

EO-2022



Re: West Michigan Railroad; STB Docket No. AB-1107X 
David Navecky to: grennellb
Cc: RWimbish

01/18/2013 10:07 AM

Brian -

The attached document should clarify some of the concerns related to the Surface Transportation Board's Section 106 consultation process.

Please let me know if you have any questions.

Thanks,

Dave Navecky
202-245-0294



106 Delegation Letter & Summary.pdf

RWimbish

Mr. Grennell - Attached is a response to your lett...

01/17/2013 02:58:34 PM

From: RWimbish@bakerandmiller.com
To: grennellb@michigan.gov, naveckyd@stb.dot.gov
Cc: Kenneth.Blodgett@stb.dot.gov
Date: 01/17/2013 02:58 PM
Subject: West Michigan Railroad; STB Docket No. AB-1107X

Mr. Grennell -

Attached is a response to your letter dated January 4, 2013, in connection with the above-referenced rail line abandonment proceeding. Included with my response is the Application for Section 106 Review that you have directed me to submit. I am also sending these materials to you in hard copy by mail. Please let me know if you have any questions.

Dave (Navecky) -

Please add the attached materials to your records for this abandonment proceeding. In addition to WMI's response to the Michigan SHPO, I am also sending along for your records a copy of Mr. Grennell's letter that initiated the balance of the attachments included with this message, as I am not sure that you had received a copy previously.

- Rob

Robert A. ("Rob") Wimbish
Attorney at Law
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave., NW
Washington, D.C. 20037
202.663.7824 (direct) / 202.663.7849 (fax)

The above message may be privileged, confidential and protected from disclosure by attorney-client, work product, or other privileges. If you believe that you have received this message in error, please do not read it, inform the sender that you have received it in error, and promptly discard the message. Thank you.[attachment "SHPO Letter - Grennell 1.17.12.pdf" deleted by David Navecky/STB] [attachment "SHPO Letter - 01.04.13.pdf" deleted by David Navecky/STB]



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,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly distinguishable.

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 or Board) Office of Environmental Analysis (OEA)(formerly the Section of Environmental Analysis or SEA) is responsible for ensuring compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), STB's environmental regulations (49 C.F.R. § 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 OEA to complete its environmental reviews. For railroad abandonment proceedings, OEA 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 OEA completes its EA, or even enters the section 106 process, an applicant seeking to abandon a line first completes an 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 State or Tribal Historic Preservation Office (SHPO or THPO) anywhere from 60 days to 20 days before filing an application, petition, or notice with the Board (see 49 C.F.R. § 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 C.F.R. § 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 OEA 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, OEA works directly with the applicant and applicable SHPO/THPO to identify consulting parties and ensure that any adverse affects 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>.