



TRRR Proposed Draft PA, Additional comments, MT SHPO
Wilmoth, Stan

to:

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05/06/2015 11:16 AM

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History: This message has been replied to and forwarded.

1 Attachment



TRRRments 1-8-15 (2).docx

Cathy: We received a hard copy and disk of draft EIS yesterday. Thanks you. Please find attached here additional MT SHPO comments on the draft PA. We request copies of all other comments from interested parties for our further consideration of those concerns and issues. Stan Wilmoth, Deputy SHPO

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

17 **WHEREAS**, the Tongue River Railroad Company Inc. (TRRC), the project applicant, filed a
18 revised application with the Surface Transportation Board (STB) proposing to construct and
19 operate a new, approximately 42-mile rail line between Colstrip, Montana, to two terminus
20 points, near Ashland, Montana in Custer, Powder River and Rosebud Counties to transport low
21 sulfur, sub-bituminous coal from proposed mine sites in the Tongue River Valley and Powder
22 River Basin (TRRC project) (Map, Attachment A); and,
23

24 **WHEREAS**, the STB is preparing an Environmental Impact Statement (EIS) in accordance with
25 the requirements of the National Environmental Policy Act (NEPA) to address the potential
26 impacts of the TRRC project on the environment, including on cultural resources. Review under
27 Section 106 of the National Historic Preservation Act (NHPA) is being coordinated with the
28 NEPA process and cultural resources documentation prepared will be the basis for determining
29 the potential impacts on historic properties, cultural resources, and tribal sites of significance for
30 both reviews; and,
31

32 **WHEREAS**, the STB is considering the No Action Alternative and five build alternative routes,
33 and certain variations on the five build alternative routes, to be carried forward in the EIS: the
34 Colstrip Alternative (the applicant's preferred alternative), the Tongue River Alternative, the
35 Tongue River Road Alternative, the Moon Creek Alternative, and the Decker Alternative, some
36 of which traverse portions of Custer County as well as Powder River and Rosebud Counties; and,
37

38 **WHEREAS**, the STB will be comparing the potential impact of each of the build alternatives on
39 historic properties, cultural resources and tribal sites of significance to inform its selection of any
40 build alternative, in addition to considering selecting the No Action Alternative, as a "preferred
41 alternative,"; and
42

43 **WHEREAS**, the STB is the lead federal agency responsible for compliance with Section 106 of
44 the NHPA, 16 U.S.C. Part 470f and its implementing regulations at 36 CFR Part 800; and,
45

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

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

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

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

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

23
24 **WHEREAS**, in the event that the STB approves any build alternatives, this PA would be
25 included in its record of decision to guide the resolution of adverse effects to historic properties
26 and tribal sites of significance; and,

27
28 **WHEREAS**, the STB may or may not approve construction and operation of the TRRC rail line,
29 the STB developed this PA to defer final identification and evaluation of historic properties
30 pursuant to 36 CFR § 800.4(b)(2), to phase the application of the criteria of adverse effect
31 pursuant to 36 CFR § 800.5(a)(3), and to continue consultation to avoid, minimize and mitigate
32 the potential adverse effects of the Undertaking to historic properties and tribal sites of
33 significance in accordance with 36 CFR § 800.6(a); and,

34
35 **WHEREAS**, pursuant to 36 CFR § 800.4(b)(2) and 36 CFR § 800.5(a)(3), the STB, through the
36 phased identification, evaluation and effect assessment, has established the likely presence of
37 historic properties and tribal sites of significance within the APE for each alternative or
38 inaccessible area through background research, consultation and the appropriate level of field
39 investigation, taking into account the number of alternatives under consideration, the magnitude
40 of the undertaking and its likely effects, and the views of the consulting parties; and,

41
42 **WHEREAS**, upon approval of the project, the STB would develop a treatment plan as an
43 amendment to this PA that would outline the specific measures that would be implemented to
44 resolve adverse effects to historic properties and tribal sites of significance for any approved
45 alternative; and,

1 **WHEREAS**, this PA was developed in consultation with the Advisory Council on Historic
2 Preservation (ACHP) and the Montana State Historic Preservation Officer (SHPO) pursuant to
3 36 CFR § 800.6, who are signatories to this PA; and,
4

5 **WHEREAS**, the U.S. Army Corps of Engineers (COE), U.S. Department of Interior Bureau of
6 Land Management (BLM), and the U.S. Department of Agriculture Agricultural Research
7 Service (ARS) are cooperating agencies under NEPA and invited signatories to this PA pursuant
8 to 36 C.F.R § 800.6(c)(2)(iii); and,
9

10 **WHEREAS**, the Montana Department of Natural Resources and Conservation (MT DNRC)
11 (acting as lead agency for all Montana State agencies, including the Montana Department of
12 Transportation (MDOT)) is a cooperating agency and an invited signatory to this PA pursuant to
13 36 C.F.R § 800.6(c)(2)(iii); and,
14

15 **WHEREAS**, the MDOT has the responsibility for complying with Section 4(f) of the
16 Department of Transportation Act where applicable; and,
17

18 **WHEREAS**, the TRRC, the project applicant, is an invited signatory to this PA, pursuant to 36
19 C.F.R. § 800.6(c)(2)(iii); and,
20

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

40 **WHEREAS**, the STB has contacted the Lower Sioux Indian Community in the State of
41 Minnesota; the Upper Sioux Community, Minnesota; and the Blackfeet Tribe of the Blackfeet
42 Indian Reservation of Montana by letter, email and phone, and invited them to participate as
43 consulting parties in the development of this PA, however each of these tribes has either not
44 responded to STB's invitation or declined to participate in the development of this PA; and,
45

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

8 **WHEREAS**, the Wolf Mountains Battlefield, a property located within the view shed of the
9 Decker Alternative, was designated a National Historic Landmark (NHL) on October 6, 2008;
10 and,
11

12 **WHEREAS**, the Wolf Mountains Battlefield Site may be indirectly affected if the STB licenses
13 the Decker alternative; and,
14

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

22 **WHEREAS**, the signatories, invited signatories and concurring parties to this PA are hereafter
23 collectively referred to as ***PA consulting parties***; and,
24

25 **WHEREAS**, TRRC, the applicant, would not be required to act under the terms of this PA
26 unless or until the STB authorizes the construction and operation of a new rail line; and,
27

28 **WHEREAS**, the TRRC project's Area of Potential Effects (APE), as defined at 36 CFR §
29 800.16(d), is outlined and identified in the Identification Plan (ID Plan), Attachment B of this
30 PA; and,
31

32 **WHEREAS**, the definitions of 36 CFR Part 800 and the definitions and acronyms in Attachment
33 C are applicable throughout this PA and any attachments to this PA; and,
34

35 **WHEREAS**, the PA consulting parties have considered requirements of NHPA, the American
36 Indian Religious Freedom Act, 42 U.S.C. 1996 *et. seq.* (AIRFA), the Native American Graves
37 Protection and Repatriation Act, 25 U.S.C. 3001 *et. seq.* (NAGPRA), Executive Order 13007 –
38 Indian Sacred Sites, Executive Order 13175 – Consultation and Coordination with Indian Tribal
39 Governments, the Archaeological Resources Protection Act of 1979 (ARPA) and Section 4(f) of
40 the Department of Transportation Act (49 U.S.C. 303) where applicable in the course of
41 consultation; and,
42

43 **WHEREAS**, in 2013 and 2014, during Phase I as defined in Attachment C, the STB conducted a
44 SHPO records search for previously recorded archaeological and historic sites, for a one-mile
45 area on either side of the proposed right-of-way of the five build alternative routes, and
46 variations, being considered for the TRRC project under NEPA; and,

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WHEREAS, in 2013 and 2014, during Phase I as defined in Attachment C, the STB conducted pedestrian transect surveys by tribal members, contracting archeologists, historians and architectural historians along portions of each of the alternatives considered under NEPA; and,

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

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

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

WHEREAS, the ID Plan in Attachment B requires that TRRC complete identification and evaluation during Phase II as defined in Attachment C and the ID Plan for the entire line approved by the STB in order to take into account any potential adverse effects to historic properties and tribal sites of significance; and,

WHEREAS, if a build alternative is selected, assessment of effects and resolution of effects on historic properties and tribal sites of significance will be addressed during Phase II as described in Stipulations V and VI of this PA; and,

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

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

1 **STIPULATIONS**

2
3 STB has a statutory obligation as the lead federal agency to fulfill the NHPA requirements of
4 Section 106; therefore, STB will ensure that the measures in the following parts are carried out.

