information or to determine that such information is not required. The signatory or concurring parties then have 45 calendar days from the receipt of the complete information or the determination that additional information is not required to comment on the data recovery report. If no additional information is requested, the parties shall have 60 calendar days from receipt of the report to submit comments. A copy of any comments shall be sent simultaneously to the SHPO.

b. Comments will be incorporated, as appropriate into the final report(s) prepared by the Permittee at the direction of the Board in consultation with the SHPO. The final report(s) shall be prepared within 45 calendar days of receipt of comments. Permittee will ensure that reports are responsive to contemporary professional standards, and to the Secretary's Standards for Archaeological Documentation (48 FR 44734-37) as well as the requirements of Section 110(f) of the National Historic Preservation Act where appropriate. A copy of all final reports will be provided by the Board to the signatories and concurring parties to this Agreement within 15 calendar days of receipt from Permittee.

VI. Construction

a. Once the Board has agreed in consultation with the signatories and concurring parties to this agreement on the adequacy of the ID Report(s) as defined in the ID Plan, the Board will allow TRRC, Inc. to begin construction in those portions of the rail line which do not contain National Register eligible historic properties within the Class I and Class III Inventory survey areas provided that such construction will not preclude consideration of the full range of treatment options (including avoidance) of historic properties situated in any adjacent portion of the ROW. Where eligible historic properties are present within the Class I and Class III Inventory survey areas, the Board will allow construction to proceed once the agreed upon data recovery fieldwork/treatment as specified in the Treatment Plan is completed and approved by the Board with the concurrence of the SHPO for that area. Where eligible historic properties are present on BLM, ARS or State Lands, the

Board will allow construction to proceed in that area only after the agreed upon data recovery fieldwork/treatment is completed and approved by the BLM with respect to BLM-administered lands, by ARS with respect to ARS lands and by MT DNRC with respect to State lands, in addition to the Board approval with the concurrence of the SHPO.

b. TRRC, Inc. will notify the Board when data recovery fieldwork/treatment is completed for an area. Within 45 calendar days of notification, the Board, and the BLM if data recovery occurs on BLM-administered lands, ARS if data recovery occurs on ARS-administered land or the MT DNRC if data recovery occurs on State Lands, will inspect the site. Upon the Board and SHPO's concurrence and, if appropriate, BLM's, ARS's or MT DNRC's concurrence, that the data recovery fieldwork/treatment has been satisfactorily completed, the Board will allow construction to proceed in that area prior to the completion of the data recovery report. The data recovery report will be prepared in accordance with Stipulation V. Alternatively, issuance of a final data recovery report pursuant to Stipulation V will be considered approval of the data recovery fieldwork/treatment.

VII. Changes in the ROW/Other Ancillary Areas

a. If changes are made to the alignment after a ID Report(s) is completed that place the alignment, staging areas, work camps, unimproved construction access routes, or other ancillary areas related to the undertaking outside of the areas previously surveyed, then the Board shall direct the Permittee to conduct at Class III inventory of the area(s) not previously surveyed and prepare a supplemental ID Report prior to construction of the previously unsurveyed area. The Board will review the supplemental ID Report including the recommendations of eligibility and findings of effects and distribute it to the signatory and concurring parties to this Agreement within 10 calendar days of the receipt of the supplemental ID Report. The Board shall require the return of comments within 30 calendar days. A copy of any comments should be sent simultaneously to the SHPO. In consultation with the SHPO and any tribe that attaches traditional religious and cultural significance to the property, the Board shall seek to reach concurrence on all site eligibility recommendations in the supplemental ID Report within 30 calendar days of receipt of comments. The Board, in consultation with the SHPO, will finalize determinations of eligibility pursuant to the criteria in Stipulation I.e. within 45 calendar days of receipt of comments. In addition, the Board, in consultation with the SHPO, shall assess the effects of the undertaking as described in Stipulation I.e. within 45 calendar days of the receipt of comments. The Board, in consultation with the SHPO, shall direct the Permittee to make any required revisions to the supplemental ID Report.

b. A copy of the final supplemental ID Report will be provided by the Board to the signatory and concurring parties to this Agreement within 10 calendar days of receipt from the Permittee.

c. The Board, in consultation with SHPO, shall consult with the signatory and concurring parties to this Agreement to avoid, minimize, or mitigate any adverse effects identified in Stipulation VII.a. above in a Treatment Plan Amendment. The Board shall invite representatives of the Arapaho, Sioux, and any other tribes that have expressed an interest in the inventories, to meet with the Board, Permittee and the Northern Cheyenne and Crow tribal representative(s) who participated in the inventory, to discuss how any historic properties of traditional religious and cultural significance could most respectfully be managed as part of the undertaking. The Board shall notify parties of the

proposed treatment options within 45 calendar days of the final supplemental Class III Inventory Report.

