

EI-20922



Fw: MOA
Vicki Rutson to: David Navecky

01/29/2015 02:43 PM

Victoria Rutson
Director, Office of Environmental Analysis
Surface Transportation Board
(202) 245-0295 (phone)
(202) 245-0454 (fax)
----- Forwarded by Vicki Rutson/STB on 01/29/2015 02:42 PM -----

From: "Louis E. Gitomer" <Lou@lgraillaw.com>
To: "'Vicki.Rutson@stb.dot.gov'" <Vicki.Rutson@stb.dot.gov>
Date: 01/29/2015 02:39 PM
Subject: FW: MOA

Vicki – Attached is a copy of the MOA with LIRC's signature. Do you need anything else?
Thanks for all of your help. Lou

Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

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From: Mark Sidman [mailto:msidman@anacostia.com]
Sent: Thursday, January 29, 2015 2:24 PM
To: Louis E. Gitomer
Subject: FW: MOA

See attached.

From: John Goldman
Sent: Thursday, January 29, 2015 2:11 PM
To: Mark Sidman
Subject: MOA





Indiana Department of Natural Resources

Michael R. Pence, Governor
Cameron F. Clark, Director

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



January 27, 2015

Dave Navecky
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Federal Agency: Surface Transportation Board

Re: Signature request for the Memorandum of Agreement concerning CSX Transportation and the Louisville & Indiana Railroad Company to jointly operate over L&I's 106.5 mile rail line between Indianapolis and Louisville (Docket No. FD 35523; DHPA #11979)

Dear Mr. Navecky:

Enclosed please find the memorandum of agreement ("MOA") for the above indicated project, which includes the replacement of the Flatrock River Bridge at MP 40.19, near Columbus, Indiana. As you know, the review of this project is being conducted pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and implementing regulations found at 36 C.F.R. Part 800. Deputy State Historic Preservation Officer ("Indiana SHPO") Mitchell K. Zoll, on behalf of Cameron F. Clark, has signed the enclosed MOA, indicating his approval of the agreement.

We are returning the MOA to you, so that it may be transmitted with the accompanying documentation specified in 36 C.F.R. § 800.11(f) to the Advisory Council on Historic Preservation (36 C.F.R. § 800.6[b][iv]). The MOA may be transmitted to:

Reid J. Nelson, Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
Pension Building
401 F Street NW, Suite 308
Washington DC 20001-2637

If you have questions about our comments, please contact Chad Slider at (317) 234-5366 or cslider@dnr.IN.gov. In all future correspondence regarding the above indicated project, please refer to DHPA #11979.

Very truly yours,

Mitchell K. Zoll
Deputy State Historic Preservation Officer

MKZ:CWS:cws

Enclosures (1)

emc: David C. Navecky, Environmental Protection Specialist, Surface Transportation Board
Melanie Yasbin, Law Offices of Louis E. Gitomer, LLC
Lou Gitomer, Law Offices of Louis E. Gitomer, LLC

The DNR mission: Protect, enhance, preserve and wisely use natural, cultural and recreational resources for the benefit of Indiana's citizens through professional leadership, management and education.

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**MEMORANDUM OF AGREEMENT
AMONG THE SURFACE TRANSPORTATION BOARD,
CSX TRANSPORTATION, INC.,
LOUISVILLE & INDIANA RAILROAD COMPANY, INC. AND
INDIANA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF HISTORIC
PRESERVATION & ARCHAEOLOGY**

**REGARDING
STB DOCKET NO. FD 35523, CSX TRANSPORTATION, INC. —JOINT USE —
LOUISVILLE & INDIANA RAILROAD COMPANY, INC.
(DHPA #11979)**

WHEREAS, on June 14, 2013, CSX Transportation, Inc. (“CSXT”) and Louisville & Indiana Railroad Company, Inc. (L&I) filed an application with the Surface Transportation Board (Board) seeking approval for joint use by CSXT and L&I of L&I’s 106.5-mile rail line between Indianapolis, Indiana and Louisville, Kentucky (“L&I Line”); and

WHEREAS, CSXT and L&I would like to replace the Flatrock River Bridge on the L&I Line at Milepost 40.19 because the bridge cannot accommodate the modern rail traffic including the heavier, taller and faster trains that would move on the L&I Line under the proposed joint use; and

WHEREAS, the Board has determined that the replacement of the Flatrock River Bridge constitutes an Undertaking, as defined in 36 C.F.R. §800.3(a); and

