

E1-3163



*Preserving America's Heritage*

August 13, 2007

Ms. Victoria Rutson  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

RE: Abandonment Exemption for Consolidated Rail Corporation  
Lancaster and Chester Counties, Pennsylvania  
STB Docket No. AB 167 (Sub-No. 1095X)

Dear Ms. Rutson:

Enclosed are three original copies of the fully executed Memorandum of Agreement (MOA) for the referenced project. By carrying out the terms of the Agreement, you will fulfill your responsibilities under Section 106 of the National Historic Preservation Act and the regulations of Advisory Council on Historic Preservation. We have retained one original of the MOA for our files and are returning the remaining three copies to you for distribution to the other signatories.

We commend the STB for working closely with the ACHP, the Pennsylvania State Historic Preservation Officer, and Norfolk Southern Railway Company to resolve the adverse effects of this undertaking.

If we may be of further assistance as the Agreement is implemented, please contact Katry Harris by telephone at (202) 606-8520 or by e-mail at kharris@achp.gov.

Sincerely,

Charlene Dwin Vaughn, AICP  
Assistant Director  
Federal Permitting, Licensing, and Assistance Section  
Office of Federal Agency Programs

Enclosures

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004  
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

**MEMORANDUM OF AGREEMENT**  
**AMONG THE SURFACE TRANSPORTATION BOARD**  
**AND**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**AND**  
**THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION**  
**AND**  
**NORFOLK SOUTHERN RAILWAY COMPANY**  
  
**REGARDING DOCKET No. AB-167 (Sub-No. 1095X)**  
**CONSOLIDATED RAIL CORPORATION**  
**B ABANDONMENT EXEMPTION B**  
**LANCASTER AND CHESTER COUNTIES, PENNSYLVANIA**

WHEREAS, in 1989 Consolidated Rail Corporation (Conrail) filed a notice of exemption with the Interstate Commerce Commission (ICC)<sup>1</sup> pursuant to 49 CFR 1152.50 seeking an exemption from the requirements of 49 U.S.C. 10903 to abandon a segment of a line of railroad commonly known as the Enola Branch. The Enola Branch extends generally westward from Milepost 0.0 in Parkesburg, Chester County, PA to Milepost 33.9 at Port in Lancaster County, PA.<sup>2</sup> The Enola Branch passes through the Townships of Sadsbury, Bart, Eden, Providence, Martic, Conestoga, and Manor, and the Borough of Quarryville in Lancaster County, and the Township of West Sadsbury, the Borough of Atglen, and the City of Parkesburg in Chester County;

WHEREAS, the portions of the Enola Branch that are the subject of this Memorandum of Agreement are those between Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9.<sup>3</sup>

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1. The ICC Termination Act of 1995, Pub. L. No. 104-88, abolished the ICC and transferred certain rail functions, including the rail line abandonment functions at issue in this case, to the Surface Transportation Board (Board), effective January 1, 1996.
  2. Conrail described the Enola Branch in its 1989 notice of exemption filing as two parallel tracks of a double tracked line. Track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township.
  3. Conrail sold the portion of the Enola Branch from Milepost 1.5 to Milepost 4.0 to the Southeastern Pennsylvania Transportation Authority in 1996. On June 23, 1997, Norfolk Southern Railway Company (NSR) and CSX Transportation Inc. sought permission from the Board to acquire Conrail and to divide its assets between them. On July 23, 1998, the Board approved the Conrail Acquisition. CSX Corp., et al. v. Board of Surface Transportation, 3 S.T.B. 196 (1998). The Enola Branch property was allocated to Pennsylvania Line LLC, a subsidiary of Conrail, as part of the Conrail Acquisition transaction. NS operates the Pennsylvania Line LLC allocated assets under an operating agreement approved by the Board. This Memorandum of Agreement pertains to the NSR-controlled portions of the Enola Branch.

WHEREAS, the ICC issued a decision served February 22, 1990 allowing the abandonment subject to a condition, developed as a result of consultation with the Pennsylvania State Historic Preservation Officer (SHPO), that Conrail take no steps to alter the historic integrity of the bridges the only properties on the Enola Branch that had been identified 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, pending negotiations to transfer the Enola Branch for interim trail use/railbanking 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 still open was the development of mitigation for 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 Board*, 252 F.3d 246 (3<sup>rd</sup> 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;

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

WHEREAS, SEA has reinitiated the Section 106 historic review process pursuant to the court's remand and the procedural provisions of the NHPA including FAST and 13 state and local government entities as consulting parties;

WHEREAS, SEA has consulted with the Advisory Council on Historic Preservation (ACHP), the SHPO, and NSR, and in two Notices to the Parties and two public meetings solicited oral and written comments from the consulting parties (all of whom are either invited signatories or concurring parties to this Memorandum of Agreement) and the public regarding possible use of the portions of the Enola Branch that are subject to this Memorandum of Agreement for interim trail use/railbanking. Assuming that no arrangement for interim trail use/railbanking is reached, completion of the mitigation phase of the Section 106 process by execution and implementation of this Memorandum of Agreement is appropriate;

WHEREAS, based on the Keeper of the National Registers 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, NSR 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, and NSR, and considering the oral and written 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 abandonment;

WHEREAS, the Memorandum of Agreement executed on August 4, 2004, was allowed to expire on August 4, 2005. During preparation of the Memorandum of Agreement, NSR requested that the expiration date be changed from the normally called for three years to one year. NSR requested this shortened time frame in order to facilitate completion of its responsibilities set out in the Memorandum of Agreement. However, because of subsequent litigation initiated by Lancaster County seeking to acquire the Enola Branch through eminent domain as well as its affirmative statements indicating that it, not NSR, would be responsible for fulfilling the requirements outlined in the Memorandum of Agreement, the Memorandum of Agreement expired.<sup>1</sup>