5
6 **I. ROLES AND RESPONSIBILITIES**

7
8 **A. Federal Agency**

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

19
20 **B. Other Federal Agencies**

- 21 1. **USACE:** The United States Army Corps of Engineers (Corps or USACE) has regulatory
22 responsibility under Section 10 of the Rivers and Harbors Act and Section 404 of the
23 Clean Water Act. Any permitting action would be considered a federal undertaking and
24 require the Corps to comply with NHPA and 36 CFR 800. The Corps acknowledges STB
25 as the lead agency responsible for Section 106 compliance in fulfilling our collective
26 responsibilities under Section 106 of the NHPA. The Corps will review STB Section 106
27 compliance documents to ensure they are acceptable to meet the Corps' Section 106
28 compliance responsibilities.
- 29 2. **BLM:** If a selected alternative or associated infrastructure crosses lands managed by the
30 U.S. Bureau of Land Management, BLM is responsible for issuing a right-of-way under
31 Title V of the Federal Land Policy and Management Act (43 U.S.C 1701) as amended.
32 Crossing BLM managed lands would be considered a Federal undertaking and require
33 BLM to comply with NHPA and 36 CFR 800. If the southern route (Decker Alternative)
34 is selected the right-of-way would avoid the BLM Wolf Mountain Battlefield Area of
35 Critical Environmental Concern (ACEC) because the ACEC is closed to rights-of-way.
- 36 3. **MDT:** If STB selects a build alternative that crosses a highway, modifies a highway
37 alignment, or the railroad would impact the highway right-of-way in any way, MDT will
38 notify STB of specific MDT's requirements with which STB must comply.
- 39 4. **USDA-ARS:** If a selected alternative or associated infrastructure crosses land managed
40 by the United States Department of Agriculture, Agricultural Research Service, USDA-
41 ARS is responsible for negotiating changes to the Easement Deed entered into between
42 USDA-ARS and the applicant on May 24, 1989 and its amendments (1994 and 1996).
43 Changes will be based on current conditions on the grounds of Fort Keogh.
44
45

1 **C. ACHP**

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

5
6 **D. SHPO**

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

9
10 **E. Tribes**

- 11 1. In 2013 to 2014, participating tribes were consulted during initial identification efforts,
12 participated in field identification efforts and in the development of this PA. During
13 circulation of the Draft EIS in 2015, tribes were requested to comment on the Draft EIS,
14 which included an analysis of the alternatives being considered, potential eligibility, and
15 effects.
- 16
17 2. If the STB decides to license any build alternative, the consulting tribes shall be
18 responsible to assist in the identification of tribal sites of significance in the APE and to
19 notify STB and SHPO whether the properties are eligible for the National Register.
20 Below ground excavation is not anticipated. Consulting tribes shall be responsible to
21 assist STB in assessing effects on sites of tribal significance in the APE and how to
22 resolve adverse effects. Tribes will adhere to the time frames in the stipulations.

23
24 **F. Applicant**

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

31
32 **G. Other Consulting Parties**

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

35
36 **II. REVIEW OF ALTERNATIVES**

- 37
38 A. Consistent with 36 C.F.R. § 800.3(b) and § 800.8, the STB coordinated its NEPA review
39 with the Section 106 process. Under NEPA, the STB considered the No Action Alternative
40 and five build alternative routes, and certain variations on the five build alternative routes:
41 the Colstrip Alternative (the applicant's preferred alternative), the Tongue River Alternative,
42 the Tongue River Road Alternative, the Moon Creek Alternative, and the Decker Alternative.
- 43
44 B. In the EIS, the STB compared the potential impact of each of the alternatives on historic
45 properties, cultural resources and tribal sites of significance to inform its eventual selection
46 of the preferred alternative. The EIS was distributed to all PA consulting parties for their

Comment [WS1]: This needs some serious thought and reconsideration. First – the use of the non-regulatory term tribal resources looks like it will confound the assessment process. Second – there well could be Historic Properties or Potential properties that need to be assessed under Criterion D as well as A. At this point eliminate this sentence.

Comment [CL2]: Not an accepted accurate statement at this point. No report of that work.

review and comment. Comments received by STB from the PA consulting parties informed the STB's consideration of the preferred alternative.

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

1. Step 1: Initiation of the Section 106 Process

- a. Establish undertaking: Pursuant to 36 C.F.R § 800.3, STB established that its potential approval of the TRRC project is an Undertaking as defined at 36 C.F.R. § 800.16(y).
- b. Identify the appropriate SHPO: Pursuant to Section 36 C.F.R. § 800.3(c), STB sent a letter to the Montana SHPO initiating Section 106 consultation on October 22, 2012, and since then actively sought input from the SHPO regarding the Undertaking.
- c. Identify consulting parties: From October 2012 to December 2012, STB sent letters initiating Section 106 consultation with the PA consulting parties, and added additional consulting parties in 2013 and 2104. STB held monthly calls with the PA consulting parties since February 2013 to inform them of updates on the NEPA process, and progress on the Section 106 steps. STB held in person meetings with the PA consulting parties in Lame Deer, Montana on April 16-18, 2013, and in Billings, Montana on February 13-14, 2014, which included information about the alternatives being considered and discussions about the Section 106 process.
- d. Plan to involve the public: STB held ten scoping meetings in multiple locations in the project vicinity from November 12-16, 2012. These meetings included maps of the alternatives and allowed for public comments on environmental topics, including cultural resources and historic properties. The project website, available to the general public at www.tonguerivereis.com, was updated regularly and has a page devoted entirely to historic preservation issues. The Draft EIS was distributed for public comment in [month] 2015, and public comments received were considered in the revisions to this PA. See Stipulation XVI.

2. Step 2: Identification of Historic Properties

Pursuant to 36 C.F.R. § 800.4(b)(2), the STB is deferring final identification and evaluation of historic properties. For the analysis of impacts under NEPA, STB utilized crews of archaeologists, tribal members, historians and architectural historians to conduct field surveys in the APE of the build alternatives where access was granted to STB by landowners. [This information gathered follows the Section 106 process and is being used to inform the NEPA process and the selection of a preferred alternative.] The results of the identification effort were reported to the PA consulting parties, and were documented in the EIS for additional review and comment by the PA consulting parties, agencies, and the public. See Stipulation IV.

3. Step 3: Assessment of Adverse Effect

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

4. Step 4: Resolution of Adverse Effect

1 A Draft of this PA, which includes ways to avoid, minimize, and mitigate potential
2 adverse effects on historic properties discussed among the PA consulting parties, was
3 included in the Draft EIS for further review and comment. In accordance with 36 C.F.R.
4 § 800.6(a), should the STB approve a build alternative, the STB shall continue
5 consultation with the PA consulting parties to avoid, minimize and mitigate the potential
6 adverse effects of the Undertaking to historic properties and tribal sites of significance.
7 See Stipulation VI.
8

9 **D. In the event the STB approves a build alternative,** the STB would ensure that the
10 stipulations that follow (*i.e.*, Stipulation III through Stipulation XXII) shall be implemented.
11

12 **III. AREA OF POTENTIAL EFFECTS (APE)**

13 **A. First Phase-APE for Review of Alternatives**

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

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

21 **1. Defining the APE**

22 The STB, in consultation with the SHPO, consulting tribes and other consulting parties, will
23 define the APE based on the vertical and horizontal direct effects, indirect effects, and
24 cumulative effects for any STB-approved build alternative. The APE will apply to federal,
25 state, tribal and private lands that may be affected by the construction and operation of this
26 Undertaking.

27 **a. Direct Effects**

28 The APE for direct effects is the vertical and horizontal area within which historic
29 properties may sustain physical alteration, damage, or destruction as a result of the
30 construction of the Undertaking. The APE for direct effects includes all areas where the
31 ground will be disturbed such as staging areas, cut and fill areas, material sources/gravel
32 quarries, overburden disposal areas, associated buildings/structures (e.g., sidings, bridges
33 etc.) and associated infrastructure (e.g., communication towers, power lines etc.). The
34 vertical lower limits of the APE for direct effects includes the depth of natural ground
35 disturbance plus the depth of soil compaction that could affect the integrity of deeply
36 buried archaeological or tribal resources, but does not exceed the depth beyond which
37 such resources are reasonably expected to occur. The horizontal APE includes up to 200
38 feet on either side (up to a total of 400 feet) of the authorized construction right-of-way
39 (ROW), to include a twenty-foot buffer on either side of the fenced construction ROW
40 along the entire route, with the exception of the Wolf Mountains Battlefield NHL site. If
41 the Decker Alternative is approved by STB, the NPS would be consulted to expand the
42 APE for consideration of moving the alignment in order to avoid or minimize, to the
43 extent feasible, adverse impacts on identified historic properties within the NHL.

44 **b. Indirect Effects**

45 The APE for indirect effects includes areas outside the construction or ground
46 disturbance ROW where there is the potential for the Undertaking to have an indirect

effect, including visual, vibration and noise effects, on historic properties, as defined in 36 C.F.R § 800.5. Tribal sites of significance located outside the field survey areas but within the line of sight of the proposed railroad including water resources, sacred and ceremonial sites, areas where traditional plants are located, and associated features, will be included in the APE for indirect effects. If a build alternative is approved, the STB will consult with the MT SHPO, tribes and other consulting parties to identify any locations where the APE should be extended beyond the buffer zones established during the first phase – that is 200 feet for archaeological and tribal resources and 1,500 feet for built resources.

