

SURFACE TRANSPORTATION BOARD

TRIBAL CONSULTATION SUMMIT

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Transcript of Proceedings
April 21, 2009

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PRESENT:

Cathy Glidden, Surface Transportation Board
Randy Withrow, Louis Berger Group
Christian Schoen, Louis Berger Group
Herb Jones, DM&E Railroad
Ian Ritchie, Forest Service
Doug Jackson, HDR Engineering
Curley Youpee, Ft. Peck, Assiniboine & Sioux
Pamela Halverson, Lower Sioux Community
Robert Campbell, Santee Sioux
Jason Haug, South Dakota State Historic Preservation Office
Amy Rubingh, South Dakota State Historic Preservation Office
Conrad Fisher, Northern Cheyenne
Dianne Desrosiers, Sisseton-Wahpeton Oyate
Jennifer Rezabek, Louis Berger Group
Faith Spotted Eagle, Yankton Sioux Tribe
Brady Grant, Turtle Mountain
Russell Eagle Bear, Rosebud Sioux Tribe
Eugene Hart, Northern Cheyenne
Dewey Tsonetokoy, Kiowa Tribe of Oklahoma
Brenda Shierts, BLM
Randy Henke, DM&E
Roger Trudell, Santee Sioux National Chairman
Joyce Whiting, Oglala Sioux Tribe
Wastewin Young, Standing Rock
Rick Wright, Ponca Tribe of Nebraska
Claire Green, Lower Brule Sioux Tribe
Eddie White Dirt, Northern Cheyenne

PRESENT (Continued):

Alan Stanfill, DM&E
Ben Rhodd, Rosebud Sioux
Tim Mentz, Sr., SRST
Tim Mentz, Jr., SRST
Brian Molyneaux, Lower Brule Sioux Tribe
Eugene Hart, Northern Cheyenne
Irene Flute, Lower Brule Sioux Tribe
Irene Skunk, Lower Brule Sioux Tribe
Shirley Flute, Lower Brule Sioux Tribe
Rose McCauley, Lower Brule Sioux Tribe
Julia Yellow Robe, Lower Brule Sioux Tribe
Amiee Ziegler, Lower Brule Sioux Tribe

1 The following proceedings were taken at the
2 Wakpa Sica Center, Ft. Pierre, South Dakota, on the
3 21st day of April 2009, commencing at 9:15 a.m.; before
4 Cheri McComsey Wittler, a Registered Professional
5 Reporter, Certified Realtime Reporter, and Notary Public
6 within and for the State of South Dakota.

1 MS. GLIDDEN: Good morning, everybody. Thank
2 you for being here. It's a beautiful day here at Wakpa
3 Sica. And I know that a lot of you came from a long
4 distance. I'd like to start with a prayer. Dewey has
5 offered to give a prayer. And I'd like to give my best
6 to Ambrose who I guess is not feeling well right now.

7 (Dewey Tsonetokoy prays)

8 MS. GLIDDEN: Thank you so much. It's a
9 beautiful prayer. I just had a friend visit from Hawaii
10 and he talked about the 'aina, and the 'aina meaning love
11 of the land and all the things that are in the land and
12 the respect of the land and all the different components
13 of the land. And that rings true with what you said
14 about respect and understanding the land and the
15 knowledge of the land of the Native Americans that I
16 don't have. And the respect of the project which is such
17 a great project.

18 And we're in a situation where we've got some
19 sites that we just -- we haven't been able to figure out
20 if they're important from a tribal perspective. We
21 haven't been able to determine eligibility.

22 We've developed a context study. Randy's going
23 to talk about an archival literature search that he has
24 done that has helped us evaluate these sites in some
25 aspect, but we think that in order to really determine

1 eligibility we need your help. We need the tribes. We
2 need the elders. And thank you so much for all the
3 elders who came here.

4 This is just information that we don't have.
5 And as a federal agency we have to evaluate these sites
6 to move forward. So I think the -- certainly as a
7 federal agency representative I'm appealing to you as
8 tribal reps to help us. And that's what the meeting is
9 about today.

10 So we're going to started. We all have binders,
11 and there's an agenda at the very beginning. We're going
12 to have opening -- we're going to have DM&E, Randy Henke,
13 give an update, a short update. And then Randy's going
14 to start with his presentation on what he's found.
15 And --

16 MS. HALVERSON: Are we going to have
17 introductions first?

18 MS. GLIDDEN: Yeah. We're going to start with
19 introductions first. Then we'll have a break, the site
20 reviews, and then we'll have lunch and then after that
21 the tribes are going to -- we're going to have an
22 opportunity to caucus with the tribes and everybody else
23 will leave.

24 So anyway, we'd like to start with
25 introductions. My name is Cathy Glidden. I'm with the

1 Surface Transportation Board. We're the lead federal
2 agency for this project. And I guess maybe we could go
3 around the room like this and then go in the back.

4 MR. TSONETOKOY, SR.: Dewey Tsonetokoy, NAGPRA
5 Preservation Office, Kiowa Tribe.

6 MS. GREEN: Claire Green, cultural resource
7 office, Lower Brule Sioux Tribe.

8 MS. DESROSIERS: Diane Desrosiers,
9 Sisseton-Wahpeton Oyate THPO.

10 MR. FISHER: Conrad Fisher, Northern Cheyenne
11 THPO.

12 MR. RHODD: Ben Rhodd, Rosebud Sioux Tribe,
13 contract archeologist.

14 MR. WHITE DIRT: Eddie White Dirt, Northern
15 Cheyenne THPO.

16 MS. RUBINGH: Amy Rubingh, South Dakota State
17 Historical Society.

18 MR. TRUDELL: Good morning. Roger Trudell,
19 Chairman, Santee Sioux Nation, Nebraska.

20 MR. CAMPBELL: Morning. Robert Campbell, Santee
21 Sioux Nation.

22 MR. EAGLE BEAR: Russell Eagle Bear, Sicangu,
23 Rosebud.

24 MR. YUPEE: Curley Youpee, Ft. Peck,
25 Assiniboine, and Sioux Tribes.

1 MR. WITHROW: Randy Withrow from Louis Berger
2 Group, third-party contractor for STB.

3 MS. WHITING: Joyce Whiting, Oglala Sioux Tribe
4 THPO Office.

5 MS. YOUNG: Good morning. Wastewin Young,
6 Standing Rock THPO.

7 MS. HALVERSON: Pam Halverson, Lower Sioux,
8 Morton, Minnesota, (Speaks in another language).

9 MR. WRIGHT: Good morning. My name's
10 Rick Wright. I'm with the Ponca Tribe.

11 MR. JONES: Herb Jones with the DM&E.

12 MR. JACKSON: Doug Jackson with the DM&E.

13 MR. HENKE: Morning. Randy Henke with the DM&E.

14 MR. RITCHIE: Good morning. I'm Ian Ritchie.
15 I'm with the Forest Service.

16 MR. TIM MENTZ, JR.: Tim Mentz Jr., Standing
17 Rock Sioux Tribe.

18 MR. TIM MENTZ, SR.: Tim Mentz, Sr., Standing
19 Rock Sioux Tribe.

20 MR. MOLYNEAUX: Brian Molyneaux, cultural
21 resources consultant, Lower Brule Sioux Tribe.

22 MR. HART: Eugene Hart, Northern Cheyenne.

23 MR. GRANT: Brady Grant, Turtle Mountain Band of
24 Chippewa, North Dakota.

25 MR. HAUG: Jason Haug, State Historical Society,

1 South Dakota.

2 MS. SHIERTS: Brenda Shierts, BLM North and
3 South Dakota.

4 MR. STANFILL: Alan Stanfill with the DM&E.

5 MR. SCHOEN: I'm Christian Schoen with the Louis
6 Berger Group.

7 MS. REZABEK: I'm Jennifer Rezabek. I'm with
8 the Louis Berger Group.

9 MS. FLUTE: I'm Irene Flute, Lower Brule Sioux,
10 cultural committee.

11 MS. SKUNK: Irene Skunk, Lower Brule Sioux
12 Tribe.

13 MS. FLUTE: Shirley Flute, Lower Brule Sioux
14 Tribe.

15 MS. MCCAULEY: I'm Rose McCauley, Lower Brule
16 Sioux Tribe. I'm also on the elderly cultural committee.

17 MS. YELLOW ROBE: Julia Yellow Robe, Lower
18 Brule.

19 MS. ZIEGLER: Amiee Ziegler, Lower Brule.

20 MR. HENKE: Okay. Thank you, Cathy. I'll try
21 to be real brief so we can get back on schedule. I was
22 asked to give a brief update of where we're at with the
23 project and what's happening. May backtrack just a
24 little bit. But in October of this year the sale and the
25 STB approval for the purchase of the DM&E was completed.

1 We are now a wholly-owned subsidiary of the CP Railroad.
2 We still operate quite independently. We have our own
3 budget. We do our own accounting, et cetera. But we are
4 a wholly-owned subsidiary of the CP Railroad.

5 It hasn't changed a lot in Sioux Falls. I think
6 we've seen one new face. We have a new president but all
7 the rest of the people are the same. And the railroad
8 tends to carry on and run very much the way it did
9 before.

10 The question that I get asked a lot is where do
11 we stand and what are we doing? There's a couple big
12 tracks we got going and trying to complete. One is the
13 finalization of all the permits, and the second is the
14 assembly of the corridor purchase of the land. And I'll
15 talk about those two separate.

16 Where are we on the permitting? I would say
17 there's four big areas of permitting yet to finish.
18 We're very far down the track on all of those. I was
19 talking with Ian earlier about the Forest Service.
20 That's in a final, final, final review, I guess. So we
21 keep expecting to see that almost any day.

22 We have two Army Corps permits to complete. One
23 being the St. Paul corps, which, again, we think it's in
24 very much the same stage as the Forest Service permit,
25 and we expect to see that hopefully in the next 30 days.

1 And then the -- we have an Army Corps permit through the
2 Omaha corps for the new-build section out in South Dakota
3 and Wyoming. And we are actually meeting and doing a
4 field trip Monday and Tuesday with the project manager on
5 that project which hopefully is the last field trip we
6 make on that. The conditions are already wrote,
7 hopefully we can come to an agreement on what needs to be
8 done yet to finalize that permit. And we've been told we
9 should be able to have that permit by August time.

10 That leaves one last large component and that is
11 the 106 process we're working through with Cathy and
12 Vickie of the STB.

13 I've been asked, well, what are we trying to
14 work to? Well, when the CP bought us last year we were
15 told at that time because the economy that they weren't
16 in a position to make a decision on whether to build but
17 they said they wanted us to have by September all the
18 things in place so that we could be in a position to
19 build.

20 It's no secret in this economy that going out to
21 borrow money if you don't have your ducks in a row, i.e.,
22 the land and the permits and the other things, it's going
23 to be very stiff to get the financing you need to build
24 the project.

25 CP bought this as part of the franchise. I

1 believe they intend to build it. I believe it's very
2 dependent on the timing as to where the economy stands on
3 whether we can get the financing when and if we're ready
4 to go ahead with the construction.

5 So as I told Cathy and Vickie in a meeting we
6 had with them a couple weeks ago, we are building towards
7 the September position of being able to give the powers
8 to be inside the DM&E and the CP enough information so
9 they can make a decision. So that's kind of a timetable
10 we're working to.

11 Where are we with the land? Because that will
12 impact today a little bit. We started in September of
13 last year assembling the corridor. We have now bought or
14 optioned 60 of the 134 properties on the route right of
15 way. We went through the Wyoming condemnation case about
16 10 months ago. It has not yet been decided by the judge.
17 That involves 20 more properties. And for those of you
18 in South Dakota who watched recently right after the
19 first of the year we went through hearings here in
20 South Dakota and we were given authority by the
21 transportation commission to use eminent domain. We have
22 not exercised eminent domain in South Dakota yet.

23 That decision has been appealed. The appeal is
24 running right now as we speak. I'm not sure of a
25 timetable for it being heard but it should be heard in

1 the next 45 to 60 days by a Pennington County Court. And
2 then we'll have a final decision hopefully on where we
3 stand with South Dakota.

4 The reason why I say that's important is the
5 sites you're looking at or Randy will talk about today,
6 we've sat with Cathy and Randy and it's in your book, I
7 think, of where we know we have access, where we struggle
8 to get access, and where we would have to go back to
9 court to get access to try to get the certain sites. So
10 we will do all we can as the DM&E to support the STB in
11 completing this context study and getting them in a
12 position so they can make some determinations.

13 So unless anybody's got any questions, I'll keep
14 it real brief today.

15 MR. EAGLE BEAR: Who appealed that, your
16 South Dakota decision?

17 MR. HENKE: There were three different, four
18 different groups, Russell, that were in the original case
19 led by Bill Janklow was one group. Hurd, an attorney out
20 of Rapid City, was another group. And then there were
21 two attorneys that represented single landowners. Bill
22 Janklow's group has appealed it. Hurd's group said they
23 will not pursue the appeal but he released his people to
24 go join Janklow's group in the appeal if they want to.
25 Right now I believe there's five people in the appeal.

1 So we'll see where that goes.

2 Now all that does in South Dakota, which is the
3 only state like it, Russell, is says we have the right to
4 use it. It doesn't allow us any condemnation. We still
5 have to go through a condemnation process. It just gives
6 us the right to use it, which is unique in South Dakota.
7 I mean, every deal we've done to now has been an
8 arms-length deal so that's the way we prefer to do it.
9 But my guess is before it's over we will be forced to use
10 condemnation.

11 And to get to where we got so far in this whole
12 106 process we did go to court and got court ordered
13 access through all of Wyoming to actually do the surveys.

14 MS. GLIDDEN: And that was temporary access; is
15 that right?

16 MR. HENKE: Correct. That access through the
17 court has expired and if we have to go back on some of
18 those properties, we have to go back and seek that
19 access.

20 MS. GLIDDEN: So it complicates the whole --

21 MR. HENKE: It's big complicated on where we can
22 and can't go.

23 MS. GLIDDEN: And Randy will go through this,
24 but in the book you have we have a list of all the
25 unevaluated sites and it will tell you in there which

1 ones we currently have access to and which ones we don't
2 have access to.

3 MR. HENKE: Okay. Thank you.

4 MS. GLIDDEN: Thanks. Okay. Randy, do you want
5 to get into it?

6 MR. WITHROW: Sure. It's been a while since
7 we've had one of these gatherings. I guess it was last
8 April actually. It's been almost a year since we were
9 last together to talk about the project.

10 A lot's been going on. A lot of reports have
11 been circulating. In fact, there was a report that was
12 shipped out to everyone just last week or the week
13 before, I guess, a large report that covers all of the
14 survey work along the existing alignment in Minnesota.
15 And so I'd just like to remind everybody to try to take
16 some time to look through that report.

17 There is, along with those reports we sent out a
18 report response or review form that we send along. If
19 you find that in your -- I guess some of you have it here
20 at the meeting, in fact. It's intended to be sort of a
21 way for you to respond quickly or easily to the sites
22 that are listed in these reports. Obviously you can
23 respond in any form that you wish. But if you find that
24 useful, please fill it out and return it to us.

25 And one of the things that the report form does

1 is allows you to indicate areas that you are interested
2 in visiting in the field. So look at it as an
3 opportunity to express your interest there, and we'll set
4 that up.

5 A lot of the other reports for the alignment in
6 Wyoming and South Dakota have already gone out. Some of
7 those reports were under review last year. We just
8 recently sent a -- survey reports for the state of
9 Wyoming to the Wyoming SHPO two weeks now for their
10 comment and review. We recently sent a similar package
11 for the new-build alignment in South Dakota to the
12 South Dakota SHPO's Office that might be arriving at your
13 desk today, Amy.

14 MS. RUBINGH: Yesterday actually.

15 MR. WITHROW: Large box. Lots of reports. So
16 we are moving through the process on sites where we've
17 been able to resolve eligibility. But there are still a
18 number of sites that need additional work and many of
19 these sites are those that tribes have expressed concern
20 about at these meetings and in some cases in letters to
21 us.

