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SMPs

EO-1172

cc



SURFACE TRANSPORTATION BOARD
395 E Street SW
Washington, DC 20423-0001
Section of Environmental Analysis

See distribution
List attached

March 25, 2009

Dale Old Horn
Tribal Historic Preservation Officer
Crow Nation
P.O. Box 159
Crow Agency, MT 59022

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation
Construction into the Powder River Basin; Meeting Invitation

Dear Mr. Old Horn:

The Surface Transportation Board's (STB) Section of Environmental Analysis (SEA) invites you to attend a one-day government-to-government Tribal consultation meeting to discuss the Dakota, Minnesota & Eastern Railroad Corporation's (DM&E) Construction project into the Powder River Basin. The summit will be held on April 21, 2009 at the Wakpa Siča Reconciliation Place in Fort Pierre, South Dakota.

Background

As you know, a number of archaeological surveys have been conducted by DM&E and its consultants encompassing areas within the states of Wyoming, South Dakota and Minnesota along both the new build sections (located mostly in Wyoming and parts of South Dakota) and the rehabilitated sections (located mostly in Minnesota) of the project. Some of you have provided comments to SEA regarding survey reports sent to you for review and comment that documented prehistoric and historic archaeological sites identified in these areas.

SEA, in coordination with consulting parties and tribes, and with assistance from its third-party consultant, The Louis Berger Group, Inc., has assessed the eligibility of most of the sites identified and documented in multiple reports completed thus far. However, a number of sites located in Wyoming and South Dakota remain unevaluated. Tribal monitors that originally accompanied field crews during the surveys suggested that some sites that they came across, principally stone feature sites such as cairns, alignments and circles, remain unevaluated pending the input of tribal elders.

Enclosed with this letter is a tribal study intended to provide the data we need to determine the eligibility for the unevaluated sites. The study begins with an archival component designed to summarize what has already been said about stone features sites and also to help SEA develop a typology to assess which of the unevaluated sites may be

Tribal Consultation Summit

Wakpa Siça, Fort Pierre, South Dakota

April 21, 2009

8:00 a.m. – 4:30 p.m.

DRAFT AGENDA

8:00 a.m. – 8:30 a.m.	Registration Continental Breakfast	
8:30 a.m. – 9:00 a.m.	Welcome & Opening Remarks Opening Prayer Introduction & Purpose Statement	STB
9:00 a.m. – 9:30 a.m.	Project Update	DM&E
9:30 a.m. – 10:15 a.m.	Traditional Sites Evaluation Key Elements of STB's Study Plan Archival Research Conducting Interviews With Tribal Experts Field Visits by Traditional Leaders Confidentiality and Proprietary Information Concerns	STB
10:15 a.m. – 10:30 a.m.	Break Refreshments	
10:30 a.m. – 12:00 p.m.	Site Reviews Discussion of Unevaluated Sites	STB
12:00 p.m. – 1:00 p.m.	Lunch Soup & Fry Bread Luncheon at Wakpa Siça	
1:00 p.m. – 4:30 p.m.	Tribal Caucus	STB and Tribal Representatives Only

National Register Evaluation of Traditional Sites

A Study Plan Prepared by the Surface Transportation Board December 24, 2008

Purpose. In its role as lead federal agency for the Powder River Basin (PRB) Expansion Project, the Surface Transportation Board (STB) is responsible for determining National Register of Historic Places (NRHP) eligibility for currently unevaluated sites located within the project's Area of Potential Effects (APE). Based on preliminary information that STB has received from tribes interested in the PRB Expansion Project, a number of sites located within the project's APE are recognized as having potential traditional cultural and religious significance.

STB has determined that additional information is needed regarding the traditional cultural significance of these sites in order for STB to make its full determination of NRHP eligibility as required by the Programmatic Agreement (PA) executed for the PRB Expansion Project. As such, this study is being proposed specifically to comply with STB's statutory obligations under Section 106 of the National Historic Preservation Act. This study is not being proposed to comply with other conditions imposed by STB on the Dakota, Minnesota & Eastern Railroad (DM&E) as part of the agency's review of this project under the National Environmental Policy Act (NEPA). An ethnohistoric study, as stipulated in the Tribal Memorandum of Agreement, will be completed independent of this effort as part of DM&E's compliance with STB's Record of Decision issued on February 13, 2006 (STB Decision, Condition 107, page 43)

Tribal Participation. This site evaluation study is proposed as part of STB's ongoing consultation with tribes interested in the PRB Expansion Project and the PA process and is conducted with STB's firm understanding that Indian tribes possess special expertise in assessing the National Register eligibility of historic properties that may possess religious and cultural significance to them [36CFR 800.4(c)(1)]. As such, STB will seek involvement and assistance from appropriate tribal members, tribal entities, and tribal contractors wherever possible.

