



March 7, 2023

Jennifer Cochran
 Perennial Environmental Services, LLC
 5424 W Hwy 290, Suite 208
 Austin, TX 78735

PRELIMINARY PROJECT CONSULTATION

Project: 211123002S – Navigator Heartland Greenway System
 Location: Brookings, Minnehaha, and Moody Counties

Dear Ms. Cochran:

Thank you for the opportunity to comment on the above-referenced project. The South Dakota Office of the State Historic Preservation Officer (SHPO) would like to provide the following comments.

On February 10, 2023, SHPO received an email from Amy Butler of Perennial Environmental Services, LLC, indicating that documents associated with the proposed Navigator Heartland Greenway were available for review and download from the online SharePoint site. In an email reply dated February 21, 2023, you clarified that Navigator would like SHPO to comment on the entire draft report and that a hard copy of the report and appendices would be provided. SHPO is still waiting for a hard copy of the report and appendices but reviewed the digital copy of the report titled “A Level III Cultural Resources Survey of the Areas within the Heartland Greenway Pipeline System, South Dakota” by Jennifer Cochran, Briana Smith, Abby Peyton, Wyatt Ellison, and Orla Elquist.

The report and previous correspondence regarding the proposed project indicate that the proposed project will require U.S. Army Corps of Engineers (USACE) permits pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act and permits from the U.S. Fish and Wildlife Service (USFWS). Projects requiring a permit from a federal agency are considered federal undertakings and are subject to the requirements of 54 U.S.C. 306108, also known as Section 106 of the National Historic Preservation Act of 1966, as amended. The portions of the project which have no federal nexus will be subject to the permitting requirements of the South Dakota Public Utilities Commission (PUC) and South Dakota Codified Law 1-19A-11.1.

According to the report, 1184.1 acres of land were subject to intensive field survey. Areas surveyed included lands which will be subject to USACE permitting and lands identified as having a high potential for containing cultural resources, as identified in the Scope of Work submitted to

SHPO on March 21, 2022. The report clarifies that additional areas requiring survey will be surveyed in 2023, and the results will be presented in an addendum report.

During the survey efforts, ten sites were newly recorded, and a railroad site was updated to include a newly recorded segment. The report indicates that these eleven properties are all located in areas which will not require USACE permitting. Based upon the information provided, SHPO agrees with the recommendations in the report that newly recorded sites **39MH0193, 39MH0194, 39MH0195, 39MH0197, 39MO0033, 39MO0034, 39MO0036, and 39MO0037** should be considered **Not Eligible** for listing in the National Register of Historic Places. SHPO also agrees that 39MH2013 remains Eligible for listing in the National Register of Historic Places, and the newly recorded segment of 39MH2013 is integral to the site's overall eligibility. Finally, SHPO agrees that newly recorded sites **39MH0196** and **39MO0035** have not been fully evaluated for listing in the National Register of Historic Places and should be considered **Unevaluated**.

The report indicates that the pipeline will be bored under the newly recorded segment of 39MH2013 and that 39MO0035 will be avoided entirely by the project due to workspace modifications. SHPO has no concerns with these proposed avoidance measures. According to the report, Navigator also plans to bore under 39MH0196. As cultural deposits were found up to 92 centimeters below the surface, SHPO strongly recommends that Navigator include adequate horizontal and vertical buffers around 39MH0196 when choosing the bore pit locations and bore depths to ensure that impacts to 39MH0196 are avoided.

Appendix K of the report includes the Unanticipated Discovery Plan for Cultural Resources and Human Remains. It should be noted that, unless specified by the Tribe which assigns religious and cultural significance to the property, a professional archaeologist is not qualified to identify properties of religious and cultural significance to American Indian Tribes and may not be able to assess means to avoid or mitigate impacts to the property. Additionally, under Step 4 of the Procedure for the Discovery of Cultural Resources, the plan states "The THPO will be from the tribe whose jurisdiction where the discovery is found." It is very unclear what is meant by "jurisdiction," and Navigator should note that multiple Tribes may have ancestral ties or assign traditional religious and cultural significance to the same locations within South Dakota. Throughout the Procedures for the Discovery of Human Remains section, please note that the burial laws codified in South Dakota Codified Law 34-27 require notification of the Office of the State Archaeologist at the Archaeological Research Center. SHPO and the Archaeological Research Center are different offices in different locations. Dustin Lloyd is the Burial Coordinator at the Archaeological Research Center and serves as the point of contact for the unanticipated discovery of human remains on state and private lands. SHPO recommends adding his contact information (Dustin.Lloyd@state.sd.us / (605)391-2928) to the list of Project Contacts.


SHPO continues to encourage the applicant to meaningfully engage with our Tribal Partners in the identification of cultural resources and impacts to those resources to assist in fulfilling the requirements of the PUC permitting application. Additionally, any federal agencies involved in the project remain responsible for government-to-government consultation with American Indian Tribes regarding the identification of historic properties and the assessment of the undertaking's effects on historic properties, pursuant to 36 C.F.R. § 800(c)(2)(ii) of the implementing regulations of Section 106.

As additional fieldwork is completed, please submit the results to SHPO for additional comments. Please note that pursuant to 36 C.F.R. § 800, the federal agency is responsible for compliance with the requirements of Section 106, including all findings and determinations and government-to-government consultation with Tribes.

Should you require additional information, please contact Jenna Carlson Dietmeier at Jenna.CarlsonDietmeier@state.sd.us or at (605)773-8370.

Sincerely,

Ted M. Spencer
State Historic Preservation Officer



Jenna Carlson Dietmeier, PhD
Review & Compliance Coordinator

CC: Abby Peyton - Perennial Environmental Services, LLC
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