

**MEMORANDUM OF AGREEMENT AMONG
THE SURFACE TRANSPORTATION BOARD,
THE BNSF RAILWAY COMPANY,
AND THE
ILLINOIS STATE HISTORIC PRESERVATION OFFICER
REGARDING THE ABANDONMENT OF 14.5 MILES OF RAIL LINE IN
FULTON COUNTY, ILLINOIS, STB DOCKET #AB 6-486X
(SHPO LOG #009101512)**

WHEREAS, on January 4, 2013, BNSF Railway Company (BNSF) filed a notice with the Surface Transportation Board (Board) under 49 C.F.R. § 1152.50 seeking approval authority to abandon a 14.5 line of rail located in Fulton County, Illinois, between milepost 52.2, in Farmington and milepost 66.7 in Dunfermline; and

WHEREAS, the Board's approval constitutes an Undertaking subject to review under Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306108, and its implementing regulations (36 CFR Part 800) (Act); and

WHEREAS, by decision served on March 4, 2013, the Board imposed an historic preservation condition requiring BNSF to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places (NRHP) until completion of the Section 106 process of the Act; and

WHEREAS, the rail line abandonment constitutes an Undertaking subject to review under Section 106 of the Act; and

WHEREAS, the Board's Office of Environmental Analysis (OEA) consulted with the Illinois State Historic Preservation Office, a Division of the Illinois Department of Natural Resources (IDNR), pursuant to the Act, and the Director of IDNR is the duly designated the State Historic Preservation Officer (SHPO); and

WHEREAS, on November 8, 2005, the SHPO determined that the stone arch bridge at milepost 52.86 (Bridge) was individually eligible for listing in the National Register of Historic Places (NRHP) under criterion C at the local level of significance; and

WHEREAS, the Board reopened the abandonment proceeding on March 21, 2016, and January 9, 2017, to modify the Section 106 historic preservation condition to apply only to the Bridge (including the rails and ties) at milepost 52.86. The Board's 2016 decision modified the condition to exclude the segment of rail line between milepost 64.65 and milepost 66.7 because OEA determined, and the SHPO concurred, that abandonment of that segment of rail line would have no adverse effect to the NRHP-eligible resources. In the Board's 2017 decision, BNSF requested, and the SHPO concurred, that the condition be modified to include just the Bridge (including the rails and ties) at milepost 52.86 because this was the only structure on the abandonment line deemed eligible for listing in the NRHP; and

WHEREAS, on September 6, 2019, the SHPO notified OEA that the rails and ties were removed from the Bridge in violation of the Board’s 2017 decision; and

WHEREAS, on September 26, 2019, BNSF confirmed to OEA that the rails and ties on the Bridge had been removed; and

WHEREAS, on September 26, 2019, OEA determined that removal of the rails and ties constituted an adverse effect to the Bridge under the NHPA and that the development of this Memorandum of Agreement (Agreement) would mitigate the adverse effect; and

WHEREAS, on November 19, 2019, the SHPO concurred with OEA’s finding of an adverse effect to the Bridge and agreed to participate in the development of this Agreement; and

WHEREAS, OEA has invited the following federally recognized tribes that have ancestral connections to the project area to participate in the development of this Agreement: the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community of Wisconsin; the Hannahville Indian Community, Michigan; the Kickapoo Tribe of Oklahoma; the Menominee Indian Tribe of Wisconsin; the Miami Tribe of Oklahoma; the Osage Nation; the Peoria Tribe of Indians of Oklahoma; and the Prairie Band of Potawatomi Nation; and to date, no tribes have indicated an interest in participating in consultation; and

WHEREAS, OEA has invited the City of Farmington to participate in the development of this Agreement, and to date, the City has not indicated an interest in participating in consultation; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1) and 36 CFR § 800.10(b), OEA notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination, and on November 17, 2019 the ACHP responded that it would not participate in consultation pursuant to 36 CFR§ 800.6(a)(1)(iii);

NOW, THEREFORE, the Board, BNSF, and SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in this Agreement in order to mitigate the adverse effects of this Undertaking to the NRHP-eligible property.

