



Surface Transportation Board Notice of Delegation of Section 106 to
Applicants - Michigan Air-Line Railway Co. - Abandonment Exemption - In
Oakland County, MI (STB Docket AB-1053 (Sub-No. 0X))

Diana Wood to: grennellb, ER
Cc: conwaybd, boba, Diana Wood

07/22/2010 11:33 AM

#EO-1474
BTW
AB-1053 0X

Dear Mr. Grennell:

This email responds to a letter you wrote to Mr. W. Robert Alderson of the law firm Alderson, Alderson, Weiler, Conklin, Burghart & Crow, LLC regarding a proposed abandonment exemption for the Michigan Air-Line Railway Co. in Oakland County, MI (STB Docket No. 1053 (Sub-No. 0X)) (see attached). Specifically, you stated that Mr. Alderson appeared to be initiating the Section 106 consultation process by sending you the historic and environmental reports for the subject abandonment, when it should have been the federal agency involved in the transaction - in this case, the Surface Transportation Board (STB or Board).

Attached is a letter dated December 10, 2009 and addressed to the State Historic Preservation Officers (SHPOs) that formalizes the Board's delegation for some of the steps in the Section 106 review process for rail line abandonments. This letter was sent to Nancy Schamu at the State Services Organization with a request that it be distributed to SHPOs nationwide (ACHP no longer performs this function). Your office should have received a copy, but if not, I have attached the subject documents (memo to SHPOs and a one-page summary of the Board's historic review process) as an FYI so that the Section 106 consultation process can be initiated with the submission of the railroad's environmental and historic reports.

If you have any questions regarding this process, I can be reached by email or at the contact information below.

Thank you for your time in this matter.



Delegation of Authority for the Section 106 Review of Rail Abandonment Projects.pdf Summary Section 106 Process.pdf



SHPO's Letter Stating that STB Needs to Initiate 106 Process.pdf



Letter from RR to STB with SHPO's Ltr Stating that STB Should Initiate 106 Process.pdf

Diana F. Wood
Section of Environmental Analysis
Surface Transportation Board
395 E Street S.W. Room 1110
Washington, DC 20423
202-245-0302 (phone)
202-245-0454 (fax)



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

To: State Historic Preservation Officers and Tribal Historic Preservation Officers

Re: Delegation of Authority for the Section 106 Review of Rail
Abandonment Projects

Date: December 10, 2009

Under the regulations of the Surface Transportation Board (STB or Board), railroad applicants seeking to abandon rail lines must prepare Historic Reports and submit these reports to the State Historic Preservation Officer (SHPO) in the state or states where the rail line proposed for abandonment is located for SHPO's review and comment. Applicants must submit the Historic Reports to SHPOs at least 20 days before filing for abandonment authority before the Board. The Board developed this early consultation process to provide more information "upfront" to assist SHPOs, railroads, and Board staff to consider whether a proposed abandonment would affect any historic sites and structures. This "upfront" review is necessary because of the tight regulatory timeframes established by Congress governing rail line abandonment cases.

Some SHPOs have expressed reluctance with reviewing the Historic Reports because they are prepared by the railroad, or in many cases, by an attorney representing a railroad, rather than by the Board, the federal agency responsible for compliance with the National Historic Preservation Act (NHPA). Consequently, some SHPOs do not respond to the Historic Reports, feeling strongly that the Section 106 process under NHPA is not appropriately begun until the Board sends a letter to the SHPO formally initiating the Section 106 historic review process.

To ensure that the Board's requirements are consistent with those of NHPA, the Board has determined pursuant to 36 CFR Section 800.2(c)(4) and our environmental regulations at 49 CFR 1105, that **applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of NHPA.**

Accordingly, applicants and their authorized representatives, such as attorneys acting on their behalf, may consult with SHPOs to initiate the review process established under 36 CFR Part 800 and to carry out some of its steps. Specifically, applicants are authorized to gather information to identify and to work with consulting parties to assess effects. The Board retains the responsibility to mitigate adverse effects, document its findings, and conclude the Section 106 review.

Rail abandonment applicants and their representatives must involve the Board in consultation whenever:

- There is a disagreement between an applicant or its authorized representatives and SHPO regarding the area of potential effect, identification and evaluation of historic properties, or assessment of effects;
- There is a disagreement between a potential consulting party and the applicant regarding the party's involvement in the Section 106 review process; or
- There is the potential for foreclosure of the opportunity to comment or anticipatory demolition pursuant to 36 CFR Section 800.9(b) and 36 CFR Section 800.9(c), respectively.

Attached is a one-page summary of the Board's Section 106 review process. In addition, the Board has developed historic preservation guidance that explains our historic preservation process in more detail (see www.stb.dot.gov/stb/environment/HistoricPreservation/Guidance). General information regarding the Board is available on the Board's website at www.stb.dot.gov.