22 And most of them include stone features. Stone
23 circles, as they're called by archeologists and rock
24 cairns and these kinds of things. And there are a number
25 of them. There are about 68 sites we've tabulated thus

1 far that are either within the existing alignment for the
2 railroad or proposed right of way. And those are the
3 sites that we've summarized in a lot of the information
4 that's in the binders that we've put together for you and
5 the ones that we want to discuss today.

6 That's not to say we're limited to just
7 commenting on these sites. If there are others,
8 obviously we want to hear your concerns there as well.

9 Over the past year a lot of the discussions
10 between STB and DM&E, some of the other consulting
11 agencies, has really focused on about four issues, four
12 key issues that are still in the process of being
13 resolved. And they focus on the ones listed on the slide
14 here.

15 Buried sites. A lot of the surveys that have
16 been done thus far have not really looked at what's below
17 the surface. Most of them have been walk-over surveys
18 and looked at near-surface signs of archaeological sites.
19 So they have been fairly well identified. But we're
20 aware in some settings, particularly in alluvial settings
21 and valleys, particularly the Cheyenne River Valley, the
22 potential for other sites that have not yet been
23 identified, much less evaluated. So that's an area of
24 concern.

25 Another area was looking at project impacts or

1 effects. And more than just direct effects. We're also
2 interested in looking at indirect effects, things that by
3 building the railroad might add a visual effect on nearby
4 sites that are not actually within the right of way. So
5 we've looked at that problem.

6 Another key problem has been resolving
7 eligibility on these sites that remain unevaluated, the
8 ones I just mentioned. And in particular, sites of
9 interest to tribes. And those are the things that we
10 really want to focus on today.

11 I'm not going to go through a lot of the --
12 these other issues in more detail. There were some
13 written statements of how we were trying to clarify these
14 issues circulated to everyone in December. It was on a
15 CD. And we'll talk about them in more detail later. But
16 I'll go through them just very briefly, give you a sense
17 for what those included.

18 The buried sites --

19 MR. EAGLE BEAR: Randy, before you go on, I know
20 last -- I can't remember what the time frame was but
21 (Inaudible). And at that time -- I guess I'm kind of
22 curious to see what your discussions were because you did
23 invite the State SHPO. However, you didn't invite any of
24 the tribes. So I guess I'm kind of curious to see
25 what -- what was the gist of that particular meeting and

1 what was the outcome.

2 MR. WITHROW: Okay. Cathy, is that something
3 you'd like to speak to? The December 2nd meeting in
4 Sioux Falls.

5 MS. GLIDDEN: That was a meeting that the
6 railroad really wanted to get the federal agencies
7 together and the SHPOs to just provide their responses to
8 some of the things that we felt that there were issues
9 with, including the indirect effects, the (Inaudible)
10 morphological stuff and the unevaluated sites. It was
11 kind of their way of having a conversation with these
12 different entities on how to move forward.

13 It wasn't really an attempt to exclude tribes
14 but simply to have a conversation with, you know -- with
15 the railroad and the SHPO and the agency so they could be
16 on board with how we wanted to move forward for
17 approaching you with a strategy.

18 MR. YOUPEE: But then you had all non-Indian
19 entities there.

20 MS. GLIDDEN: It was the railroad's meeting, and
21 it's --

22 MR. YOUPEE: Well, my point is --

23 MS. GLIDDEN: It was a way of us just working,
24 you know -- of us working with the railroad and the
25 different agencies.

1 MR. YOUPEE: Well, it was still non-Indian
2 entities. And I think that what I see is that it was
3 organized, orchestrated, to see how you can streamline a
4 process and to yet eliminate Indian people or eliminate
5 tribes. That was -- that's what happened. How to
6 overcome the Indian obstacle.

7 MS. GLIDDEN: I don't think that was the intent.
8 I mean, I think that all along certainly I, as the
9 federal agency representative, have tried very, very hard
10 to make sure that we incorporate tribes at every term.
11 So any of the outcomes of that meeting were sent to all
12 the tribes and we had -- I think we asked for input on
13 any of the -- on the meeting minutes. And I think the
14 meeting minutes were available to the tribes as well.

15 And then we met with -- we did meet with some of
16 the tribal members and also Randy met with some of the
17 tribal members to go over some of the details of how we
18 wanted to move forward with the tribal study. And now
19 we're here. We're here -- and we're here with -- all
20 we've really done up to this point as far as these
21 unevaluated sites are concerned is decide we need your
22 help. So we're at that point where we really want and
23 need your input on these sites.

24 What we've done as far as moving forward with
25 the unevaluated sites is to simply do the literature

1 review. So that's, you know, what's been written about
2 these sites. Just document it and write it up.

3 And now we're here wanting your input on how to
4 move forward. So in my mind there hasn't really been any
5 attempt to exclude any of the tribes. We're really
6 trying really hard to get your input. We didn't get
7 responses to the reports in most cases in which there
8 were unevaluated sites included in which there was 30
9 days, I guess, to respond. But as a federal agency we
10 still need to evaluate these sites. So we're at the
11 point where we need your help.

12 MR. EAGLE BEAR: Well, we were kind of curious
13 because we did get some calls from state representatives
14 and some federal entities wondering why we weren't at the
15 table. And we were kind of -- we were actually going to
16 send somebody over there to crash your party. But we
17 decided not to, you know. But I -- you know.

18 MS. GLIDDEN: I understand your concern. And
19 I -- you know. I appreciate what you're saying.

20 MR. EAGLE BEAR: But, yeah, we did have meetings
21 with Randy. But we have some issues with some of these
22 sites. And that's why we're at the table here today.

23 MS. GLIDDEN: Well, I think one of the things
24 that I'd like to do and ask your permission is to try to
25 move forward just so that we can tell we what you found.

1 And I know that there's going to be -- there's concerns
2 that you have about how things have gone in this project
3 and how things have gone forward. But I think once Randy
4 gets into the details of exactly what we found -- I mean,
5 with the South Dakota reports I actually went through
6 every site myself and read through every single site. We
7 sent out a huge series of reports.

8 And I am convinced that the sites that we've
9 pulled out, the ones that are unevaluated and the
10 appropriate ones, and they're based on what the tribal
11 monitors said when they were out in the field. They said
12 this might be a TCP, don't excavate it, it needs further
13 work. And we haven't moved forward with those sites.
14 And so, you know, there hasn't -- there's no fear, I
15 guess. There's no fear that these things will not be
16 properly addressed.

17 So but I think that if we can move forward and
18 let Randy finish his presentation, I think things will
19 become more clear. So.

20 MS. HALVERSON: I have something I'd like to
21 say. I sent off a proposal to you, to DM&E -- to Louis
22 Berger, it was sent to you, and it was for a TCP study of
23 Minnesota, and I never heard nothing. Not a word about
24 it.

25 Minnesota didn't have the opportunity to be out

1 there. And at the beginning of this process I was told
2 that we would get a TCP study of Minnesota and that
3 hasn't happened. I didn't even get the courtesy of a
4 letter stating it's -- this isn't -- you know, this isn't
5 going to happen.

6 MS. GLIDDEN: Right.

7 MS. HALVERSON: I didn't receive anything from
8 anybody. And those sites in Minnesota are not finalized.

9 MS. GLIDDEN: Right.

10 MS. HALVERSON: That burial mound that's sitting
11 underneath that trestle is not resolved.

12 MS. GLIDDEN: Well, I think -- and I understand
13 that you have a concern about the Price site, and that's
14 something I think that we should talk --

15 MS. HALVERSON: That's not the only site in
16 Minnesota, though. There's sites that we haven't gotten
17 to go out to. We haven't had that opportunity. We only
18 got to do what the archeologist wanted us to do and where
19 she wanted us to go. We have not had the opportunity to
20 be out at those -- the whole line. I want the whole
21 line.

22 MS. GLIDDEN: I understand your concern. But,
23 again, I think that, you know, out of respect for the
24 other tribes and those people that have come here, we can
25 move forward with talking about what we've done and what

1 we found, and that may be in the afternoon that we can
2 talk about these issues.

3 MS. HALVERSON: How can we move forward when you
4 haven't even addressed things that are way back?

5 MS. GLIDDEN: Randy, do you want to go on?

6 MR. WITHROW: Yeah. Well, there will be time
7 this afternoon, and I think that's a good forum to talk
8 about some of those other issues. I guess just in the
9 interest of getting more of a background on things,
10 maybe -- what we really want to talk about today are some
11 of these sites specifically that we'd like your input on.
12 Some of these, the information I'm going through now is
13 some additional background to let you know about some of
14 the issues that we've been wrestling with over the past
15 year and give you a sense for where those are -- how
16 those are being addressed.

17 Again, the buried sites issue, there's been a
18 lot of concern about that on STB's part and the railroad
19 as well. The railroad is currently putting together
20 their plan to address those sites and that site
21 potential.

22 We haven't seen that yet so it's kind of early
23 to comment on it, but that plan is being prepared. We
24 hope to see that soon, and it will be circulated to all
25 the consulting parties for review.

1 The project effects, again, this gets back to
2 the visual effects. Some of the auditory noise effects,
3 the vibration effects and things like that were dealt
4 with as part of the NEPA process. But one thing that
5 hasn't been addressed very well or fully was the visual
6 effects on sites, particularly along the new-build
7 section where there's not currently a railroad. And the
8 question is what are the visual effects going to be on
9 surrounding properties once the railroad is introduced
10 into that area.

11 In consultation with the SHPOs in Wyoming and
12 South Dakota we have an agreement to examine visual and
13 audible effects or impacts on adjacent sites within a
14 6-mile-wide corridor, for 3 miles both sides of the
15 alignment. And DM&E is currently preparing some studies
16 to help evaluate those effects having to do with
17 line-of-sight impacts, where you can see -- will be able
18 to see the railroad within that 3-mile range on either
19 side. And obviously we'll be looking at eligible
20 properties, National Register properties within those
21 zones and their potential effect on them.

22 The unevaluated sites issue become a problem for
23 a number of reasons. But in terms of the National
24 Register criteria, we have a number of sites,
25 particularly sites that tend to be of spiritual

1 significance, tend to be recommended for eligibility
2 under criterion A, which is the association of important
3 events patterns of history. Criterion D, of course, is
4 one that's targeted more at information potential,
5 typically sites that are evaluated archaeologically from
6 their scientific information value.

7 Those two things together, evaluating those two
8 criteria are often in conflict, mainly because
9 archeologists who evaluate criterion D have to dig in
10 those sites. And obviously if they're important for
11 spiritual reasons, that may be a problem. And we want to
12 hold off on doing any kind of testing in those areas
13 until we can get the traditional values established.

14 And so those things have to happen in the proper
15 sequence. STB's position and instructions to the
16 railroad has been to avoid testing those sites where
17 there's potential concern for spiritual values. And but
18 as a result we have a lot of sites that haven't been
19 evaluated for both criteria at this point.

20 Now there are also property-access issues as
21 Randy Henke was mentioning a while ago that also affect
22 our ability to get in to examine these areas. So there
23 are a number of sites that haven't been evaluated for
24 that reason as well.

25 In our discussions about how to evaluate some of

1 these sites -- and they're not all Native sites. Some
2 are old railroad sightings and things like that as well,
3 farmsteads, but some of the recommendations that STB has
4 made as part of working on that issue continue to involve
5 tribal monitors in any additional field work that's done.
6 And my understanding is there's about 20 miles' worth of
7 alignment along the new-build section in South Dakota
8 that still remains to be surveyed, has not been looked at
9 at all.

10 We decided to continue the report review process
11 even though there are a bunch of these sites that have
12 not been fully evaluated. They're being sent to the
13 SHPOs with their understanding and the SHPOs' consent to
14 review those that have been evaluated and reserve comment
15 at this point on those that have not. So the report
16 review process is going forward despite some of these
17 remaining unevaluated. They'll be addressed in a
18 separate addendum report.

19 One thing that was clear is we needed a context
20 for trying to establish eligibility for sites with
21 traditional values. And one of the suggestions was to
22 try to develop this as in the form of a context study,
23 and that context includes not only what's been written,
24 what's been published by archeologists and ethnographers
25 and people coming from a scientific background, but also

1 establish and prepare a context that reflects the
2 traditional values in these areas as well, and with
3 specific reference to sites that include stone features,
4 stone circles and cairns and so on.

5 There are a number of sites that do not have the
6 potential for traditional value and those would be
7 evaluated through criterion D testing.

8 MS. DESROSIERS: So who do you have in mind to
9 help you establish that plan for criteria on those sites?

10 MR. WITHROW: That's why we're here. That's one
11 of our main questions. We need help and we're trying to
12 establish how to do that and how to involve tribal people
13 in developing that context. So that will be the focus of
14 a lot of our discussions here.

15 Going ahead, evaluating sites under criterion A
16 with the help of that context. And that context study as
17 we proceed here involves three major parts. One is just
18 a review of the literature, as I said, the published
19 information. A second part would involve doing
20 interviews with tribal members, elders wherever possible,
21 traditional leaders who are knowledgeable about the
22 importance of these sites. And, thirdly, actual site
23 visits to the sites to help evaluate them by those same
24 individuals.

25 There's also an open policy for accepting tribal

1 comments on these sites at any time in the process. As
2 new things come to light we'll still consider any
3 comments that are presented to us.

4 We also encourage the railroad where access
5 outside the right of way is limited, that they will
6 evaluate sites based on what information they have. In a
7 lot of instances the right of way cuts through sites and
8 just portions -- there's a lot of larger portions of the
9 sites sometimes undefined that lies outside the right of
10 way. On private property, it's difficult to get access.
11 We don't like to evaluate sites just by looking at a
12 portion of them. It doesn't make any sense. We need to
13 know the whole in order to properly evaluate it. So that
14 may not be possible in all instances but we've
15 established that as our goal.

16 Now specifically with regard to traditional
17 sites, we've not gotten much in the way of comments on
18 the reports. But we've had a number of these meetings,
19 and there have been clear comments and concerns expressed
20 during the meetings about a number of sites and interest
21 in doing more work with them. We've also received some
22 letters specifically mentioning the importance of sites
23 with stone features. From Standing Rock in particular
24 and from all the other tribes as well.

25 Basically what those comments are saying, and

1 I'm summarizing them here in just brief terms, stone
2 features in particular be treated as potential TCPs
3 and/or sacred sites. Stone circles are also considered
4 to be potential burial locations, should be viewed that
5 way. Some tribes have requested TCP surveys. Pam just
6 mentioned that. Others are working independently on
7 their own context. I know Ben had shared some of that
8 with Cathy and I last fall. There's a lot of things
9 going on.

10 SHPO, in the midst of all of this, has also
11 advised that they think it's important to do an
12 ethnographic study to help support the evaluation of
13 these sites. There's been some disagreement among some
14 of the consulting parties about just exactly when that
15 should be done. It's not a question about whether it
16 will be done, it's more when. And I guess the argument
17 has been really that's something that's allowed for in
18 the NEPA conditions under the tribal MOA.

19 Conrad.

20 MR. FISHER: Before I forget, I want to make a
21 comment on the evaluating of sites. And I think that's
22 accessibility to the sites. I know in the past that
23 we've wanted to revisit some of these sites and
24 eventually we did but it was like a month, month and a
25 half before we actually had an opportunity to go back out

1 there and visit the sites.

2 And I think therein lies a problem. Because
3 oftentimes tribes, you know, don't have a lot of time
4 also. There's a lot of things that they do. And
5 certainly this is one of the more important projects that
6 tribes are doing.

7 However, you know, I think there needs to be a
8 process that's a little more streamlined as far as
9 accessibility is concerned. And I do know that, you
10 know, there's property rights and accessibility rights
11 and that sort of thing. But, you know, if it takes a
12 month and a half just to get access to those sites,
13 that's a long time for tribes to have to wait, you know,
14 just to visit a site, revisit a site.

