

as potentially eligible for inclusion on the National Register of Historic Places (National Register)—until completion of the section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f;

*Whereas*, the purpose of the condition was to allow the ICC to work with consulting parties to develop a plan to avoid, minimize, or mitigate any adverse effects of the abandonment on the bridges. The development of a mitigation plan was held in abeyance, however, pending negotiations to transfer the Enola Branch for interim trail use/rail banking under 16 U.S.C. 1247(d) (Trails Act) or other public use under former 49 U.S.C. 10906 (now 49 U.S.C. 10905). When those negotiations proved unsuccessful,<sup>4</sup> the agency resumed the NHPA process;

*Whereas*, while the Board's Section of Environmental Analysis (SEA) was working through the steps of the NHPA process, Friends of the Atglen-Susquehanna Trail, Inc. (FAST) filed a petition with the Board to reopen the proceeding and broaden the NHPA condition so that it would apply to the entire Enola Branch;

*Whereas*, the Board denied FAST's request in a decision served October 2, 1997, and FAST filed a petition for reconsideration;

*Whereas*, the Board, in a decision served August 13, 1999, believing that the only part of the NHPA process that remained open was the development of mitigation for the bridges determined to be historic, denied FAST's petition for reconsideration of the 1997 decision and FAST then sought judicial review;

*Whereas*, in *Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transportation Bd.*, 252 F.3d 246 (3rd Cir. 2001), the United States Court of Appeals for the Third Circuit vacated the Board's 1997 and 1999 decisions and remanded the case back to the Board, ruling that the Board had failed to comply fully with the procedural requirements of the NHPA;

*Whereas*, SEA has reinitiated the section 106 historic review process pursuant to the court's remand and the procedural provisions of the NHPA;

*Whereas*, SEA has consulted with the Advisory Council on Historic Preservation (ACHP), the SHPO, and NS, and in two separate Notices to the Parties and a public meeting solicited comments from consulting parties and the public regarding the possibility of using the portions of the Enola Branch that are the subject of this Memorandum of Agreement for interim trail use/rail banking, and assuming that trail use is unsuccessful, completion of the mitigation phase of the section 106 process;

*Whereas*, based on the Keeper of the National Register's 1999 finding that the entire Enola Branch is eligible for inclusion in the National Register, and in consultation with the ACHP and the SHPO, SEA has determined that the entire Enola Branch is eligible for inclusion in the National Register;

*Whereas*, based on consultation with the ACHP and the SHPO and the public

comments, SEA has determined that the abandonment at issue here would adversely affect the Enola Branch;

*Whereas*, NS already has paid to the Pennsylvania Railroad Museum \$15,437 to fund an exhibit or video of the history of the Enola Branch;

*Whereas*, based on consultation with the ACHP, the SHPO, NS, and on all of the comments received from interested and official consulting parties, SEA has devised additional measures to mitigate the adverse effects on the Enola Branch that would be caused by the abandonment;

*Now Therefore*, the Board, the ACHP, the SHPO, and NS agree that the consummation of the abandonment of the Enola Branch shall be subject to the following stipulations to take into account and to mitigate the effect of the abandonment on historic properties.

#### Stipulations

The Board shall ensure that the following measures are carried out. The Board may direct NS (and its contractor) to assist in fulfilling these stipulations or may use an independent third party contractor, working under SEA's supervision, direction and control, and at NS's expense, to assist in fulfilling these stipulations.

#### I. Additional Documentation Requirements

NS shall retain a professional historian to prepare documentation and to conduct archival research of the history of the Enola Branch rail line (to include the segments of the Enola Branch from Milepost 0.0 to Milepost 1.5 and Milepost 4.0 to Milepost 33.9 and appropriate representative structures). The documentation shall be completed in accordance with the relevant state standards as specified by the SHPO and outlined in the guidance document titled "How To Complete The Pennsylvania Historic Resource Survey Form." The historian also shall prepare a written report discussing the methods and results of the archival research.<sup>5</sup> Prior to the commencement of documentation efforts, the Board, the SHPO, and NS shall work together to develop a list of representative structures on the Enola Branch. Documentation of these structures shall serve to document the historic qualities of the line as a whole.

Upon completion of the documentation and archival research, NS shall consolidate all information into one cohesive document and submit the document to the Board's Federal Preservation Officer (FPO) (the Chief of SEA), the ACHP, and the SHPO for review.

As provided in Pennsylvania state standards, this document shall include:

A. a Photo/Site Plan Sheet, which will contain: (1) Historic name of the property; (2) county; (3) non-color coded sketch maps or other non-color maps showing the location of

the rail line; and (4) photographs of the representative structures;

B. a Data Sheet, which will describe the rail line, its historic function and current use, the representative structures, including, relevant historical and descriptive information such as the architectural classification, composition of the exterior materials, classification of the structural system, width, depth and height measurements, dates of construction and known significant changes or rebuilding, proposed disposition of the structures after abandonment, and, to the extent relevant information exists in railroad or local libraries, museums or archives, cultural affiliations, associated individuals or events, and names of builders or craftsmen who constructed the rail line;

C. a Narrative Sheet, which will include a physical description (a brief description of the current and historic physical appearance and condition of the rail line segments and all associated structures) and a historical narrative (a summary of the history and significance of the property);

In addition to the requirements of the Pennsylvania state recordation standards, the document shall also include:

A. a written report describing the methods and results of the archival research; and

B. copies of any relevant historical documents found pursuant to the archival research, as well as any available maps of the rail line and local area. The Board's FPO, the ACHP, and the SHPO shall have 30 days to review and comment on the draft document. At the end of the 30 day period, NS shall prepare a final version of the document, taking into consideration any comments received, and submit the final document to the Board, the ACHP, and the SHPO. NS shall also submit two (2) additional copies of the final document to the SHPO to be archived at the SHPO's office.

#### II. Dispute Resolution

Disagreement and misunderstanding about how this Memorandum of Agreement is or is not being implemented shall be resolved in the following manner:

A. If the SHPO or NS should object in writing to the Board's FPO regarding any action carried out or proposed with respect to the undertaking or implementation of this Memorandum of Agreement, then the Board's FPO shall consult with the objecting party to resolve this objection. If after such consultation the Board's FPO determines that the objection cannot be resolved through consultation, then the Board's FPO shall forward all documentation relevant to the objection to the ACHP, including the Board's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

1. Provide the Board with a staff-level recommendation; or

2. Notify the Board that the objection will be referred for formal comment pursuant to 36 CFR 800, and proceed to refer the objection and comment.

B. The Board shall take into account any ACHP comment or recommendations in reaching a final decision regarding its

<sup>4</sup> The ICC terminated the trail use negotiation condition with respect to the Enola Branch in a decision served April 19, 1993.

<sup>5</sup> Archival research that is conducted from information or records supplied by or available at the railroad, the Pennsylvania Historical and Museum Commission, the Pennsylvania State Archives, the Lancaster County Historical Society, the Southern Lancaster Historical Society, the Chester County Historical Society, the Railroad Museum of Pennsylvania and the Pennsylvania Railroad Technical and Historical Society (as available) shall satisfy this requirement.