

EI-1546  
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Preserving America's Heritage

June 9, 2005

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

RE: Rail Line Abandonment Exemption  
City of Des Moines, Polk County, Iowa

Dear Ms. Rutson:

This letter is in response to the request made by Ken Blodgett of your staff for ACHP review of the project referenced above, per Section 800.5(b)(3) of our regulations, 36 CFR Part 800, "Protection of Historic Properties."

From the documentation provided, and our discussions with your staff and the Iowa State Historic Preservation Office (SHPO), it is our understanding that Burlington Northern and Santa Fe Company (BNSF) filed a notice of exemption with the Surface Transportation Board (STB) for approval to abandon 1.88 miles of rail line in Des Moines, Iowa. STB granted abandonment authority on August 16, 2004, with the condition that the historic integrity of all sites and structures on the right-of-way that are 50 years old or older will be retained until the Section 106 review process is complete. BNSF initiated a survey of the area of potential effect (APE) for the undertaking, which consists of the rail line right-of-way. A Phase I Reconnaissance Survey was completed in September 2004 and was submitted to SHPO for review by BNSF. Based on this survey and other studies that were conducted previously, STB has determined that the project has no adverse effect to historic properties. This finding, however, was made after the property transfers occurred. STB notified SHPO of their finding on April 4, 2005, and SHPO responded on May 11, 2005, disagreeing with the finding of no adverse effect and raising questions about the timing of the finding.

For this project, the Federal undertaking subject to Section 106 review is STB's approval for BNSF to abandon the rail line. Part of the APE, however, was sold prior to receiving abandonment authority from STB and without retaining an operating easement. Specifically, Part 2 of the line was sold to the City of Des Moines in 2000 to make way for the Martin Luther King, Jr. Parkway. In your April 4, 2005 letter to the SHPO, you state that "BNSF has no record that it retained an easement to continue operations over this portion of the line and has no record of prior Board authorization." It is unclear how STB involved the SHPO or any other consulting

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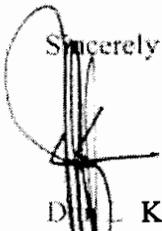
parties as required under the Section 106 regulations for this undertaking.

While we see no reason to object to your determination, we have several concerns with the consultation process and STB's role in it. Section 106 review ensures that preservation values are factored into Federal agency planning and decisions. The framework of the Section 106 review process is consultation. As defined in our regulations, "consultation means the process of seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them regarding matters arising in the Section 106 process" (Section 800.16(f)). In its May 11, 2005 letter to you, the SHPO writes, "while other agencies consulted with our office about the adverse effects to the historic properties resulting for the other undertakings, STB was not involved in any of the consultations with our office or the other agencies." Your letter states that tribes were consulted for the highway project, but STB had no role in this consultative process. It is not clear if the APE for the two projects is identical, if the effects on historic properties are the same, nor if consultation with Indian tribes was conducted on a government-to-government basis. While the agency has determined that the consultation process conducted for the highway project is appropriate for Part 2 of this project, it still needs to be clear if that is the case for this entire project.

Furthermore, we are also concerned with the sequence of events that led to this finding of no adverse effect. Our regulations state that the Section 106 process must be completed prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license. Upon further clarification by your agency and the BNSF that the sale of the property by BNSF to the city of Des Moines without the authority of STB is an aberration, this case illustrates the need for careful planning in the initiation of the Section 106 review process. We wish to reaffirm the comments provided by the SHPO in their May 11, 2005 letter that address the need for early consultation, and the consideration of designating a lead Federal agency when appropriate.

Should you have any questions about our review of this project or on the Section 106 process, please contact Karen Theimer Brown of our staff, who can be reached at (202) 606-8534, or via email at [ktheimer@achp.gov](mailto:ktheimer@achp.gov).

Sincerely

A handwritten signature in black ink, appearing to read "David L. Klima". The signature is written over a circular stamp or mark.

David L. Klima  
Director

Office of Federal Agency Programs