15 MR. WITHROW: And it's a difficult problem for
16 the railroad too in a lot of these areas. I know Randy
17 can comment on that, I guess, too. But it's difficult
18 logistically and it's tough to do it in a tight time
19 frame. Right now our goal is to try to set up a lot of
20 these site visits during the month of May and into June.
21 That's our goal. So hopefully we can make arrangements
22 to do that. We've got some time to plan for it and to
23 set up some specific time, dates, a month from now to
24 start doing some of that. And that's one of the things
25 we'd like to talk about in more detail this afternoon.

1 MR. FISHER: Sure. Sure.

2 MS. GLIDDEN: Randy, how hard would it be to get
3 tribes out to sites that currently you have access to?

4 MR. HENKE: We presently own 10 properties. We
5 can go to them tomorrow.

6 MS. GLIDDEN: Okay.

7 MR. HENKE: We have options on 50. 52. I don't
8 know the exact number today. But those require us to go
9 talk with the landowner and agree to a time and a place
10 so we don't disturb the land. And it's springtime so
11 obviously wet conditions, et cetera. There's a lot of
12 concern from ranchers and farmers not to get on the land
13 during certain times. So there's about 60 sites we can
14 get to quite easily. And I think Randy and Cathy in
15 proposing certain things may suggest we try to focus
16 maybe a little bit on those.

17 MR. FISHER: Sure.

18 MR. HENKE: There's 20 out in Wyoming I won't
19 get on without a judge ordering me on there. And there's
20 probably 25 or 30 in South Dakota I won't get on without
21 a judge ordering me on there. That leaves about 20 other
22 sites that sometimes the people have let us go.
23 Sometimes they haven't. And those are ones, Conrad, we
24 get in a bit of trouble where I go out and I say can we
25 and they go, well, maybe, should be, could be, and with

1 enough work you can typically get on those properties.

2 So there's about four or five different
3 categories right now of what we can and can't get on.
4 So, I mean, like I said to Cathy, we will try to get on
5 any piece of property somebody wants to get to, it's just
6 a matter of when and what I got to do to get there.

7 MR. FISHER: I just feel that, you know, if you
8 have archeologists that can get on there whenever they
9 can, tribes should be afforded that same opportunity.
10 That's the bottom line.

11 MR. HENKE: The archeologists, I mean, I got to
12 get access for an archeologist to go on it.

13 MR. JACKSON: It's the same process.

14 MR. HENKE: Same process. So when we go, you're
15 more than welcome to go with us. Because, I mean, we're
16 not going out and looking at any sites right now. We're
17 at a standstill.

18 MR. FISHER: I understand that.

19 MR. HENKE: Until we know where this group wants
20 to go.

21 MR. FISHER: I understand that. I'm talking
22 about in this case, in my case, when we're having to go
23 back out there and revisit a site, you know, rather
24 than -- there should be, I guess -- and I understand the
25 complexity of trying to schedule a visit. But there's

1 only a certain window of opportunity to be able to do
2 that. And all I'm asking is that when the tribes request
3 to go out there, that we try to expedite that and really
4 be responsive to those types of needs from the tribal
5 level.

6 MR. HENKE: Okay. If we know that window and
7 know what properties you're going after, we can pretty
8 quickly give a feedback of that's possible or it's
9 impossible.

10 MR. FISHER: That's all I'm asking.

11 MR. HENKE: That I think we can do fairly
12 quickly.

13 MR. JACKSON: And I'd add too, Conrad, I think
14 the one difference we have this time that we didn't have
15 before is that, you know, now we have a list of known
16 sites. We can identify them up front. And what we're
17 trying to do is actually program a certain amount of time
18 to go do these visits all at once.

19 MR. FISHER: Sure.

20 MR. JACKSON: And I think what that does allow
21 us to do, you know, is if there's tribal monitors out
22 there that say, hey, we need to have you and Ben or
23 somebody go look at this site, that gives us the time to
24 be able to work that back in and get it done. Whereas
25 before, it was a little bit more -- we were still finding

1 and still finding (Inaudible) and still getting access
2 was a little bit more, I guess, a piecemeal type of
3 approach than I think we can organize now.

4 MR. FISHER: Right. Right. Yeah. And, you
5 know, it's about -- somebody mentioned elders, you know,
6 just going on. And oftentimes, you know, within a
7 six-month period you might have two or three elders that
8 are no longer with you anymore. And so if we can get out
9 there to revisit those sites as quickly as possible, I
10 mean, that's -- that's all I'm saying is just that we
11 need to find a way that DM&E and Randy is responsive to
12 tribal requests. However they do it, that's up to you.
13 But we as tribes need to have access to those sites.

14 MR. WITHROW: I think our hope was clearly to
15 use this meeting, particularly this afternoon's
16 discussion, to try to look at the list of sites that we
17 have and at least identify some of the more important
18 ones that we can get out to in May and do it very soon.

19 MR. HENKE: What I would suggest is if we could
20 somehow focus on that 60 or 70 properties we know we can
21 get to. And in there there's, I assume -- I'm not an
22 archeologist but I assume there's an array of sites that
23 maybe represent others. We can go get those. And then
24 if from that we understand there's a bigger or different
25 sites, then we can figure out a plan for trying to get a

1 court ordered access or another. Because that will take
2 time. I mean, there's 60 sites we can get to relatively
3 easy.

4 MR. FISHER: Well, that's the kind of dialog I
5 think we're wanting to see.

6 MS. GLIDDEN: We've actually set aside the
7 afternoon to talk a bit about this, the logistical
8 concerns and things like that. But definitely understand
9 your concern and it's -- it's --

10 MR. FISHER: Sure. That's all I have.

11 MS. GLIDDEN: It's a very valid concern and
12 we're going to try to work towards getting you guys out
13 there quickly.

14 MR. FISHER: Sure.

15 MR. WITHROW: One of the things that Cathy asked
16 me to do is to prepare a plan, a study plan for dealing
17 with sites that are of interest to tribes. And as was
18 mentioned here earlier, I had some informal discussions
19 with various people last fall in trying to develop a
20 draft of this plan. And there was some versions of it
21 that were circulated to everyone I think in December and
22 also as part of the package of the invitation to this
23 meeting.

24 But there were several key things we wanted to
25 make sure we were doing. Obviously make sure that there

1 was ways to involve the tribes and participate, to deal
2 with the confidentiality issue for this information
3 that's being shared and how that would be dealt with.
4 Focusing on the sites that we know about. And there's a
5 list -- a complete list in the binder that we've handed
6 out of all the ones that have stone features in them.
7 There are 68 total so far. And then a way to address the
8 National Register evaluation criteria for helping
9 evaluate the sites. That was my charge.

10 And we came up with a plan. There is a copy of
11 it in the binder as well. But the plan, as I mentioned
12 before, has three main pieces, elements. One is to look
13 at what's been published, what's out there in the written
14 record and try to come up with some structure for looking
15 at these sites based on that information.

16 But we also recognize that that's an incomplete
17 picture of these sites. For the most part it's done by
18 non-Indians, developed by anthropologists, ethnographers,
19 historians in some cases, and it's an incomplete record
20 and evaluation of these sites. We fully understand
21 there's a need to involve tribal members in the
22 evaluation and the interpretation of these sites. We
23 can't evaluate them unless we know what they represent,
24 what they mean.

25 So our strategy for trying to do that was in two

1 different ways: Conduct interviews with knowledgeable
2 tribal members about stone circle sites and other kinds
3 of issues that surround these sites, and then just as
4 we've been talking, look at them firsthand, get the
5 people who need to be out there to look at these sites in
6 these actual locations and help them, that way help us
7 evaluate the sites.

8 The archival report, we finished that last week.
9 There's a copy of it in your binders. I'll go through it
10 very briefly. A lot of it, like I say, is -- it's the
11 archeologist's view of how to make sense of these sites.
12 It may not be germane to what you want to do at all. But
13 it's there. So we assembled that much.

14 Final report that we envision will incorporate
15 not only that literature search but also architectural
16 study from the tribal perspective, that included in it.
17 And recognizing that that part may be subject to
18 confidentiality and proprietary information concerns. So
19 part of our thinking was that as that part of the report
20 is developed, that it would have limited distribution
21 controlled by the tribes. It would say who sees it.
22 Presumably it would be shared at least with Cathy so she
23 can help make her determinations at the lead federal
24 agency, perhaps SHPOs, but the tribes will have a say in
25 who sees that information as part of the evaluation

1 process.

2 But the goal, again, is so that the completed
3 study provides the information that STB needs to make
4 their final determinations on eligibility.

5 MR. TIM MENTZ, SR.: Randy, can I ask a
6 question? Is that okay if I ask a question here?

7 MR. WITHROW: Yes.

8 MR. TIM MENTZ, SR.: Can you push it back to
9 that -- the previous one, the completed study will
10 provide -- completed study will provide basis for STB's
11 determination of eligibility. And I just want to make
12 the THPO officers aware that this is kind of stepping out
13 of the norm. I don't know if you want to really sanction
14 a study to determine eligibility.

15 The reason I say that is based off of my
16 relative's comment of the meeting that happened December
17 2. I understood the meeting was it was a question of how
18 do you evaluate stone circles and whether they're truly
19 even eligible. And that was a concern of mine.

20 I've been keeping my ear open on it simply
21 because when you start talking about doing a study now,
22 first of all, normal 106 you have a report. You know,
23 this group here is pushing for tribal participation
24 within a report that's required to recommend eligibility.
25 You do also evaluations on the eligibilities where you

1 specifically as tribes participate.

2 MS. GLIDDEN: We did have reports. We didn't
3 get responses to those reports.

4 MR. TIM MENTZ, SR.: I understand. And I'm
5 getting to that.

6 MS. GLIDDEN: Okay.

7 MR. TIM MENTZ, SR.: And back away there you
8 had limited comments. Now remember now, this is a
9 process that's moving where there's limited access.
10 You're talking about a phase process that's happening.
11 This is not specifically in the sense of where you're
12 actually out there on the field with the archeologist.

13 But the point I'm making here is that this is
14 kind of outside the scope of how 106 is completed and the
15 determinations are arrived at where a federal agency
16 signs off. Hence, you have up there a comment, and I
17 don't know how -- again, on a side note here, I don't
18 know how you're going to be commenting to this today.
19 It's a Government-to-Government consultation as I see
20 here.

21 So my point is that whether you give it today or
22 tomorrow, you need to first of all provide comments so
23 you don't have that up there anymore. Secondly, as
24 tribes we're going to have to sit down and really discuss
25 how do we want to get involved with providing comments

1 through these types of issues that are very sensitive,
2 especially when they're sacred areas. Stone features.

3 You know, because right now because of that
4 issue what Russell raised about this meeting that
5 happened or from what I understood at the meeting was
6 going to be discussing how determinations were going to
7 be arrived at for stone circles, under what criteria, let
8 alone talking about the eligibility, you've got now a
9 study that's basically going to be written by the
10 applicants or a third-party subcontractor for the
11 applicant.

12 MS. GLIDDEN: By the STB.

13 MR. TIM MENTZ, SR.: By the STB that's going to
14 do a study to determine eligibility. Do you see where
15 I'm going with this? Rather than completing an
16 archaeological survey report, inventory report that's
17 going to make recommendations.

18 I've never seen something like this in my years
19 of sitting there in that office where there was actually
20 a federal agency sanctioning a study to determine
21 eligibility. If this is going to be the norm then I
22 think the tribes need the power of the pen, not the
23 applicants here. Because the one before that, when you
24 start talking about context study and -- yeah.

25 MR. RHODD: Randy, could you go back two slides.

1 MR. TIM MENTZ, SR.: That kind of bothered me
2 sitting here thinking about that because, again, we're
3 looking at, again, that somebody else is going to be
4 talking about the history of the area. And you did make
5 a reference, Randy, this one -- that tribes are going to
6 be involved with that.

7 But my point and my concern is that, well, wait
8 now. Who's going to do the ethnographic study that's
9 going to place us in certain areas that we can tie
10 significance to our interest of significance in. And
11 that's a concern I have. Because then you have all these
12 authors out there that are placing us here. And even
13 with this last one in the book "Gall" by this Larson, he
14 puts us right here on the west side of the Missouri River
15 at 1876.

16 That's when he said we migrated over the
17 Missouri River and got now where we're sitting here
18 present day treaty land that they saying 1876 the Sioux
19 just now arrived here. So knowing that and knowing that
20 if there's going to be that type of ethnographic study,
21 let alone SHPO's going to review it and put their
22 blessing on it or not or even if the tribes are going do
23 that or not, it's a concern.

24 And I'm just cautioning us on how we're going to
25 move with this. Because this would be -- look at what's

1 going to be happening here. We're already in a situation
2 where we're trying to discuss determinations of
3 eligibility that are eventually going to be a concurrence
4 with the SHPO.

5 Resolving eligibility, and I think that's where
6 Russell makes the point as what happened in that December
7 2 meeting. Because the concern there, as I understand
8 it, was a big issue with DM&E on the eligibility of ring
9 sites, stone complex of the ring sites.

10 MS. GLIDDEN: Do we have copies of the minutes?

11 MR. WITHROW: Yeah. Those actually were sent to
12 everybody. There was a transcript of that meeting. It
13 was sent on a CD to everyone in mid-December. The 17th I
14 think it was.

15 MR. TIM MENTZ, SR.: Well, I'm kind of out of
16 the loop. So again, I'm relying on these people sitting
17 around the table here. I never seen the minutes. But
18 what I'm saying is I heard what was possibly going to
19 happen being discussed, hence that's why Curley raised
20 the issue that there was no tribes there. Regardless of
21 what happened there, tribes weren't there to hear what
22 you're talking about. And now comes that word
23 "resolving" eligibility. I didn't know we had an issue
24 of resolving eligibility when we're still in the process
25 of determining eligibility.

1 So I guess my point is that if this is going to
2 be a study, and it sounds like STB is sanctioning this
3 study, this context study. First of all, I want to make
4 sure, you know, who is going to be the person that's
5 going to write this ethnographic study of placing us
6 here. And where you're sitting around the room here as
7 tribal people and now we're determining whether tribes
8 have an interest or not. Now we're talking about
9 eligibility and ring sites. And I seen one part there,
10 resolving criteria D through field testing. And that's
11 always been a concern. So again, I would just say that
12 the THPOs need to talk about this eligibility issue when
13 we start talking about stone features.

14 Because that's good for us to talk about it, but
15 it's going to be SHPO that's going to make some type of
16 determination to concur with the federal agency. And
17 that's a concern I would have. And if it's going to be
18 based off of a study -- do you see what I'm saying?

19 MS. GLIDDEN: Well, I mean, I guess I just want
20 to make clear that whatever comes out of the tribal
21 participation part is going to be kept confidential and
22 it doesn't even have to be shared with the SHPO. It's
23 just that we have to have as a federal agency some basis
24 for making eligibility determinations about these sites.

25 MR. TIM MENTZ, SR.: Well, that's a given. I'm

1 not raising concern with that. What I'm raising concern
2 is the process leading up to that decision.

3 MS. GLIDDEN: Right.

4 MR. TIM MENTZ, SR.: That's what I'm talking
5 about, Cathy.

6 MS. GLIDDEN: Yeah. And I understand your
7 concern, but I think it's important that we let Randy go
8 through the process and so you have a complete
9 understanding of what we are proposing to do and then we
10 can --

11 MR. TIM MENTZ, SR.: No. I understand. Again,
12 you're talking about today is a consultation. I mean,
13 it's in your hands, THPOs. And this is Government to
14 Government. I see one of our tribal leaders here. And I
15 appreciate you being here, Roger, because you do bring in
16 that shroud of Government to Government in relation to
17 that, what it truly means. But the point is is that
18 somewhere you're going to have to get involved with this
19 discussion today because this is Government to
20 Government.

