



RE: Tongue River RR, PA Working group, final scheduled meeting
Coburn, David

to:

'Starzak, Richard', catherine.nadals@stb.dot.gov

12/06/2014 05:14 PM

Hide Details

From: "Coburn, David" <DCoburn@steptoe.com>

To: "'Starzak, Richard'" <Richard.Starzak@icfi.com>, "catherine.nadals@stb.dot.gov" <catherine.nadals@stb.dot.gov>

History: This message has been replied to.

1 Attachment



Draft_PA_12-5_2014_after_Working_Group_review.docx

Rich, Cathy – Here are my comments on this latest draft. As you will see, many of them are designed to clarify that certain steps need not be undertaken when a site can be avoided. I have inserted my edits in all caps so that you will find them more readily and also included margin comments. We will likely have more comments that we will get to you by January 16 once I have consulted further with my client, but I'm fine if you want to circulate this version on Monday.

I have also added a definition of TRRC.

Please email me if you wish to speak over the weekend.

Regards. David

From: Starzak, Richard [<mailto:Richard.Starzak@icfi.com>]

Sent: Friday, December 05, 2014 5:29 PM

To: brhodd1@yahoo.com; Betsy Merritt; cvaughn@achp.gov; Jenkins, Paul C (Chris) NWS; Conrad Fisher; 'conrad.fisher@cheyennation.com'; Coburn, David; doug_melton@blm.gov; oglalathpo@goldenwest.net; 'ngabriel@achp.gov'; 'swilmoth@mt.gov'; Vicki.Rutson@stb.dot.gov; Catherine.Nadals@stb.dot.gov

Cc: Barbara.Miller@stb.dot.gov; Summerville, Alan; Mello, Sarah

Subject: RE: Tongue River RR, PA Working group, final scheduled meeting

Hi everyone, Thank you for an exceptional working group call today. At the end of the call, Charlene and David asked me to circulate the PA revised with the comments from our call today, so they could take a closer look at it before we distribute it to the rest of the consulting parties on Monday. I've attached the revised draft PA for that purpose.

Please get your comments back to me as soon as possible, as we hope to deliver this to the rest of the consulting parties well before Monday's call at 1 PM Eastern time.

This was our last working group call, and we really appreciate the hard work and expertise you all lent us in this process.

Rick

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From: Starzak, Richard

Sent: Friday, December 05, 2014 9:44 AM

To: 'brhodd1@yahoo.com'; 'Betsy Merritt (emeritt@savingplaces.org)'; 'cvaughn@achp.gov'; 'Jenkins, Paul C (Chris) NWS (Paul.C.Jenkins@usace.army.mil)'; 'Conrad Fisher (esevone1@yahoo.com)'; 'conrad.fisher@cheyennenation.com'; 'dcoburn@steptoe.com'; 'doug_melton@blm.gov'; 'oglalathpo@goldenwest.net'; 'ngabriel@achp.gov'; 'swilmoth@mt.gov'; 'Vicki.Rutson@stb.dot.gov'; Catherine.Nadals@stb.dot.gov; Summerville, Alan; Mello, Sarah

Subject: RE: Tongue River RR, PA Working group, final scheduled meeting

<< File: Draft_PA_for_Working_Group_to_review_on_12-5-2014.docx >>

Hi everyone, here is the document we'll review today, and we will be focusing on the yellow highlighted sections and comments. Thank you so much!

Rick

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-----Original Appointment-----

From: Starzak, Richard

Sent: Wednesday, November 26, 2014 8:21 AM

To: Starzak, Richard; brhodd1@yahoo.com; Betsy Merritt (emeritt@savingplaces.org); cvaughn@achp.gov; Jenkins, Paul C (Chris) NWS (Paul.C.Jenkins@usace.army.mil); Conrad Fisher (esevone1@yahoo.com); 'conrad.fisher@cheyennenation.com'; dcoburn@steptoe.com; doug_melton@blm.gov; oglalathpo@goldenwest.net; 'ngabriel@achp.gov'; 'swilmoth@mt.gov'; Vicki.Rutson@stb.dot.gov; Catherine.Nadals@stb.dot.gov; Summerville, Alan; Mello, Sarah

Subject: Tongue River RR, PA Working group, final scheduled meeting

When: Friday, December 05, 2014 10:00 AM-11:30 AM (UTC-08:00) Pacific Time (US & Canada).

Where: 1-877-423-6338, Passcode: 364456#

<< File: Draft_PA_for_Working_Group_to_review_on_12-5-2014.docx >> Hi Ben, Betsy, Charlene, Chris, Conrad, David, Doug, Michael, Najah, and Stan,

ATTACHED IS THE MOST CURRENT VERSION OF THE DRAFT PA FOR USE TODAY. Rick

Our final scheduled PA working group call is Friday, December 5 at 1 PM EST. (Call in information is: 1-877-423-6338, Passcode: 364456#). Because it is our final call, I hope we get strong participation from you all.

Good news: On our November 21 call, ACHP, OEA, and SHPO all agreed that there will be a single PA and it will follow ACHP's instructions from their September 8 letter, and the process PA examples ACHP provided to us. This is entirely consistent with the revisions the working group has been making to the PA since September, so the group's effort has been right on target.

For the December 5 call, we'll have a draft PA with all the stipulations and attachments prepared, and we hope to get that to you by Wednesday December 3. For the December 5 call, it may be most useful if we spend our time revisiting the comments received and review changes to the PA that address those comments.

I wanted to send out this invite now just so you all have it on your calendars. We understand everyone has busy schedules, especially over the holidays, and we truly appreciate your participation.

Thank you very much,
Rick (in support of Cathy)

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

WHEREAS, the Tongue River Railroad Company Inc. (TRRC), the project applicant, filed a revised application with the Surface Transportation Board (STB) proposing to construct and operate a new, approximately 42-mile rail line between Colstrip, Montana, to two terminus points, near Ashland, Montana in Custer, Powder River and Rosebud Counties to transport low sulfur, sub-bituminous coal from proposed mine sites in the Tongue River Valley and Powder River Basin (TRRC project) (Map, Attachment A); and,

WHEREAS, the STB is preparing an Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) to address the potential impacts of the TRRC project on the environment, including on cultural resources. Review under Section 106 of the National Historic Preservation Act (NHPA) is being coordinated with the NEPA process and cultural resources documentation prepared will be the basis for determining the potential impacts on historic properties, cultural resources, and tribal sites of significance for both reviews; and,

WHEREAS, the STB is considering the No Action Alternative and five build alternative routes, and certain variations on the five build alternative routes, to be carried forward in the EIS: the Colstrip Alternative (the applicant's preferred alternative), the Tongue River Alternative, the Tongue River Road Alternative, the Moon Creek Alternative, and the Decker Alternative, some of which traverse portions of Custer County as well as Powder River and Rosebud Counties; and,

WHEREAS, the STB will be comparing the potential impact of each of the build alternatives on historic properties, cultural resources and tribal sites of significance to inform its selection of any build alternative, in addition to considering selecting the No Action Alternative, as a "preferred alternative,"; and

WHEREAS, the STB is the lead federal agency responsible for compliance with Section 106 of the NHPA, 16 U.S.C. Part 470f and its implementing regulations at 36 CFR Part 800; and,

Comment [SR1]: Per ACHP's 9/08/2014 letter: "The draft PA starts with the assumption that an alignment will be chosen. The ACHP has previously advised the STB that it may be premature to make this assumption. Given STB's ability to recommend a "no-build" option, we need to recognize that this option could be selected as the "preferred alternative."

Note: Resolved by inserting the "No Action" text as shown.

Comment [SR2]: This WHEREAS clause added per NTHP comment

1 **WHEREAS**, the STB’s potential approval of the TRRC project is an Undertaking as defined at
2 36 CFR § 800.16(y); and,

3
4 **WHEREAS**, the STB has determined its potential approval of the TRRC project, the
5 Undertaking, may affect properties listed in or eligible for listing in the National Register of
6 Historic Places (National Register) pursuant to 36 CFR Part 60 as well as tribal sites of
7 significance as defined in Attachment Appendix C; and,

8
9 **WHEREAS**, tribal sites of significance identified and evaluated by tribal experts or authorities
10 may be eligible for listing in the National Register as historic properties of religious and cultural
11 significance to tribes; and,

12
13 **WHEREAS**, the build alternatives under consideration consist of multiple corridors where
14 access to property is restricted on approximately 50 percent of the combined Area of Potential
15 Effects (APE), as shown in Attachment D (Table 3 and Figure 1), thereby necessitating a phased
16 approach for identification and evaluation of historic properties pursuant to 36 C.F.R. §
17 800.4(b)(2); and,

18
19 **WHEREAS**, STB’s use of a phased approach for the identification, evaluation, and assessment
20 of effects of historic properties is allowable under 36 C.F.R. § 800.4(b)(2) and 36 C.F.R. §
21 800.5(a)(3) if memorialized in a Programmatic Agreement (PA) pursuant to 36 C.F.R. §
22 800.14(b); and

23
24 **WHEREAS**, the effects on historic properties and tribal sites of significance cannot be fully
25 determined prior to any decision on the TRRC project by the STB, and therefore a
26 programmatic agreement (PA) is appropriate pursuant to the Section 106 regulations at 36 CFR §
27 800.14(b)(1)(ii); and,

28
29
30 **WHEREAS**, in the event that the STB approves any build alternatives, this PA would be
31 included in its record of decision to guide the resolution of adverse effects to historic properties
32 and tribal sites of significance; and,

33
34 **WHEREAS**, the STB may or may not approve construction and operation of the TRRC rail line,
35 the STB developed this PA to defer final identification and evaluation of historic properties
36 pursuant to 36 CFR § 800.4(b)(2), to phase the application of the criteria of adverse effect
37 pursuant to 36 CFR § 800.5(a)(3), and to continue consultation to avoid, minimize and mitigate
38 the potential adverse effects of the Undertaking to historic properties and tribal sites of
39 significance in accordance with 36 CFR § 800.6(a); and,

40
41 **WHEREAS**, pursuant to 36 CFR § 800.4(b)(2) and 36 CFR § 800.5(a)(3), the STB, through the
42 phased identification, evaluation and effect assessment, has established the likely presence of
43 historic properties and tribal sites of significance within the area of potential effects (APE) for
44 each alternative or inaccessible area through background research, consultation and the
45 appropriate level of field investigation, taking into account the number of alternatives under

Comment [SR3]: Two clauses added and the third clause deleted to address Yankton Sioux and Colstrip Alternative Landowners comments below.

Comment [SR4]: In an e-mail dated 10/27/2014, Lana Gravatt of the Yankton Sioux suggested the beginning of this clause be revised as: “Whereas, because of the several alternative build routes, the effects on historic properties (which include tribal sites of significance)...”

Comment [SR5]: The Colstrip Alternative Landowner Group letter dated 9/30/2014, had multiple comments about this WHEREAS clause. The letter stated that this clause appears to contemplate the choice of a route by STB prior to the full identification and consideration of potentially significant cultural resources, did not agree the Tongue River Railroad is a complex project, and did not agree that a PA is appropriate for this project. In terms of specific language in this clause, the letter stated: “Finally, we do not agree that the language of 36 C.F.R. § 800.14(b)(1)(ii) – ‘When effects on historic properties cannot be fully determined prior to approval of an undertaking’ – applies to this proposed project. To the contrary, determining effects on historic properties along all alternative routes is feasible prior to the agency’s decision. As the agency appears to believe otherwise, we request an explicit property description of which portions of the alternatives cannot be fully analyzed prior to the agency’s final decision.”

“Even if the regulations authorized use of a PA in this situation, it would be inadvisable as a practical matter for STB to wait until after authorizing construction – if that is the outcome – to identify some effect on historic properties. If effects turn out to be more serious or widespread than understood at the decision point, the No Action Alternative will no longer be available.”

Note: Resolved by adding the two WHEREAS clauses above and inserting a linking clause in this WHEREAS that explains the restricted access on the build alternatives under ... [1]

Comment [SR6]: In Lana Gravatt’s e-mail dated 10/27/2014, she asked that the following clause be added: “Whereas, historic properties (which includes tribal sites of significance) within the actual boundaries of APE, will be protected and given every consideration under the American Indian Religious Act of 1978 within the NEPA Process and before approval of TRRC by STB, etc.”

Note: Not applicable under NHPA.

1 consideration, the magnitude of the undertaking and its likely effects, and the views of the
2 consulting parties; and,

3
4 **WHEREAS**, upon approval of the project, the STB would develop a treatment plan as an
5 amendment to this PA that would outline the specific measures that would be implemented to
6 resolve adverse effects to historic properties and tribal sites of significance for any approved
7 alternative; and,

8
9 **WHEREAS**, this PA was developed in consultation with the Advisory Council on Historic
10 Preservation (ACHP) and the Montana State Historic Preservation Officer (SHPO) pursuant to
11 36 CFR § 800.6, who are signatories to this PA; and,

12
13 **WHEREAS**, the U.S. Army Corps of Engineers (COE), U.S. Department of Interior Bureau of
14 Land Management (BLM), and the U.S. Department of Agriculture Agricultural Research
15 Service (ARS) are cooperating agencies under NEPA and signatories to this PA; and,

16
17 **WHEREAS**, the Montana Department of Natural Resources and Conservation (MT DNRC)
18 (acting as lead agency for all Montana State agencies, including the Montana Department of
19 Transportation (MDOT)) is a cooperating agency and signatory to this PA; and,

20
21 **WHEREAS**, the MDOT has the responsibility for complying with Section 4(f) of the
22 Department of Transportation Act where applicable; and,

23
24 **WHEREAS**, the TRRC, the project applicant, is ~~an invited invited-to-be a~~ signatory to this PA,
25 ~~pursuant to in accordance with~~ 36 C.F.R. § 800.6(c)(2)(iii); and,

26
27 **WHEREAS**, the STB has consulted by letter, email, monthly teleconferences, and face-to-face
28 meetings with the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation,
29 Montana; the Crow Tribe of Montana; the Crow Creek Sioux Tribe of the Crow Creek
30 Reservation, South Dakota; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South
31 Dakota; the Standing Rock Sioux Tribe of North & South Dakota; the Cheyenne River Sioux
32 Tribe of the Cheyenne River Reservation, South Dakota; the Yankton Sioux Tribe of South
33 Dakota; the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; the
34 Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Flandreau
35 Santee Sioux Tribe of South Dakota; the Shakopee Mdewakanton Sioux Community of
36 Minnesota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the
37 Santee Sioux Nation, Nebraska; the Arapaho Tribe of the Wind River Reservation, Wyoming;
38 Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; the Cheyenne and
39 Arapaho Tribes, Oklahoma; the Fort Belknap Indian Community of the Fort Belknap
40 Reservation of Montana; the Oglala Sioux Tribe, the Shoshone Tribe of the Wind River
41 Reservation, Wyoming; and the Spirit Lake Sioux Tribe, North Dakota concerning properties of
42 traditional religious and cultural significance, ~~and~~ who have been invited, in accordance with 36
43 C.F.R. § 800.6(c)(2)(ii), to participate in the development of the PA as concurring parties, and
44 who are hereafter referred to as consulting tribes; and,

Comment [SR7]: Per TRRC request to
identify consulting tribes

1 **WHEREAS**, the STB has contacted the Lower Sioux Indian Community in the State of
2 Minnesota; the Upper Sioux Community, Minnesota; and the Blackfeet Tribe of the Blackfeet
3 Indian Reservation of Montana by letter, email and phone, and invited them to participate as
4 consulting parties in the development of this PA, however each of these tribes has either not
5 responded to STB’s invitation or declined to participate in the development of this PA; and,
6

7 **WHEREAS**, other consulting parties, including the Colstrip Alternative Landowners Group, Fix
8 Ranch, National Trust for Historic Preservation (NTHP), Montana Preservation Alliance (MPA),
9 National Wildlife Federation (NWF), Northern Cheyenne Otter Creek Descendants (NCOCD),
10 Northern Plains Resource Council (NPRC), Rocker Six Cattle Company (RSCC), and the Sierra
11 Club have been invited, in accordance with 36 C.F.R. § 800.6(c)(3), to participate in the
12 development of the PA as concurring parties; and,
13

14 **WHEREAS**, the Wolf Mountains Battlefield, a property located within the view shed of the
15 Decker Alternative, was designated a National Historic Landmark (NHL) on October 6, 2008;
16 and,
17

18 **WHEREAS**, the Wolf Mountains Battlefield Site may be indirectly affected if the STB licenses
19 the Decker alternative; and,
20

21 **WHEREAS**, given the designation of the Wolf Mountains Battlefield as an NHL, the STB must
22 adhere to Section 110(f) of the NHPA and Section 800.10 of the ACHP’s regulations, which
23 requires a higher consideration of alternatives to minimize harm to the NHL and has invited the
24 U.S. Department of Interior, National Park Service, National Landmarks Program (NLP), and the
25 NLP has agreed, to participate in consultation and invited to be a concurring party in the
26 development of this PA; and,
27

28 **WHEREAS**, the signatory signatory, invited signatories and concurring parties to this PA are
29 hereafter collectively referred to as **PA consulting parties**; and,
30

31 **WHEREAS**, TRRC, the applicant, would not be required to act under the terms of this PA
32 unless or until the STB authorizes the construction and operation of a new rail line; and,
33

34 **WHEREAS**, the TRRC project’s Area of Potential Effects (APE), as defined at 36 CFR §
35 800.16(d), is outlined and identified in the Identification Plan (ID Plan), Attachment B of this
36 PA; and,
37

38 **WHEREAS**, the definitions of 36 CFR Part 800 and the definitions and acronyms in Attachment
39 C are applicable throughout this PA and any attachments to this PA; and,
40

41 **WHEREAS**, the PA consulting parties have considered requirements of NHPA, the American
42 Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq. (AIRFA), the Native American Graves
43 Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. (NAGPRA), Executive Order 13007 –
44 Indian Sacred Sites, Executive Order 13175 – Consultation and Coordination with Indian Tribal
45 Governments, the Archaeological Resources Protection Act of 1979 (ARPA) and Section 4(f) of

Comment [MS8]: The Colstrip Alternative Landowner Group letter dated 11/4/14, requested that OEA “Please clarify legal significance – if any – of ‘concurring’ versus ‘consulting’ parties.”

Note: Section 106 regulations clarify the legal significance, and citations added to address comment. Note: § 800.2(c) describes “consulting parties”, § 800.6(c)(3) discusses consulting parties who are invited to concur in an agreement, and § 800.14(b)(3) says consultation to develop a PA for a complex project shall follow § 800.6.

Comment [SR9]: Phrase added to this clause per 0 ACHP’s letter dated 9/8/2014: **“Development of Treatment Plans**-Finally, the treatment of the Wolf Mountain Battlefield, a National Historic Landmark (NHL) must adhere to Section 110(f) of the NHPA and Section 800.10 of the ACHP’s regulations, which requires a higher consideration of alternatives to minimize harm to the NHL.”

Comment [CD10]: DHC: INVITED SIGNATORY SHOULD BE SINGULAR HERE AND THROUGHOUT BECAUSE TRRC IS THE ONLY INVITED SIGNATORY

Comment [SR11]: In Lana Gravatt’s e-mail dated 10/27/2014, she asked that the following clause be added: “Whereas, historic properties (which includes tribal sites of significance) within the actual boundaries of APE, will be protected and given every consideration under the American Indian Religious Act of 1978 within the NEPA Process and before approval of TRRC by STB, etc.”

Note: AIRFA addressed here..

1 the Department of Transportation Act (49 U.S.C. 303) where applicable in the course of
2 consultation; and,

3
4 **WHEREAS**, in 2013 and 2014, the STB conducted a SHPO records search for previously
5 recorded archaeological and historic sites, for a one-mile area on either side of the proposed
6 right-of-way of the five build alternative routes, and variations, being considered for the TRRC
7 project under NEPA; and,

8
9 **WHEREAS**, in 2013 and 2014, the STB conducted pedestrian transect surveys by tribal
10 members, contracting archeologists, historians and architectural historians along portions of each
11 of the alternatives considered under NEPA; and,

12
13 **WHEREAS**, the STB has been advised by some consulting parties, including tribal members
14 and ranchers, that the Tongue River Valley is an area of rich cultural heritage; and,

15
16 **WHEREAS**, the STB in collaboration with the ACHP, SHPO and consulting parties, will
17 include specific mitigation in its treatment plan to resolve project related adverse effects within
18 the APE for any licensed alternative; and,

19
20 **WHEREAS**, all the -data -gathered under the terms of this PA will be made available to
21 consulting tribes to inform any future undertakings that may take place in the Tongue River
22 Valley; and, _____

23
24 **WHEREAS**, the ID Plan in Attachment B requires that TRRC complete Phase I and Phase II
25 surveys as defined in Attachment C and the ID Plan for the entire line approved by the STB in
26 order to take into account any potential adverse effects to historic properties and tribal sites of
27 significance; and,

28
29 **WHEREAS**, the STB will use an independent third-party contractor, working under its sole
30 supervision, direction and control, and at TRRC's expense, to assist STB in implementing the
31 Stipulations below; and,

32
33 **NOW, THEREFORE**, the signatories to this PA agree that the proposed TRRC project will be
34 implemented in accordance with the following stipulations in order to take into account the
35 effects of the TRRC project on historic properties and sites of significance.

Comment [CD12]: DHC – I WOULD
MOVE THIS WHEREAS CLAUSE SO
THAT IT FOLLOWS IMMEDIATELY THE
WHEREAS CLAUSE RE THE RICH
CULTURAL HERITAGE OF THE VALLEY

STIPULATIONS

STB has a statutory obligation as the lead federal agency to fulfill the NHPA requirements of Section 106; therefore, STB will ensure that the measures in the following parts are carried out.

I. ROLES AND RESPONSIBILITIES

A. Federal Agency

Consistent with the requirements of 36 CFR 800.2(a), the STB remains legally responsible for ensuring that the terms of this PA are carried out. In addition to Section 106, the STB is responsible for complying with other sections of the NHPA, including Section 101(d)(6)(B) for consultation with tribes that attach religious and cultural significance to historic properties, Section 110(f) for NHLs, and Section 304 for confidentiality of location or character of certain properties. The STB is responsible for notifying the ACHP if a Memorandum of Agreement (MOA) is required and determining ACHP's participation and for notifying the signatories to this PA when Section 106 is concluded. STB reserves the right to seek qualified independent expert consultation through a third-party contractor in order to fulfill its responsibilities under this PA.