STB will assume a leadership role in developing and coordinating the study to ensure that it is completed in a timely fashion, that it addresses the site evaluation requirements of the PA process, and retains a proper focus on the National Register evaluation of known sites located within the project's APE. STB's third-party contractor (The Louis Berger Group, Inc.) will assist STB with this effort. In the event that tribes are unable to provide needed assistance with this study, STB will complete the study by relying on information sources currently in the public domain and will use the best information available to make its eligibility determinations.

PA Guidance. All sites located within the project's APE must be evaluated in accordance with the identification and evaluation procedures described in the PA and its associated Identification Plan. Sections 3.2.4 and 3.2.6 provide the following instructions regarding the identification and evaluation of properties with traditional religious and cultural significance.

contact individuals by phone and email as necessary to determine each tribe's interest or lack of interest in participating in the study and to seek assistance from the tribes in scheduling interviews. STB's third-party contractor and/or contracted tribal subconsultants will conduct the interviews. Wherever possible (allowing for confidentiality and proprietary concerns) interviews will be transcribed to establish an information record. Where oral history records already exist, STB will request assistance from participating tribes in reviewing that information as it pertains to the project area. STB will also ask for specific information from tribes regarding which archaeological sites located within the project APE they may need to visit in order to provide STB with an assessment of site significance.

IV. Field Visits to Evaluate National Register Eligibility

Field visits to recorded archaeological site locations by qualified tribal experts are considered essential to resolving National Register eligibility for most properties considered to have potential traditional religious or cultural significance. Based in part on the results of the archival review, oral history review, and informant interviews, STB will consult with interested tribes to compile a list of sites that warrant field visits by traditional leaders, to compile a list of individuals qualified and available to conduct site visits on behalf of participating tribes for the purpose of assessing National Register eligibility, and to develop a schedule for conducting the site visits. Field visits will be arranged by the STB and scheduled in coordination with DM&E and tribal representatives. For safety reasons, it is understood that a DM&E representative will need to be present in the vicinity of scheduled site visits that occur within existing railroad property and may also need to be present during visits to new construction right-of-way in accordance with private property agreements currently held by DM&E.

Documentation of Site Eligibility. STB considers information obtained from a tribe's recognized expert to be a valid line of evidence in considering determinations of eligibility. However, this information must be presented in written form to the STB by the tribe's designated government representative (e.g., Tribal Chair, Tribal Historic Preservation Officers, and/or cultural resource representatives appointed by the tribal governments) in order to be considered an official response. STB assumes that representatives from participating tribes will caucus among themselves following site visits in order to reach decisions about site eligibility on their tribe's behalf.

STB will ask that interested tribes issue a formal letter of evaluation to STB within 30 days of completing a field visit. This letter should identify the sites that were visited and whether the tribe considers the site(s) to meet the National Register eligibility criteria. If no response is received within 30 days of the site visit, then STB will proceed to make its decision regarding site eligibility without input from the tribe.

Confidentiality Policy. It is STB's intent to work with tribes to identify sensitive locations while respecting tribal desires to withhold specific information about such sites in accordance with 36CFR 800.4(b)(i) and 36CFR 800.11(c)(1), Section 304 of the NHPA, and guidance provided by NPS Bulletin 38. Since the Section 304 confidentiality provisions only apply to properties that have been determined eligible for the National

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Surface Transportation Board
Tribal Consultation Summit
Wakpa Siça, Fort Pierre, South Dakota
April 21, 2009

Pre-Registration Form

Name: _____

Title: _____

Representing: _____

Mailing Address: _____

Telephone: _____

E-mail: _____

Please Indicate Dates For Which You Require Overnight Lodging

☐ Monday, April 20, 2009

☐ Tuesday, April 21, 2009

Kings Inn Hotel & Conference Center
110 E Sioux Ave
Pierre, SD 57501
(605) 224-5951

Please Calculate Your Round-Trip Mileage Expense (Tribal Representatives Only)

Traveling From: _____ To: Rapid City, SD

Round-Trip Distance: _____ Miles @ \$0.55/mile = _____

In order to receive expense reimbursement at the Summit Meeting we must receive your Pre-Registration Form no later than April 7, 2009. Those who do not pre-register will receive a reimbursement check within two weeks following the meeting.

Return by U.S. Mail, Fax, or E-mail to:

Randy Withrow (319-373-3043)
The Louis Berger Group Inc.
950 50th Street
Marion, IA 52302
Fax: 319-373-3045
rwithrow@louisberger.com

Map of Meeting Location

Wakpa Siça
709 Ft. Chouteau Rd
Ft. Pierre, SD 57532
(605) 223-9099

Directions From Hotel:

-  1: Start out going WEST on E SIOUX AVE/US-14 BYP/US-18 BYP/SD-34 toward S PIERRE ST/US-14/US-83. Continue to follow SD-34 W. 1.4 mi
-  2: Turn SLIGHT RIGHT onto US-14/SD-1806/SD-34. 0.9 mi
-  3: Turn RIGHT onto SD-1806. 1.2 mi
-  4: Turn RIGHT onto FT CHOUTEAU RD. 0.4 mi
-  5: End at 709 Fort Chouteau Rd Fort Pierre, SD 57532-4303