If you have any questions regarding any of the above, please free to contact me or Catherine Glidden of my staff at 202-245-0293 or gliddenc@stb.dot.gov.

Sincerely,



Victoria Rutson
Chief, Section of Environmental Analysis
Federal Preservation Officer for the Board

The Section 106 Review Process for Railroad Abandonment Projects at the Surface Transportation Board: A Summary

The Surface Transportation Board's (STB) Section of Environmental Analysis (SEA) is responsible for ensuring compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), STB's environmental regulations (49 CFR 1105.8) and other laws that fall under the NEPA umbrella.

STB's environmental regulations require applicants seeking to abandon a railroad to follow a specific process with very strict timeframes for SEA to complete its environmental reviews. For railroad abandonment proceedings, SEA usually completes an environmental assessment (EA) that summarizes any potential environmental issues including historic preservation concerns. The EAs are generally five to six pages in length and may include environmental conditions that require the applicant to complete specific actions before abandonment proceeding is finalized, or consummated, by the Board. This can include a section 106 condition that, if imposed, effectively stays the abandonment pending the completion of the section 106 review process.

Before SEA completes its EA, or even enters the section 106 process, an applicant seeking to abandon a line first completes a historic report that shows the project location, the area of potential effect (always the right-of-way), summarizes any historic properties, and makes a *preliminary* recommendation regarding the National Register of Historic Places (National Register) eligibility of any properties and project effects, if any. The railroad is then required to submit the historic report to the applicable SHPO/THPO anywhere from 60 days to 20 days before filing an application, petition, or notice with the Board (see 49 CFR 1105.8). Applicants generally submit their historic report along with an environmental report to the Board prior to or at the same time as their official Board filing for the proposed action (see 49 CFR 1105.7(a)). When an applicant submits its historic report to a SHPO/THPO, it generally does so with a letter requesting a preliminary response to its recommendation from the SHPO/THPO. Any comments received by either SEA or the applicant are then summarized in the EA. Once completed, copies of the EA are mailed to appropriate state and federal agencies, SHPO/THPOs and Federally recognized tribes for review and comment.

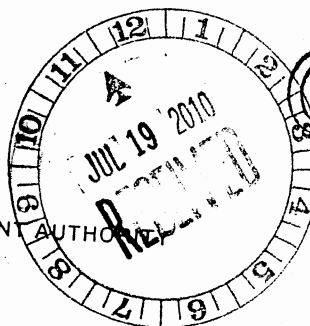
In instances where adverse effects to historic properties are likely, SEA works directly with the applicant and applicable SHPO/THPO to identify consulting parties and ensure that any adverse effects to historic properties are appropriately mitigated. STB's power to require mitigation for adverse effect to historic properties applies only to the railroad applicant(s) and property they own. However, the applicant may voluntarily decide to complete additional mitigation measures through the consultative process.

For additional information on STB's historic preservation review process please see our historic preservation guidance at <http://www.stb.dot.gov/stb/environment/HistoricPreservation/Guidance1.htm>.

JENNIFER GRANHOLM
GOVERNOR



STATE OF MICHIGAN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
LANSING



KEITH MOLIN
EXECUTIVE DIRECTOR

June 25, 2010

W ROBERT ALDERSON
ALDERSON ALDERSON WEILER
CONKLIN BURGHART & CROW LLC
P O BOX 237
TOPEKA KS 66601-0237

RECEIVED

JUL 06 2010

RE: ALDERSON, ALDERSON, WEILER
CONKLIN, BURGHART & CROW, LLC
Michigan Air-Line Railway Co. - Abandonment Exemption - Line In Oakland County, MI,
STB Docket No. AB-1053

Dear Mr. Alderson:

It appears that you are initiating consultation with the State Historic Preservation Office (SHPO) under Section 106 of the National Historic Preservation Act of 1966, as amended.

Section 106 requires federal agencies to take into account the effect of their undertakings on historic properties. The Section 106 regulations specify what is required for a Section 106 review [36 CFR § 800.11]. It is the responsibility of the federal agency, not the SHPO, to fulfill the requirements of Section 106. Thus, it is *the federal agency's* responsibility to apply the criteria for listing on the National Register of Historic Places to properties within the project's area of potential effects and provide the SHPO with a determination regarding the impact on historic properties. In some instances, the federal agency may delegate legal responsibility to a state, local, or tribal government. Consultants or designees contracted to prepare information, analyses, or recommendations, are not recognized as federally-delegated authorities. For your reference, a complete version of the Section 106 regulations can be found at www.achp.gov/regs.html.