Comment [WS3]: Consider reference to bulletin 38 and NR criteria

c. Cumulative Effects

The identification of the APE will consider cumulative effects to historic properties as referenced in 36 C.F.R 800.5, which states: adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

2. Amending the APE

- a. An APE may be modified where tribal consideration, additional field research or literature review, consultation with parties to this agreement, or other factors indicate that the qualities and values of historic properties that lie outside the boundaries of the APEs may be affected directly, indirectly and/or cumulatively.
- b. Any party to this agreement may propose that the APEs be modified by submitting a written request to the STB providing a description of the area to be included, justification for modifying the APE(s), and map of the area to be included. The STB will notify the parties to this agreement of the proposal with a written description of the modification requested within 15 days of receipt of such a request. From the date of notification, the STB will consult with the parties to this agreement for no more than 30 days to reach consensus on the proposal.
- c. If the parties to this agreement cannot agree to a proposal for the modification of the APEs, then the STB will consider their concerns and will render a final decision within 30 days after the consultation period closes.
- d. For all modifications to the APE(s) the STB will provide a written record of the decision to the parties to this agreement.
- e. Amending the APEs will not require an amendment to the PA.
- f. On BLM lands, minor changes to the APE during construction of the Undertaking that may require additional fieldwork may be handled through the BLM ROW grant variance process.

IV. IDENTIFICATION AND EVALUATION

A. First Phase- Review of Alternatives

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

1. **Inventory:** The inventory completed during Phase I was a professionally prepared study of existing cultural resource data from published and unpublished documents, SHPO and BLM cultural resource inventory records, archival records, geomorphological and soil studies, institutional site files, state and National registers, informant or ethnographic

Comment [WS4]: No report, adequacy not determined nor has accuracy, or completeness for what was looked at

interviews and other information sources. The purpose of the Inventory was to obtain sufficient information about the existing or known prehistoric and historic properties, cultural landscapes, and properties of religious and cultural significance located within the project area and to inventory those properties. The Phase I Inventory, completed for areas one mile away from each of the alternatives (2 miles total), also helped in determining the potential for previously unidentified historic properties to be located within the project area. A summary of the Inventory completed during Phase I is included in this PA in Attachment D, Tables 1 and 2.

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

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

1. In order to complete step two of the four-step Section 106 process, the second phase of the identification and evaluation effort would be implemented if the STB approves a build alternative, and it would involve the following two components:
 - a. **Completing the field surveys** that were conducted during Phase I in 2013 and 2014 for any portions of the approved build alternative APE that were inaccessible or where surveys were not previously completed; and
 - b. Conducting testing and evaluation of identified sites during Phase II in the APE for any approved build alternative to determine those that qualify for listing on the National Register of Historic Places (National Register).
2. Prior to TRRC initiating construction of any portion of the rail line, STB will retain the services of Cultural Resources Contractor (Contractor). The Contractor shall meet the professional qualifications standards provided in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, (48 Fed. Reg. 44716, September 29, 1983 and 62 Fed. Reg. 33708, June 20, 1997). The Contractor shall work under the STB's sole direction, control and supervision but will be paid by TRRC. For any approved alternative, the Contractor will:
 - a. Conduct field surveys in the APE **that were not completed during Phase I** conduct interviews and collect additional information from landowners, and prepare the Identification Reports (ID Reports).
 - b. Conduct Testing and National Register Evaluations, and Evaluation Reports (Evaluation Reports).
 - c. Obtain any needed federal or state agency permits necessary to conduct the required work.
 - d. The Contractor must have experience working in the field with tribal members.

Comment [WS5]: SHPO has not accepted nor seen the Phase I inventory Report. There is no report documenting the intensity of inventory in Phase 1.

Comment [WS6]: Repeat above WS5

- 1 3. The STB shall invite consulting tribes to work with the contractor and help plan and
2 participate in the field surveys to identify, document, and evaluate properties within the
3 APE to which they attach traditional religious and cultural significance. Consulting
4 Tribes need not meet the Secretary of the Interior's Standards specified in section B.2. of
5 this stipulation. The STB will also invite such consulting tribes to work with the
6 Contractor to identify and compile a list of traditionally-important plants that occur in the
7 APE, and identify gathering sites and access points for the plant gathering areas. TRRC
8 will provide reasonable financial reimbursement¹ for professional services provided by
9 the designated consulting tribes.
- 10
- 11 4. STB will review each ID Report prepared by the Contractor and provide copies to the PA
12 consulting parties for their review and comment. Each ID Report provided by the
13 Contractor will include the results of identification, preliminary National Register
14 eligibility recommendations and summarize potential adverse effects. The timeline for
15 PA consulting party review of each ID report will be as follows:
- 16
- 17 a. The PA consulting parties will have 15 days after receipt of each ID Report to notify
18 STB in writing if information is missing and/or provide any recommendations.
- 19 b. STB will have five days to provide any missing information to the PA consulting
20 parties, or to determine that additional information is not needed to complete National
21 Register evaluations included in a given ID Report.
- 22 c. STB will provide a 45-day comment period to the PA consulting parties beginning
23 from their receipt of the additional information or STB's determination that additional
24 information is not needed.

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

- 26 1. For each property identified in the ID Report the STB, in conjunction with the
27 Signatories, Invited Signatories, and Concurring Parties, will determine eligibility for
28 inclusion in the National Register pursuant to 36 CFR 800.4(c)(1) for each property,
29 including properties of religious and cultural significance to tribes.
- 30 2. Some archaeological sites may be evaluated for National Register eligibility based purely
31 on observed surface characteristics, e.g. a lithic scatter on bedrock. Many other
32 archaeological sites will require test excavations to evaluate the NRHP eligibility.
33 Specific information should be recovered during a Phase II investigation, including
34 determination of the horizontal and vertical limits of an archaeological site, location of
35 areas of moderate and high artifact densities, if features are present, determining the
36 vertical limits of the site, the presence of intact, sub-surface, and/or stratified deposits,
37 site structure, and site formation processes.

Comment [WS7]: SHPO should have an opportunity to evaluate the site specific testing plans, which may help eliminate disagreements over inadequate or unwarranted levels testing. Other Stake holders as well.

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

- 1 3. esting and evaluation procedures during Phase II and a summary of the results will be
2 presented in a combined ID Report/ Evaluation Report. In the Evaluation Reports, STB
3 will make its National Register eligibility determinations in consultation with the MT
4 SHPO and federally recognized tribes that attach traditional religious and cultural
5 significance to identified historic properties. STB will make a determination on the
6 NRHP eligibility of all historic properties identified in the project area within **45 days** of
7 receipt of comments from consulting parties. Such comments shall be due within **15 days**
8 of the receipt by the consulting parties of the Evaluation Report, which STB shall send to
9 the PA consulting parties within no more than 15 days of receipt of the Report from the
10 contractor. STB will finalize determinations of eligibility in a manner consistent with 36
11 CFR § 800.4(c) and pertinent guidance of the National Park Service, ACHP, and MT
12 SHPO.
- 13 4. In making determinations of eligibility, STB will rely on the special expertise of tribes to
14 inform it concerning whether or not tribal sites of significance meet the eligibility criteria
15 of the National Register.
- 16 5. For built resources, STB will rely on research and analysis by historians and architectural
17 historians, and the views of consulting parties with an interest or knowledge of built
18 resources.
- 19 6. Once STB has finalized its determinations of eligibility, and within **40 days** of receipt of
20 comments from the MT SHPO and tribes, STB will direct the Contractor to make any
21 required revisions and finalize the Evaluation Report per the ID Plan.

22 23 **V. ASSESSMENT OF EFFECTS**

- 24
25 A. **On previously surveyed areas:** During Phase I in the EIS, the STB analyzed the impacts
26 of each alternative upon the archaeological resources, tribal resources, and built resources
27 identified through field survey in the APE on areas of accessible parcels. The EIS
28 analyzed the types and numbers of resources that were identified in the proposed right-of-
29 way for each build alternative and would likely be adversely affected by construction and
30 operation activities. The EIS also analyzed potential resources that were not in the
31 proposed right-of-way, but were identified by survey in the buffer area, and could be
32 indirectly affected by construction and operation activities. The right-of-way plus the
33 buffer area is identical to the APE.
- 34 B. **On previously inaccessible areas:** In the EIS, STB also assessed impacts on land that
35 was not accessible and therefore not surveyed during Phase I. STB assessed the
36 likelihood of the presence of archaeological sites on the total acreage (both surveyed and
37 unsurveyed) of each alternative based on the number of archaeological sites identified
38 during the survey, combined with three slope **percentage** categories (high, moderate, and
39 low). OEA then used this to extrapolate the probability of unidentified archaeological
40 sites that could be located within the total build alternative. The probability of tribal sites
41 of significance located within the build alternative was not assessed in the EIS. To assess

Comment [WS8]: Where is this model described, no report, no way to assess accuracy or usefulness

1 impacts on built resources for areas where access was not granted, the STB's built
2 resource survey teams reviewed tax assessor data and geographic information system
3 (GIS) maps using Google Earth Pro satellite imagery.

