



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

December 14, 2015

Marion F. Werkheiser, Attorney for MCEAA
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2101 L Street, NW, Suite 800
Washington, DC 20037

**Re: STB Docket No. FD 34284—Southwest Gulf Railroad Company—
Construction and Operation Exemption—In Medina County, Texas;
Response to October 22, 2015 MCEAA Comments on the Draft
Programmatic Agreement**

Dear Ms. Werkheiser:

This letter responds to your October 22, 2015 comment letter submitted on behalf of the Medina County Environmental Action Association (MCEAA) and Mr. Jerry Johnston in regard to the Draft Amended Programmatic Agreement (Draft Amended PA) for the above-referenced Southwest Gulf Railroad (SGR) rail line construction project. The project was approved by the Surface Transportation Board (STB or Board) in 2008 following environmental review under the National Environmental Policy Act and cultural resources analysis under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108). For the reasons detailed below, we believe the Draft Amended PA was prepared in full compliance with Section 106 and nothing in your letter merits any further changes to the Draft Amended PA.

PERTINENT BACKGROUND

In 2004, the Board issued a Draft Environmental Impact Statement (EIS) studying four possible rail alignments for Southwest Gulf Railroad's (SGR) proposed rail line construction between an existing Vulcan Materials limestone quarry and a Union Pacific rail line in Medina County, Texas. Based on comments received, the Board decided to prepare a Supplemental Draft EIS to evaluate three new eastern alternative rail routes that would avoid potential impacts to the Quihi area. The Final EIS, issued in 2008, assessed the Modified Eastern Bypass Route (a

modification to the Eastern Bypass Route that circumvents the Weiblen property and Castroville Subdivision). The Final EIS concluded that the Eastern Bypass Route, the Modified Eastern Bypass Route, and the MCEAA Medina Dam Alternative are the environmental preferred alignments for this line. The Final EIS includes environmental mitigation measures, including requiring compliance with a PA to address potential impacts to cultural and historic resources. That PA (the Original PA) was developed with a number of interested parties prior to project approval and was executed on February 13, 2008. The Advisory Council on Historic Preservation (ACHP), the Texas State Historic Preservation Officer (SHPO), SGR, and the Board signed the Original PA.

In December 2008, the Board issued its decision authorizing SGR to construct any of the three environmentally preferred routes, subject to the terms of the Original PA and 80 additional environmental mitigation measures. The Board's decision, which MCEAA challenged in court, was affirmed in 2010. Medina County Environmental Action Ass'n v. STB, 602 F.3d 687 (5th Cir. 2010).

SGR subsequently decided to build the Modified Eastern Bypass Route. Because the Original PA had expired, the Board reinitiated the Section 106 consultation process with ACHP, the SHPO, and SGR and reached out to all interested parties, including local historical groups and Native American Tribes, for input and concurrence in developing an amended PA focusing on the route the railroad had chosen to build—the Modified Eastern Bypass Route. The Board's Office of Environmental Analysis (OEA) then requested comments on the Draft Amended PA. Only MCEAA has raised substantive concerns. ACHP, in its comment letter, suggested certain additions and changes, all of which OEA has implemented in the Draft Amended PA. OEA has worked and will continue to work with ACHP and the SHPO throughout the Section 106 process to resolve any issues regarding historic and cultural resources.

DISCUSSION

We now address the specific concerns raised in your letter.

1. **The approach that STB used in requesting comments on the Draft Amended PA was inadequate and flawed; STB should be required to conduct meaningful public examination and input under the Section 106 process. Additional parties also should have been invited to participate.** The Board has provided ample opportunity for public input during the Draft Amended PA process. On August 13, 2015, OEA sent letters to the 24 consulting parties (including 4 federally recognized Tribes) identified during the preparation of the Original PA, as well as to 18 new federally recognized Tribes, inviting all parties to participate in the development of a new PA for the previously-approved SGR rail line project. The letter explained that SGR had chosen to construct the Modified Eastern Bypass Route, one of the three routes that STB approved in 2008, but that the Original PA had expired and that a new PA needed to be developed. The letter included the Original PA and a map from the Final EIS that showed the

alternative routes. The parties initially were given 30 days to respond, however, the date was later extended at the request of Dr. Robert Fitzgerald (MCEAA) due to an error he noted in the August 13, 2015 submittal to the parties. Dr. Fitzgerald found that the map highlighted the Modified Medina Dam Route instead of the neighboring Modified Eastern Bypass Route. Upon learning of this mistake, OEA immediately sent correction notices to the parties and extended the response deadline to September 18, 2015.

OEA sent the Draft Amended PA to the 35 new consulting parties on September 28, 2015 and requested that comments be provided by October 15, 2015. On October 9, 2015, OEA received a request from Congressman Hurd's office to extend the comment due date. OEA then changed the deadline to the mutually agreeable October 22, 2015 date and promptly notified all parties. OEA notes that the general public was also given notice of the Draft Amended PA in the Hondo Anvil and the Medina Valley Times and that the document was available for viewing at the Hondo and Castroville Public Libraries or by contacting OEA.

You question whether OEA sufficiently expanded its outreach to include meaningful consulting party meetings and public examination and input. However, you fail to show that our process was inadequate. ACHP's regulations at 36 C.F.R. § 800.2(d)(2) state that public notice should be designed to effectively inform the public about the nature of the undertaking, including its effects. ACHP's regulations at 36 C.F.R. § 800.11 require materials to be made available to the public, unless constrained by legitimate confidentiality concerns. Consistent with those regulations, all environmental documents, comments, and Board decisions are publicly available on the Board's website. Moreover, OEA—through emails, mailings, and phone calls—has informed the consulting parties of the development of the new PA and invited their participation. ACHP's regulations do not require agencies to conduct on-site meetings to gather input from Section 106 consulting parties. Nevertheless, OEA held several meetings in the project area during the environmental and historic review processes that concluded in 2008. Accordingly, OEA complied fully with ACHP's regulations in developing the Original PA and the new PA, and will continue to do so by engaging interested parties and the public, pursuant to the terms of the amended PA, once it is finalized.

2. **The STB should reinitiate or revisit the NEPA process because the NEPA process was concluded in 2008.** Contrary to the suggestion in your letter, time alone does not invalidate or require supplementation of an EIS. Rather, the question is whether the original proposed action has substantially changed or there are significant new circumstances or information relevant to the project or its environmental impact. 40 C.F.R. § 1502.9; 49 C.F.R. § 1105.10(a)(5).

Your letter points to no new circumstances or information that would trigger the need for a supplement in this case. To the contrary, as you yourself note, the preferred route being pursued by SGR is one of the preferred alternatives assessed in the Final EIS and addressed by the Board in its decision authorizing the project. While you suggest that

changes “may” have occurred, such as the emergence of new federally protected flora or fauna; changes in land use; or industry and technology standards, there is no specific information in your letter on how, why, or where this would likely occur, and the information, at best, appears to be speculative. Finally, the claim that new parties should have been invited into the process once SGR selected the route for the rail line lacks merit. As previously discussed, OEA has consulted with 24 consulting parties, including four federally recognized Tribes, to the Original PA, as well as 18 new federally recognized Tribes, and is currently consulting with the 35 parties, including the 4 federally recognized Tribes, that expressed interest in becoming consulting parties to the Draft Amended PA. Thus, no need has been shown to supplement the EIS.

