



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

April 25, 2014

Charlene Dwin Vaughn, AICP
Assistant Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 803
Washington, DC 20004

RE: Docket No. FD 30186, Tongue River Railroad Company, Inc.—Rail Construction and Operation—in Custer, Powder River and Rosebud Counties, Montana:
Notification of Decision to Prepare a Programmatic Agreement

Dear Ms. Vaughn:

The purpose of this letter is to notify you that the Surface Transportation Board's (STB or Board) will prepare a Programmatic Agreement (PA) for the proposed Tongue River Railroad Company's (TRRC) proposed rail line construction and operation. As we wrote in our December 10, 2013 Section 106 initiation letter to you, the Board is the federal agency responsible for granting authority for the construction and operation of the proposed rail line by TRRC. The undertaking here would be the Board's approval of the construction and operation of a specific rail alignment. The Board's Office of Environmental Analysis (OEA) is preparing the appropriate documentation for compliance with Section 106 of the National Historic Preservation Act and the National Environmental Policy Act (NEPA).

As you know, the Section 106 regulations of NHPA at 36 CFR § 800.14(b)(1)(ii), state that a PA may be developed "when effects on historic properties cannot be fully determined prior to approval of an undertaking." Such is the case here. The proposed project consists of five alternatives and two variations that encompass approximately 240 unique linear miles and 11,975 unique acres of possible railroad rights-of-way. Landowners have granted the Board limited access (at the time of this letter, slightly less than 50%) to the land area under consideration. Moreover, while the proposed rights-of-way are generally known, the exact alignments have been neither engineered nor defined with enough certainty to establish which historic properties would be affected by each alternative under consideration. For these reasons, and those set forth in the Justification document (enclosed), we have concluded that preparation of a PA done in consultation with the Section 106 consulting parties is the appropriate next step. Below, I have summarized our outreach efforts and pledge to you that we will continue working closely with our consultation partners in developing the PA.

As described in detail on pages 1 through 3 of the attached letter to SHPO, OEA has been conducting extensive outreach to obtain the views of consulting parties and the public. OEA has been holding monthly calls with consulting parties since February 2013. OEA also created a historic preservation page on the Tongue River Project website accessible to consulting parties and members of the public (http://www.tonguerivereis.com/sect_106.html). The website includes

pertinent Section 106 correspondence, documents, and project maps. In addition to the above, OEA held two well-attended consulting party meetings. The first meeting was held on the Northern Cheyenne Reservation in Lame Deer, Montana, April 16 to 18, 2013; the second was in Billings, Montana, February 13 to 14, 2014. All meeting transcripts and monthly call summaries are posted on the project website. Some of our consulting parties have suggested that we begin work on a PA for the TRRC Project and we are following their suggestions.

We look forward to our continued positive consultations with your office regarding the TRRC project. Our Section 106 process, and particularly our outreach with consulting parties, has benefited greatly by your expert guidance and involvement. If you have any questions or comments, please feel free to contact either myself or Cathy Nadals of my staff at 202-245-0293 (Catherine.Nadals@stb.dot.gov). Please also feel free to contact Rick Starzak with ICF International (our third party contractor) at 213-312-1751 (richard.starzak@icfi.com).

Sincerely,

Victoria Rutson
Director
Office of Environmental Analysis

Attachments: Justification for Preparing a PA
 Summary of Section 106 Process Thus Far
 Letter to SHPO dated March 12, 2014
 Map of Alternatives

cc: Najah Duval-Gabriel, Council

Attachment 1 of 4:

Justification for Preparing a PA

Tongue River Railroad Undertaking:

Justification for Preparing a Programmatic Agreement

Background

On October 16, 2012, Tongue River Railroad Company, Inc. (TRRC) filed a revised application with the Surface Transportation Board (Board). TRRC intended to construct and operate an approximately 83-mile rail line between Miles City, Montana, and two ending points, one near the site of the previously planned Montco mine near Ashland, Montana, and another at the proposed Otter Creek mine in the Otter Creek area east of Ashland, Montana. On December 17, 2012, TRRC filed a supplemental application with the Board, in which TRRC changed its preferred alignment from the 83-mile Tongue River Alternative to the 42-mile Colstrip Alternative.

Because the construction and operation of this proposal has the potential to result in significant environmental impacts, the Board's Office of Environmental Analysis (OEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. §§ 4321 *et seq.*). The Surface Transportation Board must also comply with the requirements of the National Historic Preservation Act (NHPA).

The regulations that implement Section 106 of NHPA at 36 CFR Part 800 require federal agencies to take into account the effects of the undertakings on historic properties listed or eligible for listing on the National Register of Historic Places (National Register) and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. The Section 106 regulations at 36 CFR § 800.3 through § 800.6, outline the consecutive four-step process federal agencies follow to comply with Section 106:

- 1) Initiate consultation
- 2) Identify and evaluate historic properties
- 3) Assess effects
- 4) Resolve effects

In addition to completing the four-step process consecutively, a federal agency may use a phased approach to complete these steps. The phased approach can include deferring some of the identification and evaluation (National Register assessment) of historic properties (including effects assessment and resolution, or mitigation). Agencies generally use a phased process when they are considering several alternatives and where full access to the alternatives is restricted. The Section 106 regulations at 36 CFR § 800.4(b)(2), outline the phased approach as follows:

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

it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6, a programmatic agreement executed pursuant to § 800.14 (b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

Use of the phased approach, described above, requires an agency to develop a Programmatic Agreement (PA). A PA is an agreement document that sets forth roles, responsibilities, procedures and stipulations that would be followed when all of the steps in the Section 106 process cannot be completed prior to an agency's approval of a proposed undertaking. A PA can include a description of future types of activities that would need to be completed following an agency's approval, such as: identification of all area(s) of potential effects; additional identification of historic, tribal and botanical resources; the completion of studies such as ethnographies and ethno-botanical analyses; and definitive National Register assessments of historic properties likely to be adversely affected by the undertaking. An agency would also need to evaluate the types of effects that all eligible historic properties would undergo (indirect versus direct physical impacts); the PA would then describe any agreed upon measures to mitigate such effects. Federal agencies are required to consult with the State Historic Preservation Officer (SHPO) and involve its Section 106 consulting parties including federally recognized tribes in the development of a PA [36 CFR § 800.4(b)(2)]. Once a PA is agreed upon, it is executed by its signatories, which generally include the lead federal agency, SHPO, ACHP (when participating), and those parties that have a specific role in the completion of the activities outlined in the PA. Federally recognized tribes and other consulting parties are encouraged to sign the finalized PA as concurring parties.

OEA has kept in close contact with the Montana SHPO and ACHP since the onset of this project and has involved federally recognized tribes in all aspect of the proposed undertaking, including the identification of historic and tribal properties in areas where access has been granted. Both the Montana SHPO and ACHP have indicated their endorsement of developing a PA for this project and they are actively participating in consultation. OEA has initiated Section 106 consultations with the ACHP, Montana SHPO, other federal and state agencies, and federally recognized tribes and has identified other consulting parties, including local landowners and preservation groups. OEA would invite all of these consulting parties to participate in the development of a PA. Once executed, the project PA would set forth roles, responsibilities, procedures, milestones, schedules, stipulations, and post-agreement review protocols that have been agreed upon by the consulting parties to ensure compliance with Section 106.

Why is a Programmatic Agreement needed here?

