



Preserving America's Heritage

October 30, 2014

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

Ref: *Section 106 Consultation, Proposed Tongue River Railroad Project
Cluster, Rosebud, Powder River and Bighorn Counties, Montana*

Dear Ms. Rutson:

On October 20, 2014, the Advisory Council on Historic Preservation (ACHP) participated in a consulting party teleconference for the Tongue River Project. The ACHP would like to follow up with the Surface Transportation Board (STB) regarding some of the discussion points raised during this call as they are important to the Section 106 consultation.

Confidentiality of Information Regarding Sites of Religious and Cultural Significance to Indian Tribes

During the teleconference, STB's consultant shared information considered confidential to Indian tribes. We remind STB that it is the responsibility of the federal agency to protect confidential information and not make it accessible to inappropriate parties. This responsibility applies to the federal agency's consultants as well. Please ensure that STBs' protocols on confidential information are known by all and adhered to as a matter of principal.

Draft Programmatic Agreement Stipulations

The current draft programmatic agreement (PA) circulated by STB does not appear to include all of the ACHP's recommended revisions outlined in our letter of September 8, 2014 to STB. (See enclosed) Nor does the draft PA include comments submitted by other consulting parties. Since no explanations are provided in the draft PA, we question whether it was ready for circulation. Nevertheless, we request that STB revise the current draft PA to include all comments and recirculate it to all consulting parties with an explanation of comments submitted on the stipulation and STB's proposed action.

STB is encouraged to continue to conduct this Section 106 review in a meaningful and collaborative manner. Comments from all consulting parties should be shared so that the drafting of the PA is transparent. This will ensure that identification and evaluation, assessment of effects and analysis of alternative alignments adhere to the requirements of the Section 106 regulations. Consulting party comments and STB's responses also will establish the administrative record for this undertaking. Failure to fully engage all consulting parties and manage information they submit could delay the Section 106 process and potentially require STB to revisit major issues that were not clearly documented.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Consistent with our advice to STB, we are sharing this letter with all of the consulting parties. If you have any questions or concerns, please contact Najah Duvall-Gabriel at (202) 517-0210 or via email at ngabriel@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing and Assistance Section

Enclosure

New ACHP Guidance on Agreement Documents now available at:
<http://www.achp.gov/agreementdocguidance.html>