

#E7-26177

Wood, Diana

From: Coburn, David <DCoburn@steptoe.com>
Sent: Friday, August 18, 2017 1:35 PM
To: Wood, Diana
Cc: Sara Luduena; sstokely@achp.gov; Rutson, Vicki; Charlene Dwin-Vaughn (cvaughn@achp.gov); Taub, Cynthia
Subject: RE: MCEAA Questions
Attachments: Sturm Property.pdf

Diana – See below the answers of SGR to two of the questions that you asked us to respond to from the August 11, 2017 letter from Dr. Fitzgerald of MCEAA. We will respond to question 10 separately.

Answer to Question 1: The now-demolished "structures" about which Dr. Fitzgerald is complaining are the remains of a residence and surrounding structures. These structures were on property acquired by SGR. SGR cleared the structures in connection with its efforts to clear areas for construction of the track, scheduled to take place in the near future. The demolition took place within the last two weeks. As you know, subject to its obligations under the Programmatic Agreement (which as discussed below were respected here) SGR holds all of the permits it needs from the STB and other federal and state agencies to proceed with construction of its rail line.

In the Cultural Resources Report prepared by HDR for the SGR Project and submitted to the STB as per the PA in March 2017, the structures that have now been demolished were designated HDR-AR-01 and described as an 11-building farmstead located at 1180 CR 353. These structures were documented and evaluated in the report for eligibility for NRHP listing. See Cultural Resources Report at pages 148-159. The structures were recommended not eligible for individual listing and, because they were located outside the boundary of the Upper Quihi Rural Historic District, they were also recommended not eligible as contributing resources to the District. In the letter from THC dated March 21, 2017, Historian Justin Kockritz concurred that HDR-AR-01 was not eligible for NRHP listing, either individually or as a contributing resource to the UQRHD. As such, HDR-AR-01 was not subject to any mitigation measures under the PA or otherwise. Accordingly, the demolition of these structures is not a violation of the PA or any other obligation undertaken by SGR.

As for the archaeological site 41ME261, it is considered possibly eligible and is addressed in the Final Resolution Plan now pending approval. Phase II testing is scheduled as part of that Plan to determine its NRHP eligibility. Although this site is slated for NRHP testing, no excavation or other testing work was planned for the area that contained the demolished structures described above. That area is located approximately 600 feet from any of the proposed testing areas of the archeological site 41ME261. The demolition of the HDR-AR-01 structures therefore will not have any impact on the integrity of the archaeological site. Further, the demolition did not have any subsurface impact, as shown in the attached pictures of the site of the demolished structures.

Finally, SGR and its contractors are well aware of SGR's obligation under the PA not to construct in any area where such work would cause an adverse impact on eligible properties. Contrary to Dr. Fitzgerald's suggestion, there has been no violation by SGR of its obligations under the PA.

Answer to Question 6: The Corps of Engineers relied on the STB with respect to fulfilment of Section 106 obligations. Accordingly, there was no Section 404 permit condition that relates to cultural resources. Further, SGR was under no obligation to any Tribes to provide notification of the pre-construction activities undertaken as described in SGR's answer to question 1, assuming that that is the pre-construction activity to which Dr. Fitzgerald is referring in his August 11 letter.

Regards. David Coburn/Attorney for Southwest Gulf Railroad































