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**Section 106 Consulting Party Meeting on
Proposed Voluntary Mitigation
Surface Transportation Board FD 34284
Southwest Gulf Railroad Company
March 26, 2007
San Antonio, Texas**

Chair Persons: Victoria Rutson, Chief, Section Environmental Analysis, STB
Charlene Dwin Vaughn, Assistant Director, Federal Permitting, Licensing
and Assistance Section, Advisory Council on Historic Preservation

Attendees: Charlene Dwin Vaughn (Advisory Council on Historic Preservation)
Katy Harris (Advisory Council on Historic Preservation)

Jaya Zyman-Ponebshek (URS Corporation - third party consultant to Surface
Transportation Board's Section of Environmental Analysis or "STB/SEA")

Tom Ransdell (Southwest Gulf Railroad or "SGR")
Clay Upchurch (Vulcan Construction Materials, LP)
David Coburn (Steptoe & Johnson, LLP representing SGR)
Sergio A. Iruegas, R.P.A. (GTI Environmental, Inc.)

Lawrence (Larry) Oaks (Texas Historical Commission)

Robert N. Hancock (Chairman of the Medina County Historical Commission)
Joyce M. Landrum (Quihi/New Fountain Historical Society, Vice President)
Joe Manak (Quihi Landowner, Director, Quihi/New Fountain Historical Society;
Member, MCEAA; Member, Verdona Historical Society.

Jesus J. Reyes (Tap Pilam Coahuiltecan Nation Member)
Raymond Hernandez (Tap Pilam Coahuiltecan Nation (Member)
Bruce DeLa Cruz (Tap Pilam Coahuiltecan Nation (Member)
John Boyd (Tap Pilam Coahuiltecan Nation (Member)

Bob Fitzgerald, MD (Medina County Environmental Action Association or
"MCEAA")
Alyne Fitzgerald (Quihi and New Fountain Historical Society)
Mary Walpole (MCEAA Treasurer)
Archie Gerdes (MCEAA)
Lester R. Landrum (MCEAA)
Tom Walpole (MCEAA)
David Barton (The Gardner Law Firm)
Brian Pietruszowski (The Gardner Law Firm)

Harold Weiblen (Weiblen Brothers Farm)
Fred Weiblen (Weiblen Bros. Farms)
Glenn Weiblen (Weiblen Bros. Farms)
Jordan Tannenbaum, Esq. (Landowner)
Tomas Larralde (Landowner)

Joined via phone

Victoria Rutson – STB/SEA
Diana Wood – STB/SEA
Cathy Glidden – STB/SEA
Evelyn Kitay – STB Office of General Counsel
Danielle Gosselin – STB/SEA
Julianne Fletcher – Preservation Texas

Introduction

The meeting convened at 1:30 CT and 2:30 EST. Following a brief welcome and introductions, Victoria Rutson provided an overview of the agenda which included:

Purpose of Meeting and Ground Rules

Synopsis of Proposed Voluntary Historic Resources Mitigation

Discussion of Proposed Historic Resources Mitigation - Section 106 Consulting Parties

Summary of Discussions

Next Steps

Purpose of Meeting and Historical Project Overview by Victoria Rutson and Katry Harris

Victoria Rutson provided background information on the proposed railroad construction and operation proceeding. She noted the purpose of the meeting was to give the Section 106 consulting parties an opportunity to provide comments on SGR's voluntary mitigation plan for the Proposed Route. Ms. Rutson detailed the past events of the project, from SGR's initial 2003 filing for construction authority before the Surface Transportation Board (STB) to the issuance of the Supplemental Draft Environmental Impact Statement (SDEIS) in December 2006. In the SDEIS, she explained, the STB's Section of Environmental Analysis (SEA) had identified both the MCEAA and Eastern Bypass Routes as the environmentally preferred routes. Ms. Rutson also provided background information on the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) and asked that comments stay focused on NHPA issues.

Ms. Rutson summarized the Section 106 process of the NHPA, noting that it is completed in three steps involving the identification of resources, determination of adverse effects, and resolution of adverse effects. She stated that the STB/SEA has completed the first two steps of the process and that the next step would entail resolving adverse effects by first avoiding, then minimizing and finally mitigating impacts, where feasible. Ms. Rutson noted that SGR believes that its mitigation plan would adequately minimize adverse impacts to the Quihi Rural Historic Landscape, thus allowing SEA to find that the Proposed Route is also environmentally preferable. She also noted that Lawrence Oaks, Director of the Texas Historical Commission, had sent a letter to SEA stating that the two eastern routes identified by SEA as environmentally preferable would minimize impacts on the historic sites to a greater extent than the Proposed Route as mitigated under SGR's proposed plan.

