

**From:** Starzak, Richard <Richard.Starzak@icfi.com>  
**Sent:** Fri 10/24/2014 11:04 AM  
**To:** brhodd1@yahoo.com; Betsy Merritt <emerritt@savingplaces.org>; Jenkins, Paul C (Chris) NWS <Paul.C.Jenkins@usace.army.mil>; Conrad Fisher <esevone1@yahoo.com>; 'conrad.fisher@cheyennenation.com'; dcoburn@steptoe.com; doug\_melton@blm.gov; 'swilmoth@mt.gov'; tclouthier@standingrock.org; Catherine.Nadals@stb.dot.gov; Reynolds, Alisa <Alisa.Reynolds@icfi.com>; Mello, Sarah <Sarah.Mello@icfi.com>; Diller, Elizabeth <Elizabeth.Diller@icfi.com>; Summerville, Alan <Alan.Summerville@icfi.com>; Vicki.Rutson@stb.dot.gov



Stipulation\_V.FEE.

Hi Ben, Betsy, Chris, Conrad, David, Doug, Stan, and Terry,

We look forward to your participation in Friday's PA working group call at 1 PM EST. (Call in information is: 1-877-423-6338, Passcode: 364456#) **Please note, the Word file is attached, and you'll soon be getting an e-mail from Sarah Mello with the Google Docs link. The Google docs doesn't display line numbers or comment bubbles, so you may want to have the Word doc printed out or available during the call.**

Last session, we worked on the Area of Potential Effects and the Identification and Evaluation of Historic Properties.

This session, we'll be working on Assessing Effects and Treatment Plans (draft not yet attached). The Assessing Effects stipulation will follow the "process PA" template that ACHP sent us. The Treatment Plan stipulation contains the content from the 2011 PA.

Tomorrow morning, Cathy or I will be sending you these two stipulations of the draft PA in Word, and we can brainstorm on how to revise the information. Like last time, we plan to try "Google Docs" to review the file on the screen. One disadvantage of Google Docs, is it doesn't show the "bubble comments" that are in Word, so you may want to have the Word doc available during the call to see the comments received from ACHP and the Colstrip Landowners Group.

We understand everyone has busy schedules, and we truly appreciate your participation.

Thank you very much,  
Rick (in support of Cathy)

**RICHARD STARZAK** | Senior Technical Director/Senior Architectural Historian | +1.213.312.1751  
direct | [richard.starzak@icfi.com](mailto:richard.starzak@icfi.com) | [icfi.com](http://icfi.com)  
**ICF INTERNATIONAL** | 601 West 5<sup>th</sup> Street, Suite 900, Los Angeles, CA 90071 USA | +1.213.840.7480 mobile

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## STIPULATIONS

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

- I. **ROLES AND RESPONSIBILITIES (09/26/2014 session)**
- II. **REVIEW OF ALTERNATIVES (09/26/2014 session)**
- III. **AREA OF POTENTIAL EFFECTS (APE) (10/10/2014 session)**
- IV. **IDENTIFICATION AND EVALUATION (10/10/2014 session)**

### V. ASSESSMENT OF EFFECTS

- A. In the EIS, the STB analyzed the impacts of each alternative upon the archaeological resources, tribal resources, and built resources identified through field survey in the APE on areas of accessible parcels. The EIS analyzed the types and numbers of resources that were identified in the proposed right-of-way for each build alternative and would likely be adversely affected by construction and operation activities. The EIS also analyzed potential resources that were not in the proposed right-of-way, but were identified by survey in the buffer area, and could be indirectly affected by construction and operation activities. The right-of-way plus the buffer area is identical to the APE.
- B. In the EIS, STB assessed impacts on land that was not accessible and therefore not surveyed during Phase I. STB assessed the sensitivity of archaeological sites on the total acreage (both surveyed and unsurveyed) of each alternative based on the number of archaeological sites identified during the survey, combined with three slope percentage categories (high, moderate, and low). OEA then used this to extrapolate archaeological site sensitivity information within the total build alternative. To assess impacts on built resources for areas where access was not granted the STB's built resource survey teams reviewed tax assessor data and geographic information system (GIS) maps using Google Earth Pro satellite imagery.
- C. If the STB makes a decision to approve a build alternative, in consultation with the PA consulting parties, STB will assess the direct, indirect and cumulative effects of this Undertaking on historic properties consistent with 36 CFR 800.4(d) and identify effects on each historic property within the APE of the approved build alternative in accordance with the *criteria of adverse effect* established in 36 CFR 800.5(a)(1-2), and provide the PA consulting parties with the results of the finding in writing, following 36 CFR 800.11(e)(4-6), as follows:
  - 1. A description of the Undertaking's effects on historic properties;
  - 2. An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and
  - 3. Copies or summaries of any views provided by consulting parties and the public.
- D. The assessment of effects will serve as the basis for the development of one or more Treatment Plan(s) as described in Stipulation VI.

**Commented [SR1]:** Sections C-H of this stipulation follow the format of the Boardman to Hemingway PA provided by the ACHP as a template for a "process PA".

