

**Catherine Glidden/STB**

01/26/2010 09:43 AM

To "Beason, Mark" &lt;mbeason@parks.ca.gov&gt;

cc ngabriel@achp.gov, pseudocajun@verizon.net, "Stratton, Susan" <SSTRATTON@parks.ca.gov>,  
Troy.Brady@stb.dot.gov, Vicki.Rutson@stb.dot.gov,

bcc

Subject RE: Urgent request for response: AB-397 (Sub-No. 7X)

Hello Mark,

I would like to know what the current status is of your review in the above case. I contacted Mr. Fritz Kahn, the attorney acting on behalf of the Tulare Valley Railroad Company, and he said he has had no recent contact with you. It appears as though things have stalled.

I would like to confirm that your office is willing to work directly with Mr. Kahn to resolve the Section 106 condition in this case. I have attached (once again) the delegation agreement that we have developed to allow our applicants to work on behalf of the STB.

I believe our disagreement on this point is what has stalled any movement in resolving this case. It would be helpful to have your office provide us with a response either way as no response was received to an earlier email I sent you in early December (see below).

Thank you,

Catherine Glidden  
Section of Environmental Analysis  
Surface Transportation Board  
Washington, DC 20590  
(202) 245-0293

---

Mark,

As you know, we submitted a letter to the ACHP, copied to you, in which we delegated the initiation of our Section 106 reviews to our applicants. However, despite this letter, Fritz Kahn, the attorney acting on behalf of the Tulare Valley Railroad Company in the above proceeding, is still concerned that you will not allow his office to complete some of the items that you requested in your last email to me (shown below). Could you please explain that you will accept information directly from him to supplement what has already been submitted in this case? Mr. Kahn sent a letter to the STB today outlining his concerns (see attached).

We are a small agency and do not have the staffing to complete the work items that you request on our own. Consequently, it is essential that Mr. Kahn be allowed to assist the STB in assembling any information that you need and to send it to you directly. Could you please clarify your position on the above in your reply and copy all on the cc list? I hope you agree that Mr. Kahn is free to assist us in the completion of the Section 106 process and to respond directly to you regarding the information requests you included in your email to me below.

Also, please explain if you are still of the mind that the Section 106 process has not been initiated in this case. I believe it has.

Thanks in advance.

Catherine Glidden

"Beason, Mark" <mbeason@parks.ca.gov> wrote on 09/08/2009 05:23:02 PM:

> Cathy,  
> Please allow me to apologize for the lack of response from this  
> office. I won't bore you with the details, but our project reviews  
> are taking longer than usual because of three mandated furlough days  
> each month. After discussing this project with Susan Stratton, I  
> offer the following comments regarding AB -397 (Sub-No. 7X).  
>  
> This office submitted comments via email to Fritz Kahn on June 8,  
> 2009, that addressed the sufficiency of the materials received for  
> the Section 106 consultation. We have received both the  
> Environmental and Historical Report from Mr. Kahn's office and the  
> Environmental Assessment from your office; however, neither of these  
> documents resolve the issues raised in the June 8 email.  
>  
> The June 8 email is included as Exhibit E with the Environmental and  
> Historical Report. Below is a portion of that email:  
>  
> Following the identification of the undertaking and lead federal  
> agency, Section 106 consultation packages sent to the SHPO should  
> contain the following information:  
> . A cover letter explicitly initiating consultation under Section 106  
  
> . A project description with specific details of the undertaking  
> . Identification of the Area of Potential Effect (APE) for  
> the project, with a map and narrative justification  
> . Identification of Historic Properties within the APE (both  
> historic and archaeological) - this includes photographs and  
> descriptions of the properties  
> . Evaluation of Historic Properties to determine their  
> eligibility for the National Register of Historic Places (NRHP) -  
> this includes a narrative evaluation of the properties within the  
> appropriate contexts and an assessment of their significance under  
> each of the NRHP Criteria and an evaluation of their historic integrity  
> . Assess Adverse Effects of the undertaking on any eligible  
> or listed properties.  
>  
> In the case of the TVR abandonment in Tulare County, it does not  
> appear that the Section 106 process has been initiated.  
> Unfortunately, the letters from your law offices do not qualify as  
> initiating the Section 106 review process because neither your firm  
> nor TVR are federal agencies. The Section 106 initiation request  
> should come from STB. In addition, the evaluation of historic  
> properties and assessment of adverse effects should be done by  
> qualified personnel as defined in the Secretary of the Interior's  
> Standards and Guidelines for Professional Qualifications Standards,  
> [http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm).  
>  
> Specifically, the items that present the greatest concern to this  
> office are the following:  
>  
> Project description: what happens to the line after abandonment?  
> Who is responsible for historic properties within the APE after the  
> abandonment?  
>  
> APE identification: the only indication of the APE for this project  
> is a map printed from Google with the abandoned portion highlighted.  
> This map does not provide enough detail to assess the sufficiency of

