

the portion of the line that NS still owns and controls<sup>6</sup>—if a potential trail sponsor files an interim trail use/rail banking request in accordance with 49 CFR 1152.29 during this remanded proceeding, NS agrees to negotiate with the potential trail sponsor, and the parties ultimately enter into a Trails Act arrangement—it would be inappropriate for the Board to force the parties to negotiate or to include a trail use condition as part of the section 106 mitigation measures for this proceeding.<sup>7</sup>

#### *D. Summary of Other Comments and SEA's Response*

Assuming that there is no agreement for trail use and that the mitigation phase of the section 106 process goes forward for the NS-owned portions of the line from Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9, this section discusses the comments and responses received regarding section 106.

1. *Identification of additional consulting parties to the section 106 process.* *Comment.* FAST commented that SEA needs to make a greater effort to identify as many consulting parties as possible, and should include local community groups in the consultation process. FAST and other commenters requested that certain specific parties be included as consulting parties to the proceeding.

*Response.* Prior to issuing the October 2002 Notice and pursuant to the ACHP's regulations for implementing the section 106 process, 36 CFR 800.3(f), SEA consulted with the SHPO to identify possible consulting parties. SEA also conducted internet searches, contacted local government entities, and obtained updated addresses for parties that had been interested in earlier stages of the case. The Board then served the October 2002 Notice on 149 parties, placed the October 2002 Notice on the Board's Web site, and published the October 2002 Notice in the **Federal Register**, requesting comments and information on the identification of additional consulting parties. The Historic Preservation Trust of Lancaster County, Lancaster County Conservancy, Lancaster Farmland Trust, the Northeast Regional Field Office of the Rails-to-Trails Conservancy, PennDOT, and

Southern End Community Association have requested to be granted official consulting party status. SEA agrees that these six parties should be consulting parties, and, based on the history of this proceeding, has also included FAST and the Townships as official consulting parties for this section 106 process. All of these parties will be invited to concur on the terms of the final MOA.

Furthermore, SEA has added the names of all additional parties identified by commenters to the service list for this proceeding,<sup>8</sup> and has updated the names of the elected officials on the service list. The service list now stands at 211 parties.<sup>9</sup> SEA believes that its efforts to identify consulting parties have been extensive.

All official consulting parties as well as all parties on the service list will receive a copy of the attached proposed draft MOA, an opportunity to provide written comments on the proposed draft MOA, and information on how to participate in a planned public meeting. Opportunities for public involvement are discussed in more detail below in Section II.

#### 2. *Any need for further assessment of adverse effects on the line.*

*Comment.* PennDOT submitted comments stating that if any of the bridges on the line are individually eligible for inclusion in the National Register of Historic Places (National Register), then the effects of the proposed abandonment on the individually eligible bridges should be determined and taken into consideration when developing appropriate mitigation.

*Response.* As stated above and in the October 2002 Notice at 4–6, the Keeper has determined that the entire line is historic, including all sites and structures on the line. Therefore, SEA will treat the entire line as historic in accordance with the Keeper's determination and the ACHP regulations. Separate review of the bridges on the line is unnecessary because all bridges on the line will be treated as historic.

<sup>8</sup> SEA was unable to locate the addresses of several of the additional organizations submitted by FAST. These organizations are: Town and Country Garden Club, Christiana Lions Club, Lancaster County Wildlife Center, the Lancaster Environmental Alliance, Octoraro Area Trail Society, Penn Manor Neighborhood of Girl Scouts, and a high school track and cross country club.

<sup>9</sup> The 51 potential consulting parties identified in the October 2002 Notice were primarily group entities or organizations. For some of these parties, multiple names were acquired and added to the service list for this proceeding. Therefore, the total number of 211 parties includes multiple individuals affiliated with the same organization, as well as individuals unaffiliated with any organization.

*Comment.* FAST commented that a current analysis of the historic and archeological resources, and a new environmental study of the environmental and physical characteristics of the line should be performed. FAST also recommended that a title search be undertaken and that the assessment of adverse effects should be extended to a continuation of the line in Cumberland and York Counties.

*Response.* Because SEA is considering the entire line to be historic, including all sites and structures on the line, conducting a survey of all the archeological and historic resources on the line before developing mitigation measures is unnecessary. However, a SEA staff member has driven by portions of the right-of-way and inspected the current physical condition of the line. As stated in the October 2002 Notice, the tracks and ties have mostly been removed, and though there is some overgrowth of vegetation in the area, the right-of-way on NS's line appears to be intact.<sup>10</sup> Additionally, because the tracks and ties have already been removed from much of the right-of-way, there is little chance that the abandonment will affect previously undisturbed ground or impact archeological sites.<sup>11</sup> However, after completion of the section 106 process and the conclusion of the abandonment proceeding before the Board, NS would be able to remove the structures on the line and any remaining track and ties, which could disturb previously undisturbed ground. As discussed in more detail in Section III, the proposed draft MOA contains provisions for protecting any potential archeological resources from unforeseen impacts.

In accordance with the National Environmental Policy Act (NEPA), the Board issued an Environmental Assessment for this proceeding in 1989. According to the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, environmental analyses should be supplemented if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 CFR 1502.9(c). The NEPA review of this proceeding was completed long ago. No party has submitted any evidence indicating new

<sup>10</sup> In its reply comments, NS explains that portions of the line have been retained by NS and are still being used for industrial track use.

<sup>11</sup> NS has stated that it plans to remove a limited number of structures on the line, and that "little land will be disturbed by the removal of these structures which are mainly above ground." See NS Reply Comments at 61.

<sup>6</sup> See discussion above on pages 2–3.

<sup>7</sup> NS has indicated that although it might agree to a proposal to use this right-of-way as a trail under the circumstances discussed above, it does not believe that issuance of a trail condition by the Board (a notice of interim trail use or NITU) would be appropriate here. If NS continues to take this position, any trail use would have to be by private arrangement of the parties following consummation of the abandonment and conclusion of the section 106 process.