

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

Charlene Dwin Vaughn, Assistant Director
Advisory Council on Historic Preservation
Office of Federal Agency Programs
1100 Pennsylvania Avenue, NW
Suite 809
Washington DC 20004

June 15, 2009

**Re: STB Finance Docket No. 34936, Port of Moses Lake –
Construction Exemption – Moses Lake, WA; Executed
Programmatic Agreement**

Dear Ms. Vaughn:

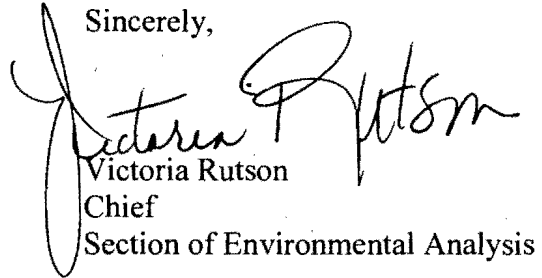
As you know, the Board's Section of Environmental Analysis (SEA) is the office within the Surface Transportation Board (Board) responsible for ensuring the agency's compliance with the National Environmental Policy Act and National Historic Preservation Act. A Programmatic Agreement (PA) was prepared for the proposed rail project called the Northern Columbia Basin Railroad Project, located in the Moses Lake area of Grant County, Washington, and the purpose of this letter is to submit the fully executed PA to your office.

Programmatic Agreement

There are certain parcels of land in the project area that the project team was unable to evaluate, and the regulations implementing Section 106 allow for the development of a PA when the effects on historic properties cannot be fully determined prior to approval of an undertaking (36 CFR 800.14). Accordingly, in consultation with the Washington State Department of Archaeology and Historic Preservation, the Port of Moses Lake (Port), the Washington State Department of Transportation, and Columbia Basin Railroad Company, Inc., SEA developed a PA for this undertaking because the potential impacts are not completely known at this time. The PA will ensure that cultural or historic resources would be assessed on these parcels prior to initiation of construction and it would govern the completion of the Section 106 process. The Port will be required to adhere to the stipulations of the PA.

If you have any questions or require additional information regarding this proceeding, please do not hesitate to call me or Christa Dean at (202) 245-0299.

Sincerely,



Victoria Rutson
Chief
Section of Environmental Analysis

Attachments

cc: Matthew Sterner, Washington SHPO
Elizabeth Phinney, Washington DOT
Craig Baldwin, Port of Moses Lake
Brig Temple, CBRR

**NORTHERN COLUMBIA BASIN RAILROAD PROJECT
PROGRAMMATIC AGREEMENT
AMONG
THE SURFACE TRANSPORTATION BOARD,
THE PORT OF MOSES LAKE,
AND
THE WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND
HISTORIC PRESERVATION**

REGARDING STB FINANCE DOCKET NO. 34936, PORT OF MOSES LAKE –
CONSTRUCTION EXEMPTION – MOSES LAKE, WASHINGTON

AND

STB FINANCE DOCKET NO. 34936 (SUB-NO. 1), PORT OF MOSES LAKE –
ACQUISITION EXEMPTION – MOSES LAKE, WASHINGTON

AND

STB FINANCE DOCKET NO. 34936 (SUB-NO. 2), NORTHERN COLUMBIA BASIN
RAILROAD – OPERATION EXEMPTION – MOSES LAKE, WASHINGTON

WHEREAS, the Port of Moses Lake (Port) is proposing the construction and acquisition of approximately 11.5 miles of rail line in Grant County, Washington. The proposed rail project, known as the Northern Columbia Basin Rail Project (hereinafter, “the Project”), is an undertaking with the potential to adversely affect historic properties as defined in 36 CFR 800.16(y); and

WHEREAS, the Surface Transportation Board (STB), as the lead federal agency for the environmental review of the Project, has consulted with the Washington State Historic Preservation Officer (SHPO) pursuant to 36 CFR 800; and,

WHEREAS, on December 8, 2008, the STB invited the Advisory Council on Historic Preservation (Advisory Council) to participate in the development of this Programmatic Agreement (hereinafter, “the Agreement”), and the Advisory Council has not elected to participate; and

WHEREAS, the following federally-recognized Native American Tribes have been consulted and invited to participate in the preparation of this Agreement: the Confederated Tribes and Bands of the Yakama Nation; the Colville Confederated Tribes; and the Confederated Tribes of the Warm Springs Reservation of Oregon. However, those tribes have not elected to participate; and

WHEREAS, the non-federally recognized Wanapum Tribe has been consulted and invited to participate in the preparation of this Agreement, and it has not elected to participate; and

