



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

October 27, 2022

Heather Gibb
Deputy State Historic Preservation Officer
Iowa State Historic Preservation Office
600 E. Locus Street
Des Moines, IA 50319

By email to heather.gibb@iowa.gov

Re: Docket No. FD 36500, Canadian Pacific Railway Limited, et al. – Control of –
Kansas City Southern, et al.; Response to Comments from October 12, 2022
Email from Iowa State Historic Preservation Office (SHPO) on Section 106
Documentation and Process

Dear Ms. Gibb:

This letter is in response to your office's October 12, 2022 comments on technical reports submitted in support of the Surface Transportation Board's (Board) ongoing Section 106 review of the proposed acquisition of Kansas City Southern Railway (KCS) by Canadian Pacific Railway (CP) in Docket No. FD 36500 (Proposed Acquisition). We appreciate the positive feedback on the quality of the technical reports, which the Board's Office of Environmental Analysis (OEA) prepared in consultation with your staff to ensure that the methodology, field efforts, documentation, and reporting are consistent with your office's requirements. We do want to address your comments regarding the definition of the Area of Potential Effects (APE) for the Proposed Acquisition.

By way of background, OEA has consistently explained that the Section 106 review in this case focuses on locations where CP and KCS intend to make capital improvements if the Board authorizes the Proposed Acquisition. There are 25 planned capital improvements, eight of which would be located in Iowa, and these would include adding new passing sidings and expanding existing sidings. As stated in our initial November 17, 2021 letter initiating the Section 106 process and in Section 3.9, *Cultural Resources*, of the Draft Environmental Impact Statement (EIS) issued on August 5, 2022, and as communicated throughout the course of Section 106 consultation, the planned capital improvements are the only outcomes of the Proposed Acquisition that could have the potential to affect cultural resources. Therefore, consistent with the Board's regulations and past practice in merger and acquisition cases, the APE was defined to include the planned capital improvement locations and adjacent areas where auditory or visual impacts could occur. To date, multiple SHPOs and Tribal Historic

Preservation Officers have already concurred with our Section 106 approach and determinations of effect on historic properties.

Your office's comments request additional explanation as to why the APE was not expanded to include existing, operational rail lines on which rail traffic could increase as a result of the Proposed Acquisition. The comments suggest that increased rail traffic outside of the APE could result in the introduction of atmospheric or audible elements that could have the potential to affect historic properties.

Expanding the APE to include existing, operational rail lines where no capital improvements are planned would be inconsistent with past practice and the Board's regulations at 49 C.F.R. § 1105.8(b)(1), which except sales, leases, and transfers of rail lines for the purpose of continued rail operations from Section 106 review where further Board approval would be required to abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Aside from the capital improvements, the Proposed Acquisition would not introduce new atmospheric or audible elements that could affect historic properties. The rail lines on which rail traffic could change if the Proposed Acquisition is approved have been in operation for many years. Therefore, elements typically associated with railroads, such as intermittent wayside or horn noise from passing trains, is and has long been part of the historic character of any historic properties located near those rail lines, and this would continue whether or not the Board authorizes the Proposed Acquisition. Further, railroads have the right to determine how to operate and route trains on their rail lines, as well as the obligation to provide rail service to shippers upon reasonable request. Therefore, average rail traffic on rail lines outside of the APE has historically risen and fallen in response to market conditions and the decisions of railroads and their customers, and this would also continue regardless of whether the Board authorizes the Proposed Acquisition. OEA notes that potential noise and visual impacts were discussed in our assessment of effects for historic properties within the APE because the planned capital improvements would involve the addition and use of new track.

Thank you for your comments. We look forward to continuing consultation with your office as the Section 106 process moves forward. If you have additional questions or comments or would like to discuss this further, please reach out to Alan Tabachnick of my staff at 202-245-0367 or by email at alan.tabachnick@stb.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Gosselin", written in a cursive style.

Danielle Gosselin
Director
Office of Environmental Analysis

Cc: Daniel K. Higginbottom, Archaeologist
Sara André, Architectural Historian