d. The Board will ensure that Permittee prepares and TRRC, Inc. implements a Treatment Plan Amendment that will address the adverse effects of the proposed undertaking on historic properties and that balances the concerns of the parties to this Agreement. Such amendment shall (1) identify all eligible historic properties in the APE not previously identified, (2) identify the nature of the effects to which each property identified in the Treatment Plan Amendment will be subjected, and (3) identify the treatment strategies proposed to avoid, minimize or mitigate the effects of the undertaking. The Treatment Plan Amendment shall comply with the provisions in Stipulation III. To the extent practicable, the Treatment Plan Amendment will incorporate measures identified by Native American representatives as necessary for mitigation of adverse effects to properties that are determined to be significant for their traditional cultural values.

e. Within 10 calendar days of receipt of the Treatment Plan Amendment from Permittee, the Board will distribute copies of it to the signatory and concurring parties to this Agreement for a 30 calendar-day comment period. A copy of any comments sent to the Board should be sent simultaneously to SHPO. Within 10 calendar days of the conclusion of the comment period, the Board will direct the Permittee to make any required changes. The final decision on the acceptability of the Treatment Plan Amendment will be made by the Board in consultation with SHPO within 30 calendar days of receipt of comments. A copy of the final Treatment Plan Amendment will be provided by the Board to the signatory and concurring parties to this agreement within 10 calendar days of receipt from the Permittee.

f. The final amendment will be incorporated in the Treatment Plan.

g. Activities undertaken pursuant to this Stipulation VII shall not impact the ability of TRRC, Inc. to construct in any areas other than the areas not previously surveyed as described in Stipulation VII.a. Construction may not begin in the areas described in Stipulation VII.a. until the Board, in consultation with the signatory and concurring parties of this Agreement, determines that the supplemental ID Report described in Stipulation VII.a. is adequate, at which time construction may begin in those areas described in Stipulation VII.a. that have been subjected to a Class III Inventory and do not contain eligible historic properties. Where eligible historic properties are present in those areas described in Stipulation VII.a, TRRC, Inc. will notify the Board when data recovery fieldwork/treatment is completed for an area. Within 45 calendar days of notification, the Board, and the BLM if data recovery occurs on BLM-administered lands, ARS if data recovery occurs on ARS-administered land, or the MT DNRC if data recovery occurs on Montana lands, will inspect the site. Upon the Board and SHPO's concurrence and, if appropriate, the BLM's, ARS's or MT DNRC's concurrence, that the data recovery fieldwork/treatment has been satisfactorily completed, the Board will allow construction to proceed in that area prior to the completion of the data recovery report. The data recovery report will be prepared in accordance with Stipulation V. Alternatively, issuance of a final data recovery report pursuant to Stipulation V will be considered approval of the data recovery fieldwork/treatment.

VIII. Discovery

a. A Discovery Plan for previously unencountered sites will be appended to the Treatment Plan. If a previously undiscovered historic property is encountered during construction, or previously known properties will be affected in an unanticipated manner, all work will cease within 200 feet in all directions until the Board can evaluate and, if necessary, authorize steps to mitigate impacts to the new discovery. Evaluation and mitigation will be carried out in consultation with the signatory and concurring parties to this Agreement as expeditiously as possible in accordance with 36 CFR § 800.13(a)(1).

b. If historic properties are encountered on Federal or State lands, the BLM, ARS or MT DNRC, depending on the agency that controls the land, will be consulted to develop appropriate mitigation measures. TRRC, Inc. will provide the construction contractor with written notification of the proper protocol for discovery of previously unencountered sites.

IX. Human Remains

a. If human remains and funerary objects, sacred objects, or items of cultural patrimony associated with human remains are encountered on Federal lands, the Board or the appropriate Federal land management agency shall consult with the appropriate tribe(s), or other appropriate culturally affiliated groups to determine treatment and disposition measures consistent with applicable Federal laws (such as NAGPRA and NHPA). If human remains and funerary objects, sacred objects, or items of cultural patrimony associated with human remains are encountered on State lands, the Board will consult with tribes, the SHPO and MT DNRC as to appropriate treatment measures in accordance with Section 106 of NHPA and the Montana Human Skeletal Remains and Burial Site Protection Act (M.C.A.22-3-801 through 811. If human remains and funerary objects, sacred objects, or items of cultural patrimony associated with human remains are encountered on private lands, the Board will ensure that they are also treated in accordance with applicable State and Federal law and the provisions of M.C.A. 22-3-801 through 811.

b. TRRC, Inc. will make every effort to avoid disturbing known human burial sites. Where avoidance is not possible, burials will be removed prior to construction and treated in accordance with procedures established by applicable Federal and state law and, culturally affiliated tribes, and in accordance with procedures identified in the Treatment Plan.

c. In the case of inadvertent discovery of human remains during construction activities, the Board will attempt to identify the appropriate Native American tribe(s) or other ethnic group(s) affiliated with the burial, and consult with them over the treatment of remains in accordance with procedures identified in the ID Plan and the Treatment Plan. All work will cease within 200 feet in all directions of the human remains until the requirements of Federal and state laws are satisfied. TRRC, Inc. will provide the construction contractor with written notification of the proper protocol for discovery of human remains, funerary objects, sacred objects or objects of cultural patrimony.