WHEREAS, the STB has consulted with the Washington State Department of Transportation, Rail and Marine Office (WSDOT) and invited WSDOT to be a concurring party to this Agreement, and it has agreed to participate; and

WHEREAS, Columbia Basin Railroad Company, Inc. has been consulted and invited to be a concurring party to this Agreement, and it has agreed to participate; and

WHEREAS, the STB has conducted a cultural resource survey report for the Project to identify historic properties in the Area of Potential Effects (APE) and evaluate whether the historic properties are eligible for listing in the National Register of Historic Places (NRHP); and,

WHEREAS, the STB has determined that some areas within the APE are not currently accessible and cannot be adequately investigated prior to the completion of the planning process, and may contain NRHP-eligible historic properties; and,

NOW, THEREFORE, the STB, the Port, and the SHPO agree that the Project is subject to the following stipulations in order to take into account the effects of the Undertaking on historic properties and further agree that these stipulations shall govern the Undertaking and all of its parts until this Agreement expires or is terminated.

STIPULATIONS

In coordination with the other signatory parties, the STB shall ensure that the following measures are carried out:

I. GENERAL REQUIREMENTS AND STANDARDS

- A. The Port shall ensure that all work carried out under this Agreement is conducted by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of the Interior's Professional Qualification Standards* (36 CFR 61).
- B. Activities carried out pursuant to this Agreement shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 CFR 44716, as revised) as well as standards and guidelines for historic preservation activities as established by the SHPO.
- C. The Port shall ensure that survey work will be conducted on parcels contained within Segment 1, Alternative 1A, and/or the Ecology Modification that were not part of previous investigations.

II. NHPA EVALUATION

- A. Once access to a previously inaccessible area within the APE has been secured, or in the event that the Project's APE is expanded, the Port shall:
 1. Contact the SHPO, interested and affected Indian Tribes, and other consulting parties with the survey methodology and project schedule at least fourteen (14) calendar days prior to initiating the cultural resources survey.
 2. Conduct a professional cultural resources survey to identify archaeological resources and/or historic structures that are 45 years old or older. Any identified resources will be inventoried and evaluated for their eligibility for inclusion in the National Register of Historic Places (NRHP). The inventory and evaluation will be documented in a Draft Survey Report that addresses such properties' potential eligibility for listing on the NRHP, potential adverse affects to the resource as a result of the project, and recommended actions for further investigation of identified resources.
- B. The Port shall provide the Draft Survey Report and any applicable Historic Property Inventory (HPI) forms to the STB. The STB shall review and comment on the Draft Survey Report and HPI forms within fourteen (14) calendar days. The Port shall revise the Draft Survey Report consistent with the STB's comments and submit three (3) copies of the revised Draft Survey Report within fourteen (14) calendar days of the receipt of comments.
- C. The STB shall provide the revised Draft Survey Report to the SHPO, any interested or affected Native American Tribes, and other consulting parties for review and comment. The SHPO, any interested and affected Native American Tribes, and other consulting parties shall review the documentation and respond with any comments within thirty (30) calendar days.
- D. The STB, in consultation with the SHPO, any interested or affected Native American Tribes, and other consulting parties, may determine that further study is necessary. The STB may require the Port to conduct additional fieldwork, including a pedestrian survey and/or subsurface testing, as necessary.

III. TREATMENT OF HISTORIC PROPERTIES

- A. For archaeological or cultural resources or historic properties deemed eligible for inclusion on the NRHP, the STB will apply the criterion of adverse effect and consult with the SHPO, any interested or affected Native American Tribes, and other consulting parties.
- B. The STB shall develop a treatment plan to avoid, minimize, or mitigate adverse effects to the historic properties identified during the Survey, and this treatment plan will include a curation plan for any artifacts that are recovered. The treatment plan will be developed by cultural resource professionals that meet the

Secretary of the Interior's Standards and must be concurred upon by the SHPO prior to implementation.

- C. The STB will ensure that the treatment plan is implemented.

IV. APPROVAL TO PROCEED

- A. The Port may not proceed with construction of Segment 1, Alternative 1A, and/or the Ecology Modification until notified in writing by the STB's Section of Environmental Analysis that there are no unresolved concerns pertaining to the STB's assessment of effects on any identified historic properties or measures required to avoid, reduce, or mitigate adverse effects on those properties. The STB may require the Port to conduct additional evaluation or assessment of effects to resolve any concerns as necessary.
- B. If the SHPO, interested and affected Indian Tribes, or other consulting parties fail to provide comments within the designated review period, the STB and WSDOT will assume their concurrence and proceed with the proposed action or activity.