STIPULATIONS

I. MITIGATION

The Board shall ensure the following mitigation occurs.

BNSF shall retain a historical contractor(s) of its choice (Contractor) that meets the Secretary of the Interior’s Professional Qualification Standards (36 CFR Part 61, https://www.nps.gov/history/local-law/arch_stnds_9.htm) to complete the measures described below. Prior to the expiration of this Agreement, BNSF shall ensure, and provide written notice to the Board and SHPO, that the following mitigation and HAER recordation (see: <https://www.nps.gov/hdp/standards/haerguidelines.htm>) is completed by

the Contractor. The Contractor must consult with the SHPO prior to the initiation of the work to ensure that expectations are understood.

A. Recordation

1. Fieldwork: Site Visit, Photography, Measurements. The following must be completed prior to BNSF selling or transferring the property.
 - a. The Contractor shall take site, interior (under the Bridge), exterior, and detail digital images of the Bridge. These photos should be used for reference in developing the architectural description outlined in I.A.2.d.
 - b. The Contractor shall develop field notes/sketches, as required. Field notes/sketches should be used to create the digital sketch plans and elevations outlined in I.A.2.a.
 - c. The Contractor shall submit draft digital images of the same or very similar views that are proposed for HAER photography to the SHPO for comment. Selection of views and quantity of images shall be done in consultation with the SHPO. Images must include site, interior (under the Bridge), exterior, and details. Upon SHPO concurrence in writing of the selected draft views, the Contractor may proceed with taking the final HAER photography as outlined in I.A.1.d.
 - d. Final HAER photographs must be taken by a professional photographer and must include all the views agreed to in I.A.1.c. Photographs must be taken with a large-format film camera using 4" x 5" or larger black-and-white negatives, processed according to HAER guidelines, with in-camera perspective correction (as needed).
 - e. Upon the completion of I.A.1.a, b, and d, the Contractor shall digitally submit the images and copies of field notes to the SHPO for review and comment. Upon SHPO confirmation in writing that the data necessary to complete HAER recordation have been collected, BNSF may sell or transfer the property.
2. Recordation components shall consist of the following items.
 - a. Sketch plans and elevations, as defined by HAER and digitally drawn, of the Bridge in its current condition printed drawing-size on vellum with either a large-format inkjet printer using a HAER-designated ink set or with a large-format laser printer (i.e., photocopier).

- b. HAER photographs. Prints from the negatives taken in I.A.1.c must be either wet processed on regular (not resin-coated) photo paper or inkjet-printed, according to HAER guidelines. The size of the final prints shall be the size of the negatives, and their mounting and labeling shall be done in accordance with guidance provided by the NPS. Final recordation package must contain the photo prints, original negatives, and a contact sheet, per HAER standards.
 - c. Archival digital photography. This set of labeled photos are those taken as a part of the reconnaissance and agreed to as stated in I.A.1.a. They should be printed as directed by HAER staff.
 - d. Context, narrative and description. A written historic context of the rail line of which the stone arch bridge is a component and a historic narrative and architectural description of the Bridge using HAER-designated outline format printed single sided on regular-weight, archival (non-recycled, with 25% cotton fiber content) bond paper.
 - e. Original and/or historic drawings. Any original and/or historic drawings of the stone arch bridge scanned at a minimum of 400 dpi, dropped full-size onto HAER title blocks, and printed on vellum with either a large-format inkjet printer using a HAER - designated ink set or with a large-format laser printer (i.e., photocopier). The Contractor must consult with the SHPO to determine which extant plans warrant scanning and inclusion in the recordation package.
 - f. Original field notes, if applicable (i.e., field sketches, laser-scan info, photogrammetric data info.)
 - g. Historic images and maps. Photographic copies of illustrative historic images and maps must be scanned, and printed, and labeled according to HAER guidelines. The Contractor must consult with the SHPO to determine which historic images and maps warrant inclusion in the recordation package.
 - h. CD/DVD. Digital versions of items I.A.2.a through I.A.2.g must be saved onto an archival CD/DVD.
3. Draft submission. The Contractor shall email in pdf format and mail a hardcopy of the 95% draft of the items in I.A.2.a through g to the SHPO for review and comment. When the SHPO accepts in writing the 95%

draft submission, the Contractor will complete the final documentation as directed in I.A.4.