WHEREAS, the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (DHPA), acting in its designated capacity as the State of Indiana’s Historic Preservation Officer (“Indiana SHPO”), has advised in letters to CSXT dated October 11, 2011, and October 3, 2013, that the Flatrock River Bridge located at Milepost 40.19 is eligible for listing in the National Register of Historic Places (“NRHP”), and that replacement of the Flatrock River Bridge would result in an adverse effect on an historic property; and

WHEREAS, the Board, through its Office of Environmental Analysis (“OEA”), consulted with Indiana SHPO pursuant to regulations at 36 C.F.R. Part 800, effective August 30, 2004, implementing Section 106 of the NHPA, and determined that the proposed joint use would have an adverse effect on the Flatrock River Bridge; and

WHEREAS, in a letter dated July 25, 2014, OEA notified the Advisory Council on Historic Preservation (Advisory Council) of the adverse effect on the bridge in accordance with 36 C.F.R. § 800.6(a)(1); and

WHEREAS, in a letter dated August 6, 2014, the Advisory Council declined to participate in the negotiation of this Memorandum of Agreement (“MOA”); and

WHEREAS, pursuant to 36 C.F.R. §800.6, OEA has consulted with Indiana SHPO, L&I and CSXT regarding ways to avoid, minimize, or mitigate potential effects to the Flatrock River

Bridge as a result of the proposed joint use, and the Board, Indiana SHPO, L&I and CSXT have all agreed upon the measures described below under "Stipulations;" and

WHEREAS, the Board provided opportunities for public and Tribal participation during the Board's environmental review under the National Environmental Policy Act including distribution of and posting to its website a Draft Environmental Assessment (EA) and Supplemental EA, with the latter also containing (1) the conclusion of adverse effect on the Flatrock River Bridge, (2) documentation of the Flatrock River Bridge to DHPA Minimum Architectural Documentation Standards ("DHPA Standards"), and (3) a draft MOA; and

WHEREAS, the Board consulted Indiana SHPO, and reviewed data in Indiana Survey of Historic Sites and Structures reports, State Historic Architectural and Archaeological Research Database and the NRHP, and did not identify any documented archaeological resources in the L&I Line right-of-way that encompasses the Flatrock River Bridge; and

WHEREAS, the Board concurs with Indiana SHPO's conclusion that no archaeological investigations are necessary if construction activities associated with replacement of the Flatrock River Bridge are limited to areas within the disturbed L&I Line right-of-way; and

WHEREAS, CSXT and L&I agree to limit construction activities associated with replacement of the Flatrock River Bridge to areas within the disturbed L&I Line right-of-way; and

WHEREAS, the definitions listed in 36 C.F.R. § 800.16 are applicable throughout this MOA.

NOW, THEREFORE, the Board, L&I, CSXT, and Indiana SHPO agree that this Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated. Execution and submittal of the MOA, and implementation of its terms, are evidence that the Board has afforded the Advisory Council an opportunity to comment on the proposed action relating to the Flatrock River Bridge, and that the Board has taken into account the effects of the removal of the Flatrock River Bridge on historic properties and is satisfying the requirements of Section 106 of the NHPA.

STIPULATIONS

The Board shall ensure that the following mitigation measures are carried out:

I. PREPARATION OF PRESENTATION PACKAGE

A. Presentation Package contents. CSXT will prepare a presentation package for the Flatrock River Bridge in compliance with the DHPA Standards. The package will include:

1. **Black and white photographs providing an overall view of the Flatrock Bridge in its environment and views of its significant components.** Photographic

documentation will be produced in compliance with the camera requirements set forth in the DHPA Standards. All photographs will be labeled in accordance with DHPA Standards.

2. **A written description.** A brief description of the Flatrock Bridge and its condition, including the architectural style, plan, building materials, and details.
 3. **Statement of Significance.** The history and significance of the Flatrock River Bridge must be explained in compliance with the DHPA Standards format. The statement will begin with a summary paragraph that succinctly discusses the date or era of construction and why the Flatrock River Bridge is important. Enough history and background will be presented to establish the Flatrock River Bridge's importance. If the Flatrock River Bridge is architecturally significant, the statement must indicate how it is an outstanding example of an important architectural style, type, or work of a significant architect. Dates and descriptions of major alterations, if known, will be included.
 4. **Drawings.** If available, architectural drawings will be submitted in the presentation. If architectural drawings are not available, a sketch plan of the site will be included in the presentation. All drawings must be submitted in accordance with DHPA Standards.
- B. Completion Schedule.** CSXT completed the aforementioned recordation package and related written documentation, and by letter dated November 13, 2013, submitted the recordation package to the Indiana SHPO and Board.
- C. Recordation Package Acceptance.** In a letter dated November 19, 2013, Indiana SHPO acknowledged receipt of the documentation, stated that it had reviewed the material, and concluded that the documentation is consistent with DHPA's Standards.
- D. Public Accessibility.** The presentation package for the Flatrock River Bridge has been placed on the Board's website (www.stb.dot.gov, see Environmental Matters, Key Cases) to enhance public accessibility to the documentation.

