



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

#EO-466
Dw

Office of Economics, Environmental Analysis and Administration

April 9, 2007

**Re: STB Finance Docket No. 34284 – Southwest Gulf Railroad Company –
Construction and Operation Exemption – Medina County, TX**

Dear Section 106 Consulting Party:

At our meeting in San Antonio, Texas, on March 26, 2007, representatives of Southwest Gulf Railroad (SGR) and Vulcan Construction Materials, Inc. presented a voluntary mitigation plan intended to minimize impacts on rural historic landscapes caused by construction and operation of SGR's proposed rail route through Quihi, Texas.¹ At the conclusion of that meeting, Ms. Charlene Dwin Vaughn of the Advisory Council on Historic Preservation suggested that SGR be given an opportunity to integrate into its voluntary mitigation plan some of the new information heard during the meeting.

SGR has revised its voluntary mitigation plan, which I have enclosed for your review. Also enclosed is a schematic of the bridge that will be used to cross Quihi Creek, which has been prepared by SGR.

To provide you and all the consulting parties with the opportunity to share your views on the enclosed materials, I have scheduled a teleconference call on **Friday April 20, 2007, from 10:00am – 12:00pm CT/11:00am – 1:00pm EST. The call in number is 1-866-603-2146 and the access code is 368166.** In the event you are unable to take part in the meeting, I ask that you try to find a substitute who can participate and represent your views. SEA will take notes and will post the notes on the Board's website as soon as we can following the teleconference.

We appreciate your continued participation in the Section 106 consulting party process and look forward to reaching an understanding of the issues. If you have questions, please feel

¹ The minutes from the March 26, 2007 meeting are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Correspondence," then "Environmental," then selecting "Outgoing by Docket Number," then conducting a search for FD 34284, and finally selecting "#EO-463."

free to contact Diana F. Wood, Project Manager, by telephone at 202-245-0302 or by email at woodd@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

Enclosure

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April 5, 2007

VIA FACSIMILE AND COURIER

Ms. Victoria Rutson
Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Mr. F. Lawrence Oaks
Executive Director
Texas Historical Commission
P.O. Box 12276
Austin, TX 78711-2276

Ms. Charlene Dwin-Vaughn
Ms. Katry Harris
Advisory Council on Historic Preservation
1100 Pennsylvania Ave.
Washington, DC 20004

**Re: STB Finance Docket 34284, Southwest Gulf Railroad Company Construction and
Operation Exemption – Medina County, TX**

Dear Ms. Rutson, Mr. Oaks, Ms. Dwin-Vaughn and Ms. Harris:

This letter follows up on the March 26, 2007 consultation in San Antonio, TX concerning the line construction proposed by Southwest Gulf Railroad (SGR) Company in Medina County. At that meeting, it was agreed that SGR would present revisions to its proposed January 16, 2007 voluntary mitigation measures for the Proposed Route, as well as information about the bridge that will be used to cross Quihi Creek on that Route. Based on views expressed at the meeting, SGR here offers certain revised mitigation measures that it believes more appropriately address the historic preservation concerns expressed at that meeting. We understand that SEA will forward a copy of this letter to each of the non-government Section 106 consulting parties.

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Specifically, SGR proposes the following revised voluntary mitigation for the Proposed Route to address the concerns that have been raised about the impacts of that route on the Quihi Rural Historic District and to minimize those impacts:

1. SGR will fund the preparation by a competent historic resources consultant of an Historic Preservation Plan ("HPP") for the Quihi Rural Historic District ("QRHD"). The purpose of the HPP will be to establish a plan for the current and long-range preservation, maintenance and use of the QRHD. The HPP will be developed in consultation with the Medina County Historical Commission and subject to review by the Texas Historical Commission ("THC") and the Advisory Council. The HPP would be designed to meet all appropriate State and Federal standards and guidelines for preservation planning. The consultant retained to prepare the HPP will meet, at a minimum, the "Professional Qualification Standards" detailed in the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9). The HPP will include the identification and evaluation materials that were utilized to determine that the QRHD met the criteria for inclusion in the National Register of Historic Places. It would also include a discussion of the available resources -- both existing and proposed -- that might be used to help achieve the recommendations of the HPP. In the event the HPP recommends the adoption of a local historic district ordinance to preserve the historic integrity of the QRHD and completion of a National Register nomination for the QRHD, SGR further agrees to support such an ordinance and nomination.