For the same reasons set forth in the Council's regulations at 36 CFR § 800.4(b)(2), the Board will not be able to complete the 4-step Section 106 process for the Tongue River Railroad proposal before deciding whether to approve the undertaking. The Tongue River Railroad proposal is a complex project, consisting of five alternative routes and two variations that encompass approximately 240 miles and 11,975 acres of possible railroad rights-of-way. Landowners have only granted OEA access to slightly less than half of the project area, making completion of identification and evaluation efforts challenging. Where access has been granted, OEA has completed some identification of historic properties through archaeological/tribal and historic property surveys (some of the surveys were completed in 2013 and additional archaeological/tribal surveys are planned for May and June of 2014). However, appropriate additional identification and evaluation efforts would be required for any alternative the Board licenses as only preliminary surveys are being conducted and no definitive National Register assessments of any identified historic properties will be made before the Board decides whether to approve the undertaking. In addition, precise alignments will not be known (not fully engineered) until the Board issues its final decision on the proposed undertaking, requiring post-agreement Section 106 reviews.

When, or if, the Board decides to authorize the construction and operation of one of the alternatives under consideration, exact areas could be identified as the project's area(s) of potential effect(s), including those National Register eligible historic and tribal resources that would be subject to direct physical impacts from the proposed rail line and those that would undergo indirect effects from the noise and visual impacts imposed by a new railroad. Any mitigation measures outlined in the PA will be tied to the type of impact as well as type of resource (i.e. mitigation for a site that might be destroyed by the proposed railroad might differ from impacts to sites indirectly affected from noise or the visual intrusion of a new railroad). The mitigation measures in the PA would also be based on consultation with the Section 106 consulting parties.

A PA would outline the additional identification efforts that would be conducted and set forth stipulations on and clarify how to mitigate any adverse effects to National Register eligible historic and tribal properties. This could include ethnographies, ethno-botanical studies, or other mitigation measures (perhaps unique to the Tongue River Valley area) that the consulting parties agree upon. All of the measures described in the PA could be incorporated in a mitigation plan or a treatment plan developed by the STB in consultation with the Section 106 consulting parties. Should an alternative be approved, negotiations with landowners would begin for access to all the property along the licensed alternative, the precise location of the route would be staked, and the measures outlined in the PA for complying with Section 106, including convening Section 106 parties for post-agreement reviews, would be initiated.

Attachment 2 of 4:

Summary of Section 106 Process Thus Far

Summary of Section 106 Process Thus Far

April 2014

1. DESCRIPTION OF UNDERTAKING

On October 16, 2012, the Board received a revised application from TRRC to construct and operate a new rail line from Miles City, Montana to two ending points, one near the site of the previously planned Montco mine near Ashland, Montana; and another at the proposed Otter Creek mine east of Ashland. The purpose of the proposed rail line would be to transport low sulfur, subbituminous coal from proposed mine sites in the Tongue River Valley and Powder River Basin. On December 17, 2012, TRRC filed a supplemental application with the Board in which TRRC changed its preferred alternative from the 83-mile Tongue River Alternative to the 42-mile Colstrip Alternative. TRRC's new preferred alignment would generally parallel Greenleaf Road (S-447) rather than follow Roe and Cooper Creek.

The Board is considering five alternative routes and two variations to be carried forward in its environmental impact statement (EIS): the Tongue River Alternative, the Tongue River Road Alternative, the Moon Creek Alternative, the Decker Alternative, the Colstrip Alternative, the Ashland East Variation, and the Terminus 1 Variation (see attached Map 1 of alternatives). The proposed alternatives are located in Custer, Rosebud, Powder River, and Bighorn Counties, Montana.

Areas of Potential Effect. Pursuant to § 800.4(a)(1), OEA established preliminary Areas of Potential Effect (APEs) to identify cultural, tribal and built resources in the study area. The preliminary APE for tribal and archaeological sites was defined as the right-of-way for each alternative plus a 200-foot-wide buffer on either side of the right-of-way. The preliminary APE for built resources (historic buildings, structures, objects and districts) was limited to the right-of-way with a maximum 1,500-foot buffer on either side of the right-of-way. This wider buffer allows for analysis of the full range of potential impacts on built resources, which could include operation impacts caused by changes to the visual and auditory setting of the resource. Areas within the 1,500-foot buffer but obscured by a butte or mountain were not included.

2. STEPS TAKEN TO IDENTIFY HISTORIC PROPERTIES

OEA provided details of the steps it has taken to identify historic properties in a letter to the Montana State Historic Preservation Officer (SHPO) dated March 12, 2014 to which you were copied (also attached here). The information provided in that letter is summarized as follows. (Please refer to the SHPO letter for a more detailed synopsis of this section.)

Previously Recorded Sites and Resources. Pursuant to 36 CFR § 800.4(a)(2), OEA reviewed existing information from the Montana Cultural Resources Information System (CRIS) on historic properties from a larger study area than the preliminary APEs. Reports of past surveys indicated that *less than 10 percent* of the APEs had been previously surveyed for archaeological sites.

The records searches identified 780 previously recorded cultural resources, 71 of which fell within the preliminary APEs including 44 archaeological sites and 27 built resources. No previously recorded tribal sites were identified within the project area.

The following three resource areas were identified through a literature review of the project area:

- Birney Ranching Rural Historic District
- Tongue River Valley Rural Historic District
- Hogback Pasture

OEA also reviewed the inventory of properties listed in the National Register of Historic Places (National Register) through the National Park Service's Focus digital library. Based on this search, OEA discovered that a small portion of the Main Street Historic District in Miles City is the sole property in the APE for the built environment that is currently listed in the National Register. Other listed properties in the project vicinity, but not the APE, are the Wolf Mountains Battlefield, Bones Brothers Ranch, and Fort Keogh Historic District.

Phased Identification. OEA is conducting a phased identification of historic properties allowable under 36 CFR § 800.4(b)(2), "where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts...." OEA determined that the phased approach was appropriate here because several landowners did not grant OEA access to their land over which portions of the APE for the alternatives under consideration were located. Given the complexity of the project and the number of alternatives under consideration, on May 23, 2013, Dr. Stan Wilmoth of the Montana SHPO approved of the phased approach. Later, Dr. Wilmoth and Advisory Council reaffirmed OEA's decision to conduct a phased approach: in a telephone call on October 28, 2013 and in a meeting on January 23, 2014.

If the Board should decide to approve one of the build alternatives for construction and operation, OEA would execute a PA to memorialize any agreed upon steps to mitigate any adverse effects to historic properties. This would include additional identification of historic and tribal resources, a full application of the National Register criteria and other mitigation measures agreed to by the consulting parties including an ethnographic and ethno botanical analyses.

Tribal and Archaeological Sites. In the summer of 2013, OEA conducted pedestrian surveys within the APE for each alternative under consideration. Tribal members and archaeologists from ICF International, OEA's independent third-party consultant, conducted pedestrian transect surveys of 4,464 acres in the preliminary APE. OEA could not gain access in some areas due to landowner restrictions, because some parcels were surrounded by inaccessible parcels, or because severe weather and fire hazard conditions prohibited safe access. Because of concerns expressed by Section 106 consulting parties at the consulting party meeting held in Billings, MT, on February 13 to 14, 2014, OEA decided to conduct additional field surveys in May and June 2014, with tribal members and ICF archaeologists, in some areas previously inaccessible because of lack of landowner permission or fire hazard concerns.