3. **The Modified Eastern Bypass Route that SGR has chosen to construct would harm archaeological resources on the Johnston property and elsewhere in the area of potential effects.** The Modified Eastern Bypass Route is one of eight routes studied during the environmental review process. The modified route came into existence to avoid any direct impacts to the Wieblen farm and the Castroville West subdivision. In terms of potential impacts to historic sites on the Johnston property, SGR stated in letters to OEA dated November 4, 2015 and November 20, 2015 (attached), that the area of potential effect (APE) under Section 106 is not located in the path of two known sites on the Johnston property—the Buddy Mangold site (41ME132) and an American Indian campsite.¹ The November 4, 2015 letter also explains that although SGR has always planned to avoid these sites, it has hired HDR, Inc. to delineate a preferred right-of-way within the Modified Eastern Bypass corridor that moves the line even further away from both sites, as well as from the springs on the Johnston property (see attached map from November 20, 2015 letter). In addition, the Draft Amended PA contains stipulations for identifying and evaluating historic properties in the APE, including any sites not previously identified or evaluated, and for assessing and resolving adverse effects. SGR must comply with the terms of the new PA and 80 other environmental mitigation measures imposed by the Board in its 2008 decision. In short, the execution of the amended PA is not the end of the cultural resources and environmental review processes, but rather is a continuation of the on-going, consultative process that MCEAA professes to want.
4. **The Modified Bypass Route was not properly studied during the environmental review process.** OEA conducted extensive review of eight alternatives in the Draft EIS, the Supplemental Draft EIS, and the Final EIS. OEA’s evaluation included the Quihi Rural Historic District, the New Fountain Rural Historic District, and the Upper Quihi Historic District, and concluded that three routes to the east—the Eastern Bypass Route, the Modified Eastern Bypass Route, and the MCEAA Medina Dam Alternative—would be the environmentally preferred alignments. The Modified Eastern Bypass Route came

¹ Your letter inaccurately refers to the cultural resource site as 41 ME 133. This site is located well to the west of the Modified Eastern Bypass Route and is outside the selected route corridor.

into existence at the request of the Wieblens to avoid any direct impacts to their large farming operations as well as the Castroville West subdivision and (as explained in more detail in the following paragraph) was thoroughly assessed in the Final EIS. While there may not have been a comprehensive study of the Johnston property, SGR's November 4, 2015 letter notes that the Final EIS specifically acknowledged that there may be additional unidentified sites along the route, and that the Original PA and Draft Amended PA were developed to address the possibility of such discoveries as construction moves forward. SGR adds that it has made every effort to limit impacts to Mr. Johnston's property, including impacts to hydrologic features, although it cannot fully avoid that property while staying within the approved route. Thus, SGR understands that further surveys and consultations are part of the ongoing PA process here.

The Modified Eastern Bypass Route connects to the Eastern Bypass Route and was evaluated in the Final EIS in regard to the numerous environmental resource areas, including transportation and traffic safety; public health and safety; hazardous materials/waste sites and existing energy resources; worker health and safety; water resources; biological resources; air quality; geologic hazards and soils; karst features; land use; environmental justice; noise and vibration; recreational and visual resources; cultural resources including known historic period resources, historic period archaeological site sensitivity, known prehistoric sites, prehistoric site sensitivity; and socioeconomics. The Final EIS identified the Modified Eastern Bypass Route as one of three environmentally preferred alternatives. The Board's December 2008 decision then concluded that the Draft EIS, Supplemental Draft EIS, and Final EIS took the requisite "hard look" at the potential environmental impacts associated with the construction proposal. Moreover, the Board's decision affirmed OEA's analysis of alternatives and concluded that the 80 final recommended environmental mitigation conditions in the Final EIS would be adequate to address the potential environmental effects identified in the course of the environmental review. Thus, the Modified Eastern Bypass Route was fully assessed during the EIS process; no need has been shown for further environmental review of that alternative.

5. **STB has undermined the Section 106 process by engaging HDR, Inc. to conduct archaeological and historic assessments prior to the approval of the new PA, and MCEAA questions the APE and Scope of Work.** HDR is SGR's consultant and has done no work on this project on behalf of the Board. SGR notes in its November 4, 2015 letter that HDR was hired by the railroad to assist in the delineation of a final route within the corridor of the approved Modified Eastern Bypass Route, and to conduct initial studies that would allow proper assessment of potential impacts. SGR states that it has put any field work relating to Section 106 on hold until the new PA is executed. SGR adds that it will initiate survey work pursuant to the terms of that PA only after the Draft Amended PA is executed.

With regard to the APE, OEA notes that although the APE in the Original PA provided for 1000 feet on either side of the right-of-way for direct and indirect impacts, it also stipulated that the APE could be adjusted to reflect any changes to the design and actual limit of disturbance. The APE was revised in the Draft Amended PA to 300 feet on either side of the right-of-way for direct impacts and 1000 feet on either side of the right-of-way for indirect impacts because SGR has stated in the past, and confirms in its November 4, 2015 letter, that the construction footprint will not exceed the width of the 600-foot direct effects APE, including staging and temporary construction areas. OEA made the change in the APE width following discussions with STB and SHPO archaeologists. None of the signatories including ACHP and the SHPO raised concerns about revising the APE under the circumstances presented here.

Regarding the Scope of Work, SGR's November 4, 2015 letter explains that the appropriate entities have been consulted for traditional cultural properties and cultural/historic landscapes; that Texas state laws, standards, and guidelines will be considered in any survey and identification work that is undertaken once the new PA is in effect; that a Texas Antiquities permit is not required because the APE does not include state-owned property or involve sub-entities of the State of Texas; that HDR's archaeological survey model does not exclude any areas within the APE from survey, and that all areas are covered via pedestrian surface survey methods and will involve shovel testing, where appropriate; and that the GIS model and overall methodology for the Statement of Work were designed specifically for this project based on over 20 years of Texas archaeological experience.

6. **The Draft PA has excluded Tribes from participating in the process.** OEA has invited the Tribes that participated in the development of the Original PA to participate in the development of the Draft Amended PA as consulting parties, including: the Comanche Nation of Oklahoma; the Mescalero Apache Tribe; the Wichita and Affiliated Tribes of Oklahoma; and the Kiowa Tribe of Oklahoma. OEA has also identified 18 other federally recognized tribes that may have ancestral connections to the project area and has invited these Tribes to participate in the development of the Draft Amended PA. The tribes contacted include: the Alabama-Coushatta Tribe of Texas; the Alabama-Quassarte Tribal Town; the Apache Tribe of Oklahoma; the Caddo Nation; the Cherokee Nation of Oklahoma; the Choctaw Nation of Oklahoma; the Coushatta Tribe of Louisiana; the Lovelin Poncho; the Delaware Nation; the Kialegee Tribal Town; the Kickapoo Traditional Tribe of Oklahoma; the Kickapoo Traditional Tribe of Texas; the Poach Band of Creek Indians; the Quapaw Tribe of Oklahoma; the Seminole Nation of Oklahoma; the Thlopthlocco Tribal Town; the Tonkawa Tribe of Oklahoma; the Tunica-Biloxi Tribe of Louisiana; and the United Keetoowah Band of Cherokee Indians. To date, however, none of the 18 other federally recognized tribes have indicated an interest in participating in the project.