SGR is offering the above mitigation in recognition of the fact, made clear at the meeting, that there is at present no mechanism for protecting the QRHD from development. In other words, there is no means of preventing the suburban sprawl, evident in eastern portions of Medina County since this project was first proposed, from spreading into the Quihi area. Absent a means of controlling growth in the area, talk about the historic resources will not protect them. SGR is prepared to work with the local community to change this situation. The development of an Historic Preservation Plan is an essential step in the process. SGR will support and fund this effort.¹

2. SGR agrees to implement a conservation easement program in consultation with the Medina County Historical Commission and the THC on those properties that it or its affiliates own in the QRHD. Those properties constitute about one half of the length of the Proposed Route in the QRHD. The purpose of this program would be to control development within the QRHD. The easement would work hand in hand with the preservation plans put forward in the HPP. Further, SGR will use its best efforts to encourage other landowners within the boundaries of the QRHD from which it would need to acquire its right of way to establish a similar conservation easement. If those landowners

¹ It should be noted that SGR's original offer of a \$500,000 contribution to a state historic preservation fund did not appear to be embraced by the THC (or other consulting parties). SGR has thus restructured that contribution as set forth in this letter, but is prepared to restore a contribution to the fund if that is preferred by the THC.

concur, the entire length of the line within the QRHD would be protected by an easement. As a result, no rail-served businesses could locate along the SGR line within the QRHD.

3. Should the Proposed Route be constructed, SGR would take steps (through rate incentives and other means) to incentivize any businesses desiring to locate on its line to do so outside of the QRHD and, instead, in the area near the southern terminus of its line, well outside the QRHD and near the UP line and U.S. 90. As stated previously, SGR believes that this is the area in which businesses are most likely to locate due to its proximity to the highway and the existing rail line. However, to the extent that any business did choose to locate in the QRHD along a portion of the line, if any, that might be not be protected through an easement, SGR would contribute a fixed sum to either the Medina County Historical Commission or the THC to fund historic preservation within the QRHD. The size of the contribution would be commensurate with size of the area consumed by the rail-served business that locates in the QRHD under a formula that SGR would discuss with the relevant preservation agencies, but would not be less than \$75,000. Of course, to the extent that the entire line within the QRHD were to be protected by an easement, or to the extent that Medina County were to enact a preservation ordinance protecting the QRHD from development, this measure would be unneeded.

4. SGR will ensure that the Proposed Route avoids the historic stone wall as well as any other structures that are contributing elements to the QRHD. This re-routing is reflected on the attached map of the Proposed Route. In addition, natural vegetation in the area of the Proposed route will be maintained to screen the rail line as much as possible.

5. SGR will avoid bisecting the Gerdes farm, designated as a heritage property, by re-routing the Proposed Route along the edge of that property, adjacent to County Road 353 currently marks the edge of the property. This re-routing is also reflected on the attached map of the Proposed Route. The Proposed Route otherwise runs as close as possible to property boundaries and traverses fewer properties than any other route.

6. SGR will consult with the Tap-Pilam Tribal Council to develop a plan to ensure that any Tap-Pilam human remains and grave associated artifacts encountered during the construction phase of the project are reburied within 30 days and in a location where their subsequent disturbance is unlikely and in a manner consistent with Tap-Pilam Tribal custom and tradition. In addition, the SGR and the Texas SHPO will consult with the Tap-Pilam Tribal Council prior to completion of the SGR undertaking and afford them the opportunity to conduct a ceremony of their own design recognizing the significance of the project area to the Tribe.

7. To the extent that the STB approves the Proposed Route, SGR will submit final engineering plans and specifications for that Route to the Medina County Historical Commission and the THC for advance review and comment. SGR stands prepared to satisfy reasonable concerns based on historic preservation that are raised about the location of its line and the design of bridges.