In conducting the cultural resources survey work during the summer of 2013, ICF archaeologists organized four survey teams, designated A through D, to conduct field surveys on accessible property in the APE. Each team included four tribal members and four OEA archaeologists. The ICF chief archaeologist for each rotation met the Secretary of the Interior Standards (36 C.F.R. § 61) for archaeology; all other ICF crewmembers had Bachelor's degrees or higher in anthropology or a closely related field. Consistent with 36 C.F.R. § 800.4(a)(4), all tribes who expressed interest and availability were able to participate in the field survey. Thirteen tribes participated in the field surveys (Table 1).

Table 1. Tribes that Participated in 2013 Field Surveys

Team A <i>July 15–24, 2013</i>	Team B <i>July 29–August 7, 2013</i>	Team C <i>August 12–21, 2013</i>	Team D <i>August 26–Sept. 4, 2013</i>
Northern Arapaho	Mandan, Hidatsa, and Arikara	Crow	Cheyenne and Arapaho
Northern Cheyenne	Northern Cheyenne	Northern Cheyenne	Crow Creek Sioux
Fort Peck Assiniboine and Sioux	Oglala Sioux	Standing Rock Sioux	Northern Cheyenne
Yankton Sioux	Rosebud Sioux	Yankton Sioux	Sisseton Wahpeton Oyate Turtle Mountain Chippewa

During each rotation, all eight survey team members conducted the survey as one team. Individuals were spaced approximately 49 feet apart and walked at the same pace observing the ground for any indications of cultural and tribal resources such as rock alignments, flaked stone (lithics), bone, historical debris, or other deposits or feature types. As potential resources were encountered, the entire crew stopped and recorded the resource using a global positioning system (GPS) device and iPad® to record the location and attributes, as appropriate. The crew did not perform any earthmoving or excavation, and all team members took care not to disturb any cultural resources they observed. Archaeological site types were recorded using standard types based on the CRIS form. Team members kept field notes.

As tribal members observed tribal sites (sites containing attributes beyond or in addition to archaeological data), the team recorded a single GPS point for that resource along with a brief description consistent with protecting confidentiality. In all cases, all four tribal participants collectively agreed that a particular resource should be recorded before ICF archaeologists collected any information.

Built Resources. OEA historians and architectural historians conducted vehicular or pedestrian surveys of 34,944 acres in the preliminary APE. Two teams of two federally qualified (36 C.F.R. § 61) architectural historians conducted field survey work for built resources from July 15 to 24, 2013, and from July 29 to August 7, 2013. Their methods involved reviewing geographic information system (GIS) maps using Google Earth Pro satellite imagery (Google Earth 2013); reviewing previously recorded site forms; interviewing landowners or managers; primarily conducting a survey using public roads and private roads where permission was granted; and a pedestrian survey where appropriate. In accordance with 36 C.F.R. § 800.4(a)(3), the architectural historians made contact with 23 local repositories and organizations regarding the location and significance of any built resources that might be located in the preliminary APE. The groups contacted are listed on page 7 of the attached SHPO letter.

3. DESCRIPTION OF POTENTIALLY AFFECTED HISTORIC PROPERTIES

Tribal and Archaeological Sites. The field survey conducted in 2013 resulted in the identification of 198 new sites in the preliminary APE, including 162 archaeological and 36 tribal resources (Table 2).

Table 2. Newly Recorded Tribal Sites and Archaeological Sites

Lithic Scatter	Lithic Scatter with Other Components	Stone Circle/Tipi Rings	Cairn	Historic Water-Associated Features	Historic Trail or Fence	Other	Total Archaeology Sites	Tribal Sites
107	9	3	6	6	7	24	162	36

These archaeological sites are summarized in Table A-1 and their approximate locations shown on Figure 1 in the attached letter to SHPO. The information on the archaeological sites will be reported to SHPO in greater detail under separate cover. The confidential information gathered on tribal sites was sent to the primary contacts at the tribes via certified mail on November 19, 2013, delivered in person to tribal representatives attending the consulting party meeting in Billings, MT on February 13, 2014, and is available to you upon request. OEA has determined all newly identified tribal and newly identified archaeological sites potentially eligible for listing in the National Register.

Built Resources. The architectural historians recorded buildings, structures, objects, and districts that appeared to be 50 years of age or older—the general threshold for consideration under the National Register. The field survey resulted in the recording of 35 new built resources in the preliminary APEs for all five alternatives (Table 3).

Table 3. Newly Recorded Built Resources

Barn	Bridge	Dam/Levee	District	Homestead	Railroad	Ranch	Road/Trail	Utility	Windmill	Other ^a
3	3	2	1	4	2	3	4	3	4	6

Notes:

^a Other includes a pump house, fish hatchery, culvert, cattle pen, park facilities, and a residence

These built resources are summarized in Table A-2 and their approximate locations shown on Figure 2 in the attached letter to SHPO. The information on the built resources will be reported to SHPO in greater detail in the near future. OEA has determined all identified built resources potentially eligible for listing in the National Register.

4. DESCRIPTION OF LIKELY EFFECTS ON HISTORIC PROPERTIES

In accordance with § 800.5(a)(3), because the Tongue River Railroad “alternatives under consideration consist of corridors,” “large land areas,” and “where access to properties is restricted,” the Board is using a phased process to apply the criteria of adverse effect consistent with its phased identification and evaluation efforts. The likely effect on historic properties will be analyzed and reported in the Draft EIS and submitted under separate cover to the SHPO. OEA, in concert with the Section 106 consulting parties, will develop the PA. Working with the Council, the SHPO, federally recognized tribes, other federal agencies, and other consulting parties, OEA will develop a PA that will stipulate the measures and process for completing the identification and evaluation efforts should the Board approve an alternative for construction and operation and when access to restricted properties is gained. The PA will lay out steps to avoid, minimize, or mitigate any adverse effects to historic properties and tribal sites.

5. APPLICABILITY OF CRITERIA OF ADVERSE EFFECT

The criteria of adverse effect would only be applicable if the Board approves an alternative for construction and operation. In that event, the Board would need to further refine the engineering of any approved alternative(s); gain access to the APE(s), including any previously restricted properties; and determine if any historic properties and tribal sites would be adversely affected by the proposed action. Once the PA is developed, executed and implemented, it will lay out steps to avoid, minimize, or mitigate any adverse effects to historic properties and tribal sites. Although specific resources have not been fully evaluated for the National Register at this time, they can be categorized into general resource types, and the likely effect of the undertaking can be summarized based on the characteristics and sensitivity of the resource type. Tables 4 and 5 provide the seven examples of *criteria of adverse effect* described at 36 C.F.R. § 800.5(a)(1), the activity that may be likely to cause an adverse effect, and the general resource types that may be adversely affected. Table 4 is related to construction activity and Table 5 is related to operations activity.

