

DRAFT 12/02/2008 (Subject to change pending review with Interested Tribes)

National Register Evaluation of Traditional Sites

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.

“The intensive survey shall gather information from American Indian tribes and elders to assist in identifying properties of traditional religious and cultural significance to them and identifying properties that may [be] eligible for the NRHP” [ID Plan, Section 3.2.6, page A-3].

“If the cultural resource is in the APE, necessary information to evaluate the cultural resource against NRHP eligibility criteria (36 CFR 60.4) shall be obtained. The guidance in National Park Service [NPS] Bulletin 38 and E.O. 13007 shall also be considered when evaluating sites for NRHP eligibility. If in the opinion of the investigator and cultural resource representative designated by the tribes, the cultural resource is recommended NRHP eligible, sufficient information to formulate Treatment Plan(s) shall be obtained.” [ID Plan, Section 3.2.4, pages A-2 and A-3. Similar wording is repeated in Section 3.4.4.]

Scope of Work:

This site evaluation study seeks to include information from a variety of sources including archival review of relevant ethnohistoric and ethnographic sources, review of oral histories, and interviews with traditional experts identified by the tribes. STB anticipates that this portion of the study will result in a written report that compiles existing information regarding the traditional religious and cultural significance of both individual sites and site types known to exist within the project’s APE. Throughout the course of this work, i.e., reviews of archival information and informant interviews, STB will simultaneously work with participating tribes to arrange and schedule field visits by traditional leaders, identified by the tribes, to places of interest or concern for the purpose of determining the significance of these places as historic properties eligible for listing in the National Register of Historic Places. These site visits will be focused on known site locations identified by previous surveys within the APE, but may also include visits to other specific locations identified within the APE as a result of the archival research and interview process.

I. Tribal Notification

STB will notify interested tribes of its intent to conduct the study and request assistance from tribes with archival research, interviews, and field visits.

II. Archival Research

This task will include review of ethnohistoric and ethnographic sources to establish a record of existing historical and anthropological documentation regarding tribes with ancestral or traditional cultural interests in the project area, places of known cultural significance that may be located within the project area, and traditional cultural values or activities that may be associated with specific areas classified archaeologically as petroform sites, e.g., stone circles, cairns, rock alignments, etc. This research may also be used as a basis for developing questions for informant interviews.

III. Oral History Review and Informant Interviews

Tribes will be contacted to request interviews with individuals who have knowledge of tribal history, traditional culture, and spiritual values relevant to the project’s APE. Letters will be sent to Tribal Chairs and Tribal Historic Preservation Officers and/or cultural resource representatives appointed by the tribal governments. STB will also 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 Register, information disclosed prior to a determination of eligibility may not be

protected under this law. For this reason, pending a determination of eligibility, STB will request that tribes provide only enough information to identify the existence of a site and a general statement signifying its importance to tribes without disclosing specifics that could compromise the site or its associated significance. National Register staff will be consulted in situations where any uncertainty exists regarding information requirements for making a determination of eligibility. If tribes request that information not be shared with other consulting parties or their contractors, STB will safeguard this information to the best of its ability in accordance with its trust responsibility toward tribes and its respect for the tribes' status as sovereign governments; however, STB cannot insure the complete confidentiality of any information provided in written form.

V. Reporting

- An interim report will be prepared by STB with assistance from its third-party contractor and tribal subcontractors upon completion of the archival research. The interim report will identify tribes with ancestral ties to the project area and will include a summary of findings regarding known sites and site types with potential traditional cultural and religious significance to those tribes.
- A final report will be prepared by the tribal subcontractors following completion of the field visits. This final report will incorporate the content presented as part of the interim report, but will also include a summary of the information gathered during oral history reviews, informant interviews, and field visits as these investigations pertain to sites identified within the project area. Presentation of specific site information in the report and agency review of the final report will be subject to the confidentiality policy and procedures presented as part of this work plan.
- Letters of Evaluation will be prepared by Tribal Historic Preservation Officers and/or cultural resource representatives appointed by the tribal governments following all field visits conducted for the purpose of evaluating the NRHP eligibility of sites located within the project's APE. All letters must be received by STB no later than 30 days following the scheduled field visits.

VI. Schedule

Kick Off Meeting: December 2008

Archival Research: December 2008 – January 2009

Interviews: January – February 2009

Interim Report Due: March 1, 2009

Field Visits: April 2009 (variables: # of visits, field conditions, and property access)

Final Report Due: May 31, 2009

Letters of Evaluation: 30 days following Individual Field Visits