

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

July 1, 2004

Advisory Council on Historic Preservation
Office of Planning and Review
Mr. Don L. Klima, Director
1100 Pennsylvania Avenue, NW, Suite 809
Washington DC, 20004

**Re: Docket No. AB - 167 (1095X), Consolidated Rail Corporation -
Abandonment Exemption - in Lancaster and Chester Counties,
Pennsylvania**

Dear Mr. Klima:

As you know, the Surface Transportation Board's Section of Environmental Analysis (SEA) has completed its review of Consolidated Rail Corporation's proposed abandonment exemption in Lancaster and Chester Counties, Pennsylvania, pursuant to Section 106 of the National Historical Preservation Act. On April 12, 2004, SEA sent copies of the Final Memorandum of Agreement (MOA) for signature to the signatory and concurring parties, including the Advisory Council on Historic Preservation.

SEA is sending you a copy of the Final MOA, which has been signed by our office, the the Pennsylvania Historical and Museum Commission (the State Historic Preservation Office), the railroad, and the Townships of Martic, Providence, and Sadsbury. The Final MOA is also available on the Board web site at "WWW.STB.DOT.GOV," if you need additional copies. In the interest of completing the Section 106 process in a timely manner, we request that you review the Final MOA, sign at the appropriate line, and return the completed set of signatures by Friday, July 16, 2004.

If you have questions regarding the Final MOA or require further information, please do not hesitate to contact me at (202) 565-1606 or Troy Brady at (610) 793-4301. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Christa Dean". The script is cursive and fluid, with the first name "Christa" and last name "Dean" clearly distinguishable.

Christa Dean
Attorney Adviser
Section of Environmental Analysis

Enclosure

MEMORANDUM OF AGREEMENT
AMONG THE SURFACE TRANSPORTATION BOARD
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
AND
NORFOLK SOUTHERN RAILWAY COMPANY

REGARDING DOCKET No. AB-167 (Sub-No. 1095X)
CONSOLIDATED RAIL CORPORATION
- ABANDONMENT EXEMPTION -
LANCASTER AND CHESTER COUNTIES, PENNSYLVANIA

WHEREAS, in 1989 Consolidated Rail Corporation (Conrail) filed a notice of exemption with the Interstate Commerce Commission (ICC)¹ pursuant to 49 CFR 1152.50 seeking an exemption from the requirements of 49 U.S.C. 10903 to abandon a segment of a line of railroad commonly known as the Enola Branch. The Enola Branch extends generally westward from Milepost 0.0 in Parkesburg, Chester County, PA to Milepost 33.9 at Port in Lancaster County, PA.² The Enola Branch passes through the Townships of Sadsbury, Bart, Eden, Providence, Martic, Conestoga, and Manor, and the Borough of Quarryville in Lancaster County, and the Township of West Sadsbury, the Borough of Atglen, and the City of Parkesburg in Chester County;

WHEREAS, the portions of the Enola Branch that are the subject of this Memorandum of Agreement are those between Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9.³

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, abolished the ICC and transferred certain rail functions, including the rail line abandonment functions at issue in this case, to the Surface Transportation Board (Board), effective January 1, 1996.

² Conrail described the Enola Branch in its 1989 notice of exemption filing as two parallel tracks of a double tracked line. Track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township.

³ Conrail sold the portion of the Enola Branch from Milepost 1.5 to Milepost 4.0 to the Southeastern Pennsylvania Transportation Authority in 1996. On June 23, 1997, Norfolk Southern Railway Company (NS) and CSX Transportation Inc. sought permission from the Board to acquire

(continued...)