- 4 C. If the STB makes a decision to approve a build alternative, in order to complete step three
5 of the four-step Section 106 process and in consultation with the PA consulting parties,
6 STB will assess the direct, indirect and cumulative effects of this Undertaking on historic
7 properties consistent with 36 CFR 800.4(d) and identify effects on each historic property
8 within the APE of the approved build alternative in accordance with the **criteria of**
9 **adverse effect** established in 36 CFR 800.5(a)(1-2), and provide the PA consulting parties
10 with the results in a report entitled **Finding of Effect** with the content following the
11 documentation standards at 36 CFR 800.11(e)(4-6), as follows:
- 12 1. A description of the Undertaking's effects on historic properties;
 - 13 2. An explanation of why the criteria of adverse effect were found applicable or
14 inapplicable, including any conditions or future actions to avoid, minimize or mitigate
15 adverse effects; and
 - 16 3. Copies or summaries of any views provided by consulting parties and the public.
- 17 D. The assessment of effects will serve as the basis for the development of one or more
18 Treatment Plan(s) as described in Stipulation VI. The STB, in consultation with the PA
19 consulting parties, will broadly assess cumulative effects under Section 106 in order to
20 identify all reasonably foreseeable potential adverse effects as a result of the Undertaking
21 (36 CFR 800.5 (a)(1)). Potential cumulative or reasonably foreseeable effects will be
22 based on the APEs for direct and indirect effect and be addressed in the Treatment
23 Plan(s) according to the procedures in Stipulation VI.
- 24 E. The STB will provide all assessments of effect to historic properties in the **Finding of**
25 **Effect** to the PA consulting parties. This will be done concurrently with the distribution
26 of the Phase II Evaluation Reports described in Stipulation IV. Reviews will proceed
27 according to the procedures and timeframes established in Stipulation IV, sections B.4.,
28 C.3, and C.6.
- 29 F. Disagreement regarding assessments of effect will be handled according to the
30 procedures established in Stipulation XIV.

31 32 VI. RESOLUTION OF ADVERSE EFFECTS

- 33 A. If the STB licenses any build alternative, in order to complete step four of the four-step
34 Section 106 process, the STB will consult with the PA consulting parties, and other
35 parties who have entered the consultation process with the selection of a build alternative,
36 to seek ways to avoid or minimize adverse effects to historic properties. Hereafter, the
37 PA consulting parties and any other parties who enter the process will be referred to as
38 "consulting parties." If historic properties cannot be avoided, subsurface investigation
39 may be necessary for archaeological sites within the direct effect APE which may be
40 adversely affected. Determination of the site boundaries in relation to the direct effect
41 APE, and actual area of ground disturbance, may be analyzed to aid in developing

alternative design and or mitigation strategies. If adverse effects cannot be avoided the STB will consult with the consulting parties to determine appropriate measures to resolve adverse effects to be detailed in the Treatment Plan(s).

B. Consultation on Developing Treatment Plans

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

C. Development of the Treatment Plan(s)

1. The STB will ensure that the Contractor prepares a Treatment Plan(s) that will address the adverse effects of the proposed Undertaking on historic properties, including direct and indirect impacts (visual, noise, aesthetic, etc.) A separate Treatment Plan will be developed for the Wolf Mountains Battlefield NHL if the Decker Alternative is approved; and one or more Treatment Plans may be prepared for other sections of the APE affected by the Undertaking. If the Decker Alternative is approved, STB must adhere to Section 110(f) of the NHPA and Section 800.10 of the ACHP's regulations, which and requires a higher consideration of alternatives to minimize harm to the NHL. Because land acquisition and engineering surveys may be completed in different stages, a Treatment Plan may be prepared for a portion of the line provided that the Phase I ID Report for that portion has been completed and approved in accordance with Stipulation IV. Each Treatment Plan will be amended, if necessary, after the finalization of any supplemental Phase II Evaluation Report(s).
2. Each Treatment Plan will do the following:
 - a. identify tribal sites of significance and National Register-eligible or-listed historic properties in the APE or portion thereof;
 - b. identify the nature of the effects to which each property will be subjected;
 - c. identify the treatment strategies proposed to avoid, minimize or mitigate the effects of the Undertaking on the tribal sites of significance and historic properties; and
 - d. Only include treatments that would be feasible from an engineering standpoint.
3. **Tribal sites of significance:** Each Treatment Plan will incorporate measures identified by consulting tribes to resolve adverse effects to properties significant for their traditional

Comment [WS9]: I have Concerns about evaluation standards when using these words, why not use Sites of cultural and religious importance to tribe references, TCPs and std. s

1 cultural values and, if possible, the protection and continuing access to gathering sites of
2 traditionally-important plants. If appropriate, TRRC may attempt to negotiate tribal
3 access to public or private lands that are not currently accessible to tribes for plant
4 gathering purposes.

Comment [WS10]: Why is TRRC
referenced here. Isn't STB the lead?

- 5
6 4. **Other properties listed on or eligible for the National Register:** Each Treatment Plan
7 will incorporate measures identified by other consulting parties who have expertise or
8 interest in properties listed on or eligible for the National Register. The Treatment
9 Plan(s) will conform to the principles of the Council's Treatment of Archaeological
10 Properties: A Handbook, Parts I and II, the "Secretary of the Interior's Standards and
11 Guidelines for Archaeology and Historic Preservation" (48 Fed. Reg. pp. 44716-44742),
12 and appropriate MT SHPO guidelines. Each finalized Treatment Plan will be
13 implemented by TRRC prior to the onset of construction activities.

- 14
15 5. Whenever possible avoidance of adverse effects shall be the preferred alternative. In
16 consultation with the consulting parties, TRRC shall develop specific procedures to
17 preserve historic properties and tribal sites of significance in place. These procedures
18 may include minor changes to the rail alignment or construction method to avoid or
19 reduce impacts, and/or monitoring historic properties by historians, archaeologists and
20 tribal members for sites of significance during construction. Each Treatment Plan will
21 focus on avoidance measures and examine the feasibility of avoiding National Register-
22 listed or -eligible historic properties, or tribal sites of significance. These measures may
23 include modifications to the rail alignment, to the extent feasible, to avoid adverse
24 impacts.

Comment [WS11]: Why is STB not
referenced here rather than TRRR? Same at
line 26. Reroutes should be early enough and
coordinated with other evaluation so that
alternatives on other mile post areas are not
compromised.

- 25
26 6. If avoidance is not possible, in-place preservation will be the preferred option. TRRC will
27 work with the consulting parties to develop specific procedures to preserve historic
28 properties and sites of significance in-place and minimize visual and noise impacts to
29 such resources as well as impacts to tribal, historic and rural landscapes. These
30 procedures may include minor changes to the rail alignment or construction methods to
31 reduce impacts, and/or monitoring of historic properties by historians, archaeologists and
32 tribal members for sites of significance during construction.

33
34 **D. Finalization of Treatment Plan(s)**

- 35
36 1. STB will submit the draft Treatment Plan(s) to the consulting parties for review. If no
37 additional information is requested, the consulting parties will have **60 days** from receipt
38 of the initial Treatment Plan(s) to submit comments.
39 a. If any consulting party identifies any informational deficiencies in the Treatment
40 Plan(s), the consulting party must notify STB in writing within **30 days** of receipt of
41 the Treatment Plan(s). A copy of any comments sent to STB will be sent
42 simultaneously to the MT SHPO.
43 b. STB will then have **10 days** to provide the additional information, or provide an
44 explanation why such information is not required, to the MT SHPO and all consulting
45 parties.

- c. The consulting parties will then have **45 days** from the receipt of the complete information, or notice that additional information is not required, to comment on the Treatment Plan(s).
 - d. If any consulting party fails to submit its comments within the specified time limits above, STB may assume that party's concurrence with the Treatment Plan(s).
2. STB will make any required revisions to the Treatment Plan(s), as appropriately, within **45 days** of the close of the comment period, taking into consideration the comments received during this review period.
 3. The final decision on the acceptability of the Treatment Plan(s) will be made by STB, in consultation with the MT SHPO. A copy of the final Treatment Plan(s) will be provided by STB to the PA consulting parties.

VII. DATA RECOVERY

A. Consideration of Alternatives to Data Recovery

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

1. preserving selected eligible archaeological sites and incorporating them into heritage tourism plans while allowing others to be lost;
2. burying sites under fill or incorporating them into the undertaking;
3. using resources to develop syntheses of existing information on the Tongue River Valley region instead of, or in addition to, using them on data recovery;
4. using resources to develop virtual or Web-based reports or educational media that otherwise would not be produced.
5. Acquiring and preserving of archaeological sites not located in the APE in lieu of direct mitigation of sites within the APE, also known as "mitigation banking".

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

1. the historic properties to be affected and the nature of those effects;
2. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
3. the data needed to address specific research questions, the likelihood that this data can be recovered and how the data will be analyzed;
4. the fieldwork and analytical strategies to be employed, with an explanation of their relevance to the research question;
5. proposed methods of dealing with individual discovery situations;
6. methods to be used in data management and dissemination of data, including a schedule;
7. how findings will be presented to support the research design;
8. the proposed repatriation of recovered materials and records including the disposition of tribal sacred items, human remains and funerary items;

- 1 9. proposed methods for disseminating results of the work to the public;
2 10. proposed methods by which tribal representatives will be kept informed of the work and
3 afforded an opportunity to participate;
4 11. a proposed schedule for the submission of progress reports to STB;
5 12. proposed approach for the disposition and curation of data and materials (other than tribal
6 identified items, human remains and funerary items as discussed under item 8 above)
7 upon completion of data collection; and,
8 13. information regarding the tribal value of the affected sites of concern to participating
9 tribes.