Katry Harris provided an overview of the Advisory Council on Historic Preservation's role in the NHPA process. She stated that the purpose of the agency is to seek to accommodate historic preservation concerns with other Federal actions through consultation, to seek views of other participants, and, if feasible, to reach an agreement. She explained that the Section 106 process is not well suited for the selection of alternatives, but rather provides the tools to identify the impacts. The main goal is to consider options that first avoid, then minimize, and finally, mitigate adverse effects. The Federal agency charged with approving the undertaking is the final decision-maker. In this case, the STB must consider balancing the project's needs with preservation: ACHP does not preordain an outcome, but rather ensures that Federal agencies integrate preservation and project needs into the process. The State Historic Preservation Office (SHPO) serves as the official preservation advocate for the state in question.

Ground Rules by Ms. Katry Harris (ACHP)

Katry Harris provided an overview of the ground rules, stating that meeting participants should limit comments to SGR's proposed mitigation measures and whether they thought the measures would resolve adverse impacts to cultural resources. She stated that environmental issues, such as groundwater and air quality were not the focus of today's discussion, and noted that there would be no time limit for speakers.

Synopsis of Southwest Gulf Railroad's Proposed Voluntary Historic Resources Mitigation – presented by Clay Upchurch, Vulcan Construction Materials, LP (VCM)

Clay Upchurch presented two maps of the routes and provided an overview of the following key points of SGR's proposed mitigation measures to avoid adverse effects along the Proposed Route:

1. SGR shall establish a Conservation Easement along the area that crosses the Quihi Rural Historic Landscape within the property that Vulcan owns.
2. SGR shall adjust the Route to avoid direct impacts to cultural resources (such as the historic wall) by moving the line to the east paralleling an existing pipeline easement and also paralleling it a bit more with CR 353 to run along property

boundaries. These realignments have not been discussed with property owners yet.

3. SGR shall donate \$500,000 to the Texas Historical Commission (THC).
4. SGR shall support THC and Medina County in National Register of Historic Places (NRHP) listings and overall preservation of the rural and historic character of the area.

Mr. Upchurch emphasized that these voluntary mitigation measures do not replace any of the mitigation measures that the Board might impose and/or any other voluntary mitigation measures that SGR has offered or that might be included in any Section 106 agreement document that may be negotiated.

Mr. Upchurch also said that the eastern routes cannot be modified to parallel property lines and that SGR and VCM would need to expend an additional 3 million dollars to build any of the eastern routes, versus constructing SGR's Proposed Route.

Discussion of Proposed Historic Resources Mitigation - Section 106 Consulting Parties by Meeting Participants

Katry Harris stated that AHCP, STB, and THC would sign either a Memorandum of Agreement or a Programmatic Agreement. Most likely SGR will also sign it and other 106 parties may sign it if in agreement. She said that in almost all cases, an agreement is signed, but even for those few that do not end in an agreement; this can't prevent STB from issuing a final decision on the case.

Ms. Rutson stated that SEA would make final recommendations to the Board through the issuance of a FEIS. Normally the applicant offers mitigation on the most environmentally preferable route, but in this case, SGR offered mitigation on the Proposed Route.

Mr. Oaks said that it is important to listen to cultural and agricultural resources comments before issuing a decision. The selected alternative should also have the least adverse impacts to agricultural communities.

Dr. Fitzgerald highlighted the importance of the Quihi cultural landscape and raised concerns over silica dust, flooding, and aesthetic impacts on the rural historic landscape. He stated that he favors the MCEAA Medina Dam Alternative over the Proposed Route because it avoids most of the Quihi Rural Historic Landscape. He stated that the proposed mitigation does not address the aesthetic, air, and noise impacts to the rural historic district, because the very presence of the rail line causes these impacts.

Mr. David Coburn stated that no final designs on the bridges have been developed yet but that SGR believes they will be concrete structures. He clarified, per an earlier comment, that no transmission lines would be built as part of the proposed action.

Ms. Katry Harris stated that it is normal practice to base NEPA environmental reviews on preliminary engineering and that subsequent meetings to discuss these impacts when the design reaches 60-90% can also be done at a later time. Once there is a finding of an adverse effect, the

next step is to reach an agreement. A design review provision could be added to discuss the bridges design at that time.

Mr. Oaks stated that it would be helpful to have a sketch of the design of the bridge crossing Quihi Creek, or an elevation profile for greater insight. He also said that archeological models could be used to predict site locations within the proposed Route, where there is greater chance of uncovering archeological resources.

Ms. Rutson stated that the visual impacts of the rail line were discussed in the DEIS and the SDEIS.

