

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

OFFICE OF ENVIRONMENTAL ANALYSIS

October 8, 2014

Reid J. Nelson, Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
Pension Building
401 F Street NW, Suite 308
Washington, DC 20001-2637

EO-2365

Re: AB-55 (Sub-No. 401X) – CSX Transportation, Inc. - Abandonment Exemption –
between Delphi and Frankfort, IN
Wildcat Creek Bridge (bridge #19243), Indiana SHPO Number: DHPA #4590

Dear Mr. Nelson:

CSX Transportation, Inc. (CSXT) filed for abandonment of its rail line from Delphi to Frankfort, Indiana with the Interstate Commerce Commission (ICC, now the Surface Transportation Board) on November 20, 1991. The ICC issued a decision imposing a Section 106 historic condition on the line pending evaluation. CSXT believed that the Wildcat Creek Bridge (bridge #19243) located at milepost 121.5 had become a liability and needed to be dismantled. It was determined, in consultation with the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, that the demolition or dismantling of the bridge would be an adverse effect to a historic property.

The Office of Environmental Analysis is the office within the Board responsible for conducting the environmental review process pursuant to the National Environmental Policy Act, including the National Historic Preservation Act (NHPA). Please find enclosed a copy of the Amended Memorandum of Agreement (MOA) which allows two additional years for the parties to complete the requirements of Stipulation II, which pertains to the transfer of Deer Creek Bridge. The Amendment resulted from the consultation process pursuant to the regulations implementing Section 106 of NHPA.

Sincerely,



Kenneth H. Blodgett
Office of Environmental Analysis

cc: Chad Slider, IN SHPO
Melanie Yasbin, CSX
Tommy Kleckner, Indiana Landmarks

**AMENDED MEMORANDUM OF AGREEMENT
AMONG THE SURFACE TRANSPORTATION BOARD,
CSX TRANSPORTATION COMPANY, INC. AND
THE INDIANA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF
HISTORIC PRESERVATION & ARCHAEOLOGY**

**REGARDING DOCKET NO. AB 55 (SUB-NO. 401X) CSX TRANSPORTATION,
INC.—ABANDONMENT—BETWEEN DELPHI AND FRANKFORT, IN**

WHEREAS, on November 20, 1991, CSX Transportation, Inc. (“CSXT”) filed an application under 49 U.S.C §10903 to abandon an approximately 25.28 mile rail line (the “Line”) between milepost QA-112.22 at Delphi and milepost QA-137.50 at Frankfort, in Carroll and Clinton Counties, IN (the “Rail Line Abandonment”); and

WHEREAS, in a decision served on January 3, 1992, the Interstate Commerce Commission, now the Surface Transportation Board (“Board”) imposed a condition on the proposed abandonment that requires CSXT “to retain its interest in and take no steps to alter the historic integrity of bridges 113.0 and 121.5 spanning Deer Creek and Wildcat Creek, respectively, and the Depot at Frankfort, IN until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. §470” (“NHPA”); and

WHEREAS, CSXT would like to dismantle the Wildcat Creek Bridge at milepost 121.5 because of safety concerns raised by both the Indiana Department of Transportation and the Army Corps of Engineers; and

WHEREAS, the Board has determined that the removal of the Wildcat Creek Bridge constitutes an Undertaking, as defined in 36 C.F.R. §800.3(a); and

WHEREAS, the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology, acting in its designated capacity as the State of Indiana’s Historic Preservation Officer (“Indiana SHPO”), has advised in letters to CSXT dated August 14, 2008, and July 14, 2011, that the Wildcat Creek bridge (bridge #19243) located at milepost 121.5 (hereinafter referred to as the “Wildcat Creek Bridge”) is eligible for listing in the National Register of Historic Places (“NRHP”), and that removal of the Wildcat Creek Bridge will result in an adverse effect on historic properties; and

WHEREAS, the Board, through its Office of Environmental Analysis (“OEA”), consulted with Indiana SHPO pursuant to regulations at 36 C.F.R. Part 800, effective August 30, 2004, implementing Section 106 of the NHPA, and determined that the proposed abandonment will have an adverse effect on the Wildcat Creek Bridge; and