X. Curation

a. The Board shall ensure curation of all records and other items resulting from identification and data recovery efforts is completed in accordance with 36 CFR Part 79, Curation of Federally Owned and Administered Archaeological Collections, and the provisions of NAGPRA. Documentation of the curation of these materials shall be prepared by Permittee and submitted to the Board. The Board shall provide copies of the documentation to the signatory and concurring parties to this Agreement within 15 calendar days of receipt from Permittee. All archaeological materials recovered from BLM lands shall be curated in accordance with BLM requirements at BLM's Billings Curation Center. All archeological materials recovered from ARS lands shall be curated in accordance with 36 CFR Part 79.

b. The Board will encourage private land owners to donate collections from their lands to an appropriate facility meeting the requirements of the Department of the Interior's Manual 411 on curation.⁴ Permittee will provide private landowners with a list of all collected artifact finds from their lands. Materials from private lands to be returned to the private land owners shall be maintained in accordance with 36 CFR Part 79 until any specified analysis is complete. Documentation of the return of these materials to the private land owner shall be prepared by Permittee and submitted to the Board. The Board shall provide copies of the documentation to the signatory and concurring parties of this agreement within 15 calendar days of receipt from Permittee.

c. The Board will ensure through consultation with the MT DNRC that all cultural and paleontologic materials discovered on State lands will be curated in accordance with the Montana State Antiquities Act, M.C.A. 22-3-432.

XI. Dispute Resolution

a. Should any party to this Agreement object within 30 calendar days to any actions pursuant to this Agreement, the Board shall consult with the objecting party to resolve the objection. If the Board determines that the objection(s) cannot be resolved, the Board shall forward all documentation relevant to the dispute to the Council, unless the dispute involves site eligibility. Any unresolved issue regarding site eligibility shall be sent by the Board to the Keeper of the National Register.

b. For disputes not involving site eligibility the Council will, within 30 calendar days of receipt of all pertinent documentation, either:

1. provide the Board with recommendations, which the Board will take into account in reaching a final decision regarding the dispute; or
2. notify the Board that it will comment pursuant to 36 CFR Part 800.7(c)(1) through 36 CFR Part 800.7(c)(4), and proceed to comment.

⁴ Stipulation X. b. addresses the curation of cultural resources encountered during construction of the Tongue River Railroad on land owned by private party(ies) other than the Tongue River Railroad Company. Materials found on land owned by the Tongue River Railroad Company will be donated to an appropriate facility meeting the requirements of the Department of the Interior's Manual 411 on curation.

Should the Council not exercise one of the above options within 30 calendar days after receipt of all pertinent documentation the Board may assume the Council's concurrence with the Board's proposed response to the dispute.

Any Council comment provided in response to such a request will be taken into account by the Board in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of dispute.

c. For disputes regarding site eligibility the Board will send all pertinent documentation to the Keeper of the National Register to make a determination on issues regarding site eligibility.

d. Any recommendation or comment provided by the Council or the Keeper of the National Register will be understood to pertain only to the subject of the dispute; and no additional work shall occur which could affect the historic property(s) under dispute until resolution of said dispute. The Board's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

e. Should any member of the public with a demonstrated interest in the project or Federally recognized tribal member raise a timely and substantive objection pertaining to the manner in which the terms of this Agreement are carried out, at any time during its implementation, the Board shall take the objection into account by consulting with the objector to resolve the objection. When the Board responds to an objection, it shall notify the parties to this Agreement of the objection and the manner in which it was resolved. The Board may request assistance of the Council to resolve objections

XII. Public Participation

The Board will ensure that an active public participation program be carried out. Modified version of reports required under this Agreement (locational information removed), will be made available for review to the general public on the Boards website at www.stb.dot.gov. The views of the parties to this Agreement, interested parties, and the general public will be considered by the Board with respect to the terms of this Agreement.

Consistent with Section 304 of the National Historic Preservation Act of 1966, as amended, Executive Order 13007, and ARPA, the parties to this Agreement will withhold from disclosure to the public, information about the location, character, or ownership of a historic property or if it is determined that disclosure may (1) cause a significant invasion of privacy, (2) risk harm to a historic property, or (3) impede the use of a traditional religious site by practitioners.

XIII. Final Report

Within six(6) months of completing construction of the rail line a Final Report shall be prepared and submitted to the Board who will provide copies to the signatory and concurring parties to this Agreement. The Final Report shall include all Class I, windshield, and Class III inventory reports, treatment plans, and data recovery reports for the project. The report shall also include information

about treatment and disposition of any human remains and funerary objects, sacred objects, or items of cultural patrimony associated with human remains encountered during construction.