> the APE for this project. In addition, no discussion or  
> justification of the APE is included.  
>  
> Identification and evaluation of historic properties within the APE:  
>  
> . The Environmental and Historical Report contains this  
> statement: "TVRR believes that neither the culver nor the wooden  
> trestle bridge warrants listing in the Register of Historic Places.  
> Similarly, TVRR is unaware of any archeological resources or any  
> other previously unknown historic properties in the area." This is  
> not a sufficient evaluation of the eligibility of resources in the  
> APE for listing on the National Register of Historic Places (NRHP).  
> . As stated in the June 8 email, this function should be  
> performed by someone who meets the Secretary of the Interior's  
> Professional Qualifications Standards. None of the documents we  
> have received mention who identified and evaluated the historic  
> properties in the APE.  
> . Has the railroad line itself been evaluated for NRHP eligibility?  
> . Similarly, the sentence provided as the history of this  
> line is insufficient to provide a context within which to evaluate  
> the historic significance of the railroad line or other resources  
> within the APE.  
> . The statement of ineligibility does not apply the NRHP  
> Criteria for eligibility.  
> . What archaeological surveys have been conducted to support  
> TVRR's implication that there are no archaeological resources within  
> the APE? Has a record search been conducted with the California  
> Historical Resources Information System?  
>  
> Assess Adverse Effects: It appears that the conclusion both TVRR and  
> STB has reached is that a Finding of No Historic Properties Affected  
> is the appropriate conclusion for the Section 106 process. However,  
> this is not stated in any of the documentation received in this office.  
>  
>  
> The SHPO is thankful that STB has included the environmental  
> condition that nothing be done to alter the historic integrity of  
> historic properties until the completion of the Section 106 process.  
> We also appreciate the efforts to consult with Native American  
> groups regarding the project. As stated in the June 8 email, the  
> primary concern with regard to this undertaking is the  
> identification and evaluation of historic properties and the  
> qualifications of those performing the identification and  
> evaluation. This is still the SHPO's position.  
>  
> Again, Cathy, I offer my apologies that these concerns were not re-  
> submitted after your email inquiries. We will continue to work on  
> and improve our review process.  
>  
> Sincerely,  
>  
> Mark A. Beason  
> State Historian II, Project Review  
> California Office of Historic Preservation  
> 1416 9th Street, Room 1442, Sacramento, CA 95814  
> (916) 653-8902, fax (916) 653-9824  
>  
>  
>  
> From: Catherine.Glidden@stb.dot.gov [mailto:Catherine.Glidden@stb.dot.gov]

