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[REDACTED]
05/06/2004 11:42 AM

To "Victoria Rutson" <vicki.rutson@stb.dot.gov>, "Evelyn Kitay" <evelyn.kitay@stb.dot.gov>, "Christa Dean" <deanc@stb.dot.gov>

cc

bcc

Subject ACHP Response to Randolph Harris Email Questions

----- Original Message -----

From: Karen Theimer Brown

To: Randolph Harris ; Zacher, Susan ; [REDACTED]

Cc: Don Klima

Sent: Thursday, May 06, 2004 11:28 AM

Subject: Fw: Sec. 106 and Enola Low Grade Line Questions

Randy, thank you for your email and your message earlier this week. I have attempted to respond to your questions below. Please feel free to contact me should you need further clarification. My comments are in red.

----- Original Message -----

From: Randolph Harris

To: Karen Theimer Brown ; kcarr@state.pa.us

Cc: szacher@state.pa.us

Sent: Thursday, April 22, 2004 4:04 PM

Subject: Sec. 106 and Enola Low Grade Line Questions

Greetings:

Since phone tag seems to be the prevailing trend these days, I thought I would pose my question to both of you here with hopes that you've discussed the issue and may have some feedback or advice.

I would appreciate an e-mail reply or a return phone call.

Here goes:

1) April 12 STB sent out the final MOA and asks for a 20-day turn around from four signatories and the concurring parties. Assuming the four sign off, is the Sec. 106 completed?

As per Section 800.6(c), Section 106 is complete when the agreement is executed and implemented. Specifically, if the mitigation stipulations (documentation) are not complete prior to the transfer of the land, STB still must ensure that it is carried out. For example, the mitigation provisions could then be a condition of the transfer, so that STB can meet its obligation to ensure the MOA terms are carried out.

2) If yes, what are the implications relative to mitigation measures?

a) can the RR convey property as soon as possible, or as soon as it would prefer? I do not know. You should address this question to the federal agency, STB. Also, see the answer #1 above.

b) does the research and recordation need to be conducted in whole or in part? Whatever is specified in the MOA. The MOA says the rail line includes segments from milepost 0.0 to 1.5 and 4.0 to 33.9.

c) can ACHP and/or PHMC/BHP act independently to hold a public presentation in some fashion to invite broad review of the consulting historian's scope of work and later review their final work product before the recordation report is accepted?

There are checks and balances incorporated in the MOA. The SHPO and the ACHP review and comment on the draft MOA. The SHPO also works with NS to develop a list of representative structures on the Branch. The report must be prepared by someone who meets DOI's Standards. It is at the discretion of the SHPO/ACHP to determine if they need additional public input to assist them in their review.

3) Fortunately, the four signors agreed to the inclusion of an added provision in the final MOA which calls for some degree of consultation on salvage and reuse of materials in the event a bridge is removed.

If the Sec. 106 process is completed at MOA execution, and there is no longer any federal agency involvement or jurisdiction, and if the RR then conveys the property to the municipality which has no local legal mandate to consult on historic resource salvage and re-use, how can the mitigation of the adverse effect for that particular resource be addressed?

See #1.

4) Same type of question on potential post review discovery of historic and/or cultural resources. How can resources which are due at least some degree of protection under federal law through the consultation process be accommodated in the circumstances described?

There is a post-review discovery section in the MOA. This spells out a process if the historian identifies the potential for unanticipated effects, and further consultation with the SHPO.

Given the above, and with only three municipalities holding out against a conveyance of this land to the County for the public stated plan to preserve all the resources and develop a trail, is there any latitude in this process to recognize that the County's position at this late date represents a means to the

elimination of federal jurisdiction, the absolution of ownership responsibility on the part of the RR, and it actually represents the highest form of mitigation that should be embraced by those who mission it is to preserve historic and cultural resources? Section 106 does not require the 'highest form' of mitigation. The MOA presents the federal mitigation agreed to under the process. The execution of the MOA does not preclude any future arrangements that can be made with the municipalities.

In sum, is there any way to extend the amount of time until MOA execution to allow for full consideration of all avenues to broker a deal with the final three municipalities? As we discussed on the phone, the ACHP will not hold up the execution of this MOA with hopes that the municipalities will come on board. As I stated earlier, the execution of the MOA does not preclude any future arrangements. The concern that you made earlier this week is centered around having the documentation completed before any properties are adversely effected. Again, STB is required to complete the documentation as stipulated in the MOA. If the property is transferred out of their jurisdiction before it is completed, then there needs to be a condition attached to the transfer that spells out what outstanding work needs to be completed so that STB can ensure that such documentation takes place.

You are urged to contact Lancaster County Commission Molly Henderson to obtain her direct assessment of the current state of negotiations between Lancaster County and all of the municipalities. Her phone number is 717-299-830 or at Mollyhenderson03@aol.com

There has been a remarkable change of leadership and vision with the new Board of County Commissioners. They are trying everything to make this happen, and have succeeded in developing a very sound plan. But old bad blood and stubbornness on the part of a handful of elected officials with an agenda that has never been clear and above board is about to ruin more than a decade of effort on this project.

Your reply would be most appreciated.

It is my understanding that the documentation issue is your primary outstanding concern. With this clarification, we are prepared to move forward with the execution of the MOA. I cannot give you an exact time when the agreement will be signed, but we have advised STB that the ACHP will be the final signatory. Thank you for your comments and your participation in this process. Again, you are welcome to contact me should you have further questions.

Randy Harris

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