

From: [Beimers, Sarah \(ADM\)](#)
To: [Tabachnick, Alan](#)
Cc: [Murphy, Erin](#); [Andrew Pappas](#)
Subject: RE: Docket No. FD 36500, Canadian Pacific Railway Limited et al. - Control of - Kansas City Southern, et al.; Section 106 Consultation
Date: Wednesday, October 26, 2022 6:10:44 PM

Hello Alan,

Thank you for following up with our office regarding your August 30, 2022 letter to our office which provided a revised determination by your agency that Section 106 does not apply to the proposed railroad acquisition in Minnesota.

While we included your 8/30 letter in our project review file, we typically do not comment on a federal agency's "no potential to cause effects" determination pursuant to 36 CFR 800.3(a)(1) or equivalent procedural withdrawal from the Section 106 consultation process.

To clarify a statement in your August 30th letter, the proposed Brownsville Siding by Canadian Pacific was not permitted in its entirety by the U.S. Army Corps of Engineers. Only the portions of the approximately 2-mile siding construction which impacted wetlands, and were therefore included in the USACE permit area, were subject to review under Section 106. The USACE does not approve projects per se, but instead authorizes the project's impacts to waters of the U.S. Therefore, the scope of USACE undertaking under Section 106 is typically quite limited as is the corresponding Area of Potential Effect. For the Brownsville Siding project, the Section 106 review did not include the entire extent of the proposed siding construction. Also, we understand that the siding has not yet been constructed even though the Section 106 Memorandum of Agreement to resolve the adverse effect to archaeological site was executed in May 2018 and will expire in May 2023. To date, no mitigation stipulations have been fulfilled under this agreement.

In summary, we do not dispute your agency's determination under 36 CFR 800.3(a)(1) for the undertaking, we only want to clarify the scope and nature of the USACE's Section 106 review.

Let me know if this response is sufficient for your agency's record of consultation with the Minnesota SHPO, or if you would like to discuss further.

Sarah

Sarah Beimers (she/her) | Environmental Review Program Manager

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From: Tabachnick, Alan <alan.tabachnick@stb.gov>
Sent: Tuesday, October 25, 2022 11:02 AM
To: Roberts-Davis, Alice (ADM) <alice.roberts-davis@state.mn.us>; Beimers, Sarah (ADM) <sarah.beimers@state.mn.us>
Cc: Murphy, Erin <EMurphy@VHB.com>; Andrew Pappas <apappas@vhb.com>
Subject: RE: Docket No. FD 36500, Canadian Pacific Railway Limited et al. - Control of - Kansas City Southern, et al.; Section 106 Consultation

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Hi. I was wondering if you were going to send us a letter back in response to this letter. It would be great for us to be able to put into our files. Please let me know if you have any additional questions. Thank you.

From: Tabachnick, Alan
Sent: Tuesday, August 30, 2022 2:01 PM
To: Alice.Roberts-Davis@state.mn.us; Beimers, Sarah (ADM) <sarah.beimers@state.mn.us>
Cc: Wayland, Joshua <Joshua.Wayland@stb.gov>; Gosselin, Danielle <Danielle.Gosselin@stb.gov>; Murphy, Erin <EMurphy@VHB.com>; Andrew Pappas <apappas@vhb.com>
Subject: Docket No. FD 36500, Canadian Pacific Railway Limited et al. - Control of - Kansas City Southern, et al.; Section 106 Consultation

Good afternoon. Attached please find a letter with OEA's determination that the Proposed Acquisition would have No Potential to Cause Effects to historic properties in Minnesota, pursuant to 36 C.F.R. § 800.3(a)(1). Thank you for your consultation efforts on this project!

If you have any questions, please let me know.

Alan Tabachnick

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