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§. I In furtherance of this effort, on June 16, 2004, Lancaster County filed a declaration of taking in the Common Pleas Court of Lancaster County, Pennsylvania. In this filing, Lancaster County states that it has decided to use its powers of eminent domain in an effort to acquire and preserve the Enola Branch for recreational trail purposes. Moreover, in a letter dated November 17, 2004, Lancaster County filed a Motion with the Board to Remove Historic Preservation Conditions and to Grant Final Abandonment Authority to NSR in order to terminate the Board's jurisdiction in this proceeding. Furthermore, Lancaster County goes on to state in part that "...Lancaster County has agreed to undertake historic preservation

historian shall also prepare a written report discussing the methods and results of the archival research.<sup>4</sup>

Prior to the commencement of documentation efforts, the Board, the SHPO, and NSR 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, NSR shall consolidate all of the information into one cohesive document and submit the document to the Board, the Federal Preservation Officer (FPO) (the Chief of SEA), the ACHP, and the SHPO for review.

Should it be determined that any of the historic bridges must be dismantled, NSR shall consult with the FPO, SHPO, and the consulting parties regarding the potential for any re-use of the historic materials for commemoration of the Enola Branch Rail Line.

As provided in Pennsylvania state standards, the document to be prepared by NSR shall include:

A. A Photo/Site Plan Sheet containing: (1) the historic name of the property; (2) the county; (3) noncolor-coded sketch maps or other noncolor maps showing the location of the rail line; and (4) photographs of the representative structures;

B. A Data Sheet describing: (1) the rail line, its historic function and current use, (2) the representative structures, including relevant historical and descriptive information such as the architectural and structural system classifications, the exterior materials, the width, depth, and height measurements, dates of construction and known significant changes or rebuilding, (3) the proposed disposition of the structures after abandonment, and (4) to the extent there is relevant information in railroad or local libraries, museums or archives, the cultural affiliations, associated individuals or events, and names of builders or craftsmen who constructed the rail line;

C. A Narrative Sheet, including a brief physical description of the line (current and historic physical appearances and conditions 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:

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9. 4 Archival research 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.

If one or more archeological sites, additional cultural or historic resources, or human remains are discovered during NSR=s salvage activities, NSR shall immediately cease all work and notify the FPO and any Federally recognized tribe that might attach religious or cultural significance to the site. The FPO shall consult with the SHPO and any such tribe to determine whether additional mitigation measures are necessary, and if so, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

*Any additional mitigation developed shall be consistent with the provisions of the Pennsylvania Historic and Museum Commission=s Policy on the Treatment of Human Remains adopted March 10, 1993, the Native American Graves Protection and Repatriation Act, and ACHP guidance documents such as the ACHP=s Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites.*

#### **IV. AMENDMENT**

Any Signatory to this Memorandum of Agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment pursuant to 36 CFR Part 800.

#### **V. TERMINATION**

A. If the terms of this Memorandum of Agreement have not been implemented within three years of its execution, it shall be considered null and void, unless the parties agree to a written extension of time. In that event, the Board shall notify the parties to this Memorandum of Agreement, and if NSR chooses to continue with this undertaking, the Board shall reinitiate review of this undertaking in accordance with 36 CFR Part 800.

B. Any signatory to the Memorandum of Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Board shall comply with 36 CFR Part 800.

#### **VI. SCOPE OF AGREEMENT**

This Memorandum of Agreement is limited in scope to the abandonment of the sections of the Enola Branch from Milepost 0.0 to 1.5 and Milepost 4.0 to 33.9, and is entered into solely for that purpose. Execution and implementation of this Memorandum of Agreement by the Board, the ACHP, the SHPO, and NSR is evidence that the Board has afforded the ACHP an opportunity to comment on the project and its effects on historic properties, has taken into account the effects of the undertaking on those properties, and has, therefore, satisfied its Section 106 responsibilities for this undertaking.

Northeast Regional Field Office of the Rails-to-Trails Conservancy

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Pennsylvania Department of Transportation

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Quarryville Borough

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Southern End Community Association

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Township of Bart

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Township of Conestoga

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Township of Eden

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Township of Martic

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Township of Providence

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Township of Sadsbury

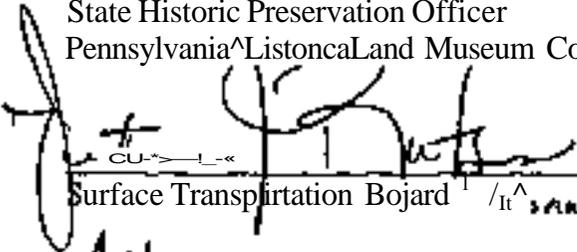
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Township of West Sadsbury

**SIGNATORIES:**

\_\_\_\_\_  
Advisory Council on Historic Preservation

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State Historic Preservation Officer  
Pennsylvania^ListoncaLand Museum Commission, Bureau for Historic Preservation

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Norfolk Southern Railway Company  
BY: JOHN H. FRIEDMAN

**CONCURRING PARTIES:**

\_\_\_\_\_  
Friends of the Atglen-Susquehanna Trail

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Historic Preservation Trust of Lancaster County

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Lancaster County

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Lancaster County Conservancy

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Lancaster Farmland Trust

Northeast Regional Field Office of the Rails-to-Trails Conservancy

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Pennsylvania Department of Transportation

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Quarryville Borough

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Southern End Community Association

*Calvin D. Keener, Jr.*

Township of Bart

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Township of Conestoga