II. UNANTICIPATED DISCOVERIES

If the Board determines after Flatrock River Bridge replacement has commenced that the Undertaking will affect a previously unidentified property that may be eligible for inclusion in the NRHP, then the Board will address the discovery in accordance with 36 C.F.R. §800.13(b)(3). The Board may assume that the discovered property is eligible for the NRHP in accordance with 36 C.F.R. §800.13(c).

In the event that one or more historic properties—other than the Flatrock River Bridge—are discovered or that unanticipated effects on historic properties are expected after commencement of the Undertaking, the Board shall ensure that the procedure specified in 36 C.F.R. §800.13, as well as IC 14-21-1-27 and IC 14-21-1-29, is followed by stopping work in the immediate area, which shall be no greater than a 100-foot radius from the discovery, and informing the Indiana SHPO of such unanticipated discoveries or effects within (2) business

days. Any necessary archaeological investigations will be conducted according to the provisions of IC 14-21-1, 312 IAC 21, 312 IAC 22, and the most current *Guidebook for Indiana Historic Sites and Structures Inventory—Archaeological Sites*. If human remains are discovered, the appropriate County Coroner and law enforcement officials must also be notified immediately. If Native American human remains and/or objects subject to the provisions of the Native American Graves Protection and Repatriation Act ("NAGPRA"), including human burials, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony, are encountered, the Board shall notify and consult with the culturally affiliated Tribe(s) and lineal descendants to determine appropriate treatment measures for these human remains in agreement with NAGPRA.

III. ADMINISTRATIVE PROVISIONS

A. Dispute Resolution: Should any signatory party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Board shall consult with such party to resolve the objection. If the Board determines that such objection cannot be resolved, the Board will:

1. Forward all documentation relevant to the dispute, including the Board's proposed resolution, to the Advisory Council. The Advisory Council shall provide the Board with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Board shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Advisory Council, signatories and concurring parties, and provide them with a copy of this written response. The Board will then proceed according to its final decision.
2. If the Advisory Council does not provide its advice regarding the dispute within the thirty (30) day time period, the Board may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Board shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the Advisory Council with a copy of such written response.
3. Carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.

B. Amendments: This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Advisory Council.

C. Termination: If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation III-B, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, the Board must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 C.F.R. § 800.7. The Board shall notify the signatories as to the course of action it will pursue.

D. Duration of the MOA: This MOA will expire if its stipulations are not carried out within 8 years from the date of its execution. At such time, and prior to work continuing on the Undertaking, the Board shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 C.F.R. § 800.7. Prior to such time, the Board may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation III-B above. The Board shall notify the signatories as to the course of action it will pursue.

E. Counterparts: This MOA may be executed in any number of counterparts, each of which shall be an original, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

F. Effective Date: This MOA will take effect on the date the fourth and final signatory signs and dates the document.

IV. SCOPE OF AGREEMENT

This MOA is limited in scope to the proposed undertaking, and, more particularly, to the Flatrock River Bridge located on the L&I Line, and it is entered into solely for purposes of historic impacts mitigation associated with the replacement of the Flatrock River Bridge.

EXECUTION of this MOA by the Board, L&I, CSXT, and Indiana SHPO; its transmittal to the Advisory Council; and subsequent implementation of its terms, evidences that the Board has afforded the Advisory Council a reasonable opportunity to comment on the Undertaking and its effects on historic properties, that the Board has taken into account the effects of the Undertaking on historic properties, and that the Board has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations.

SIGNATORY PARTIES:

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____
Victoria Rutson
Director, Office of Environmental Analysis

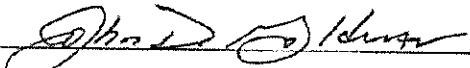
INDIANA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF HISTORIC
PRESERVATION & ARCHAEOLOGY

By: Mitchell K. Zoll Date: 1-28-2015
Mitchell K. Zoll
Deputy State Historic Preservation Officer

CSX TRANSPORTATION, INC.

By:  Date: 1/26/15
Printed Name: J. Todd Echler
Title: AVP Engineering

LOUISVILLE & INDIANA RAILROAD COMPANY, INC.

By:  Date: 1-29-15

Printed Name: John D. Goldman

Title: PRESIDENT