



Preserving America's Heritage

#E1-18920
JR

June 19, 2012

Ms. Victoria Rutson
Federal Preservation Officer
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Ref: *Saratoga and North Creek Railway, LLC-Operation Exemption-Tahawus Line
New York*

Dear Ms. Rutson:

The Advisory Council on Historic Preservation (ACHP) was recently contacted by the Sierra Club regarding the Surface Transportation Board's (STB's) compliance with the requirements of Section 106 of the National Historic Preservation Act (NHPA) for the referenced action. (see enclosed) Unfortunately, the ACHP is unable to respond to this issue without adequate background information. Accordingly, we are contacting STB to inquire about steps it has taken to comply with the requirements of Section 106 and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800) for this action.

Based on the e-mails we received from the Sierra Club, there was a proposed action before STB involving the Adirondack Forest reserve, a National Historic Landmark (NHL). We do not have a record of being notified by STB of an undertaking potentially affecting this NHL. Therefore, in order for the ACHP to better understand STB's strategy in managing this action, it would be helpful if you could clarify whether STB has defined this Federal action as an undertaking.

We obviously have limited information about this matter, therefore, STB is probably in the best situation to respond to the citizen inquiries. Once STB has prepared a response to the Sierra Club, please copy us on your explanation of proposed next steps to fulfill the requirements of Section 106.

We thank you in advance for your assistance with this matter and look forward to hearing from you soon. If you have any questions, please contact Ms. Najah Duvall-Gabriel of our staff at (202) 606-8585 or via email at ngabriel@achp.gov. We appreciate your attention to this matter.

Sincerely,

Charlene Dwin Vaughn, AICP
Assistant Director, FPLAS Section
Office of Federal Agency Programs

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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LaShavio Johnson

From: Charles Morrison [charlescmorrisonjr@gmail.com]
Sent: Monday, June 18, 2012 2:04 PM
To: Najah Duvall-Gabriel
Cc: Ruth.Pierpont@parks.ny.gov
Subject: Adirondack Forest Preserve NHL (1963) and STB decision on Tahawus rail spur Docket No. FD-35631

Najah - As we discussed by phone last week, the "exemption" process used by the STB for supposedly non-controversial projects moves fast and prompt action by ACHP would be needed to keep ahead of a decision in this case. After I mailed our protest letter to STB on June 1, the applicant replied on June 11. I was preparing a further reply when I talked with you but the STB decision came out on Friday, June 15. (See Docket # FD-35631 on their website. (Look under E-Library and then Decisions.)

However, we are going to appeal. I will send our appeal tomorrow to the STB and send you an email copy.

It will be critically important that you send a letter to STB quite immediately, as you said you would in your email to Ruth Pierpont, dated 5/31 (see below). If that had gone out in that first week of June, it might have prevented the June 15 STB decision. In our appeal to STB I will be very specific that an investigations letter is coming from ACHP. So we have one more chance with that. The ACHP letter will be the cornerstone of our appeal.

Thank you. Your help on this matter is of utmost importance - and we appreciate it.

Charlie

Charles C. Morrison
Project Coordinator, Sierra Club, Atlantic Chapter
o/o 88 Court Street
Saratoga Springs, NY 12866
518-583-2212

From: Najah Duvall-Gabriel [mailto:ngabriel@achp.gov]
Sent: Thursday, May 31, 2012 12:54 PM
To: Pierpont, Ruth (PEB)
Subject: RE: Surface Transportation Board Action

Yes. The contact person for Section 106 reviews is Environmental Protection Specialist Cathy Glidden. Her number is (202) 245-0293.

We will send STB an investigation letter regarding this permit request and will copy you on it early next week.

LaShavio Johnson

From: Charles Morrison [charlescmorrisonjr@gmail.com]
Sent: Friday, June 15, 2012 9:54 PM
To: Najah Duvall-Gabriel
Cc: Ruth.Pierpont@parks.ny.gov; Wint Aldrich; Mark Lawton; Samuel Sage; Roger Gray; Roger Downs; Chuck Dworkin
Subject: Re: Tahawus rail spur re Adirondack Forest Preserve

In case you didn't get the STB decision, here it is. Thanks to one and all for a good effort. Too bad they didn't get the main points that (a) now that the spur, including the Preserve easements, is under federal jurisdiction and law, State law on abandonment (and Article 14) for example has been preempted and made irrelevant (only STB abandonment procedure now prevails) and (b) it is the impacts of STB's decision on the Preserve that requires the assessment, not the environmental impact of how many trains a day Saratoga will operate. - and the historic assessment really was required but they never got the message.

CCM

<http://nextstoptupperlake.org/760/adirondack-railroads-move-forward-major-setback-for-protect-the-sierra-club-groups-advocating-rail-removal>

On Fri, Jun 15, 2012 at 4:12 PM, Charles Morrison <charlescmorrisonjr@gmail.com> wrote:
Naja - STB just issued a decision today on the exemption request for the Tahawus Railroad, rejecting the petition of the Sierra Club and Atlantic States Legal Foundation. I knew they would move fast. When you said in the first week of June that you would start an investigation with STB that week, that timing might have slowed the thing down but I think that now it is too late for ACHP to do anything unless you want to appeal the decision. I don't see any point in Sierra and Atlantic doing that.

/// This makes this 30 mile private industrial spur on the State Forest Preserve a part of the national and puts the Forest Preserve easements under federal jurisdiction because federal law in these matters preempts and supercedes State law, including Article 14 of the NYS constitution which protects the Forest Preserve.

Thanks anyway for your support.

Best wishes,
Charlie Morrison

On Thu, Jun 14, 2012 at 1:07 PM, Charles Morrison <charlescmorrisonjr@gmail.com> wrote:
Naja - Good to talk with you this morning. I am forwarding this PARTIAL draft (SEE ATTACHED) in reply to the Strasburger/Heffner June 14 reply to our protest letter of June 1 (filed

with STB June 4) in response to Saratoga and North Creek Railway's filing of a Notice of Exemption a process on "automatic" for routine, noncontroversial projects, for the Tahawus industrial spur which extends for 30 miles northward from North Creek to the old mining site at the former hamlet of Tahawus at the foot of the High Peaks Wilderness area on the south side of the Adirondacks.

I sent you our June 4 protest letter by Priority Mail. It is on your desk unless you gave it to Cathy Glidden. But in any case if you go to the STB's web site you will see it under "E-Library," then clicking on "Filings" where you can bring up the several filings for this case by clicking on "Search by Parameters." This will bring up a form. In the first box (pull down menu) click on "FD" then in the second box insert "35631" Then Submit and the three filings will appear.

Do the same for the previous Saratoga NOE case - FD 35559 - and go back to Protect the Adirondacks, Inc.! protest letter of November 14, 2011 which explains the whole Forest Preserve situation.

You can also go back under E-Library and do the same for "Decisions" in the FD - 35559 case to get the STB decisions on the first NOE - on 11/23/11 and on 5/14/12.

DO YOU HAVE ANY PROBLEM HERE WITH THE WAY IN WHICH I HAVE EXPRESSED WHAT ACHP WILL DO?

Again, the STB may move VERY fast. If you are going to send a letter to STB it MUST be done by next week before they make a decision. On the first NOE the made a decision on 11/23, just a week after our protest letter of 11/14.

Please give me a call if there are questions or if discussion is needed. Thank you!

Charlie Morrison

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