XIV. Effective Date

This Agreement shall become effective when executed by the authorized representatives of each party and implementation of the Agreement may begin.

XV. Amendments

Any party to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800 to consider such amendment.

XVI. Termination

Any signatory party to this Agreement may terminate it by providing thirty (30) calendar days notice, in writing, to the other parties, provided that the parties will consult during the period prior to termination to seek agreement or amendments or other action that would avoid termination. In the event of a termination, the Board will comply with 36 CFR Part 800.4 through 800.6 with regard to this undertaking.

XVII. Duration

This Agreement shall remain in effect for five (5) years after its execution by the signatories, at which time the Board will notify the parties within three months of its impending expiration and request to extend it for a specific time period. All signatories must respond affirmatively prior to the expiration date for the Agreement to remain in effect.

Execution and implementation of this Programmatic Agreement evidences that the Board has afforded the Council a reasonable opportunity to comment on the construction of the Tongue River Railroad.

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____

MONTANA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____

U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

By: _____ Date: _____

U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE

By: _____ Date: _____

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: _____ Date: _____

TONGUE RIVER RAILROAD COMPANY, INC.

By: _____ Date: _____

Concurrence:

NORTHERN CHEYENNE TRIBE

By: _____ Date: _____

CROW TRIBE

By: _____ Date: _____

NORTHERN PLAINS RESOURCE COUNCIL

By: _____ Date: _____

Execution and implementation of this Programmatic Agreement evidences that the Board has afforded the Council a reasonable opportunity to comment on the construction of the Tongue River Railroad.

SURFACE TRANSPORTATION BOARD

By: Victoria J. Rutson

Date: Oct. 6, 2005

Victoria J. Rutson

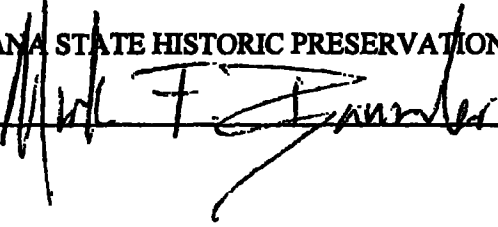
Chief

Section of Environmental Analysis

Execution and implementation of this Programmatic Agreement evidences that the Board has afforded the Council a reasonable opportunity to comment on the construction of the Tongue River Railroad.

MONTANA STATE HISTORIC PRESERVATION OFFICER

By: _____



Date: _____

8/31/2005

Execution and implementation of this Programmatic Agreement evidences that the Board has afforded the Council a reasonable opportunity to comment on the construction of the Tongue River Railroad.

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____

MONTANA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *Executive Director* _____ Date: *11/1/05*

U.S. ARMY CORPS OF ENGINEERS

By: *[Signature]* _____ Date: *29 Sep 05*

U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

By: _____ Date: _____

U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE

By: _____ Date: _____

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: _____ Date: _____

TONGUE RIVER RAILROAD COMPANY, INC.

By: _____ Date: _____

Consentance:

NORTHERN CHEYENNE TRIBE

By: _____ Date: _____

CROW TRIBE

By: _____ Date: _____

NORTHERN PLAINS RESOURCE COUNCIL

By: _____ Date: _____

Execution and implementation of this Programmatic Agreement evidences that the Board has afforded the Council a reasonable opportunity to comment on the construction of the Tongue River Railroad.

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____

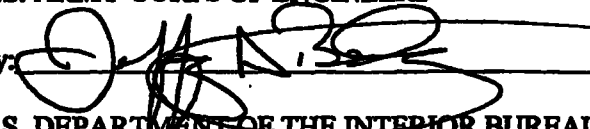
MONTANA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

U.S. ARMY CORPS OF ENGINEERS

By:  _____ Date: 29 Sep 05

U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

By: _____ Date: _____

U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE

By: _____ Date: _____

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: _____ Date: _____

TONGUE RIVER RAILROAD COMPANY, INC.

By: _____ Date: _____

Concurrence:

NORTHERN CHEYENNE TRIBE

By: _____ Date: _____

CROW TRIBE

By: _____ Date: _____

NORTHERN PLAINS RESOURCE COUNCIL

By: _____ Date: _____

Execution and implementation of this Programmatic Agreement evidences that the Board has afforded the Council a reasonable opportunity to comment on the construction of the Tongue River Railroad.

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____

MONTANA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____

U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

By: David M. Shroy Date: 10/3/05

U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE

By: _____ Date: _____

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: _____ Date: _____

TONGUE RIVER RAILROAD COMPANY, INC.

By: _____ Date: _____

Concurrence:

NORTHERN CHEYENNE TRIBE

By: _____ Date: _____

CROW TRIBE

By: _____ Date: _____

NORTHERN PLAINS RESOURCE COUNCIL

By: _____ Date: _____

Execution and implementation of this Programmatic Agreement evidences that the Board has afforded the Council a reasonable opportunity to comment on the construction of the Tongue River Railroad.

