

Follow-up to yesterday's ACHP/STB meetingn on Tongue River I

EI- 18757

Najah Duvall-Gabriel

CG

to:

Vicki.Rutson

12/07/2011 09:21 AM

Cc:

Catherine.Glidden, "Charlene Vaughn", "Valerie Hauser"

Hide Details

From: "Najah Duvall-Gabriel" <ngabriel@achp.gov>

To: <Vicki.Rutson@stb.dot.gov>

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History: This message has been forwarded.

Dear Vicki,

Thank you for meeting with us yesterday to discuss the Tongue River I rail extension project. As a follow-up to our meeting, I'd like to highlight some relevant provisions in the Section 106 regulations that may be helpful to you as you coordinate the Section 106 review and prepare for the January meeting.

Although in the meeting, we focused on step two of the four-step Section 106 process, there are aspects of step one (Section 800.3) that may still need to be clarified to consulting parties.

In initiating the Section 106 review process, the Federal agency takes the first step of establishing the undertaking (Section 800.3(a)). The establishment of the undertaking does not need to take place through consultation. It is solely the Federal agency's determination that it has an undertaking that requires compliance with Section 106. Clarifying this undertaking will help STB as it defines the next steps in the Section 106 process. It will also assist STB in clarifying with the consulting parties or interested groups the focus of the consultation.

As we agreed today, due to the pending court decision on the EIS, it is neither appropriate nor prudent to attempt to coordinate Section 106 with NEPA at this time. This is in keeping with the regulations Section 800.3 (b), which states that the Federal agency should coordinate steps of the Section 106 process with other reviews, such as NEPA, "as appropriate." Section 800.2(a)(4) also mentions the agency should plan consultations appropriate to the "scope of Federal involvement and coordinating with other requirements of other statutes, "as appropriate." This means that the agency will make this decision, and must only disclose how it reached a decision about coordination with other reviews. Clarifying this point with consulting parties may help the

consultation stay focused on Section 106.

In carrying out the consultation, there are a couple other aspects of the consultation that are outlined in step one of the process that I want to bring to your attention. One is that STB, in consultation with SHPOs and THPOs, should plan for involving the public in the review process (Section 800.3(e)). Planning for public involvement early in the review will ensure that the consultation is informed by the diverse interests of consulting parties, and that the outcomes of the review are in the defensible as meeting the broader public interest.

Also, STB has already notified consulting parties of the previous PA of its intentions to develop a new PA. A teleconference was held to discuss these intentions. However, STB is still required per the regulations to identify and invite other consulting parties, like local and county governments, to participate in the new Section 106 review process (Section 800.3(f)). This invitation should be transmitted in formal correspondence to identified former and new interested parties. New interested parties identified by others, or who have been following this project on their own and have a preservation interest, may also request inclusion as a consulting party (Section 800.3(f)(3)). STB, in consultation, with the SHPO may determine which requests to accept.

Lastly, we recommend that STB clarify in its meeting invite to existing consulting parties that 1) the new undertaking for Tongue I will focus on Section 106, exclusively, 2) that it intends to involve the public in the consultation throughout the process and consulting parties in the review process, and 3) that others can give STB names of other consulting parties, or suggest that interested parties notify STB of their interest in participating in the Section 106 review as a consulting party.

These initial steps should help STB to develop a clear and defensible administrative record of how it is adhering to the four-step Section 106 review process, particularly step one.

Let us know if we can provide further assistance.

Najah

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