

Section 106 Issues, Interpretations and Processes

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Presentation Format

Standing Rock Sioux Tribe

- Geographic and Ancestral territory

Identification issues

- National Historic Preservation Act – Tribal perspective
- Tribal identification versus archaeological identification

Standing Rock Sioux Tribe Process for Cell Tower/FCC Projects

- On reservation projects
- Off reservation projects
- Two Towers (not a Tolkien reference)

Standing Rock Sioux Tribe

- Reservation located in North and South Dakota along the western edge of the Missouri River
- 2.3 million acres of tribal trust, allotted and fee lands
- The Tribal Historic Preservation Office has assumed all functions of the State Historic Preservation Office for Sioux County, ND and Corson County, SD



Geographic location of Standing Rock Sioux Tribe

Source www.npr.org. Used for educational purposes only.

Why are the Tribes concerned with projects outside the reservation boundaries?

- Section 101 (d) (6) (b)
- Ancestral or Traditional territories

Section 101 (d) (6) (b)

Section 101 (d) (6) (b) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

Ancestral or Traditional Territory

Main focus outside of the reservation for section 106 involves the ancestral or traditional territory which includes the states of Minnesota, North Dakota, South Dakota, Nebraska, Wyoming, Montana and internationally into Canada although the territory is traditionally accepted by Oceti Sakowin (7 council fires) Tribes as being “...anywhere the Buffalo roamed”

Section 106: Meeting the “good faith” effort requirement

- Two sections within 36CFR800 regulations which require federal agencies to meet a vaguely defined and poorly understood “good faith effort” in relation to Indian Tribes and Native Hawaiian organizations and other consulting parties.

36CFR800.2 (c) (2) (ii) (A)

“It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian Tribes and Native Hawaiian Organizations that shall be consulted in the section 106 process.”

The agency official 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, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties and participate in the resolution of adverse effects.

36CFR800.4 (b) (1)

Level of effort. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey.

36CFR800.4 (b)

Identify historic properties. Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian Tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

36CFR800.4 (a) (3)

Seek information, as appropriate, from consulting parties and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties, and

36CFR800.4 (a) (4)

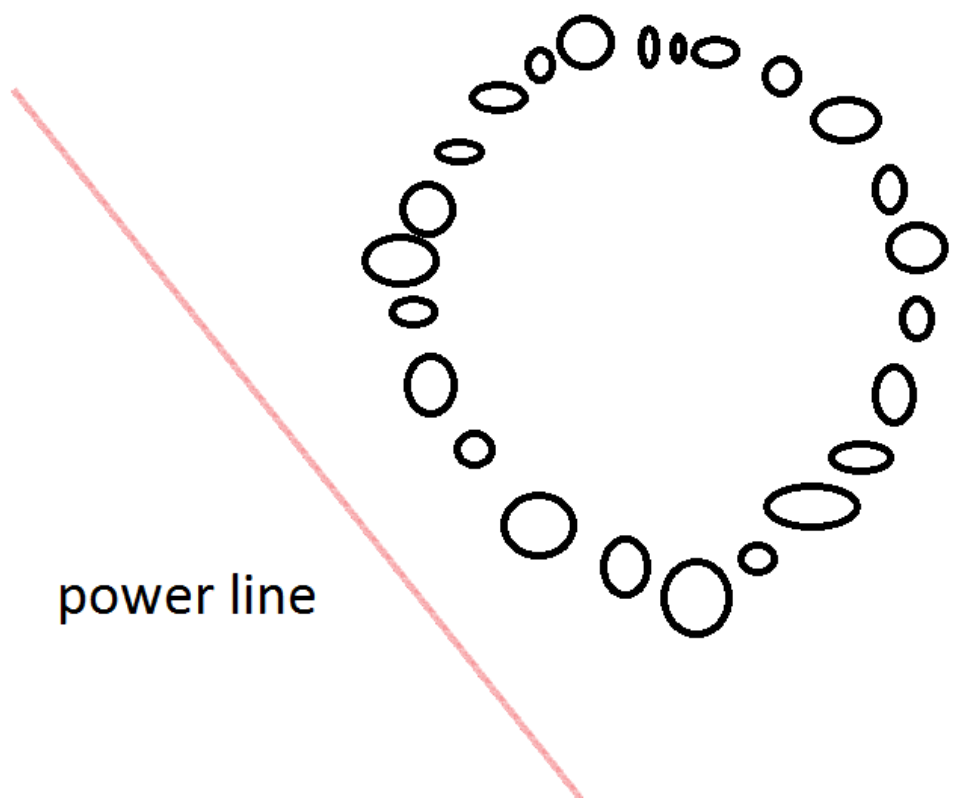
Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to 800.3 (f) to assist in identifying properties, including those of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites.