21 MS. GLIDDEN: Thanks, Tim. Should we take a
22 quick break? Would this be a good time?

23 MR. WITHROW: We can. I would just follow up on
24 what you just said. I mean, the reports, the survey
25 reports that went out, I mean, the problem with the

1 reports is the consultants weren't able in a lot of
2 instances to provide a recommendation even on eligibility
3 because of the issues (Inaudible).

4 (Discussion off the record)

5 (A short recess is taken)

6 MR. RHODD: I want to follow up on something
7 that Tim was bringing up, and it's something that Pam was
8 mentioning too. As far as how we're going to create a
9 criteria-driven evaluation methodology. And I'm using
10 that from an archaeological perspective but also now as a
11 tribal perspective.

12 This is -- we can't -- we're really at a rock
13 and a hard place on this because if we're going to deal
14 with the criteria and that criteria -- we're going to
15 have to meet that criteria of A or B or whatever. And a
16 study -- in the two times that you've had a study up
17 there on the PowerPoint, you've used that phrase or that
18 word. What is happening from that is that it places us
19 in a very difficult position from -- on behalf of the
20 Rosebud Sioux Tribe I'll say it this way, is for us to be
21 able to say, hey, wait a minute. There is a -- there is
22 a criteria that we have that is not going to fit to the A
23 or D. So it's a rock and a hard place for you guys too.

24 MS. GLIDDEN: Yeah.

25 MR. RHODD: And so I'm trying to put this in

1 perspective for all of us in that sense to understand
2 what Pam and what Tim are bringing up.

3 Because when you say -- right up there you've
4 got another word, verifiability. You know. If you're
5 going to rely on strictly previous ethnographic study,
6 ethnohistory, any other works that have been done by
7 "qualified researchers," if you're going to rely on that,
8 and that is already, I will tell, you skewed. And it's
9 skewed to -- in a way that it's going to -- we are going
10 to -- no matter what we say with about I want to say,
11 well, 70 percent -- well, we're going to lose. I can't
12 even put it in a percentage right now. But the point is
13 is that we're going to -- our information will become
14 part of another study and another study and -- that we
15 have no control of.

16 MS. GLIDDEN: Well, I think just to make sure
17 I'm clear that if there's information that you think that
18 you would like to provide, that you think that
19 information is something that has to remain confidential,
20 I will certainly make certain that it remains
21 confidential. And it doesn't have to become part of a
22 study. It could be something that's presented verbally,
23 orally, and not written down.

24 So none of this is set in stone. The only thing
25 that we've done so far is review what's already been

1 written. And so just to make clear that we'll work with
2 you hopefully in the afternoon. We set aside this
3 meeting in the afternoon to be able to talk just between
4 the tribes and us as a federal agency. Now the SHPOs
5 will be there --

6 MS. HALVERSON: You don't think DM&E needs to
7 hear this? DM&E doesn't need to hear our concerns?

8 MS. GLIDDEN: Well, I think if you have any
9 concerns that would impact them, I would definitely talk
10 about them now. Because we were hoping that in the
11 afternoon if you provide any information to us that's
12 confidential that we wouldn't want DM&E to know that
13 information. That's the only reason that (Inaudible).

14 MR. WITHROW: Let me continue, if that's okay.
15 I mean, one of the points I wanted to make, there are
16 several challenges. I mean, you just outlined one of
17 them very well. And that was the point I intended to
18 make as well.

19 Archeologists and tribal members view these
20 places differently. Archeologists have a very academic,
21 scientific-oriented perspective. And the point that I
22 want to make is that we recognize that does not get us to
23 a complete understanding of these sites. There's an
24 aspect -- a spiritual value and a traditional value of
25 these sites are not something an archeologist can access

1 through their scientific approach. Both perspectives
2 need to be incorporated into this plan, into this study.
3 And that's one major challenge.

4 The second one is one you raise as well. The
5 National Register criteria do not necessarily fit well
6 for the kinds of values that tribes ascribe to these
7 places. And yet we have to work with that structure with
8 regard to eligibility.

9 In most cases TCPs or sites that are important
10 for their traditional cultural, religious significance
11 are often found eligible under either criteria A having
12 to do with broad events or events that contribute to the
13 significance of broad patterns of history or associated
14 with important individuals. And those can also include
15 those that are individuals that are entities or beings or
16 spirits and so on. That doesn't necessarily have to be
17 tied to, you know, living, breathing individuals as we
18 know them, non-Indians know them. But that's also a
19 challenge, trying to fit it in with those criteria.

20 Then there's the terminology that archeologists
21 use. We like to type things. We order things that way.
22 And if you read any of the reports that have been sent
23 out to you, you'll see these kinds of site types. We
24 assign names to them. And the names are often very
25 loaded. Sometimes they describe the sites in terms of

1 their form. It's a stone ring or it's a rock pile or
2 what have you.

3 Some archeologists go further than that. They
4 assign attributions to those. They interpret those sites
5 in ways that they're not qualified to do.

6 So those are problems with the way this work has
7 been handled up until now as well.

8 Let me just go through some of this background
9 stuff. Some of this was just sort of some additional
10 background coming out of the study that we did. But, you
11 know, for a long time stone circles were interpreted
12 solely as teepee rings. That's the way archeologists
13 viewed them, that's the way they were interpreted.

14 Going through the literature, one of the themes
15 that's developing at least in the last decade if not two
16 is that people are recognizing that stones can be
17 arranged in circles for a lot of other reasons and they
18 represent a lot of other things other than lodge
19 locations. But archeologists still kind of look at them
20 as types. They segregate the small circles as having
21 some sort of ritual associations. They segregate real
22 large circles in that way as well. And then everything
23 in between, usually anything that measures about 7 feet
24 to 30 feet in diameter is described as a habitation type
25 feature.

1 And then you can read all kinds of studies that
2 archeologists have done. They measure things and compare
3 things in lots of different ways trying to find patterns
4 to help them explain these things. And whether or not
5 they're successful or not, I guess, is my point. What do
6 we learn from all these things? In a lot of cases not a
7 lot.

8 But one lesson, I think, that comes through is
9 that we know that they're a lot more complex than people
10 regarded them in the past. There's a lot that we don't
11 understand. And I think one of the main reasons as
12 archeologists that we're having difficulties, we're
13 probably not asking the right kinds of questions. And if
14 we've learned anything, maybe just recognizing that fact
15 is maybe the most important lesson that we've learned up
16 to this point.

17 But it really gets back to, you know, where do
18 we go from here? In doing the literature survey, there
19 was one study in particular that I found that I thought
20 was very interesting. It was done by a couple of
21 archeologists from the Bureau of Reclamation in Bismarck.
22 And one of their ideas was to, you know, get away from
23 the archaeological data but look at historic images of
24 campsites and try to look at that as a way to help
25 interpret the archaeological information.

1 Now again, I would say that's a good approach,
2 but a better approach would be to talk to tribal members
3 and have them help you themselves because they already
4 know all these things. But in any case, this study in
5 particular was interesting because it tried to look for a
6 lot of these patterns in images. And one of the first
7 questions I asked was there's some contention or
8 disagreement about whether stones actually were used to
9 anchor tents, whether they be stone rings actually
10 represent places where tepees were. So they looked for
11 evidence of that in these photographs. And what they
12 found was that very few of the photographs actually
13 showed stones being used in that manner. There were
14 some, but most of them used pegs. In this photograph
15 actually you can see some logs used here and so on. But
16 stones don't regularly appear in these historic
17 photographs.

18 One of the archeologists was making the argument
19 that, well, that's an older practice. It's been
20 abandoned pretty much in historic times.

21 MR. YOUPEE: Perhaps it's a prop as well.

22 MR. WITHROW: Perhaps so.

23 MS. GLIDDEN: What did he say? I'm sorry,
24 Curley.

25 MR. YOUPEE: I'm saying maybe it's a prop for

1 the picture itself.

2 MR. WITHROW: One other thing I would mention
3 too is it's a nice little structure out behind. I mean,
4 people -- they look at teepee rings as marking location
5 of structures. But there's a lot of little structures
6 too that appear at these sites.

7 So very interesting photographs. One of the
8 things that they did is they defined a number of camp
9 types by looking at these photographs. And some I
10 thought were interesting, worth mentioning.

11 This is one photograph where they claimed to see
12 stones being used as outlines. I looked at it closely.
13 It looks like there's one there and one here. You also
14 see pegs being used. But again, they were trying to look
15 for some evidence to support the interpretation that
16 these represent actual teepee rings.

17 Other things that I think are interesting is if
18 this, in fact, was a ring and it marks what we would see
19 in the field now archaeologically as a former lodge
20 location, you know, the hearth would be out here and so
21 on. I mean, there's some relationships that you can
22 interpret from these photographs that help you interpret
23 the archaeological sites a little bit better.

24 I apologize for the quality of some of these. I
25 had to scan them in and such.

1 MR. EAGLE BEAR: That meat certainly looks good.

2 MR. WITHROW: Again, there's a hearth area here
3 and there's a tripod for the cooking pots and so on. But
4 there's other structures too I guess is part of the
5 point.

6 So they identified one camp type as being a
7 small group camp, usually less than 10 structures at a
8 camp. This one's a little bit larger, has about nine
9 structures altogether. Some interesting things you can
10 see if you look closely at the photographs, for instance
11 all the openings for each of the lodges, they're all
12 oriented in the same distribution. Just judging from the
13 shadows, it all looks like they're facing east. So there
14 are some patterns apparent that are in these photographs
15 that I think help as well.

16 Another camp type that they identified or,
17 again, types. They're all about identifying types for
18 ordering their information, are cluster camps. This is a
19 campsite along Ponca Creek, which I think is in south
20 central South Dakota. The date isn't well ascribed.
21 It's believed to be a Sioux camp. 30 or more lodges.
22 But, again, a lot of variety in the sizes. You can see
23 small ones, larger lodges as well.

24 And I guess one of the things I was going to
25 point out too is they seem to occur in more clustered

1 forms, not spread out in a necessary pattern but in
2 clusters.

3 Another camp type that they identified were
4 large circular camps, and these tend to be large seasonal
5 gatherings. This one in particular I think includes a
6 sun dance structure here in the center. But, again, you
7 get the circular outline of the entire camp. So there
8 are some things -- if teepee -- if stone circles actually
9 represent teepee locations and lodges, there are some
10 patterning to these sites that could help interpret some
11 of these.

12 Another example of a circular camp, this is a
13 rather famous one at Rosebud from 1897. And the circle,
14 you know, continues way off into the horizon. It was
15 measured over a mile across. I thought that was pretty
16 remarkable.

17 Another alignment. Again, we're looking at
18 patterns and the way lodges are arranged. A linear
19 pattern was another variety or variation that was
20 noticed.

21 The other point they were trying to make is
22 there are a lot of other kinds of structures that could
23 be part of these camps that might also be marked by stone
24 outlines. This one, a whole series of lodges put
25 together as one large council lodge. But that would look

1 very different obviously on a site as opposed to
2 individual family lodges.

3 Another possible structure type of medicine
4 lodge, you see an opened teepee with a partition, in this
5 particular instance a ceremonial setting with the
6 spectators on the outside and participants inside.

7 But, again, if this were marked by stone
8 outline, instead of a circle you would see an arc type
9 arrangement.

10 Other kinds of structures is just a shade.
11 Again, you have several lodges tied together. There's a
12 covering established along the entire backside.
13 Interestingly, you've got the travois frames helping to
14 support the structures. I thought that was interesting.
15 But, again, that might look like a long linear alignment
16 maybe with some edges.

17 This kind of structure is obviously sweat
18 lodges. There's some smaller structures out here shown
19 in this photograph. Those may or may not be anchored but
20 they may have other kinds of stone features associated
21 with them. This particular -- this photo I liked a lot.
22 But you see the large pile of rocks here associated with
23 this structure. The structure itself may not be marked,
24 but the cairns and piled stone that we find at sites
25 sometimes may have an association with this type of

1 ritual activity.

2 Yet another one. This one is Northern Cheyenne,
3 1895, not only the rock in the center of the sweat lodge
4 but also a large pile outside here nearby.

5 But, again, I thought this was an interesting
6 study because it makes it more contextualized, meaning
7 you've got some basis for interpreting the kind of
8 patterns that appear at these archaeological sites. But
9 as part of our study we wanted to also look at a way of
10 ordering these. But one of our conclusions was that an
11 archeologist really needs to stick to the things they
12 have access to or can do best. And again, we are very
13 observation oriented. We are very -- we measure. We map
14 things. We record things. But interpreting these
15 features is a different matter. You can only get -- that
16 type of approach only gets you so far.

17 And so that's really the heart of our proposal
18 is looking at the literature that exists. I think the
19 best approach is to try to order these sites because we
20 need to try to assemble some order or way of talking
21 about them but do so in a way that emphasizes their form.

22 So the typology we've tried to use, to try to
23 just summarize what we have among these 68 sites so far
24 are just based on identifying them as circles or
25 incomplete circles or arcs, piled stone or cairns as

1 they're often referred to, alignments, some cases there's
2 some rectangular outlines at some of these sites. And
3 then there are combination forms. Sometimes there are
4 circles with piled stone in the center or alignments
5 radiating out from the circle that indicate other kinds
6 of purposes and uses.

7 But our approach was to try to -- not to go too
8 far with the interpretation, limit it back, look at them
9 as formal types and try to organize it that way. Now
10 within those some other things that came across in other
11 sources, you can spend a lot of time looking at the
12 diameter or the size of these circles as a way to assign
13 some or interpret their function.

14 Generally, as I said, archeologists tend to look
15 at things that are 2 meters or less, 6 feet, 7 feet or
16 less in diameter as having some sort of ritual
17 association. Anything in the 2- to 9-meter range or 7 to
18 30 feet in diameter is usually associated with
19 habitation, lodges. And then anything larger than 9
20 meters again, more community, ceremonial use, that sort
21 of thing. But that's the framework that the
22 archeologists are working with so far.

23 They also look at the number of circles within a
24 site boundary and then they assign some types to the kind
25 of camps that those may have represented.

1 MS. GLIDDEN: Randy, I'm sorry, I might have
2 missed this but the circle diameter, what was that based
3 on? I mean --

4 MR. WITHROW: Measuring the size of the outline.

5 MS. GLIDDEN: I mean --

6 MR. WITHROW: Where does this come from?

7 MS. GLIDDEN: Yeah.

8 MR. WITHROW: That's sort of a general pattern
9 in the literature that archeologists have been employing.
10 Actually, in the Wyoming SHPO multiple-property
11 documentation form, that's the typology that they use.
12 Those are the size estimates.

13 MS. GLIDDEN: Wyoming?

14 MR. WITHROW: These are just estimates. That's
15 sort of the general pattern. But that's how they're
16 interpreting them. That's how they're using them.

17 Small camps, less than 10 circles; large camps
18 more than 10. That's sort of a general pattern. And
19 then they look at the arrangement of those circles within
20 the camps. Are they clustered? Are they in groups?
21 Family groupings, for instance, might be that kind of
22 pattern. Or a large circular pattern or linear pattern.
23 They are some of the things we try looking at.

24 Try to, again, give us some basis for talking
25 about these sites. We took the 68 sites, we kind of

1 grouped them this way. Now whether these are meaningful
2 patterns or not, this is just a place to begin. But what
3 it does is it kind of highlights, you know, a large
4 section of these sites are identified thus far as
5 campsites. Some of them are fairly small, 15, 16 here.
6 Those are probably 10 circles or less. But also with
7 some smaller circles so they're highlighting probable
8 ritual within those sites, whatever they may be.

9 Larger cluster camps, these are the ones that
10 are going to have probably upwards of 20 stone circles as
11 well as some smaller and larger circles. There aren't
12 many of those. The largest ones, they're all in Wyoming.
13 There are four of them. And anywhere from 15, 23 stone
14 circles. But they're large, large sites.

15 There are an awful lot of sites that just
16 consist of piled stone and maybe some other kinds of
17 smaller circles with them. A large number of those.