U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE

By: W. H. Blahm Date: 19 Sept 2005

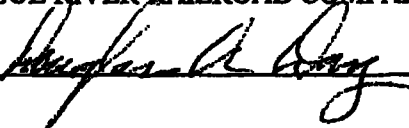
Execution and implementation of this Programmatic Agreement evidences that the Board has afforded the Council a reasonable opportunity to comment on the construction of the Tongue River Railroad.

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: Mary [Signature] Date: 9/15/05

Execution and implementation of this Programmatic Agreement evidences that the Board has afforded the Council a reasonable opportunity to comment on the construction of the Tongue River Railroad.

TONGUE RIVER RAILROAD COMPANY, INC.

By:  Date: 9-7-05

Appendix 1

Definitions

Class I Inventory

A Class I Inventory is a professionally prepared study of existing cultural resource data from published and unpublished documents, BLM cultural resource inventory records, institutional site files, State and National registers, informant interviews and other information sources. The purpose of the Class I Inventory is to obtain sufficient information about the prehistoric and historic properties, cultural landscapes, and properties of traditional cultural value to determine if these properties may be affected by the undertaking.

Windshield Survey

Windshield survey involves review of a project area by qualified cultural resource specialists from publicly accessible roads. The focus of the survey is to identify potential visual, audible, and atmospheric effects, as well as other indirect effects on standing structures, cultural landscapes and properties of traditional cultural value that may be affected by the undertaking outside the APE.

Class III Inventory

A Class III Inventory is a professionally conducted intensive survey of an entire target area (except for any subareas determined very unlikely to contain discoverable cultural properties such as developed and previously disturbed areas) aimed at locating and recording all cultural properties that have surface and exposed profile indications, through systematic inspection commonly carried out by a professional archaeologists walking a series of close-interval parallel transects until the area has been thoroughly examined. The Class III survey will be conducted using transects no more than 30 meters apart. If necessary, test excavations will be conducted to locate and record cultural resources.

The Class III Inventory also will be conducted on any staging areas, work camps, unimproved construction access routes, and other ancillary areas related to the undertaking. Ancillary areas include all contractor supplied construction materials (e.g. gravel, ballast, fill borrow, etc.) that would result in ground disturbance that have not otherwise been surveyed and permitted separately (e.g. commercial sources of ballast or gravel).

Reconnaissance Survey

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.

Attachment A

July, 2005 Identification Plan for the Tongue River Railroad Project

Surface Transportation Board Finance Docket No. 30186 (Sub-No. 3)

1. PURPOSE

This Identification Plan (ID Plan) has been developed by the Surface Transportation Board (Board) as part of the Section 106 Programmatic Agreement (PA) for the Tongue River Railroad Project, Finance Docket No. 30186 (Sub-No. 3). The ID Plan outlines the process for the identification and evaluation of historic properties for the project and describes: 1) the safety measures to be followed in compliance with the ID Plan; 2) the project's area(s) of potential effect (APE(s)); 3) the cultural resources studies required to identify, record, and evaluate historic properties located within the APE(s); 4) the minimum standards required for the cultural resource investigations; and 5) tribal and consulting party involvement.

The ID Plan has been developed in accordance with the stipulations outlined in the PA for this project, Section 106 of the National Historic Preservation Act (NHPA), Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, other applicable Federal laws that consider impacts to historic properties for Federal undertakings, and the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (Standards and Guidelines)* (48 FR 44716-44742).

2. SAFETY

All contractors and sub-contractors shall adhere to Occupational, Safety, and Health Administration (OSHA) standards while conducting related activities covered in the PA and ID Plan. Such personnel shall also follow the Bureau of Land Management (BLM) and Tongue River Railroad Company, Inc. (TRRC, Inc.) safety rules when conducting activities on lands under management or jurisdiction of these parties.

3. AREA OF POTENTIAL EFFECT (APE)

The APE for the project will include:

1. The construction right-of-way (ROW) to include a twenty-foot buffer on either side of the fenced construction ROW along the entire route (ground disturbance area).
2. All lateral areas, borrow areas, haul roads (new or upgraded), staging areas, and other ancillary areas related to the undertaking.

3. That area outside the construction or ground disturbance ROW where there is the potential for the undertaking to have an adverse effect on historic properties, as defined in 36 CFR 800.5. Identification of these areas will include consultation with the SHPO, THPO/cultural resource representatives designated by the tribes, TRRC, Inc., other identified consulting parties, and Federal agencies.

4.0 IDENTIFICATION AND EVALUATION

Class I and Windshield Survey

The Class I Inventory, previously conducted for this project and described in the PA, shall be updated for an area 1,500 feet on either side of the centerline of the approval rail alignment.¹ The Class I Inventory is a professionally prepared study of existing cultural resource data from published and unpublished documents, 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 Class I Inventory is 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 to determine if these properties are eligible for the National Register and may be affected by the undertaking. The Class I Inventory also assists in determining the potential for previously unidentified historic properties to be located within the project area. The update will include, as needed, a reevaluation of the National Register eligibility of previously identified historic properties.