Identification Issues and the Section 106 Process

“An archaeological or ethnographic study is completed. Isn't that enough?”

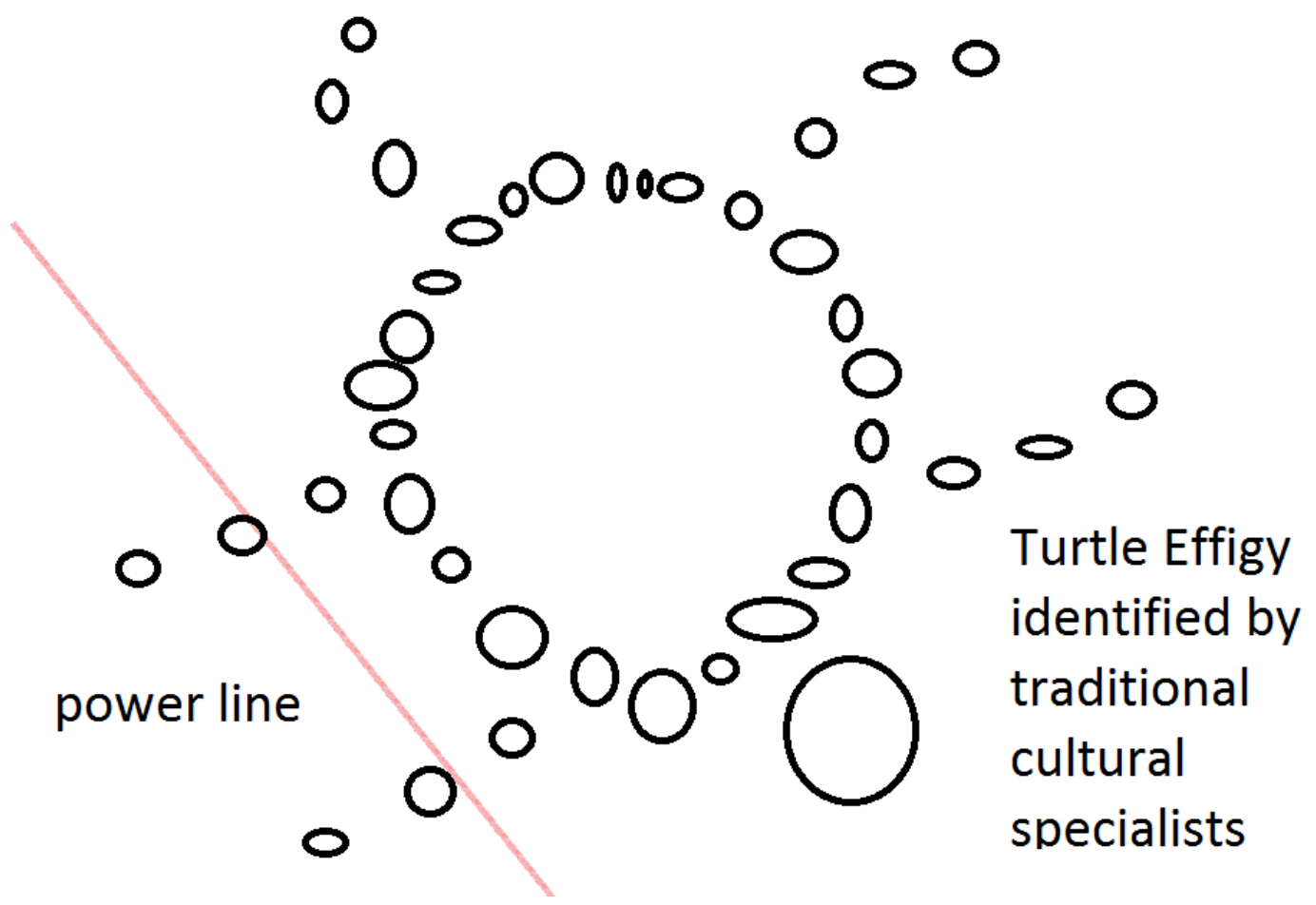
Archaeological identification efforts are not the same as tribal identification efforts

While there are many similarities between archaeological and tribal identification efforts (i.e. survey methodology is not that different on the Great Plains). The understanding and knowledge of what the sites represent is vastly different. This affects the identification of features on sites, the recommendations for boundaries and buffers at sites and for the actual physical effects to historic properties including the destruction of sites if not properly identified by Traditional Cultural Specialists.