10
11 C. **Data Recovery Plan:** Following implementation of the research design specified above, a
12 **Data Recovery Plan** will be drafted and incorporated into the Treatment Plan(s). The Data
13 Recovery Plan shall be consistent with the Secretary's Standards for Archaeological
14 Documentation (48 Fed. Reg. 44734-37) and will take into account the ACHP's publications,
15 including Treatment of Archaeological Properties: A Handbook, and The ACHP's Section
16 106 Archaeology Guidance (<http://www.achp.gov/archguide>). Contractor shall obtain all
17 necessary cultural resource permits for data recovery, including an excavation permit from
18 BLM for any data recovery on BLM land, appropriate ARS permits for any recovery on ARS
19 lands, and appropriate state permits for any recovery on state lands.

20
21 D. **Data Recovery Report:** Reports resulting from the implementation of the Data Recovery
22 Plan will be submitted by the TRRC to STB for review. Within **15 days** of receipt of the draft
23 report(s), STB will provide a copy(s) to the PA consulting parties for their review and
24 comment. Within **15 days** of its receipt, a PA consulting party must notify STB in writing of
25 any informational deficiencies in the **Data Recovery Report**. STB then has **10 days** to
26 provide the additional information or to determine that such information is not required. The
27 PA consulting parties will have **45 days** from the receipt of the complete information, or the
28 determination that additional information is not required, to comment on the Data Recovery
29 Report. If no additional information is requested, the parties will have **60 days** from receipt
30 of the report to submit comments to STB. A copy of any comments will be sent
31 simultaneously to the MT SHPO.

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

40 41 VIII. CONSTRUCTION

- 42
43 A. STB shall consider the No Action Alternative during the Phase I review of alternatives
44 (Stipulation II). Construction would only occur during Phase II if STB selects any of the
45 build alternatives.
46

Comment [WS12]: STB is the lead? This sounds like TRRR is

- 1 B. Once STB has agreed in consultation with the PA consulting parties on the adequacy of
2 the ID Report(s) and Evaluation Report(s) as defined in the ID Plan, STB will allow
3 TRRC to begin construction on those portions of the approved rail line which do not
4 contain National Register eligible or listed historic properties or tribal sites of
5 significance within the direct APE, provided that such construction will not preclude
6 consideration of the full range of treatment options (including avoidance, preservation in
7 place, and other alternatives to data recovery) of historic properties situated in the indirect
8 APE and cumulative effect APE.
9
- 10 C. Where eligible historic properties or sites of significance are present within the direct
11 APE, STB will allow construction to proceed once the agreed upon treatment/data
12 recovery for that portion of the APE as specified in the Treatment Plan is completed and
13 approved by STB, with the concurrence of the MT SHPO. Where tribal sites of
14 significance or eligible historic properties are present on BLM, ARS or state lands, STB
15 will allow construction to proceed in that area only after the agreed upon treatment/data
16 recovery fieldwork is completed and approved by BLM with respect to BLM-
17 administered lands, by ARS with respect to ARS lands, and by MT DNRC with respect
18 to state lands, in addition to STB approval with the concurrence of the MT SHPO.
19
- 20 D. TRRC or STB's Contractor will notify STB when treatment/data recovery fieldwork is
21 completed for an area. Within **45 days** of notification, STB, and BLM if data recovery
22 occurs on BLM-administered lands, ARS if data recovery occurs on ARS-administered
23 land, or the MT DNRC if data recovery occurs on state lands, will inspect the site. Upon
24 STB and MT SHPO's concurrence and, if appropriate, BLM's, ARS's or MT DNRC's
25 concurrence, that the treatment/data recovery fieldwork has been satisfactorily
26 completed, STB will allow construction to proceed in that area prior to the completion of
27 the Data Recovery Report. The Data Recovery Report will be prepared in accordance
28 with Stipulation VII.D. Alternatively, issuance of a Final Data Recovery Report pursuant
29 to Stipulation VII.E. will be considered approval of the data recovery
30 fieldwork/treatment.
31

Comment [WS13]: Consulting Parties all have chance to review and object, This sentence should be so modified

32 **IX. CHANGES TO THE RAIL LINE ALIGNMENT/OTHER AREAS SUBJECT TO**
33 **DIRECT IMPACTS**

- 34 A. The STB will notify the consulting parties of proposed changes in ancillary areas (e.g.,
35 staging areas, waste or borrow pits) or modest changes to the right-of-way outside of the
36 originally defined APE. The STB will ensure that the APE of the new ancillary area or
37 reroute is inventoried and evaluated in accordance with Stipulation IV, and will consult
38 with the consulting parties on the proposed APE and the determination of eligibility,
39 finding of effect, and resolution of effect in accordance with Stipulations V. through VII.
- 40 B. The STB will provide the consulting parties with the revised addendum reports and
41 findings on eligibility and effects for a **30 day** review and comment period. The STB will
42 seek consensus determinations of eligibility for all properties identified in the APEs. If
43 consensus cannot be reached, the process articulated in Stipulation XIV for seeking a
44 determination of eligibility from the Keeper of the NRHP or resolving other disputes will
45 be followed.
46

1 **X. DISCOVERY**

- 2 A. A **Discovery Plan** for previously undiscovered sites and unanticipated effects on
3 previously evaluated sites will be appended to the Treatment Plan. If a previously
4 undiscovered historic property is encountered during construction, or previously known
5 properties will be affected in an unanticipated manner, all work will cease within 200 feet
6 in all directions until STB can evaluate and, if necessary, authorize steps to mitigate
7 impacts to the new discovery. Evaluation and mitigation will be carried out in
8 consultation with the PA consulting parties as expeditiously as possible in accordance
9 with 36 C.F.R § 800.13(a)(1).
- 10 B. If historic properties or sites of significance are encountered on federal or state lands, the
11 BLM, ARS or MT DNRC, depending on the agency that controls the land, will be
12 consulted to develop appropriate mitigation measures. TRRC will provide the
13 construction contractor with written notification of the proper protocol for discovery of
14 previously unencountered sites.

15
16 **XI. HUMAN REMAINS**

- 17 A. If human remains and funerary objects, sacred objects, or items of cultural patrimony
18 associated with human remains are encountered on federal lands, STB or the appropriate
19 federal land management agency will consult with the appropriate tribe(s) to determine
20 treatment and disposition measures consistent with applicable federal laws (such as
21 NAGPRA and NHPA) and guidance documents (such as the ACHP Policy Statement
22 Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects (2007)
23 (<http://www.achp.gov/docs/hrpolicy0207.pdf>). If human remains and funerary objects,
24 sacred objects, or items of cultural patrimony associated with human remains are
25 encountered on state lands, STB will consult with tribes, the MT SHPO, and MT DNRC
26 as to appropriate treatment measures in accordance with Section 106 of NHPA, and the
27 Montana Human Skeletal Remains and Burial Site Protection Act (M.C.A.22-3-801
28 through 811. If human remains and funerary objects, sacred objects, or items of cultural
29 patrimony associated with human remains are encountered on private lands, STB will
30 ensure that they are also treated in accordance with applicable state and federal law and
31 the provisions of M.C.A. §§ 22-3-801 through 811.
- 32 B. TRRC will make every effort to avoid disturbing known human burial sites. Where
33 avoidance is not possible, burials will be removed prior to construction and treated in
34 accordance with procedures established by applicable federal and state law and, culturally
35 affiliated tribes, and in accordance with procedures identified in the Treatment Plan.
- 36 C. In the case of inadvertent discovery of human remains during construction activities, STB
37 will attempt to identify the appropriate tribe(s) that may be affiliated with the burial
38 pursuant to NAGPRA, and consult with them over the treatment of remains in accordance
39 with procedures identified in the ID Plan and the Treatment Plan. All work will cease
40 within 200 feet in all directions of the human remains until the requirements of federal
41 and state laws are satisfied. TRRC will provide the construction contractor with written
42 notification of the proper protocol for discovery of human remains, funerary objects,
43 sacred objects or objects of cultural patrimony.