- E. The STB will consult with the PA consulting parties to seek ways to avoid or minimize adverse effects to historic properties. If historic properties cannot be avoided, subsurface investigation may be necessary for archaeological sites within the direct effect APE which may be adversely affected. Determination of the site boundaries in relation to the direct effect 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 parties to this agreement to determine appropriate measures to resolve adverse effects to be detailed in the Treatment Plan(s).
- F. The STB, in consultation with the PA consulting parties, will broadly assess cumulative effects under Section 106 in order to identify all reasonably foreseeable potential adverse effects as a result of the Undertaking (36 CFR 800.5 (a)(1)). Potential cumulative or reasonably foreseeable effects will be based on the APEs for direct and indirect effect and be addressed in the Treatment Plan(s) according to the procedures in Stipulation VI.
- G. The STB will provide all assessments of effect to historic properties in writing to the parties to this agreement. This will be done concurrently with the distribution of the Phase II Evaluation Reports described in Stipulation IV. Reviews will proceed according to the procedures and timeframes established in Stipulation IV.
- H. Disagreement regarding assessments of effect will be handled according to the procedures established in Stipulation (TBD).

**VI. TREATMENT PLANS**

**A. Consultation on Developing Treatment Plans**

- 1. STB will consult with the MT SHPO, consulting tribes and other PA 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. STB will notify the PA consulting parties and participating tribes of the proposed treatment options within 45 days of the date of issuance of complimentary Final Phase II Evaluation reports.

**B. 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

**Commented [SR2]:** This Stipulation based on the 2011 PA.

Undertaking. 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 historic properties in the APE or portion thereof;
  - b. identify the nature of the effects to which each property will be subjected; and
  - c. identify the treatment strategies proposed to avoid, minimize or mitigate the effects of the Undertaking on the historic properties.
3. Each Treatment Plan will incorporate, to the extent feasible, measures identified by tribal representatives to resolve adverse effects to properties significant for their traditional cultural values and, if possible, the protection and continuing access to gathering sites of traditionally-important plants. If appropriate, TRRC may attempt to negotiate tribal access to public or private lands that are not currently accessible to tribes for plant gathering purposes. The Treatment Plan(s) will conform to the principles of the Council's Treatment of Archaeological Properties: A Handbook, Parts I and II, the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation" (48 Fed. Reg. pp. 44716-44742), and appropriate MT SHPO guidelines. Each finalized Treatment Plan will be implemented by TRRC prior to the onset of construction activities.
4. Each Treatment Plan will examine the feasibility of avoiding National Register-listed or -eligible historic properties, or tribal sites of significance. These measures may include modifications to the rail alignment, to the extent feasible, to avoid adverse impacts.
5. If avoidance is not possible, in-place preservation will be the preferred option. TRRC will work with the consulting parties to develop specific procedures to preserve historic properties and sites of significance in-place and minimize visual and noise impacts to such resources as well as impacts to tribal, historic and rural landscapes. These procedures may include minor changes to the rail alignment or construction methods, to the extent feasible, to reduce impacts, and/or monitoring of historic properties by historians, archaeologists and tribal members for sites of significance during construction.

C. Finalization of Treatment Plan(s)

1. STB will submit the draft Treatment Plan(s) to the PA consulting parties for review. Within 30 days of receipt of the Treatment Plan(s), a PA consulting party must notify STB in writing of any informational deficiencies in the Treatment Plan(s). STB will then have 10 days to provide the additional information or to determine that such information is not required. The PA consulting parties will have **45 days** from the receipt of the complete information, or the determination that additional information is not required, to comment on the Treatment Plan(s). If no additional information is requested, the PA consulting

**Commented [SR3]:** Per 9/30/2104 comment letter from Baumstark Braaten Law Partners-Colstrip Alternative Landowners Group: "The 15-day timeline for PA consulting party responses on informational deficiencies is inadequate. To ensure the Landowners' ability to participate meaningfully, the minimum turn-around for their response should be 45 days. The Landowners will require expert assistance to review the sufficiency and quality of the Treatment Plans for their property. We request reasonable financial reimbursement for a qualified expert approved by the Landowners to assist them with this review."

The Landowners are not willing to be bound by any clause that interprets their failure to comment as concurrence."

**OEA:** In response to the comment, the 15-day timeline was expanded to 30-days. Note the highlighted text already illustrates that additional 45-day or 60-day response periods to the consulting parties are available.

Need to discuss whether reimbursement is appropriate. The applicant would already be paying for tribal members and OEA's experts, and SHPO is involved in reviewing adequacy.

**Deleted:** 15 days

parties will have 60 days from receipt of the initial Treatment Plan(s) to submit comments. A copy of any comments sent to STB will be sent simultaneously to the MT SHPO. If any PA consulting party fails to submit its comments within 45 days of the receipt of the complete information, or 60 days of receipt of the initial Treatment Plan(s) if it is complete, STB may assume that party's concurrence with the Treatment Plan(s). 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.

2. 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.