



August 9, 2011

Ms. Victoria Rutson
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Tongue River Railroad Construction and Operation (Western Alignment),
STB Finance Docket No. 30186 (Sub.-No. 3), Miles City to Decker, Montana

Dear Ms. Rutson:

The National Trust for Historic Preservation (National Trust) has recently become aware that the Surface Transportation Board (STB) will be consulting about a new Programmatic Agreement (PA) under Section 106 of the National Historic Preservation Act for the Tongue River Railroad (TRR) Construction and Operation (Western Alignment), from Miles City to Decker, Montana. We would like to participate as a consulting party in the Section 106 review process for the new PA.

Since the 2005 Programmatic Agreement was signed for this project, several new developments occurred that trigger additional planning, consultation and consideration by STB. In particular, the Wolf Mountains Battlefield and the Rosebud Battlefield were designated as National Historic Landmarks. Section 110(f) of the National Historic Preservation Act requires that federal agencies "to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to National Historic Landmarks, which may be directly and adversely affected by an undertaking." 16 U.S.C. § 470h-2(f); 36 C.F.R. § 800.10.

More recently, we learned through the media that the proposed rail alignment may be undergoing substantial revision, because of a major acquisition by Forrest Mars. As a result, the effects of the modified project on historic properties will apparently change, and may well require additional consultation. Given the reports from the media, there is no definitive information about the new scope or alignment of the TRR, or the revised area of potential effects. We request additional information on this issue. We had been contacted by tribes seeking our involvement as a consulting party in order to help address tribal concerns that have not been satisfactorily resolved by the STB during previous consultation. We understand that the STB had reopened Section 106 consultation in any event, because the earlier PA had expired and in response to the concerns raised by tribes that meaningful tribal consultation had not taken place when the earlier PA was executed. We are interested to learn about STB's proposed schedule and next steps for NHPA compliance, particularly in light of the expected changes in the project.

In light of the National Trust's experience with complex Section 106 consultation, the significant historic properties potentially affected by the TRR project, and the concerns raised by tribes, we believe we could play a valuable role as a consulting party. Although we may be unable to attend every meeting in person, we would expect to be able to participate actively in the consultation process by telephone.

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The National Trust has a long-standing interest in the preservation of our nation's irreplaceable historic and cultural resources. Congress chartered the National Trust in 1949 as a private nonprofit organization to "facilitate public participation" in historic preservation, and to further the purposes of federal historic preservation laws. 16 U.S.C. §§ 461, 468. With the continued support of almost 200,000 members nationwide, the National Trust has been involved in helping federal, state, and local agencies to effectively address and resolve issues affecting historic resources for more than 60 years. In addition, the Chairman of the National Trust has been designated by Congress as a member of the Advisory Council on Historic Preservation, which is responsible for assisting other federal agencies in complying with Section 106 of the National Historic Preservation Act. See 16 U.S.C. § 470i(a)(8).

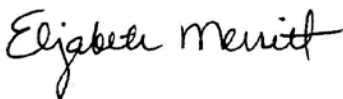
Please include the following in your distribution list for public notices of any meetings, and for the circulation of any documents for comment.

Elizabeth Merritt
Deputy General Counsel
Nat'l Trust for Historic Preservation
1785 Massachusetts Ave. NW
Washington, DC 20036
betsy_merritt@nthp.org

Amy Cole
Regional Attorney/Sr. Program Officer
Mountains/Plains Region, National Trust
535 16th St., Suite 750
Denver, CO 80202
amy_cole@nthp.org

Thank you for your consideration and we look forward to hearing your response to our consulting party request.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel

Cc: Mark Baumler, MT SHPO
Chere Jiusto, Montana Preservation Alliance
Steve Brady, Northern Cheyenne Tribe
Christine Whitacre, National Park Service
Barbara Pahl, National Trust Mountains/Plains Office
Amy Cole, National Trust Mountains/Plains Office
Charlene Dwin Vaughn, Advisory Council on Historic Preservation
Reid Nelson, Advisory Council on Historic Preservation