Table 4. Possible Adverse Effects Related to Construction Activity

Possible Adverse Effect	Construction Activity	Archaeological and Tribal Resources	Built Resources
<i>Physical destruction of or damage to all or part of the property</i>	Clearing railroad right-of-way for staging and construction grading, cuts, excavating earth and rock on previously undisturbed land	All types that are in the path of construction or staging	All types that are in the path of construction or staging
<i>Alteration of a property...that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 C.F.R. § 68) and applicable guidelines</i>	Railbed construction and staging, access roads	All types that can be altered by compression or spreading of fill	Districts, linear features that need to be rerouted (e.g., roads and trails)
	Rerouting of irrigation or drainage	All types in the path of rerouting	Water conveyance features
<i>Removal of the property from its historic location</i>	Clearing the railroad right-of-way for construction, existing road relocation	All moveable objects that are in the path of construction or staging	All moveable buildings, structures, and objects that are in the path of construction or staging
<i>Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance</i>	Existing road relocation	Properties whose setting contributes to its significance	Properties whose setting contributes to its significance
<i>Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features</i>	Pile driving or heavy construction equipment that generates temporary noise or vibration, fugitive dust	All types sensitive to temporary visual, noise, vibration, or atmospheric elements	All types sensitive to temporary visual, noise, vibration, or atmospheric elements
<i>Neglect of a property which causes its deterioration</i>	NA	NA	NA
<i>Transfer, lease or sale out of federal ownership or control.</i>	Board licensing, property acquisition, lease, or easement	All types on federal lands, i.e., BLM and USDA	All types on federal lands
Notes:			
NA = not applicable; BLM = Bureau of Land Management; USDA = U.S. Department of Agriculture			

Table 5. Possible Adverse Effects Related to Operations Activity

Possible Adverse Effect	Operational Activity	Archaeological and Tribal Resources	Built Resources
<i>Physical destruction of or damage to all or part of the property</i>	Changes in water flow from culverts, and other drainage structures may lead to erosion or flooding	Types that could be damaged by erosion or flooding	Types that could be damaged by erosion (irrigation ditches) or flooding (buildings)
<i>Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance</i>	Permanent change of setting from railroad grade, bridges and structures	Properties where setting contributes to its significance (e.g., tribal sites, petroglyphs, and rock art sites)	Properties where setting contributes to its significance (e.g., districts, ranches, and homesteads)
<i>Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features</i>	Visibility of railroad structures (e.g., tracks, sidings, trestles, bridges, embankments, communications towers, and power lines); Atmospheric elements-engine emissions; long-term railroad noise	All types sensitive to visual, noise, vibration, or atmospheric elements	All types sensitive to visual, noise, vibration, or atmospheric elements
<i>Neglect of a property which causes its deterioration</i>	Change in land use that results in abandonment	NA	Some ranches, buildings or structures if their continued use becomes no longer practical
	Access limitation that results in abandonment	NA	Some ranches, buildings or structures if their continued use becomes no longer practical
<i>Transfer, lease or sale out of federal ownership or control</i>	NA	NA	NA
Notes: NA = not applicable			

6. VIEWS OF CONSULTING PARTIES AND THE PUBLIC

As described in detail on pages 1 through 3 of the attached letter to SHPO, OEA has been conducting extensive outreach to obtain the views of consulting parties and the public. OEA has been holding monthly calls with consulting parties since February 2013. OEA also created a historic preservation page on the Tongue River Project website accessible to consulting parties and members of the public (http://www.tonguerivereis.com/sect_106.html). The website includes pertinent Section 106 correspondence, documents, and project maps. In addition to the above, OEA held two well-attended consulting party meetings. The first meeting was held on the Northern Cheyenne Reservation in Lame Deer, Montana, April 16 to 18, 2013; the second was in Billings, Montana, February 13 to 14, 2014. All meeting transcripts and monthly call summaries are posted on the project website.

Attachment 3 of 4:

Letter to SHPO dated March 12, 2014



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

March 12, 2014

Dr. Mark Baumler
State Historic Preservation Officer
Montana Historical Society
225 North Roberts, P.O. Box 201201
Helena, MT 59620-1201

Attn: Stan Wilmoth

Re: Docket No. FD 30186, Tongue River Railroad Company, Inc. - Rail Construction and Operation - in Custer, Powder River and Rosebud Counties, Montana: Project Updates

Dear Dr. Baumler:

As you know, the Surface Transportation Board (Board) initiated consultation with your office regarding the proposed Tongue River Railroad Company, Inc. (TRRC) Rail Construction and Operation on October 22, 2012, pursuant to the National Environmental Policy Act (NEPA) and Section 106 regulations (36 CFR Part 800) of the National Historic Preservation (NHPA). The purpose of this letter is to summarize our historic preservation outreach, consultation, and fieldwork efforts to date, and to thank you for the input and guidance you have provided to the Board's Office of Environmental Analysis (OEA) thus far. We begin with our current list of Section 106 consulting parties.

Consulting Parties

Since October 2012, OEA has sent letters initiating consultation with the ACHP, affiliated federally recognized tribes, federal and state agencies, TRRC, and several historic preservation organizations, ranchers, and environmental groups, as follows:

36 CFR § 800.2 Participants in the Section 106 process:

§ 800.2(a) Agency Official

Surface Transportation Board, Office of Environmental Analysis

§ 800.2(a)(2) Lead Federal Agency

Surface Transportation Board

Other Federal Agencies include:

U.S. Army Corps of Engineers (USACE)

Bureau of Land Management (BLM)

U.S. Department of Agriculture (USDA)

National Park Service (NPS)

§ 800.2(b) Council

Advisory Council on Historic Preservation (ACHP)

§ 800.2(c) Consulting Parties

§ 800.2(c)(1) State Historic Preservation Officer

Montana State Historic Preservation Officer (SHPO)

§ 800.2(c)(2) Federally Recognized Tribes¹

Cheyenne & Arapaho Tribes	Rosebud Sioux Tribe of Indians
Cheyenne River Sioux Tribe	Santee Sioux Nation (Santee Sioux Tribe of Nebraska)
Crow Creek Sioux Tribe	Shakopee Mdewakanton Sioux
Crow Tribe of Indians	Shoshone Tribe of the Wind River Reservation
Flandreau Santee Sioux	Sisseton Wahpeton- Oyate
Ft. Belknap Indian Community	Spirit Lake Tribe
Ft. Peck Assiniboine and Sioux Tribes	Standing Rock Sioux Tribe
Lower Brule Sioux Tribe	Three Affiliated Tribes: Mandan, Hidatsa & Arikara Nation
Lower Sioux Indian Community ²	Turtle Mountain Band of Chippewa
Northern Arapaho Tribe	Upper Sioux Community ³
Northern Cheyenne Tribe	Yankton Sioux Tribe
Oglala Sioux Tribe	

§ 800.2(c)(3) Representatives of Local Governments

Montana Department of Natural Resources and Conservation
Montana Department of Transportation
Miles City Historic Preservation Office

§ 800.2 (c)(4) Applicants for Federal Assistance, Permits, Licenses, or Other Approvals

Tongue River Railroad Company

§ 800.2(c)(5) Additional Consulting Parties

Fix Ranch
Montana Preservation Alliance
National Wildlife Federation
National Trust for Historic Preservation
Northern Cheyenne Otter Creek Descendants
Northern Plains Resource Council
Rocker Six Cattle Company
Sierra Club

¹ The Blackfeet Nation declined to be a consulting party.

² The Lower Sioux Indian Community requested to continue to receive information about the undertaking, but declined consulting party status.

³ The Upper Sioux Community has been contacted, but has not expressed a preference to date.

We believe we had a productive meeting on January 23, 2014, with Stan Wilmoth of your office and Charlene Vaughn and Najah Duvall-Gabriel of the ACHP. The meeting provided us with an opportunity to discuss an appropriate strategy for completing our historic reviews for the TRRC project moving forward. The meeting included a discussion regarding our consultation efforts to date, as discussed below.