44
45 **XII. CURATION**

- 1 A. As stated in Stipulation VI.C.5 and VI.C.6, avoidance and preservation-in-place are the
2 preferred treatment for historic properties. STB will ensure that curation of all records
3 and other items resulting from identification and data recovery efforts is completed in
4 accordance with 36 C.F.R Part 79, Curation of Federally Owned and Administered
5 Archaeological Collections, and the provisions of NAGPRA. Documentation of the
6 curation of these materials will be prepared by Contractor and submitted to STB. STB
7 will provide copies of the documentation to the signatory and concurring parties to this
8 PA within **15 days** of receipt from Contractor. All archaeological materials recovered
9 from BLM lands shall be curated in accordance with BLM requirements at BLM's
10 Billings Curation Center. All archeological materials recovered from ARS lands shall be
11 curated in accordance with 36 C.F.R Part 79.
12
- 13 B. STB will encourage private land owners to donate collections from their lands to an
14 appropriate facility² meeting the requirements of the Department of the Interior's Manual
15 411 on curation. The Contractor will provide private landowners with a list of all
16 collected artifact finds from their lands. Materials from private lands to be returned to the
17 private land owners shall be maintained in accordance with 36 C.F.R Part 79 until any
18 specified analysis is complete. Documentation of the return of these materials to the
19 private land owner will be prepared by Contractor and submitted to STB. STB will
20 provide copies of the documentation to the PA consulting parties within 15 days of
21 receipt from Contractor.
22
- 23 C. STB shall ensure through consultation with the MT DNRC that all cultural and
24 paleontologic materials discovered on state lands will be curated in accordance with the
25 Montana state Antiquities Act, M.C.A. 22-3-432.
26
- 27 D. STB will ensure that all archeological materials collected by TRRC and Contractor as
28 part of this project will be processed and curated within two years following the
29 completion of identification and data recovery. In the case where TRRC decides to halt
30 the Undertaking, all recovered archaeological material must be curated within one year
31 following work stoppage. A contingency plan will be developed in such case.
32

33 **XIII. EMERGENCY SITUATIONS**

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

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

1
2 **XIV. DISPUTE RESOLUTION**

- 3 A. During the Phase I alternatives analysis, consulting parties and the public may submit
4 their comments on the Draft EIS.
5
6 B. If STB approves a build alternative, the following process for dispute resolution shall be
7 followed:
8
9 1. Should any Signatory or Invited Signatory to this PA provide notice to the STB of its
10 objection to an action under this PA, or implementation of the measures stipulated in
11 this PA, within 30 days of becoming aware of an action, the STB shall consult with
12 all Signatories and Invited Signatories to this PA to resolve the objection, unless
13 otherwise specified in this document, and notify the concurring parties. If the STB
14 determines that the objection cannot be resolved, the STB shall forward all
15 documentation relevant to the dispute to the ACHP. The objecting party must provide
16 reasons for, and a justification of, its objection at the time it initially submits its
17 objection to the STB. Within 30 days after receipt of all pertinent documentation, the
18 ACHP shall either:
19 2. a. Provide the STB with recommendations, which the STB shall take into account in
20 reaching a final decision regarding the dispute; or
21 3. b. Notify the STB that it will comment within an additional 30 days, in accordance
22 with 36 C.F.R. 800.7(c)(4). Any ACHP comment provided in response to such a
23 request will be taken into account, and responded to by the STB in accordance with
24 36 C.F.R. 800.7(c)(4) with reference to the subject of the dispute.
25 4. The STB's responsibility to carry out all actions under this PA that are not the subject
26 of the dispute will remain unchanged.
27

28 **XV. TRIBAL COORDINATION**

- 29 A. Tribal coordination will be conducted pursuant to tribal protocols that will be developed
30 by the STB in consultation with tribes participating in the project, as discussed in the ID
31 Plan.
32
33 B. Tribal protocols may be amended in accordance with Stipulation XIV if new tribal
34 leadership is elected and proposes a different approach to coordinating the undertaking.
35

36 **XVI. PUBLIC PARTICIPATION**

- 37 A. STB will ensure that an active public participation program be carried out. Modified
38 versions of reports required under this PA (locational information removed), will be
39 made available for review to the general public on STB's website at www.stb.dot.gov.
40 The views of the PA consulting parties, interested parties, and the general public will be
41 considered by STB with respect to the terms of this PA.
42
43 B. At any time during implementation of the measures stipulated in this PA, should an
44 objection to any such measure or its manner of implementation be raised by a member of
45 the public, the STB will take the objection into account, consult as needed with the

objecting party and the parties to this agreement to resolve the objection. The STB will determine the final resolution.

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

Comment [WS14]: This is STB responsibility to be taken in concert with The Keeper of the NR and ACHP see section 304 of NHPA.

XVII. FINAL REPORT

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

XVIII. EFFECTIVE DATE

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

XIX. ANNUAL STATUS REPORT

- A. Commencing one year from the effective date of this PA, TRRC shall prepare an Annual Report documenting the status of the implementation of the terms of this PA to PA consulting parties. If no work has been conducted under the terms of the PA, TRRC must still submit the Annual Report stating that no action under the PA has begun. TRRC will submit the Annual Report to STB, which will submit the report to the PA consulting parties. The Annual Report will include, at a minimum:
1. A list of all studies, reports, evaluations, or monitoring reviewed or generated under the stipulations of the PA.
 2. Efforts to identify and/or evaluate potential historic properties, monitoring efforts, archaeological management assessments or research designs, and treatment of historic properties.
 3. Any recommendations to amend this PA or improve communication among the parties.
 4. A discussion of any inadvertent effect to historic properties occurring during the course of the year.
- B. The STB will ensure that the Annual Report is made available to the public and that potentially interested persons and members of the public are invited to provide comments to the STB.

XX. AMENDMENTS

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

XXI. TERMINATION

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

XXII. DURATION

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

Comment [WS15]: 10 years is a long time if construction doesn't begin right away on licensed alt. Maybe something like PA will terminate within 5 years if construction has not be authorized and begun within that time.

EXECUTION

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

SIGNATORIES:

SURFACE TRANSPORTATION BOARD

By:_____ Date:_____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:_____ Date:_____

MONTANA STATE HISTORIC PRESERVATION OFFICER

By:_____ Date:_____

INVITED SIGNATORIES:

U.S. ARMY CORPS OF ENGINEERS

By:_____ Date:_____

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

By:_____ Date:_____

1
2 U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE
3
4 By:_____ Date:_____
5
6
7 MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
8
9 By:_____ Date:_____
10
11
12
13 TONGUE RIVER RAILROAD COMPANY, INC.
14
15 By:_____ Date:_____
16
17
18 **CONCURRENCE:**
19
20 U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, HISTORIC
21 LANDMARKS PROGRAM
22
23 By:_____ Date:_____
24
25
26 NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE INDIAN
27 RESERVATION, MONTANA
28
29 By:_____ Date:_____
30
31
32 CROW TRIBE OF MONTANA
33
34 By:_____ Date:_____
35
36
37 CROW CREEK SIOUX TRIBE OF THE CROW CREEK RESERVATION, SOUTH DAKOTA
38
39 By:_____ Date:_____
40
41
42 LOWER BRULE SIOUX TRIBE OF THE LOWER BRULE RESERVATION, SOUTH
43 DAKOTA
44
45 By:_____ Date:_____
46

1
2 STANDING ROCK SIOUX TRIBE OF NORTH & SOUTH DAKOTA
3
4 By:_____ Date:_____
5
6
7 CHEYENNE RIVER SIOUX TRIBE OF THE CHEYENNE RIVER RESERVATION, SOUTH
8 DAKOTA
9
10 By:_____ Date:_____
11
12
13 YANKTON SIOUX TRIBE OF SOUTH DAKOTA
14
15 By:_____ Date:_____
16
17 SISSETON-WAHPETON OYATE OF THE LAKE TRAVERSE RESERVATION, SOUTH
18 DAKOTA
19
20 By:_____ Date:_____
21
22 ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION,
23 MONTANA
24
25 By:_____ Date:_____
26
27
28 FLANDREAU SANTEE SIOUX TRIBE OF SOUTH DAKOTA
29
30 By:_____ Date:_____
31
32
33 SHAKOPEE MDEWAKANTON SIOUX COMMUNITY OF MINNESOTA
34
35 By:_____ Date:_____
36
37
38 ROSEBUD SIOUX TRIBE OF THE ROSEBUD INDIAN RESERVATION, SOUTH
39 DAKOTA
40
41 By:_____ Date:_____
42
43
44 SANTEE SIOUX NATION, NEBRASKA
45
46 By:_____ Date:_____

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ARAPAHO TRIBE OF THE WIND RIVER RESERVATION, WYOMING

By:_____ Date:_____

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION, NORTH DAKOTA

By:_____ Date:_____

CHEYENNE AND ARAPAHO TRIBES, OKLAHOMA

By:_____ Date:_____

THE FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION OF MONTANA

By:_____ Date:_____

OGLALA SIOUX TRIBE

By:_____ Date:_____

THE SHOSHONE TRIBE OF THE WIND RIVER RESERVATION, WYOMING

By:_____ Date:_____

SPIRIT LAKE SIOUX TRIBE, NORTH DAKOTA

By:_____ Date:_____

COLSTRIP ALTERNATIVE LANDOWNERS GROUP

By:_____ Date:_____

1 FIX RANCH
2
3 By:_____ Date:_____

5
6 NATIONAL TRUST FOR HISTORIC PRESERVATION
7
8 By:_____ Date:_____

10
11 MONTANA PRESERVATION ALLIANCE
12
13 By:_____ Date:_____

15
16 NATIONAL WILDLIFE FEDERATION
17
18 By:_____ Date:_____

20
21 NORTHERN CHEYENNE OTTER CREEK DESCENDANTS
22
23 By:_____ Date:_____

25
26 NORTHERN PLAINS RESOURCE COUNCIL
27
28 By:_____ Date:_____

30
31 ROCKER SIX CATTLE COMPANY
32
33 By:_____ Date:_____

35
36 THE SIERRA CLUB
37
38 By:_____ Date:_____

40
41 ***[LIST OF ATTACHMENTS-FOR REFERENCE***
42 *Attachment A-Map of Alternatives*
43 *Attachment B-Identification Plan (ID Plan)*
44 *Attachment C-Definitions and Acronyms*
45 *Attachment D Phase I Inventory-Literature Search and Field Results*
46 *(From Stipulation IV.A-Identification, Tables 1, 2 and 3 and Figure 1)*