WHEREAS, the ICC issued a decision served February 22, 1990 allowing the abandonment subject to a condition, developed as a result of consultation with the Pennsylvania State Historic Preservation Officer (SHPO), that Conrail take no steps to alter the historic integrity of the bridges—the only properties on the Enola Branch that had been identified as potentially eligible for inclusion on the National Register of Historic Places (National Register)—until completion of the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f;

WHEREAS, the purpose of the condition was to allow the ICC to work with consulting parties to develop a plan to avoid, minimize, or mitigate any adverse effects of the abandonment on the bridges. The development of a mitigation plan was held in abeyance, pending negotiations to transfer the Enola Branch for interim trail use/railbanking under 16 U.S.C. 1247(d) (Trails Act) or other public use under former 49 U.S.C. 10906 (now 49 U.S.C. 10905). When those negotiations proved unsuccessful,⁴ the agency resumed the NHPA process;

WHEREAS, while the Board's Section of Environmental Analysis (SEA) was working through the steps of the NHPA process, Friends of the Atglen-Susquehanna Trail, Inc. (FAST) filed a petition with the Board to reopen the proceeding and broaden the NHPA condition so that it would apply to the entire Enola Branch;

WHEREAS, the Board denied FAST's request in a decision served October 2, 1997, and FAST filed a petition for reconsideration;

WHEREAS, the Board, in a decision served August 13, 1999, believing that the only part of the NHPA process still open was the development of mitigation for bridges determined to be historic, denied FAST's petition for reconsideration of the 1997 decision and FAST then sought judicial review;

WHEREAS, in Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transportation Bd., 252 F.3d 246 (3rd Cir. 2001), the United States Court of Appeals for the Third Circuit vacated the Board's 1997 and 1999 decisions and remanded the case back to the Board, ruling that the Board had failed to comply fully with the procedural requirements of the NHPA;

³(...continued)

Conrail and to divide its assets between them. On July 23, 1998, the Board approved the Conrail Acquisition. CSX Corp., et al.—Control—Conrail Inc., et al., 3 S.T.B. 196 (1998). The Enola Branch property was allocated to Pennsylvania Line LLC, a subsidiary of Conrail, as part of the Conrail Acquisition transaction. NS operates the Pennsylvania Line LLC allocated assets under an operating agreement approved by the Board. This Memorandum of Agreement pertains to the NS-controlled portions of the Enola Branch.

⁴ The ICC terminated the trail-use negotiation condition with respect to the Enola Branch in a decision served April 19, 1993.

WHEREAS, SEA has reinitiated the Section 106 historic review process pursuant to the court's remand and the procedural provisions of the NHPA including FAST and 13 state and local government entities as consulting parties;

WHEREAS, SEA has consulted with the Advisory Council on Historic Preservation (ACHP), the SHPO, and NS, and in two Notices to the Parties and two public meetings solicited oral and written comments from the consulting parties (all of whom are either invited signatories or concurring parties to this Memorandum of Agreement) and the public regarding possible use of the portions of the Enola Branch that are subject to this Memorandum of Agreement for interim trail use/railbanking. Assuming that no arrangement for interim trail use/railbanking is reached, completion of the mitigation phase of the Section 106 process by execution and implementation of this Memorandum of Agreement is appropriate;

WHEREAS, based on the Keeper of the National Register's 1999 finding that the entire Enola Branch is eligible for inclusion in the National Register, and in consultation with the ACHP and the SHPO, SEA has determined that the entire Enola Branch is eligible for inclusion in the National Register;

WHEREAS, based on consultation with the ACHP and the SHPO and the public comments, SEA has determined that the abandonment at issue here would adversely affect the Enola Branch;

WHEREAS, NS already has paid to the Pennsylvania Railroad Museum \$15,437 to fund an exhibit or video of the history of the Enola Branch;

WHEREAS, based on consultation with the ACHP, the SHPO, and NS, and considering the oral and written comments received from interested and official consulting parties, SEA has devised additional measures to mitigate the adverse effects on the Enola Branch that would be caused by abandonment;

NOW THEREFORE, the Board, the ACHP, the SHPO, and NS agree that, assuming that the Board gives final approval to abandon and there is no agreement for interim trail use/railbanking, abandonment of the Enola Branch shall be subject to the following stipulations to mitigate the effect of the abandonment on historic properties.

STIPULATIONS

The Board shall ensure that the following measures are carried out. The Board may direct NS (and its contractor) to assist in fulfilling these stipulations or may use an independent third-party contractor, working under SEA's supervision, direction, and control, and at NS's expense, to assist in fulfilling these stipulations.