18 And then a few sort of miscellaneous ones, I
19 guess some that are these arc forms or in combination
20 with piled stone or rectangle forms, which have an
21 appearance of being burials. I mean, that's their
22 current interpretation. Along with piled stone and
23 linear alignments sometimes in combination with stone.
24 And whether those represent even effigy forms, like arrow
25 forms or things like that, it's hard to say. But that's

1 how we classified them thus far. And again, this is just
2 our way of trying to put some order to it so we can start
3 talking about them in groups a little bit more easily.

4 In the binders you have there's an 11-by-17
5 table. There's some red print on it as well as some
6 black print. It's a list of all of these 68 sites. And
7 there's information in there about what types of stone
8 features are at those sites. There's some additional
9 comments about the number of artifacts found at those
10 sites to help with some of that -- summarize that
11 information.

12 The ones that are highlighted in red are the
13 ones that for property access reasons we do not currently
14 have access to visit. All the ones that are in black we
15 can visit at this time. There are about 20 out of the 68
16 that we don't have access to.

17 I was going to look at some of these sites.
18 I've got information in here only for about a dozen. But
19 I tried to highlight some of the ones that I thought --
20 include the larger sites, some of the unusual -- ones
21 with unusual features just to kind of, you know, give us
22 a little bit more of a sense for what these might look
23 like.

24 MS. GLIDDEN: And we have maps for all these
25 sites; right? The maps.

1 MR. WITHROW: Yeah. The binders also include
2 right-of-way maps prepared by DM&E showing the location
3 of all 68 sites in relationship to the right-of-way
4 boundaries and also showing the features, the stone
5 features that are on them, I think in most cases. They
6 may not all be plotted on there, but I think most of
7 them.

8 MS. GLIDDEN: These are all in the right of way,
9 all of these 68 sites?

10 MR. WITHROW: It's variable. It's variable.
11 I'll kind of point them out as we go. This particular
12 site, this is the site boundary. This is in Wyoming,
13 site 48 CA 211. It's one of the larger campsites that's
14 been identified on the project. This is the DM&E
15 right-of-way line, the west one and the east line. So
16 the right-of-way centerline is this dotted line through
17 the middle. So it's going right through the middle of
18 this site.

19 Some of the stone features that are identified
20 are shown on the map on various locations. Another
21 interesting feature of this site, it's got a linear
22 alignment of small cairns or piled stone. I'll show you
23 some photographs.

24 It goes for quite a distance. Like 1,200 feet,
25 something like that. It's a very long line. This site

1 is on Forest Service land partly, partly on private. It
2 is accessible. Situated on a stream terrace near School
3 Creek. It's typed -- in our typology it's typed or
4 considered a cluster camp, meaning you've got more than
5 10 stone circles and some small ritual loci or arc
6 patterns or alignments or cairns or so on.

7 MR. JONES: Randy, can you help me? What's
8 L-O-C-I?

9 MR. WITHROW: Loci, or location. Just plural.
10 Most stones or most circles have additional stones in the
11 center. In reviewing some of the literature, there's
12 some speculation that the addition of stones to circles
13 that were no longer being used maybe represent memorials
14 and other kinds of things. So those are noted. There
15 are a couple stone pile features. Interestingly, there's
16 one very small feature on this site. We didn't see too
17 many that were less than 2 meters in size in diameter,
18 but there is one at this site and I have a photograph of
19 it.

20 MR. TIM MENTZ, SR.: Randy, where is the water
21 source? Is there any water near this site?

22 MR. WITHROW: There is. Let's see if it's on
23 the map here. It looks like there's a drainage here.
24 That must be the School Creek. So just off to the east.

25 MR. GRANT: It's actually on page 1 of 3 in this

1 binder.

2 MR. HENKE: Towards the back. 10 or 12 pages
3 from the back.

4 MR. WITHROW: Okay. This site currently -- it
5 also has some historic artifacts. There's a road, as you
6 can see, cuts through the center of the site. At this
7 time there's some debris scatter associated with that.
8 But it's primarily otherwise associated with prehistoric
9 artifacts. Currently the consultants have recommended it
10 eligible under A and D. And it's not been finalized.

11 This photograph, you can't see it very well. If
12 you get up close you can see there's some red flags in
13 here that the consultant laid out. This is the
14 alignment. And every 15 to 30 feet along this line right
15 up through here down toward the creek are small rock
16 cairns. And they're spaced out. But there's a
17 continuous line for about 1,500 feet.

18 MR. YOUPEE: Where is this located?

19 MR. WITHROW: Wyoming. I don't know. Alan,
20 maybe you can help me.

21 MR. HENKE: Just south of Black Thunder Mine.
22 Campbell County.

23 MR. WITHROW: The alignment is part of this
24 site. Part of it's within the right of way.

25 MR. RITCHIE: So it's south of Highway 450.

1 UNIDENTIFIED SPEAKER: Yeah. About a mile south
2 of 450.

3 MR. RITCHIE: Getting close to -- west of
4 New Castle.

5 MR. WITHROW: One portion of the site there's a
6 prominence that extends out, this rock cairn that's
7 located there, it's a rather substantial one. And just
8 below it down the hill a little bit further is this
9 feature. It's typed as a small circle and it roughly has
10 this appearance. Again, it's less than 2 meters so it's
11 less than 6 feet in size. It has a number of stacked
12 stones around the perimeter. Looks like 2 or 3 courses
13 high that have somewhat fallen off to the one side. The
14 consultants were identifying this as an eagle trap site
15 potentially. Yeah. That's where we need your
16 assistance, to help identify these. That's site 211.
17 Site CA 211.

18 This is a second site. This is also identified
19 as a cluster camp. Again, it has a large number of stone
20 circles. And here's the current outline of the site as
21 it's defined. Here's the nearby drainage on the left,
22 west side. Here's the current right-of-way alignment
23 going, again, through the site.

24 One thing I'd point out at this site, the
25 archeologists have identified three localities. Now

1 these are areas where they've identified higher
2 concentrations of either features and/or artifacts.
3 There's three of them. There's one up at this end, one
4 near the center that's partially within the right of way,
5 and then a larger one down here, locality 3, which is
6 also partially within the right of way. And mainly I'm
7 going to show you locality 3.

8 This is a close-up view of locality 3. Here's
9 the same outline. Again, the right of way. West edge of
10 the right of way cuts into it this way. These are all
11 stone feature locations. Again, you see this clustering
12 effect within the site on different portions of it, which
13 is why we refer to it as a cluster camp, for lack of a
14 better word. But there are a lot of -- obviously a high
15 concentration of stone features on this site.

16 MS. GLIDDEN: Were there artifacts for that
17 site?

18 MR. WITHROW: I guess I'd go back to the table.
19 They're listed in the table in the comments section.

20 MR. SCHOEN: I believe there are quite a number
21 of artifacts (Inaudible).

22 MR. WITHROW: I believe there are. 60 plus it
23 says here in locality 2. I'm not sure what I had for
24 locality 3 but it should be in the comments on the table.

25 MR. YOUPEE: Is that in Powder River then?

1 MR. HENKE: This one, Curley? This is just
2 below Highway 450 about 2 miles east of the UP's main
3 line but a mile east of Black Thunder Mine.

4 MS. GLIDDEN: Pretty easily accessible?

5 MR. HENKE: Yeah. You've got to be careful.
6 There's one landowner immediately to the north of us that
7 will come after us if we go on his property. Mostly
8 Forest Service property.

9 MR. WITHROW: This is a view across the south
10 end of the site, locality 3 looking to the northwest, and
11 you see this large outcrop here. And it's near the
12 confluence of School Creek and Little Thunder Creek. So
13 it's situated above that confluence. It's a cluster
14 camp. There are 23 circle features at this site. One
15 incomplete circle or an arc-shaped feature, two
16 piled-stone features, and one rock arc panel. I think
17 it's probably on this outcrop here. Some artifacts.

18 There was actually a clovis point identified at
19 the locality just to the northeast of this location. A
20 clovis point, as many of you are probably aware, is a
21 very old artifact, probably ranging up to 12,000 years
22 old. There's also one glass bead that was found at this
23 site indicating a more recent occupancy as well. So it's
24 a complex site.

25 Example of one of the stone features, the circle

1 features at the site, again looking south to give you a
2 better view of the surrounding terrain.

3 This is the rock art panel. Unfortunately, the
4 scale here is covering part of it. But it's pecked into
5 the stone. There is an area down here that extends down.
6 It looks like it formerly came up this way on this side,
7 as well on this side. It looks like there's a peck line
8 coming in from above. And it's eroded a lot. The
9 patina, the aged patina of the rock that's been weathered
10 is in yellow so you see a lot of it that's missing here
11 in the lighter colored areas. It looks like there might
12 still be a remnant of some other lines as well. But this
13 is part of that site.

14 This is yet a third site, another one of the
15 larger cluster camps, also in Wyoming. 3517. I don't
16 know, Randy, if you have any information about its
17 location.

18 MR. HENKE: It's on Forest Service. It is just
19 north of Jacobs' ranch about a half a mile, mile. Little
20 hard to get to but it's on Forest Service land.

21 MR. WITHROW: It's kind of a ridge of higher
22 ground here. Kind of slopes in this direction. These
23 lines are the railroad right-of-way lines. That's
24 including about half of the site. This is the adjacent
25 drainage. I can tell you what creek that is. Thunder

1 Creek.

2 This is on private land, but it is accessible.
3 It's on a ridge slope area overlooking the creek to the
4 northwest.

5 MR. HENKE: Excuse me. It is private land.
6 It's one of the coal companies.

7 MR. WITHROW: Okay. There are 11 circle
8 features at this site, two of which have stone
9 concentrations in the center, one arc or incomplete
10 circle alignment, one piled stone feature. Archeologist
11 didn't find much in the way of artifacts but there were
12 at least some chipped-stone artifacts present. This site
13 has been identified as not eligible under both C and D.
14 Again, it's not been finalized.

15 This is a view of the one piled stone feature at
16 the site.

17 I thought I had another one. I guess that's it
18 for that one.

19 This is the fourth cluster camp in Wyoming. You
20 can see this one -- rather large site but the railroad
21 right of way is only impacting this portion of it. This
22 is the site boundary here. This is the east side of the
23 railroad alignment, proposed alignment.

24 Again, you see the clustering, little
25 concentrations of the stone circles distributed across

1 that area.

2 MR. HERB JONES: Randy, where is the alignment
3 on the -- so it goes through the very tip of that up --

4 MR. WITHROW: The centerline is here.

5 MR. HERB JONES: Right.

6 MR. WITHROW: The right of way meet area is
7 there.

8 MR. HERB JONES: All right.

9 MR. WITHROW: Misses most of this site as
10 currently designed.

11 MR. RHODD: Randy, can you go back?

12 MR. WITHROW: Yes.

13 MR. RHODD: What are those two features up
14 there, 11 and -- I can't read them from here. 11 and 19?

15 MR. WITHROW: This one's 8, 9.

16 MR. RHODD: No, no. The ones over in the right
17 of way that's going to be impacted.

18 MR. WITHROW: Feature 8. Feature 9. Sorry?

19 MR. RHODD: Whatever those two are.

20 MR. WITHROW: They would both be -- they were
21 both identified as stone circles, yeah, within the range
22 of presumed habitation circles.

23 MR. RHODD: Will that right of way have to be a
24 cut? Because I see that's a contour line just to the
25 left of it. But is that a cut or what?

1 MR. WITHROW: I would assume so. It should show
2 on the plans.

3 MR. RHODD: Engineering?

4 MR. WITHROW: Can you tell, Doug?

5 MR. JACKSON: What was that?

6 MR. WITHROW: Ben was asking whether this is a
7 cut area?

8 MR. HENKE: No. That's the proposed property
9 line. But again, if you go to the page of the book now
10 that we've semifinalized on a grading plan, it looks like
11 we'd probably by property and not buy that and we'd
12 probably put it outside the right of way.

13 MR. FISHER: That blue line, is that a contour
14 line as opposed to the black line?

15 MR. WITHROW: The contour line is this. It
16 comes out this way, indicating this is higher ground.

17 MR. JACKSON: The problem is that the drawings
18 you're showing up here, Randy, don't have the cut and
19 fill that you see in the book. The book has the
20 engineering drawing and it has the cut and fill line
21 (Inaudible).

22 MR. WITHROW: So it would be in your binder
23 identified under this site name, CA --

24 MS. GLIDDEN: And those are pretty well
25 finalized?

1 MR. HENKE: They're pretty close. They're not
2 100 percent finalized but they're close.

3 MS. GLIDDEN: The maps that you got.

4 MR. YOUPEE: Why do we go heavier on top and
5 then we come down and cut into that, make that jog back
6 into the right of way? Why is it different?

7 MR. JACKSON: Because when we planned this with
8 preliminary engineering we did not have the cut and fill
9 and the elevation of the roadbed for the track
10 established. As we adjust that up or down, that
11 elevation approves those lines then. So Randy and I were
12 just saying this is most like a place where that jog in
13 the right of way could potentially be adjusted. We'd
14 have to go back and look and see if it was only driven
15 out there by a cut fill. In that case, we'd probably
16 adjust it back parallel and miss that whole site.

17 MR. WITHROW: Okay. I guess I went a little
18 fast here. I can go back.

19 Okay.

20 MR. HENKE: Curley, the reason we haven't
21 adjusted that property is it's mine property and we have
22 not sat down in final negotiation with the mines. We all
23 know the general property. We have done this in other
24 places where we've narrowed the right of way up as we've
25 refined the engineering. We just haven't done it on the

1 mine property yet.

2 MR. WITHROW: This site is Forest Service land
3 in part. Part also private. Partial access to this at
4 the moment is I think the information I have. Presumably
5 the Forest Service portion. It's on a ridge overlooking
6 Burning Coal Draw, which is to the south of the site.

7 It is identified as a cluster camp, again, with
8 ritual loci. Designated by the piled stone features and
9 the incomplete circle features. There are about 11.
10 This is one here. You can see the flag. Flags usually
11 outline the stones as they've been identified in the
12 field. Archeologist found 4 chipped-stone artifacts with
13 this. Currently listed as eligible under C and D.
14 Unevaluated under A and D.

15 This is the incomplete circle alignment that was
16 identified at the site. Again, it's hard to sort of
17 image the shape here. It seems to have some additional
18 stones out this way. It's sort of an alignment here and
19 kind of a larger group in here. So I'm not sure I would
20 call that a circle necessarily. But it's been typed as a
21 circle alignment on the report so far. But I think the
22 monitor who was on site that day identified it as a
23 possible hunting blind structure. My understanding is
24 it's on the slope so it kind of overlooks the draw
25 through that area.

1 Okay. So those were the four large cluster
2 sites or sites with the most stone features on them.
3 Again, all in Wyoming.

4 MR. HENKE: No. That's in South Dakota.

5 MR. WITHROW: This one is in South Dakota.
6 That's what I was about to say. This one is kind of a --
7 is a different kind of site altogether. It's very
8 unusual. And I wanted to highlight it for that reason.
9 It sits on a high terrace. It's along the Cheyenne
10 River, which would be over this way. The tight,
11 closely-spaced contours here indicate a drop or a scarp
12 on the terrace dropping in this direction.

13 The archeologist found some artifacts down here
14 on the slope that were eroding out of some buried soils
15 along that terrace. And they noticed two large features
16 up on top. Feature 1, which is this one I'll show you,
17 was unusual simply because it's the largest stone ring
18 that has been identified thus far. It measures 12 meters
19 by 9 meters. So it's about 30 feet by almost 40 feet.
20 So it's kind of oval shaped.

21 It's marked by 10 stones, all granite type
22 stone. You can see a couple of them sitting out here in
23 the foreground. They presumably continue around. It's a
24 large circle.

25 Adjacent to it or nearby, I don't have the

1 figures how close, there's one piled stone feature which
2 the monitor on site identified as a possible burial
3 location.

