



Catherine Glidden/STB

05/21/2010 01:32 PM

To "Herb Jones" <hjones@cedaramerican.com>

cc "Stanfill, Alan" <Alan.Stanfill@hdrinc.com>, "Madson, Michael J." <Michael.Madson@hdrinc.com>, "Withrow, Randy" <rwithrow@louisberger.com>, Vicki

bcc

Subject RE: Next Steps - Buried Sites Proposal

Herb -

Thanks for providing your detailed response to my email. And thanks for clarifying DM&E's stance on the various issues related to the buried sites proposal.

I would like to reiterate that the critical next step here would be for you to provide us with the engineering data for the vertical APE. As noted in STB's procedural clarification statement presented at the December 2008 meeting, the STB supports the notion that the placement of fill above unidentified buried archaeological sites would not constitute an adverse effect *"pending an engineering analysis of the potential effects associated with soil compaction."* As before, we are awaiting your submission of this engineering data prior to excluding testing in fill areas and prior to determining our next steps on this issue.

Your other concerns (regarding eligibility and tribal input) would naturally be addressed following your submission of the engineering data. Once we have this information in hand, we can then determine whether any testing in fill areas is necessary. The decision to exclude fill areas from testing would be dependent on the depth of the vertical APE. If it turns out that the APE is very shallow (as you suggest), then a decision could be made to exclude these areas altogether (regardless of the potential eligibility of sites). Therefore, the eligibility question may not even come into play if it is determined that the vertical APE is so shallow that any reasonable impacts would be unlikely (regardless of site type). We would then take this argument through to its logical course.

I am not aware of any specific source material that is available at the STB regarding the impact of compaction. For other projects of this type, we would naturally follow the existing ACHP regulations and guidelines, as we have done here.

-Cathy

"Herb Jones" <hjones@cedaramerican.com> wrote on 05/18/2010 06:21:28 PM:

> Cathy--
>

> I hope the following sufficiently outlines our current thinking on
> the issues you raised in the attached email and those discussed at
> the last meeting in Rapid City. If you need anything else from me,
> let me know.
>
> Since the April meeting, we've begun our efforts to address the
> various requests made and are beginning to see the need to better
> understand where the process will take us. This will help to ensure
> the work is done properly and, hopefully, avoid the need to keep
> going back once decisions are made about processes. I don't think
> anyone can fault us for presenting a deeply buried plan that is
> entirely consistent with the outline laid out in at the December
> 2008 meeting in Sioux Falls where both DM&E's and STB's presentation
> of protocols called only for testing in cut areas. We all understood
> that Mr. Currit was not in concurrence with ACHP guidance, but we
> also understood that STB was prepared to support ACHP's stated
> position. That alone explains why there was no analysis conducted
> on, or testing called for in, fill zones.
>
> We have found that the effort to analyze fill areas is more involved
> than anticipated. There are about 116 miles of New Build to be
> addressed which would result in approximately 40 additional maps
> comparable to those already provided for cut areas. The designation
> of high/medium/low sensitivity areas would require the
> geomorphologist to review all the soils maps, assess landforms, and
> apply his experience to generate the sensitivity designations based
> in part on professional intuition and informed expectations. This
> can't be accomplished by in-house personnel or by LBG with the same
> consistency or comparability as the information provided in existing
> cut maps. Consequently, a new contract would be needed to acquire
> the necessary information from the geomorphologist, adding an
> unexpected expense to a very tight budget.
>
> As stated above, the suggestion that these maps should be produced
> for fill areas was not consistent with the direction and
> expectations we arrived at prior to preparing the proposal. Both
> the STB's and DM&E's draft protocols presented to the SHPOs and
> Forest Service on Dec 2, 2008, clearly excluded testing in fill
> areas for this proposal. These protocols were based, in part, on
> ACHP guidance which recognizes that precluding access to sites below
> the vertical APE is not an adverse effect (ACHP guidance point #40).
> In addition, ACHP guidance also says that once the vertical APE is
> determined the agency is not obligated to identify sites below that
> depth and suggests that doing so is not consistent with its
> regulations (ACHP guidance point #40).
>
> We have not decided to scrap production of the maps, but before
> committing the time and investment needed to generate them, we need
> to know whether this effort is justified. We think it makes sense
> to resolve two issues before proceeding with the maps.
>
> 1) It sounded like there may be a difference of opinion between
> STB and Wyoming SHPO regarding the eligibility status of stone
> feature sites that might qualify under criteria other than D.
> Specifically, we would like to know for certain whether stone
> feature sites qualify under Criterion A as STB asserts, but for
> which it sounded as though no consensus has been reached with SHPO.
> If they do not qualify under criterion A, then presumably, STB will
> assert that such sites are subject to the ACHP's guidance regarding
> identification of buried of sites that qualify under criterion D-