B. Other Federal Agencies

1. **USACE:** The United States Army Corps of Engineers (Corps or USACE) has regulatory responsibility under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Any permitting action would be considered a federal undertaking and require the Corps to comply with NHPA and 36 CFR 800. The Corps acknowledges STB as the lead agency responsible for Section 106 compliance in fulfilling our collective responsibilities under Section 106 of the NHPA. The Corps will review STB Section 106 compliance documents to ensure they are acceptable to meet the Corps' Section 106 compliance responsibilities, not any responsibilities of the Corps, if applicable.
2. **BLM:** If a selected alternative or associated infrastructure crosses lands managed by the U.S. Bureau of Land Management, BLM is responsible for issuing a right-of-way under Title V of the Federal Land Policy and Management Act (43 U.S.C 1701) as amended. Crossing BLM managed lands would be considered a Federal undertaking and require BLM to comply with NHPA and 36 CFR 800. If the southern route (Decker Alternative) is selected the right-of-way would avoid the BLM Wolf Mountain Battlefield Area of Critical Environmental Concern (ACEC) because the ACEC is closed to rights-of-way.
3. **MDT:** If STB selects a build alternative that crosses a highway, modifies a highway alignment, or the railroad would impact the highway right-of-way in any way, MDT will notify STB of specific MDT's requirements with which STB must comply.
4. **USDA-ARS:** If a selected alternative or associated infrastructure crosses land managed by the United States Department of Agriculture, Agricultural Research Service, USDA-ARS is responsible for negotiating changes to the Easement Deed entered into between USDA-ARS and the applicant on May 24, 1989 and its amendments (1994 and 1996). Changes will be based on current conditions on the grounds of Fort Keogh.

C. ACHP

Comment [MS13]: Colstrip Alternative Landowners Group letter dated 11/4/14: The 10/17/14 version "of the Stipulations lacks many sections for which the Landowners proposed changes in their 9-30-14 letter to Vicki Rutson. Are we to understand that STB has fully reviewed and decided to reject all those comments?"

Comment [SR14]: Colstrip Alternative Landowners Group letter dated 9/30/2014: "Preamble. We would like a clarification here that STB's duty extends to the full scope of NHPA and its implementing regulations, not just the section mentioned here. We would also like some commitment as to the overall timeline in which STB would carry out its legal duties under the PA, if the PA takes effect. The twelve-year lifetime of the proposed PA is far too long for the Landowners to live in limbo, especially given the decades this proposal has already dragged on."

Added references to other applicable sections of the NHPA and revised the duration stipulation.

Comment [rs15]: Reviewed in 9/26/2014 WG Session. In ACHP's letter dated 9/8/2014, ACHP asked that a stipulation for "roles and responsibilities" be added as follows: "Given the prominent role that the applicant, Tongue River Railroad Company (TRRR), will assume in project planning and implementation, we recommend that a stipulation be added to the stipulations section that clarifies the roles and responsibilities of key consulting parties. We believe that all consulting parties would find this information useful since other Federal agencies such as BLM will be involved in project reviews. Further, it will help to avoid confusion in implementing the PA once it is executed."

Resolved by adding stipulation I.

Comment [SR16]: ACHP guidance, 9/8/2014: ACHP requests that OEA add a Stipulation clarifying the roles and responsibilities of key consulting parties.

OEA action, 11/28/2014: We added Section I, Roles and Responsibilities, to the draft PA and expanded Subsection B, Other Federal Agencies, to include BLM. Further, we expanded "Subsection, E. Tribes," to provide additional information about the Tribes' role in assisting in the identification of and determining effects on historic properties and tribal sites of significance. We added a clause to the "Subsection F. Applicant" explaining ... [2]

1 The ACHP shall be responsible for providing technical guidance, monitoring the
2 effectiveness of this PA, participating in dispute resolutions if needed, and notifying the STB
3 if ACHP will participate in consultation for an MOA if needed.

4 5 **D. SHPO**

6 The SHPO shall be responsible for reviewing project documentation in a timely manner and
7 participating in consultation as set forth in this PA.

8 9 **E. Tribes**

10 [Text sent 11/24/2014 to Conrad, Ben, and Michael for their review, would replace #3:]

11 1. In 2013 to 2014, tribes participating in initial field identification efforts and in the
12 development of this PA had the additional opportunity to comment on the PA in the Draft
13 EIS, which included an analysis of potential effects to historic properties and tribal sites
14 of significance within each alternative under consideration by the STB.

15
16 ~~2. Consulting tribes would assist in the identification of- tribal sites of significance in the~~
17 ~~APE of any build alternative licensed by the -STB and provide it with recommendations~~
18 ~~regarding National Register, effects assessment and the resolution of effects to such~~
19 ~~properties.~~

20
21 2.

22 ~~—The participating Tribes shall be responsible to assist in the identification of tribal sites of~~
23 ~~significance in the APE and notifying STB and SHPO whether the properties are eligible~~
24 ~~for the National Register and also sites of tribal significance. [Add tribes' role to assist in~~
25 ~~identification of and determination of effect assessing effects upon tribal sites of~~
26 ~~significance in the APE.] [Text inserted per Stan Wilmoth's comment, but Conrad would~~
27 ~~like to review it at Stan's request.]: In 2013 to 2014, participating tribes were consulted~~
28 ~~during initial identification efforts, participated in sample field identification efforts and~~
29 ~~in the development of this PA. During circulation of the Draft EIS in 2015, tribes were~~
30 ~~requested to comment on the Draft EIS, which included an analysis of the alternatives~~
31 ~~being considered, potential eligibility, and effects. Circle back to ACHP that they do not~~
32 ~~anticipate below ground surveys.] Tribes will adhere to the time frames in the~~
33 ~~stipulations.~~

34 35 **F. Applicant**

36 Once the TRRC has gained access to the right-of-way, tThe TRRC shall be responsible for
37 providing information to accurately delineate the APE, and providing access to the right-of-
38 way so that STB and its contractor, tribes, and SHPO can complete the stipulations set forth
39 in this PA. If specific circumstances arise that other consulting parties need to access the
40 APE in order to complete their review under the PA, and the STB authorizes the request, the
41 TRRC shall be responsible for providing access until the line is constructed.

42 43 **G. Other Consulting Parties**

44 The other participating consulting parties shall be responsible for reviewing project
45 documentation in a timely manner and participating in consultation as set forth in this PA.

Comment [SR17]: Stan Wilmoth commented: In answer to Conrad's concern what [about] in role in Stip II "Tribes will be consulted during initial ID efforts and participate in sample field ID efforts and will formally be requested to comment on a proposed PA, Draft EIS and [alternatives, eligibility and effects] at (what time or step...Spring 2015 for Draft EIS, When for Draft PA, Etc.

Note: Text in #1 and #2 added to replace #3 and address SHPO's comment, awaiting tribal review

II. REVIEW OF ALTERNATIVES

A. Consistent with 36 C.F.R. § 800.3(b) and § 800.8, the STB coordinated its NEPA review with the Section 106 process. Under NEPA, the STB considered the No Action Alternative and five build alternative routes, and certain variations on the five build alternative routes: the Colstrip Alternative (the applicant's preferred alternative), the Tongue River Alternative, the Tongue River Road Alternative, the Moon Creek Alternative, and the Decker Alternative.

B. In the EIS, the STB compared the potential impact of each of the alternatives on historic properties, cultural resources and tribal sites of significance to inform its eventual selection of the preferred alternative. The EIS was distributed to all PA consulting parties for their review and comment. Comments received by STB from the PA consulting parties informed the STB's consideration of the preferred alternative.

C. Consistent with 36 C.F.R. § 800.3(b) and § 800.8, the STB coordinated the four-step Section 106 process set forth in 36 CFR § 800.3 through § 800.6 with the NEPA review of alternatives as follows:

1. Step 1: Initiation of the Section 106 Process

- a. Establish undertaking: Pursuant to 36 C.F.R. § 800.3, STB established that its potential approval of the TRRC project is an Undertaking as defined at 36 C.F.R. § 800.16(y).
- b. Identify the appropriate SHPO: Pursuant to Section 36 C.F.R. § 800.3(c), STB sent a letter to the Montana SHPO initiating Section 106 consultation on October 22, 2012, and since then actively sought input from the SHPO regarding the Undertaking.
- c. Identify consulting parties: From October 2012 to December 2012, STB sent letters initiating Section 106 consultation with the PA consulting parties, and added additional consulting parties in 2013 and 2104. STB held monthly calls with the PA consulting parties since February 2013 to inform them of updates on the NEPA process, and progress on the Section 106 steps. STB held in person meetings with the PA consulting parties in Lame Deer, Montana on April 16-18, 2013, and in Billings, Montana on February 13-14, 2014, which included information about the alternatives being considered and discussions about the Section 106 process.

d. Plan to involve the public: STB held ten scoping meetings in multiple locations in the project vicinity from November 12-16, 2012. These meetings included maps of the alternatives and allowed for public comments on environmental topics, including cultural resources and historic properties. The project website, available to the general public at www.tonguerivereis.com, was updated regularly and has a page devoted entirely to historic preservation issues. [The Draft EIS was distributed for public comment in \[month\] 2015, and public comments received were considered in the revisions to this PA. See Stipulation XVI.](#)

2. Step 2: Identification of Historic Properties

Pursuant to 36 C.F.R. § 800.4(b)(2), the STB is deferring final identification and evaluation of historic properties. For the analysis of impacts under NEPA, STB utilized crews of archaeologists, tribal members, historians and architectural historians to conduct field surveys in the APE of the build alternatives where access was granted to STB by landowners. [\[This information gathered follows the Section 106 process and is being](#)

Comment [rs18]: (Stipulation II added per ACHP's request and reviewed in 9/26/2014 WG session.)

ACHP guidance 9/8/2014: ACHP requests OEA add a Stipulation at the beginning of the Stipulations section clarifying that we are coordinating the review of alternatives for the TRRC proposal to build and operate a rail line as part of our NEPA review. We should also clarify how the review process outlined in the draft PA will inform the analysis of alternatives, including the selection of a preferred alternative.

OEA action 11/28/2014: On September 26, 2014, we added Section II, Review of Alternatives, to the draft PA. Here, we clarify that we are coordinating the NEPA review and Section 106 process. We also state that we are assessing 10 alternatives (5 build alternatives with variations yielding a total of 10 alternatives) and the No Action alternative in the NEPA process. The draft PA states that the Draft EIS will set forth a comparative analysis of all alternatives (including No-Action) and that the consulting parties, as well as members of the public and other stakeholders, will have the opportunity to comment on the draft EIS and the draft PA, which will be made available to the public in the Draft EIS. Comments received from the consulting parties and others will inform the STB's consideration of the preferred alternative. Additional revisions were made to the Whereas clauses and Section II of subsequent drafts of the PA (distributed on October 17 and November 10) that further outline the review process and how it will ... [3]

Comment [MS19]: Per 11/7/14 Working Group discussion: need to go through Stipulation II and clarify how the Board makes their decision and that it will take into account the work done thus far and the relative adverse effects

Comment [rs20]: This section II.C. was added to address the following comment in ACHP's letter dated 9/8/2104: "We, therefore, suggest that the PA outline specific measures that will be taken once the analysis of alternatives is completed and STB makes a decision. [SEE ALSO SECTION D. and STIPULATIONS III AND HIGHER] Accordingly, STB should clarify in the draft PA how the four-step Section 106 review process will be coordinated during the analysis of alternatives, and what role the consulting parties will have as determinations and findings are made."

Note: Resolved by adding the four steps here and further clarifying in later Stipulations.

1 | used to inform the NEPA process and the selection of a preferred alternative. The
2 | results of the identification effort were reported to the PA consulting parties, and were
3 | documented in the EIS for additional review and comment by the PA consulting parties,
4 | agencies, and the public. See Stipulation IV.

5 | **3. Step 3: Assessment of Adverse Effect**

6 | Pursuant to 36 C.F.R. § 800.5(a)(3), the STB phased the application of the criteria of
7 | adverse effect. The EIS documented the adverse effects of the build alternatives for
8 | cultural resources identified by the field crews, and predicted the potential adverse effects
9 | in areas that were not surveyed. See Stipulation V.

10 | **4. Step 4: Resolution of Adverse Effect**

11 | A Draft of this PA, which includes ways to avoid, minimize, and mitigate potential
12 | adverse effects on historic properties discussed among the PA consulting parties, was
13 | included in the Draft EIS for further review and comment. In accordance with 36 C.F.R.
14 | § 800.6(a), should the STB approve a build alternative, the STB shall continue
15 | consultation with the PA consulting parties to avoid, minimize and mitigate the potential
16 | adverse effects of the Undertaking to historic properties and tribal sites of significance.
17 | See Stipulation VI.

18 |
19 | **D. In the event the STB approves a build alternative,** the STB would ensure that the
20 | stipulations that follow (i.e., Stipulation III through Stipulation XXII) shall be implemented.
21 |

22 | **III. AREA OF POTENTIAL EFFECTS (APE)**

23 | **A. First Phase-APE for Review of Alternatives**

24 | STB defined two APEs during the effort to identify historic properties as alternatives were
25 | being reviewed. The APE for tribal and archaeological resources was the right-of-way for
26 | each build alternative plus a 200-foot-wide buffer zone on either side of the right-of-way
27 | edge. ~~STB limited the~~ The APE for built resources (historic buildings, structures, objects, and
28 | districts) to the included the proposed right-of-way with a maximum 1,500-foot buffer
29 | measured from the outer edges of both sides of the proposed right-of-way.

30 | **B. Second Phase-APE if a Build Alternative is Approved**

31 | **1. Defining the APE**

32 | The STB, in consultation with the SHPO, consulting tribes and other consulting parties, ~~has~~
33 | will ~~defined and documented~~ the APE based on the vertical and horizontal direct effects,
34 | indirect effects, and cumulative effects ~~in the event the for any STB approves a build~~
35 | alternative. The APE will apply to federal, state, tribal and private lands that may be affected
36 | by the construction and operation of this Undertaking.

37 | **a. Direct Effects**

38 | The APE for direct effects is the vertical and horizontal area within which historic
39 | properties may sustain physical alteration, damage, or destruction as a result of the
40 | construction of the Undertaking. The APE for direct effects includes all areas where the
41 | ground will be disturbed such as staging areas, work camps, cut and fill areas, material
42 | sources/gravel quarries, overburden disposal areas, associated buildings/structures (e.g.,
43 | sidings, bridges etc.) and associated infrastructure (e.g., communication towers, power
44 | lines etc.). The vertical lower limits of the APE for direct effects includes the depth of
45 | natural ground disturbance plus the depth of soil compaction that could affect the
46 | integrity of deeply buried archaeological or tribal resources, but does not exceed the

Comment [MS21]: Colstrip Alternative Landowners Group letter dated 11/4/14: "With regard to activities completed to date, the Landowners dispute the statement that the information gathering process has been consistent with federal guidelines."

Note: This is consistent with federal guidelines 36 C.F.R. § 800.4(b)(2) which is entitled "Phased identification and evaluation" and may be used "Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted." All three conditions apply to this undertaking.

Comment [MS22]: Colstrip Alternative Landowners Group letter dated 11/4/14: "With regard to activities completed to date, the Landowners dispute the statement that the agency has fully documented potential adverse effects."

Note: 36 C.F.R. § 800.5(a)(3) allows for phasing the application of the criteria of adverse effect. Effects addressed in the first phase during the review of alternatives are discussed in Stipulation V and Attachment D, tables 4 and 5.

Comment [SR23]: 10/10/2014 WG session. APE Stipulation III added to follow ACHP's examples of a "process PA".

[Note: The text below (Stipulations III-V) takes portions of the draft PA from 2011, and puts it within the framework of a "process PA" requested by the ACHP. It is organized [... [4]

Comment [ADS24]: Colstrip Land Owners Group, letter dated 10/14/14: A cultural resources site was identified but not recorded as part of the cultural resources survey because it was beyond the APE (the 200-foot buffer on either side of the ROW). The land between the site and the railroad is steep and would likely require cut and fill which would impact [... [5]

Comment [MS25]: Cathy Nadals: We need to define the vertical limits as well.

Comment [MS26]: Cathy Nadals: "Undertaking" capitalized in places below.

Comment [MS27]: Per 9/30/2104 comment letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group: "The language of this stipulation represents the first notice the Landowners have had that there are plans for staging areas or work camps. Such facilities represent many potential impacts that have not yet been considered at all in the [... [6]

depth beyond which such resources are reasonably expected to occur. The horizontal APE~~This~~ includes up to 200 feet on either side (up to a total of 400 feet) of the authorized construction right-of-way (ROW), to include a twenty-foot buffer on either side of the fenced construction ROW along the entire route, with the exception of the Wolf Mountains Battlefield NHL site. If the Decker Alternative is approved by STB, the NPS would be consulted to expand the APE for consideration of moving the alignment in order to avoid or minimize, to the extent feasible, adverse impacts on identified historic properties within the NHL.

b. Indirect Effects

The APE for indirect effects includes areas outside the construction or ground disturbance ROW where there is the potential for the ~~Undertaking~~ to have an indirect effect, including visual, vibration and noise effects, on historic properties, as defined in 36 C.F.R § 800.5. ~~Tribal sites of significance located~~ ~~Sensitive sites~~ outside the field survey areas ~~but within the line of sight of the proposed railroad including~~ ~~line of sight~~, water resources, sacred and ceremonial sites, areas where traditional plant-s are located life, and association-associated features, will be included ~~should also be considered for inclusion~~ in the APE for indirect effects. If a build alternative is approved, ~~consultation with the STB will consult with~~ the MT SHPO, tribes and other consulting parties ~~will be undertaken to determine if there are to identify~~ any locations where the APE should be extended beyond the buffer zones ~~beyond the right-of-way~~ established during the first phase ~~that is~~ 200 feet for archaeological and tribal resources and 1,500 feet for built resources.

c. Cumulative Effects

~~The identification of the APE will consider cumulative effects to historic properties as referenced in 36 C.F.R 800.5, which states: adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative. For the purposes of this PA, the APE for cumulative effects is the same as that for direct and indirect effects.~~

2. Amending the APE

a. An APE may be modified where tribal consideration, additional field research or literature review, consultation with parties to this agreement, or other factors indicate that the qualities and values of historic properties that lie outside the boundaries of the APEs may be affected directly, indirectly and/or cumulatively.

b. Any party to this agreement may propose that the APEs be modified by submitting a written request to the STB providing a description of the area to be included, justification for modifying the APE(s), and map of the area to be included. The STB will notify the parties to this agreement of the proposal with a written description of the modification requested within 15 days of receipt of such a request. From the date of notification, the STB will consult with the parties to this agreement for no more than 30 days to reach consensus on the proposal.

c. If the parties to this agreement cannot agree to a proposal for the modification of the APEs, then the STB will consider their concerns and will render a final decision within 30 days after the consultation period closes.

Comment [MS28]: Cathy Nadals:
Capitalized

Comment [rs29]: From 2/2014 CP meeting

Comment [DC30]: This sentence is very broad and seems unnecessary given the prior sentence.

Comment [SR31]: Per NTHP comment on 10/10/2014

We should coordinate with analysis for cumulative impacts being developed for the EIS. Specifically for induced development at the mine itself

Comment [SR32]: From WG session: Add a process to amend the APE in the event a build alternative is approved and the alignment changes, similar to that provided by the ACHP PA templates.

Note: The added text was on the BLM's Boardman to Hemingway "process PA".

d. For all modifications to the APE(s) the STB will provide a written record of the decision to the parties to this agreement.

e. Amending the APEs will not require an amendment to the PA.

a-f. On BLM lands, minor changes to the APE during construction of the Undertaking that may require additional fieldwork may be handled through the BLM ROW grant variance process.

IV. IDENTIFICATION AND EVALUATION

A. First Phase-APE for Review of Alternatives

In 2013 and 2014, as the STB was reviewing the five alternative routes and two variations being considered for this undertaking, it completed the following tasks:

1. **Phase I Inventory:** The Phase I Inventory is a professionally prepared study of existing cultural resource data from published and unpublished documents, SHPO and BLM cultural resource inventory records, archival records, geomorphological and soil studies, institutional site files, state and National registers, informant or ethnographic interviews and other information sources. The purpose of the Phase I Inventory was to obtain sufficient information about the existing or known prehistoric and historic properties, cultural landscapes, and properties of religious and cultural significance located within the project area and to inventory those properties. The Phase I Inventory, which encompassed completed for areas one-a mile away from each of the alternatives (2 miles total), also assisted-helped in determining the potential for previously unidentified historic properties to be located within the project area. [Include results table as attachment] A summary of the Phase I Inventory is included in this PA in Attachment D, Tables 1 and 2.

2. **Phase I Alternatives surveys:** Pedestrian transect field surveys were conducted by an equal number of tribal resource-expertsmembers and STB archaeologists of accessible portions of the direct and indirect APE for the alternatives being considered for this Undertaking. Vehicular and pedestrian survey was conducted by historians and architectural historians of the direct and indirect APE. For areas that were not accessible, satellite imagery was used to determine the likely presence or absence of built resources. [Include sPhase I Alternatives survey results are included in this PA in Attachment D, Tables 3, 4, and 5, and Figure 1.as an attachment]

B. Second Phase-Field Surveys if a Build Alternative is Approved

Comment [SR33]: This Stipulation is based on the text in the 08/28/2014 draft PA

Comment [SR34]: ACHP guidance, 9/8/2014:, Identification and Evaluation ACHP emphasizes that the draft PA more clearly recognize that OEA may recommend the No Action alternative to the decision makers, the three members of the Board, and that OEA could identify the No Action alternative as the environmentally preferable alternative. Consequently, the draft PA should outline specific measures that will be taken following completion of the NEPA process and a decision by the STB either granting, or granting with the imposition of conditions, a build alternative. (If the Board decides to deny TRRC's proposal or decides to approve the No Action alternative, then further review under Section 106 would be moot.) The draft PA should set forth how the four-step Section 106 process will be coordinated during the analysis of alternatives and what role the consulting parties will have as determinations and ... [7]

Comment [SR35]: Colstrip Alternative Landowners Group letter dated 9/30/2014: Many of the Landowners have long family relationships with the land to be crossed and personal knowledge of historically and culturally significant sites that may be affected by the rail line. Most have had little or no opportunity to share this information. Th ... [8]

Comment [SR36]: For WG consideration, suggest replacing with: "The Phase I Inventory, completed for an area one mile wide on either side of the centerline for each alternative (2 miles total), also helped..."

Comment [SR37]: Based on PA working group comments, 10/10/2014, a summary of the records search and literature search would be included as an attachment to the draft PA. This information was included as the first part of Attachment D.

Comment [SR38]: Based on PA working group comments, 10/10/2014, a summary of the field survey results, including the sessions from 2014, would be included as an attachment to the draft PA. The 11/17/2014 letter to the MT SHPO included a summary of the field results, and that content was included in Attachment D.