4 MR. JONES: Randy, can you back up to the map
5 again?

6 MR. WITHROW: Yes.

7 MR. HERB JONES: And this is -- we're looking up
8 in the feature up above there that's outside the right of
9 way?

10 MR. WITHROW: This is the large circle here.

11 MR. HERB JONES: Where is the edge of the right
12 of way?

13 MR. WITHROW: Right of way line is here.

14 MR. HERB JONES: So what's the distance to the
15 right of way of that?

16 MR. HENKE: Just in reference, this is the
17 right-of-way line to the BN Railroad. The BN Railroad
18 sits right here.

19 MR. WITHROW: Assume this dotted line is the
20 centerline.

21 MR. HERB JONES: Features 1 and 2 are outside
22 the right of way?

23 MR. WITHROW: Features 1 and 2 are outside.
24 Feature 3, again, designating an area where artifacts
25 appear to be eroding out of the deposit in the terrace

1 here is within.

2 MR. HENKE: My only caution, Randy, on a site
3 like that, we got permission through the court to do that
4 on an extra width. We have bought from this landowner or
5 optioned from this landowner only the right of way. So
6 for us to go outside our right of way now we'll have to
7 talk to the landowner to see if he'll allow us outside
8 the right of way for future work. We have optioned this
9 piece of property.

10 MR. WITHROW: Again, my intent here is not to go
11 through every site that's in this group of 68, but to
12 highlight some of the more unusual ones. So this one I
13 selected primarily because of the size of that
14 stone ring.

15 MS. HALVERSON: In the future, is there going to
16 be some kind of guarantee that those two sites that are
17 outside the right of way aren't going to be disturbed?

18 MR. HENKE: They won't be disturbed by us, but
19 we have no ownership or authority outside the property
20 line.

21 MS. HALVERSON: Yeah, but if you go to the
22 landowner like happened in Minnesota where you could get
23 access to a burial mound and use it for fill, what's
24 stopping you from doing those sites?

25 MR. HENKE: Well, part of our --

1 MS. HALVERSON: I'm asking if there's a
2 guarantee that that won't happen.

3 MR. HENKE: All our fill has to -- all our fill
4 as of right now is generated inside our property line.
5 And for us to go outside the property line, we would have
6 to go through this process if we go outside the right of
7 way.

8 MS. GLIDDEN: The PA covers fill and borrow
9 areas. So any of those areas are part of the APE in this
10 project.

11 MS. HALVERSON: Yeah. But it was a big
12 statement that it's outside of the right of way. It
13 doesn't matter if it's outside the right of way. It
14 still belongs to the people that put it there.

15 MR. YOUPEE: I think the point to be made is
16 that -- is that when we continue to explain these
17 properties in this type of process we're really giving
18 information to other than what's here, tribes and federal
19 agencies as well as the private sector that has the
20 contract or that has the work to be done.

21 The information that is given to the private
22 sector, they could do with it what they want to do with
23 it as far as the information. So it's kind of like
24 providing brokers that information to market what they
25 want to do with these different sites. And I think the

1 more that we get involved with sites outside of the right
2 of way beyond, say, DM&E or beyond STB, I think there's a
3 big risk there. There's a big risk there.

4 But we -- it's necessary for us to do it with
5 you so we can explain and define this information.

6 MS. GLIDDEN: Well, we consider even those sites
7 that are outside of the right of way to be potentially
8 part of the APE for this project because there could be
9 indirect affect.

10 MR. YOUPEE: I understand that. But where does
11 the confidentiality come in?

12 MS. GLIDDEN: It comes in -- I mean, it's up to
13 you to tell us.

14 MR. YOUPEE: Okay. Now how much of this
15 information is going to that private landowner?

16 MS. GLIDDEN: Well, if you don't want any
17 information regarding the specificity of the site with
18 respect to the landowner, if won't go to the landowner.
19 We're intending to keep it just within the STB to make
20 these determinations.

21 MR. YOUPEE: I'm saying that because beyond
22 archaeological surveys and what the technocrats have done
23 to distinguish different sites out there, tribes had come
24 after and --

25 MS. GLIDDEN: Noticed that something --

1 MR. YOUPEE: Also interpret some of the things
2 or additional sites, and so that was recorded. But the
3 next time they went out there, these stone features that
4 we said these are important, these are significant, they
5 were no longer there. They came there with bulldozers or
6 whatever. They needed a ton -- better than a ton of
7 stone, to pick up and take out. And three of them were
8 like that. Just as quick as the next meeting, I mean.

9 So I think the confidentiality clause going
10 beyond the borders -- or going beyond the right of ways,
11 I think we need to address that in the confidentiality.

12 MR. HENKE: Curley, we have not provided any of
13 the landowners any of this information. This has only
14 been provided to this group. Whatever gets published at
15 some point then becomes public knowledge. Now how we fix
16 that, I don't know. That's STB's call.

17 MS. GLIDDEN: You know, for instance, we've
18 gotten a number of archaeological reports. We don't put
19 those on the internet. We just say that we sent the
20 letter out. As far as the details of any of the sites or
21 anything like that, we haven't made it publicly
22 available. And we won't.

23 MR. HENKE: But, again, by Court Order in
24 Wyoming, once the STB approves it I have to provide
25 that -- I'm required by the Court Order to provide all of

1 that STB information. I have to produce it for them.

2 MS. GLIDDEN: For the private owners.

3 MR. HENKE: Yeah.

4 MR. YOUPEE: To the private owners.

5 MR. HENKE: We have not produced anything to
6 them but by Order I have to produce it to them once it
7 becomes public knowledge.

8 MS. GLIDDEN: And actually even in the
9 Programmatic Agreement it will say that any artifacts
10 that are collected from private land actually belong to
11 the private landowner and it would be up to them to
12 decide if they wanted to have it curated by a federal
13 facility or by tribes. It's in the PA. So that is a --
14 definitely something to be aware of.

15 MR. YOUPEE: Well, what I'm trying to get around
16 is the possibility of private -- or landowners from
17 destroying those sites anyway. Because there's --
18 there's a monetary benefit to them for that. That
19 monetary benefit is created by this archaeological,
20 anthropological society. And it's a hard -- it's really
21 a complex -- there's a tough thing to contend with for
22 tribes. Or at least one tribe. But we try to get a
23 consortium of tribes to do these things. But --

24 MS. GLIDDEN: Now all the land -- Randy, all the
25 land that's within the right of way you eventually will

1 own; correct?

2 MR. HENKE: Assuming we close all the options,
3 yeah.

4 MS. GLIDDEN: Would there be anything that you
5 could do to ensure that some of the properties within the
6 right of way, if they're not going to be destroyed to
7 potentially be in some way --

8 MR. HENKE: We have control inside the right of
9 way. As part of the mitigation plan we can protect,
10 do -- I mean, we've talked about this before how we could
11 fence or how we could pull fill in and other things to
12 protect stuff inside the property we will eventually
13 control. What I think Curley's talking about is where
14 we're outside the area we control.

15 MS. GLIDDEN: That's tough.

16 MR. YOUPEE: Well, I think you need to take a
17 count or at least record that type of erosion or that
18 type of impact. Because the project itself causing the
19 impact other than the right of way. You see what I'm
20 saying?

21 MS. GLIDDEN: Yeah.

22 MR. YOUPEE: And I think that's necessary for us
23 to understand that. Because we're letting a lot of
24 information here and it's going to impact those sites if
25 we have no control over them.

1 MS. GLIDDEN: I think all of the maps do show
2 very clearly, you know, where the sites are and the
3 boundaries, at least as the archeologists have outlined
4 them.

5 MR. WHITE DIRT: Those sites, a lot of the
6 landowners they already know that that site is there. It
7 seems like it's -- the more people know about that site,
8 the cost of the land goes up. Assume they end up selling
9 their land because of higher offer because of them --
10 those sites. It would be some kind of way to protect
11 those sites even though the person that owns the land --

12 MS. GLIDDEN: Right.

13 MR. WHITE DIRT: If any of you guys -- since you
14 have the authority in Washington, D.C. should have some
15 kind of at least legal option to help protect the land.
16 You guys have already gone through a lot of property
17 already that had sacred sites.

18 MR. FISHER: Randy, I kind of wanted to go back
19 to 39 FA 1362. It's just one before this. Oh, there it
20 is. Yeah. Yeah. This one here. But the map itself.

21 I'm curious. Just within the right of way, the
22 bottom right in the center -- bottom center of this
23 picture, what kind of site are we looking at? I know
24 you're talking about the sites outside the corridor but,
25 yeah, that one there.

1 MR. WITHROW: As I recall, these are -- it's a
2 collection of chipped-stone artifacts. This escarpment
3 here, this is the terrace edge right there. And my
4 understanding is that they were seeing a varied soil
5 coming out about a meter down below the surface. And
6 there's some chipped-stone artifacts eroding out of that
7 buried soil. And what they're finding is the artifacts
8 are actually eroded down slope here a little bit. So
9 they're plotting the location of them and that's what
10 those markers indicate, location of those stones.

11 Now did I include here the number? 100 -- a
12 little over 100 or more chipped-stone artifacts,
13 including one projectile point that was typed by the
14 archeologist as Middle Archaic, which is about 8,000
15 years ago. They're actually seeing four buried soils.
16 So a series of stacked occupation layers, if you will,
17 potentially within that first meter of the terrace
18 surface. So I would say there's likely potential for
19 older occupation of this area buried beneath that. What
20 you're seeing here is just the most recent use.

21 MR. JACKSON: Randy, even on that, the one, the
22 feature 3 I think you call it, we miss it. Grading
23 doesn't disturb it.

24 MR. WITHROW: All right. This one here?

25 MR. JACKSON: Yep.

1 MR. HENKE: Correct.

2 MR. WITHROW: Should I move on? Again, in
3 addition to the large circle, there is a rock pile, a
4 cairn, nearby. I forget the distance. I don't know that
5 I noted that. It may be in the comments. This is
6 feature 2 and it was identified as a possible burial by
7 the monitor on site. There are six stones exposed.

8 This is another site. This was kind of an
9 unusual one. It's a rock alignment and piled stone
10 feature. You can see they're represented here by this
11 icon right there, feature 1, which is the pile of stone.
12 And this one, which is the alignment.

13 And it's not clear from the photographs but we
14 have in the reports just how closely they are associated
15 with one another, but they seem kind of close in
16 proximity. Otherwise it sits on -- this is the
17 centerline. This is the east boundary of the right of
18 way, so the site is 100 percent within the right of way.
19 This is a high prominence. There's a ridge that extends
20 this direction, kind of the knob or the end of it here.
21 And so this feature is on a little bit of a side spur
22 that extends to the south. So it's -- the alignment is
23 aligned with the direction of that ridge.

24 This is the overview shot that we have. This
25 site is on -- is in Wyoming. It's on Forest Service

1 land. Access is available. So it's on the east end of
2 this ridge, extending from a nearby plateau or mesa area,
3 flat area, overlooking West Beckwith Creek. The site as
4 it's defined archaeologically includes an alignment and
5 the piled stone. A question about whether they're
6 related or combined is not understood. The site was
7 first reported back in 1999 as part of the survey done by
8 USD through this area. They identified it actually as
9 two cairns connected by an alignment. The tribal
10 monitors at that time identified the site as a potential
11 spiritual location.

12 Site records show that the U.S. Forest Service
13 had been back in 2001, also inspected the site. They
14 advise that it remain unevaluated pending tribal
15 interpretation and involvement. Ian, I don't know if you
16 are familiar with this site at all.

17 MR. RITCHIE: Yeah.

18 MR. EAGLE BEAR: Is that a buried cowboy?

19 MR. WITHROW: Here? Yeah. This is all that's
20 left of him.

21 MS. HALVERSON: Sticking up in here or down?
22 You'll know if it's a cowboy if his boots are up in the
23 air.

24 MR. WITHROW: Currently it's listed as not
25 eligible under B, C, and D, but again, in accordance with

1 the Forest Service, I believe the Wyoming SHPO has also
2 weighed in on this, they're reserving it as unevaluated
3 for now.

4 MR. HENKE: I was just talking to Ian. This is
5 on Forest Service, but it's surround by Jerry Dill
6 (phonetic). We cannot touch Jerry Dill's property,
7 although maybe working with Ian we can get to it because
8 he can get -- technically can get -- Forest Service can
9 get to all the properties.

10 MS. GLIDDEN: Ian, can we work through you to
11 get access on some of these things?

12 MR. RITCHIE: We can probably work it out.

13 MS. GLIDDEN: Okay.

14 MR. WITHROW: This is the piled stone feature
15 that's at the site. Fairly substantial. This is the
16 alignment, which is a pretty clear alignment, I think.

17 MR. TIM MENTZ, SR.: Randy, is the determination
18 made on testing for these types of sites from a rock
19 pile -- how are you going to determine eligibility? I'm
20 assuming you're going to test. What was you planning on
21 testing? How are you going to test eligibility? With a
22 stone circle and a rock pile.

23 MR. WITHROW: I think I'd have to go back to the
24 report to be sure, but I think the archeologist has
25 argued that there's not much soil left here and that's a

1 big concern from criterion D standpoint and I think
2 because they noticed not much soil left, they assumed
3 very little potential for any kind of buried
4 associations, archaeological deposits. So that was the
5 basis for them recommending it not eligible under
6 criterion D. Essentially they're saying it has no
7 integrity for buried deposit potential.

8 MS. GLIDDEN: I think some of them also have not
9 been excavated yet. This is my phone. I'm sorry. Mine
10 never rings. Nobody ever calls me.

11 MR. WITHROW: The feature, the site as it's
12 defined, again, by the archeologist includes that
13 alignment, that cairn feature, those two things. So far.

14 MR. TIM MENTZ, SR.: Well, not considering this
15 one, I'm just saying on the ones that you all have
16 unevaluated and you have a stone -- what you're calling a
17 stone pile, how are you going to determine eligibility?
18 How are you going to test it?

19 MS. GLIDDEN: Well, I think one of the things
20 that we're concerned about is that if we just leave it up
21 to the archeologist assessment, which would mean is there
22 a deposit, is there anything there, we're going to define
23 it as not eligible.

24 MR. TIM MENTZ, SR.: You're going to what?

25 MS. GLIDDEN: We would probably have to define

1 most of them as not eligible because the ones that we
2 have tested we've noticed that there's almost no
3 deposit, there's nothing there. There's nothing
4 archeologically --

5 MR. TIM MENTZ, SR.: So some have been tested?

6 MS. GLIDDEN: I think some of them have been
7 tested.

8 MR. WITHROW: As part of this project, I can't
9 say.

10 MS. GLIDDEN: The other thing is that in
11 Wyoming, they use the deposit, whether or not there's a
12 deposit as one of the criteria for determining
13 eligibility of the stone circles.

14 MR. TIM MENTZ, SR.: Assuming it's in North
15 Dakota.

16 MS. GLIDDEN: So obviously we're not going to
17 get anywhere in terms of being able to determine
18 eligibility by testing these things. We're most likely
19 going to find them not eligible because there's not going
20 to be anything there. So that's why it's important that
21 we get the tribal input on eligibility so we can look at
22 A criterion first.

23 So it's really critical -- that's why it's
24 really critical we (Inaudible). Because if we test them
25 to determine their eligibility under D, I think most of

1 them are going to be found not eligible because the
2 criteria that they look at in South Dakota and Wyoming,
3 again it's the perspective that if you don't have
4 anything there in the ground associated with it, there's
5 no data you can get out of it.

6 So the information potential part of it -- so
7 that's why I didn't think, you know, in terms of
8 eligibility, criterion A, association with important
9 events in history, association with ritual use and so on
10 through time, that would be how we find these sites
11 eligible.

12 MR. TSONETOKOY, SR.: Can you tell us what the
13 method of testing involves?

14 MR. WITHROW: Usually with cairns, I mean, as a
15 general rule those sites have not been tested as part of
16 this project. Now there's similar kinds of features have
17 been tested in the past and on other projects in other
18 areas. I mean, obviously one thing that's been found is
19 they tend to be associated with burials. And that's one
20 possibility for these rock piles of stone. So that's one
21 possibility. And they should -- that's a real distinct
22 possibility in some of these areas.