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8. SGR will take steps to use natural vegetation and other available means to make the rail line, including stream crossings, as unobtrusive as possible.

9. SGR commits to adhering to the terms of the Programmatic Agreement as a means of addressing any archeological resources that may be located along the Proposed Route.

SGR has attached to this letter a not-to-scale artist rendering of the crossing of Quihi Creek as requested at the meeting. The rendering reflects neither final engineering work, which has not yet been undertaken, nor the hydrological modeling that SGR has committed to employ in connection with all stream crossings as part of its voluntary mitigation. The sketch shows one scenario for crossing the Creek and CR 353. Under this scenario, the visual impacts of the stream crossing have been minimized by moving the road away from the Creek, to the west side of the Schweers House. SGR has advised the County Commissioner for the area of the possibility that it could seek permission to move CR 353. Other scenarios are also possible, including crossing the Creek at a point north of the current crossing point, where there is more land between the Creek and the road.

SGR looks forward to discussing these revised mitigation proposals and the attachments with you. To the extent that a determination is made to consult further with the non-government agency consulting parties, SGR wishes to note for the record that two of the consulting parties, the Schweers Foundation and the Weiblen family, favor the Proposed Route, as mitigated in the manner initially proposed by SGR. MCEAA, it bears noting, has expressly stated that it does not want any rail route in the area. Thus, the views of Dr. Fitzgerald on behalf of MCEAA should be understood in that context -- there is nothing that SGR could offer in terms of proposed mitigation for the Proposed Route to satisfy that party. SGR assumes that the same is true for the organization headed by Dr. Fitzgerald's wife, the Quihi and New Fountain Historical Society, an organization whose membership appears to overlap significantly, if not entirely, with MCEAA's. As to Section 106 consultant Mr. Archie Gerdes, SGR believes that it has fully satisfied his concerns with the suggested re-routing of the Proposed Route to the edge of his property. It also bears note that Mr. Gerdes was advised of this proposed re-routing at the meeting and he has advised SGR that he is comfortable with the re-routing.

SGR of course appreciates that the Eastern Routes, two of which have been tentatively determined to be environmentally preferable, bypass the QRHD. While SGR recognizes that the "path of least resistance" here relative to the concerns expressed about historic resources in the Quihi area would be to build along one of those routes, it should be recognized that doing so is not without its own costs. As SGR has stated, the cost of such construction is considerably higher, as would be the operational and maintenance costs. In addition, SGR has previously identified other issues with the Eastern Routes that, in its view, render the Proposed Route preferable, including intrusion onto the properties of fewer private landowners and less impacts to irrigated fields. Moreover, a review of the comments filed in this proceeding reveals, predictably, that numerous landowners (not only the Weiblen's, but several others) who live in the area impacted directly by the Eastern Routes oppose the line running through their property for one reason or another. SGR notes this fact not because it

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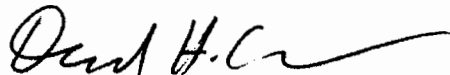
believes that any of the commenters have raised disqualifying issues or issues that cannot be addressed, but merely to note that satisfying one group of landowners in the Quihi area, such as Dr. Fitzgerald and his wife, by routing the line away from their properties will inevitably lead to the dissatisfaction of others landowners. Thus, no option is available that does not create some issues for some persons, as is typical in any rail construction proceeding.

As noted, the cost to SGR of constructing and operating the longer Eastern Routes is much higher than the Proposed Route. Nothing in the Section 106 process, or the NEPA process, suggests that this fact should be ignored in assessing alternatives or that avoidance is necessarily mandated when mitigation can address the issues at hand.

Finally, SGR urges the parties to consider that its offer constitutes the best opportunity to protect the Quihi area against future intrusions and suburban growth, which is otherwise inevitable and not subject to any controls. The funding of the historic preservation plan, coupled with the easement, the incentives for businesses to locate away from the QRHD, the re-routings and other mitigation measures offered above, will go far toward preserving the area and thus fulfilling the letter and spirit of the National Historic Preservation Act.