- 1 *(From Stipulation V.A.-Assess Effects) Tables 4 and 5 from letter to SHPO [If the Board licenses*
- 2 *any alternative, additional attachments would be developed including a Treatment and*
- 3 *Mitigation Plan to be developed through consultation for any licensed alternative.]*

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

1. PURPOSE

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

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

2. AREA OF POTENTIAL EFFECTS (APE)

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

3. IDENTIFICATION AND EVALUATION

Identification -- Inventory and Field Survey

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

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

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

7
8
9 **Field Survey conducted during Phase I:** In 2013-2014, during Phase I, a pedestrian transect
10 field survey was conducted by an equal number of tribal resource experts and archaeologists of
11 the APE of the five alternative routes and two variations being considered for this project where
12 property access was granted. The focus of the survey was to identify potential National Register
13 eligible or listed historic properties, including standing structures, buildings, districts, sites, and
14 properties of religious and cultural significance that may be affected by the Undertaking.
15 Representatives of the tribes were invited by STB to participate in the Phase I Survey to help
16 identify, document, and evaluate properties within the APE to which they attach traditional,
17 religious, and cultural significance. The results of the field survey are included in Attachment D
18 of this PA, in tables 3 through 5 and Figure 1.

Comment [WS16]: No complete report

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

33
34 The field survey during Phase II will include the following activities:

- 35
36 1. An intensive pedestrian survey of the portions of the construction ROW plus 20
37 feet on either side of the fenced construction ROW that were not surveyed during
38 Phase I.
- 39 2. An intensive pedestrian survey of all the lateral areas, borrow areas, haul roads
40 (new and upgraded), staging areas, and other ancillary areas related to the
41 Undertaking.
- 42 3. A geomorphological survey of the construction ROW will be conducted to
43 identify areas where buried historic properties may exist and where deep testing,
44 as identified by the geomorphologist, may be necessary to identify cultural
45 resources. The geomorphologist will also recommend construction monitoring
46 areas and assist in evaluating the National Register eligibility of any newly

Comment [WS17]: There is no indication that Phase one was intensively inventoried, in fact all indications are that is was only recon level. Unless class III intensity is demonstrated the area needs to be re inventoried to appropriate standards. This is further an issue without a standard inventory report for phase one for documentation and assessment.

Comment [WS18]: GEOMorph should make a report and recommendation SHPO and others should review just like other identification efforts

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

4. An intensive pedestrian survey of the construction ROW using transects no more than 15 meters apart to complete the field survey inventory effort.
5. A reconnaissance level survey of those areas outside the ground disturbance area where there is the potential for the Undertaking to have an adverse effect, as defined in 36 C.F.R 800.5, on historic properties. A reconnaissance survey is an on the ground or pedestrian examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present. Identification of these areas will include consultation with the MT SHPO, THPO/cultural resource representative designated by the tribes, TRRC, other identified consulting parties, and federal agencies.

Comment [WS19]: Is this for indirect effects? Clarify

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

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

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

Phase II Archaeological Testing and Evaluation of National Register Eligibility

If STB selects a build alternative, archaeological investigations during Phase II would be conducted in order to test or evaluate an archaeological site's eligibility for inclusion in the National Register of Historic Places (NRHP). Evaluation of built resources is described below, in Section 8. Some archaeological sites may be evaluated for National Register Eligibility based purely on observed surface characteristics, e.g. a lithic scatter on bedrock. Many other archaeological sites will require test excavations to evaluate the National Register eligibility of identified historic properties. If necessary, testing and evaluation excavations during Phase II will be conducted to locate, record, and evaluate the National Register eligibility of any identified historic properties within the APE of the approved alternative route. Testing and Evaluation excavations during Phase II may include shovel testing, augering, 1 x 1m or 50 x 50 cm test units, and use of heavy equipment such as backhoes in certain cases. Tribal input will be sought when assessing the National Register eligibility of any properties of traditional religious and cultural significance to tribes. If, in the opinion of the Contractor and the cultural resource representative designated by the tribes, an historic property is eligible for the National Register as a traditional cultural property,³ sufficient information to formulate Treatment Plan(s) will be obtained.

Comment [WS20]: SHPO needs to have an opportunity to comment on site specific testing plan adequacy and in case where tribes and SHPO recommendations may not agree

Specific information should be recovered during an investigation, including determination of the horizontal and vertical limits of an archaeological site, location of areas of moderate and high

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

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

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

Archaeological Data Recovery/Mitigation

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

Comment [WS21]: Need consensus agreement of avoidance

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

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

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

4. TRIBAL CONSULTATION PROTOCOLS

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

Ethnographic Study

[TBD]

5. STANDARDS AND QUALIFICATIONS

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

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

6. SAFETY

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

7. REPORTS

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

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

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

PART 1

Cover

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

Comment [WS22]: Not needed, seems like red herring SHPO guidance on standards should be referenced and followed

prepared the report.

Cover Page

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

Summary of Findings

Table of Contents

List of Figures

List of Tables

Appendix(s)

1. Introduction

Project Description	(include appropriate permit and agency file numbers)
Personnel	(their roles and duties on the project)
Report Format	(what is in each chapter of the report and who wrote or contributed to each chapter)

2. Environmental Overview

- Topography
- Geology
- Drainages
- Flora
- Fauna
- Climate
- Paleoenvironment

3. Culture History

Paleoindian	(includes a discussion of pre-Clovis)
Archaic etc.	(varies widely along the project)
Woodland and Plains	(Plains Indian)
Village	
Contact Period	(Protohistoric)
Historic	

1 4. Research Design and Materials

2 Archaeological Site Definition

3 Prehistoric Archaeological Research Orientation

4 Prehistoric Archaeological Research Questions

5 Historic Archaeological Research Orientation

6 Historic Archaeological Research Questions

7 Inventory and Research Methods

8 Record Search and Literature Review

9 Known Sites

10 Previous Investigations

11 Field Survey

12 Methods

13 Expected site types/locations

14 Field and Site Records

15 Methods

16 Testing and Evaluation

17 Methods

18 Laboratory Analysis

19 Prehistoric Artifact Collection and Analysis

20 Methods

21 Chipped-stone Technological and Functional Analysis

22 Methods

23 Historic Artifact Collection and Analysis

24 Methods

25 Curation

26 Methods

27 Facilities/Disposition

28 References

29 Appendix(s)

30 (Geomorphological Report)

31 Detailed Project Location Maps

32 and

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

35 5. Results of Investigation

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

38 Site type, component, USGS 7.5 minute quadrangle, site area, topography,
39 elevation, soil type, nearest water, survey method, site condition, site description,
40 artifact descriptions and disposition, interpretation, and National Register
41 eligibility recommendation.
42
43
44
45
46

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

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

Prehistoric Context

Site distribution relative to environmental variables potential for unanticipated discovery

Site density

Site function

Temporal and cultural affiliation

Historic Context

Site distribution relative to environmental variables potential for unanticipated discovery

Site density

Site function

Temporal and cultural affiliation

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

Conclusions

Prehistoric Sites

Historic Sites

Recommendation (eligibility recommendations)

Prehistoric Sites

Site Specific/Avoidance/Mitigation/Other Historic Sites

Site Specific/Avoidance/Mitigation/Other

8. References

9. Appendix(s)

(Geomorphology report)

(Ethnographic)

(Site forms)

(Maps)

(Correspondence)

(American Indian coordination and consultation documentation and description)

(American Indian monitor reports)

(Other ancillary studies for example: radiocarbon, AMS, faunal analysis, phytolith analysis, pollen analysis, etc)

8. FIELDWORK –Field Methods for Subsurface Investigations

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

- Shovel Testing and Augering

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

- 1 x 1 meter or 50 x 50 cm Test Units

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

- Backhoe **Excavation**

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

- Collection

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

- Curation

See Stipulation XII.in this PA.

- Human Remains

See Stipulation XI.in this PA.

Comment [WS23]: Tribes and Shpo should have comment period on proposed site specific efforts

Comment [WS24]: This methodology is for low surface visibility and or establishing boundaries from known densities to less but not testing per say. It may also demonstrate lack of soil deposition, but that is not testing for features, artifact density etc. as term is generally used.

Comment [WS25]: Comment period for shpo on site specific proposal

Comment [WS26]: Only after all parties careful consider and offer comments objections etc. Cannot be unilateral, and this doesn't even say who would decide or when.