Comment [SR39]: ACHP in their letter dated 9/08/2014: "We, therefore, suggest that the PA outline specific measures that will be taken once the analysis of alternatives is completed and STB makes a decision. Accordingly, STB should clarify in the draft PA how the four-step Section 106 review process will be coordinated during the an ... [9]

1. In order to complete step two of the four-step Section 106 process, the second phase of the identification and evaluation effort would be implemented if the STB approves a build alternative, and it would involve the following two ~~components~~ steps:
- a. Completing the ~~first phase~~ field surveys that were conducted during Phase I in 2013 and 2014 for any portions of the approved ~~alignment-build alternative APE~~ that were inaccessible or where surveys were not previously completed; and
- a.b. Conducting ~~Phase II~~ testing and evaluation of identified sites during Phase II in the APE for any approved build alternative to determine those that qualify for listing on the National Register of Historic Places (National Register).
2. Prior to TRRC initiating construction of any portion of the rail line, STB will retain the services of a Cultural Resources Contractor (Contractor). The Contractor shall meet the professional qualifications standards provided in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, (48 Fed. Reg. 44716-44742, September 29, 1983 and 48 C.F.R §§ 44720-44723 62 Fed. Reg. 33708, June 20, 1997). The Contractor shall work under the STB's sole direction, control and supervision but will be paid by TRRC. The Contractor will:
- a. Conduct field surveys in the APE that were not completed during Phase I, conduct interviews and collect additional information from landowners, and prepare the Identification Reports (ID Reports) FOR ANY APPROVED ALTERNATIVE.
- b. Conduct Phase II Testing and National Register Evaluations, and prepare the Identification Reports (Phase I ID Report) and Evaluation Reports (Phase II Evaluation Reports).
- c. The Contractor will obtain any needed federal or state agency permits necessary to conduct the required work.
- b.d. The Contractor must have experience working in the field with tribal members.
3. The STB shall invite consulting tribes, tribal members to work with the contractor and help plan and participate in the field surveys to identify, document, and evaluate properties within the APE to which they attach traditional religious and cultural significance. Tribal Members Consulting Tribes are not required need not to meet the Secretary of the Interior's Standards specified in section B.2. of this stipulation.. The STB will also invite such tribal representative(s) consulting tribes to work with the Contractor to identify and compile a list of traditionally-important plants that occur in the APE, and identify gathering sites and access points for the plant gathering areas. TRRC will provide reasonable financial reimbursement¹ for professional services provided by the designated consulting tribes, tribal members(s).
4. STB will review each Phase I ID Report prepared by the Contractor and provide copies to the PA consulting parties for their review and comment. Each Phase I ID Report provided by the Contractor will include the results of identification, preliminary National Register eligibility recommendations and summarize potential adverse effects. The timeline for PA consulting party review of each Phase I ID report will be as follows:

¹ Reasonable financial reimbursement shall include payment for professional services (based on an agreed upon hourly rate), travel and expenses incurred by the tribal member(s).

Comment [MS40]: NTHP asked to check this citation for 1983 and sent the published draft standards from 1997 to be added to the citation.

Comment [SR41]: Added to address 9/30/2014 comment from Colstrip Landowners Group that the ID plan obtain more information from landowners.

Comment [CD42]: DHC: SEE SUGGESTED CLARIFYING LANGUAGE

Comment [CD43]: DHC: IS THIS REFERENCE TO EVALUATION REPORTS CORRECT? IT SEEMS TO ME THAT SUCH REPORTS ARE NOT PREPARED AT THIS POINT IN THE PROCESS, BUT ONLY IF A FORMAL EVALUATION IS NEEDED BECAUSE THE SITE CAN'T BE AVOIDED – SEE C.3. BELOW.

Comment [SR44]: Per applicant during 10/10/2014 WG call, define which Tribal Members would participate.

Per OEA, tribal members should be defined in the WHEREAS clauses. [This term "consulting tribe" was added here and to the WHEEEAS clause.

Comment [SR45]: Added per Standing Rock Sioux during 10/10/2014 call.

Comment [MS46]: Cathy Nadals: Let's use the term, "consulting tribes" to distinguish those tribes that have been consulting with us (or will be) on the project. We can define the term in the whereas clauses. [Done]

Comment [SR47]: Per 10/10/2014 PA Working Group call, add that Tribal Members are not required to meet Secretary's Standards mentioned above.

Comment [MS48]: Per 10/10/2014 PA Working Group call, Make this more focused. Cathy may have language for this.

From Rick: [see also footnote, as that may be useful to make more focused terms.

- a. The PA consulting parties will have 15 days after receipt of each Phase I ID Report to notify STB in writing if information is missing and/or provide any recommendations.
- b. STB will have five days to provide any missing information to the PA consulting parties, or to determine that additional information is not needed to complete National Register evaluations included in a given Phase I ID Report.
- c. STB will provide a 45-day comment period to the PA consulting parties beginning from their receipt of the additional information or STB's determination that additional information is not needed.

C. Second Phase-Determinations of Eligibility if a Build Alternative is Approved

1. For each property identified in the Phase I ID Report that cannot be avoided by the rail line construction, the STB, in conjunction with the Signatories, Invited Signatories, and Concurring Parties, will determine eligibility for inclusion in the National Register pursuant to 36 CFR 800.4(c)(1) for each property, including properties of religious and cultural significance to tribes. THE PROCEDURES SET FORTH IN THIS SECTION C APPLY ONLY FOR SITES THAT CANNOT BE AVOIDED BY RAIL CONSTRUCTION
2. Some archaeological sites may be evaluated for National Register eligibility based purely on observed surface characteristics, e.g. a lithic scatter on bedrock. Many other archaeological sites will require test excavations to evaluate the NRHP eligibility of identified historic properties. Specific information should be recovered during a Phase II investigation, including determination of the horizontal and vertical limits of an archaeological site, location of areas of moderate and high artifact densities, if features are present, determining the vertical limits of the site, the presence of intact, sub-surface, and/or stratified deposits, site structure, and site formation processes.
3. FOR SITES THAT CANNOT BE AVOIDED, Phase II (Testing and Evaluation procedures and a summary of the results will be presented in a combined Phase I Survey ID Report/Phase II Testing and Evaluation Report. In the Phase II Evaluation Reports, STB will make its National Register eligibility determinations in consultation with the MT SHPO and federally recognized tribes that attach traditional religious and cultural significance to identified historic properties. STB will make a determination will seek to reach concurrence on the NRHP eligibility of all historic properties identified in the project area within 45 days of receipt of comments from consulting parties. Such comments shall be due within 15 days of the receipt by the consulting parties of the Phase II Evaluation Report, which STB shall send to the PA consulting parties within no more than 15 days of receipt of the Report from the contractor. —STB will finalize determinations of eligibility in a manner consistent with 36 CFR § 800.4(c) and pertinent guidance of the National Park Service, ACHP, and MT SHPO.

Comment [SR49]: David Coburn, representing TRRR, suggested the time frame be reduced from 15 to 10 days.

In the Colstrip Alternative Landowner Group letter dated 9/30/2014: "The 15-day timeline for response by PA consulting parties on each Phase I ID Report, and again for submitting final comments, is far too short. The Landowners are working people participating in this process in their spare time. At some points during the agricultural calendar, they are effectively unavailable for weeks. To ensure the Landowners' ability to participate meaningfully, the minimum turn-around for their response should be 45 days."

Note: Since applicant wanted to shorten the time frame and Colstrip Landowner Group wanted to lengthen it, suggest appropriate compromise is to leave it as 15 days as originally stated in the 2011 PA.

Comment [SR50]: In the Colstrip Alternative Landowner Group letter dated 9/30/2014: "The five days allowed for STB to provide missing information or determine that additional information is not needed may be inadequate where a significant data gap is identified. We also request an automatic extension period of at least 15 days on any deadline named in the PA, if requested in writing by one of the interested parties, and reasonable financial reimbursement for the Landowners' time required to review reports, or if deemed necessary by the Landowners, reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review."

Comment [SR51]: David Coburn, representing TRRR, suggested the time frame be reduced from 45 to 30 days.

Comment [DC52]: We see no point in doing a Phase II evaluation if the railroad can avoid the site.

Comment [CD53]: DHC: ADDED FOR CLARIFICATION

Comment [DC54]: This term was defined above.

Comment [DC55]: We assume that you intend that the comments described in paragraphs 7 and 8 will be the comment on the Phase II report. We see no need for a second round of comments. We have built the timelines from paragraphs 7 and 8 into this paragraph.

4. ~~In making determinations of eligibility, STB will rely on the special expertise of tribes to inform it concerning determine whether or not the eligibility of tribal sites of significance as these may or may not meet the eligibility criteria of the National Register.~~

5. For built resources, STB will rely on research and analysis by historians and architectural historians, and the views of consulting parties with an interest or knowledge of built resources.

6. Once STB has finalized its determinations of eligibility, and within **40 days** of receipt of comments from the MT SHPO and tribes, ~~it will apply the criteria of adverse effect (36 CFR § 800.5(a)) to any tribal sites of significance or properties determined eligible for listing in the National Register.~~ STB will direct the Contractor to make any required revisions and finalize the ~~Phase II~~ Evaluation Report per the ID Plan.

~~7. Within 15 days of receipt of a final Phase II Evaluation Report from the Contractor, STB will send approved Final Phase II Evaluation Reports to the PA consulting parties.~~

~~The PA Consulting Parties will have 15 days to provide any final comments to the STB.~~

V. ASSESSMENT OF EFFECTS

A. ~~On previously surveyed areas:~~ During Phase I ~~in~~ the EIS, the STB analyzed the impacts of each alternative upon the archaeological resources, tribal resources, and built resources identified through field survey in the APE on areas of accessible parcels. The EIS analyzed the types and numbers of resources that were identified in the proposed right-of-way for each build alternative and would likely be adversely affected by construction and operation activities. The EIS also analyzed potential resources that were not in the proposed right-of-way, but were identified by survey in the buffer area, and could be indirectly affected by construction and operation activities. The right-of-way plus the buffer area is identical to the APE.

B. ~~On previously inaccessible areas:~~ In the EIS, STB ~~also~~ assessed impacts on land that was not accessible and therefore not surveyed during Phase I. STB assessed the ~~sensitivity likelihood of the presence~~ of archaeological sites on the total acreage (both surveyed and unsurveyed) of each alternative based on the number of archaeological sites identified during the survey, combined with three slope percentage categories (high, moderate, and low). OEA then used this to extrapolate ~~the probability of unidentified~~ archaeological sites ~~sensitivity information that could be located~~ within the total build alternative. ~~The probability of tribal sites of significance located within the build alternative was not assessed in the EIS.~~ To assess impacts on built resources for areas where access was not granted, the STB's built resource survey teams reviewed tax assessor data and geographic information system (GIS) maps using Google Earth Pro satellite imagery.

Comment [DC56]: See prior comment.

Comment [SR57]: (10/24/2014 session)

Comment [MS58]: Defined in Attachment C

Comment [SR59]: The WG asked that the comment received from Lana Gravatt of the Yankton Sioux be added when we were discussing this subsection, but Lana's comments were about the WHEREAS clauses, so they appear there and were addressed there.

Comment [MS60]: Per 11/7/2014 Working Group meeting: Will include an attachment of surveyed sites located in the right-of-way and the Buffer Area. (Attachment D, Tables 4 and 5 and Figure 1)

Comment [MS61]: Betsy Merritt asked for a different term than sensitivity

Comment [MS62]: Use the terms that we use: -eligible -listed tribal sites of significance.

Comment [MS63]: Conrad Fisher asked to specify that tribal resources weren't considered in the sensitivity model.
Stan Wilmoth: wanted definition of sensitivity model

Comment [SR64]: From ACHP 9/8/2014 letter: "*Consultation on Developing Treatment Plans* - During the analysis of alternatives, consulting parties should understand the extent to which STB has considered measures to avoid adverse effects on historic properties on the particular alternative. It is our understanding that once the rail alignment is selected, the planning process will not be very flexible. Thus, once a preferred STB alignment is chosen, consulting parties will be limited in requesting modifications. It is therefore important that the consulting parties be able to share their comments on alternatives during the evaluation of an alternative and in advance of the Board's decision. The Stipulations section, therefore, needs to emphasize that the identification and evaluation process will be coordinated with the State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officers (THPOs) to ensure that adequate baseline information is prepared for below ground historic properties, cultural landscapes, and traditional cultural properties associated with each alternative."

C. If the STB makes a decision to approve a build alternative, in order to complete step three of the four-step Section 106 process and in consultation with the PA consulting parties, STB will assess the direct, indirect and cumulative effects of this Undertaking on historic properties consistent with 36 CFR 800.4(d) and identify effects on each historic property within the APE of the approved build alternative in accordance with the **criteria of adverse effect** established in 36 CFR 800.5(a)(1-2), and provide the PA consulting parties with the results of the finding in a report entitled writing Finding of Effect with the content, following the documentation standards at 36 CFR 800.11(e)(4-6), as follows:

1. A description of the Undertaking's effects on historic properties;
2. An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and
3. Copies or summaries of any views provided by consulting parties and the public.

~~D.~~ The assessment of effects will serve as the basis for the development of one or more Treatment Plan(s) as described in Stipulation VI.

~~E.D. The STB will consult with the PA consulting parties to seek ways to avoid or minimize adverse effects to historic properties. If historic properties cannot be avoided, subsurface investigation may be necessary for archaeological sites within the direct effect APE which may be adversely affected. Determination of the site boundaries in relation to the direct effect APE, and actual area of ground disturbance, may be analyzed to aid in developing alternative design and or mitigation strategies. If adverse effects cannot be avoided the STB will consult with the parties to this agreement to determine appropriate measures to resolve adverse effects to be detailed in the Treatment Plan(s).~~

~~F.E.~~ The STB, in consultation with the PA consulting parties, will broadly assess cumulative effects under Section 106 in order to identify all reasonably foreseeable potential adverse effects as a result of the Undertaking (36 CFR 800.5 (a)(1)). Potential cumulative or reasonably foreseeable effects will be based on the APEs for direct and indirect effect and be addressed in the Treatment Plan(s) according to the procedures in Stipulation VI.

~~G.F.~~ The STB will provide all assessments of effect to historic properties in the Finding of Effect writing to the parties to this agreement PA consulting parties. This will be done concurrently with the distribution of the Phase II Evaluation Reports described in Stipulation IV. Reviews will proceed according to the procedures and timeframes established in Stipulation IV, sections B.3 and B.6.

~~H.G.~~ Disagreement regarding assessments of effect will be handled according to the procedures established in Stipulation XIV.

VI. TREATMENT PLANS RESOLUTION OF ADVERSE EFFECTS

A. If the STB licenses any build alternative, ~~in order to complete step four of the four-step~~ Section 106 process, the STB will consult with the PA consulting parties, and other

Comment [MS65]: Define term in glossary and clarify in whereas clause. Came from David Coburn. Betsy Merritt and Stan Wilmoth both spoke on this matter.

Comment [SR66]: Sections C-H of this stipulation V. have been added to follow the format of the Boardman to Hemingway PA provided by the ACHP as a template for a "process PA".

Comment [SR67]: Stan Wilmoth asks: How about a statement here describing what document and when it will be released (either by date or in milestone order or something) that will ID the preferred PA, the finding of effect and if applicable the Board decision to license what Alt.

In answer to Conrad's concern what [about] in role in Stip II "Tribes will be consulted during initial ID efforts and participate in sample field ID efforts and will formally be requested to comment on a proposed PA, Draft EIS and [alternatives, eligibility and effects] at (what time or step...Spring 2015 for Draft EIS, When for Draft PA, Etc.

[WG to review text added to Stipulation II per Stan's comment.]

Comment [SR68]: Per Betsy Merritt's request during the 11/7/14 WG meeting, this subsection was moved to the beginning of Stipulation VI.

Comment [CD69]: DHC: I THINK THAT YOU MEAN TO REFER TO B4. IT NEEDS TO BE CLARIFIED THAT PHASE II EVALUATION REPORTS ARE ONLY PREPARED UNDER SECTION C AND ONLY WHERE A SITE CANNOT BE AVOIDED.

Comment [MS70]: Per Betsy Merritt's and Najah Gabriel's request during the 11/7/14 Working Group meeting, Stipulation VI was renamed to be more consistent with the four step process.

Comment [SR71]: This Stipulation based on the 2011 PA.

parties who have entered the consultation process with the selection of a build alternative, to seek ways to avoid or minimize adverse effects to historic properties. Hereafter, the PA consulting parties and any other parties who enter the process will be referred to as "consulting parties." If historic properties cannot be avoided, subsurface investigation may be necessary for archaeological sites within the direct effect APE which may be adversely affected. Determination of the site boundaries in relation to the direct effect APE, and actual area of ground disturbance, may be analyzed to aid in developing alternative design and or mitigation strategies. If adverse effects cannot be avoided the STB will consult with the consulting parties to this agreement to determine appropriate measures to resolve adverse effects to be detailed in the Treatment Plan(s). THE PROVISIONS OF THIS STIPULATION VI WILL APPLY FOR ADVERSE EFFECTS THAT CANNOT BE AVOIDED BY RAIL CONSTRUCTION.

B. Consultation on Developing Treatment Plans

1. If the STB licenses any build alternative, STB will consult with the MT SHPO, consulting tribes and other PA consulting parties to develop measures that would avoid, minimize or mitigate adverse effects to tribal sites of significance or identified National Register-eligible or -listed historic properties and memorialize such measures in a Treatment Plan(s). The STB will meet with the MT SHPO, TRRC, the managing federal agency (for sites on federal land), and consulting tribes to further review the framework for how individual treatment plans will be developed, and to consider ways to avoid or minimize adverse effects to tribal sites of significance, individual historic properties, groups of closely related historic properties, or category of historic properties including traditional cultural properties and historic or tribal landscapes. STB will notify the PA consulting parties and participating tribes of the proposed treatment options within 45 days of the date of issuance of complementary Final Phase II Evaluation reports.

C. Development of the Treatment Plan(s)

1. The STB will ensure that the Contractor prepares a Treatment Plan(s) that will address the adverse effects of the proposed Undertaking on historic properties, including direct and indirect impacts (visual, noise, aesthetic, etc.). THAT CANNOT BE AVOIDED BY RAIL CONSTRUCTION. A separate Treatment Plan will be developed for the Wolf Mountains Battlefield NHL if the Decker Alternative is approved; and one or more Treatment Plans may be prepared for other sections of the APE affected by the Undertaking. If the Decker Alternative is approved, STB must adhere to Section 110(f) of the NHPA and Section 800.10 of the ACHP's regulations, which and requires a higher consideration of alternatives to minimize harm to the NHL. Because land acquisition and engineering surveys may be completed in different stages, A Treatment Plan may be prepared for a portion of the line provided that the Phase I ID Report for that portion has been completed and approved in accordance with Stipulation IV. Each Treatment Plan will be amended, if necessary, after the finalization of any supplemental Phase II Evaluation Report(s).
2. Each Treatment Plan will do the following:

Comment [SR72]: Text from Charlene Vaughn and Vicki Rutson on 11/21/2014 WG call.

Comment [SR73]: Text from Charlene Vaughn and Vicki Rutson on 11/21/2014 WG call.

Comment [CD74]: SEE CLARIFYING LANGUAGE

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Comment [SR75]: *Consultation on Developing Treatment Plans*
ACHP guidance 9/8/2014: It is important that the consulting parties have an opportunity to share their comments on all alternatives under consideration in advance of the Board decision. The stipulations section must, therefore, emphasize that the identification and evaluation process will be coordinated with Montana SHPO and Tribal Historic Preservation Officers to ensure that adequate baseline information is prepared for each group of historic properties, cultural landscapes and traditional cultural properties associated with each alternative.

OEA response, 11/28/2014: As noted above, the Draft EIS will set forth each alternative analyzed and will make a comparative assessment of each alternative's effects on the environmental disciplines required under NEPA and the National Historic Preservation Act (including the No Action alternative). For impacts to historic and tribal sites of significance, we conducted extensive surveys in 2013 and 2014 and set forth the data collected during those surveys (with the exception of specifics regarding confidential tribal data). The consulting parties, as v... [10]

Comment [SR76]: From ACHP letter, 9/8/2014: "Development of Treatment Plans - Further explanation is needed in this stipulation regarding how the applicant, TRRC, will consult with consulting parties to develop treatment plans. The timing of ... [11]

Comment [CD77]: DHC: CLARIFYING LANGUAGE ADDED

Comment [SR78]: As a result of 11/21/2014 WG meeting and referenced from ACHP's letter dated 9/8/2014: "Development of Treatment Plans-Finally, the treatment of the Wolf Mountain Battlefield, a National Historic Landmark (NHL) must adhere to Sectio... [12]

Comment [SR79]: From ACHP letter, 9/8/2014: "Development of Treatment Plans- We also are concerned about the notion that a treatment plan can be prepared for a portion of the line. This concept needs to be better ... [13]

a. identify tribal sites of significance and National Register-eligible or-listed historic properties in the APE or portion thereof;

b. identify the nature of the effects to which each property will be subjected; ~~and~~

c. identify the treatment strategies proposed to avoid, minimize or mitigate the effects of the Undertaking on the tribal sites of significance and historic properties; and-

~~e.d.~~ Only include treatments that would be feasible from an engineering standpoint.

Comment [SR80]: Per Cathy's suggestion at 11/21/2014 WG meeting.

3. Tribal sites of significance: Each Treatment Plan will incorporate ~~to the extent feasible,~~ measures identified by ~~tribal representatives consulting tribes~~ to resolve adverse effects to properties significant for their traditional cultural values and, if possible, the protection and continuing access to gathering sites of traditionally-important plants. If appropriate, TRRC may attempt to negotiate tribal access to public or private lands that are not currently accessible to tribes for plant gathering purposes.

4. Other properties listed on or eligible for the National Register: Each Treatment Plan will incorporate measures identified by other consulting parties who have expertise or interest in properties listed on or eligible for the National Register. The Treatment Plan(s) will conform to the principles of the Council's Treatment of Archaeological Properties: A Handbook, Parts I and II, the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation" (48 Fed. Reg. pp. 44716-44742), and appropriate MT SHPO guidelines. Each finalized Treatment Plan will be implemented by TRRC prior to the onset of construction activities.

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Comment [SR81]: Discussed at 11/21/2014 WG meeting.

~~IX-5.~~ Whenever possible avoidance of adverse effects shall be the preferred alternative. In consultation with the consulting parties, TRRC shall develop specific procedures to preserve historic properties and tribal sites of significance in place. These procedures may include minor changes to the rail alignment or construction method to avoid or reduce impacts, and/or monitoring historic properties by historians, archaeologists and tribal members for sites of significance during construction. Each Treatment Plan will focus on avoidance measures and examine the feasibility of avoiding National Register-listed or -eligible historic properties, or tribal sites of significance. These measures may include modifications to the rail alignment, to the extent feasible, to avoid adverse impacts.

Comment [SR82]: Charlene Vaughn in 11/21/2014 WG meeting

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Comment [SR83]: Text from 2011 PA read by David Coburn to the WG on 11/21/2014.

Comment [SR84]: From Charlene and David on 11/21/2014 WG call.

Comment [SR85]: From ACHP letter, 9/8/2014: "**Development of Treatment Plans-** The Stipulations section should be explicit in encouraging the Contractor to give priority consideration to measures that would avoid adverse effects to historic properties."

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~~X-6.~~ If avoidance is not possible, in-place preservation will be the preferred option. TRRC will work with the consulting parties to develop specific procedures to preserve historic properties and sites of significance in-place and minimize visual and noise impacts to such resources as well as impacts to tribal, historic and rural landscapes. These procedures may include minor changes to the rail alignment or construction methods, ~~to the extent feasible,~~ to reduce impacts, and/or monitoring of historic properties by historians, archaeologists and tribal members for sites of significance during construction.