Mr. Raymond Hernandez raised issues pertaining to environmental protection in Texas. He discussed the potential for sinkholes and their cultural significance, and requested that cultural sites be identified, recorded, and preserved. He also raised concerns related to the investigation efforts from the Texas Archeological Society. He believes that the construction and operation of this rail line may affect their investigations. He also stated that SGR should avoid the need to relocate burial sites at all cost, so avoidance is critical.

Ms. Katry Harris said that STB is required to consider traditional cultural properties (TCPs), sites of religious significance, and archeological resources. Ms. Glidden noted that Federally recognized Tribes, as well as the Tap Pilam Coahuiltecan Nation had been consulted and had expressed concerns regarding burials but had not identified TCPs in the project area. She mentioned that the Native American Graves Protection and Repatriation Act (NAGPRA) is not applicable to this case (no Federal land or Federal funding involved). Ms. Glidden stated that though there is no Federal land within the project area, the STB could still follow NAGPRA protocols, if the Tribes agree. She also said that the final agreement would include identification of these sites, performing detailed archeological surveys, and methodology to handle these sites if found during construction. It was agreed that the area of the Proposed Route has a higher potential for finding archeological resources than either of the two environmentally preferred eastern routes.

Mr. Harold Weiblen stated that the Weiblen family prefers the Proposed Route over any of the eastern routes. However, if one of the eastern routes is chosen, he requested that the "Weiblen Modification" be considered to minimize impact to their irrigation system. He met with the THC on March 14, 2007 to explain the impact of the eastern routes on his property.

Ms. Charlene Dwin Vaughn pointed out that even if the Eastern Bypass was chosen, it would also require mitigation to avoid impacts to the Weiblen ranch.

Mr. Coburn stated that there is already a mitigation measure that requires SGR to negotiate with landowners in locations where the proposed rail line would impact agricultural land, and adjust where feasible.

Mr. Tom Walpole is concerned about the very fragile historic resources and does not endorse any of the rail line alternatives. He questioned why the proposed route was being discussed when better routes exist.

Ms. Cathy Glidden stated that SEA would involve the tribes in the mitigation process and in the archeological survey. She also said that SEA welcomes the participation of aboriginal Texas Indians even if they may not be officially recognized.

Mr. Oaks stated that most rehabilitation would need to be funded from a combination of sources, mostly private, to complement SGR's monetary offer. However, there is concern that donors will be less likely to invest in rehabilitation of cultural structures if a rail line is built due to the possibility of depreciation of land.

Ms. Rutson stated that if the STB were to approve SGR's petition to construct and operate the rail line, the railroad will then have common carrier status and must offer rail service at a reasonable rate to any potential shippers who wants to locate along the rail line. Therefore, a conservation easement along both sides of the entire right-of-way would likely not be possible because it could conflict with the common carrier status.

Brian Pietruszowski expressed concern about not having more detailed information on bridge design. He believes that the lack of detail makes it difficult for the public to determine an appropriate route. He also said that economic feasibility should not be part of the evaluation/selection.

Ms. Dwin Vaughn said that the discussion has indicated that concerns exist about the height and profile of the bridge. The Proposed Route would likely create visual impacts to the Quihi Rural Historic Landscape.

Mr. Coburn stated that SGR will not prepare final design documents until a final route is selected. Final engineering is cost prohibitive on multiple rail routing alternatives.

Mr. Oaks indicated that SGR could possibly prepare sketches and profiles of the Quihi bridge.

Ms. Rutson said that we need an agreement document as soon as possible with reasonable consensus. We have three possible routes: the MCEAA Medina Dam Alternative, The Eastern Bypass Route, and the Proposed Route with additional mitigation.

Mr. Oaks stated that THC favors avoidance rather than mitigation. Therefore, THC favors the eastern routes with the Weiblen farm modification. He noted that most people appeared to favor the eastern routes over SGR's proposed mitigation for the Proposed Route. Mr. Oaks made it clear that THC will not take the position of preventing this project from moving forward, but would like impacts to be avoided or minimized to the greatest extent possible.

Ms. Dwin Vaughn agreed with Mr. Oakes, citing that it's not the ACHP's intent to stop the project.

Summary of Discussions - Charlene Dwin Vaughn and Victoria Rutson

SGR will modify its proposal to address the issues raised brought forth and submit a revised proposal to STB within 10 days. STB would then send the revision to all Section 106

consulting parties for review. A subsequent consultation conference call will be scheduled to allow for consultation on the revised proposal.

SGR will do the following: modify its mitigation proposal and integrate some of the issues raised during today's consultation into the mitigation proposal. SGR will then submit the modified proposal to SEA, who will distribute it to the meeting attendees and official Section 106 consulting parties. SEA will set up a day and time for a conference call for the consulting parties to discuss SGR's modified proposed mitigation plan.