Consultation Efforts

OEA has been holding its monthly calls with consulting parties since February 2013. OEA has also created a historic preservation page on the Tongue River Project website accessible to consulting parties and members of the public (http://www.tonguerivereis.com/sect_106.html). The website includes pertinent Section 106 correspondence, documents, and project maps. OEA held a consulting party meeting on the Northern Cheyenne Reservation in Lame Deer, Montana, from April 16th to 18th, 2013. The meeting included a one-day bus tour of portions of the study area. During the meeting, representatives from the Rosebud Sioux Tribe offered suggestions for OEA to consider in developing its archaeological methods for the project. These suggestions, which follow, were echoed by other tribal representatives at the meeting.

- Tribal members and archaeologists offer differing expertise, which should be considered in the identification of sites of religious and cultural significance to tribes.
- Tribal sites should be respected.
- Tribal members should have parity with archaeologists.

These suggestions were incorporated into the development of our field survey methods and the composition of our field crews, as described below.

OEA recently held a Section 106 consulting party meeting in Billings, Montana, February 13 to 14, 2014, and it was attended by Stan Wilmoth of your office. OEA provided an update on Section 106 to the consulting parties and solicited their comments, questions, and concerns about the progress to date and next steps. Several of the meeting attendees had recommended that we begin work on a PA right away. Consequently, after the meeting was formally adjourned on February 14th, the following consulting party representatives remained behind to work on redrafting the PA that we had developed for the old Tongue River project:

- Conrad Fisher, Northern Cheyenne Tribe, Tribal Historic Preservation Officer (THPO)
- Terry Clouthier, Standing Rock Sioux Tribe, tribal archaeologist
- Ben Rhodd, Rosebud Sioux Tribe, contract archaeologist
- Tamara St. John, Sisseton-Wahpeton Oyate, THPO office archivist
- Steve Vance, Cheyenne River Sioux Tribe, THPO
- Curley (Darrell) Youpee, Ft. Peck Assiniboine and Sioux Tribes, THPO
- Chris Jenkins, USACE, Regulatory Branch, Cultural Resources Program Manager
- David Coburn, Steptoe & Johnson, representing the TRRC.

OEA intends to further refine the old PA with the current project description. Once we have completed the administrative edits, we will send around the redrafted PA for your review and

comment. We also intend to add some language to the redrafted PA to incorporate recommendations made by the meeting participants on February 14th and 15th. However, OEA will not make any additional changes to the PA until you and the consulting parties have a chance to review the revised draft to ensure that you and the consulting parties are in agreement with these inclusions/changes to the PA.

Area of Potential Effects

Pursuant to 36 CFR § 800.4(a)(1), OEA established a preliminary Area of Potential Effect(s) (APE) to identify cultural and tribal resources in the study area. The preliminary APE for tribal and archaeological sites was defined as the right-of-way for each build alternative plus a 200-foot-wide buffer on either side of the right-of-way.

The preliminary APE for built resources (historic buildings, structures, objects and districts) was limited to the right-of-way with a maximum 1,500-foot buffer as defined above. This buffer was selected to allow for analysis of the full range of potential impacts on built resources, which could include demolition, construction and operation impacts, and impacts caused by changes to the visual and auditory setting of the resource. Areas within the 1,500-foot buffer but obscured by a butte or mountain were not included.

Previously Recorded Sites and Resources

Pursuant to 36 CFR § 800.4(a)(2), OEA reviewed existing information on historic properties within the APE. As you know, cultural resources in Montana are recorded on site forms that are retained in the State of Montana Cultural Resource Information System (CRIS) database, maintained by the Montana Historical Society (MHS). OEA obtained site records from the MHS for an area extending one mile from each side of the centerline for each build alternative, which is larger than the APE. This large records search area, because it yields many site forms describing previously found cultural resources, also provides a better context to describe the cultural environment of the study area. Reports of past surveys and analyses were also obtained from the MHS, indicating that *less than 10 percent* of the APE had been previously surveyed for archaeological sites. The records searches yielded 780 site forms: 170 from Custer County, 166 from Powder River County, 312 from Rosebud County, and 132 from Bighorn County. Of these 780 previously recorded cultural resources, 71 fell within the APE, including 44 archaeological sites (Table 1) and 27 built resources (Table 2).

Table 1. Previously Recorded Archaeological Sites—All Build Alternatives

Lithic Scatter	Lithic Scatter with Other Components	Stone Circle	Cairn	Historic Water – Associated Features	Historic Trail or Fence	Other ^a	TOTAL Archaeology Sites	Tribal Sites
16	23	2	1	0	0	2	44	0

Notes:

^a Other includes two railroad grades

Table 2. Previously Recorded Built Resources—All Build Alternatives

Barn	Bridge	Dam/ Levee	District ^a	Homestead	Railroad	Ranch	Road/ Trail	Utility	Windmill	Other ^b
0	2	0	2	3	2	11	2	0	0	5

Notes:

^aThe two *districts* included the Lee Community Historic District and the Main Street Historic District in Miles City,

^b *Other* includes schools, irrigation systems, and a grave marker.

In addition to the 27 built resources formally recorded in the State of Montana CRIS database, three other built resources were identified through literature review.

- Birney Ranching Rural Historic District: *Cultural Landscape of the Upper Tongue River Valley in Rosebud County, Montana* (Montana Preservation Alliance 2007).
- The Tongue River Valley Rural Historic District: *Cultural Landscape-Scale Overview of the High Potential Coal Bed Natural Gas Development Area* (Renewable Technologies, Inc. 2006).
- The Hogback Pasture: *A Study of the Hogback Pasture on the Fort Keogh USDA Agricultural Station* (Ethnoscience in press).

OEA also reviewed the inventory of properties listed in the National Register of Historic Places (National Register) through the National Park Service’s Focus digital library. Based on this search, OEA found that the Main Street Historic District in Miles City is the sole property in the APE that is currently listed in the National Register. The Wolf Mountains Battlefield, Bones Brothers Ranch, and Fort Keogh Historic District are not located in the APE.

Phased Identification

OEA is conducting a phased identification of historic properties allowable under 36 CFR § 800.4(b)(2) “where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts....” This approach was deemed necessary because some landowners did not grant OEA access to portions of the APE for each build alternative. In a telephone call with Stan Wilmoth of your office on May 23, 2013, it was deemed that a phased identification effort was appropriate for this project given these circumstances. This approach to a phased identification and evaluation was reaffirmed twice by the ACHP, Mr. Wilmoth, and OEA: in a telephone call on October 28, 2013; and in a meeting on January 23, 2014.

If the Board approves a build alternative for construction and operation, OEA would complete any additional identification, apply the National Register criteria to each resource identified in the preliminary APE, and submit the determinations of eligibility to you for review and assessment. In accordance with 36 CFR § 800.14(b), OEA will develop a PA with the SHPO, federal agencies, ACHP, federally recognized tribes, and other consulting parties that would stipulate the measures and process for completing the identification and evaluation efforts and lay out steps to avoid, minimize, or mitigate any adverse effects.