1 **CD.** Finalization of Treatment Plan(s)

2
3 1. STB will submit the draft Treatment Plan(s) to the PA consulting parties for review. If
4 no additional information is requested, the PA consulting parties will have 60 days from
5 receipt of the initial Treatment Plan(s) to submit comments.

6 a. If any consulting party identifies any informational deficiencies in the Treatment
7 Plan(s), the consulting party must notify STB in writing within 15 days30 days of
8 receipt of the Treatment Plan(s); a PA consulting party must notify STB in writing of
9 any informational deficiencies in the Treatment Plan(s). A copy of any comments
10 sent to STB will be sent simultaneously to the MT SHPO.

11 b. STB will then have **10 days** to provide the additional information, or to determine
12 that provide an explanation why such information is not required, to the MT SHPO
13 and all consulting parties.

14 c. The PA consulting parties will then have **45 days** from the receipt of the complete
15 information, or notice the determination that additional information is not required, to
16 comment on the Treatment Plan(s). If no additional information is requested, the PA
17 consulting parties will have 60 days from receipt of the initial Treatment Plan(s) to
18 submit comments. A copy of any comments sent to STB will be sent simultaneously
19 to the MT SHPO.

20 d. If any PA consulting party fails to submit its comments within **45 days of the receipt**
21 **of the complete information, or 60 days of receipt of the initial Treatment Plan(s) if it**
22 **is complete the specified time limits above,** STB may assume that party's concurrence
23 with the Treatment Plan(s).

24
25 1-2. STB will make any required revisions to the Treatment Plan(s), as appropriately, within
26 **45 days** of the close of the comment period, taking into consideration the comments
27 received during this review period.

28
29 3. The final decision on the acceptability of the Treatment Plan(s) will be made by STB, in
30 consultation with the MT SHPO. A copy of the final Treatment Plan(s) will be provided
31 by STB to the PA consulting parties.

32
33 **VII. DATA RECOVERY PLAN**

34
35 **A. Consideration of Alternatives to Data Recovery**

36 Where avoidance and in-place preservation have been explored but are not feasible, STB and
37 the consulting parties shall consider alternatives to archaeological data recovery as mitigation
38 for adverse effects. Such approaches can either be implemented alone or as part of a broader
39 mitigation package. Examples of such alternatives to be considered may include:

40 1. preserving selected eligible archaeological sites and incorporating them into heritage
41 tourism plans while allowing others to be lost;

42 2. burying sites under fill or incorporating them into the undertaking;

43 3. using resources to develop syntheses of existing information on the Tongue River Valley
44 region instead of, or in addition to, using them on data recovery;

45 4. using resources to develop virtual or Web-based reports or educational media that
46 otherwise would not be produced.

Comment [SR86]: Per 9/30/2014 letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group: "The 15-day timeline for PA consulting party responses on informational deficiencies is inadequate. To ensure the Landowners' ability to participate meaningfully, the minimum turn-around for their response should be 45 days. The Landowners will require expert assistance to review the sufficiency and quality of the Treatment Plans for their property. We request reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review."

The Landowners are not willing to be bound by any clause that interprets their failure to comment as concurrence."

Comment [SR87]: WG on 11/21/2014 asked for a clearer sequence for the comment periods.

Comment [SR88]: ACHP 09/08/2014 **Data Recovery Plan**

ACHP guidance, 9/8/2014: If avoidance of adverse effects to historic properties is not feasible, we do not believe that it is a forgone conclusion that data recovery the appropriate treatment. There should be some consultation regarding this matter, particularly when properties of religious and cultural significance to Indian tribes are involved. There are other treatment options for National Register eligible and listed archeological sites that can be considered; however, they are not outlined in the draft PA. Further, any archeology data recovery plan should have a public benefit that is explained. How would data recovery plans benefits the State, Region, and Tribes?

ACHP guidance: Other treatment options, in addition to data recovery, should be consulted upon and considered in cases in which avoidance of adverse effects is not feasible. This is particularly important when properties of religious and cultural significance to Indian tribes are involved. Other treatment options should be outlined in the draft PA. Also, any archeological data recovery plan should have a public benefit that is explained. How would data recovery plans benefit the State, Region, and Tribes?

OEA response: Under Section VI, Subsection B, a new Part 5 [6] has been added:

If avoidance is not possible, in-place preservation will be the preferred option. TRRC will work with the consulting parties to develop specific procedures to preserve historic properties and sites of significance in place and minimize visual and noise impacts to such resources as well as impacts to tribal, historic and rural landscapes ... [14]

5. acquisition and preservation of archaeological sites not located in the APE in lieu of direct mitigation of sites within the APE, also known as “mitigation banking”.

B. Where avoidance, in-place preservation, and other alternatives to data recovery are not feasible and data recovery is determined by STB and the consulting parties to be the most prudent and feasible treatment option, the research design proposed in the Treatment Plan(s) will specify, at a minimum:

1. the historic properties to be affected and the nature of those effects;
2. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
3. the data needed to address specific research questions, the likelihood that this data can be recovered and how the data will be analyzed;
4. the fieldwork and analytical strategies to be employed, with an explanation of their relevance to the research question;
5. proposed methods of dealing with individual discovery situations;
6. methods to be used in data management and dissemination of data, including a schedule;
7. how findings will be presented to support the research design;
8. the proposed repatriation of recovered materials and records including the disposition of tribal sacred items, human remains and funerary items;
9. proposed methods for disseminating results of the work to the public;
10. proposed methods by which tribal representatives will be kept informed of the work and afforded an opportunity to participate;
11. a proposed schedule for the submission of progress reports to STB;
12. proposed approach for the disposition and curation of data and materials (other than tribal identified items, human remains and funerary items as discussed under item 8 above) upon completion of data collection; and,
13. information regarding the tribal value of the affected sites of concern to participating tribes.

C. Data Recovery Plan: Following implementation of the research design specified above, a Data Recovery Plan will be drafted and incorporated into the Treatment Plan(s). The Data Recovery Plan shall be consistent with the Secretary’s Standards for Archaeological Documentation (48 Fed. Reg. 44734-37) and will take into account the ACHP’s publications, including Treatment of Archaeological Properties: A Handbook, and The ACHP’s Section 106 Archaeology Guidance (<http://www.achp.gov/archguide>). Contractor shall obtain all necessary cultural resource permits for data recovery, including an excavation permit from BLM for any data recovery on BLM land, appropriate ARS permits for any recovery on ARS lands, and appropriate state permits for any recovery on state lands.

D. ~~D.~~ Data Recovery Report: Reports resulting from the implementation of the Data Recovery Plan will be submitted by the TRRC to STB for review. Within 15 days of receipt of the draft report(s), STB will provide a copy(s) to the PA consulting parties for their review and comment. Within 15 days of its receipt, a PA consulting party must notify STB in writing of any informational deficiencies in the Data Recovery Report. STB then has 10 days to provide the additional information or to determine that such information is not required. The PA consulting parties will have 45 days from the receipt of the complete

Comment [rs89]: To address ACHP’s comment, see VII. A. added to consider “alternative mitigation” to data recovery, from ACHP’s 2009 **Section 106 Archaeology Guidance** at www.achp.gov/archguide:

44. What is “alternative” or “creative” mitigation?

These terms refer to alternatives to archaeological data recovery as mitigation for an undertaking’s adverse effects. Such approaches can either be implemented alone or as part of a broader mitigation package. Examples of such alternatives may include:

- preserving selected eligible archaeological sites and incorporating them into heritage tourism plans while allowing others to be lost;
- burying sites under fill or incorporating them into the undertaking;
- using resources to develop syntheses of existing information on a region or area instead of, or in addition to, using them on data recovery;
- use of barriers to route traffic away from eligible archaeological sites;
- using resources to develop virtual or Web-based reports or educational media that otherwise would not be produced.

Another example of these alternatives is archaeological “mitigation banking.” This term refers to the acquisition and preservation of archaeological sites away from the project area in return for doing little or no direct mitigation on sites within the area of potential effects. This concept of “alternative” or “creative” mitigation is consistent with the definition of “mitigation” as used in the National Environmental Policy Act regulations of the Council on Environmental Quality [Section 1508.20(c)-(e)], where it includes: (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected

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information, or the determination that additional information is not required, to comment on the Data Recovery Report. If no additional information is requested, the parties will have 60 days from receipt of the report to submit comments to STB. A copy of any comments will be sent simultaneously to the MT SHPO.

E. Comments will be incorporated, as appropriate, into the Final Data Recovery Report(s) prepared by the Contractor at the direction of STB in consultation with the MT SHPO. The Final Data Recovery Report(s) will be prepared within 45 days of the close of the comment period. The Contractor will ensure that reports are responsive to contemporary professional standards, and to the Secretary's Standards for Archaeological Documentation (48 Fed. Reg. 44734-37) as well as the requirements of Section 110(f) of NHPA, where appropriate. A copy of all Final Data Recovery Reports will be provided by STB to the PA consulting parties within 15 days of receipt from Contractor.

VIII. CONSTRUCTION

i. STB shall consider the No Action Alternative during the Phase I review of alternatives (Stipulation II). Construction would only occur during Phase II if STB selects any of the build alternatives.

ii. Once STB has agreed in consultation with the PA consulting parties on the adequacy of the ID Report(s) and, TO THE EXTENT ANY ELIGIBLE SITES OR SITES OF TRIBAL SIGNIFICANCE WITHIN THE APE CANNOT BE AVOIDED, Evaluation Report(s) as defined in the ID Plan, STB will allow TRRC to begin construction on those portions of the approved rail line which do not contain National Register eligible or listed historic properties or tribal sites of significance within the direct APE, provided that such construction will not preclude consideration of the full range of treatment options (including avoidance, preservation in place, and other alternatives to data recovery) of historic properties situated in the indirect APE and cumulative effect APE.

iii. Where eligible historic properties or sites of significance THAT CANNOT BE AVOIDED are present within the direct APE, STB will allow construction to proceed once the agreed upon treatment/data recovery for that portion of the APE as specified in the Treatment Plan is completed and approved by STB, with the concurrence of the MT SHPO. Where tribal sites of significance or eligible historic properties are present on BLM, ARS or state lands, STB will allow construction to proceed in that area only after the agreed upon treatment/data recovery fieldwork is completed and approved by BLM with respect to BLM-administered lands, by ARS with respect to ARS lands, and by MT DNRC with respect to state lands, in addition to STB approval with the concurrence of the MT SHPO.

D. TRRC or STB's Contractor will notify STB when treatment/data recovery fieldwork is completed for an area. Within 45 days of notification, STB, and BLM if data recovery occurs on BLM-administered lands, ARS if data recovery occurs on ARS-administered land, or the MT DNRC if data recovery occurs on state lands, will inspect the site. Upon STB and MT SHPO's concurrence and, if appropriate, BLM's, ARS's or MT DNRC's

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Comment [SR90]: Per 9/30/2014 letter from
Baumstark Braaten Law Partners-Colstrip
Alternative Landowners Group:

Data Recovery Plan

We are concern that subsection (c), regarding
the Contractor's duty to conduct data recovery
in accordance with the Data Recovery Plan,
includes no timeline and could potentially be
delayed indefinitely. We request a clear
timeline.

Review of Data Recovery Reports

The 15-day timeline for PA consulting party
responses on informational deficiencies is
inadequate. To ensure the Landowners' ability
to participate meaningfully, the minimum
turnaround for their response should be 45
days. ... [17]

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Comment [SR91]: ACHP 09-08-2014
Construction

We are concerned that we are being ask ... [19]

Comment [SR92]: Per 9/30/2014 letter from
Baumstark Braaten Law Partners-Colstrip
Alternative Landowners Group: ... [20]

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1 concurrence, that the treatment/data recovery fieldwork has been satisfactorily
2 completed, STB will allow construction to proceed in that area prior to the completion of
3 the Data Recovery Report. The Data Recovery Report will be prepared in accordance
4 with Stipulation VII.D. Alternatively, issuance of a Final Data Recovery Report pursuant
5 to Stipulation VII.E. will be considered approval of the data recovery
6 fieldwork/treatment.

7 8 **IX. CHANGES TO THE RAIL LINE ALIGNMENT/OTHER AREAS SUBJECT TO** 9 **DIRECT IMPACTS**

10 A. The STB will notify the consulting parties of proposed changes in ancillary areas (e.g.,
11 staging areas, waste or borrow pits) or modest changes to the right-of-way outside of the
12 originally defined APE. The STB will ensure that the APE of the new ancillary area or
13 reroute is inventoried and evaluated in accordance with stipulation IV, and will consult
14 with the consulting parties on the proposed APE and the determination of eligibility.
15 finding of effect, and resolution of effect in accordance with stipulations V, through VII.

16 B. The STB will provide the consulting parties with the revised addendum reports and
17 findings on eligibility and effects for a 30 day review and comment period. The STB will
18 seek consensus determinations of eligibility for all properties identified in the APEs. If
19 consensus cannot be reached, the process articulated in Stipulation XIV for seeking a
20 determination of eligibility from the Keeper of the NRHP or resolving other disputes will
21 be followed.

22 23 **X. DISCOVERY**

24 A. A Discovery Plan for previously undiscovered sites and unanticipated effects on
25 previously evaluated sites will be appended to the Treatment Plan. If a previously
26 undiscovered historic property is encountered during construction, or previously known
27 properties will be affected in an unanticipated manner, all work will cease within 200 feet
28 in all directions until STB can evaluate and, if necessary, authorize steps to mitigate
29 impacts to the new discovery. Evaluation and mitigation will be carried out in
30 consultation with the PA consulting parties as expeditiously as possible in accordance
31 with 36 C.F.R § 800.13(a)(1).

32 B. If historic properties or sites of significance are encountered on federal or state lands, the
33 BLM, ARS or MT DNRC, depending on the agency that controls the land, will be
34 consulted to develop appropriate mitigation measures. TRRC will provide the
35 construction contractor with written notification of the proper protocol for discovery of
36 previously unencountered sites.

37 38 **XI. HUMAN REMAINS**

39 A. If human remains and funerary objects, sacred objects, or items of cultural patrimony
40 associated with human remains are encountered on federal lands, STB or the appropriate
41 federal land management agency will consult with the appropriate tribe(s) to determine
42 treatment and disposition measures consistent with applicable federal laws (such as
43 NAGPRA and NHPA) and guidance documents (such as the ACHP Policy Statement
44 Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects (2007)
45 (http://www.achp.gov/docs/hrpolicy0207.pdf). If human remains and funerary objects,
46 sacred objects, or items of cultural patrimony associated with human remains are

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Comment [SR93]: Per 9/30/2014 letter	... [25]
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encountered on state lands, STB will consult with tribes, the MT SHPO, and MT DNRC as to appropriate treatment measures in accordance with Section 106 of NHPA, and the Montana Human Skeletal Remains and Burial Site Protection Act (M.C.A.22-3-801 through 811. If human remains and funerary objects, sacred objects, or items of cultural patrimony associated with human remains are encountered on private lands, STB will ensure that they are also treated in accordance with applicable state and federal law and the provisions of M.C.A. §§ 22-3-801 through 811.

- B. TRRC will make every effort to avoid disturbing known human burial sites. Where avoidance is not possible, burials will be removed prior to construction and treated in accordance with procedures established by applicable federal and state law and, culturally affiliated tribes, and in accordance with procedures identified in the Treatment Plan.
- C. In the case of inadvertent discovery of human remains during construction activities, STB will attempt to identify the appropriate tribe(s) that may be affiliated with the burial pursuant to NAGPRA, and consult with them over the treatment of remains in accordance with procedures identified in the ID Plan and the Treatment Plan. All work will cease within 200 feet in all directions of the human remains until the requirements of federal and state laws are satisfied. TRRC will provide the construction contractor with written notification of the proper protocol for discovery of human remains, funerary objects, sacred objects or objects of cultural patrimony.

XII. CURATION

- A. As stated in Stipulation VI.C.5 and VI.C.6, avoidance and preservation-in-place are the preferred treatment for historic properties. STB will ensure that curation of all records and other items resulting from identification and data recovery efforts is completed in accordance with 36 C.F.R Part 79, Curation of Federally Owned and Administered Archaeological Collections, and the provisions of NAGPRA. Documentation of the curation of these materials will be prepared by Contractor and submitted to STB. STB will provide copies of the documentation to the signatory and concurring parties to this PA within 15 days of receipt from Contractor. All archaeological materials recovered from BLM lands shall be curated in accordance with BLM requirements at BLM's Billings Curation Center. All archeological materials recovered from ARS lands shall be curated in accordance with 36 C.F.R Part 79.
- B. STB will encourage private land owners to donate collections from their lands to an appropriate facility meeting the requirements of the Department of the Interior's Manual 411 on curation.² The Contractor will provide private landowners with a list of all collected artifact finds from their lands. Materials from private lands to be returned to the private land owners shall be maintained in accordance with 36 C.F.R Part 79 until any specified analysis is complete. Documentation of the return of these materials to the private land owner will be prepared by Contractor and submitted to STB. STB will provide copies of the documentation to the PA consulting parties within 15 days of receipt from Contractor.

² Stipulation XII. b. addresses the curation of cultural resources encountered during construction of the Undertaking on land owned by private party(ies) other than TRRC. Materials found on land owned by TRRC will be donated to an appropriate facility meeting the requirements of the Department of the Interior's Manual 411 on curation.

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Comment [SR95]: Per 9/30/2014 letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group:

Curation

The Landowners express their preference for preservation in place of all archeological, cultural, and paleontological materials discovered on their property, and their wish to be consulted on the handling of such materials before any removal from the Landowners' individual properties. The Landowners wish to receive a detailed report on and receipt for any such materials prior to their removal. Finally, the Landowners request that STB require a bond from TRRC prior to the beginning of construction sufficient to cover the expense of handling and returning any such materials to private property owners.

OEA: The STB will use an independent third-party contractor, working under its sole supervision, direction and control, and at TRRC's expense, to assist STB in the disposition and appropriate curation of any artifacts or archaeological materials.

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

D. STB will ensure that all archeological materials collected by TRRC and Contractor as part of this project will be processed and curated within two years following the completion of identification and data recovery. In the case where TRRC decides to halt the Undertaking, all recovered archaeological material must be curated within one year following work stoppage. A contingency plan will be developed in such case.

XIII. EMERGENCY SITUATIONS

Should an emergency situation occur which represents an imminent threat to public health or safety, a natural disaster, or creates a hazardous condition, the STB shall immediately consult with TRRC to develop alternative procedures to relevant Stipulations in this PA, notify the SHPO and the ACHP of the condition which has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the SHPO or the ACHP desire to provide technical assistance to the STB, they shall submit comments within seven (7) calendar days from notification, if the nature of the emergency or hazardous condition allows for such coordination. STB shall notify consulting parties of within (7) calendar days after SHPO's or ACHP's response.

XIV. DISPUTE RESOLUTION

A. During the Phase I alternatives analysis, consulting parties and the public may submit their comments on the Draft EIS.

B. If STB approves a build alternative, the following process for dispute resolution shall be followed:

1. Should any Signatory or Invited Signatory to this PA provide notice to the STB of its objection to an action under this PA, or implementation of the measures stipulated in this PA, within 30 days of becoming aware of an action, the STB shall consult with all Signatories and Invited Signatories to this PA to resolve the objection, unless otherwise specified in this document, and notify the concurring parties. If the STB determines that the objection cannot be resolved, the STB shall forward all documentation relevant to the dispute to the ACHP. The objecting party must provide reasons for, and a justification of, its objection at the time it initially submits its objection to the STB. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:
 2. a. Provide the STB with recommendations, which the STB shall take into account in reaching a final decision regarding the dispute; or
 3. b. Notify the STB that it will comment within an additional 30 days, in accordance with 36 C.F.R. 800.7(c)(4). Any ACHP comment provided in response to such a request will be taken into account, and responded to by the STB in accordance with 36 C.F.R. 800.7(c)(4) with reference to the subject of the dispute.

Comment [SR96]: ACHP 09/08/2014 **Emergency Situations**

We encourage STB to add a new section that is related to emergency situations. Emergencies occur in a number of ways that could complicate the implementation of a PA. They could change the scope of the project, or compromise the agency's ability to meet the terms of an executed PA. This provision should be developed with the consulting parties so that it addresses the concerns of the residents in the project area and provides for contingencies, as appropriate.

Note: This added Emergency Situations stipulation was based on the ACHP's MOA template on its website. Working Group should any other parties be added.

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Comment [SR97]: ACHP 09/08/2014 **Dispute Resolution**

As currently drafted, the stipulation for dispute resolution allows "any party to this PA" to object. Does this mean that all consulting parties can file objections? Are objections during the alternative analysis to be handled differently from objections during project implementation? This stipulation needs to be revised.

Note: To address ACHP's comment, the dispute resolution was divided into two phases (A & B) and the 2011 PA text substituted by text from the "process PA" provided by ... [64]

Comment [SR98]: Per 9/30/2014 letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group: ... [65]

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4. The STB's responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

XV. TRIBAL COORDINATION

A. Tribal coordination will be conducted pursuant to tribal protocols that will be developed by the STB in consultation with tribes participating in the project, as discussed in the ID Plan.

B. Tribal protocols may be amended in accordance with Stipulation XIV if new tribal leadership is elected and proposes a different approach to coordinating the undertaking.

XVI. PUBLIC PARTICIPATION

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

B. At any time during implementation of the measures stipulated in this PA, should an objection to any such measure or its manner of implementation be raised by a member of the public, the STB will take the objection into account, consult as needed with the objecting party and the parties to this agreement to resolve the objection. The STB will determine the final resolution.

C. Consistent with Section 304 of NHPA, Executive Order 13007, and ARPA, the PA consulting parties will withhold from disclosure to the public information about the location, character, or ownership of a historic property, or if it is determined that disclosure may (1) cause a significant invasion of privacy, (2) risk harm to an historic property, or (3) impede the use of a traditional religious site by practitioners.

VIII. FINAL REPORT

Within six (6) months of completing construction of the Undertaking or submission of the Final Data Recovery Report, Contractor will prepare a **Final Report** and submit it to STB, which will provide copies of the Final Report to the PA consulting parties. The Final Report will include all ID Reports, Evaluation Reports, Finding of Effect reports, Treatment Plans, and Data Recovery Reports. The Final Report will also include information about the treatment and disposition of any human remains and funerary objects, sacred objects, or items of cultural patrimony associated with human remains encountered during construction.

IX. EFFECTIVE DATE

This PA shall become effective when executed by the authorized representatives of each signatory party, at which time implementation of the PA may begin.

X. ANNUAL STATUS REPORT

a. Commencing one year from the effective date of this PA, **AND UNTIL SUCH TIME AS THE PA IS TERMINATED**, TRRC shall prepare an Annual Report documenting the

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Comment [SR99]: ACHP 09/08/2014 Tribal Coordination ... [69]

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Comment [CD101]: DHC: SEE ... [88]

status of the implementation of the terms of this PA to PA consulting parties. If no work has been conducted under the terms of the PA, TRRC must still submit the Annual Report stating that no action under the PA has begun. TRRC will submit the Annual Report to STB, which will submit the report to the PA consulting parties. The Annual Report will include, at a minimum:

1. A list of all studies, reports, evaluations, or monitoring reviewed or generated under the stipulations of the PA.
2. Efforts to identify and/or evaluate potential historic properties, monitoring efforts, archaeological management assessments or research designs, and treatment of historic properties.
3. Any recommendations to amend this PA or improve communication among the parties.
4. A discussion of any inadvertent effect to historic properties occurring during the course of the year.