4. Final submission. Upon completion of the final documentation, the Contractor shall submit the following to the SHPO:
 - a. One (1) HAER recordation package containing items I.A.2.a, b, c, d, e, f, g, and h.
 - b. One (1) recordation package containing items I.A.2.a, c, d, e, g, and h in an archival clamshell.

Upon final approval, the SHPO will submit the HAER recordation package to the Heritage Documentation Programs in the National Park Service for eventual deposit in the Library of Congress, and the SHPO will deposit the recordation package with the Abraham Lincoln Presidential Library in Springfield, Illinois.

B. Additional Mitigation

BNSF agrees to leave the Bridge in situ and unaltered in current condition as of the date of this Agreement during its tenure of ownership.

II. DURATION

This Agreement shall terminate if its stipulations are not carried out within two (2) years from the date of its execution. Prior to such time, the Board may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation VI AMENDMENTS below. The Board shall notify the signatories as to the course of action it will pursue.

III. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, BNSF shall notify the Board and SHPO who will then consult immediately and make reasonable efforts to avoid, minimize, or mitigate adverse effects to such properties. In the event of an unanticipated discovery of human remains or burials, BNSF agrees that it must immediately stop work within the area of discovery and consult with the SHPO.

IV. MONITORING AND REPORTING

Every six (6) months following the execution of this Agreement until it expires or is terminated or until the SHPO agrees that Stipulation I has been fulfilled, BNSF shall provide all parties to this Agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any

problems encountered, and any disputes or objections received in regard to the terms of this Agreement.

V. DISPUTE RESOLUTION

Should any signatory to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the Board shall consult with the signatories to resolve the objection. If the signatories cannot agree regarding a dispute, the signatories shall:

- A. Forward all documentation relevant to the dispute, including the Board's proposed resolution, to the ACHP. The ACHP 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 ACHP, signatories and concurring parties, and provide them with a copy of this written response. The Board will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) daytime 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 Agreement and provide them and the ACHP with a copy of such written response.
- C. The Board's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This Agreement 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 is signed by all of the signatories.

VII. TERMINATION

If any signatory to this Agreement determines that its terms become impossible to carry out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulations V and VI above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

Once this Agreement is terminated, and prior to work continuing on the Undertaking, the Board must either (a) execute a Memorandum of Agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36

CFR § 800.7. The Board shall notify the signatories as to the course of action it will pursue.

VIII. COUNTERPARTS; FACSIMILE OR .PDF SIGNATURES

This Agreement may be executed in counterparts, each of which shall be considered an original and together shall be one and the same Agreement. A facsimile or .pdf copy of this Agreement and any signatures thereon will be considered for all purposes as an original.

IX. EFFECTIVE DATE

This Agreement is effective on the date signed by the Board.

EXECUTION of this Agreement and the implementation of its terms evidences that the Board, and BNSF have afforded the SHPO an opportunity to comment on the effects of the Undertaking in compliance with the Act.

[Signature Pages to follow]

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(SHPO LOG #009101512)**

SIGNATORY

BNSF RAILWAY COMPANY (BNSF)

Signature: *Jean Rugma* Date: *3/5/2020*
Name: *Jill Rugema*
Title: *General Attorney*

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SIGNATORY

ILLINOIS STATE HISTORIC PRESERVATION OFFICER (SHPO)

By:



Date:

1-14-20

Colleen Callahan, Director and State Historic Preservation Officer
Illinois Department of Natural Resources

APPROVED FOR EXECUTION

Date:

1/13/2020

Legal Counsel:



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SIGNATORY

THE SURFACE TRANSPORTATION BOARD (Board)

Signature: _____

Date: _____

Name: _____

Title: _____

Victoria Ryckson
March 6, 2020
Victoria RYCKSON
Director, Office of Environmental Analysis