V. DISPUTE RESOLUTION

- A. If any party to this agreement or any tribe or other interested party objects to plans, documents, reports, activities, or determinations proposed pursuant to the terms of this Agreement, the STB shall notify SHPO of the objection, then consult with the objecting party and the SHPO to resolve the issue. If, after initiating consultation, the STB determines that the objection cannot be resolved through consultation, the STB shall forward all documentation relevant to the dispute to the Advisory Council for a review of the findings. Such documentation shall include the STB's proposed response to the objection.
 - 1. Any comment provided by the Advisory Council will be taken into account by the STB in accordance with 36 CFR Part 800.6.
 - 2. Any recommendation or comment provided by the Advisory Council will be understood to pertain only to the subject of the dispute, and the STB's responsibility regarding actions outside the dispute will remain unchanged.
 - 3. The parties may continue all actions under this Agreement that are not the subject of the dispute.
 - 4. Each party reserves any and all rights it may otherwise have to enforce its rights or seek resolution of the dispute under applicable law.

VI. FAILURE TO COMPLY

- A. Should the STB find that the terms of this Agreement have not been carried out:

1. The STB will request the Advisory Council to comment in accordance with 36 CFR Part 800;
2. The Port will not take any action to make an irreversible commitment that would result in an adverse effect with respect to an inadvertently discovered property or other properties covered by this Agreement; and
3. The STB will not foreclose the Advisory Council's opportunity to suggest modifications or alternatives to the proposed APE that could avoid or mitigate any adverse effect on historic, cultural or archaeological resources until the commenting process has been completed.

VII. MODIFICATIONS AND AMENDMENTS

Any signatory to this Agreement may propose that it be amended or modified, whereupon the parties will confer and consider the amendment. Any resulting amendment requires the agreement of all signatory parties and shall be executed in writing.

VIII. UNANTICIPATED DISCOVERIES

In the event that any unanticipated historic or cultural properties, archaeological sites, human remains, funerary items, or assorted artifacts are discovered during the proposed construction, the Port shall immediately cease all work and notify the SHPO, STB, WSDOT, interested federally-recognized tribes, and consulting parties, if any, to determine if additional consultation and mitigation is necessary. In the event that human remains are discovered, the Port shall also notify appropriate law enforcement agencies. (See the Plan and Procedures for the Unanticipated Discovery of Cultural Resources and Human Skeletal Remains in Appendix B).

IX. TERMINATION

- A. This Agreement shall remain in effect until terminated by mutual agreement of the signatory parties or replaced with a revised Agreement.
- B. Any signatory party may withdraw from this Agreement upon thirty (30) days written notice to the other parties.
- C. Any discovery of historic or cultural properties, archaeological sites, human remains, funerary items, or assorted artifacts in process under the terms of this Agreement at the time of the termination shall be processed to its completion.
- D. In the event of termination or a signatory party withdraws from the Agreement, the STB will comply with 36 CFR Part 800, Protection of Historic Properties.

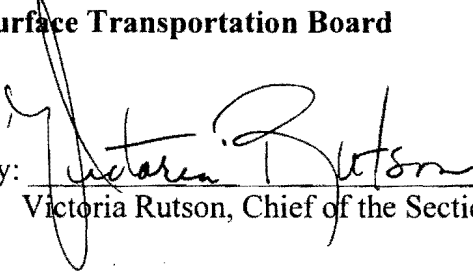
X. SUNSET CLAUSE

This Agreement shall terminate if the Project is cancelled; if the terms of this Agreement have been met; or ten (10) years after the date of any STB decision approving the construction and operation of the proposed new rail line in Grant County, Washington.

ACCEPTED AND AGREED

SIGNATORY PARTIES

Surface Transportation Board

By:  Date: 5-29-2009
Victoria Rutson, Chief of the Section of Environmental Analysis

Washington Department of Archaeology and Historic Preservation

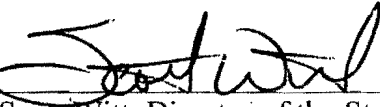
By:  Date: 6/10/09
Dr. Allyson Brooks, Washington State Historic Preservation Officer

The Port of Moses Lake

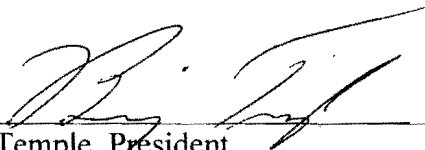
By:  Date: 6/1/09
Craig Baldwin, Executive Manager

CONSULTING PARTIES

Washington State Department of Transportation

By:  Date: 6/5/09
Scott Witt, Director of the State Rail and Marine Office

Columbia Basin Railroad Company, Inc.

By: 
Brig Temple, President

Date: 6/3/09