- b. The STB will ensure that the Annual Report is made available to the public and that potentially interested persons and members of the public are invited to provide comments to the STB.

XI. AMENDMENTS

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

XII. TERMINATION

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

XIII. DURATION

This PA shall remain in effect for ~~ten (10)~~ twelve (12) years after its execution by the signatories, at which time STB will notify the PA consulting parties within three months of its impending expiration and request to extend it for a specific time period, but would not go beyond five (5) years. All signatories must respond affirmatively prior to the expiration date for the PA to remain in effect. Once the STB is notified by TRRC that the project is complete, STB will notify the signatories, that the terms of this PA have been fulfilled AND THE PA SHALL THEREUPON TERMINATE.

EXECUTION

Execution and implementation of this PA evidences that STB has afforded the ACHP a reasonable opportunity to comment on the Undertaking.

SIGNATORIES:

SURFACE TRANSPORTATION BOARD

By: _____

Date: _____

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Comment [SR102]: Colstrip Alternative Landowners Group letter dated 9/30/2014: "Preamble. We would also like some commitment as to the overall timeline in which STB would carry out its legal duties under the PA, if the PA takes effect. The twelve-year lifetime of the proposed PA is far too long for the Landowners to live in limbo, especia[... [89]"

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Comment [CD103]: DHC SEE ADDITIONAL CLARIFYING LANGUAGE

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ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

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MONTANA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

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INVITED SIGNATORIES:

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____

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

By: _____ Date: _____

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U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE

By: _____ Date: _____

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MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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TONGUE RIVER RAILROAD COMPANY, INC.

By: _____ Date: _____

CONCURRENCE:

U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, HISTORIC
LANDMARKS PROGRAM

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CROW TRIBE OF MONTANA

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STANDING ROCK SIOUX TRIBE OF NORTH & SOUTH DAKOTA

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THE SIERRA CLUB

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LIST OF ATTACHMENTS-FOR REFERENCE

Attachment A-Map of Alternatives

Attachment B-Identification Plan (ID Plan);

Attachment C-Definitions and Acronyms

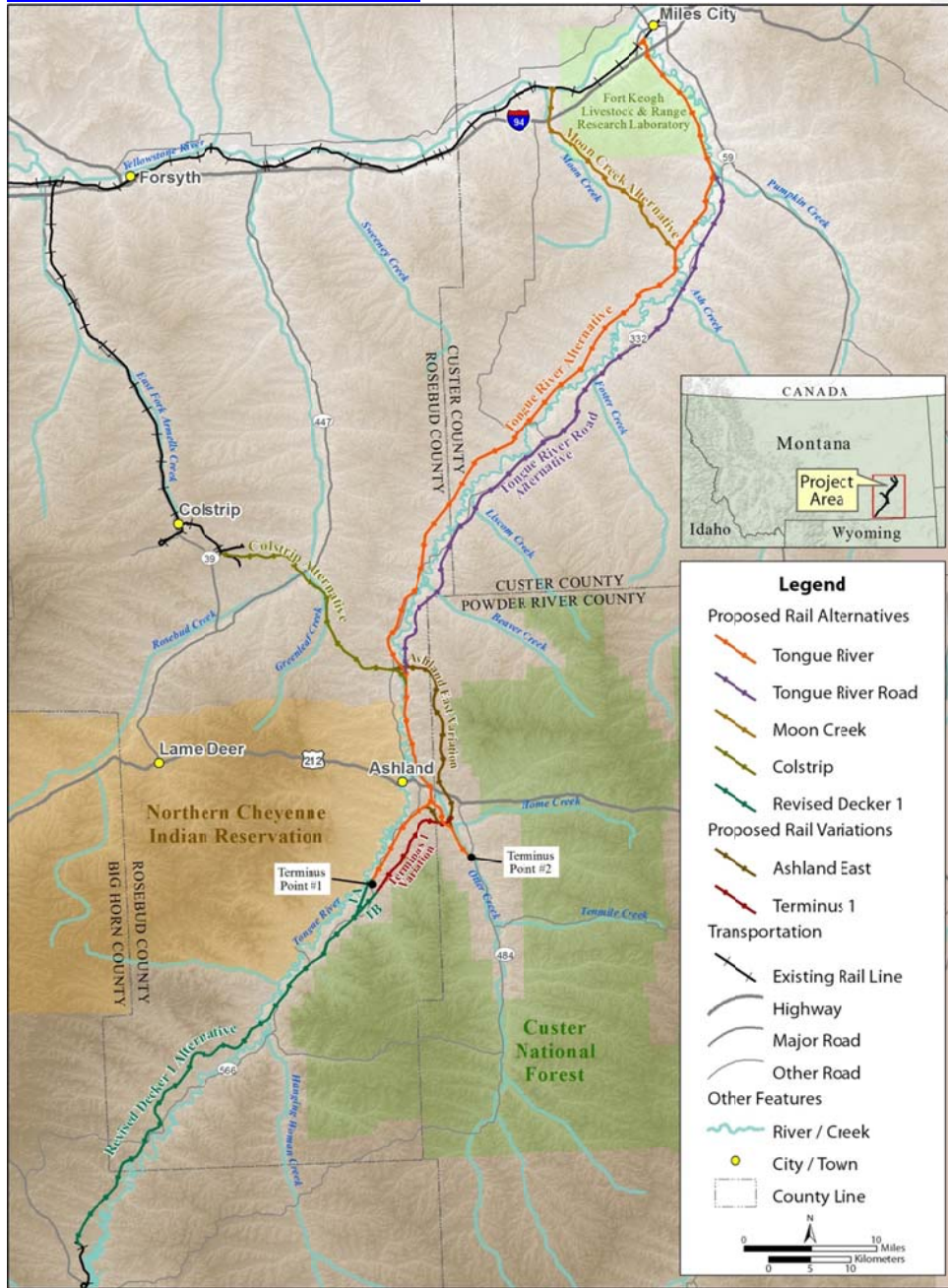
Attachment D Phase I Inventory-Literature Search and Field Results

(From Stipulation IV.A-Identification, Tables 1, 2 and 3 and Figure 1)

(From Stipulation V.A.-Assess Effects) Tables 4 and 5 from letter to SHPO

[If the Board licenses any alternative, additional attachments would be developed including a Treatment and Mitigation Plan to be developed through consultation for any licensed alternative.]

ATTACHMENT A – PROJECT MAP



ATTACHMENT B
IDENTIFICATION PLAN
for the Tongue River Railroad Project
Surface Transportation Board
Finance Docket No. 30186

1. PURPOSE

This Identification Plan (ID Plan) has been developed by the Surface Transportation Board (STB) as part of the Programmatic Agreement (PA) for the Tongue River Railroad Project (Undertaking). The ID Plan outlines the process for the identification and evaluation of historic properties for the Undertaking and describes: 1) the project's area(s) of potential effect [APE(s)]; 2) the process for the identification and evaluation of historic properties; 3) the minimum standards required for the cultural resource investigations; 4) tribal consultation protocols; 5) minimum standards and qualifications for Cultural Resources Contractors (Contractors); 6) the safety measures to be followed in compliance with the ID Plan; and 7) requirements for cultural resources reports.

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

2. AREA OF POTENTIAL EFFECTS (APE)

The Area of Potential Effects (APE) is described in Stipulation III of this PA.

3. IDENTIFICATION AND EVALUATION

Identification -- Inventory and Field Survey

The identification effort consists of an inventory and pedestrian field survey of the APE.

Inventory: The inventory conducted for the five alternative routes and two variations being considered for this project was completed during Phase I in 2013-2014 (Phases I and II are defined in Attachment C to this PA). Additional survey will also be conducted for the entire area within the Wolf Mountains Battlefield NHL if the Decker Alternative is approved. The inventory is a professionally prepared study of existing cultural resource data from published and unpublished documents, BLM cultural resource inventory records, archival records, geomorphological and soil studies, institutional site files, state and National registers, informant or ethnographic interviews and other information sources. The purpose of the inventory is to

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1 obtain sufficient information about the existing or known prehistoric and historic properties,
2 cultural landscapes, and properties of religious and cultural significance located within the
3 project area and to inventory those properties. The inventory also assists in determining the
4 potential for previously unidentified historic properties to be located within the project area. The
5 update will include, as needed, a reevaluation of the National Register eligibility of previously
6 identified historic properties in the APE of the approved alternative route.
7

8
9 **Field Survey conducted during Phase I:** In 2013-2014, during Phase I, a pedestrian transect
10 field survey was conducted by an equal number of tribal resource experts and archaeologists of
11 the APE of the five alternative routes and two variations being considered for this project where
12 property access was granted. The focus of the survey was to identify potential National Register
13 eligible or listed historic properties, including standing structures, buildings, districts, sites, and
14 properties of religious and cultural significance that may be affected by the Undertaking.
15 Representatives of the tribes were invited by STB to participate in the Phase I Survey to help
16 identify, document, and evaluate properties within the APE to which they attach traditional,
17 religious, and cultural significance. The results of the field survey are included in Attachment D
18 of this PA, in tables 3 through 5 and Figure 1.
19

20
21 **Field Survey to be conducted during Phase II:** If the STB approves a build alternative, field
22 survey will be completed for the APE of the approved alignment; however, this survey may be
23 performed for a portion of the alignment such that once TRRC has access to a portion of the
24 alignment TRRC may direct the Contractor to perform field survey for that portion and prepare
25 an **Identification Report** (ID Report) for that portion. If the Decker Alternative is approved, the
26 field survey will be extended to 400 feet on either side of the ROW for sections of the alignment
27 located within the Wolf Mountains Battlefield NHL. TRRC will provide the PA consulting
28 parties with a map of the area to be inventoried prior to performing each field survey.
29 Representatives of the tribes will be invited by STB to participate in the Inventory to help
30 identify, document, and evaluate properties within the APE to which they attach traditional,
31 religious, and cultural significance. As was done for the field survey during Phase I, an equal
32 number of tribal resource experts shall join the archaeologists during the Phase II field survey.
33

34 The field survey during Phase II will include the following activities:
35

- 36 1. An intensive pedestrian survey of the portions of the construction ROW plus 20
37 feet on either side of the fenced construction ROW that were not surveyed during
38 Phase I.
- 39 2. An intensive pedestrian survey of all the lateral areas, borrow areas, haul roads
40 (new and upgraded), staging areas, and other ancillary areas related to the
41 Undertaking.
- 42 3. A geomorphological survey of the construction ROW will be conducted to
43 identify areas where buried historic properties may exist and where deep testing,
44 as identified by the geomorphologist, may be necessary to identify cultural
45 resources. The geomorphologist will also recommend construction monitoring
46 areas and assist in evaluating the National Register eligibility of any newly

identified buried historic properties by providing identification of the soil(s), soil characteristics, soil dating, and analysis of the probability of the soils to contain cultural material.

4. An intensive pedestrian survey of the construction ROW using transects no more than 15 meters apart to complete the field survey inventory effort.

5. A reconnaissance level survey of those areas outside the ground disturbance area where there is the potential for the Undertaking to have an adverse effect, as defined in 36 C.F.R 800.5, on historic properties. A reconnaissance survey is an on the ground or pedestrian examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present. Identification of these areas will include consultation with the MT SHPO, THPO/cultural resource representative designated by the tribes, TRRC, other identified consulting parties, and federal agencies.

Contractor will use GPS units that meet BLM requirements when conducting field surveys. Any changes to the APE will follow the process in Stipulation III of this PA.

STB will consult with the MT SHPO, consulting tribes, TRRC, other identified consulting parties (as defined in 36 C.F.R 800.2(c)), and federal agencies to address their concerns.

Phase II Testing and Evaluation procedures and a summary of the information to be presented in the combined **ID Report/Evaluation Report** is presented below.

Phase II Archaeological Testing and Evaluation of National Register Eligibility

If STB selects a build alternative, archaeological investigations during Phase II would be conducted in order to test or evaluate an archaeological site's eligibility for inclusion in the National Register of Historic Places (NRHP). Evaluation of built resources is described below, in Section 8. Some archaeological sites may be evaluated for National Register Eligibility based purely on observed surface characteristics, e.g. a lithic scatter on bedrock. Many other archaeological sites will require test excavations to evaluate the National Register eligibility of identified historic properties. If necessary, testing and evaluation excavations during Phase II will be conducted to locate, record, and evaluate the National Register eligibility of any identified historic properties within the APE of the approved alternative route and only when tribal members do not consider such properties sensitive to testing. Testing and Evaluation excavations during Phase II may include shovel testing, augering, 1 x 1m or 50 x 50 cm test units, and use of heavy equipment such as backhoes in certain cases. Tribal input will be sought when assessing the National Register eligibility of any properties of traditional religious and cultural significance to tribes. If, in the opinion of the Contractor and the cultural resource representative designated by the tribes, an historic property is eligible for the National Register as a traditional cultural property,³ sufficient information to formulate Treatment Plan(s) will be obtained.

Specific information should be recovered during an investigation, including determination of the

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

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Comment [rs104]: This phrase was added to include the areas where the survey was already completed in 2013-2014, as well as areas where landowner access won't be granted until after there is an approved alternative.

The additional text also makes it clear that testing not be done if tribal members consider them sensitive to testing.

horizontal and vertical limits of an archaeological site, location of areas of moderate and high artifact densities, if features are present, the presence of intact, sub-surface, and/or stratified deposits, site structure, and site formation processes. Field methods that would be used for the Project are described below in Section 8.

Testing and Evaluation procedures and a summary of the results will be presented in a combined ID Report and Evaluation Report. An outline for this report is presented in Section 7 below. This report will also describe the results of the Inventory Surveys, on both the selected alternative, and on those portions of the other alternatives that were surveyed in 2013-2014.

Archaeological Data Recovery/Mitigation

Once an archaeological site is determined to be eligible for inclusion in the National Register, the effect an Undertaking may have on the property must be assessed. Avoidance of the property results in a determination of no effect. If the property cannot be avoided, and if any damage or disruption of the resource will result from implementation of the Undertaking, a determination of adverse effect is made. Stipulation VI and Stipulation VII.A of this PA describe preferred options to lessen the adverse effect, including preservation-in-place and other alternatives to data recovery.

Data Recovery is the least preferred response to an adverse effect determination. Data recovery efforts are undertaken to mitigate the adverse effect by recovering significant data or information prior to disturbance or destruction of the site. If data recovery is determined to be necessary, the STB will submit a detailed **Data Recovery Plan** to the MT SHPO for review and comment.

Briefly, the Data Recovery Plan must include an overview of previous investigations that were conducted for the archaeological resource(s). The Data Recovery Plan must include a brief description of the Testing and Evaluation finding and justification for the determination of eligibility, a discussion of relevant research topics, and should guide the level and effort of fieldwork to be conducted.

A number of field methods and techniques may be implemented during data recovery investigations, including hand excavated test units, and other methods as detailed in Section 8 below. The focus of data recovery is to excavate a sufficient sample of a site so as to preserve the scientific information that renders the site eligible.

4. TRIBAL CONSULTATION PROTOCOLS

The STB will continue to consult with THPOs and federally recognized tribes that do not have a designated THPO in order to establish consultation protocols for the Undertaking beyond those roles outlined in the PA and this ID Plan. Discussions on developing protocols will be conducted between the tribal governments and the STB on a government-to-government basis. The Tribal and STB representatives will work together to develop the consultation protocols. The consultation protocols shall be built upon existing relationships between the STB and Tribal governments.

Comment [rs105]: Tribal consultation protocols should be discussed for better definition.

Ethnographic Study

If STB approves a build alternative, the TRRC will provide funding to consulting tribes to prepare an ethnographic study of traditional beliefs, language, plant use, and migration and traditional use patterns of tribes in the Tongue River Valley, and funding the means to pass this information on to younger people.

Comment [rs106]: Add per 2/2014 CP meeting. Details to be added following tribal consultation.

5. STANDARDS AND QUALIFICATIONS

The cultural resources inventory surveys shall be conducted consistent with the Standards and Guidelines, applicable federal laws, and guidelines of the MT SHPO. In addition, the professionals that will conduct cultural resources studies described for the Undertaking shall meet the Secretary of the Interior's Professional Qualifications and Standards (Professional Qualifications and Standards) (48 Fed. Reg. 22716, September 1983). All National Register findings shall be made pursuant to 36 C.F.R § 800, 36 C.F.R § 60.4, and National Park Service Bulletin 38.

Comment [SR107]: This language for an ethnographic study was derived from the MT SHPO's website for Step Four: Resolve Adverse Effects and FCC's template for an MOA.

Tribes need to review and add detail.

If unanticipated discoveries of cultural resources are found during implementation of the Undertaking, STB shall satisfy the requirements of Section 106 in accordance with 36 C.F.R § 800.13.

6. SAFETY

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

7. REPORTS

All reports prepared pursuant to this ID Plan will follow the outline below to address the specific requirements of the survey conducted. Combined ID Reports and Evaluation Reports will provide information for future research and National Register recommendations for those historic properties identified as National Register eligible. These ID Reports and Evaluation Reports will provide explanations of potential effects on historic properties and shall comply with 36 C.F.R § 800.5. It is recommended that for clarity, above ground resources be presented in a separate combined ID Report and Evaluation Report.

Data Recovery reports, if required, will be prepared following a standard format based on the particular results of the excavations; this format will be approved by the MT SHPO.

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

PART 1

Cover

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

Cover Page

Will include authors, report title, date of report, lead agency, preparer's organization, type of report (C, s county(s), USGS quad(s), landowner(s), legal description (reference to project maps may be appropriate), acreage (federal, non-federal, block and linear with total), file search date(s), field personnel, and a site summary table.

Summary of Findings

Table of Contents

List of Figures

List of Tables

Appendix(s)

1. Introduction

Project Description (include appropriate permit and agency file numbers)

Personnel (their roles and duties on the project)

Report Format (what is in each chapter of the report and who wrote or contributed to each chapter)

2. Environmental Overview

Topography

Geology

Drainages

Flora

Fauna

Climate

Paleoenvironment

3. Culture History

Paleoindian (includes a discussion of pre-Clovis)

Archaic etc. (varies widely along the project)

Woodland and Plains (Plains Indian)

Village

Contact Period (Protohistoric)

Historic

4. Research Design and Materials

Archaeological Site Definition

Prehistoric Archaeological Research Orientation

Prehistoric Archaeological Research Questions

Historic Archaeological Research Orientation

Historic Archaeological Research Questions

Inventory and Research Methods

Record Search and Literature Review

Known Sites

Previous Investigations

Field Survey

Methods

Expected site types/locations

Field and Site Records

Methods

Testing and Evaluation

Methods

Laboratory Analysis

Prehistoric Artifact Collection and Analysis

Methods

Chipped-stone Technological and Functional Analysis

Methods

Historic Artifact Collection and Analysis

Methods

Curation

Methods

Facilities/Disposition

References

Appendix(s)

(Geomorphological Report)

Detailed Project Location Maps

and

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

5. Results of Investigation

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

Site type, component, USGS 7.5 minute quadrangle, site area, topography,

elevation, soil type, nearest water, survey method, site condition, site description, artifact descriptions and disposition, interpretation, and National Register eligibility recommendation.

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

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

Prehistoric Context

Site distribution relative to environmental variables potential for unanticipated discovery

Site density

Site function

Temporal and cultural affiliation

Historic Context

Site distribution relative to environmental variables potential for unanticipated discovery

Site density

Site function

Temporal and cultural affiliation

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

Conclusions

Prehistoric Sites

Historic Sites

Recommendation (eligibility recommendations)

Prehistoric Sites

Site Specific/Avoidance/Mitigation/Other Historic Sites

Site Specific/Avoidance/Mitigation/Other

8. References

9. Appendix(s)

(Geomorphology report)

(Ethnographic)

(Site forms)

(Maps)

(Correspondence)

(American Indian coordination and consultation documentation and description)

(American Indian monitor reports)

(Other ancillary studies for example: radiocarbon, AMS, faunal analysis,

1 phytolith analysis, pollen analysis, etc)

2

3

4 **8. FIELDWORK –Field Methods for Subsurface Investigations**

5

6 Subsurface testing will be conducted in consultation with tribal resource experts and in
7 accordance with the Guidelines and Procedures for Cultural Resource Review and Consultation
8 under the National Historic Preservation Act and Montana State Antiquities Act, Montana State
9 Historic Preservation Office, Planning Bulletin No. 21,
10 (<http://montanahistoricalsociety.org/shpo/archaeology/consultingwith.asp>). One method or a
11 combination of methods may be employed. The rationale for the methodology will be justified.
12

Comment [rs108]: This is added to make sure the tribal experts can prevent disturbance of sensitive sites that may result from testing.

13 • Shovel Testing and Augering

14
15 Shovel testing and augering will be required if the surface visibility is less than
16 50% in the opinion of the project archaeologist/principle investigator, or if the
17 terrain warrants the shovel tests. Tests will be approximately 30x30 centimeters
18 to minimum depth of 50 centimeters or until sterile subsoil, or bedrock, or water
19 is encountered.
20

21 • 1 x 1 meter or 50 x 50 cm Test Units

22
23 If in the opinion of the Contractor, 1 x 1 meter test units are necessary, the test
24 unit will be excavated in arbitrary 10 centimeter levels, unless cultural material is
25 encountered, to a depth of 50 centimeter or 20 centimeters below the last level of
26 cultural material. Augering shall be conducted in the center of the 1 x 1 meter
27 unit to a depth of 1 meter.
28

29 • Backhoe Excavation

30
31 Heavy equipment such as a backhoe may be necessary for the identification of a
32 buried historic resource. In this event, a backhoe equipped with a 3 foot bucket
33 will be used for excavation to 1.5 meters. Soil will be excavated in increments of
34 one foot, allowing for careful examination of sidewalls and soils prior to
35 continuing. Excavated materials will be randomly screened using ¼ inch screen.
36

37 • Collection

38
39 All subsurface artifacts will be collected and properly labeled in the field. Surface
40 collection of sites not within the ground disturbance area is not required. All
41 obsidian artifacts will be collected.
42

43 • Curation

44
45 See Stipulation XII.in this PA.
46

1 • Human Remains

2 See Stipulation XI in this PA.

3 • Evaluation Testing

4
5
6
7 Sufficient subsurface testing, as determined by STB, the Contractor, the SHPO,
8 the BLM if BLM administered lands, the ARS if ARS administered lands or MT
9 DNRC if state lands, and the Tribal Nation monitor on those sites suspected to be
10 NRHP eligible, will be conducted to allow the Contractor to develop Treatment
11 Plans or other alternatives to address any adverse effects.