7. The Draft Amended PA provides no recourse for resolution of public objections.

Stipulation XI in the Draft Amended PA provides a process for resolution of public objections. The Draft Amended PA allows any person to raise objections and to have those objections considered in a timely manner (within 30 days) by the STB, SHPO, and ACHP.

The Draft Amended PA also provides that there be ongoing consultation with the signatories and consulting parties on specific procedures for preserving historic properties and avoiding adverse effects, including re-routing the railroad alignment around an individual historic property where feasible, and/or monitoring of archeological or tribal historic properties by archeologists or Tribal representatives. SGR also must avoid, minimize or mitigate effects of the undertaking, with an emphasis on avoiding, where possible. OEA therefore believes the Draft Amended PA contains sufficient and reasonable provisions regarding the resolution of public objections.

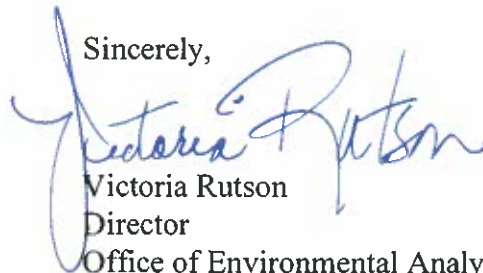
8. Mitigation contemplated in the Draft Amended PA is inadequate in terms of the destruction of a known archaeological site containing artifacts 10,000 years old that may be deemed to be of national and state significance. ACHP's regulations at 36 C.F.R. §§ 800.5 and 800.6 detail the process by which a federal agency must determine if the proposed undertaking would adversely affect historic and prehistoric properties, and the necessary steps to avoid, minimize, or mitigate the adverse effects. The National Register's Bulletin 36 explains that an archaeological site is the place or places where the remnants of a past culture survive in a physical context that allows for the interpretation of these remains, and treatment for such sites, or portions thereof. Preservation may occur in place for future study or other use, or may involve recovery or partial recovery of archeological data, public interpretive display, or any combination of these and other measures. The Draft Amended PA includes measures for the resolution of adverse effects, the treatment of human remains, curation of artifacts and records, and monitoring and reporting. In addition, the Draft Amended PA includes provisions to allow minor route adjustments when needed to avoid and protect significant resources (including archaeological sites such as 41ME132, and historic sites and structures), as well as provisions to ensure implementation of appropriate alternative mitigation measures. The Draft Amended PA also includes a dispute resolution clause and measures for amendment, noncompliance, and termination. Finally, as explained above, SGR has stated that the APE is not located in the path of two known sites on the Johnston property – the Buddy Mangold site (41ME132) and an American Indian campsite. SGR also explains that although it has always planned to avoid these sites, it hired HDR to delineate a preferred right-of-way within the Modified Eastern Bypass corridor that moves the line further away from both sites, as well as from the springs on the Johnston property. In these circumstances, we believe the mitigation in the Draft Amended PA is adequate.

In our view, you have not substantiated your claims and concerns related to the Board's Section 106 process or the Draft Amended PA. Moreover, for the reasons discussed above, we are confident that SGR's proposed rail line construction has been fully and adequately reviewed under NEPA and NHPA. It is our intent, therefore, to move forward with finalizing the new PA so that SGR can proceed with this project, subject to the terms of the new PA and the 80 environmental mitigation measures imposed by the Board.

For your convenience, I am enclosing copies of: Chapter 4 of the Final EIS, which provides a summary of the historic preservation review process; SGR's response letter of November 4, 2015; and SGR's November 20, 2015 letter containing a map of the revised alignment.

Thank you for your interest in this matter. If you have additional questions, please contact me or Diana Wood of my staff by telephone at 202-245-0302.

Sincerely,



Victoria Rutson
Director

Office of Environmental Analysis

Enclosures (3)

cc: Charlene Dwin Vaughn, Assistant Director, Federal Permitting, ACHP
Najah Duvall-Gabriel, Historic Preservation Specialist, ACHP
Bill Martin, Archaeologist, Texas Historical Commission
David Coburn, Attorney for SGR
Erik Remmert, Vice President, SGR

4.0 SUMMARY OF HISTORIC PRESERVATION REVIEW PROCESS

4.1 Introduction

This chapter provides a summary of all the cultural resources review that has been completed during the course of this proceeding. It includes a historic preservation compliance history, a synopsis of the studies completed, an impacts assessment of each of the alternatives, and an overview of measures that would be taken to mitigate adverse effects on National Register of Historic Places (National Register) eligible or listed properties identified in the project area, pursuant to the Programmatic Agreement (PA)¹ that has been entered into in accordance with 36 CFR 800.14(b), to meet the Board's obligations under Section 106 of the National Historic Preservation Act (NHPA) 16 U. S. C. 470(f) (Section 106).

4.2 Discussion and Chronology of the 106 Process for this Proceeding

Section 106 requires Federal agencies to follow steps to identify, evaluate, and resolve or mitigate adverse effects to National Register listed or eligible historic properties within the project's Area of Potential Effect (APE). The APE for each alternative route included a corridor of about 2,000 feet in width, or 1,000 feet on either side of the center line of each alignment. In this proceeding, the Section of Environmental Analysis (SEA) has conducted the Section 106 process in consultation with the Texas Historical Commission (THC) or State Historic Preservation Officer (SHPO); the Advisory Council on Historic Preservation (ACHP); Southwest Gulf Railroad (SGR); representatives of local governments; and federally recognized Tribe(s) that may attach traditional religious or cultural importance to properties located within the APE(s). The recognized Tribes consulted in this process include: the Kiowa Tribe of Oklahoma, Mescalero Apache Tribe, and Wichita and Affiliated Tribes of Oklahoma. The Tap Pilam-Coahuiltecan Nation, a non-Federally or state recognized Tribe, was also included in consultations due to its ancestral connections to the Quihi area. SEA also has added other consulting parties throughout the entire Section 106 process and has considered the views of the public.²

SEA has conducted four detailed cultural resources studies as part of its historic review: The Preliminary Cultural Resources Assessment (Study 1); Technical Memorandum: Supplement to the Preliminary Cultural Resources Assessment (Study 2); a Rural Historic Landscape Study (landscape study Study 3); and Technical Memorandum: A Reconnaissance Survey of the Eastern Alternatives (Study 4).³ As discussed below, these studies and the public concerns raised by commenters about the potential effects of the original Alternatives on the Quihi and Upper Quihi Rural Historic Districts led SEA to study additional Eastern Alternatives in the Supplemental Draft Environmental Impact Statement

¹ A PA stipulates the process that the parties must follow, if the proposal is authorized, to continue to identify, evaluate, assess, and resolve potential effects on historic properties in the project area.