In summer 2013, OEA conducted pedestrian surveys within the APE for each build alternative under consideration. OEA could not gain access in some areas due to landowner restrictions, as some parcels were surrounded by inaccessible parcels, or because weather and fire conditions prohibited safe access. Even so, tribal members and OEA archaeologists conducted pedestrian transect surveys of 4,464 acres in the preliminary APE. OEA historians and architectural historians also conducted vehicular or pedestrian surveys of 34,944 acres in the preliminary APE. However, due to concerns expressed by some participants at the consulting party meeting on February 13 to 14, 2014, OEA plans to undertake additional field surveys in spring 2014, with tribal members and OEA archaeologists, in areas where landowners provide access.

Tribal and Archaeological Sites

In summer 2013, OEA archaeologists organized four survey teams, designated A through D, to conduct field surveys on accessible property in the APE. Each team included four tribal members and four OEA archaeologists. The OEA chief archaeologist for each rotation met the Secretary of the Interior Standards (36 CFR § 61) for archaeology; all other OEA crew members had a Bachelor's degree or higher in anthropology or a closely related field. In accordance with 36 CFR § 800.4(a)(4), all tribes who expressed interest and availability were able to participate in the field survey. Thirteen tribes participated in the field surveys (Table 3).

Table 3. Tribes Participating in Field Surveys

Team A <i>July 15–24, 2013</i>	Team B <i>July 29–August 7, 2013</i>	Team C <i>August 12–21, 2013</i>	Team D <i>August 26–Sept. 4, 2013</i>
Northern Arapaho	Mandan, Hidatsa, and Arikara	Crow	Cheyenne and Arapaho
Northern Cheyenne	Northern Cheyenne	Northern Cheyenne	Crow Creek Sioux
Fort Peck Assiniboine and Sioux	Oglala Sioux	Standing Rock Sioux	Northern Cheyenne
Yankton Sioux	Rosebud Sioux	Yankton Sioux	Sisseton Wahpeton Oyate
			Turtle Mountain Chippewa

During each rotation, all eight survey team members conducted the survey as one team. Individuals were spaced approximately 49 feet apart and walked at the same pace observing the ground for any indications of cultural and tribal resources such as rock alignments, flaked stone (lithics), bone, historical debris, or other deposits or feature types. As potential resources were encountered, the entire crew stopped and recorded the resource using a global positioning system (GPS) device and iPad® to record the location and attributes, as appropriate. The crew did not perform any earthmoving or excavation, and all team members took care not to disturb any cultural resources they observed. Archaeological site types were recorded using standard types based on the CRIS form. Team members kept field notes and took photos of archaeological resources.

In accordance with 36 CFR § 800.4(a)(4), if a tribal member observed tribal sites (sites containing attributes beyond or in addition to archaeological data), the team recorded a single GPS point for that resource, along with a brief description that protected confidentiality. In all cases, all four tribal participants agreed that the resource should be recorded before OEA archaeologists collected any information.

The field survey in the summer of 2013 resulted in the identification of 198 new sites in the preliminary APE, including 162 archaeological and 36 tribal resources (Table 4).

Table 4. Newly Recorded Tribal Sites and Archaeological Sites

Lithic Scatter	Lithic Scatter with Other Components	Stone Circle/Tipi Rings	Cairn	Historic Water-Associated Features	Historic Trail or Fence	Other	Total Archaeology Sites	Tribal Sites
107	9	3	6	6	7	24	162	36

These archaeological sites are summarized in Table A-1 and their approximate locations shown on Figure 1 in the attachment to this letter. The information on the archaeological sites will be reported to you in greater detail under separate cover. The confidential information gathered on tribal sites was sent to the primary contacts at the tribes via certified mail on November 19, 2013, in person on February 13, 2014, and is available to you upon request. OEA considers the newly identified tribal and archaeological sites potentially eligible for listing in the National Register.

Built Resources

Two teams of two federally qualified (36 CFR § 61) architectural historians conducted field survey work for built resources from July 15 to 24, 2013, and from July 29 to August 7, 2013. Their methods involved reviewing geographic information system (GIS) maps using Google Earth Pro satellite imagery (Google Earth 2013); reviewing previously recorded site forms; interviewing land owners or managers; conducting a windshield survey along public roads; and conducting a pedestrian or all-terrain vehicle field survey along private roads, trails, or cow paths, where available. In accordance with 36 CFR § 800.4(a)(3), the architectural historians made contact with the following various local repositories and organizations to determine if they have knowledge of the significance of built resources in the preliminary APE and to seek information from them. The groups are:

American Prairie Foundation	Montana Live
Billings Preservation Alliance	Montana Preservation Alliance
Bureau of Land Management Research Center	Montana State Historic Preservation Office
Custer County Art and Heritage Center and Waterworks Art Museum	Montana State Historic Preservation Office
Frontier Heritage Alliance	Montana State University Billings - Library
Frontier Montana Museum	Montana State University Bozeman - Library
Hardin, Big Horn County, Certified Local Government	Museums Association of Montana
Miles City, Certified Local Government	Range Riders Museum
Miles City Public Library	Sheridan (Wyoming) Fulmer Public Library
Montana Heritage Commission	USDA Agricultural Research Center
Montana Historical Society Research Center	Western Heritage Center

The architectural historians recorded buildings, structures, objects, and districts that appeared to be 50 years of age or older—the general threshold for consideration under the National Register. The field survey resulted in the recording of 35 new built resources in the preliminary APE for all build alternatives (Table 5).

Table 5. Newly Recorded Built Resources

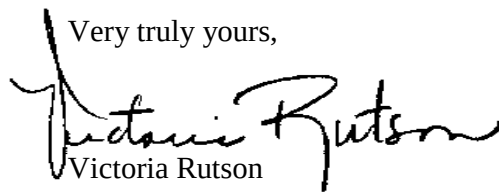
Barn	Bridge	Dam/ Levee	District	Homestead	Railroad	Ranch	Road/Trail	Utility	Windmill	Other ^a
3	3	2	1	4	2	3	4	3	4	6

Notes:
^a *Other* includes a pump house, fish hatchery, culvert, cattle pen, park facilities, and a residence

These built resources are summarized in Table A-2 and their approximate locations shown on Figure 2 in the attachment to this letter. The information on the built resources will be reported to you in greater detail under separate cover. OEA considers these built resources potentially eligible for listing in the National Register.

At this time, OEA would appreciate your comments on the following areas: (1) please let us know if there are other consulting parties that should be included in our outreach; (2) we would also value your opinion regarding the preliminary APE(s); (3) our ongoing identification efforts; (4) results of our records searches and field surveys; and (5) the level of tribal involvement in the project thus far. In addition to the field work planned for this spring, more intensive identification and National Register evaluation of historic properties would be completed if and when the Board approves construction and operation of a railroad line along one or more of the selected alternatives according to the procedures and stipulations set forth in a PA for this undertaking.

As before, Catherine Nadals of my staff will be working on the Section 106 compliance aspects of the project. Please feel free to contact me or Ms. Nadals at 202-245-0293 (Catherine.Nadals@stb.dot.gov). You may also contact Rick Starzak with ICF International (our third-party contractor) at 213-312-1751 (Richard.Starzak@icfi.com). We look forward to your comments and appreciate your assistance.