WHEREAS, in a letter dated July 28, 2011, OEA notified the Advisory Council on Historic Preservation (Advisory Council) of the adverse effect on the bridges in accordance with 36 C.F.R §800.6(a)(1); and

WHEREAS, in a letter dated August 6, 2011, the Advisory Council declined to participate in the negotiation of a Memorandum of Agreement; and

WHEREAS, pursuant to 36 C.F.R. §800.6, OEA has consulted with Indiana SHPO, Carroll County, Wabash & Erie Canal, Inc., the City of Delphi, the Carroll County Historical Society, the Carroll County Historian, the Office of Indiana Landmarks, and CSXT regarding ways to avoid, minimize, or mitigate potential effects to the historic resources as a result of abandonment, and the Board, Indiana SHPO, and CSXT have all agreed upon the measures described below under “Stipulations;” and

WHEREAS, the Office of Indiana Landmarks, Carroll County Wabash & Erie Canal, Inc., and the City of Delphi have each asked to be a consulting party; and

WHEREAS, the Carroll County Historical Society, and the Carroll County Historian, have declined to participate in the negotiation of the Memorandum of Agreement; and

WHEREAS, the Surface Transportation Board, Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology, CSX Transportation, Inc., and the Indiana Landmarks, Western Regional Office entered a Memorandum of Agreement (the “MOA”) executed as of July 9, 2012; and

WHEREAS, the definitions listed in 36 C.F.R. §800.16 are applicable throughout this MOA; and

WHEREAS, this agreement amends the MOA by extending the schedule to allow 2 additional years from the date of the execution of this Amended MOA for the completion of Stipulation II pertaining to the transfer of Deer Creek Bridge (“Amended MOA”); and

WHEREAS, CSXT has complied with and fulfilled the requirements of Stipulations I, III, and IV of the MOA.

NOW, THEREFORE, the Board, CSXT, and Indiana SHPO agree that this Amendment shall be implemented in accordance with Stipulation II in order to take into account the effects of the Undertaking on historic properties, and further agree that the Amended MOA shall govern the Undertaking and Stipulation II until the Amended MOA expires or is terminated. Additionally, the Board, CSXT and Indiana SHPO agree that the execution of this Amended MOA by the parties hereto and its subsequent submission to the Advisory Council in accordance with 36 C.F.R. §800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. §800.6(c), be considered to be an agreement with the Advisory Council for purposes of the NHPA. Execution and submission of the Amended MOA, and implementation of its terms, are evidence that the Board has afforded the Advisory Council an opportunity to comment on the proposed action relating to the Wildcat Creek Bridge, and that the Board has taken into account the effects of the removal of the Wildcat Creek Bridge on historic properties and is satisfying the requirements of Section 106 of the NHPA.

STIPULATIONS

The Board shall ensure that the following mitigation measures are carried out:

I. PREPARATION OF PRESENTATION

A. Presentation Package contents. CSXT shall prepare a presentation package for the Wildcat Creek Bridge in compliance with the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology's Minimum Architectural Documentation Standards ("DHPA Standards"). See Appendix A. The package shall include:

1. **Black and white photographs providing an overall view of the Wildcat Creek Bridge in its environment and views of its significant components.** Photographic documentation shall be produced in compliance with the camera requirements set forth in the DHPA Standards. All photographs shall be labeled in accordance with DHPA Standards.
2. **A written description.** A brief description of the Wildcat Creek Bridge and its condition, including the architectural style, plan, building materials, and details.
3. **Statement of Significance.** The history and significance of the Wildcat Creek Bridge must be explained in compliance with the DHPA Standards format. The statement shall begin with a summary paragraph that succinctly discusses the date or era of construction and why the Wildcat Creek Bridge is important. Enough history and background shall be presented to establish the Wildcat Creek Bridge's importance. If the Wildcat Creek Bridge is architecturally significant, the statement must indicate how it is an outstanding example of an important architectural style, type, or work of a significant architect. Include any dates and descriptions of major alterations.
4. **Drawings.** If available, architectural drawings shall be submitted in the presentation. If architectural drawings are not available, a sketch plan of the site shall be included in the presentation. All drawings must be submitted in accordance with DHPA Standards.