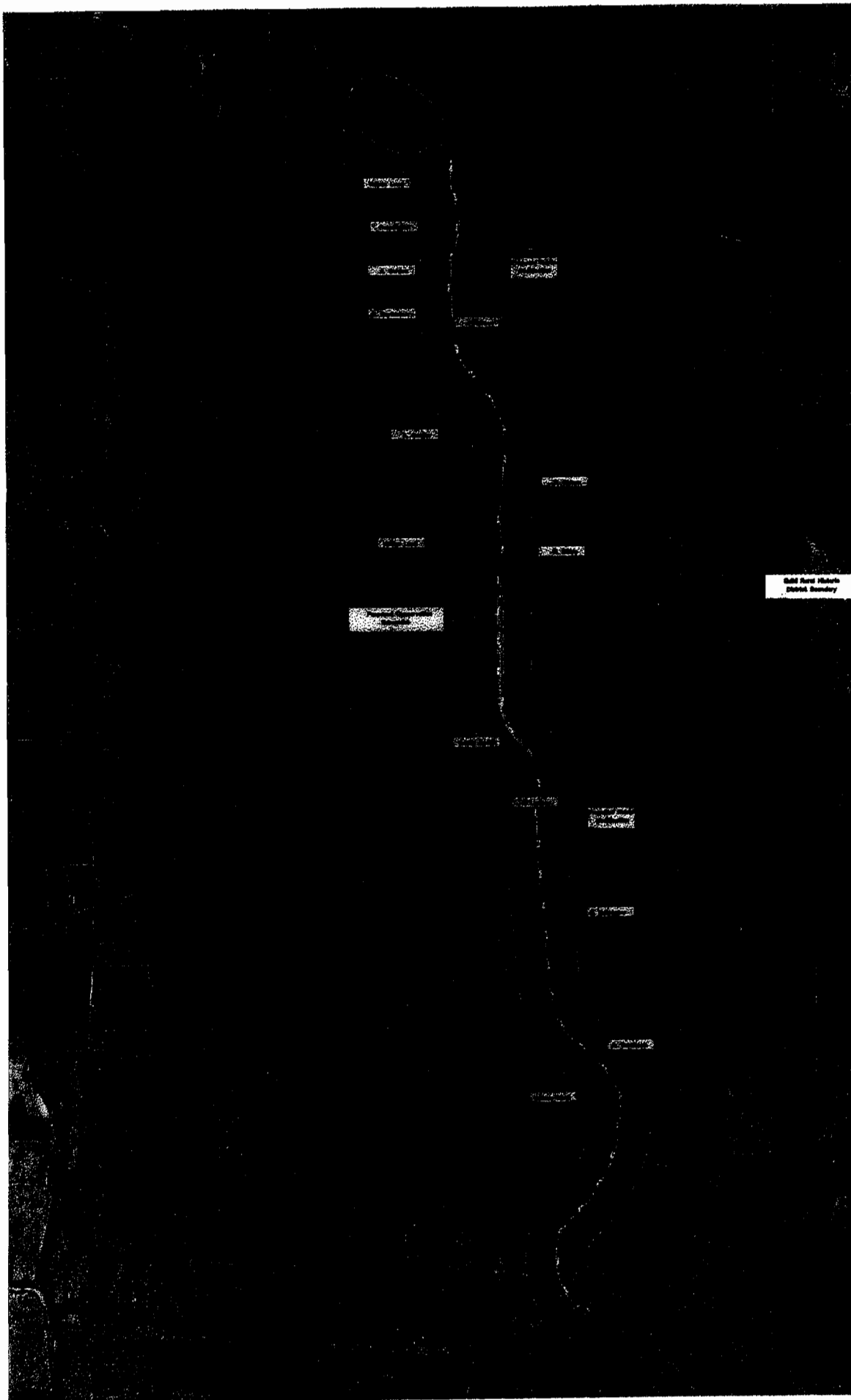
We look forward to your views and to reaching a memorandum of understanding on the above points.

Sincerely,



David H. Coburn
Attorney for Southwest Gulf Railroad

cc: Ms. Diana Wood, SEA
Ms. Jaya Zyman Ponebshek, URS



Artist's Rendering of Quihi Creek Crossing