23 Others were created for different reasons we
24 assume. We're kind of counting on you to help us
25 interpret those things. As far as testing --

1 MR. TSONETOKOY, SR.: Testing, though, are you
2 taking samples from the rocks or are you taking soil
3 samples or doing soil profiles? What's being done?

4 MR. WITHROW: I'm not sure that they would need
5 to be excavated. They're usually mapped in and they're
6 assumed to be simply piles of stone. If there are
7 artifacts associated with them, that would be what the
8 archeologist would primarily be looking for is some kind
9 of artifact association that would help them assign a
10 function or a purpose to that pile. That's how they
11 would approach it.

12 MR. YOUPEE: I think that's where the tribes and
13 archeologists differ. Because there's times that we're
14 not going to get that information concerning a site like
15 this. You don't know -- you don't know this site. I'm
16 not going to tell you this site. You can't even use this
17 site. You can't go there and say this is me and this
18 site is my people, spirit of my people. I'm going to use
19 this site. You can't say that. You can't. There's no
20 possible way that you can do that as an individual, as a
21 scientist.

22 You can't go to this site -- I haven't even been
23 here. I don't even know this place. I haven't been
24 there. But we have people that can come here and know
25 what this site is in a spiritual realm. Archeologists

1 can't do this. They don't have the ability. They're not
2 connected to the earth like we are as a people.

3 The stone itself is a deity form, okay. And I'm
4 not prepared to give you that type of information.
5 Because you're not going to understand it anyway. You
6 can't connect -- there's no possible way. You can't do
7 it.

8 This is why we're two different people. Okay.
9 But try to explain that under the criteria C, D -- B, C,
10 D.

11 MS. GLIDDEN: Yeah. I mean, that's the big
12 problem with this eligibility, the way that they evaluate
13 these sites, because the National Register criteria were
14 developed to evaluate houses, buildings.

15 MR. YOUPEE: Yeah.

16 MS. GLIDDEN: And then TCPs were added later on
17 and you still have the criteria. It doesn't really work.
18 I mean, so it makes it really hard. But I think you
19 could still find them with the criteria, the criterion A,
20 that would be a way to address those issues. I mean, the
21 big question is in terms of determining its eligibility
22 is that it would then be included in our treatment plan.
23 And you would be included in developing that treatment
24 plan for those eligible sites. If we don't find them
25 eligible, they're not going to be included in the

1 treatment plan. So --

2 MR. YOUPEE: Well, I become frustrated at times
3 when the archaeological community determined not eligible
4 under B, C, D.

5 MS. GLIDDEN: Well, I mean, I think it's still
6 possible, even within the -- even within, you know, the
7 tribal perspective to find a site eligible under D that
8 an archeologist determined wasn't --

9 MR. YOUPEE: Yeah.

10 MS. GLIDDEN: -- important under D because there
11 might be data that you would find important from a tribal
12 perspective. I wouldn't rule that out.

13 MR. WITHROW: At this point those are the
14 consultants' recommendations.

15 MS. GLIDDEN: Those are the archeologist's
16 recommendations, and we're looking for yours.

17 MR. WITHROW: In our classification these are
18 all unevaluated sites.

19 MR. HERB JONES: I think that's why we're here,
20 Curley, is there are these sites that we were originally
21 instructed not to evaluate those, not to do that work on
22 these sites and to get the tribal input on these sites.
23 These are all unevaluated sites from that criteria and
24 that's the point of the get-together.

25 MR. YOUPEE: Well, yeah. And I agree with that.

1 But I also agree that, you know, there needs to be more
2 tribal input. We can't be excluded from these meetings
3 when we're talking about formulating a description or
4 what was the -- what was the -- had some terminology that
5 I differed with.

6 MS. GLIDDEN: Study?

7 MR. YOUPEE: Determination, eligibility.

8 MS. GLIDDEN: Okay.

9 MR. YOUPEE: But it had -- resolving.

10 MS. GLIDDEN: Resolving.

11 MR. YOUPEE: Resolving eligibility. And so, you
12 know, those are two different -- two different ways of, I
13 guess, of trying to come to a happy medium, determining
14 and then resolving. But resolving, again, becomes a
15 complex form because, you know, we've built ourself into
16 a complexity here. This whole DM&E business since the
17 beginning with Claire Green and I doing an MOA, we
18 thought that was going to, you know, be helpful. It was
19 helpful to the eight circuit appeals court. It was
20 helpful.

21 But it seems like we're drifting from some
22 important matter. We have 68 sites here. And some of
23 them have been -- pictures taken. The availability, the
24 opportunity for tribes to go and measure, okay, sites,
25 I'm not saying by dimensions. I mean, measure

1 spiritually, taking scientific information to measure,
2 physical. Okay. That opportunity, you know -- that has
3 to happen. That has to happen. And I think Louis
4 Berger, you know, because they're a third party have been
5 doing a pretty good job in trying to balance, I guess,
6 the concerns of DM&E and tribes and appease the STB, you
7 know, of what we're trying to achieve here.

8 But still we need to formulate, I think, a
9 tribal opportunity, go ahead and get that physical
10 examination done. I don't know what more we need to do.
11 You have a tribal caucus this afternoon. I'm not sure
12 what that's going to be about.

13 MR. WITHROW: I would say it's about defining
14 how to get to that step. That's what we really need to
15 do. We understand that.

16 MS. GLIDDEN: My vision is that we would sit
17 down and talk about next steps. How do we go ahead and
18 get out there, get to look at the sites, which sites you
19 think you might want to see, what tribal elders we could
20 get out to see this, if you have tribal elders that could
21 assist us with this. So we're going to get into more
22 details about what our next steps are going to be for
23 this.

24 MR. TSONETOKOY, SR.: More on the spiritual
25 aspect of what Curley's talking about is that, you know,

1 I think one of the Congressional enactments I think tried
2 its best to try to define what that is, but that is, you
3 know, NEPA -- NEPA regulations. And I think the best
4 that they could come up with, though, was this term
5 called cultural landscape. I think what they were trying
6 to do, though, or whoever was trying -- had to hand it to
7 them, that they were trying to define the spiritual
8 aspect of that, you know, that they took all the ecology,
9 the components of the ecology of the land and the animals
10 and the riparian areas and the geology of the land.

11 MR. YOUPEE: Seasonal humidity.

12 MR. TSONETOKOY, SR.: Yeah. All of that. They
13 were trying to define what I call a spiritual landscape.
14 That's what they were trying to do. And that's
15 important. That's important because there is a spirit
16 that's in the land, you know, and you see it in different
17 aspects. You know, I'm sure -- I, you know, the tower
18 that's associated with Bear Butte. And Bear Butte of the
19 Black Hills. There's a cultural landscape there but
20 there's a spiritual aspect of that too that's more
21 important, just more meaningful. And it's hard to
22 define, you know. You can't define spirituality in those
23 terms. But NEPA, I think, probably tried to do the best
24 that they could to define that.

25 Spirituality is important. Last week I was up

1 here. I went down to the Dead Horse Creek there where
2 they were having all of that construction there and all
3 of those roads and byways and gravel roads. Boy, that's
4 really impacted the area. I drove through there, you
5 know, and I looked at the areas there. I noticed these
6 big old fans -- I don't know what they're used for, but
7 these big old fan units are sitting out there in the
8 valleys there and right alongside are these prairie dogs
9 there, you know. And I wanted to sing that song, you
10 know.

11 (Dewey Tsonetokoy sings)

12 That's a Kiowa song for prairie dogs. And those
13 prairie dogs are being impacted by that construction
14 that's going on there, you know. And not only that but
15 while, you know, driving those roads, along the side of
16 the highway I saw a dead coyote. Someone had just shot
17 it and just let it lay there on the passageway. And
18 those antelopes. You know, I drove by those antelopes.
19 And, you know, I could feel their distress, you know.
20 It's like they don't know what the heck's going on. What
21 happened to their world is kind of the feeling I got from
22 these animals. They looked confused, you know, because
23 of all the activity that's going on around there. So
24 that's spiritual. You know, I felt that spirituality of
25 those animals and I saw like the stress in their

1 demeanor, you know. So I was kind of concerned about
2 that.

3 So, yeah, certainly people -- I don't know if
4 the Surface Transportation Board or DM&E is considering
5 that. I know in archeology you go and you excavate a
6 site. You develop what is called provenance and you get
7 all this data recovery into this provenance study and
8 that helps you to tell the story what happened there at
9 that site, okay.

10 But in the overall bigger picture here is the
11 land here, you know. And so what we're kind of -- you
12 know, where we're kind of involved here is a bigger idea
13 of that, you know. Because each one of these sacred
14 sites tells a story, like they're all connected, see.
15 They're all interconnected. So that's not just one
16 aspect of this sacred site that's here and this sacred
17 site that's over here. All of that is connected.
18 They're all related to each other. So you have like a
19 real big provenance going on here, you know, in this
20 area. And you can't impact one area and not have it not
21 impact this other area. You see what I'm saying? It's
22 all related.

23 So but, you know, I have to say that, you know,
24 going to have to respect the NEPA regulations when they
25 were established because they tried to, you know -- it

1 seemed like they tried to define what that -- that
2 spiritual element of the landscape was, you know. So
3 that's just one thing I wanted to interject here.

4 MR. WITHROW: Let me see if I can get through.
5 We're almost done. I've just got a couple more. But
6 they're important. I'd like you to have a look at them.

7 These next two or three sites have been
8 identified as having potential for burials. And for that
9 reason I think it's something we should talk about.

10 This is a site in South Dakota, Custer County.
11 The centerline, the alignment, right-of-way boundary,
12 east and west, sorry. West right-of-way boundary. The
13 main site is in here. There's some prehistoric artifacts
14 that were found over in this area as well.

15 This site was first identified by USD in 1999,
16 and they identified four areas. Let's see if I can pick
17 them out here. I think it's -- this one's listed as
18 grave no. 4, feature 2. It's not listed that way, but
19 it's -- here's 1 and 2, 4, and I believe there was
20 another one over in this area. They're not listed that
21 way on that map so it's a little confusing.

22 But they were -- this is on private land.
23 They're all on this high land form here. It's
24 overlooking French Creek, which is to the north. The
25 site is typed as a group camp because it has two or

1 three -- I guess two stone circles. And then there are
2 these four rectangular outlines, and those are the things
3 that were identified as burials. In the original report
4 they were identified as Euro-American burials because of
5 the, I guess, brave-looking outline.

6 The site was revisited in 2007 by SWCA. They
7 were able to relocate three out of the four rectangular
8 features. They did not see the two stone circles. They
9 suggested based on the artifacts that were on the
10 surface, which were all precontact chipped-stone
11 artifacts, that these were all prehistoric or precontact
12 features, not Euro-American in affiliation. And the site
13 is currently unevaluated. We've got some photographs of
14 these features so you can see them.

15 This is a photograph that was taken of this same
16 feature in 1999. You can see it does have some angular
17 edges on it and fairly straight edges. So it does not
18 really conform to a circle form. This is the one that
19 shows it most pronounced. This is the same feature
20 photographed in 2007.

21 MR. YOUPEE: Scaffolding.

22 MR. WITHROW: This is the second one. Again,
23 there are areas that look like, you know, more of a
24 straight alignment, other areas a little more curved but,
25 again, whether the stones are moving out of place a

1 little bit would be the question.

2 This one is a little bit more difficult to
3 recognize, but you can still see pretty clear alignment.
4 I'm not sure where the stones are over here. Certainly
5 along this end.

6 MS. GLIDDEN: It looks like there's a little
7 circle there near the tape.

8 MR. WITHROW: I think so. And those are the
9 three that SWCA was able to relocate. We don't have
10 photographs of the other ones from the USD survey.

11 MR. YOUPEE: What do you mean relocate?

12 MR. WITHROW: They went back to the same site in
13 2007.

14 MR. YOUPEE: And it was there?

15 MR. WITHROW: They had a map made by USD but
16 they could not locate all the things that USD had seen.

17 MR. YOUPEE: What was the time span between USD
18 and --

19 MR. WITHROW: 1999, USD, and 2007. So eight
20 years later. So this one's a little unusual that way.

21 Another site also in Custer County,
22 South Dakota. Site 1831. This one's on State land.
23 Access for it is available. Upland overlooking French
24 Creek. This is reported as having rectangle feature and
25 piled stone feature identified as a possible burial.

1 MR. HENKE: But it's all outside the right of
2 way. We completely miss it, Randy.

3 MR. WITHROW: Is it? This is the west
4 right-of-way line then. And here's the centerline.

5 MS. GLIDDEN: Any possibility for buried
6 deposits there?

7 MR. WITHROW: As I recall this one, I think the
8 photograph I have will show it. It's a highly eroded --
9 this is the upland higher portion here. There's a
10 concentration of chipped-stone artifacts here on top of
11 this hill. The burial was reported as here. There's
12 sort of a little saddle that runs through here with a
13 higher promontory here as well. Some burials down in
14 this area. This whole portion of this land form is
15 highly eroded.

16 MR. YOUPEE: And how was the Euro-American
17 burial identified?

18 MR. WITHROW: Again, by the shape. And
19 unfortunately in the USD report there was no photograph
20 taken. And the group that went back in 2007 could not
21 find it again.

22 MR. YOUPEE: By the shape, what do you mean? I
23 just want to understand because I don't want to get -- I
24 don't want it to get too messy out there.

25 MR. WITHROW: My understanding is it had the

1 same kind of rectangular or straight-edge outlines as the
2 ones at the previous site I just showed you.

3 MR. YOUPEE: Are you familiar with burial
4 scaffolds?

5 MR. WITHROW: Yes.

6 MR. YOUPEE: And what happens there when the
7 rocks or the timbers loosen up? The rocks kind of shift
8 around as well. It becomes a square or rectangle.

9 MR. JACKSON: Randy, on that previous one you
10 showed, all three of the areas that were identified as
11 potential burial sites we don't affect.

12 MR. WITHROW: Yeah. Again, this one, because of
13 the uncertainty, you know, one group going out and
14 finding one set of features, the other group going out
15 and finding --

16 MR. YOUPEE: That one there. That's your
17 Euro-American burial?

18 MR. WITHROW: That's how it was identified
19 originally, yeah.

20 MR. YOUPEE: Okay.

21 MR. WITHROW: Again, this is that -- here's the
22 centerline. Two of those features, grave no. 4, feature
23 3, these two -- I think these three --

24 MS. HALVERSON: The rest are all in the right of
25 way.

1 MR. WITHROW: -- features here are -- three of
2 the four. I think there was another one that was over
3 here.

4 MR. JACKSON: Yeah. It's missed by the grade.
5 It's a fill section.

6 MS. HALVERSON: Fill sector?

7 MR. WITHROW: But in any case, I don't know what
8 to make of the fact that one consultant group goes out
9 and finds one thing, then another one comes back two
10 years later and can't relocate some things. That seems
11 like we need another look, especially these here. So
12 that's why I included it in the group I wanted to
13 highlight for you today.

14 This one, this is a -- identified as a rock
15 cairn or a piled stone feature. It's up on that higher
16 promontory. Again, go back to the site map here. It's
17 in this area, specifically right there. Yeah. Again,
18 the burial with the rectangular outline was located
19 farther to the northwest.

20 I guess I don't have a photograph of that
21 overall area except for this photograph. But the topsoil
22 is very eroded on the other photograph I remember seeing.

23 MR. HENKE: Again, Randy, that's completely
24 outside of the right of way, that whole site.

25 MR. WITHROW: Right. I'm just highlighting all

1 the ones that were recorded as having burials.