² The additional Section 106 consulting parties are: the Honorable Ciro Rodriguez of the U.S. House of Representatives; Comanche Nation of Oklahoma; Mr. Archie Gerdes; Kiowa Tribe of Oklahoma; Medina County Environmental Action Association (MCEAA); Medina County Historical Commission; Mescalero Apache Tribe; Quihi and New Fountain Historical Society; Schweers Historical Foundation; Tap Pilam Coahuiltecan Nation of Texas; Coahuiltecan Research Associates; Wichita and Affiliated Tribes of Oklahoma; Dr. Thomas Hester; Harold Weiblen, Weiblen Farms; the Michael Churchill Jones Ranch Trust; Donato Rio Jr., Joseph and Vicki Solomon; Russell Mangold; Curtis Saathoff; Lester R. Landrum; Joe H. and Erna L. Balzen; Richard Fournier; Madelyn Schott; Lynette Stewart, and Larry Saiers.

³ Studies 1 and 2 are included in Appendix I of the DEIS; Studies 3 and 4 can be found in Appendix F of the Supplemental DEIS (SDEIS).

(SDEIS). SEA has also completed additional historic review of the potential adverse effects that would result from construction of the Modified Eastern Bypass Route (a slight modification of the Eastern Bypass Route analyzed by SEA in Chapter 2 of this Final Environmental Impact Statement or FEIS).⁴

Indeed, SGR has stated in writing (see #EI-2712 and #EI-3040 in Appendix A-2 of this FEIS) that it no longer seeks approval for the original preferred alignment (Proposed Route) through Quihi and does not oppose SEA's recommendation in the SDEIS to designate both the Eastern Bypass Route and the MCEAA Medina Dam Alternative as environmentally preferable routes. Of these two alternatives, SGR favors the Eastern Bypass Route. Subsequently, SGR has advised SEA that it does not oppose the Weiblen Modification to the Eastern Bypass Route (designated as the Modified Eastern Bypass Route in this FEIS), which SEA also recommends as environmentally preferable. In addition, all of the necessary Section 106 signatory parties (THC, ACHP, SEA, and SGR) have signed the PA, which sets forth the historic preservation process only for the environmentally preferable Eastern Alternatives, should the Board authorize any of these routes to be built.

Study 1: Preliminary Cultural Resources Assessment

SEA completed the Preliminary Cultural Resources Assessment in October 2003 and circulated it to the Section 106 consulting parties identified at that time. The study set forth SEA's preliminary conclusions and recommendations regarding cultural resources identified in the proposed project area (see DEIS, Appendix I-2) and the potential impacts on National Register eligible or listed cultural resources from the construction and operation of the Proposed Route, Alternative 1, Alternative 2, and Alternative 3, as well as impacts to cultural resources that could result from the No-Action or trucking alternative.

In response to the report, SEA received a number of comments from Section 106 consulting parties and members of the public expressing concerns regarding the potential adverse impacts of the proposed project on the Quihi area.

Study 2: Technical Memorandum: Supplement to the Preliminary Cultural Resources Assessment

Based on those comment letters and the results of its own independent investigation, SEA decided to augment the Preliminary Cultural Resources Assessment with additional research and fieldwork within the APE's for the Proposed Route, Alternative 1, Alternative 2, Alternative 3, and the No-Action or trucking alternative. The results of the study were included in the Technical Memorandum: Supplement to the Preliminary Cultural Resources Assessment included in the DEIS as Appendix I-4. This study indicated that the entire Quihi, Texas, area was likely part of a rural historic landscape potentially eligible for listing in the National Register.

Study 3: Rural Historic Landscape Study

A number of comments on the DEIS raised concerns that the cultural resources analysis conducted to that point was inadequate. In particular, the THC and ACHP indicated that it would be appropriate to further assess the potential rural historic landscape (including providing a better idea of its boundaries; determining its non-contributing and contributing elements; and the overall eligibility of the district) and to examine whether additional rail line alternatives could potentially avoid any landscape

⁴ SEA did more extensive and comprehensive analysis of potential historic sites and structures for this project than in the other construction cases that have come before the Board. As the environmental review progressed, it became increasingly apparent that the alternatives initially analyzed in the Draft Environment Impact Statement (DEIS), the Proposed Route, Alternative 1, Alternative 2, Alternative 3, and the No-Action Alternative, would have significant adverse effects to Quihi, an area of unusual historic importance to the state of Texas.

determined by SEA as National Register eligible. In response, SEA completed a study of the potential rural historic landscape (Rural Historic Landscape Study) (see Appendix F-2 of the SDEIS) that included an in-depth analysis of three additional rail line alternatives to the east (the Eastern Alternatives: the Eastern Bypass Route, the MCEAA Medina Dam Alternative, and SGR's Modified Medina Dam Route).⁵ SEA determined that these routes would largely avoid the Quihi area and would likely have fewer impacts to significant historic properties than the alternatives studied in the DEIS. (The results of the above analysis are set out in Chapter 5 of the SDEIS.)

The landscape study identified three rural historic landscapes,⁶ each determined by SEA as eligible for listing in the National Register,⁷ as historic districts:⁸ the Quihi Rural Historic District, the New Fountain Rural Historic District, and the Upper Quihi Rural Historic District (see Figures 2-7 and 2-8 in Chapter 2 of this FEIS). The landscape study indicated that, of the three, the Quihi Rural Historic District is the most significant landscape, eligible for listing in the National Register at the state level of significance (meaning that it is important to the overall history of Texas) due to its rare architectural setting within a relatively unaltered Texas pioneer landscape. The New Fountain Rural Historic District and Upper Quihi Rural Historic District were determined to be eligible for the National Register at the (lesser) local level of significance.

The landscape study showed that both the Quihi Rural Historic District and the Upper Quihi Rural Historic District are located within the APEs of the alternatives examined in the DEIS (the Proposed Route, Alternative 1, Alternative 2, Alternative 3, and the No-Action Alternative). The New Fountain Rural Historic District would not be directly impacted by any of the routing alternatives. Overall, impacts would be substantially greater for those alternatives that would impact both the Quihi Rural Historic District and the Upper Quihi Rural Historic District. The landscape study also showed that the Eastern Alternatives examined in the SDEIS would all impact the Upper Quihi Rural Historic District, but to a much lesser degree than the routes studied in the DEIS, and would not affect the Quihi Rural Historic District (see Figures 2-7 and 2-8 in Chapter 2 of this FEIS).⁹

⁵ A map of all of the alternatives that have been studied in this proceeding can be found at Figure ES-1 in the Executive Summary of this FEIS.

⁶ "A rural historic landscape is defined as a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention and that possesses a significant concentration, linkage, or continuity of areas or land use, vegetation, buildings, and structures, roads, and waterways, and natural features." *National Register Bulletin 30: Guidelines for Evaluating and Documenting Rural Historic Landscapes*, at 2. National Park Service, 1989 (Revised 1999) (*National Register Bulletin 30*).

⁷ The National Register was established under Section 101 of NHPA to serve as the Nation's formal list of significant cultural resources. Only properties listed in or eligible for listing in the National Register are given consideration under Section 106 of NHPA.

⁸ Rural historic landscapes are determined eligible for listing in the National Register as either sites or historic districts (*National Register Bulletin 30* at 3).

