



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

December 9, 2010

James A. Glass, Ph.D.
Deputy State Historic Preservation Officer
Indiana Department of Natural Resources
Division of Historic Preservation & Archaeology
402 W. Washington Street, W274
Indianapolis, IN 46204

Re: STB Docket No. AB-1065X – Indiana Southwestern Railway Company – Abandonment
Exemption – In Posey and Vanderburgh Counties, IN; DHPA #10815

Dear Dr. Glass:

On November 29, 2010, the Office of Environmental Analysis (OEA) received a letter from your office regarding the above referenced abandonment proceeding. OEA is the office within the Surface Transportation Board (Board) responsible for conducting the environmental review process pursuant to the National Environmental Policy Act (NEPA), including Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f). Based on the information provided by your office, consultation with appropriate parties, and all applicable materials to date, OEA has determined that the proposed rail abandonment would not affect historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register).

Below, you will find a summary indicating our compliance with the documentation requirements of 36 C.F.R. § 800.11(d). OEA believes that our environmental review process meets the intent and goals of NEPA and the NHPA, including 36 C.F.R. §§ 800.11, 800.2(d)(2) and 800.4(d)(1) (See 49 C.F.R. § 1105.8), and is therefore informing you that the Section 106 process has been properly completed for this abandonment.

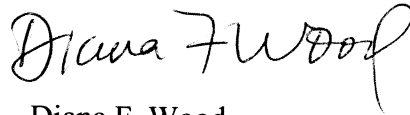
**Summary of OEA's Compliance with 36 C.F.R § 800.11(d),
Finding of No Historic Properties Affected**

- (1) A description of the undertaking, specifying the federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;
 - On October 4, 2010, the Indiana Southern Railway Company (ISW) sent to the State Historic Preservation Officer (SHPO) a Historic Report that depicts the location of the proposed abandonment including the 16 structures (bridges) within that area of the proposed abandonment that are believed to be 50 years or older; a written description of the right-of-way (area of potential effects or APE), including approximate widths, topography, and surrounding land uses; good quality photographs that show the 16 bridges (all wooden trestles); topographic and valuation maps; a brief history of carrier operations and an explanation; a brief summary of the documents in ISW's possession; an opinion as to whether the site and structures meet the criteria for listing on the National Register and whether there is a likelihood of archaeological resources; and a description of any known subsurface conditions, including ground disturbances that might affect the potential for recovery of said resources.
- (2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to 36 C.F.R. § 800.4(b);
 - ISW solicited comments from the Indiana SHPO, as well as other federal, state and local agencies regarding the proposed abandonment.
 - The Board's OEA prepared an Environmental Assessment (EA) indicating that there are 16 structures (bridges) in the APE that are 50 years or older, but that none of these structures are believed to be eligible for inclusion on the National Register because they do not have any unique or otherwise significant design characteristics.
 - OEA placed all material regarding the proposed abandonment in the public docket and solicited comments from agencies, interested parties, and the public on the EA.
 - OEA received a letter addressed to ISW from the Indiana SHPO stating that, based on information provided by ISW, the SHPO did not identify any historic buildings, structures, districts, or objects listed in or eligible for inclusion on the National Register within the APE. The SHPO also did not identify any archaeological resources within the APE of the proposed abandonment.
- (3) The basis for determining that no historic properties are present or affected.
 - In addition to the SHPO and the Board's conclusions regarding National Register eligibility, OEA served the EA on agencies, interested parties and the public with a 15-day comment period. The comment period ended December 6, 2010 and OEA did not

receive comments on issues pertaining to historic preservation. On December 9, 2010, OEA prepared a Final EA that addressed public comments. The document was placed in the public docket.

Although you did not identify any archaeological resources within the APE of the proposed abandonment, your comment letter cautioned that in the event any artifacts are discovered during salvage operations, the railroad should immediately cease all work related to the salvage process and contact the SHPO. OEA has included a condition in the Final EA that reflects the concerns of your comment (see enclosure). If you have any questions, require additional information regarding this proceeding, or have any concerns, please do not hesitate to contact me at 202-245-0302.

Sincerely yours,

A handwritten signature in black ink that reads "Diana F. Wood". The signature is written in a cursive style with a large, stylized "D" and "W".