1 • Evaluation Testing

2
3 Sufficient subsurface testing, as determined by STB, the Contractor, the SHPO,
4 the BLM if BLM administered lands, the ARS if ARS administered lands or MT
5 DNRC if state lands, and the Tribal Nation monitor on those sites suspected to be
6 NRHP eligible, will be conducted to allow the Contractor to develop Treatment
7 Plans or other alternatives to address any adverse effects.
8

9 • Minimum Field Recordation Standard

10
11 1. Prehistoric and Historic Sites

12
13 The appropriate site forms will be completed while on site (if possible). A
14 sketch map and field notes (field notes should be kept by each crew
15 member), and photographs of the site will be required, and log with photo
16 information will be kept. A description of the artifacts and features
17 observed on each site will be included in the field notes. The site will be
18 noted on a 7.5 minute USGS quad.
19
20

Comment [WS27]: SHPO CRIS forms

221 Built Resources (including buildings, bridges, and other structures)

22
23 The appropriate site forms will be completed while on site. The field notes will include the
24 address or location, the present condition and integrity of the property; a description of the
25 prominent architectural/engineering features with emphasis on the primary facade; a documented
26 or estimated date of original construction; identification of obvious alterations/additions; and a
27 designation of style or vernacular type, when applicable. A 3 ½-inch by 5-inch black and white
28 photograph of each property will be taken using 35mm format. Each photograph will be keyed
29 with the corresponding roll and frame number and identified as such on individual photographs
30 (see photo log instructions above). Original negatives and contact sheets will be included with
31 the final report (Structures should be evaluated in the field by a qualified architectural historian).
32 Upon completion of the project and acceptance of the Final ID and Evaluation Reports all
33 photographs and negatives will be shipped to the appropriate curation facility.
34
35

36 **CONFIDENTIALITY**

37
38 All PA consulting parties shall ensure that shared data, including data concerning the precise
39 location and nature of historic properties and properties of religious and cultural significance are
40 protected from public disclosure to the greatest extent permitted by law, including conformance
41 to Section 304 of the NHPA, Section 9 of ARPA, and the Executive Order on Sacred Sites,
42 13007 Fed. Reg. 61-104, dated May 24, 1996.
43

ATTACHMENT C
ACRONYMS and DEFINITIONS

ACRONYMS

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

DEFINITIONS

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

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

[Other definitions?]

ATTACHMENT D

NEPA Phase I Inventory

Summary of Previously Recorded Cultural Resources

Cultural resources in Montana are recorded on site forms that are retained in the State of Montana Cultural Resource Information System database, maintained by the Montana Historical Society. Site records are forms prepared by cultural resources specialists that describe and map previously discovered cultural resources (including archaeological sites and built resources) in an area. OEA obtained site records from MHS for an area 1 mile wide on either side of the centerline for each build alternative. This was consistent with the access requested for all NEPA resource areas, not just cultural resources. This large records search area, because it yields many site forms describing previously found cultural resources, also provides a better context for the cultural environment of the APE. The records searches yielded 780 site forms: 170 from Custer County, 166 from Powder River County, 312 from Rosebud County, and 132 from Bighorn County. Of these 780 previously recorded cultural resources, 71 fell within the APE including 44 archaeological sites (Table 1) and 27 historic built resources (Table 2). Reports of past surveys and analyses were also obtained from the Montana Historical Society, indicating that *less than 10 percent* of the areas encompassed by the build alternatives had been previously surveyed for archaeological sites. Tables 1 and 2 summarize the previously recorded archaeological sites and built resources within one mile on either side of the centerline for all build alternatives.

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

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

Notes:

^a Two railroad grades.

Table 2. Previously Recorded Built Resources—All Build Alternatives

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

Notes:

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

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

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

OEA reviewed the inventory of properties listed in the National Register through the National Park Service's Focus digital library. Based on this search, OEA found that the Main Street Historic District in Miles City is the sole property in the APE listed in the National Register. Neither the Wolf Mountain Battlefield National Historic Landmark nor the National Register-listed Fort Keogh Historic District are located in the APE.

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

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

NEPA Phase I Field Survey Results

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

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

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

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

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

Notes:

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

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

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

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

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

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

1
2

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

Table 5. Number of Built Resources surveyed within the APE

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

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

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

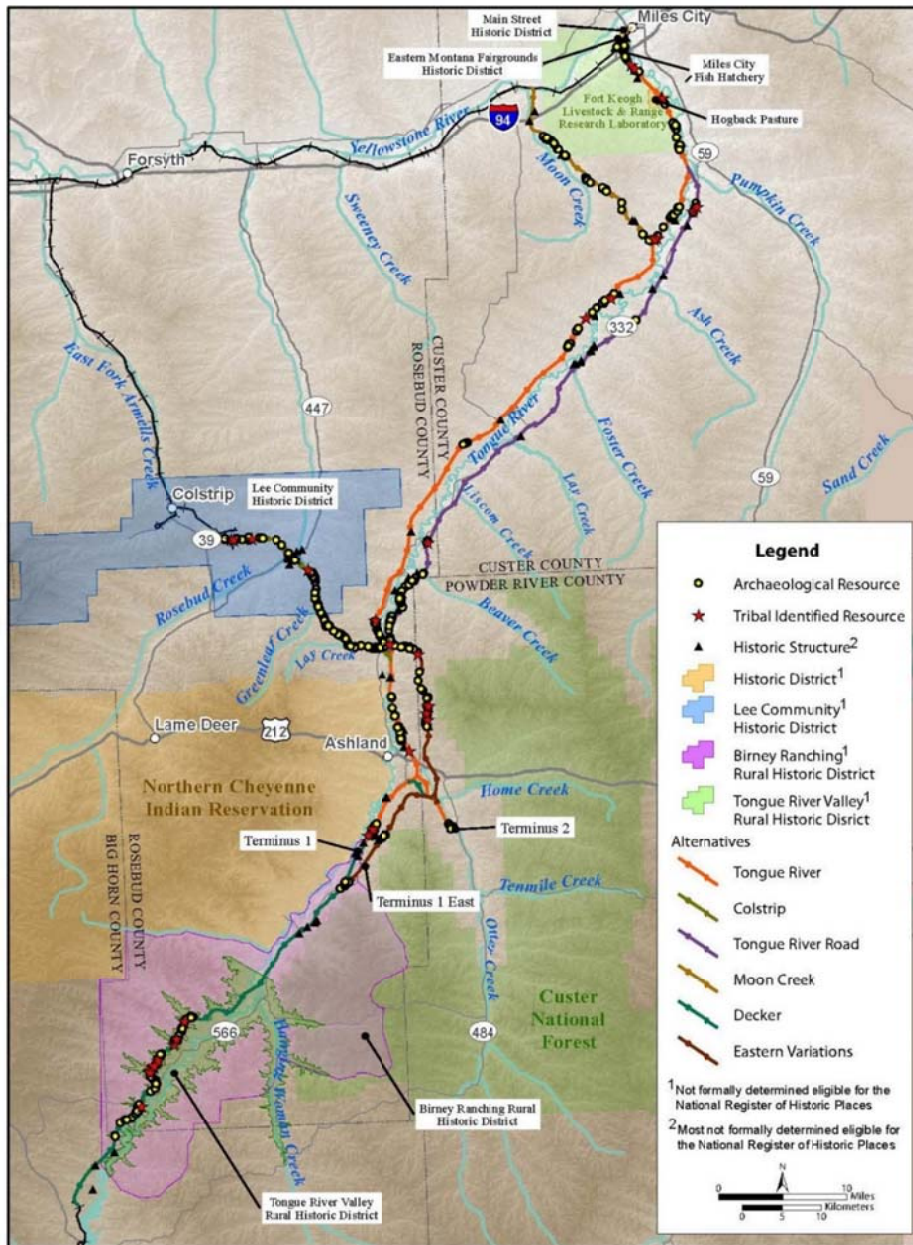


Figure 1. Newly and Previously Identified Cultural Resources in Tongue River Railroad APE

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

Tribal Resources

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

Potential Eligibility of Tribal Resources

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

Archaeological Resources

Lithic Scatters

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

Lithic Scatters with Other Components

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

Stone Circles

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

such as hide tanning.

Cairns

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

Figure 2. View of a Cairn



Historic Water-Associated Structures

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

Historic Trail or Fence

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

common materials used for fence construction.

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

Stone Alignments

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

Rockshelters

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

Depressions

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

Native Americans and/or European Americans.

Refuse Scatters

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

Building Remains

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

Survey Markers

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

Hillcuts

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

Potential Eligibility of Archaeological Resources

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

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

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

Figure 3. Rocks Aligned for a Fasting Circle



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

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

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

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

- 29 • Lithic scatters with other components
- 30 • Stone circles/tipi rings
- 31 • Rock cairns and rock alignments
- 32 • Rock shelters and depressions
- 33

34 *Built Resources*

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

37 *Ranches*

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

2 Homesteads

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

11 **Figure 4. Example of a Homestead in the APE**



12 Transportation and Water Conveyance

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

16 **Figure 5. Example of a Windmill in the APE**



Potential or Designated Historic Districts

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

Fish Hatchery (Potential Historic District)

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

Eastern Montana Fairgrounds (Potential Historic District)

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

Figure 6. Eastern Montana Fairgrounds, Miles City



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

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

Lee Community Historic District (Potential Historic District)

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

Tongue River Valley Rural Historic District (Potential Historic District)

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

Birney Ranching Rural Historic District (Potential Historic District)

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

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

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

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

Potential Eligibility of Built Resources

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

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

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

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

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

the region or are good representations of a significant property type, they could be considered eligible under Criteria A or C if they retain integrity.

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

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

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

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

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

References Cited

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