I. ADDITIONAL DOCUMENTATION REQUIREMENTS

NS shall retain a professional historian⁵ to document and conduct archival research of the history of the Enola Branch rail line (including the segments of the Enola Branch from Milepost 0.0 to Milepost 1.5 and Milepost 4.0 to Milepost 33.9 and appropriate representative structures). The documentation shall be completed in accordance with the relevant state standards as specified by the SHPO and outlined in the guidance document titled "How to Complete the Pennsylvania Historic Resource Survey Form." The historian shall also prepare a written report discussing the methods and results of the archival research.⁶

Prior to the commencement of documentation efforts, the Board, the SHPO, and NS shall work together to develop a list of representative structures on the Enola Branch. Documentation of these structures shall serve to document the historic qualities of the line as a whole.

Upon completion of the documentation and archival research, NS shall consolidate all of the information into one cohesive document and submit the document to the Board's Federal Preservation Officer (FPO) (the Chief of SEA), the ACHP, and the SHPO for review.

Should it be determined that any of the historic bridges must be dismantled, NS shall consult with the FPO, SHPO, and the consulting parties regarding the potential for any re-use of the historic materials for commemoration of the Enola Branch Rail Line.

As provided in Pennsylvania state standards, the document to be prepared by NS shall include:

A. A Photo/Site Plan Sheet containing: (1) the historic name of the property; (2) the county; (3) noncolor-coded sketch maps or other noncolor maps showing the location of the rail line; and (4) photographs of the representative structures;

B. A Data Sheet describing: (1) the rail line, its historic function and current use, (2) the representative structures, including relevant historical and descriptive information such as the

⁵ The professional historian will meet the "Secretary of Interior's Professional Qualification Standards" as specified in Section 800.2(a)(1). 48 FR 44738-9; see <http://www2.cr.nps.gov/laws/ProfQual83.htm>.

⁶ Archival research conducted from information or records supplied by or available at the railroad, the Pennsylvania Historical and Museum Commission, the Pennsylvania State Archives, the Lancaster County Historical Society, the Southern Lancaster Historical Society, the Chester County Historical Society, the Railroad Museum of Pennsylvania, and the Pennsylvania Railroad Technical and Historical Society (as available) shall satisfy this requirement.

architectural and structural system classifications, the exterior materials, the width, depth, and height measurements, dates of construction and known significant changes or rebuilding, (3) the proposed disposition of the structures after abandonment, and (4) to the extent there is relevant information in railroad or local libraries, museums or archives, the cultural affiliations, associated individuals or events, and names of builders or craftsmen who constructed the rail line;

C. A Narrative Sheet, including a brief physical description of the line (current and historic physical appearances and conditions of the rail line segments and all associated structures) and a historical narrative (a summary of the history and significance of the property);

In addition to the requirements of the Pennsylvania state recordation standards, the document shall also include:

1. A written report describing the methods and results of the archival research; and
2. Copies of any relevant historical documents found pursuant to the archival research, as well as available maps of the rail line in its local context.

The Board's FPO, the ACHP, and the SHPO shall have 30 days to review and comment on the draft document. At the end of the 30 day period, NS shall prepare a final version of the document, taking into consideration any comments received, and submit the final document to the FPO, the ACHP, and the SHPO. NS shall also submit two (2) additional copies of the final document to the SHPO to be archived at the SHPO's office.

II. DISPUTE RESOLUTION

Disagreements over implementation of this Memorandum of Agreement shall be resolved in the following manner:

A. If the SHPO or NS objects in writing to the Board's FPO regarding any action carried out or proposed in implementation of this Memorandum of Agreement, the FPO shall consult with the objecting party to resolve this objection. If after such consultation there is no resolution, then the FPO shall forward all documentation of the objection and attempted resolution to the ACHP, including the FPO's proposed response to the objection. Within 45 days of receipt of this pertinent documentation, the ACHP shall exercise one of the following options:

1. Provide the Board with a staff-level recommendation; or
2. Notify the Board that the objection will be referred for formal comment pursuant to 36 CFR Part 800, and complete the referral.

B. The Board shall take into account any ACHP comments or recommendations in reaching a final decision regarding the objection. The Board's responsibilities related to all undisputed actions under the Memorandum of Agreement shall remain unchanged.