power line

Stone circle
identified by
archaeologist



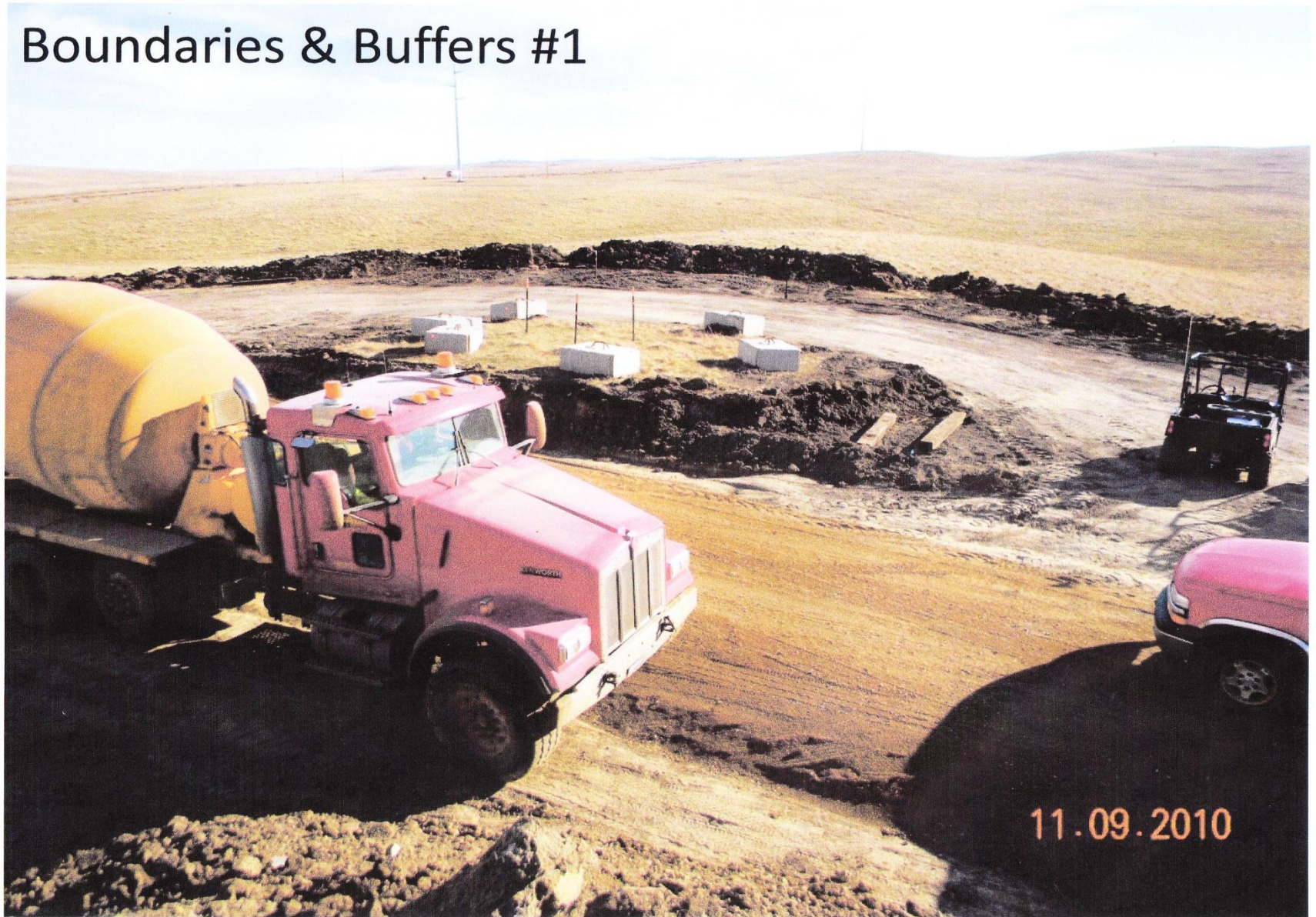
power line

Turtle Effigy
identified by
traditional
cultural
specialists

Boundaries & Buffers #1



Boundaries & Buffers #1



Boundaries & Buffers #1





Boundaries & Buffers #2 (cairn)

11.07.2010

Boundaries & Buffers #2 (ring)



How is the FCC fulfilling this “good faith” responsibility?

- Nationwide Program Agreement (PA) which implemented the Tower Construction Notification System (TCNS)

Standing Rock Sioux Tribe Section 106 process for Cell towers – on reservation

- 100% survey requirement
- Traditional Cultural Specialist requirement
- Fee Schedule

Standing Rock Sioux Tribe Section 106 process for Cell towers – off reservation

- Traditional Cultural Specialist
requirement

Two Towers

Or:

What happens when the Section 106 process and FCC TCNS are not followed