In addition, a windshield survey shall be conducted from publicly accessible roads of a one-mile wide corridor centered on the approved railroad alignment. The windshield survey involves review of a project area by qualified cultural resource specialists from publicly accessible roads. The focus of the survey is to identify potential visual, audible, and atmospheric effects, as well as other indirect effects on National Register eligible or listed historic properties including standing structures, buildings, districts, sites, cultural landscapes and properties of religious and cultural significance that may be affected by the undertaking.

The results of the Class I Inventory and windshield survey are intended to help guide the more detailed Class III Inventory(s). The results of the Class I Inventory and windshield survey shall be and included in a combined report.

¹ The BLM Miles City Office will be conducting a Landscape Level Overview of the High Potential Coalbed Methane Area in the later part of 2005 which will serve as a historic context and research direction document. This overview will overlap with the Tongue River Railroad project area. Additionally the BLM Miles City Office in cooperation with the Ashland Ranger District, Custer National Forest, Gnomon Inc, and Western GeoArch Research have applied for a grant to conduct predictive modeling in the Tongue River and Powder River drainages. This will include a geo-archaeological study similar to the one required by this ID plan and should cover the Tongue River Railroad project area. If possible SEAs/permittees will coordinate with the BLM to incorporate information from these studies into the ID plan to avoid duplication of effort.

Class III Inventory

The Class III Inventory will be performed for the entire alignment; however, the Class III Inventory may be performed for a portion of the alignment, such that once TRRC, Inc. has access to a portion of the alignment TRRC, Inc. may direct the Cultural Resource Use Permittee (Permittee)² to perform a Class III Inventory for that portion and prepare the Class III Inventory Report for that portion. TRRC, Inc. will provide the signatory and concurring parties to the PA with a map of the area to be inventoried prior to performing each Class III Inventory.

The Class III 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. An intensive pedestrian survey of the construction ROW using transect no more than 30 meters apart. If necessary, test excavation will be conducted to locate, record and evaluate the National Register eligibility of any identified historic properties. Test excavation 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 religious and cultural significance to tribes. If, in the opinion of the Permittee and the cultural resource representative designated by the tribes, an historic property is eligible for the National Register as a traditional cultural property³, sufficient information to formulate Treatment Plan(s) shall be obtained.
4. 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.
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 CFR 800.5, on historic properties. A reconnaissance survey is an on the ground or pedestrian examination of all

² See PA Stipulation Lc. which describes the necessary qualification for the Cultural Resource Use Permittee.

³ See National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties.

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 SHPO, THPO/cultural resource representative designated by the tribes, TRRC, Inc. other identified consulting parties, and Federal agencies.

Any areas not originally identified within the APE, but potentially affected by the undertaking, must be identified by the Board in consultation with the SHPO, THPO/cultural resource representative designated by the tribes, TRRC, Inc. other identified consulting parties, and Federal agencies. The Board will consult with the SHPO, THPO/cultural resource representative designated by the tribes, TRRC, Inc. other identified consulting parties (as defined in 36 CFR 800.2(c)), and Federal agencies to address their concerns.

5. STANDARDS AND QUALIFICATIONS

The Class I and III Inventories shall be conducted consistent with the *Standards and Guidelines*, applicable Federal laws, and guidelines of the MT SHPO. In addition, the professionals that will conducting cultural resources studies described for the Tongue River Railroad Project shall meet the *Secretary of the Interior's Professional Qualifications and Standards (Professional Qualifications and Standards)* (48 FR 22716, September 1983). All National Register findings shall be made pursuant to 36 CFR 800, 36 CFR 60.4, National Park Service Bulletin 38.

If unanticipated discoveries of cultural resources are found during implementation of the undertaking, the Board shall satisfy the requirements of Section 106 in accordance with 36 CFR 800.13.

6. REPORTS

All reports prepared pursuant to this ID Plan should follow the outline below to address the specific requirements of the survey conducted. Class III Inventory Reports should provide information for future research and National Register recommendations for those historic properties identified as National Register eligible. Class III Inventory Reports must provide explanations of potential effects on historic properties and comply with 36 CFR 800.5.

The reporting of results and discussions of the cultural resources investigations shall be organized in a logical sequence. In tables, site numbers shall be organized in sequence. A detailed outline of the required elements for the reports is contained as follows:

PART 1

Cover

Must include report title, date of report, project number(s), authors, organizations or who prepared the report.

Cover Page

Must include authors, report title, date of report, lead agency, preparer's organization, type of report (Class I/Windshield Survey, Class III Inventory), survey methods (transects in meters), county(s), USGS quad(s), landowner(s), legal description (reference to project maps may be appropriate), acreage (Federal, non-federal, block and linear with total), file search date(s), field personnel, and a site summary table.