B. Completion schedule. CSXT shall complete an initial draft of the aforementioned recordation package(s) and related written documentation within two years of the execution of this MOA.

C. Distribution of Presentation. CSXT shall submit 2 bound copies of all of the information outlined in Stipulation I-A to the Indiana SHPO, as well as an electronic copy of all information to the Indiana SHPO and the Board. CSXT shall submit the bound copies of the documentation to:

Indiana Department of Natural Resources, Division of Historic Preservation and
Archaeology, State Historic Preservation Officer
402 W. Washington Street, Room W274
Indianapolis, IN 46204
(317) 232-1646

- D.** CSXT complied with the requirements of this Stipulation I on May 30, 2012.

II. TRANSFER OF DEER CREEK BRIDGE AT MILEPOST 113.0

To mitigate the potential adverse effects on historic property that may result from the removal of the Wildcat Creek Bridge, CSXT agrees to transfer to a qualified trails group the Deer Creek Bridge located at milepost 113.0 and the 0.43 mile northern approach to the Deer Creek Bridge, in exchange for one dollar.

The transfer of the Deer Creek Bridge must take place within 2 years from the date of the execution of this Amended MOA. If there is no qualified trails group willing to take donation of the Deer Creek Bridge within the 2 year timeframe, this condition will be considered fulfilled.

III. TIMING OF MITIGATION AND REMOVAL OF WILDCAT CREEK BRIDGE

The Board shall ensure that CSXT conducts the measures set forth in Stipulations I and II to mitigate the adverse effects of the removal of the Bridge. CSXT notified the Board and Indiana SHPO in writing on June 21, 2012, and May 30, 2012, respectively, that it had completed the mitigation measures set forth in Stipulation I by providing copies of specified deliverables to Indiana SHPO. The Indiana SHPO acknowledged receipt and compliance of deliverables in writing on June 1, 2012. Upon presentation of the specified deliverables to Indiana SHPO, CSXT commenced with removal of the Bridge. Completion of the Bridge removal occurred during the last week of August 2013.

IV. UNANTICIPATED DISCOVERIES

If the Board determines after Wildcat Creek Bridge removal has commenced that the Undertaking will affect a previously unidentified property that may be eligible for inclusion in the NRHP, then the Board will address the discovery in accordance with 36 C.F.R. §800.13(b)(3). The Board may assume that the discovered property is eligible for the NRHP in accordance with 36 C.F.R. §800.13(c).

In the event that one or more historic properties-other than the Wildcat Creek Bridge-are discovered or that unanticipated effects on historic properties are discovered after commencement of the Undertaking, the Board shall ensure that the procedure specified in 36 C.F.R. §800.13, as well as IC 14-21-1-27 and IC 14-21-1-29, is followed by stopping work in the immediate area and informing the Indiana SHPO of such unanticipated discoveries or effects within (2) business days. Any necessary archaeological investigations will be conducted according to the provisions of IC 14-21-1, 312 IAC 21, 312 IAC 22, and the most

current *Guidebook for Indiana Historic Sites and Structures Inventory—Archaeological Sites*. If human remains dating on or before December 31, 1939 are discovered, the appropriate County Coroner and law enforcement officials must also be notified immediately. If Native American human remains and/or objects subject to the provisions of the Native American Graves Protection and Repatriation Act (“NAGPRA”), including human burials, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony, are encountered, the Board shall notify and consult with the culturally affiliated Tribe(s) and lineal descendants to determine appropriate treatment measures for these human remains in agreement with NAGPRA.

V. ADMINISTRATIVE PROVISIONS

A. Dispute Resolution: Should any signatory party to the MOA and this Amended MOA object at any time to any actions proposed or the manner in which the terms of the MOA and this Amended MOA are implemented, the Board shall consult with such party to resolve the objection. If the Board determines that such objection cannot be resolved, the Board will:

1. Forward all documentation relevant to the dispute, including the Board’s proposed resolution, to the Advisory Council. The Advisory Council shall provide the Board with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Board shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Advisory Council, signatories and concurring parties, and provide them with a copy of this written response. The Board will then proceed according to its final decision.
2. If the Advisory Council does not provide its advice regarding the dispute within the thirty (30) day time period, the Board may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Board shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and this Amended MOA, and provide them and the Advisory Council with a copy of such written response.
3. The Board's responsibility to carry out all other actions subject to the terms of the MOA and this Amended MOA that are not the subject of the dispute remain unchanged.

