

Richard,

Thanks for your prompt response. I agree with your interpretation of the 106 regs regarding the federal agency's responsibility to seek tribal comment and I also appreciate your advice on how to proceed with regard to TCP considerations absent a response from interested tribes.

I also respect your preference to review eligibility for these sites on an individual rather than collective basis. We'll review our individual site determinations to ensure that you have the information you need to complete your review and provide us with comment.

Best Regards,
Catherine Glidden
Environmental Protection Specialist
Surface Transportation Board
Section of Environmental Analysis
Washington, DC 20423-0001
Phone: (202) 245-0293
Fax: (202) 245-0454

-----"Richard Currit" <RCURRI@state.wy.us> wrote: -----

>To: Catherine.Glidden@stb.dot.gov
>From: "Richard Currit" <RCURRI@state.wy.us>
>Date: 07/09/2008 01:14PM
>cc: iritchie@fs.fed.us, mhays@fs.fed.us, Michael.Madson@hdrinc.com,
>dbibler@louisberger.com, rwithrow@louisberger.com, "John Laughlin"
><JLaugh@state.wy.us>, "mary hopkins" <hopkins@uwyo.edu>
>Subject: Re: DM&E Project Report Review- Federal Agency Comments

>

>

>Catherine,

>

>Thanks for the clarification.

>

>Per 36 CFR Part 800.2(c)(2)(ii)(A), in part:

>

>"The agency shall ensure that consultation in the section 106 process
>provides the Indian tribe or Native Hawaiian organization a
>reasonable opportunity to identify its concerns about historic
>properties, advise on the identification and evaluation of historic
>properties, etc."

>

>Please note, the standard for consultation is a "reasonable
>opportunity". Elsewhere in the 800 regs (36 CFR Part 800.3(f)((2),
>"Involving Indian Tribes and Native Hawaiian organizations), it
>describes the Federal Agency making a "reasonable and good faith
>effort" in identifying Tribes. Nowhere do the regulations require
>that the Federal Agency actually receive a response from the Tribes
>in order to move forward. The Tribes cannot be forced to consult or
>respond. Whether or not Tribes choose to participate in
>determinations of eligibility and/or effect is entirely at their
>discretion. If the Tribes have been provided "reasonable"
>opportunities to comment, and have chosen not to, the Federal

>Agencies consultation requirements have been met. The only
>assumption that can be made at that point in time is that the Tribes
>have no interest in that particular site/set of sites, and that the
>sites do not meet the criteria for Traditional Cultural Properties.
>The Federal Agency documents this in their NRHP eligibility
>determination (other eligibility criteria must still be considered)
>that is submitted to the SHPO.

>
>I hope this helps.

>
>Richard L. Currit
>Senior Archaeologist
>NEPA Coordinator
>Wyoming State Historic Preservation Office
>307-777-5497
>rcurri@state.wy.us

>
>
>>>> <Catherine.Glidden@stb.dot.gov> 7/9/2008 10:26 AM >>>

>
>The question is: How would you like the STB to address the National
>Register eligibility of sites that are shown in reports provided by
>consultants (as the report in question, our WY1) as "unevaluated"
>under any criteria and needing Native American input, when no Native
>American input has been forthcoming?

>
>
>Catherine Glidden
>Environmental Protection Specialist
>Surface Transportation Board
>Section of Environmental Analysis
>Washington, DC 20423-0001
>Phone: (202) 245-0293
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>
>
>
>-----"Richard Currit" <RCURRI@state.wy.us> wrote: -----

>
>>To: Catherine.Glidden@stb.dot.gov
>>From: "Richard Currit" <RCURRI@state.wy.us>
>>Date: 07/09/2008 12:03PM
>>cc: iritchie@fs.fed.us, mhays@fs.fed.us, Michael.Madson@hdrinc.com,
>
>>dbibler@louisberger.com, rwithrow@louisberger.com, "John Laughlin"
>><JLaugh@state.wy.us>, "mary hopkins" <hopkins@uwyo.edu>
>>Subject: Re: DM&E Project Report Review- Federal Agency Comments

>>
>>
>>Catherine,
>>I am not sure what you are looking for. Beyond following the regs
>>there really isn't any standardization. Are there any specific
>>concerns, issues, questions?

>>Richard
>>
>>>>> <Catherine.Glidden@stb.dot.gov> 7/9/2008 9:42 AM >>>>>

>>
>>Thanks, Richard
>>
>>Could you provide us with an appropriate way to deal with these
>types
>>of sites?
>>
>>Thanks,
>>Cathy
>>
>>Catherine Glidden
>>Environmental Protection Specialist
>>Surface Transportation Board
>>Section of Environmental Analysis
>>Washington, DC 20423-0001
>>Phone: (202) 245-0293
>>Fax: (202) 245-0454
>>
>>
>>
>>-----"Richard Currit" <RCURRI@state.wy.us> wrote: -----
>>
>>>To: Catherine.Glidden@stb.dot.gov
>>>From: "Richard Currit" <RCURRI@state.wy.us>
>>>Date: 07/09/2008 11:12AM
>>>cc: iritchie@fs.fed.us, mhays@fs.fed.us, Michael.Madson@hdrinc.com,
>
>>
>>>dbibler@louisberger.com, rwithrow@louisberger.com, "John Laughlin"
>
>>><JLaugh@state.wy.us>, "mary hopkins" <hopkins@uwyo.edu>
>>>Subject: Re: DM&E Project Report Review- Federal Agency Comments
>>>
>>>
>>>Catherine,
>>>
>>>Thank you for the information. Per item #3 below, blanket eligible
>
>>>TCP status for stone circles and cairns. We will not be using this
>
>>>approach in Wyoming for several reasons:
>>>
>>>-We do not feel this approach conforms with 36 CFR Part 800, or
>>>National Register Bulletin 38.
>>>
>>>-The State of Wyoming does not, and will not, presume to make
>>blanket
>>>decisions concerning what is traditional or sacred for sovereign
>>>Native American Nations or traditional religious practitioners.
>>>
>>>-In past consultations, the assumption that all sites of these
>types
>>
>>>are eligible, sacred, or TCP's has not been born out.
>>>
>>>-Consistency and precedent. If we assume this determination of