12 • Minimum Field Recordation Standard

13 1. Prehistoric and Historic Sites

14
15 The appropriate site forms will be completed while on site (if possible). A
16 sketch map and field notes (field notes should be kept by each crew
17 member), and photographs of the site will be required, and log with photo
18 information will be kept. A description of the artifacts and features
19 observed on each site will be included in the field notes. The site will be
20 noted on a 7.5 minute USGS quad.

21
22
23
24
25 Built Resources (including buildings, bridges, and other structures)

26
27 The appropriate site forms will be completed while on site. The field notes will include the
28 address or location, the present condition and integrity of the property; a description of the
29 prominent architectural/engineering features with emphasis on the primary facade; a documented
30 or estimated date of original construction; identification of obvious alterations/additions; and a
31 designation of style or vernacular type, when applicable. A 3 ½-inch by 5-inch black and white
32 photograph of each property will be taken using 35mm format. Each photograph will be keyed
33 with the corresponding roll and frame number and identified as such on individual photographs
34 (see photo log instructions above). Original negatives and contact sheets will be included with
35 the final report (Structures should be evaluated in the field by a qualified architectural historian).
36 Upon completion of the project and acceptance of the Final ID and Evaluation Reports all
37 photographs and negatives will be shipped to the appropriate curation facility.

38
39
40 **CONFIDENTIALITY**

41
42 All PA consulting parties shall ensure that shared data, including data concerning the precise
43 location and nature of historic properties and properties of religious and cultural significance are
44 protected from public disclosure to the greatest extent permitted by law, including conformance
45 to Section 304 of the NHPA, Section 9 of ARPA, and the Executive Order on Sacred Sites,
46 13007 Fed. Reg. 61-104, dated May 24, 1996.

ATTACHMENT C
ACRONYMS and DEFINITIONS

ACRONYMS

<u>AIRFA</u>	<u>American Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq.</u>
<u>ACHP</u>	<u>Advisory Council on Historic Preservation</u>
<u>ARPA</u>	<u>Archaeological Resources Protection Act of 1979</u>
<u>ARS</u>	<u>U.S. Department of Agriculture Agricultural Research Service</u>
<u>APE</u>	<u>Area of Potential Effects</u>
<u>BLM</u>	<u>U.S. Department of the Interior Bureau of Land Management</u>
<u>C.F.R.</u>	<u>Code of Federal Regulations</u>
<u>COE</u>	<u>U.S. Army Corps of Engineers</u>
<u>CRIS</u>	<u>Cultural Resource Inventory System</u>
<u>EIS</u>	<u>Environmental Impact Statement</u>
<u>ID Plan</u>	<u>Identification Plan</u>
<u>MDT</u>	<u>Montana Department of Transportation</u>
<u>MHS</u>	<u>Montana Historical Society</u>
<u>MT DNRC</u>	<u>Montana Department of Natural Resources and Conservation</u>
<u>NAGPRA</u>	<u>Native American Graves Protection and Repatriation Act, 23 U.S.C. 3001 et. seq.</u>
<u>NHL</u>	<u>National Historic Landmark</u>
<u>NHPA</u>	<u>National Historic Preservation Act</u>
<u>NPRC</u>	<u>Northern Plains Resource Council</u>
<u>NPS</u>	<u>U.S. Department of the Interior National Park Service</u>
<u>OEA</u>	<u>Office of Environmental Analysis</u>
<u>OSHA</u>	<u>Occupational Safety and Health Administration</u>
<u>PA</u>	<u>Programmatic Agreement</u>
<u>ROW</u>	<u>Right-of-Way</u>
<u>SHPO</u>	<u>State Historic Preservation Officer</u>
<u>STB</u>	<u>Surface Transportation Board</u>
<u>TRRC</u>	<u>Tongue River Railroad Company, Inc.</u>
<u>USC</u>	<u>United States Code</u>

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DEFINITIONS

- **Phase I:** Phase I (a.k.a. NEPA Phase) is the time period extending from the NEPA scoping process to the certification of the Final EIS (2012-2015). Phase I encompasses the Section 106 activities associated with identifying consulting parties, identifying historic properties and tribal sites of significance, and assessing the effects of the Undertaking on such properties and sites, to reflect and inform the STB's consideration of project alternatives in the NEPA process.
- **Phase II:** Phase II (a.k.a. Post-Decision Phase) is the time period that would only occur in the event that the STB approves any build alternatives, would begin after such decision and would end when the stipulations of this PA are complete or this PA is terminated.

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Comment [MS109]: Add to this list of definitions and create a Glossary for the PA based on comments from WG meetings, Section 106 meetings, and written comments.

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- *The Tongue River Railroad Company, Inc.* is a Delaware corporation that has applied to the Surface Transportation Board for authority to construct a common carrier railroad linking planned or future coal mines in the Ashland /Otter Creek area with lines of the BNSF Railway Company. (ask applicant)
- *Tribal Sites of Significance:* *Properties identified by consulting tribes that have cultural and religious significance to the tribes.* (ask tribes in WG)

[Other definitions?]

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ATTACHMENT D

Phase I Inventory

Summary of Previously Recorded Cultural Resources

Cultural resources in Montana are recorded on site forms that are retained in the State of Montana Cultural Resource Information System database, maintained by the Montana Historical Society. Site records are forms prepared by cultural resources specialists that describe and map previously discovered cultural resources (including archaeological sites and built resources) in an area. OEA obtained site records from MHS for an area 1 mile wide on either side of the centerline for each build alternative. This was consistent with the access requested for all NEPA resource areas, not just cultural resources. This large records search area, because it yields many site forms describing previously found cultural resources, also provides a better context for the cultural environment of the APE. 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 historic built resources (Table 2). Reports of past surveys and analyses were also obtained from the Montana Historical Society, indicating that less than 10 percent of the areas encompassed by the build alternatives had been previously surveyed for archaeological sites. Tables 1 and 2 summarize the previously recorded archaeological sites and built resources within one mile on either side of the centerline for all build alternatives.

Table 1. Number of Previously Recorded Archaeological Resources—All Build Alternatives

<u>Lithic Scatter</u>	<u>Lithic Scatter with other components</u>	<u>Stone Circle</u>	<u>Cairn</u>	<u>Historic Water Associated</u>	<u>Historic Trail or Fence</u>	<u>Other^a</u>	<u>TOTAL Archaeological Sites</u>	<u>Tribal Resources</u>
<u>16</u>	<u>23</u>	<u>2</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>44</u>	<u>0</u>

Notes:

^a Two railroad grades.

Table 2. Previously Recorded Built Resources—All Build Alternatives

<u>Barn</u>	<u>Bridge</u>	<u>Dam/ Levee</u>	<u>District^{a, b}</u>	<u>Homestead</u>	<u>Railroad</u>	<u>Ranch</u>	<u>Road/ Trail</u>	<u>Utility</u>	<u>Windmill</u>	<u>Other^c</u>
<u>0</u>	<u>2</u>	<u>0</u>	<u>2</u>	<u>3</u>	<u>2</u>	<u>11</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>5</u>

Notes:

^a Includes the Miles City Main Street Historic District, listed in the National Register

^b Includes the Lee Community Historic District, which was identified in the records search (Ferguson 2002) but was only nominally recorded and was not formally determined eligible for the National Register.

^c Includes schools, irrigation systems, and a grave marker.

OEA reviewed the inventory of properties listed in the 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 listed in the National Register. Neither the Wolf Mountain Battlefield National Historic Landmark nor the National Register-listed Fort Keogh Historic District are located in the APE.

In addition to the 27 built resources formally recorded in the CRIS database, the following three resources were revealed through literature review, but none have been formally determined eligible for the National Register:

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

Phase I Field Survey Results

Identified Archaeological Resources, Tribal Resources, and Built Resources Identified within the APE by Alternative Surface Transportation Board Field Survey for Tongue River Railroad EIS – 2013-2014 Docket No. FD 30186

As reported to the MT SHPO in a letter dated 11/17/2014, Table 3 provides the percentage coverage of OEA's identification effort for each alternative. The results include the:

- Total number of acres of the Area of Potential Effects (APE) for archaeological resources and tribal resources.
- Accessible number of acres of the APE.
- Number of acres surveyed, and
- Percent surveyed of the APE that was accessible.

Table 3. Coverage of Identification Effort for Archaeological and Tribal Resources

<u>Alternative</u>	<u>Total Acres in the APE^a</u>	<u>Total Acreage Accessible</u>	<u>Percent Access Granted</u>	<u>Total Acreage Surveyed</u>	<u>Percent of APE Surveyed</u>	<u>Percent Accessible Surveyed</u>
<u>Tongue River</u>	<u>7,921</u>	<u>4,226</u>	<u>53</u>	<u>2,674</u>	<u>34</u>	<u>63</u>
<u>Tongue River East</u>	<u>8,097</u>	<u>4,353</u>	<u>54</u>	<u>3,080</u>	<u>38</u>	<u>71</u>
<u>Colstrip</u>	<u>4,133</u>	<u>2,913</u>	<u>71</u>	<u>2,124</u>	<u>51</u>	<u>73</u>
<u>Colstrip East</u>	<u>4,369</u>	<u>3,156</u>	<u>72</u>	<u>2,590</u>	<u>59</u>	<u>82</u>
<u>Tongue River Road</u>	<u>8,368</u>	<u>3,641</u>	<u>44</u>	<u>2,493</u>	<u>30</u>	<u>68</u>
<u>Tongue River Road East</u>	<u>8,491</u>	<u>3,714</u>	<u>44</u>	<u>2,834</u>	<u>33</u>	<u>76</u>
<u>Moon Creek</u>	<u>8,086</u>	<u>4,299</u>	<u>53</u>	<u>2,456</u>	<u>30</u>	<u>57</u>
<u>Moon Creek East</u>	<u>8,262</u>	<u>4,426</u>	<u>54</u>	<u>2,862</u>	<u>35</u>	<u>65</u>
<u>Decker</u>	<u>5,420</u>	<u>2,555</u>	<u>47</u>	<u>1,699</u>	<u>31</u>	<u>66</u>
<u>Decker East</u>	<u>5,229</u>	<u>2,560</u>	<u>49</u>	<u>1,683</u>	<u>32</u>	<u>66</u>
<u>Unique Segment Total^b</u>	<u>23,431</u>	<u>11,995</u>	<u>51</u>	<u>8,650</u>	<u>37</u>	<u>72</u>

Notes:

^a APE includes a 200-foot buffer zone on either side of the right-of-way edge.

^b Some alternatives share common segments; the total is for unique segments.

Table 4 tallies and categorizes the archaeological resources and tribal resources that were identified by OEA's survey effort in 2013 and 2014 within the accessible areas of the APE of each alternative.

Table 4. Number of Archaeological and Tribal Resources identified within Alternative APEs

	<u>Lithic Scatter</u>	<u>Lithic Scatter with other components</u>	<u>Stone Circle/Tipi Rings</u>	<u>Cairn</u>	<u>Historic Water Associated</u>	<u>Historic Trail or Fence</u>	<u>Other</u>	<u>Isolate</u>	<u>TOTAL Archaeological Resources</u>	<u>TOTAL Tribal Resources</u>	<u>TOTAL</u>
<u>Tongue River Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>19</u>	<u>9</u>	<u>2</u>	<u>5</u>	<u>2</u>	<u>2</u>	<u>3</u>	<u>16</u>	<u>58</u>	<u>5</u>	<u>63</u>
<u>Within 200-foot buffer zone</u>	<u>9</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>8</u>	<u>17</u>	<u>35</u>	<u>5</u>	<u>40</u>
<u>TOTAL</u>	<u>28</u>	<u>9</u>	<u>2</u>	<u>6</u>	<u>2</u>	<u>2</u>	<u>11</u>	<u>33</u>	<u>93</u>	<u>10</u>	<u>103</u>
<u>Tongue River East Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>20</u>	<u>8</u>	<u>2</u>	<u>7</u>	<u>2</u>	<u>0</u>	<u>5</u>	<u>17</u>	<u>61</u>	<u>6</u>	<u>67</u>
<u>Within 200-foot buffer zone</u>	<u>10</u>	<u>0</u>	<u>3</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>11</u>	<u>24</u>	<u>50</u>	<u>8</u>	<u>58</u>
<u>TOTAL</u>	<u>30</u>	<u>8</u>	<u>5</u>	<u>9</u>	<u>2</u>	<u>0</u>	<u>16</u>	<u>41</u>	<u>111</u>	<u>14</u>	<u>125</u>
<u>Colstrip Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>8</u>	<u>1</u>	<u>4</u>	<u>6</u>	<u>2</u>	<u>2</u>	<u>13</u>	<u>10</u>	<u>46</u>	<u>3</u>	<u>49</u>
<u>Within 200-foot buffer zone</u>	<u>4</u>	<u>4</u>	<u>0</u>	<u>7</u>	<u>0</u>	<u>0</u>	<u>6</u>	<u>13</u>	<u>34</u>	<u>12</u>	<u>46</u>
<u>TOTAL</u>	<u>12</u>	<u>5</u>	<u>4</u>	<u>13</u>	<u>2</u>	<u>2</u>	<u>19</u>	<u>23</u>	<u>80</u>	<u>15</u>	<u>95</u>
<u>Colstrip East Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>16</u>	<u>5</u>	<u>4</u>	<u>10</u>	<u>2</u>	<u>2</u>	<u>15</u>	<u>14</u>	<u>68</u>	<u>4</u>	<u>72</u>
<u>Within 200-foot buffer zone</u>	<u>8</u>	<u>4</u>	<u>3</u>	<u>8</u>	<u>0</u>	<u>0</u>	<u>10</u>	<u>22</u>	<u>55</u>	<u>5</u>	<u>60</u>
<u>TOTAL</u>	<u>24</u>	<u>9</u>	<u>7</u>	<u>18</u>	<u>2</u>	<u>2</u>	<u>25</u>	<u>36</u>	<u>123</u>	<u>9</u>	<u>132</u>
<u>Tongue River Road Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>14</u>	<u>11</u>	<u>3</u>	<u>2</u>	<u>0</u>	<u>3</u>	<u>5</u>	<u>13</u>	<u>51</u>	<u>4</u>	<u>55</u>
<u>Within 200-foot buffer zone</u>	<u>8</u>	<u>3</u>	<u>0</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>8</u>	<u>13</u>	<u>36</u>	<u>3</u>	<u>39</u>

	<u>Lithic Scatter</u>	<u>Lithic Scatter with other components</u>	<u>Stone Circle/ Tipi Rings</u>	<u>Cairn</u>	<u>Historic Water Associated</u>	<u>Historic Trail or Fence</u>	<u>Other</u>	<u>Isolate</u>	<u>TOTAL Archaeological Resources</u>	<u>TOTAL Tribal Resources</u>	<u>TOTAL</u>
<u>TOTAL</u>	<u>22</u>	<u>14</u>	<u>3</u>	<u>6</u>	<u>0</u>	<u>3</u>	<u>13</u>	<u>26</u>	<u>87</u>	<u>7</u>	<u>94</u>
<u>Tongue River Road East Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>14</u>	<u>10</u>	<u>3</u>	<u>4</u>	<u>0</u>	<u>1</u>	<u>7</u>	<u>14</u>	<u>53</u>	<u>5</u>	<u>58</u>
<u>Within 200-foot buffer zone</u>	<u>9</u>	<u>3</u>	<u>3</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>11</u>	<u>20</u>	<u>51</u>	<u>2</u>	<u>53</u>
<u>TOTAL</u>	<u>23</u>	<u>13</u>	<u>6</u>	<u>9</u>	<u>0</u>	<u>1</u>	<u>18</u>	<u>34</u>	<u>104</u>	<u>7</u>	<u>111</u>
<u>Moon Creek Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>23</u>	<u>8</u>	<u>2</u>	<u>6</u>	<u>3</u>	<u>2</u>	<u>2</u>	<u>17</u>	<u>63</u>	<u>3</u>	<u>66</u>
<u>Within 200-foot buffer zone</u>	<u>6</u>	<u>1</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>3</u>	<u>15</u>	<u>27</u>	<u>2</u>	<u>29</u>
<u>TOTAL</u>	<u>29</u>	<u>9</u>	<u>2</u>	<u>8</u>	<u>3</u>	<u>2</u>	<u>5</u>	<u>32</u>	<u>90</u>	<u>5</u>	<u>95</u>
<u>Moon Creek East Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>23</u>	<u>7</u>	<u>2</u>	<u>8</u>	<u>3</u>	<u>0</u>	<u>4</u>	<u>18</u>	<u>65</u>	<u>4</u>	<u>69</u>
<u>Within 200-foot buffer zone</u>	<u>7</u>	<u>1</u>	<u>3</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>6</u>	<u>22</u>	<u>42</u>	<u>5</u>	<u>47</u>
<u>TOTAL</u>	<u>30</u>	<u>8</u>	<u>5</u>	<u>11</u>	<u>3</u>	<u>0</u>	<u>10</u>	<u>40</u>	<u>107</u>	<u>9</u>	<u>116</u>
<u>Decker Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>18</u>	<u>5</u>	<u>0</u>	<u>7</u>	<u>0</u>	<u>2</u>	<u>4</u>	<u>18</u>	<u>54</u>	<u>8</u>	<u>62</u>
<u>Within 200-foot buffer zone</u>	<u>9</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>5</u>	<u>18</u>	<u>6</u>	<u>24</u>
<u>TOTAL</u>	<u>27</u>	<u>5</u>	<u>0</u>	<u>8</u>	<u>0</u>	<u>3</u>	<u>6</u>	<u>23</u>	<u>72</u>	<u>14</u>	<u>86</u>
<u>Decker East Alternative</u>											
<u>Within or intersected by the right-of-way</u>	<u>17</u>	<u>6</u>	<u>0</u>	<u>6</u>	<u>0</u>	<u>0</u>	<u>4</u>	<u>16</u>	<u>49</u>	<u>8</u>	<u>57</u>
<u>Within 200-foot buffer zone</u>	<u>9</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>9</u>	<u>23</u>	<u>5</u>	<u>28</u>
<u>TOTAL</u>	<u>26</u>	<u>7</u>	<u>0</u>	<u>7</u>	<u>0</u>	<u>1</u>	<u>6</u>	<u>25</u>	<u>72</u>	<u>13</u>	<u>85</u>

1
2

Table 5 tallies and categorizes the built resources that were identified by OEA's survey effort in 2013 and 2014 within the accessible areas of the APE of each alternative.

Table 5. Number of Built Resources surveyed within the APE

	<u>Barn</u>	<u>Bridge</u>	<u>Dam/Levee</u>	<u>District</u>	<u>Homestead</u>	<u>Irrigation Ditch</u>	<u>Railroad</u>	<u>Ranch</u>	<u>Road/Trail</u>	<u>Utility</u>	<u>Windmill</u>	<u>Other</u>	<u>TOTAL</u>
<u>Tongue River Alternative</u>													
<u>Within or intersected by the right-of-way</u>	0	0	0	1	1	0	1	0	1	0	0	3	7
<u>Within 1,500-foot buffer zone</u>	2	3	0	2	3	0	1	6	2	3	1	3	26
<u>TOTAL</u>	2	3	0	3	4	0	2	6	3	3	1	6	33
<u>Tongue River East Alternative</u>													
<u>Within or intersected by the right-of-way</u>	0	0	0	0	0	0	1	0	1	0	0	3	5
<u>Within 1,500-foot buffer zone</u>	2	2	0	2	0	0	0	4	2	3	1	2	18
<u>TOTAL</u>	2	2	0	2	0	0	1	4	3	3	1	5	23
<u>Colstrip Alternative</u>													
<u>Within or intersected by the right-of-way</u>	0	0	2	2	1	2	0	0	0	0	0	1	8
<u>Within 1,500-foot buffer zone</u>	0	1	1	0	4	0	3	2	0	0	1	2	14
<u>TOTAL</u>	0	1	3	2	5	2	3	2	0	0	1	3	22
<u>Colstrip East Alternative</u>													
<u>Within or intersected by the right-of-way</u>	0	0	2	1	0	2	0	0	0	0	0	1	6
<u>Within 1,500-foot buffer zone</u>	0	0	1	0	1	0	2	0	0	0	1	1	6
<u>TOTAL</u>	0	0	3	1	1	2	2	0	0	0	1	2	12
<u>Tongue River Road Alternative</u>													
<u>Within or intersected by the right-of-way</u>	0	0	0	1	1	1	1	0	1	0	0	3	8
<u>Within 1,500-foot buffer zone</u>	2	4	0	2	5	1	1	4	2	3	1	5	30

	<u>Barn</u>	<u>Bridge</u>	<u>Dam/Levee</u>	<u>District</u>	<u>Homestead</u>	<u>Irrigation Ditch</u>	<u>Railroad</u>	<u>Ranch</u>	<u>Road/Trail</u>	<u>Utility</u>	<u>Windmill</u>	<u>Other</u>	<u>TOTAL</u>
<u>buffer zone</u>													
<u>TOTAL</u>	<u>2</u>	<u>4</u>	<u>0</u>	<u>3</u>	<u>6</u>	<u>2</u>	<u>2</u>	<u>4</u>	<u>3</u>	<u>3</u>	<u>1</u>	<u>8</u>	<u>38</u>
<u>Tongue River Road East Alternative</u>													
<u>Within or intersected by the right-of-way</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>3</u>	<u>6</u>
<u>Within 1,500-foot buffer zone</u>	<u>2</u>	<u>3</u>	<u>0</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>0</u>	<u>2</u>	<u>2</u>	<u>3</u>	<u>1</u>	<u>4</u>	<u>22</u>
<u>TOTAL</u>	<u>2</u>	<u>3</u>	<u>0</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>3</u>	<u>1</u>	<u>7</u>	<u>28</u>
<u>Moon Creek Alternative</u>													
<u>Within or intersected by the right-of-way</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>5</u>
<u>Within 1,500-foot buffer zone</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>3</u>	<u>0</u>	<u>1</u>	<u>5</u>	<u>2</u>	<u>0</u>	<u>3</u>	<u>2</u>	<u>19</u>
<u>TOTAL</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>4</u>	<u>0</u>	<u>2</u>	<u>5</u>	<u>4</u>	<u>0</u>	<u>3</u>	<u>2</u>	<u>24</u>
<u>Moon Creek East Alternative</u>													
<u>Within or intersected by the right-of-way</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
<u>Within 1,500-foot buffer zone</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>	<u>2</u>	<u>0</u>	<u>3</u>	<u>1</u>	<u>11</u>
<u>TOTAL</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>3</u>	<u>4</u>	<u>0</u>	<u>3</u>	<u>1</u>	<u>14</u>
<u>Decker Alternative</u>													
<u>Within or intersected by the right-of-way</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
<u>Within 1,500-foot buffer zone</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>6</u>
<u>TOTAL</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>2</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>9</u>
<u>Decker East Alternative</u>													
<u>Within or intersected by the right-of-way</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
<u>Within 1,500-foot buffer zone</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>2</u>
<u>TOTAL</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>5</u>

Figure 1 presents the information contained in Tables 4 and 5 on a map of the project area.