B. Amendments: The MOA and this Amended MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Advisory Council.

C. Termination: If any signatory to the MOA and this Amended MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation V-B, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA and this Amended MOA upon written notification to the other signatories.

Once this Amended MOA is terminated, and prior to work continuing on the Undertaking, the Board must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 C.F.R. § 800.7. The Board shall notify the signatories as to the course of action it will pursue.

D. Duration of the MOA: The MOA will expire if Stipulation II is not carried out within 2 years from the date of the execution of this Amended MOA. At such time, and prior to work continuing on the Undertaking, the Board shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 C.F.R. § 800.7. Prior to such time, the Board may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V-B above. The Board shall notify the signatories as to the course of action it will pursue.

E. Counterparts: The Amended MOA may be executed in any number of counterparts, each of which shall be an original, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

F. Effective Date: This Amended MOA will take effect on the date that it has been executed by the Board, CSXT, and Indiana SHPO.

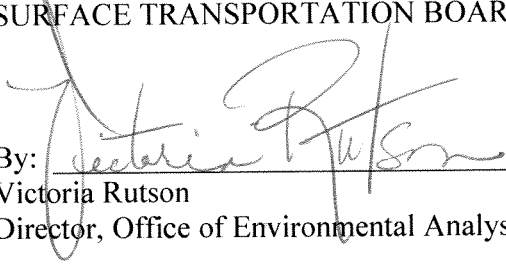
VI. SCOPE OF AGREEMENT

The MOA was limited in scope to the Rail Line Abandonment, and, more particularly, to the Wildcat Creek Bridge located along the Line, and it is entered into solely for purposes of historic impacts mitigation associated with the Wildcat Creek Bridge. To mitigate the potential adverse effects on historic property that may result from the removal of the Wildcat Creek Bridge, the parties agreed to Stipulation II. This Amended MOA is limited in scope to the extension of time for completion of Stipulation II pertaining to the transfer of Deer Creek Bridge.

EXECUTION of this Amended MOA by the Board, CSXT, and Indiana SHPO; its transmittal to the Advisory Council; and subsequent implementation of its terms, evidences that the Board has afforded the Advisory Council a reasonable opportunity to comment on the Undertaking and its effects on historic properties, that the Board has taken into account the effects of the Undertaking on historic properties, and that the Board has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations.

SIGNATORY PARTIES:

SURFACE TRANSPORTATION BOARD

By: 
Victoria Rutson
Director, Office of Environmental Analysis

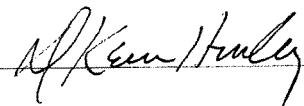
Date: Oct. 3, 2014

INDIANA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF HISTORIC
PRESERVATION & ARCHAEOLOGY

By: Mitchell K. Zoll
Mitchell K. Zoll
Deputy State Historic Preservation Officer

Date: 10-2-2014

CSX TRANSPORTATION, INC.

By:  Date: October 1, 2014

D. Kevin Hurley
Director – Sales and Leasing
By: CSX Real Property, Inc.
Under the Authority of Property
Management Agreement and
Limited Power of Attorney dated
as of March 1, 1990

Concurring Party


Tommy Kleckner, Director
Indiana Landmarks, Western Regional Office

10-6-14
Date

APPENDIX A



Indiana DNR - Division of Historic Preservation and Archaeology
Minimum Architectural Documentation Standards



The following criteria represent the minimum architectural documentation standards to be used by the Division of Historic Preservation and Archaeology. These criteria are to be used to record significant buildings and structures that are either listed in or eligible for inclusion in the Indiana Register of Historic Sites and Structures. The intent of the standards is to create documents which will preserve a record of a resource in the event that it is altered or demolished in the future. Minimum documentation standards are as follows:

1. All Photographic Prints

Depending upon the size and complexity of the structure to be recorded, ten (10) to thirty (30) views may be necessary. Views must include all exterior facades, the major entrance, significant interior spaces such as principal rooms and stairs, and interior and exterior architectural details.