⁹ Section 5.1 of the SDEIS describes in more detail the landscape study that was conducted; Section 5.2 of the SDEIS presents the results of the reconnaissance survey for the Eastern Alternatives; and Section 5.3 of the SDEIS compares the overall cultural resources impacts of all of the routing alternatives studied for this proceeding.

Study 4: Technical Memorandum: Reconnaissance Survey of the Eastern Alternatives

To further compare the potential cultural resources impacts of the Eastern Alternatives to those of the alternatives studied in the DEIS, SEA conducted a reconnaissance survey of the Eastern Alternatives similar to those previously completed in Studies 1 and 2, described above. (Appendix F-1 of the SDEIS contains this study.) The reconnaissance survey indicated, that of the three Eastern Alternatives, the Eastern Bypass Route would have a slightly greater combined cultural resource impact within the project area than either the MCEAA Medina Dam Alternative or SGR's Modified Medina Dam Route. However, all of the Eastern Alternatives would have a significantly lesser cultural resource impact than the alternatives studied in the DEIS. Largely because of historic preservation, the SDEIS concluded that the Eastern Bypass Route or the MCEAA Medina Dam Alternative would be the environmentally preferable alternatives for this rail construction project. SGR's Modified Medina Dam Alternative was not found to be environmentally preferable because of potential environmental concerns not related to historic preservation.

As a result of comments received on the SDEIS, SEA decided to consider a Modified Eastern Bypass Route that would follow much of the same right-of-way as the Eastern Bypass Route, as proposed in the SDEIS, but would bypass properties owned by the Weiblen family as well as the Castroville West Subdivision (see Chapter 2 of this FEIS, Figures 2-7 and 2-8). As previously noted in Section 2.4.1.14 of this FEIS, the Modified Eastern Bypass Route would have slightly greater cultural resources impacts than the other three Eastern Alternatives, but those impacts would be significantly less than the original alternatives studied in the DEIS.¹⁰

4.3 Overall Cultural Resources Impacts

The overall cultural resource impacts for all the alternatives that have been studied are summarized in Table 4.3-1, below. As discussed in more detail in Chapter 5 of the SDEIS, Alternative 1 and the No-Action Alternative would have the most potential impacts on cultural resources. Alternative 1 would be located near more known and suspected historic structures (over twice as many as any other alternative); it would intersect the largest acreage within two historic districts (including the core of original Quihi); and would cross the most amount of terrain with a high potential for containing archeological resources. The No-Action Alternative likely would have fewer archaeological impacts (because it would involve less ground disturbance than the rail alternatives), but would have a greater impact on the historic districts due to necessary road improvements, visual impacts, and vibration (depending on the distance from the roadway to the historic structures), as well as the noise effects from high volumes of truck traffic. Alternative 2 has the next highest potential for cultural resources impacts. Although it ranks fourth in total historic district acreage impacted, it is second in the number of individual National Register-eligible resources within the APE and has higher potential to affect archaeological resources. The Proposed Route and Alternative 3 are next in potential impacts. Both would cross relatively large areas within two historic districts, but these alternatives would be situated further east from the core of the Quihi Rural Historic District than Alternative 1 and Alternative 2, and would encounter fewer individual National Register-eligible resources.

All of the Eastern Alternatives would have fewer cultural resources impacts than the original four rail routes studied. Of these alternatives, the Modified Eastern Bypass Route would have slightly more cultural resources impacts than any of the other Eastern Alternatives.

¹⁰ As discussed in more detail in Chapter 2 of this FEIS, this FEIS recommends that the following alternatives be authorized as environmentally preferable, should the Board decide to approve this project: the Eastern Bypass Route (including the Modified Eastern Bypass Route) and the MCEAA Medina Dam Alternative.

SGR's Modified Medina Dam Route would cover more acreage in the Upper Quihi Rural Historic District than the Modified Eastern Bypass Route; however, the Modified Eastern Bypass Route would likely have a greater impact because it would intersect with an older portion of the district in relatively close proximity to two German-Alsatian farms and an historic road remnant. It is also more likely to include prehistoric and historic archaeological sites.¹¹ The Eastern Bypass Route would rank next highest in likely cultural resource impacts.

Table 4.3-1 Summary of Cultural Resources Impacts

Routes	Rail Routes Studied in the DEIS				Rail Routes Studied in the SDEIS			FEIS	
	Proposed Route	Alternative 1	Alternative 2	Alternative 3	Eastern Bypass Route	MCEAA Medina Dam Alternative	SGR's Modified Medina Dam Route	Modified Eastern Bypass Route	No-Action Alternative
Length (miles)	7.5	9.0	7.0	7.5	9.2	9.9	10.9	9.1	---
Known Prehistoric Sites within about 1000 feet (National Register eligible)	None	None	None	41ME133 (100 ft east)	None	None	None	41ME132	---
Overall Ranking of Potential Archaeological Site Impacts (1=highest)	3	1	2	4	7	6	8	5	Possibly less impacts than rail alternatives
Known Historic Resources	7	22	10	8	7	5	8	9	---
National Register Listed Historic Resources	1	0	1	0	0	0	0	0	---
Total Acreage of Rural Historic District(s) Crossed	1169	1280	1161	1217	709	636	863	709	More impact on districts than rail alternatives
Overall Ranking of Cultural Resources Impacts	3	1	2	4	6	7	7	5	1

SGR's Modified Medina Dam Route and the MCEAA Medina Dam Alternative would be the least likely of all the alternatives to have potential cultural resource impacts. The SGR Modified Medina Dam Route would cross FM 2676 and Quihi Creek in an area containing more modern farms that are both larger in size and have fewer visual barriers. The MCEAA Medina Dam Alternative would cross more

¹¹ The APE of the Modified Eastern Bypass Route intersects previously recorded prehistoric archaeological site 41ME132, known as the Buddy Mangold Site, which has produced artifacts as much as 10,000 years old and may be eligible for the National Register.

archaeologically sensitive terrain than the SGR Modified Medina Dam Route, but would skirt the northern and eastern margins of the Upper Quihi Rural Historic District.

4.4 Section 106 Consultations Following Issuance of the SDEIS

SEA issued the SDEIS in December 2006, recommending the Eastern Bypass Route and the MCEAA Medina Dam Alternative as the two environmentally preferable alternatives. To select the preferred route(s), SEA considered first that all the Eastern Alternatives (including the Modified Eastern Bypass Route) would have the potential to cause fewer impacts to cultural resources and to the 100-year floodplain than any of the original alternatives. Furthermore, even though the Eastern Alternatives would be somewhat longer, SEA concluded that the increased impacts from the longer lengths of the Eastern Alternatives would not be significantly different in terms of cultural resource impacts than would be caused by the original alternatives studied in the DEIS. SEA next determined that SGR's Modified Medina Dam Route was not environmentally preferable because it would cause more impacts to transportation and traffic safety, would require more high order stream crossings, and was longer than either the Eastern Bypass Route, the Modified Eastern Bypass Route, and the MCEAA Medina Dam Route. Given that the distinctions between the Eastern Bypass Route and the MCEAA Medina Dam Route were not sufficient to designate one or the other as the environmentally preferable route, SEA designated the Eastern Bypass Route and the MCEAA Medina Dam Alternative as the Environmentally Preferable Alternatives.