Very truly yours,

Victoria Rutson
Director
Office of Environmental Analysis

Attachment

cc: Charlene Dwin Vaughn, ACHP
Najah Duvall-Gabriel, ACHP

ATTACHMENT

Newly and Previously Identified Archaeological Resources Identified within the Study Area Surface Transportation Board Field Survey for Tongue River Railroad EIS - 2013 Docket No. FD 30186

Table A1. Archaeological Resources^a within Study Area

Archaeological Resources	Build Alternative						Grand Total
	Ashland East	Colstrip	Decker	Moon Creek	Tongue River	Tongue River Road	
Lithic Scatter	3	2	35	22	60	7	129
Lithic Scatter with other components			1	1	7		9
Cairn			3	1	2		6
Stone Circle			1	1	3		5
Historic Trail or Fence		1	1		4	1	7
Historic Water Resource				3	2		5
Other ^b		1	6		15	4	26
Grand Total	3	4	47	28	93	12	187

Notes:

^a Includes newly identified resources and record search results but does not include tribally-identified resources.

^b Includes historic refuse features, building remains, survey markers, a buffalo jump, and historic petroglyphs.

Lithic Scatters

These sites, from both pre-contact and historic periods, consist of culturally-modified stone tool materials including refuse and fully formed tools such as projectile points. Lithic scatters are by far the most common site type in the study area.

Lithic Scatters with Other Components

Lithic scatters, as defined above, are often found associated with other types of cultural features. These include quarry sites, bedrock milling features, and historic period petroglyphs.

Stone Circles

This site type includes circular or semi-circular stone alignments typically made of cobbles.

Cairns

Cairns are piles of rocks of varying sizes. Cairns may have functioned for ceremonial purposes and may mark the location of burials.

Figure 1 presents the information contained in Table A1 on a map of the project area.

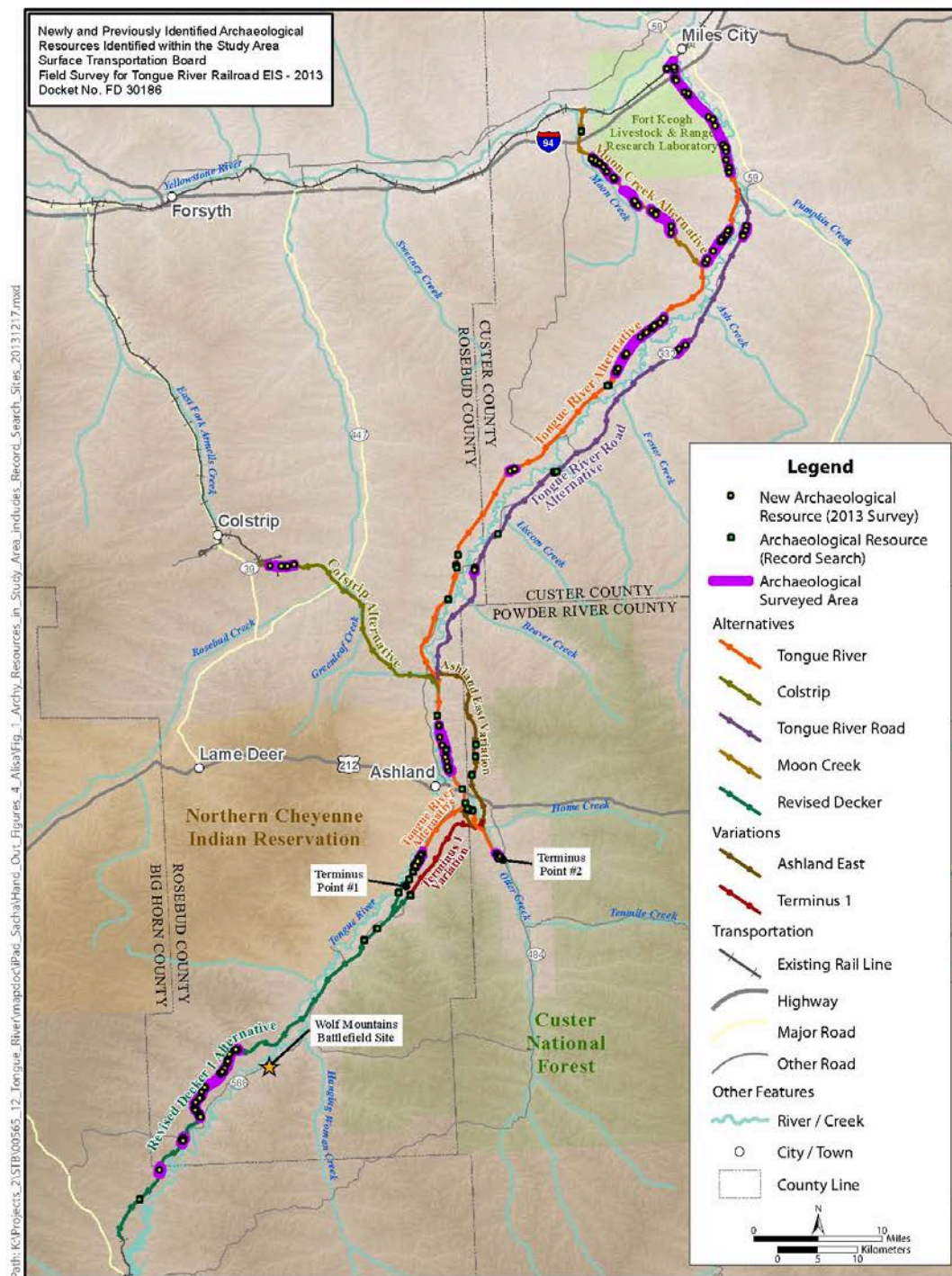


Figure 1. Newly and Previously Identified Archaeological Resources in 2013 Tongue River Railroad EIS Study Area

**Newly and Previously Identified Built Resources
Identified within the Study Area
Surface Transportation Board
Field Survey for Tongue River Railroad EIS - 2013
Docket No. FD 30186**

Table A-2. Built Resources^a within Study Area

Built Environment Resources	Build Alternative						Grand Total ^b
	Ashland East	Colstrip	Decker	Moon Creek	Tongue River	Tongue River Road	
Barn				1	2		3
Bridge				1	3	1	5
Dam/Levee				1	1		2
Historic District		1	2		3		6 ^b
Homestead	1		1		4	1	7
Other ^c		1	1	1	7	3	12 ^b
Railroad		2	1	1	1		4 ^b
Ranch		2			7	5	14
Road/Trail			1	3	2	1	7
Utility					3		3
Windmill			1	2	1		4
Grand Total	1	6	7	10	34	11	69^b

Notes:

^a Includes newly identified built resources and literature/record search results.

^b There are a total of 65 discrete built resources. Some of these built resources are located in the study area for more than one alternative so they are counted more than once. Therefore, the grand total numbers may exceed the actual number of discrete built resources.

^c *Other* includes schools, irrigation systems, a grave marker, hogback pasture, fish hatchery, culvert, residence, pump house, park facilities, and cattle pen.

Figure 2 presents the information contained in Table A-2 on a map of the project area.