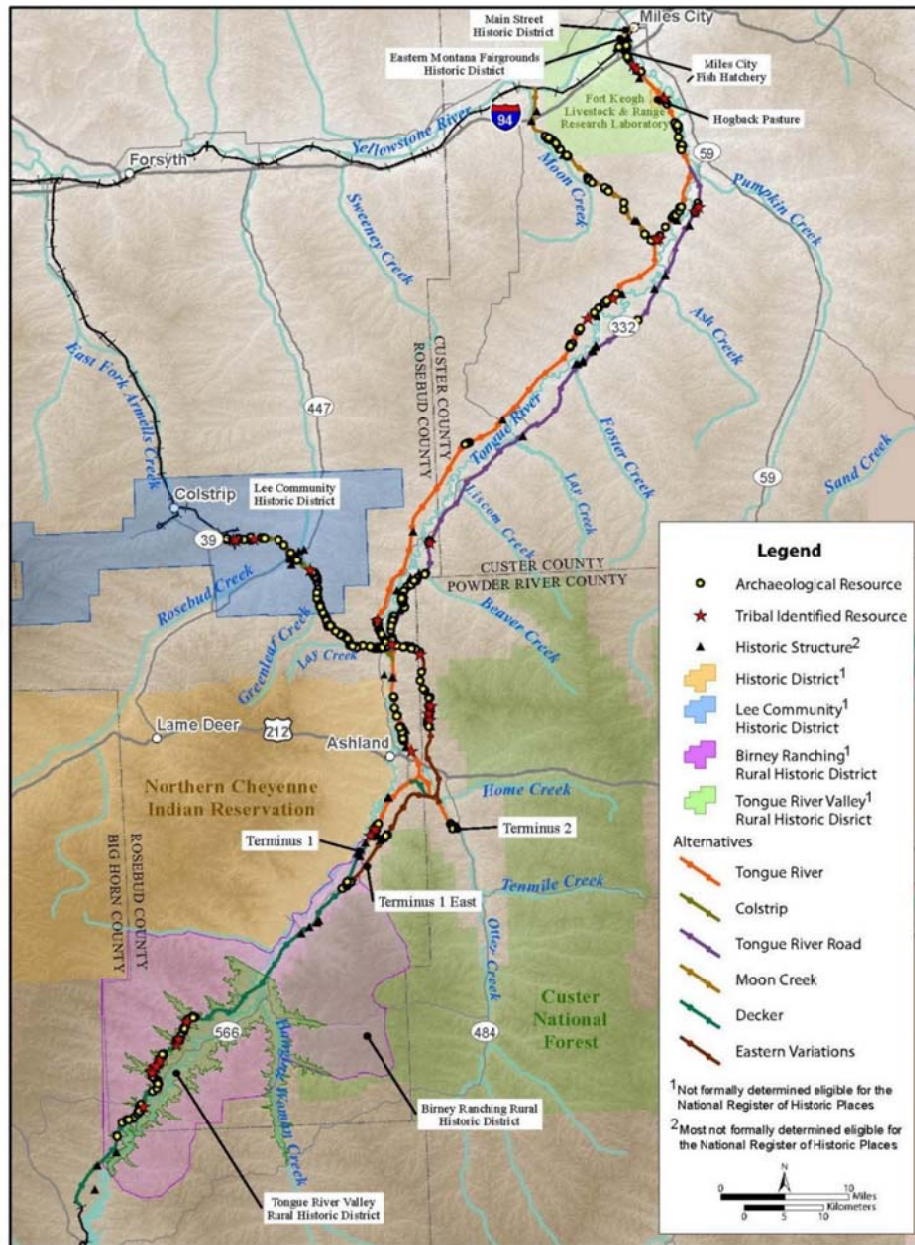


Figure 1. Newly and Previously Identified Cultural Resources in Tongue River Railroad APE

The following text provides a general description of the types of tribal resources, archaeological resources, and built resources identified by tribal members and OEA's archaeologists, architectural historians, and historians and our reasoning regarding their potential eligibility for the National Register.

Tribal Resources

Tribal members that participated in the field surveys used the following terms to describe resources significant to the tribes: cairns, depressions, stone circles, and ceremonial, cosmological, faunal, or spirit track sites. Many of these resources are also considered archaeological resources or resource types as described below.

Potential Eligibility of Tribal Resources

Tribal resources include locations with religious and cultural significance to tribes. OEA acknowledges that tribes possess special expertise identifying cultural resources with religious and/or cultural significance. OEA presumes all of the newly identified tribal resources as eligible for listing in the National Register for the purposes of the EIS. The evaluation of these resources for the National Register would not be undertaken unless the Board licenses a build alternative, and would follow the procedures set forth in the Programmatic Agreement, which would involve participation by the tribes.

Archaeological Resources

Lithic Scatters

Lithic scatters are by far the most common site type (precontact or historic) in the APE. These sites consist of culturally modified stone tool materials, including projectile points (e.g., spear tips, atlatl dart tip, arrowheads), tools (e.g., scrapers, choppers, hammerstones), tested cobbles, waste flakes (associated with cobble testing, and projectile point or tool manufacture), and ground stone artifacts (e.g., manos, metates). Tongue River Silicified Sediment (arenaceous chert) was the principal material represented in chipped stone assemblages, with small quantities of various cryptocrystalline silicates (chert, jasper, chalcedony) and quartzites also present.

Lithic Scatters with Other Components

Lithic scatters, as defined above, are often found associated with other types of precontact cultural features. These often include stone circles and cairns, as described below. Other features often associated with lithic scatters in the APE included quarry sites, bedrock milling features, and historic-period petroglyphs. Quarry sites are, in essence, lithic scatters whose implied origin is that of lithic tool source material extraction and testing. These sites occur at bedrock outcrops or areas of abundant surface cobbles and gravels. By nature, quarry sites are typically fairly large and contain a much higher percentage of primary reduction material and tested cobbles when compared with general lithic scatters. Petroglyphs are rock art created by physical removal of material from natural stone, done by incising and/or pecking. Petroglyphs are found on bedrock exposures that form cliffs, bedrock outcrops, rockshelters, and caves. Bedrock milling features are expanses of natural bedrock that have been used to process plant foods or hides. The bedrock surfaces are worn smooth by these activities.

Stone Circles

This site type includes circular or semicircular stone alignments, typically using cobbles, and is one of the most common site types in the APE. These alignments are associated with habitation, fasting and spiritual activities; smaller structures were likely used for a variety of different functions

such as hide tanning.

Cairns

Cairns are piles of rocks of various sizes, typically ranging from several stones to larger stacks of rocks (Figure 2). Cairns may be associated with ceremonial or other important functions such as burials, commemoration of people or events, and directional references such as trail marking.

Figure 2. View of a Cairn



Historic Water-Associated Structures

These types of features consist of human-made structures used to direct or retain water. Dams—earthen and made of wood or stone—are a common example of this site type, in addition to canals and water-retention basins. These features are most often constructed through some scale of excavation and piling of local sediment.

Historic Trail or Fence

These are linear human-made features on the landscape. Trail and road sites are linear alignments used for movement of individuals and material. Trails are unimproved alignments and often associated with pedestrian, equestrian, and wagon movement. Roads are typically associated with motorized vehicle use. Both trails and roads may consist of simple dirt alignments. Fences are constructed alignments usually used for partitioning land and/or enclosing livestock. Milled wood, local trees and brush, and barbed-wire are the most

common materials used for fence construction.

Other archaeological resources found in small numbers in the APE include stone alignments, rockshelters, depressions, historic period refuse scatters, building remains, survey markers, and hillcuts.

Stone Alignments

Stone alignment sites are generally linear straight to curving arrangements of piles and/or intentionally aligned stone. Alignments may be associated with bison drive lines, trail alignments, effigies, or ceremonial practices, among others. Figure 3 shows an alignment for a fasting circle.

Rockshelters

Rockshelters are natural rock formations, typically semi-enclosed, associated with cultural activities. These activities include general habitation, lithic tool procurement, petroglyphs/pictographs, quarries, and burials.

Depressions

Depressions are areas that may be associated with lookout or hunting activities, both by

Native Americans and/or European Americans.

Refuse Scatters

This site type consists of general waste material generated through cultural activities. Refuse scatters can range in density from very sparse to highly concentrated dumps. Typically material present at this type of site are from the historic era and include cans, bottles, domestic ceramics, clothing (e.g., boots, shoes), construction material (e.g., nails, milled wood), among other items.

Building Remains

Building remains refers to foundations or other features associated with a once-standing structure. These resources are historical and may also include chimney remnants, historic debris, privies, collapsed walls, or other structural elements associated with the structure.

Survey Markers

Historic survey markers are typically small metal posts purposefully set in the ground during land surveys to act as a geographic reference and evidence of surveying activities. The posts are set in the ground until flush with ground level, and almost always contain inscribed information about the location and survey (date and responsible party/agency for the survey) on the visible cap.

Hillcuts

Hillcuts are areas where sediment has been physically removed from a slope, by manual and/or mechanical means.

Potential Eligibility of Archaeological Resources

OEA presumes all of the newly identified archaeological resources as eligible for listing in the National Register for the purposes of the EIS. The evaluation of these resources for the National Register would not be undertaken unless the Board licenses a build alternative, and would follow the procedures set forth in the Programmatic Agreement. However, previous excavation and evaluation of precontact archaeological resources indicates in general terms which resource types are more likely to yield important scientific information, and thus to be eligible for the National Register.

Isolated artifacts by their nature as single items or a very sparse collection of items are rarely considered eligible. Very rare artifact types, such as fluted projectile points, may be an exception to this rule. Similarly, *lithic scatters* are usually not eligible. However, test excavations at a small percentage of sites recorded as lithic scatters would uncover subsurface features and components and significant archaeological materials.

Sites recorded as *lithic scatters with other components*, especially habitation-related components such as hearths or tipi rings, are almost always eligible under Criterion D. For example, one type of important information that can be gained at sites of this type is datable material recovered

Figure 3. Rocks Aligned for a Fasting Circle



1 in hearths, with radio carbon dates adding important information to scientific understanding of the
2 region. As noted above, some small number of lithic scatters would be determined to be sites of this
3 types, and likely eligible. Similarly, stone circles often prove to indicate habitation sites, and these
4 are, in turn, considered eligible under Criterion D. However, some stone circles would be excavated,
5 and no other archaeological artifacts or features would be found in association. Archaeologically,
6 these circles would not yield further scientific information being isolated single-use features, and
7 thus would not be considered eligible under Criterion D. However, if tribes viewed the circles as
8 sacred or of a spiritual nature, these features would be eligible as tribal resources under Criterion A
9 and, or D.

10 Rock cairns and rock alignments are feature types that can be eligible under Criterion D
11 depending on what other archaeological artifacts or features are found in association with the cairns
12 or alignments, in a manner similar to stone circles. A cairn marking human remains would obviously
13 be eligible, while an isolated trail marker might not be. Similarly, rock shelters and depressions may
14 be eligible depending on what archaeological items and information could be recovered from them, if
15 any. However, again, if this use is of a spiritual nature, any features of these types may be eligible as
16 tribal resources.

17 Historical archaeological resources also fall into broad categories in terms of eligibility for
18 the National Register. Refuse scatters and building remains are typically not eligible but can be
19 eligible under Criterion D if sufficient new information can be gathered from the site. Sparse refuse
20 or very fragmentary remains would be not eligible. Historic water-associated structures and historic
21 trail or fence sites are usually not eligible under Criterion D. However, some trails and irrigation
22 structures would be eligible under Criterion A, associated with events that have made a significant
23 contribution to the broad patterns of history. Survey markers and hillcuts on the other hand, are
24 almost always considered not eligible under Criterion D.

25 In summary, while all archaeological sites identified are presumed eligible for listing in the
26 National Register, none have been formally evaluated. However, there are some indications—such
27 as possible burial remains or other indications noted previously—that suggest some sites may address
28 research issues and meet Criterion D or Criterion A, including the following.

- 29 • Lithic scatters with other components
- 30 • Stone circles/tipi rings
- 31 • Rock cairns and rock alignments
- 32 • Rock shelters and depressions

34 Built Resources

35 The field survey team of architectural historians and historians observed built resources in the
36 survey areas for all build alternatives that fall within the following categories.

37 Ranches

38 Previously documented ranches are reflected in the records search and additional examples
39 were recorded during the field survey. A ranch is an existing group of related buildings and/or
40 structures that represent the primary residence and operations of a working ranch. The grouping
41 most often consists of a farmstead with a main house and multiple outbuildings, such as barns,
42 equipment sheds, and livestock corrals. A ranch might also contain the remnants of an original
43 homestead or log cabin and be the amalgamation of multiple periods of development.

Homesteads

Previously documented homestead cabins and sites are reflected in the records search and additional examples were recorded during the field survey. A homestead is an extant building or group of buildings (and/or structures) in a single location associated with the early settlement of the Tongue River region. Most often characterized by a log cabin, a homestead could also include a dugout, barn, or other related structures of this early time period. These elements would have been constructed by a settler attempting to homestead a tract of land, and may represent the development of this land over time. Some elements of a homestead are sometimes found in close proximity to, or exist as a part of, an active ranch or farm. Figure 4 shows an example of a homestead in the APE.

Figure 4. Example of a Homestead in the APE



Transportation and Water Conveyance

A variety of resources including roads, trails, bridges, dams, levees, windmills, pumphouses, and park facilities have been identified in the Tongue River Valley. Figure 5 depicts a windmill in the APE.

Figure 5. Example of a Windmill in the APE



Potential or Designated Historic Districts

Historic districts possess a significant concentration of built resources united historically or aesthetically by plan, design, or physical development. Seven potential or designated Historic Districts are present in the Project Area, and are described below. At this time, only the Main Street Historic District (Miles City) has been determined eligible and is listed on the National Register.

Fish Hatchery (Potential Historic District)

The Miles City Fish Hatchery was established in late 1958 by the U.S. Fish and Wildlife Service (Figure 1). The Montana Department of Fish, Wildlife & Parks (Montana FWP) became the operator of the hatchery in the early 1980s. It is accessible from Main Street via Fish Hatchery Road. The geography is generally flat, although there is a low butte to the east of the buildings and ponds. There are two 1-story, midcentury residences situated parallel to the road and west of the main entrance to the facility. There is a midcentury concrete block building, the Administration Building, with an attached one-and-a-half-story, two-bay garage just north of the entrance. Behind the Administration Building are several large garages with gable roofs, and smaller outbuildings, mostly used for equipment storage. Northeast of the Administration Building on a small rise are two large ponds with metal platforms extending out from the banks on the southern end. There is some additional utility equipment in this area. Northwest of the Administration Building are three rows of smaller, rectangular ponds lined up generally on a northeast-southwest axis. Three additional ponds are located northwest of this set. Most of the ponds are not visible from the Administration building area, and are only accessed by a series of internal gravel roads.

Eastern Montana Fairgrounds (Potential Historic District)

The Eastern Montana Fairgrounds (Figure 1) are bounded by Garryowen Road on the west, Pacific Avenue on the south, Tongue River on the east, and Miles City Main Street on the north. The geography is flat. The fairgrounds have been operating at this location since at least 1928. The fairgrounds are accessed via three primary entrances, one from each road, and identified by two-story-high masonry pillars. This is a large property, encompassing approximately 0.12 square mile with buildings clustered in the center. At the center of the property is an oval dirt racetrack with a grandstand on the southwest corner. In addition to the racetrack, the site includes a grandstand, an exhibition hall, stables, an office, possible residence, a variety of barns, and more than 20 buildings and structures on the site of varying sizes and uses. Most of these are clustered on either side of an interior road that leads in from Pacific Avenue.

Figure 6. Eastern Montana Fairgrounds, Miles City



Hogback Pasture (Under Evaluation by USDA as a National Register-Eligible Historic District)

Hogback Pasture is located on the USDA Agricultural Research Service facility at Fort Keogh (Figure 1). The pasture is associated with experimental techniques developed on site that have been widely adopted across the country. The most significant feature of Hogback Pasture is the unique arrangement of pastures around a central feeding area. Otherwise, the site is almost entirely undeveloped, except for gravel roads, transmission lines, windmills, corrals, and fences. USDA is currently preparing a study to determine if Hogback Pasture is eligible for listing in the National Register.

Lee Community Historic District (Potential Historic District)

The Lee Community Historic District is identified in the records search as a homesteading community defined by historic school district number 19 as constituted in 1920 and encompassing approximately 248 square miles (Figure 1). Located south of the town of Colstrip, the period of significance spans the 1880s to the 1930s. The site record only nominally recorded the district and describes it as “temporarily defined as including those homesteads, community buildings, travel routes, which were located within Lee School District 8 (later District 19), and or were served by the Lee Post Office. This description is generalized; further research may result in a more refined boundary for the historic district.” The site record does not identify specific contributors. (Ferguson 2002)

Tongue River Valley Rural Historic District (Potential Historic District)

The Tongue River Valley Rural Historic District covers a large area along the Tongue River Valley extending just north of the town of Birney to the Tongue River Reservoir (Figure 1). This district includes contributing buildings, structures, and clusters and consists of homestead sites, ranches, ranching-related resources, transportation, and water resources. Ranches included in this district include Diamond Cross, 4D Ranch, and Quarter Circle Ranch (Renewable Technologies 2006:109–133). The Tongue River Valley Rural Historic District and Birney Ranching Rural Historic District, discussed below, boundaries overlap. (Renewable Technologies 2006)

Birney Ranching Rural Historic District (Potential Historic District)

The Birney Ranching Rural Historic District covers a large area centered on the Town of Birney (Figure 1). It is bisected by the Tongue River and includes at least eight significant contributing ranches including the Knobloch Ranch, U Cross Nance Ranch, Three Circle Ranch,

Quarter Circle Ranch, 4D Ranch, and Diamond Cross Ranch (Montana Preservation Alliance 2007).

Main Street Historic District (Miles City) (National Register-Listed Historic District)

The Main Street Historic District in Miles City, listed on the National Register on July 21, 1989, consists predominantly of two-story commercial buildings constructed between 1882 and 1940 (Figure 1). As one of the oldest cities in the Yellowstone River Valley, Miles City was developed as an important hub for commerce in the area. Serving as the city's central business district during this important period of its development, the Main Street Historic District reflects a variety of architectural styles popular during the three main growth periods: 1882 to 1887, 1905 to 1920, and 1935 to 1940. In addition to the commercial buildings lining Main Street and its side streets, Riverside Park is an important landscape feature of the district (McDaniel and Sanford 1989).

Potential Eligibility of Built Resources

OEA presumes all of the newly identified built resources are eligible for listing in the National Register for the purposes of the EIS. The evaluation of these resources for the National Register would not be undertaken unless the Board licenses a build alternative, and would follow the procedures set forth in the Programmatic Agreement. However, to meet National Register criteria, built resources need to demonstrate quality of significance within an important historic context and retain the characteristics and integrity necessary to convey that significance. A formal evaluation of each resource is necessary to determine eligibility under National Register Criteria A, B, or C. However, it is possible to make general statements for some categories of property types.

Homesteads, which consist of one or more elements (such as log homes and cabins) built by original homesteaders and settlers, are becoming increasingly rare resources, as they succumb to purposeful removal or natural deterioration. Most of the homesteads identified in the APE are likely eligible under Criteria A and C. A finding of National Register eligibility would likely apply to most homesteads erected prior to 1950, but particularly those built in the late 19th and early 20th centuries, a significant period of tribal resettlement and European-American settlement in the region.

Roads, trails, and bridges are other transportation-related resources identified in the APE. The identified roads and trails primarily consist of road traces and former road alignments that often related to existing highways and routes. The identified bridges consist of existing road bridges over the Tongue River or existing railroad lines. Most of these resources are considered not eligible for the National Register, either due to lack of significant association or as common examples of engineering or bridge type. The several railroad lines that pass through the APE are generally considered not eligible for listing in the National Register, due to loss of integrity or a lack of significant association. Exceptions to this conclusion would be mainline routes that were a part of or associated with the transcontinental railroad, or routes that were particularly important to the development of a local community. Remnants of the North and South Railway, which exist in the APE between Miles City and Birney, exemplify the latter. However, the remnants' loss of integrity likely prevents them from meeting the National Register thresholds as an eligible resource.

Extant irrigation ditches and dam/levee structures are generally considered not eligible for listing in the National Register, unless associated with the early management and conveyance of water in the region.

Ranches are complex properties that may be eligible for the National Register when they have associations with important historic events or personages, or retain a good representation of historic-era buildings, structures, and objects. When isolated, individual ranch structures, such as cattle corrals, barns, and other ancillary ranch structures are generally considered not eligible for the National Register. If these resources have significant associations with the history of ranching in the region or are good representations of a significant property type, they could be considered

1 eligible under Criteria A or C if they retain integrity.

2 Several electricity transmission lines are located in the APE. Transmission lines are
3 commonplace structures and typically subject to frequent maintenance and changes in materials.
4 These are generally considered not eligible for listing in the National Register, unless they are
5 associated with a historically significant hydroelectric or other type of power-generating project.

6 Most of the windmills identified in the APE are of a similar type, design, and construction
7 and were erected circa 1920 to 1940. Many were reportedly produced by the same company and
8 installed by the same individuals or vendors operating out of Colstrip, Miles City, or another local
9 community. Given their commonplace occurrence, the windmills identified in the APE would
10 generally not be considered for the National Register unless they have a unique design or retain a
11 remarkably high level of integrity.

12 Finally, several districts described above are located in or immediately adjacent to the APE.
13 These include the Lee Community Historic District, the Eastern Montana Fairgrounds, the Tongue
14 River Valley Rural Historic Landscape District, and the proposed Birney Ranching Historic Rural
15 District. Each of these resources have associations with the history and development of the region or
16 individual communities; however, integrity is a factor. The Eastern Montana Fairgrounds, for
17 example, is likely eligible for the National Register under both Criteria A and C, because it is a
18 cohesive collection of buildings with a unique use built in a similar historic time period. The Miles
19 City Main Street Historic District is already listed in the National Register. The Lee Community
20 District, however, is likely not eligible for the National Register because it does not appear to retain a
21 cohesive collection of contributing buildings, and lacks physical integrity.

22 In summary, while all built resources identified are presumed eligible for listing in the
23 National Register, none have been formally evaluated. More research and field survey would be
24 needed to adequately apply the National Register criteria and determine their eligibility. However,
25 based on the above discussions, the following categories of built resources are more likely to be
26 eligible for the National Register under Criteria A, B, or C.

- 27 • Homesteads
- 28 • Irrigation ditches with important historic associations
- 29 • Ranches with important historic associations or many historic-era components
- 30 • Districts with cohesion and integrity
- 31 • Other properties with unique historic associations, such as the Hogback Pasture

32 References Cited

33 Ferguson, David. 2002. Lee Community Historic District Determination of Eligibility.
34 24RB2053.

35 McDaniel, Susan R. and Dena L. Sanford. 1989. Main Street Historic District (Miles City)
36 National Register Registration Form. 24CR701.

37 Montana Preservation Alliance. 2007. Cultural Landscape of the Upper Tongue River Valley in
38 Rosebud County, Montana. Prepared for National Center for Preservation Technology and
39 Training.