III. POST REVIEW DISCOVERY

If the professional historian retained by NS identifies a potential for unanticipated effects on historic properties, as defined in 800.16(l)(1), during the implementation of this Memorandum of Agreement, NS shall notify the Board's FPO. The FPO shall then consult with the SHPO to determine whether additional mitigation measures are necessary, and if so, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

If one or more archeological sites, additional cultural or historic resources, or human remains are discovered during NS's salvage activities, NS shall immediately cease all work and notify the FPO and any Federally recognized tribe that might attach religious or cultural significance to the site. The FPO shall consult with the SHPO and any such tribe to determine whether additional mitigation measures are necessary, and if so, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

Any additional mitigation developed shall be consistent with the provisions of the Pennsylvania Historic and Museum Commission's Policy on the Treatment of Human Remains adopted March 10, 1993, the Native American Graves Protection and Repatriation Act, and ACHP guidance documents such as the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*.

IV. AMENDMENT

Any Signatory to this Memorandum of Agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment pursuant to 36 CFR Part 800.

V. TERMINATION

A. If the terms of this Memorandum of Agreement have not been implemented within one year of its execution, it shall be considered null and void, unless the parties agree to a written extension of time. In that event, the Board shall notify the parties to this Memorandum of Agreement, and if NS chooses to continue with this undertaking, the Board shall reinstate review of this undertaking in accordance with 36 CFR Part 800.

B. Any signatory to the Memorandum of Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to

termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Board shall comply with 36 CFR Part 800.

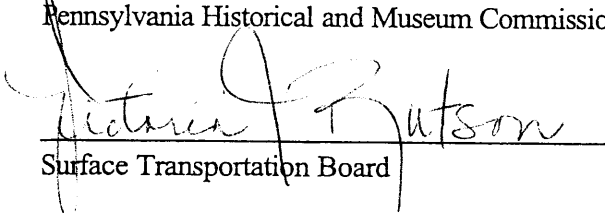
VI. SCOPE OF AGREEMENT

This Memorandum of Agreement is limited in scope to the abandonment of the sections of the Enola Branch from Milepost 0.0 to 1.5 and Milepost 4.0 to 33.9, and is entered into solely for that purpose. Execution and implementation of this Memorandum of Agreement by the Board, the ACHP, the SHPO, and NS is evidence that the Board has afforded the ACHP an opportunity to comment on the project and its effects on historic properties, has taken into account the effects of the undertaking on those properties, and has, therefore, satisfied its Section 106 responsibilities for this undertaking.

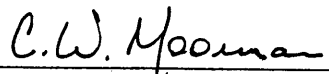
SIGNATORIES:

Advisory Council on Historic Preservation

State Historic Preservation Officer
Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation


Surface Transportation Board

June 30, 2004


Norfolk Southern Railway Company

CONCURRING PARTIES:

Friends of the Atglen-Susquehanna Trail

Historic Preservation Trust of Lancaster County

Lancaster County

Lancaster County Conservancy

Lancaster Farmland Trust

Northeast Regional Field Office of the Rails-to-Trails Conservancy

Pennsylvania Department of Transportation

Quarryville Borough

Southern End Community Association

Township of Bart

Township of Conestoga

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SIGNATORIES:

Advisory Council on Historic Preservation

Jean Hutter 6-21-04

State Historic Preservation Officer
Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation

Surface Transportation Board

Norfolk Southern Railway Company

CONCURRING PARTIES:

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Historic Preservation Trust of Lancaster County

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Pennsylvania Department of Transportation

Quarryville Borough

Southern End Community Association

Township of Bart

Township of Conestoga

Township of Eden

James W. Little, Chairman

Township of Martic

Township of Providence

Township of Sadsbury

Township of West Sadsbury

Township of Eden

Township of Martic

George S. Dm Chairman

Township of Providence

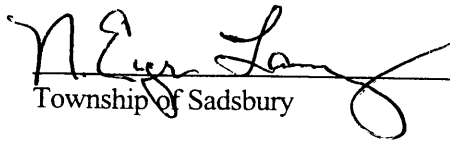
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