- Use a film SLR camera or digital camera with at least 5.0 megapixel quality and .TIF setting capability
- Prints cannot be smaller than 5" x 7".
- Each print must be labeled in pencil or with an archival photographic marker as follows:

Building name
Address
City, County
Location, direction of camera, and description of the view
Date of photograph

- If available, copies or high resolution scans of historic photographs should be included with information on the source of the original photographs.

2. Digital Images Substituted for 35 mm Film Photography

Researchers may substitute digital images for film black and white photography. The number, type of views, and labeling of digitally-produced prints will correspond to the stated requirements for traditional prints listed above. Digital submissions will consist of the following:

- A set of black and white prints labeled per the above requirements that meet the standards enumerated in the DHPA photography certification sheet. Prints must be made on high-quality photographic grade papers by either an imaging shop or home photographic grade printer. If you are not sure if your printer meets these standards, please contact DHPA. The Division requires submittal of the "Certification of Meeting National Archive and Records Administration (NARA) Photographic Documentation Standards"

Applicants must submit an archival gold CD-R non-rewriteable or DVD-R non-rewriteable containing the electronic image files. They MUST BE saved as uncompressed .TIF (Tagged Image File format) in keeping with the guidance on digital photographic records issued by the U.S. National Archives and Records Administration.

Please note: .TIF is not an option on many digital cameras so please check your owner's manual. If .TIF is not available, images may be taken in another format but they must be capable of conversion to the following size and resolution: size of each .TIF image must be 1600x1200 pixels at 300 ppi (pixels per inch) or larger. Photographs should not be manipulated in any way other than conversion (if necessary) to .TIF. It is recommended that digital images be saved in 8-bit (or larger) color format, which provides maximum detail even when printed in black and white.

Creating a digital photo log

The individual image files must be labeled and there must be a photo log for all photos. The photo numbers of the saved digital images must correspond to the photo log. The digital images must also reference the state and county in which the property is located. For example, the image files for Union Station in Marion County, Indiana, would be saved as "IN_MarionCounty_UnionStation1.tif," "IN_MarionCounty_UnionStation2.tif," and so on. The log itself must contain the same seven identification items required for traditional prints (listed above). The CD should be labeled with the name of the property, the county, and state where the property is located.

3. Written Description.

A brief description of the structure and its condition must accompany the documentation. The description should be word-processed in a standard format. A printed copy must be included. The description should include architectural style, plan, number of stories, building materials, organization of major elevations, details, and significant interior and exterior elements.

4. Statement of Significance.

The history and significance of the building must be explained using the equivalent of one to two standard pages of text in a standard word processing format. The statement should begin with a summary paragraph that succinctly discusses the date or era of construction and why the building is important (what makes it National Register eligible). If the building is important for association with an historical event or person, its relationship to the event or person must be clear. Enough history and background should be presented to establish the building's importance. If the building is architecturally significant, the statement must indicate how it is an outstanding example of an important architectural style, type, or the work of a significant architect. Include any dates and descriptions of major alterations. This section should include a list of bibliographic sources, including author, title, place of publication and publisher, and date of publication.

5. Drawings.

If available, include architectural drawings, reduced to 8.5" x 11" or scanned into a readily available viewing program, such as PDF. Drawings should include a site plan, floor plans, building elevations, and building sections and details.

6. Sketch Plan

Include a sketch plan of the site, on 8.5" x 11" paper. The site plan does not need to be drawn to scale and may be omitted altogether, if the original or existing site plan is included under item #5.

7. Presentation

All information should be printed and presented in some notebook form (either spiral bound or 3-ring binder), measuring 8.5" x 11" with cover, and two copies must be submitted to the DHPA. DHPA will submit one copy to State Archives.

- Additionally, please copy all possible items to a CD-ROM, accessible to a readily available program.
- Alternative data recording technologies to those listed here may be acceptable. Please contact DHPA.

All submittals are sent to:

Indiana Division of Historic Preservation and Archaeology
402 W. Washington Street, Room W274
Indianapolis, IN 46204 317-232-1646 dhpa@dnr.in.gov

Adopted by Indiana Historic Preservation Review Board, July 27, 2011