1 [Renewable Technologies, Inc. 2006. *Cultural Landscape-Scale Overview of the High Potential*](#)
2 [*Coal Bed Natural Gas Development Area \(North Powder River Basin Southeast Montana,*](#)
3 [*Prepared for Bureau of Land Management.*](#)
4
5

The Colstrip Alternative Landowner Group letter dated 9/30/2014, had multiple comments about this WHEREAS clause. The letter stated that this clause appears to contemplate the choice of a route by STB prior to the full identification and consideration of potentially significant cultural resources, did not agree the Tongue River Railroad is a complex project, and did not agree that a PA is appropriate for this project. In terms of specific language in this clause, the letter stated: “Finally, we do not agree that the language of 36 C.F.R. § 800.14(b)(1)(ii) – ‘When effects on historic properties cannot be fully determined prior to approval of an undertaking’ – applies to this proposed project. To the contrary, determining effects on historic properties along all alternative routes is feasible prior to the agency’s decision. As the agency appears to believe otherwise, we request an explicit property description of which portions of the alternatives cannot be fully analyzed prior to the agency’s final decision.”

“Even if the regulations authorized use of a PA in this situation, it would be inadvisable as a practical matter for STB to wait until after authorizing construction – if that is the outcome – to identify some effect on historic properties. If effects turn out to be more serious or widespread than understood at the decision point, the No Action Alternative will no longer be available.”

Note: Resolved by adding the two WHEREAS clauses above and inserting a linking clause in this WHEREAS that explains the restricted access on the build alternatives under consideration limited the identification and evaluation effort. Effects cannot be “fully” determined on approximately 49 percent of the APE where historic properties and tribal sites of significant could not be identified because of restricted access. .

The Colstrip Alternative Landowner Group letter dated 11/4/14, stated: “Landowners continue to object to the wording of this item. The agency has not produced any written record showing that effects “cannot be fully determined prior to any approval of the TRRC project by the STB.” Without such a written showing, the decision to use a PA on this basis is arbitrary, capricious, and unsupported by substantial evidence.”

Note: The written record was provided in the SHPO letter dated 11/17/2014, and the attachment to that letter is provided in Attachment D to the PA.

ACHP guidance, 9/8/2014: ACHP requests that OEA add a Stipulation clarifying the roles and responsibilities of key consulting parties.

OEA action, 11/28/2014: We added Section I, Roles and Responsibilities, to the draft PA and expanded Subsection B, Other Federal Agencies, to include BLM. Further, we expanded “Subsection, E. Tribes,” to provide additional information about the Tribes’ role in assisting in the identification of and determining effects on historic properties and tribal sites of significance. We added a clause to the “Subsection F. Applicant” explaining that, in certain circumstances, TRRC shall be responsible for providing access to the APE. We also added language regarding consultant roles and input to the Whereas clauses in Sections II and IV. The first of these changes was made to the draft PA distributed September 26, with additional revisions being made to the drafts distributed on October 17 and November 10.

(Stipulation II added per ACHP’s request and reviewed in 9/26/2014 WG session.)

ACHP guidance 9/8/2014: ACHP requests OEA add a Stipulation at the beginning of the Stipulations section clarifying that we are coordinating the review of alternatives for the TRRC proposal to build and operate a rail line as part of our NEPA review. We should also clarify how the review process outlined in the draft PA will inform the analysis of alternatives, including the selection of a preferred alternative.

OEA action 11/28/2014: On September 26, 2014, we added Section II, Review of Alternatives, to the draft PA. Here, we clarify that we are coordinating the NEPA review and Section 106 process. We also state that we are assessing 10 alternatives (5 build alternatives with variations yielding a total of 10 alternatives) and the No Action alternative in the NEPA process. The draft PA states that the Draft EIS will set forth a comparative analysis of all alternatives (including No-Action) and that the consulting parties, as well as members of the public and other stakeholders, will have the opportunity to comment on the draft EIS and the draft PA, which will be made available to the public in the Draft EIS. Comments received from the consulting parties and others will inform the STB's consideration of the preferred alternative. Additional revisions were made to the Whereas clauses and Section II of subsequent drafts of the PA (distributed on October 17 and November 10) that further outline the review process and how it will inform selection of a preferred alternative for the decision maker.

Page 9: [4] Comment [SR23]	Starzak, Richard	12/6/2014 5:10:00 PM
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10/10/2014 WG session. APE Stipulation III added to follow ACHP's examples of a "process PA".

[Note: The text below (Stipulations III-V) takes portions of the draft PA from 2011, and puts it within the framework of a "process PA" requested by the ACHP. It is organized by what was completed during the first phase of TRRR-the review of alternatives, followed by what would need to be completed if the STB approves a build alternative.]

Page 9: [5] Comment [ADS24]	ICFI	12/6/2014 5:10:00 PM
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Colstrip Land Owners Group, letter dated 10/14/14: A cultural resources site was identified but not recorded as part of the cultural resources survey because it was beyond the APE (the 200-foot buffer on either side of the ROW). The land between the site and the railroad is steep and would likely require cut and fill which would impact (if not destroy) the cultural resources site. Requests that ICF reconsider its exclusion of this site. Additional engineering analysis of proposed route will be needed to determine necessary ROW width. Concerned that lack of detail from TRRC is impeding a complete study of impacts.

Note: The cultural resource in question was not within the APE, it was outside the right-of-way and 200-foot buffer zone.

Page 9: [6] Comment [MS27]	Mello, Sarah	12/6/2014 5:10:00 PM
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Per 9/30/2104 comment letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group: "The language of this stipulation represents the first notice the Landowners have had that there are plans for staging areas or work camps. Such facilities represent many potential impacts that have not yet been considered at all in the planning process, such as damage to roads and other infrastructure, and law enforcement needs. We are very concerned that STB would propose to consider these impacts, along with those created by construction access routes and completely unknown "changes to the alignment," after selecting an alternative. These impacts are completely knowable in advance if the agency makes the effort to acquire the information. Again we object to any plan to postpone collection of this vital data until after an alternative is chosen."

"As above, the Landowners will require expert assistance to review the sufficiency and quality of supplemental reports. We request reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review. The Landowners request at least 45 days to provide comments."

Note: The STB will use an independent third-party contractor, working under its sole supervision, direction and control, and at TRRC's expense, to assist STB in the review of reports.

Page 11: [7] Comment [SR34]	Starzak, Richard	12/6/2014 5:10:00 PM
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ACHP guidance, 9/8/2014; Identification and Evaluation ACHP emphasizes that the draft PA more clearly recognize that OEA may recommend the No Action alternative to the decision makers, the three members of the Board, and that OEA could identify the No Action alternative as the environmentally preferable alternative. Consequently, the draft PA should outline specific measures that will be taken following completion of the NEPA process and a decision by the STB either granting, or granting with the imposition of conditions, a build alternative. (If the Board decides to deny TRRC's proposal or decides to approve the No Action alternative, then further review under Section 106 would be moot.) The draft PA should set forth how the four-step Section 106 process will be coordinated during the analysis of alternatives and what role the consulting parties will have as determinations and findings are made. It would be imprudent to defer involvement of consulting parties in findings and determinations until a preferred alternative is selected.

OEA action, 11/28/2014: We added several references to the No Action alternative throughout the draft PA where the alternatives are discussed. We have clarified that the consulting parties are involved throughout the process, including in considering and commenting upon impacts of each alternative (*see e.g.*, September 26 draft PA (Section I, Roles and Responsibilities); October 17 Draft PA (Whereas clauses, Section II, Review of Alternatives, Section IV.B, Identification and Evaluations); November 10 Draft PA (Whereas clauses, Section II, Review of Alternatives, Section IV.B, Identification and Evaluation). As stated earlier, we included the four-step Section 106 process language and will include the draft PA in the Draft EIS when we issue that document this spring. OEA will specifically request comments on alternatives from all stakeholders, including the consulting parties.

In the Final EIS, we will summarize and respond to comments and will be recommending an environmentally preferred alternative based on a comparative evaluation of each alternative's impacts to the environmental disciplines (*e.g.*, air, water, biological resources, land use, safety, noise, and cultural resources). As a result, well before any decision is made with respect to TRRC's request for approval of the construction and operation of a line of railroad, the consulting parties, as well as all the stakeholders interested and involved in this matter, will have had a full opportunity to be heard. Moreover, OEA will, as part of its NEPA and Section 106 duties, respond to comments and will disclose impacts to the Board so that it is able to make a fully-informed decision.

The samples of process PAs that ACHP helpfully provided do not contain Identification Plans. Nevertheless, we are continuing to revise the Identification Plan to ensure that ACHP's concerns are fully addressed.

Colstrip Alternative Landowners Group letter dated 9/30/2014:

Many of the Landowners have long family relationships with the land to be crossed and personal knowledge of historically and culturally significant sites that may be affected by the rail line. Most have had little or no opportunity to share this information. The oral history surveys prescribed in National Register Bulletin 24 have not taken place. There is no barrier to collecting this information immediately. Participants with relevant knowledge should receive reasonable financial reimbursement for their time.

ICF: Phase I survey crews noted landowner historical information when it was offered. Additional oral history information will be collected during Phase 2. See text added below in IV.B.2.

Page 11: [9] Comment [SR39] Starzak, Richard 12/6/2014 5:10:00 PM

ACHP in their letter dated 9/08/2014: “We, therefore, suggest that the PA outline specific measures that will be taken once the analysis of alternatives is completed and STB makes a decision. Accordingly, STB should clarify in the draft PA how the four-step Section 106 review process will be coordinated during the analysis of alternatives, and what role the consulting parties will have as determinations and findings are made. To defer involvement of consulting parties in findings and determinations until the preferred alternative is selected would be imprudent. Moreover, it would likely leave STB open to challenges regarding the preferred alternative and questions about whether other alternatives may have avoided adverse effects of concern to consulting parties.”

Note: Section B, applies to the second phase, once alternatives are analyzed and if STB approves a build alternative.

Page 16: [10] Comment [SR75] Starzak, Richard 12/6/2014 5:10:00 PM

Consultation on Developing Treatment Plans

ACHP guidance 9/8/2014: It is important that the consulting parties have an opportunity to share their comments on all alternatives under consideration in advance of the Board decision. The stipulations section must, therefore, emphasize that the identification and evaluation process will be coordinated with Montana SHPO and Tribal Historic Preservation Officers to ensure that adequate baseline information is prepared for each group of historic properties, cultural landscapes and traditional cultural properties associated with each alternative.

OEA response, 11/28/2014: As noted above, the Draft EIS will set forth each alternative analyzed and will make a comparative assessment of each alternative’s effects on the environmental disciplines required under NEPA and the National Historic Preservation Act (including the No Action alternative). For impacts to historic and tribal sites of significance, we conducted extensive surveys in 2013 and 2014 and set forth the data collected during those surveys (with the exception of specifics regarding confidential tribal data). The consulting parties, as well as members of the public and other stakeholders, will have the opportunity to comment on the EIS and the draft PA, which will be made available to the public in the Draft EIS. Comments received from the consulting parties and others will inform the Board’s consideration of the preferred alternative.

Moreover, clauses addressing coordination with the Montana SHPO and the Tribal Historic Preservation Officers and the consulting parties’ ability to comment on the alternatives were added to the draft PA distributed on September 26, 2014 (Section II, Review of Alternatives) and to subsequent drafts (October 17 Draft (Whereas clauses, Section I, Roles and Responsibilities, Section II, Review of Alternatives); November 10, Draft (Whereas clauses, Section I, Roles and Responsibilities, Section II, Review of Alternatives, Section III, Area of Potential Effects)).

Page 16: [11] Comment [SR76] Starzak, Richard 12/6/2014 5:10:00 PM

From ACHP letter, 9/8/2014: “**Development of Treatment Plans** - Further explanation is needed in this stipulation regarding how the applicant, TRRC, will consult with consulting parties to develop treatment plans. The timing of the development of these plans is unclear. Will this occur during the analysis of alternatives or after the selection of the preferred alternative? Will the Contractor have sole discretion to carry out this task or will it be done in consultation with STB?.

OEA, letter to ACHP dated 11/28/2014: The draft PA we are currently developing with the Section 106 consulting parties sets forth the four-step Section 106 process through consideration of alternatives and sets forth the process for developing treatment plans should the STB approve a build alternative. We understand that, unless and until the STB approves a specific build alternative, the treatment plan(s) cannot be finalized. Should the STB approve a specific build alternative, the treatment plan(s) will be developed with the full participation of consulting parties identified for the specific alternative approved. Obviously, if the STB were to deny TRRC’s proposed rail line construction and operation, or if were to approve the No Action alternative, there would be no need for subsequent development of treatment plan(s).

Revised Section VI, Subsection B, Development of the Treatment Plan(s) provides timing, process, and participation of Montana SHPO, applicant TRRC, STB and the consulting parties identified for the specific alternative, assuming that the STB approves a build alternative. At the working group call on November 21, 2014, language was added to the mitigation measures to bolster avoidance. Moreover, clauses addressing the treatment plan were included in the Whereas clauses of the October 17 and November 10 drafts of the PA.

Page 16: [12] Comment [SR78]

Starzak, Richard

12/6/2014 5:10:00 PM

As a result of 11/21/2014 WG meeting and referenced from ACHP’s letter dated 9/8/2014: “**Development of Treatment Plans**- Finally, the treatment of the Wolf Mountain Battlefield, a National Historic Landmark (NHL) must adhere to Section 110(f) of the NHPA and Section 800.10 of the ACHP’s regulations, which requires a higher consideration of alternatives to minimize harm to the NHL.”

Page 16: [13] Comment [SR79]

Starzak, Richard

12/6/2014 5:10:00 PM

From ACHP letter, 9/8/2014: “**Development of Treatment Plans**-We also are concerned about the notion that a treatment plan can be prepared for a portion of the line. This concept needs to be better explained in the PA, and have agreement of affected consulting parties.”

Note: The BLM Boardman to Hemingway example of a process PA provided by ACHP allows treatment plans to be developed and reviewed for different segments. The text may be useful to further explain, if needed.

Page 18: [14] Comment [SR88]

Starzak, Richard

12/6/2014 5:10:00 PM

ACHP 09/08/2014

Data Recovery Plan

ACHP guidance, 9/8/2014: If avoidance of adverse effects to historic properties is not feasible, we do not believe that it is a forgone conclusion that data recovery the appropriate treatment. There should be some consultation regarding this matter, particularly when properties of religious and cultural significance to Indian tribes are involved. There are other treatment options for National Register eligible and listed archeological sites that can be considered; however, they are not outlined in the draft PA. Further, any archeology data recovery plan should have a public

benefit that is explained. How would data recovery plans benefit the State, Region, and Tribes?

ACHP guidance: Other treatment options, in addition to data recovery, should be consulted upon and considered in cases in which avoidance of adverse effects is not feasible. This is particularly important when properties of religious and cultural significance to Indian tribes are involved. Other treatment options should be outlined in the draft PA. Also, any archeological data recovery plan should have a public benefit that is explained. How would data recovery plans benefit the State, Region, and Tribes?

OEA response: Under Section VI, Subsection B, a new Part 5 [6] has been added:

If avoidance is not possible, in-place preservation will be the preferred option. TRRC will work with the consulting parties to develop specific procedures to preserve historic properties and sites of significance in place and minimize visual and noise impacts to such resources as well as impacts to tribal, historic and rural landscapes. These procedures may include minor changes to the rail alignment or construction methods, to the extent feasible, to reduce impacts, and/or monitoring of historic properties by historian, archaeologists and tribal members for sites of significance during construction.

Page 19: [15] Comment [rs89]

Rick Starzak, ICF

12/6/2014 5:10:00 PM

To address ACHP's comment, see VII. A. added to consider "alternative mitigation" to data recovery, from ACHP's 2009 **Section 106 Archaeology Guidance** at www.achp.gov/archguide:
44. What is "alternative" or "creative" mitigation?

These terms refer to alternatives to archaeological data recovery as mitigation for an undertaking's adverse effects. Such approaches can either be implemented alone or as part of a broader mitigation package. Examples of such alternatives may include:

- preserving selected eligible archaeological sites and incorporating them into heritage tourism plans while allowing others to be lost;
- burying sites under fill or incorporating them into the undertaking;
- using resources to develop syntheses of existing information on a region or area instead of, or in addition to, using them on data recovery;
- use of barriers to route traffic away from eligible archaeological sites;
- using resources to develop virtual or Web-based reports or educational media that otherwise would not be produced.

Another example of these alternatives is archaeological "mitigation banking." This term refers to the acquisition and preservation of archaeological sites away from the project area in return for doing little or no direct mitigation on sites within the area of potential effects.

This concept of "alternative" or "creative" mitigation is consistent with the definition of "mitigation" as used in the National Environmental Policy Act regulations of the Council on Environmental Quality [Section 1508.20(c)-(e)], where it includes:

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) Compensating for the impact by replacing or providing substitute resources or environments (i.e., "off-site mitigation").

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Starzak, Richard [2]

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Page 20: [17] Comment [SR90]	Starzak, Richard	12/6/2014 5:10:00 PM
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Per 9/30/2014 letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group:

Data Recovery Plan

We are concern that subsection (c), regarding the Contractor's duty to conduct data recovery in accordance with the Data Recovery Plan, includes no timeline and could potentially be delayed indefinitely. We request a clear timeline.

Review of Data Recovery Reports

The 15-day timeline for PA consulting party responses on informational deficiencies is inadequate. To ensure the Landowners' ability to participate meaningfully, the minimum turnaround for their response should be 45 days.

Note: The total time is 60 days.

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Page 20: [19] Comment [SR91]	Starzak, Richard	12/6/2014 5:10:00 PM
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ACHP 09-08-2014

Construction

We are concerned that we are being asked by STB to provide comments on a build alternative before STB has demonstrated that a no-build alternative is not appropriate. A stipulation needs to be added that makes it clear that good faith consultation will occur for the no build alternative. Perhaps STB should revise this stipulation to make it clear under what circumstances construction will proceed. We also recommend that stipulations be added to be precise about how construction management, staging areas, use of Tribal monitors, etc., will be determined for the preferred alternative, and what consulting parties will be involved in this decision making.

INote: Stipulation II and VIII.A. added to address the comment.

Page 20: [20] Comment [SR92]	Starzak, Richard	12/6/2014 5:10:00 PM
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Per 9/30/2014 letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group:

The Landowners are concerned that the PA contemplates consideration of "the full range of treatment options (including avoidance)" after a route decision has been made. The only way that STB can realistically consider the full range of options is to analyze all the data described in the Stipulations prior to the route decision. In addition, a phased review of data while construction is underway may foreclose options that would have been available prior to construction. As a practical matter, delays and route changes will be far more costly to TRRC during construction, putting additional pressure on the Contractor and STB to set aside serious concerns. For other interested parties, being forced to raise objections during construction creates the risk of being required by a court to post a bond while attempting to have the PA enforced, which the Landowners cannot afford to do. Only a full review of all data *prior to the route decision* will leave all options open and protect all parties' rights.

The Landowners will require expert assistance to review the sufficiency and quality of the Contractor's data recovery fieldwork/treatment on their land. We request reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review.

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Per 9/30/2014 letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group:

Changes to the Rail Line Alignment/Other Areas Subject to Direct Impacts

The language of this stipulation represents the first notice the Landowners have had that there are plans for staging areas or work camps. Such facilities represent many potential impacts that have not yet been considered at all in the planning process, such as damage to roads and other infrastructure, and law enforcement needs. We are very concerned that STB would propose to consider these impacts, along with those created by construction access routes and completely unknown "changes to the alignment," *after* selecting an alternative. These impacts are completely knowable in advance if the agency makes the effort to acquire the information. Again we object to any plan to postpone collection of this vital data until after an alternative is chosen.

As above, the Landowners will require expert assistance to review the sufficiency and quality of supplemental reports. We request reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review. The Landowners request at least 45 days to provide comments.

Note Replaced language with that used in the BLM Boardman to Hemingway process PA stipulation for "Changes in Ancillary Areas/Construction ROW" because it was much simpler than the language used for this stipulation in the 2011 PA.

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Page 21: [53] Comment [SR94]	Starzak, Richard	12/6/2014 5:10:00 PM
Per 9/30/2014 letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group:		

Discovery

The Discovery Plan creates the same need for expert assistance. We request reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review.

OEA: The STB will use an independent third-party contractor, working under its sole supervision, direction and control, and at TRRC's expense, to assist STB in discovery and other historic preservation needs under the PA.

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Page 23: [64] Comment [SR97]	Starzak, Richard	12/6/2014 5:10:00 PM
ACHP 09/08/2014 Dispute Resolution As currently drafted, the stipulation for dispute resolution allows “any party to this PA” to object. Does this mean that all consulting parties can file objections? Are objections during the alternative analysis to be handled differently from objections during project implementation? This stipulation needs to be revised. Note: To address ACHP’s comment, the dispute resolution was divided into two phases (A & B) and the 2011 PA text substituted by text from the “process PA” provided by ACHP, for the BLM Gateway PA.		
Page 23: [65] Comment [SR98]	Starzak, Richard	12/6/2014 5:10:00 PM
Per 9/30/2014 letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group:		

Dispute Resolution

Given the possibility that the Landowners will not ultimately sign the PA, but have participated in its development and will continue to have a significant interest in its enforcement, they request language that would grant them access to review of disputes by the Council as described under subsections (a) - (f), instead of the lesser level of review offered to members of the public at subsection (g). The Landowners also request the right to initiate Council review of an objection in the event that STB declines to do so.

Note: The use of the process PA example text addresses the comment, as consulting parties participate in consultation. .

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Page 24: [69] Comment [SR99]	Starzak, Richard	12/6/2014 5:10:00 PM
ACHP 09/08/2014 Tribal Coordination This stipulation should recognize that there may be a need to amend tribal protocols if new tribal leadership is elected and proposes a different approach to coordinating the undertaking. To address this potential change to approved tribal protocols, we recommend that language be included in the PA that recognizes the need for amendments to the ID Plan. Note: XV.B. added to address.		
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Page 24: [75] Comment [SR100]	Starzak, Richard	12/6/2014 5:10:00 PM
ACHP 09/08/2014 Public Participation The STB needs to include in the Stipulations section language that allows the public to file objections regarding the implementation of the terms of this PA. While the filing of reports is helpful, it is unclear what steps should be taken if the public wants to file objections to the actions, findings, or determinations that are required under the terms of the PA. Note: XVI.B. was added to address the comment, and is based on the BLM Boardman-Hemingway process PA example provided by ACHP.		
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DHC: SEE CLARIFYING LANGUAGE

Page 25: [89] Comment [SR102]	Starzak, Richard	12/6/2014 5:10:00 PM
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Colstrip Alternative Landowners Group letter dated 9/30/2014: "*Preamble.* We would also like some commitment as to the overall timeline in which STB would carry out its legal duties under the PA, if the PA takes effect. The twelve-year lifetime of the proposed PA is far too long for the Landowners to live in limbo, especially given the decades this proposal has already dragged on."

Note: Revised the duration from 12 to 10 years. Extension would not go beyond five years