The mandatory application form and instructions for submitting projects for review under Section 106 may be downloaded in MS Word format from our website at <http://www.michigan.gov/shposection106>. Please read each requirement carefully in its respective field, and respond in full. In addition, please ensure that future project submissions will utilize the application form. Incomplete applications and projects not submitted on the application forms will be sent back to the applicant without comment.

If at this time, you are seeking information on above-ground historic resources that are listed in the National Register of Historic Places or in the State Register of Historic Sites, please refer to the Michigan Sites Online website at: <http://www.michiganhistory.org/preserve/michsite/index.html>. The SHPO cannot conduct such research on your behalf. For information regarding archaeological sites, please contact the State Archaeologist, Dr. John Halsey, at (517) 373-6358.

If you have any questions, please contact Brian Grennell, Environmental Review Specialist, at (517) 335-2721 or by email at ER@michigan.gov. **Please reference our project number in all communication with this office regarding this undertaking.** Thank you for your cooperation.

Thank you for your cooperation.

Sincerely,


Brian G. Grennell
Cultural Resources Protection Specialist

for Brian D. Conway
State Historic Preservation Officer

Enclosure(s)



STATE HISTORIC PRESERVATION OFFICE
702 WEST KALAMAZOO STREET • P.O. BOX 30740 • LANSING, MICHIGAN 48909-8240
www.michigan.gov/shpo (517) 373-1830 FAX (517) 335 0348

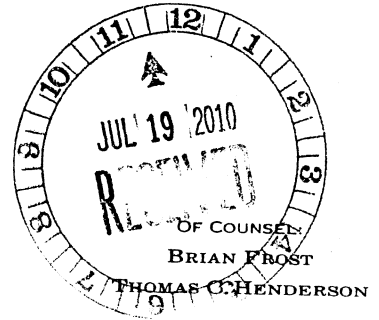
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CONKLIN, BURGHART & CROW, L.L.C.
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July 12, 2010

Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: *Michigan Air-Line Railway Co.-Abandonment
Exemption-Line in Oakland County, Michigan,
STB Docket No. AB-1053*

Greetings:

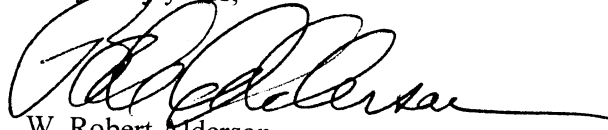
I am an attorney for Michigan Air-Line Railway Co., which filed a Notice of Exemption with the STB's office of proceedings on July 8, 2010, in the above-referenced docket. Prior to filing the exemption notice, I sent a copy of the proposed Environmental and Historic Report to 18 governmental agencies, with a request that each agency review the proposed report and advise the Section of Environmental Analysis and me as to any questions or concerns regarding the report.

One of the agencies receiving a copy of the proposed Environmental and Historic Report is the Michigan State Historic Preservation Office. Subsequent to mailing the exemption notice for filing at the STB, I received a letter from that office in response to the proposed Environmental and Historic Report. I am enclosing a copy of that letter, which explains the submission of projects for review under Section 106 [36 CFR § 800.11]. However, I do not understand this letter as requiring Michigan Air-Line Railway Co. to submit the abandonment exemption notice for review under Section 106, and it is my opinion that no such submission is required. As indicated in the Environmental and Historic Report, which is included in the recently-filed Notice of Exemption, there are no structures on the line to be abandoned which are 50 years old or older.

Section of Environmental Analysis
Surface Transportation Board
July 12, 2010
Page 2 of 2

However, if you should determine that a submission to the Michigan State Historic Preservation office is needed, please let me know at your earliest convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Robert Alderson', with a long horizontal flourish extending to the right.

W. Robert Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.

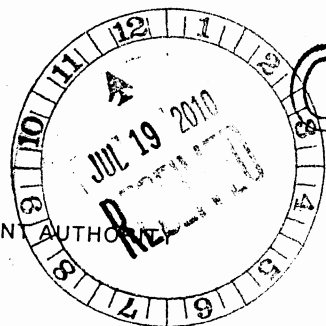
WRA:bjb

cc: R. Robert Butler
Dirk H. Beckwith, Esq.



JENNIFER GRANHOLM
GOVERNOR

STATE OF MICHIGAN
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LANSING



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EXECUTIVE DIRECTOR

June 25, 2010

W ROBERT ALDERSON
ALDERSON ALDERSON WEILER
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P O BOX 237
TOPEKA KS 66601-0237

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STB Docket No. AB-1053

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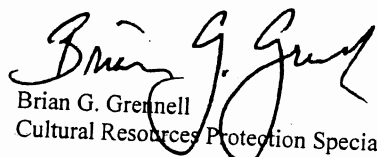
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