In a letter dated January 29, 2007, SGR advised SEA (see #EI-2712 in Appendix C of this FEIS) that it did not take issue with SEA's conclusions about alternatives in the SDEIS and indicated that it continued to favor the Proposed Route. SGR also presented SEA with voluntary mitigation that it believed would make the Proposed Route an additional environmentally preferable option (see #EI-2658 in Appendix A-2 of this FEIS). On March 26, 2007, SEA held a meeting in San Antonio, Texas, hosted by ACHP to provide an opportunity for the project's "official" Section 106 consulting parties to comment on SGR's proposed voluntary mitigation (with SEA participating by phone)¹². During the meeting, a number of parties continued to raise historic preservation concerns about the Proposed Route.

In response, SGR submitted a revised voluntary mitigation proposal to SEA and the Section 106 consulting parties regarding the proposed route. On April 20, 2007, SEA held a follow-up conference call to discuss the revisions. During the conference call and in subsequent comment letters, a number of Section 106 consulting parties indicated that neither the original nor revised proposals presented by SGR for the Proposed Route would adequately mitigate the likely adverse effects to the Quihi area.

By letter dated April 27, 2007, the ACHP provided formal comments to SEA (#EI-2921), suggesting that SEA should undertake further analysis of historic properties in the project area to better guide the ongoing discussions regarding whether the Proposed Route could be considered one of the environmentally preferable alternatives. Specifically, the ACHP recommended that SEA request a formal determination of eligibility (DOE) from the Keeper of the National Register (Keeper) as to:

- Whether the Quihi and the Upper Quihi Rural Historic Districts are eligible for the National Register as separate districts or as a single district;
- The appropriate boundaries of any eligible district(s);
- A determination of the contributing and non-contributing elements of any eligible historic district(s), considering both significance and integrity, including any rural landscape

¹² The "official" signatory parties in this proceeding are SGR, THC, ACHP, and SHPO. See 36 CFR800.2(a).

elements (land uses and activities, patterns of spatial organization, circulation networks, boundary demarcations, etc.); and

- The significance of cenotés¹³ within any eligible historic district(s) and the basis of their importance to Indian Tribes.

SEA followed up on the ACHP's recommendations in a letter to the Keeper dated June 5, 2007 (see #EO-517 in Appendix A-2 of this FEIS). On July 24, 2007, the Keeper responded (see #EI-3030 in Appendix A-2 of this FEIS), requesting additional information.

On August 3, 2007, SGR submitted a letter to SEA (#EI-3040) stating that it now preferred the Eastern Bypass Route to the alternatives that would have the most impacts on both the Quihi and Upper Quihi Rural Historic Districts (Alternative 1, Alternative 2, Alternative 3, and the Proposed Route). Accordingly, SEA notified the Keeper that it no longer required a DOE related to the Proposed Route. This essentially eliminated the Proposed Route and all the other alternatives studied in the DEIS from further consideration in this environmental review. SGR has recently stated in writing (see #EI-2712 and #EI-3040 in Appendix A-2 of this FEIS) that it no longer seeks approval for the original preferred alignment (Proposed Route) through Quihi and does not oppose SEA's recommendation in the SDEIS to designate both the Eastern Bypass Route and the MCEAA Medina Dam Alternative as environmentally preferable routes. Of these two alternatives, SGR favors the Eastern Bypass Route. Subsequently, SGR has advised SEA that it does not oppose the Weiblen Modification to the Eastern Bypass Route (designated as the Modified Eastern Bypass Route in this FEIS), which SEA also recommends as environmentally preferable.

4.5 Programmatic Agreement (PA) Process

SEA subsequently developed a PA with SGR, the THC, and ACHP, pursuant to 36 CFR 800.14(b) (see Appendix A-3 of this FEIS). The PA initially included stipulations for the further identification, evaluation, and effect assessment of National Register eligible or listed historic properties within the APE(s) for any of the alternatives that might be authorized by the Board. The PA was circulated to all of the Section 106 consulting parties and made available for public notice and comment through the issuance of a notice in the *Federal Register* on October 18, 2007. A summary of the comments received in response to the notice is provided in Appendix A-4 of this FEIS.

Some of the comments raised concerns that, notwithstanding SGR's August 2007 letter indicating that it now favors the Eastern Bypass Route to its original preferred route, the Board could still authorize one or more of the routing alternatives that would intersect the Quihi Historic District. Both the THC and ACHP urged SEA to add language to the PA that would address this concern. Based on consultation with the consulting parties, SEA subsequently inserted a change to the Amendments and Noncompliance (Stipulation XI) clause of the PA that specifically states that: "the Section 106 process will be reinitiated in the event the Board approves an alignment other than the Eastern Bypass Route and/or MCEAA Medina Dam Alternative and/or a modification of one of these two routes. Once resumed, the Section 106 process will be concluded within a three month time period unless agreed to otherwise by the signatories." All of the official consulting parties indicated that they were satisfied with these terms.

The PA has measures for the resolution of adverse effects, the treatment of human remains, curation of artifacts and records, and monitoring and reporting. The PA includes provisions to allow minor route adjustments when needed to avoid and protect significant resources (including archaeological sites such as 41ME132, and historic sites and structures), as well as provisions to ensure implementation

¹³ A cenoté is a type of sinkhole containing groundwater. The term is derived from a word used by the low-land Maya to refer to locations where groundwater is accessible.

of appropriate alternative mitigation measures. The PA also includes a dispute resolution clause and measures for amendment, noncompliance, and termination. The term of the PA is five years from the date of its execution by the ACHP.

The PA has been signed by all the necessary parties and adequately resolves all of the concerns involving historic preservation that have been raised by the parties in this case (a copy of the Executed PA appears at Appendix A-3 of this FEIS). SGR is obligated to comply with the PA pursuant to SEA's recommended Mitigation Measure #F-77.

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November 4, 2015

Via E-Mail

Ms. Diana Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW, Room 1110
Washington, DC 20423-0001

Re: STB Docket No. FD 34284, Southwest Gulf Railroad Company; Development of a New Programmatic Agreement

Dear Ms. Wood:

I am writing on behalf of Southwest Gulf Railroad (SGR) in response to Cultural Heritage Partners' October 22, 2015 letter on behalf of the Medina County Environmental Action Assn. and Mr. Jerry Johnston ("MCEAA letter").

While purporting to be a response to the STB's invitation for comments on the draft amended programmatic agreement (PA) for SGR's rail project, in fact the letter amounts to a challenge to the STB's December 18, 2008 decision in this proceeding authorizing construction by SGR of its line along the Modified Eastern Bypass Route, one of three alternative alignments authorized for construction by the STB. That decision followed extensive environmental and cultural resources analysis of each alternative alignment that were prepared in this proceeding consistent with National Environmental Policy Act and the National Historic Preservation Act. Indeed, the STB's environmental reviews and Section 106 processes relative to the choice of routings for the SGR line were extensive, and included preparation of a Supplemental EIS to assess impacts to a cultural landscape that the SGR line will in fact avoid.¹ It also merits note

¹ The STB's then-called Section of Environmental Analysis issued a Draft Environmental Impact Statement (DEIS) in 2004 that contained an in-depth study of four possible rail alignments. In response to the DEIS, SEA received approximately 120 written comment letters, as well as comments at two public meetings. After careful review of all comments, as well as additional information submitted by SGR, SEA decided to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) in 2006. The SDEIS focused on evaluation of three new eastern alternative rail routes that would avoid potential

that the STB's decision, which was challenged by MCEAA in 2009, was affirmed over that entity's objections by the U.S. Court of Appeals for the Fifth Circuit. *Medina County Environmental Action Ass. v. STB*, 602 F.3d 687 (5th Cir. 2010).