Diana F. Wood
Office of Environmental Analysis

Enclosure

SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS

EO-1550

FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB 1065X

December 9, 2010

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

(X) Notice of Exemption () Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

In this proceeding, the Indiana Southwestern Railway Company (ISW) filed a notice of exemption with the Surface Transportation Board (Board) seeking approval authority to abandon 17.2 miles of interconnecting rail lines located in Posey and Vanderburgh Counties, Indiana. The Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) for this proceeding on November 19, 2010 for public review and comment. In the EA, OEA recommended 1 environmental (historic) condition and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments on the EA

OEA received 4 comments during the 15-day comment period. The comments are summarized below. In this Final EA, OEA is removing the 1 environmental (historic) condition recommended for imposition in the EA and replacing it with another historic condition. OEA is also adding 2 new conditions, one that requires the use of best management practices during the salvage process, and another that requires consultation with the Indiana Department of Natural Resources (DNR).

Historic Preservation Comments

ISW submitted an historic report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and served the report on the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (State Historic Preservation Office or SHPO) pursuant to 49 C.F.R. § 1105.8(c). Based on available information, the SHPO submitted the attached comments, dated November 3, 2010, stating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way (the Area of Potential Effect) of the proposed abandonment.

OEA concurs with this finding and is removing the condition recommended in the EA that requires ISW to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA).

Therefore, pursuant to the Section 106 regulations of the NHPA at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's historic report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <http://www.stb.dot.gov>.

The SHPO also commented that in the event any archaeological artifacts or human remains are uncovered during the salvage process, it would need to be contacted within 2 business days, pursuant to Indiana Code 14-21-1-27 and 29. To address this concern, OEA is recommending a condition that requires ISW to cease all work and notify OEA, the SHPO, and interested federally recognized tribes on this abandonment proceeding if unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the railroad's salvage activities.

Other Environmental Comments

In a letter dated November 16, 2010, the U.S. Fish and Wildlife Service (USFWS) commented that 2 federally listed endangered species, the Indiana bat (*Myotis sodalis*) and the fat pocketbook mussel (*Potamilus capax*), are within close range of the proposed abandonment. However, due to the railroad's attached salvage procedure,¹ USFWS has determined that the proposed action is not likely to adversely impact these species, and therefore, has concluded that no further consultation under Section 7 of the Endangered Species Act is required. To ensure that these listed species and their habitat are protected during the salvage process, USFWS has requested that ISW use best management practices. Specifically, USFWS would like ISW to minimize grading and other soil disturbances; minimize tree clearing; avoid wetland disturbances; avoid discharge of demolition debris, waste material, and other pollutants into streams or wetlands; and avoid disturbances to stream channels during the primary fish spawning season (April 1 through June 15). To address this concern, OEA is recommending a condition that requires ISW to implement USFWS's recommended best management practices during the salvage process.

In a letter dated November 30, 2010, the Indiana DNR, Division of Fish and Wildlife provided a number of comments. Specifically, DNR states that any work within the designated

¹ ISW has stated in its salvage procedure that it does not intend to remove any bridges or culverts within the area of the proposed abandonment, nor does it intend to create new access routes during the salvage process. ISW also does not plan to remove any trees or conduct demolition or clearing as part of the abandonment process.

floodway requires a permit; mitigation may be required for any impacts to forested habitat, wetlands, or streams in the floodway during the salvage process; and any work along stream banks would require stabilization using a number of different techniques. DNR also notes that no state or federally listed threatened, endangered, or rare species have been reported to occur within the project area, but that the 2 federally listed endangered species previously identified by USFWS in its comments are within close proximity. DNR stated that permits could be required for salvage activities and that the railroad should implement the same or similar best management practices that USFWS recommended. To ensure that all of DNR's concerns are addressed, OEA is recommending a condition that requires ISW to consult with DNR prior to initiating salvage.

In an email dated October 15, 2010, the National Geodetic Survey (NGS) commented that there are no geodetic survey marks within the area of the proposed abandonment. Therefore, OEA has determined that no further consultation with NGS is necessary.

Conclusions

The EA comment period has ended. Accordingly, OEA is removing the 1 environmental (historic) condition recommended for imposition in the EA and recommending that 3 new conditions be imposed upon any decision granting abandonment authority. The new conditions are:

1. In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, the Indiana Southwestern Railway Company (ISW) shall immediately cease all work and notify the Board's Office of Environmental Analysis (OEA), the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (State Historic Preservation Office or SHPO), and interested federally recognized tribes, pursuant to 36 CFR 800.13(b). OEA shall then consult with the SHPO, interested federally recognized tribes, and ISW to determine whether appropriate mitigation measures are necessary.
2. Based on the comments of the U.S. Fish and Wildlife Service (USFWS), ISW shall implement the following best management practices during the salvage process to ensure protection of the federally endangered Indiana bat (*Myotis sodalis*) and the fat pocketbook mussel (*Potamilus capax*), and its habitat: minimize grading and other soil disturbances; minimize tree clearing; avoid wetland disturbances; avoid discharge of demolition debris, waste material, and other pollutants into streams or wetlands; and avoid disturbances to stream channels during the primary fish spawning season (April 1 through June 15).