>>>eligibility for this project, we will be bound to make the same
>>>assumption for every other undertaking in the State. If we are to
>do

>>

>>>this, STB will need to get concurrence on this presumption of
>>>eligibility from the other federal agencies which will be affected

>

>>by

>>>it. Particularly the BLM, USFS and NPS.

>>>

>>>We will comment on the other items at the appropriate time.

>>>

>>>Sincerely,

>>>

>>>Richard L. Currit

>>>Senior Archaeologist

>>>NEPA Coordinator

>>>Wyoming State Historic Preservation Office

>>>307-777-5497

>>>rcurri@state.wy.us

>>>

>>>

>>>>> <Catherine.Glidden@stb.dot.gov> 7/9/2008 8:21 AM >>>

>>>

>>>Dear Richard Currit:

>>>

>>>I am writing you in regards to your review of the report: A Class

>

>>>III Cultural Resource Inventory of Eight Portions of Dakota,

>>>Minnesota, and Eastern Railroad Corporation's Powder River Basin

>>>Expansion Project, Segments 1 and 2, Campbell, Niobrara, and Weston

>

>>

>>>Counties, Wyoming (Louis Berger Tracking No WY1).

>>>

>>>You had requested information regarding agency comments concerning

>

>>>the above report. I have attached comments that we received from

>the

>>

>>>U.S. Forest Service (FS) in Wyoming and the Army Corps of

>Engineers.

>>

>>>In an October 7, 2007 letter to me (EI-3193), the FS had a number

>of

>>

>>>comments and concerns while the ACOE concurred with the

>>>determinations offered up in the report (EI-3168). I have shown the

>

>>

>>>six separate comments from the FS below along with my suggested

>>>resolution of these comments. I am copying DM&E's consultant, HDR,

>

>>>on this email as they are conducting the survey work for this

>>project

>>>and many of the comments need to be addressed by HDR. I am also

>>>copying the FS on this email so they are aware that we are
>>>addressing their concerns. In your response, please copy all of the
>
>>
>>>individuals shown in the addressee list. Also, in the future please
>
>>
>>>copy me on any emails sent to our third-party contractor so I can
>
>>>stay in the loop.
>>>
>>>FS Comments:
>>>
>>>1. The report notes that the work done was only for the ROW
>corridor
>>
>>>and does not address indirect effects in the rest of the APE. As a
>
>>>result our comments are limited to the subset of the APE described
>
>>in
>>>the report. We look forward to taking part in the development of
>how
>>
>>>the remainder of the APE will be addressed.
>>>
>>>- HDR, please respond to the above issue and how you intend to
>>>address the remainder of the APE.
>>>
>>>2. Does the route surveyed match the design plans, or is the route
>
>>>immutably fixed?
>>>
>>>- HDR, please respond to the above question.
>>>3. We look forward to a chance to review the report once tribal
>>>consultation has been taken into account. For example consideration
>
>>
>>>of 48WE1280 may be clarified based on the results of tribal
>>>consultation.
>>>- The site noted above was left unevaluated in the report and
>>>includes stone circles. In SD, the SHPO and STB have concurred that
>
>>
>>>we will be finding such sites eligible as a group under Criterion
>A.
>>
>>>We never received a response from tribes regarding the eligibility
>
>>of
>>>the site in specific, but did receive information from the Standing
>
>>
>>>Rock Sioux Tribes indicating that such sites as well as cairns are
>
>>>sacred and could be TCPS. The information provided by the tribe is

>
>>>attached. Please comment if you disagree with this approach for
>>>stone circle sites and cairns in Wyoming.
>>>4. We concur with the evaluation of 48WE1080 and will be interested
>
>>
>>>in the development of mitigation measures (treatment).
>>>- Federal agencies, tribes, SHPO, and DM&E will be involved in the
>
>>>development of treatments in the near future.
>>>5. The report maps show several sites, 48WE1075, 48WE1076, and
>>>48WE1079 for example, which are not addressed in the report. What
>is
>>
>>>the status of these sites?
>>>- HDR, please explain.
>>>6. We provisionally concur with the remaining determinations of
>>>eligibility, pending a field visit of two sites, 48WE1347, 48WE1349
>
>>
>>>and the results of tribal consultation.
>>>- HDR, please work with FS to arrange a site visit to these sites
>
>>>(both sites are listed as being on FS land).
>>> I look forward to hearing from you regarding the above. In your
>>>responses, please be sure to copy everyone on this list.
>>>Thanks all. If anyone has any questions regarding the above, please
>
>>
>>>email me, or call me at the number shown below or on my cell at
>>>240-446-5086. I am working at home today, so please call me on my
>
>>>cell if you need to talk with me today.
>>>Best Regards,
>>>-Cathy
>>>Catherine Glidden
>>>Environmental Protection Specialist
>>>Surface Transportation Board
>>>Section of Environmental Analysis
>>>Washington, DC 20423-0001
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