The time for questioning the STB's decision to allow construction along one corridor versus another is thus long passed. Yet the MCEAA letter does just that – it seeks no specific changes to the PA but raises broad and false allegations designed to impugn the integrity of the NEPA and Section 106 processes followed by the STB in this proceeding and asks that SGR be required to construct its line along a different alternative, the so-called Medina Dam Alternative. The letter amounts to an abuse of the process that the STB's Office of Environmental Analysis appropriately established for seeking comments on the amended PA given the expiration of the prior PA.

The STB and the other signatory parties should now proceed to finalize that amended PA, which was carefully crafted to protect any cultural resources that might be impacted by the SGR line. This will allow a project long ago authorized by the STB to move forward, subject to all of the protections afforded to cultural resources by the well-crafted amended PA. Below, we will address some of the specific points raised by MCEAA so that these can be put to rest.

As noted, several of the issues raised in the MCEAA letter in fact relate to the NEPA process that was undertaken for the project, including the consideration of alternatives. For example, MCEAA asserts the Modified Eastern Bypass Route was not properly studied in the Final EIS. MCEAA Letter at 5. As the STB made clear in its public notice regarding the amended PA, however, the NEPA process for this project is closed. The STB completed the NEPA process in May 2008 and, as noted, issued a final decision approving the proposed rail line for construction on any one of three alternative alignments (including the Modified Eastern

impacts to the historically sensitive Quihi area; discussion of extensive additional historic property identification efforts following issuance of the DEIS; and additional noise analysis. A more detailed study of three rural historic landscape districts in the area (the Quihi Rural Historic District, the New Fountain Rural Historic District, and the Upper Quihi Rural Historic District) was also included in the SDEIS. After extensive consultation with agencies, tribes, and members of the public, as well as consideration of comments received on the DEIS and SDEIS, SEA issued a FEIS in 2008. In response to concerns raised during the SDEIS process, the FEIS assesses the Modified Eastern Bypass Route, a modification to the Eastern Bypass Route that circumvents the Weiblen property and Castroville West Subdivision. SEA concluded that the Eastern Bypass Route (including the Modified Eastern Bypass Route) and the MCEAA Medina Dam Alternative are the environmentally preferred alignments. The FEIS includes over ninety mitigation measures to minimize the potential effects of construction and operation of the project, including requiring a PA for addressing potential impacts to historic and cultural sites. Further, ACHP was actively engaged in the Section 106 process undertaken by SEA.

Bypass Route) on December 18, 2008. Therefore MCEAA's "comments" related to project routing and the environmental review process are not germane to the sole issue currently before the Board, the amendment of the PA.²

MCEAA claims that the STB has regulatory obligations to "reassess" the potential impacts of the rail line because the NEPA process was concluded in 2008. MCEAA Letter at 3. However, time alone does not invalidate an EIS. *Coker v. Skidmore*, 941 F.2d 1306, 1310 (5th Cir. 1991) (15 year old EIS upheld); *Becker v. Federal Railroad Admin.*, 999 F. Supp. 2d 240, 249 (D. Conn. 1996) ("[EIS] done eighteen years ago does not necessarily make it either stale or no longer useful."). Rather the question is whether the original proposed action has substantially changed or there are significant new circumstances or information relevant to the project and its environmental impact. 40 C.F.R. § 1502.9; 49 C.F.R. § 1105.10(a)(5). Thus, the passage of time is not determinative as to the continued validity of an EIS – the need to supplement arises only with a significant change in circumstances or new information. Tellingly, MCEAA points to *no* new circumstances or information that would trigger the need for a supplement in this case. In fact, circumstances have not materially changed – no significant new information regarding the project or the surrounding environment has arisen. As MCEAA itself notes, the preferred route being pursued by SGR is one of the preferred alternatives discussed in the Final EIS. There is no basis for the Board to undertake any further analysis under NEPA.

With regard to the Section 106 issues raised in MCEAA's letter, we believe their concerns are already covered by the amended PA for the project. For example, MCEAA states that there has never been a comprehensive study of the Johnston property and that there is a high likelihood of finding additional sites there and elsewhere. MCEAA Letter at 4. The FEIS specifically acknowledged that there may be additional unidentified sites along the route. *See* FEIS at 2-31 ("Even though only one documented prehistoric site has been recorded in the Modified Eastern Bypass, it is probable that other sites exist."). Indeed, the original PA and amended PA were specifically developed to address the possibility of further discoveries, and further surveys and consultations are part of the process outlined in the amended PA. Thus, the execution of the PA is not the end of the cultural resources review process, and the amended PA provides precisely for the very on-going, consultative process that MCEAA professes to want.

² MCEAA quotes from a September 5, 2007 letter of SGR counsel to suggest the EIS analysis of the Modified Eastern Bypass Route was inadequate. MCEAA Letter at 5. However, the quote is taken out of context. The statement that "an intensive analysis" of the alternative was not undertaken in the DEIS was in reference to the fact that the alternative was a minor modification of the Eastern Bypass Route, which had been extensively studied in the DEIS. Moreover, the letter was referring to the Draft EIS, not the final, and the Final EIS set forth further analysis of the Modified Eastern Bypass Route. *See* FEIS Section 2.5. Indeed, as noted, the Modified Eastern Bypass Route was determined to be one of preferred alternatives.

MCEAA also expresses concern that the Modified Eastern Bypass Route would “severely and irreparably impact archaeological resources of potential national and state significance located on the Johnston property and elsewhere in the Area of Potential Effect (APE).” MCEAA Letter at 4. The Modified Eastern Bypass Route was specifically developed in response to comments to avoid impacts to the Weiblen farm and the Castroville West Subdivision. See FEIS Section 2.5. While SGR has made every effort to limit impacts to Mr. Johnston’s property, SGR cannot fully avoid that property while staying within the approved route. That is not a new fact; it has been known for years and was considered during the EIS and Section 106 processes and in the STB’s final decision.

MCEAA nonetheless expresses concern that the route will impact the so-called Buddy Mangold site (41ME133), as well as an American Indian campsite, neither of which is located within the direct APE for the line.³ However, SGR has always planned to avoid these sites and is in fact with HDR’s assistance is currently delineating a preferred ROW within the Modified Eastern Bypass corridor that will move the line even further away from both these sites, as well as from the springs on the Johnston property.