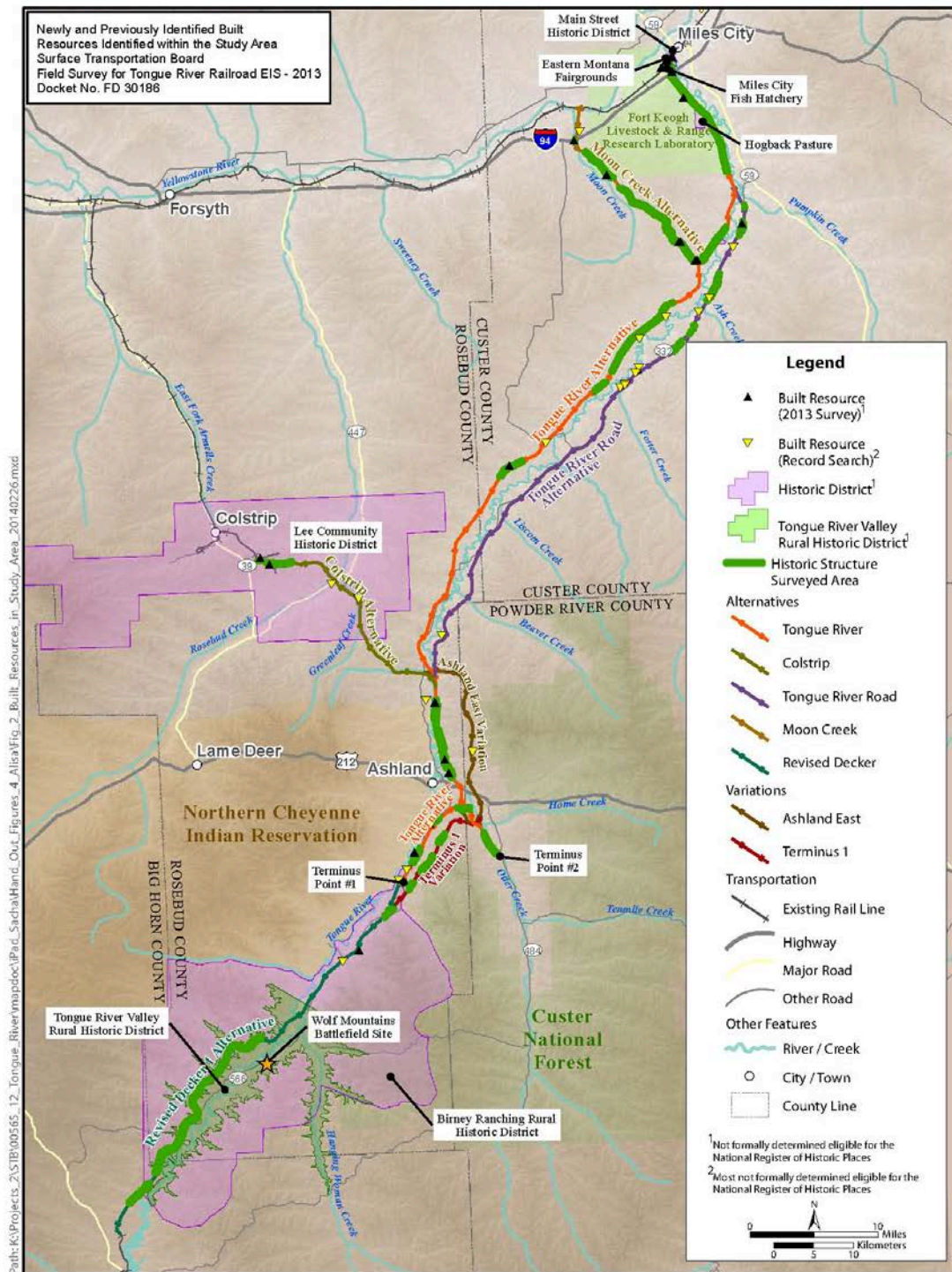
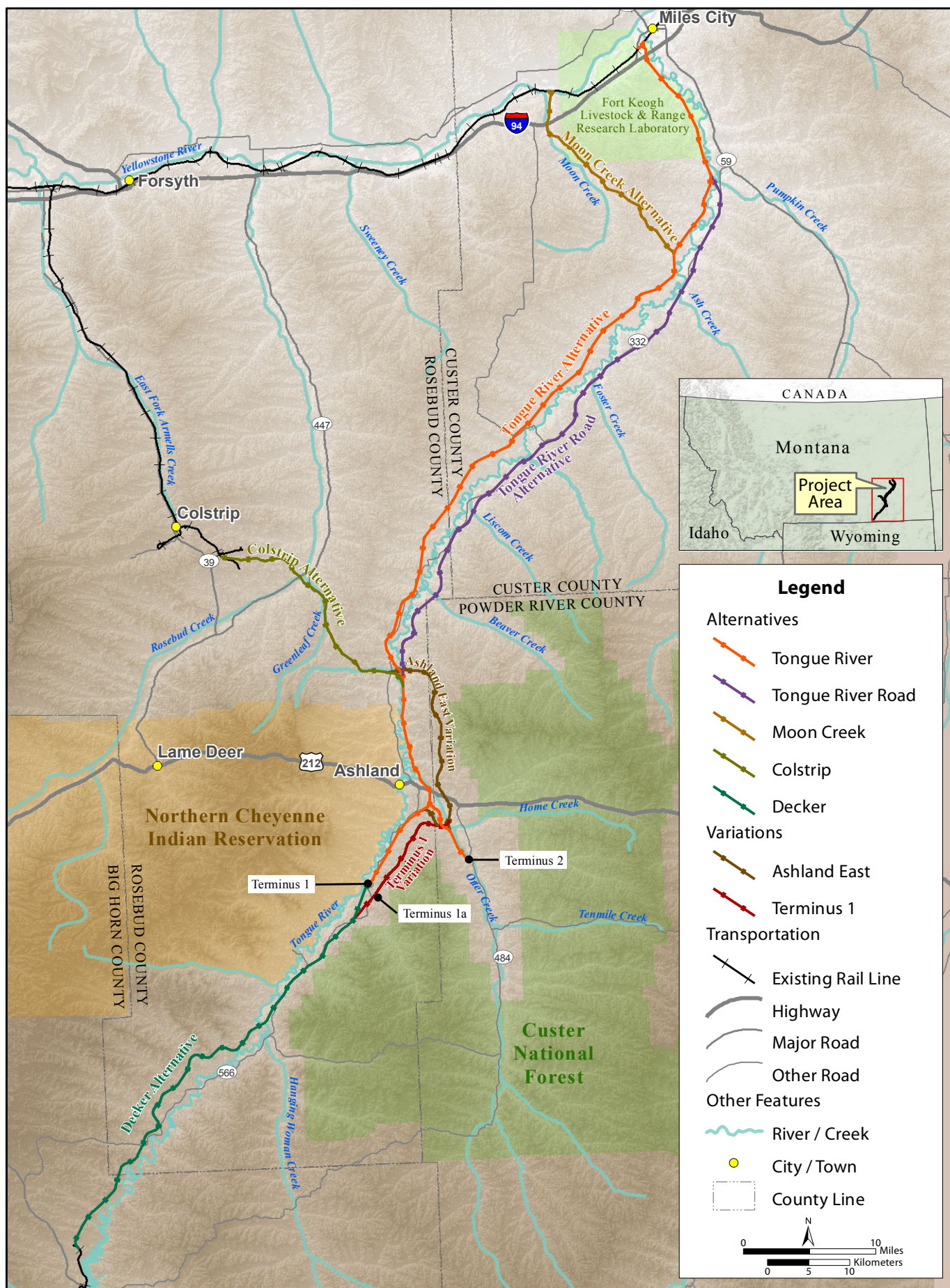


Figure 2. Newly and Previously Identified Built Resources in 2013 Tongue River Railroad EIS Study Area

Attachment 4 of 5:

Map of Alternatives



Map 1. Project Vicinity