2 MS. HALVERSON: Isn't that the right of way
3 right there?

4 MR. HENKE: That's a different one.

5 MR. WITHROW: This is a different site now, this
6 one.

7 MS. GLIDDEN: Can you look at the previous map?

8 MR. WITHROW: Yep. Let me go back here. So
9 what Randy is saying is that this is the centerline,
10 proposed centerline. This is the west edge of the right
11 of way. So they're not going beyond this line. And it
12 does miss this entire site as mapped.

13 MS. GLIDDEN: I think it's important to note,
14 though, that, again, even if the site is outside of the
15 right of way, that there still could be an impact, an
16 adverse effect. So but, yeah. Obviously it's not going
17 to be a direct impact in a situation like this. But, you
18 know, the setting of the site, everything could
19 potentially be affected by a railroad coming through
20 there. If it's used such that you need quiet and peace
21 then all of the sudden you have a railroad.

22 MR. WITHROW: We'll stop with this next one, but
23 this one also has a reported burial. And it actually is
24 here. There are three stone circles on this site.
25 Here's the centerline. This is the outside right-of-way

1 line. So the burial is outside, again, but adjacent.
2 There are a couple stone circle features inside.

3 This particular one, it's on private land. Just
4 to get through that. Currently typed as a group camp
5 because of the presence of circles. But this piled stone
6 feature was identified as having high potential for human
7 burial.

8 MR. HENKE: This property falls in the category
9 of we have not made a deal with him. Historically he has
10 let us on sometimes and hasn't let us on sometimes.

11 MR. WITHROW: I don't have a photograph of this
12 particular feature. This was the drawing that was made.
13 The notes in the site description indicate that among
14 other things the cobbles that are present are all reddish
15 in color. And it's oriented in a northeast-southwest
16 direction.

17 So I had a couple more. We can save those for
18 after lunch. I'm told the food is ready and we shouldn't
19 let it get cold. So I guess for that reason I'd like to
20 suggest we all adjourn.

21 (A lunch recess is taken)

22 MS. GLIDDEN: Okay, everybody. We're going to
23 get started again. Randy is going to finish up the
24 sites. And one of the things we wanted to do is show you
25 the maps as they've been updated. Randy Henke has a map

1 up right now of one of the sites that Randy had showed
2 you. And it really explains in much more detail about
3 the impact to the site based on the different lines that
4 show up on the map, the cut versus the fill lines. In
5 some cases the site will be filled over and so not
6 impacted beyond just being filled, and in other cases the
7 site will be excavated.

8 All these maps are in your map book and there
9 are these big maps that should be inside at the very end
10 of the book.

11 MR. HENKE: I just want to briefly go over
12 because the maps Randy had are identical except they're
13 missing a bunch of things we tried to do to make it
14 easier for you to look at and evaluate at least from a
15 map standpoint.

16 So if you look on the maps, these are always
17 oriented the same way. This is towards the mines, that's
18 back towards Wall. There is a north arrow on all of them
19 so you can orientate yourself.

20 Like on the other maps we have a property line
21 and a centerline. What's added on these maps is then
22 either a cut line or a fill line. And if it's cut, it
23 will say cut, and if it's fill, it will say fill. I'll
24 show you in a minute what that means. And then we've
25 plotted on top of that all the sites, similar to what

1 Randy showed you earlier and then on top of that we put
2 all the features on it so you can see what's happening at
3 each one of these sites.

4 This is the one Randy talked about earlier, the
5 Quinn property with the burial sites that are off the
6 property and the one potential burial site that's here.
7 You can see by this line that it misses the fill right
8 now. Again, if this changes and goes up, then that fill
9 line's going to go out. But it looks like regardless of
10 what happens there we can probably find a way to protect
11 that site as part of it.

12 MR. HERB JONES: Randy, explain fill and cut for
13 those people who don't know what --

14 MR. HENKE: Well, I'll show you in a second.
15 Then you go up to the next site, this shows all in fill.
16 And then when you get up here, this is a huge cut. This
17 is up on the Bees' ranch. This is one of the largest
18 cuts on the whole job.

19 And what we did then, again, so you can tell
20 what we're doing at each one of these sites, these lines
21 it says A, B, C. So if you look then in your book, it
22 should be immediately following the map will then be
23 this, which will be A, B, and C, sections cut. So you
24 can see what we're doing -- we're up on a fill here. Not
25 a real high fill. And we also plotted in where those

1 site boundaries are at that cut. So you can tell right
2 in there is where that site boundary is. Here the site
3 boundary -- I can't quite see it here. Here's it up
4 here. I can't see where that one is. That's the
5 centerline. But that's a site boundary. So depending on
6 where you are on the map, that will show you where the
7 edge of the boundary of that is.

8 And then if you -- that's what we call a fill
9 section where the track's been built up over the existing
10 ground line. And then if you go to the very next one,
11 which is the one I told you a very big cut, this is a
12 huge cut where -- we're cutting 100 feet deep here.
13 There's where that cultural site lies, somewhere in
14 there. And then if you go up the other section -- and
15 this is so big it's on two sheets because you couldn't
16 get the cross-sections on one sheet.

17 So just trying so you know what you got in the
18 book. And if I back up, one thing I didn't say on the
19 opening page, there's a description of every site. So
20 this is Site 1822. It gives you the explanation of what
21 it is, what was found. This is the next site down here.
22 Explains all the things that were found, how bad it's
23 impacted, et cetera. And then for 1825 you got to go to
24 the next page. That was on a different page. But every
25 site has a site number and a description that goes with

1 it. So we've tried to provide every bit of information
2 we have on these in as concise a format as we could so
3 you can look at them and evaluate them.

4 So I just wanted to make sure you understood
5 that the maps in the book are different than the maps
6 shown. All the information's the same, this just
7 enhances that information so you got more detail.

8 MS. GLIDDEN: Thank you. That's very helpful.

9 MR. WITHROW: Okay.

10 Okay. I just have a couple more to look at.
11 Let's just get to those.

12 Let's see. This site is in South Dakota, Custer
13 County as well. The site number is 1870. It's a long
14 linear site boundary, follows a ridge line through here.
15 There are features scattered throughout this area.
16 There's a large concentration down here that includes
17 both stone circles and some of these arc-shaped or
18 partial circle forms. Another one here in the center.
19 Circle up at the top. I think maybe a cairn or a rock
20 concentration here. So it's kind of -- there's some
21 inside, some outside the right of way.

22 This is on State land. It's one of the reasons
23 I highlighted this is because it's an example of -- shows
24 some example of some of these stone features that are not
25 complete circles. And this site was also singled out by

1 the tribal monitors who advised further consultation of
2 this site. They were particularly concerned it seemed
3 with the partial circle alignments.

4 Access is available. Within our typology it's
5 identified as a group camp, again, a small, less than 10
6 circle size camp. It's on the upland overlooking Battle
7 Creek, which is to the south. Four stone circles total,
8 four incomplete circles or arc alignments, five piled
9 stone features, another linear alignment. I guess two of
10 the circles and one of the arc are within the APE.
11 Others are adjacent. Consultant recommended it eligible
12 under criterion D, otherwise it's considered unevaluated.

13 MR. HENKE: Randy, just to be clear, part of
14 this site is on Forest Service. Part of it is on a
15 property we don't have access to.

16 MR. WITHROW: Okay. So that's wrong? It's not
17 State land?

18 MR. HENKE: Part of it's up against Forest
19 Service and part of it's on property we don't have access
20 to it.

21 MR. WITHROW: So we have partial access only to
22 this one?

23 MR. HENKE: Partial access, yeah. Southern half
24 of it.

25 MR. WITHROW: And I guess that's the only shot

1 that I had of this particular site. This is from roughly
2 the center of the site looking south, southwest. So it
3 gives you a view of what the rest of the site general
4 area looks like.

5 Okay. Custer County, South Dakota. It's 1874.
6 This one I chose to illustrate because it has some very
7 interesting circle features. It's on Forest Service
8 land, if that's correct. Access is available. It's on
9 an upland area overlooking -- Spring Creek is over to the
10 east. Actually it kind of drains off in this direction
11 so you're right at the head of that creek.

12 One circle. I believe this one here, feature 3,
13 and then the two combination features which are circular
14 outlines with fairly pronounced concentrated piled stone
15 in the center of both of these.

16 This site, the site boundary looks a little odd
17 here because there was one visit that outlined the site
18 boundary as including this feature and then a subsequent
19 visit extended it to include another one out here.

20 Here's the centerline for the alignment running
21 through this way. The west right-of-way boundary, east
22 right-of-way boundary.

23 MR. HENKE: Again, just to be clear, Randy, all
24 the features found are outside the right of way.

25 MR. WITHROW: That's correct. Again, this is

1 one of the more interesting circle feature types. In the
2 literature you see references periodically to circle
3 features that, again, have had rocks added to them,
4 either in the form of concentrations in the center or
5 additional alignments extending out from them. These are
6 sometimes referred to, again, in the archaeological
7 literature as memorial areas. Sometimes they're even
8 referred to as medicine wheels. But, again, we're trying
9 to avoid those kind of interpretive labels until people
10 who know better can tell us.

11 This is an example of what one of these looks
12 like. Another one nearby.

13 And, finally, this site. I included this site
14 because it also includes a rock carving, a petroglyph
15 within it. It's kind of an unusual site in a lot of ways
16 because it's been visited a couple different times and
17 it's one of those examples where one group of consultants
18 went and observed something and the second group went and
19 didn't see some of the same things but added others.
20 It's a little confusing.

21 This site is in Wyoming, Site 1862. Again, the
22 site boundary is the dark outline. The centerline,
23 proposed alignment is here, and this would be the east
24 right-of-way line. These gray shaded areas inside here
25 are rock outcroppings, and one of the petroglyphs is on

1 one of these.

2 Off to the east of the rock outcrops are a
3 couple of depressions, and they're about -- one measures
4 about 10 feet in diameter, the other one about 5 feet.
5 The archeologists during one of their visits had put a
6 soil probe down into one, didn't find anything, but they
7 concluded based on the soils that it was about 2 feet in
8 depth, filled in.

9 And I think the original site report, it's on
10 Forest Service land, it is accessible. It's on a foot
11 slope of this outcrop, Beckwith Creek flows to the east
12 of it. The original site report identified a stone
13 circle at this site. Subsequent visits by archeologists
14 in 2006 did not relocate that. Apparently the Forest
15 Service was there as well in 2002 and could not relocate
16 that circle so it's unsure exactly what that is. It
17 looks like there's probably, you know, some
18 susceptibility in here to blowing sand or things like
19 that so it may have been buried or covered in the
20 interim.

21 Besides the stone circle there was a hearth
22 identified. One of the archeology teams that visited the
23 site characterized the hearth as more recent in origin.
24 There were some signs of historic use of this area.
25 Apparently it's a nice windbreak area and sheep herders

1 or someone like that may have used it as a way to get out
2 of the elements a little bit.

3 And at least one of the consultants identified
4 the depressions which are over here as historic in origin
5 too without really ascribing any real clear
6 interpretation to them.

7 Forest Service, when they were there in 2002,
8 did not find the circle. They could not find the hearth
9 feature. They examined the petroglyph and considered it
10 to have been deteriorated to the point where it was
11 recommended not eligible. Wyoming SHPO did concur with
12 that recommendation in 2002.

13 It was revisited again in 2006 and again found
14 not eligible.

15 Again, the reason I included this is because the
16 petroglyph feature I thought may be something of
17 interest. This is a photograph of that feature. The
18 dark liken (phonetic) growth is encrusting some of the
19 lines within the feature.

20 Ian, I don't know if you've -- have you been to
21 this site?

22 MR. RITCHIE: If that is the petroglyph, that's
23 not one I'm familiar with. I'm familiar with one -- it
24 had three lines on it and the archeologist consultant had
25 said oh, below these three lines there was a shield and

1 everything. There had never been anything there. That's
2 why my comment on the lines. Those are actually pecked
3 lines and that's still very intact, but what I recall
4 from the creative drawing that had been done before, I
5 thought it wasn't much. So if that -- and that's why
6 that's for drawings of this. I cannot tell what's there
7 based on this photograph.

8 MR. WITHROW: I see.

9 MS. GLIDDEN: What is that feature? Is that an
10 outcropping that this petroglyph is on?

11 MR. WITHROW: Sandstone outcropping.

12 MS. GLIDDEN: Oh, okay. You'd think something
13 like that in and of itself -- is that unusual in a
14 landscape, that kind of outcropping?

15 MR. WITHROW: I couldn't say personally. I
16 don't know. Brian, if he was here he may have been out
17 there. I guess I don't see him. Ian's certainly
18 familiar with the area.

19 MR. RITCHIE: I mean, there periodically are
20 those across the landscape -- old seabeds. And there are
21 sometimes older carbons, but most of the rock falls off
22 very rapidly. So anytime we have decent old rock art it
23 should be eligible.

24 MS. GLIDDEN: Okay. This is something you might
25 want to look at.

1 MR. RITCHIE: I'd really like to see what's
2 there. Just from that photograph it's hard to tell. I
3 mean, are those things off to the right, are those little
4 pecked lines and stuff or is that just moss? I can't
5 tell.

6 MR. WITHROW: Yeah. These are more obvious
7 obviously.

8 MS. GLIDDEN: You haven't personally been to
9 this site then?

10 MR. RITCHIE: I don't know. Because when I
11 reviewed this I thought of another site where we had some
12 very creative --

13 MR. WITHROW: There were some artifacts found in
14 the immediate vicinity, including four points, some hide
15 scrapers, knives, chipping debris. So there is a pretty
16 clear precontact component.

17 This site also has a fair amount of historic
18 carvings in the same sandstone. There's a lot of, you
19 know, whether you want to characterize it as graffiti or
20 what have you. Lots of initials and other things. But
21 there is a historic presence there at this location that
22 has probably disturbed some of it to some extent.

23 Those are the sites that I selected. Again,
24 that's just a sampling of all that are out there. Again,
25 I selected these primarily for the kinds of features and

1 things that they included that I thought might be of more
2 interest. Certainly they're examples as well of the kind
3 of things that have been found. They give a pretty good
4 representation.

5 Again, the next step, some things that we can
6 talk about more this afternoon, our basic message is that
7 we need your help to interpret these sites. Our typology
8 is set up to essentially avoid applying too much in the
9 way of a cultural interpretation of these sites without
10 assistance from tribal members. We hope to do that by
11 securing interviews, arranging interviews with tribal
12 members that you would identify for us, visiting sites of
13 interest, perhaps some of these, perhaps some of the
14 other 68 that we've provided information for in the
15 binder.

16 The object is to complete our assessment of
17 these sites and work with tribal members and STB to
18 incorporate these findings into a confidential report
19 that can be used by both STB and tribes to determine
20 eligibility on these sites.

21 So once that information has been gathered,
22 we've got a proper interpretation, we can apply the
23 National Register criteria and then, again, looking at
24 how they will be affected by the project, if at all.

25 So that's where we're headed. And I guess these

1 are discussion topics for the rest of this afternoon. We
2 would like to talk about the plan that we've proposed,
3 see if there are any other concerns about how that's
4 being done, if there are things that we should be doing
5 that are not in the plan. We need to talk about some
6 scheduling and logistical concerns associated with
7 arranging the site visits and the interviews.

8 If there's still some concerns about the
9 confidentiality aspect, which, you know, Curley mentioned
10 earlier, that can be something we can discuss.
11 Identifying people to either provide interviews or do the
12 site visits. We should talk about that. And, of course,
13 the contracting arrangements as necessary to make all of
14 this happen.

15 That's pretty much what I hoped to present
16 today.

17 MS. GLIDDEN: Okay. Our court reporter needs to
18 actually leave; right? So we're going to wrap up the
19 recorded -- or recorded part of the session. And then
20 following this point it's just going to be the tribal
21 members and the STB and the consultants for STB.
22 Everybody else is free to go. Thank you so much,
23 everyone.

24

25

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 21st day of
11 April, 2009, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 7th day of
14 May, 2009.

15

16

17

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

22

23

24

25

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