MCEAA asserts that the STB has undermined the Section 106 process by engaging HDR to conduct archaeological and historic assessments along the route prior to approval of the Draft PA. As you know, HDR has not been engaged by the Board, but instead by SGR. HDR was contracted by SGR to assist with delineation of a final route within the approved Modified Eastern Bypass corridor, as well as to conduct initial studies to determine the appropriate inventory and evaluation strategies that would allow the proper assessment of potential impacts of the project. However, all Section 106 survey work is currently on hold until the amended PA is executed. Only after the amended PA is executed, will HDR initiate survey work pursuant to the terms of that PA.

MCEAA also questions the APE and whether it has been properly adjusted based on preliminary design/engineering. MCEAA Letter at 7. SGR has completed preliminary design/engineering and has consulted with the STB and SHPO regarding the appropriate APE. The SHPO and the Board have agreed that an APE of 300 feet on either side of the ROW for direct impacts, and 1,000 feet for indirect effects, is appropriate for this project. In response to

³ The previously recorded site, 41ME132, is located approximately 600 ft. north of the proposed APE on the Johnston property. There was no evidence of this site near or within the proposed APE on the Johnston property. The Texas Archeological Society chose site 41ME132 as the location of its 2004 volunteer field school. After excavating 6, 2 x 2 meter units throughout the site, the group did not recover any diagnostic artifacts or features (TAS Bulletin 2004). To date, there has been no professional study of site 41ME132 to evaluate its age and or integrity.

MCEAA's request, SGR confirms that the construction footprint will not exceed the width of the 600 foot direct effects APE, including staging and temporary construction areas. We also note that the amended PA allows for APE adjustments based on future design changes, if necessary. PA at § IB.

MCEAA raises several questions about HDR's draft scope of work (SOW), which we are happy to answer:

- Regarding traditional cultural properties (TCPs) and cultural/historic landscapes, the STB sent a letter in August 2015 inviting local historical groups and 20 separate Native American Tribes to comment on the PA, and pursuant to the PA, will continue to consult regarding the SOW and TCPs and other resources within the APE. This outreach to Native American tribes is only the latest in the STB's extensive efforts throughout the course of this proceeding.⁴
- As required by the amended PA, Texas state laws, standards and guidelines will be considered in any survey and identification work that is undertaken once the PA is in effect. PA § II(A)(2). At this time, the APE does not include state-owned property or involve sub-entities of the State of Texas, and as such, a Texas Antiquities Permit is not required.
- HDR's archaeological survey model does not exclude any areas within the APE from survey. All areas are covered via pedestrian surface survey methods. Where appropriate, shovel testing will be carried out.
- The GIS model and overall methodology for the SOW were designed specifically for this project based on over 20 years of Texas archaeological experience. The GIS model proposed utilizes topography/ground cover, distance to water, and soils data to help inform where shovel testing might be required. Due to the lack of large-scale survey data (i.e., site locations) in the immediate area, reliance on a refining model would have potentially provided distorted information. If conditions in the field differ from the GIS-

⁴ The following Native American Tribes were contacted: Alabama-Coushatta Tribe of Texas, Alabama-Quassarte Tribal Town, Apache Tribe of Oklahoma, Caddo Nation, Cherokee Nation of Oklahoma, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana Lovelin Poncho, The Delaware Nation, Kialegee Tribal Town, Kickapoo Traditional Tribe of Texas, Kiowa Tribe of Oklahoma, Mescalero Apache Tribe, Poach Band of Creek Indians, Quapaw Tribe of Oklahoma, Seminole Nation of Oklahoma, Thlopthlocco Tribal Town, Tonkawa Tribe of Oklahoma, Tunica-Biloxi Tribe of Louisiana, United Keetoowah Band of Cherokee Indians, and the Wichita and Affiliated Tribes.

informed model, methods will be modified in such a way as to maximize artifact identification and recovery.

MCEAA claims that the PA's provision regarding the resolution of public objections is inadequate, but provides no specific suggestions as to how the provision could be improved. MCEAA Letter at 9. Section XI of the amended PA in fact provides an open and fair dispute resolution process, allowing any person to raise objections and to have those objections considered in a timely manner by the STB, SHPO and Council. These provisions are not unlike any number of other PA's entered by the STB and other federal agencies.

MCEAA asserts that the mitigation contemplated in the amended PA is inadequate, but again provides no specific suggestions as to how the PA could be improved. MCEAA states that while the PA refers to avoidance, the focus of the Resolution Plan is data recovery. MCEAA Letter at 10. However, the PA is clear that the resolution plan is to include "an emphasis on avoiding, where possible". PA at IV(A)(1). Data recovery only comes into play where avoidance is infeasible. *Id.* at IV(D).

As noted above, SGR is working with local landowners to devise a final routing within the approved Modified Eastern Bypass Route corridor that minimizes impacts to known cultural, historic and environmental resources. MCEAA notes that "in-depth consultation" will be required on mitigation. The amended PA appropriately provides for such consultation throughout the Agreement's implementation.

Finally, it bears note that MCEAA has been raising unsubstantiated objections to the construction of the SGR rail line ever since it was proposed over a decade ago. Its latest letter is more of the same. There is nothing in its letter that merits any further changes to the amended PA, or any other action by OEA or the other signatories to the amended PA. We therefore respectfully request that the amended PA be finalized and executed.

Sincerely,



David H. Coburn
Cynthia Taub

cc: Victoria Rutson, Office of Environmental Analysis
Cathy Nadals, Office of Environmental Analysis
Bill Martin, Texas State Historic Preservation Officer
Charlene Dwin Vaughn, Advisory Council on Historic Preservation

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November 20, 2015

Via E-Mail

Ms. Diana Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW, Room 1110
Washington, DC 20423-0001

**Re: STB Docket No. FD 34284, Southwest Gulf Railroad Company; Development of a
New Programmatic Agreement**

Dear Ms. Wood:

Further to my November 4, 2015 letter responding to the letter from counsel for the Medina County Environmental Action Association ("MCEAA"), please find the attached map depicting the currently planned, "revised" alignment (shown in blue) of the Southwest Gulf Railroad line in the area close to the Mangold site (41ME133) and certain springs on the Johnston property.

As you will see, that revised alignment remains within the Modified Eastern Bypass Corridor studied during the NEPA and Section 106 review processes at the STB, but reflects a modest change to the location of the line relative to the original conception of how the line would traverse the area, which is shown in green. The revision adjusts the line even further away (to the east) from the Mangold site and other features than had initially had been the case. The revised line also completely avoids an irrigated area as the map indicates. Please note that the line cannot be moved any further east (i.e., closer to the eastern boundary of the studied Corridor) due to curve-related engineering parameters relative to rail operations.

Ms. Diana Wood
November 20, 2015
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STEPTOE & JOHNSON LLP

Please let me know if you have any questions.

Sincerely,



David H. Coburn
Cynthia Taub
Attorneys for Southwest Gulf Railroad
Company

cc: Victoria Rutson, Office of Environmental Analysis
Cathy Nadals, Office of Environmental Analysis
Bill Martin, Texas State Historic Preservation Officer
Charlene Dwin Vaughn, Advisory Council on Historic Preservation



PRELIMINARY
 NOT FOR CONSTRUCTION DATE: 11/02/2015

H2R	
DATE: 11/02/2015	BY: [Signature]
SOUTHWEST GULF RAILROAD COMPANY	
MEDINA, ILL.	
JOHNSTON PROPERTY	