Abstract

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List of Tables

Appendix(s)

1. Introduction

Project Description (include appropriate permit and agency file numbers)
Personnel (their roles and duties on the project)
Report Format (what is in each chapter of the report and who wrote or contributed to each chapter)

2. Environmental Overview

Topography
Geology
Drainages
Flora
Fauna
Climate
Paleoenvironment

3. Culture History

Paleoindian (includes a discussion of pre-Clovis)
Archaic etc. (varies widely along the project)
Woodland and Plains (Plains Indian)
Village
Contact Period (Protohistoric)

Historic

4. Research Design and Materials

Archaeological Site Definition

Prehistoric Archaeological Research Orientation

Prehistoric Archaeological Research Questions

Historic Archaeological Research Orientation

Historic Archaeological Research Questions

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Previous Investigations

Field Survey

Methods

Expected site types/locations

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Methods

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Methods

Chipped-stone Technological and Functional Analysis

Methods

Historic Artifact Collection and Analysis

Methods

Curation

Methods

Facilities/Disposition

References

Appendix(s)

(Geomorphological Report)

Detailed Project Location Maps

and

Ethnographic Reports for all Traditional Cultural Properties that may be eligible for the National Register (if required to justify recommendations)

5. Results of Investigation

(A detailed discussion of each site that will include, as a minimum, the following information)

Site type, component, USGS 7.5 minute quadrangle, site area, topography, elevation, soil type, nearest water, survey method, site condition, site description, artifact descriptions and disposition, interpretation, and recommendation.

Legal and UTM locations will be confidential and only included in a removable appendix.

6. **Research Findings (answer research questions presented in Chapter 4)**

Prehistoric Context

Site distribution relative to environmental variables potential for unanticipated discovery

Site density

Site function

Temporal and cultural affiliation

Historic Context

Site distribution relative to environmental variables potential for unanticipated discovery

Site density

Site function

Temporal and cultural affiliation

7. **Conclusions and Recommendations (appropriate text but also include tables to explain the recommendations)**

Conclusions

Prehistoric Sites

Historic Sites

Recommendation (eligibility recommendations)

Prehistoric Sites

Site Specific/Avoidance/Mitigation/Other Historic Sites

Site Specific/Avoidance/Mitigation/Other

8. **References**

9. **Appendix(s)**

(Geomorphology report)

(Ethnographic)

(Site forms)

(Maps)

(Correspondence)

(American Indian coordination and consultation documentation and description)

(American Indian monitor reports)

(Other ancillary studies for example: radiocarbon, AMS, faunal analysis, phytolith analysis, pollen analysis, etc)

7. FIELDWORK – Survey Methods for Subsurface Investigations

Subsurface testing should be conducted in accordance with the Guidelines and Procedures for Cultural Resource Review and Consultation under the National Historic Preservation Act and Montana State Antiquities Act, Montana State Historic Preservation Office, Planning Bulletin No. 21.

(<http://www.his.state.mt.us/shpo/archaeology/consultingwith.asp>)

- **Shovel Testing and Augering**

Shovel testing and augering will be required if the surface visibility is less than 50% in the opinion of the project archaeologist/principle investigator, or if the terrain warrants the shovel tests. Tests will be approximately 30x30 centimeters to minimum depth of 50 centimeters or until sterile subsoil, or bedrock, or water is encountered. Tests will be spaced no further than 30 meters apart or closer if required by the SHPO. Shovel tests or augering will not be done if, in the project archaeologist's justifiable judgment (such as steep terrain or rocky or other etc.) they are unnecessary.

Regardless of surface visibility, shovel test or augering will be conducted and documented on each identified site or isolated find site. If a shovel test or augering is not conducted, justification for not conducting the test will be noted in field notes, site form or report. Deviation from the above policies must be justified.

- **1 x 1 meter or 50 x 50 cm Test Units**

If in the opinion of the project archaeologist/principle investigator 1 x 1 meter test units are necessary, the test unit will be excavated in arbitrary 10 centimeter levels, unless cultural material is encountered, to a depth of 50 centimeter or 20 centimeters below the last level of cultural material. Augering shall be conducted in the center of the 1 x 1 meter unit to a depth of 1 meter.

- **Backhoe Excavation**

Heavy equipment such as a backhoe may be necessary for the identification of a buried historic resource. In this event, a backhoe equipped with a 3 foot bucket shall be used for excavation to 1.5 meters. Excavated materials shall be randomly screened using ¼ inch screen.

- **Collection**

All subsurface artifacts will be collected and properly labeled in the field. Surface collection of sites not within the ground disturbance area is not required. All obsidian artifacts shall be collected.

- **Curation**

The Board shall ensure curation of all records and other items resulting from identification and data recovery efforts is completed in accordance with 36 CFR Part 79, Curation of Federally Owned and Administered Archaeological Collections, and the provisions of NAGPRA. Documentation of the curation of these materials shall be prepared by Permittee and submitted to the Board. The Board shall provide copies of the documentation to the signatory and concurring parties to this Agreement within 15 calendar days of receipt from Permittee. All archaeological materials recovered from BLM lands shall be curated in accordance with BLM requirements at BLM's Billings Curation Center. All archeological materials recovered from ARS lands shall be curated in accordance with 36 CFR Part 79.