-
3. To address the concerns raised by the Indiana Department of Natural Resources (DNR), Division of Fish and Wildlife, ISW shall contact DNR prior to commencement of any salvage activities on this project concerning: removal and salvage methods; and any work within the designated floodway, including possible impacts to forested habitat, wetlands, or streams, and stream banks.

OEA concludes that if the above conditions are imposed, the proposed action would not significantly affect the quality of the human environment.

OEA CONTACT:

Diana Wood 
202-245-0302
woodd@stb.dot.gov

Distribution:

Ann Newman, Office of Proceedings
OEA Chron
ECT

Attachments



Indiana Department of Natural Resources

Mitchell E. Daniels, Jr., Governor
Robert E. Carter, Jr., Director

HEI-18421
D7W
AB-1065X

Division of Historic Preservation & Archaeology • 402 W. Washington Street, W274 • Indianapolis, IN 46204-2739
Phone 317-232-1646 • Fax 317-232-0693 • dhpa@dnr.IN.gov



November 3, 2010

Robert A. Wimbish
Baker & Miller PLLC
2401 Pennsylvania Avenue NW
Suite 300
Washington, D.C. 20037

Federal Agency: Surface Transportation Board

Re: Project information regarding notice of exemption for abandonment of a 17.2 mile rail line between milepost 227.5 at Poseyville and milepost 240.2 near German Township and between milepost 277.5 at Cynthiana and 282.0 at Poseyville (DHPA #10815)

Dear Mr. Wimbish:

Pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) and 36 C.F.R. Part 800, the staff of the Indiana State Historic Preservation Officer ("Indiana SHPO") has conducted an analysis of the materials dated October 4, 2010 and received on October 6, 2010 for the above indicated project in Posey & Vanderburgh Counties, Indiana.

Based upon the documentation available to the staff of the Indiana SHPO, we have not identified any historic buildings, structures, districts, or objects listed in or eligible for inclusion in the National Register of Historic Places within the probable area of potential effects. In addition, we have not identified any currently known archaeological resources listed in or eligible for the National Register of Historic Places within the proposed project area.

This identification is subject to the following condition:

- The project activities remain within areas disturbed by previous construction.

If any archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (Indiana Code 14-21-1-27 and 29) requires that the discovery must be reported to the Department of Natural Resources within two (2) business days. In that event, please call (317) 232-1646. Be advised that adherence to Indiana Code 14-21-1-27 and 29 does not obviate the need to adhere to applicable federal statutes and regulations.

Please be aware of the cemetery development plan requirements in Indiana Code 14-21-1-26.5 (<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>) regarding any proposed ground disturbance within 100 feet of a cemetery.

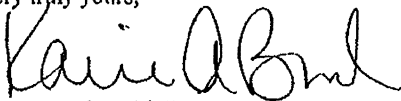
At this time, it would be appropriate for the Surface Transportation Board to analyze the information that has been gathered from the Indiana SHPO, the general public, and any other consulting parties and make the necessary determinations and findings. Please refer to the following comments for guidance:

- 1) If the Surface Transportation Board believes that a determination of "no historic properties affected" accurately reflects its assessment, then it shall provide documentation of its finding as set forth in 36 C.F.R. § 800.11 to the Indiana SHPO, notify all consulting parties, and make the documentation available for public inspection (36 C.F.R. §§ 800.4[d][1] and 800.2[d][2]).

- 2) If, on the other hand, the Surface Transportation Board finds that an historic property may be affected, then it shall notify the Indiana SHPO, the public and all consulting parties of its finding and seek views on effects in accordance with 36 C.F.R. §§ 800.4(d)(2) and 800.2(d)(2). Thereafter, the Surface Transportation Board may proceed to apply the criteria of adverse effect and determine whether the project will result in a "no adverse effect" or an "adverse effect" in accordance with 36 C.F.R. § 800.5.

A copy of the revised 36 C.F.R. Part 800 that went into effect on August 5, 2004, may be found on the Internet at www.achp.gov for your reference. If you have questions about archaeological issues please contact Amy Johnson at (317) 232-6982 or ajohnson@dnr.IN.gov. If you have questions about buildings or structures please contact Miriam Widenhofer at (317) 233-3883 or mwidenhofer@dnr.IN.gov. Additionally, in all future correspondence regarding the above indicated project, please refer to DHPA #10815.

Very truly yours,



James A. Glass, Ph.D.
Deputy State Historic Preservation Officer

JAG:MLW:ALJ:aj

cc: David C. Navecky, Environmental Protection Specialist, Surface Transportation Board