> meaning that there is no need to identify such deeply buried sites.
>
> If they do qualify under criterion A, then STB must determine if a
> different protocol should apply than ACHP's guidance regarding
> identification of sites that qualify under criterion D, since that
> guidance says no testing is necessary for Criterion D sites below
> the APE. For that reason, we request that the report regarding the
> 21 stone feature sites visited with the tribes last year in Wyoming
> be completed and submitted to the WY SHPO for consensus
> determinations of eligibility to resolve this issue.
>
> 2) If, based on the report's review, buried, unknown, and
> previously unrecorded stone feature sites in fill areas are presumed
> to qualify under criterion A because of their associations with
> tribal traditions and belief systems, then we would request that the
> tribes be consulted before fill area maps are generated to ascertain
> whether the tribes support the excavation effort that would be
> needed to identify, expose, and record such sites in fill areas.
>
> Thus far, the tribes have been asked to comment only on our
> proposal, which excludes fill areas from deep testing efforts to
> identify such sites. We believe it is important to determine
> whether the tribes would support testing in fill areas to identify
> such sites and subject them to the evaluations, scrutiny, and
> potential physical damage that this effort might entail, or whether
> the tribes would prefer that such buried sites be left undisturbed
> and unidentified under a layer of fill and the engineered elements
> of the rail bed. If they would prefer the latter, then a proposal
> to conduct deep testing to identify buried sites in fill areas may
> be viewed as offensive and inappropriate to the tribes.
>
> This is a case where the testing itself may be more damaging to
> sites than project construction.
>
> We are generating the requested information from our engineers
> regarding the vertical APE. Does STB have data or source materials
> derived from previous railroad construction permitted projects that
> would bear on this issue beyond the research we have presented? Has
> STB applied ACHP guidance and assessed the vertical APE in cut and
> fill areas of previously permitted railroad construction projects?
> In addition to any additional information you may have to offer in
> response to those questions, we will incorporate the engineering
> analysis derived through our efforts with appropriate citations in
> the proposal as documentation of the vertical APE.
>
> Let me know if I've missed something or if you need more.
> Herb M. Jones
> (605) 782-1223
> From: Catherine.Glidden@stb.dot.gov [mailto:Catherine.Glidden@stb.dot.gov]
> Sent: Monday, May 17, 2010 9:33 AM
> To: Stanfill, Alan
> Cc: Herb Jones; Madson, Michael J.; Withrow, Randy
> Subject: Next Steps - Buried Sites Proposal

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> Alan or Herb,
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> Could you clarify DM&E's current plan for moving forward with the
> Buried Sites Proposal?
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> For instance, is it your current decision to scrap completing the
> maps that were promised at the Rapid City Meeting? What about
> providing us with an engineering analysis per the compaction issue
> and your 8 inch vertical APE? I have discussed what I know of your
> plan with Vicki, but we need some kind
> of formal statement from you regarding your next steps so that we
> can then provide you with our formal response.
>
> We would be willing to support DM&E regarding the vertical APE and
> the no adverse effects determination for compaction below that area
> as long as we have some kind of sound engineering data pursuant to
> the reference in the ACHP Guidance on this issue. I think that we
> would need a suitable series of references from actual engineers at
> DM&E to support the contention that only 8 inches would be affected
> within fill areas. The engineering analysis is critical because if there
is
> ACHP involvement, and there will be, we would need to have something
> verifiable to support our argument. I don't think that your
> research alone is going to be enough (as presented at the Rapid meeting).
>
> If DM&E does not have engineers currently on board to supply this
> information, perhaps someone at Berger could do this. However, they
> would need the soils maps, GPS data, engineering plans etc. from
> you. Once the appropriate data sets are assembled, I would add this
> to the current proposal. We would then send it on to the SHPOs for review.
>
> At any rate, let me know how you intend to proceed.
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> -Cathy
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