The Board will encourage private land owners to donate collections from their lands to an appropriate facility meeting the requirements of the Department of the Interior's Manual 411 on curation. Permittee will provide private landowners with a list of all collected artifact finds from their lands. Materials from private lands to be returned to the private land owners shall be maintained in accordance with 36 CFR Part 79 until any specified analysis is complete. Documentation of the return of these materials to the private land owner shall be prepared by Permittee and submitted to the Board. The Board shall provide copies of the documentation to the signatory and concurring parties of this agreement within 15 calendar days of receipt from Permittee.

The Board will ensure through consultation with the MT DNRC that all cultural and paleontologic materials discovered on State lands will be curated in accordance with the Montana State Antiquities Act, M.C.A. 22-3-432.

- **Human Remains**

If human remains and funerary objects, sacred objects, or items of cultural patrimony associated with human remains are encountered on Federal lands, the Board or the appropriate Federal land management agency shall consult with the appropriate Tribe(s), or other appropriate culturally affiliated groups to determine treatment and disposition measures consistent with applicable Federal laws (such as NAGPRA and NHPA). If human remains and funerary objects, sacred objects, or items of cultural

patrimony associated with human remains are encountered on State lands, the Board will consult with tribes, the SHPO and MT DNRC as to appropriate treatment measures in accordance with Section 106 of NHPA and the Montana Human Skeletal Remains and Burial Site Protection Act (M.C.A.22-3-801 through 811. If human remains and funerary objects, sacred objects, or items of cultural patrimony associated with human remains are encountered on private lands, the Board will ensure that they are also treated in accordance with applicable State and Federal law and the provisions of M.C.A. 22-3-801 through 811.

TRRC, Inc. will make every effort to avoid disturbing known human burial sites. Where avoidance is not possible, burials will be removed prior to construction and treated in accordance with procedures established by applicable Federal and state law and, culturally affiliated tribes, and in accordance with procedures identified in the Treatment Plan.

In the case of inadvertent discovery of human remains during construction activities, the Board will attempt to identify the appropriate Native American Tribe(s) or other ethnic group(s) affiliated with the burial, and consult with them over the treatment of remains in accordance with procedures identified in the ID Plan and the Treatment Plan. All work will cease within 200 feet in all directions of the human remains until the requirements of Federal and state laws are satisfied. TRRC, Inc. will provide the construction contractor with written notification of the proper protocol for discovery of human remains, funerary objects, sacred objects or objects of cultural patrimony.

- **Evaluation Testing**

Sufficient subsurface testing, as determined by the Board, the Permittee, the SHPO, the BLM if BLM administered lands, the ARS if ARS administered lands or MT DNRC if state lands, and the Native American monitor on those sites suspected to be NRHP eligible, will be conducted to allow the Permittee to develop Treatment Plans or other alternatives to address any adverse effects.

- **Minimum Field Recordation Standard**

1. **Prehistoric and Historic Sites**

The appropriate site forms will be completed while on site (if possible). A sketch map and field notes (field notes should be kept by each crew member), and photographs of the site will be required. A description of the artifacts and features observed on each site shall be included in the field notes. The site will be noted on a 7.5 minute USGS quad.

All photographs will be keyed in the corresponding roll and frame number and identified as such on a photo log. The photo log will also include the site number or temporary site number, time of day, weather conditions at the time of the photograph, what was photographed, and the direction the photographer was facing. The ASA setting and the type of film (color or B&W) shall also be noted (Once the film is developed this information will be on the individual photograph along with the state-assigned site number). Upon completion of the project and acceptance of the Final Cultural Resources Report all photographs and negatives shall be shipped to the appropriate curation facility.

2. Standing Structures (including buildings, bridges, and other structures)

The appropriate site forms will be completed while on site. The field notes will include the address or location, the present condition and integrity of the property; a description of the prominent architectural/engineering features with emphasis on the primary facade; a documented or estimated date of original construction; identification of obvious alterations/additions; and a designation of style or vernacular type, when applicable. A 3 1/2-inch by 5-inch black and white photograph of each property will be taken using 35mm format. Each photograph will be keyed with the corresponding roll and frame number and identified as such on individual photographs (see photo log instructions above). Original negatives and contact sheets will be included with the final report (Structures should be evaluated in the field by a qualified architectural historian). Upon completion of the project and acceptance of the Final Cultural Resources report all photographs and negatives shall be shipped to the appropriate curation facility.

CONFIDENTIALITY

All Signatories and Invited Signatories shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the NHPA, as amended and Section 9 of the ARPA and Executive Order on Sacred Sites 13007 FR 61-104 dated May 24, 1996.