> Sent: Tuesday, September 08, 2009 7:29 AM  
> To: Stratton, Susan  
> Cc: Beason, Mark; Vicki.Rutson@stb.dot.gov; Evelyn.Kitay@stb.dot.gov;  
> Troy.Brady@stb.dot.gov; pseudocajun@verizon.net;  
> xicgc@verizon.net; ngabriel@achp.gov  
> Subject: Urgent request for response: AB-397 (Sub-No. 7X)  
>  
>  
> Susan:  
>  
> I am contacting you regarding an abandonment filing in AB -397 (Sub-  
> No. 7X). I have sent several emails to Mark Beason of your office  
> regarding the proceeding and have received no response. I left a  
> voice mail on Mark's phone this morning.  
>  
> Today, I received a call from the attorney acting on behalf of the  
> applicant in this case. The applicant is in urgent need to move  
> forward with this abandonment and feels as though the Section 106  
> review process is taking too long. As you can see from the emails  
> sent below (the one directly below was sent August 18th), the  
> applicant has been willing to provide additional documentation, if  
> needed, as well as work with your office in any way necessary to  
> move this process forward. However, we have received no response  
> from Mr. Beason to either email.  
>  
> The applicant is likely to file a request to remove the Section 106  
> condition with the STB today. Therefore, I request that you get  
> back to us ASAP if you have any issues with any concerns you may  
> have regarding the abandonment.  
>  
> In my last email to Mark, I requested a response to our finding of  
> No Historic Properties Affected within 30 days. The 30 days will  
> be due on September 17th. If we do not hear from you by then we  
> will remove the Section 106 condition pursuant to 36 CFR 800.4(d)(1)(i),  
>  
> Thank you for your attention to this matter.  
>  
> Sincerely,  
> Catherine Glidden  
> Surface Transportation Board  
> Section of Environmental Analysis  
> (202) 245-0293  
>  
>

---

> Dear Mark Beason:  
>  
> I am following up with you regarding the abandonment proceeding in  
> STB Docket No. AB-397 (Sub-No. 7X). In my July 27, 2009 email to  
> you (shown below), I had requested that you let me know if there is  
> anything you need from either the Board or the Tulare Valley  
> Railroad Company in order to move forward with the Section 106  
> process in this case. Since I have not heard back from you, I am  
> prepared to make the following determination on behalf of the STB:  
>  
> The STB has determined that the undertaking in STB Docket No. AB-397  
> (Sub-No. 7X) will have no effect on historic properties eligible  
> for listing or listed on the National Register of Historic Places  
> pursuant to 36 CFR Part 800. This determination is based on the

> information provided to you in the project historic report and the  
> Environmental Assessment sent to you by mail and also via electronic  
> link (see my July 27, 2009 email below).  
>  
> Please provide your comment, if any, regarding this undertaking  
> within 30 days of receipt of this email. If we do not hear from you  
> within the 30-day time frame specified in the regulations at 36 CFR  
> 800.4(d)(1)(i), we will determine that the Section 106 process is  
> complete and will remove the Section 106 condition from this proceeding.

> Thank you.

>  
> Best Regards,  
> Catherine Glidden  
> Surface Transportation Board  
> Section of Environmental Analysis  
> Historic Preservation Specialist and  
> Environmental Protection Specialist  
> 202-245-0293

> \_\_\_\_\_  
>  
> Mark:

>  
> As you know, my agency is currently in the process of drafting a  
> broadcast memo to all SHPOs/THPOs and Federally recognized tribes  
> pursuant to our conference call a week ago. The memo will outline  
> the delegation of certain parts of our section 106 process to our  
> applicants and their attorneys.

>  
> In the meantime, I would like to work with you to help further the  
> section 106 review for the above named abandonment proceeding to  
> which I have been assigned. Fritz R. Kahn is the attorney acting on  
> behalf of the client seeking abandonment authority in this case (the  
> Tulare Valley Railroad Company) and I have copied him here. I  
> recently completed the Environmental Assessment (EA) for this  
> proceeding and there appear to be two properties along the line:  
> a 48-foot culvert (ca. 1934) and a wooden trestle bridge (1924).  
> Neither of these resources appear to meet the criteria for listing  
> in the National Register of Historic Places based on my review.

>  
> I have attached a link to the EA and to the historic report  
> completed by the applicant (both should have been mailed to you).  
> Mr. Kahn is eager to further the Section 106 process on behalf of  
> his client and will provide you with whatever additional  
> documentation, if any, you may need to move things forward. Please  
> let me know how you would like to proceed.

>  
> Thanks,  
> Cathy

>  
> Catherine Glidden  
> Environmental Protection Specialist  
> Surface Transportation Board  
> Section of Environmental Analysis  
> Washington, DC 20423-0001  
> Phone: (202) 245-0293  
> Fax: (202) 245-0454

- > Link to EA: <http://www.stb.dot.gov/decisions/readingroom>.
- > [nsf/fc695db5bc7ebe2c852572b80040c45f/5a5e1d823ef6d8e9852575fa00429fc9?](http://www.stb.dot.gov/decisions/readingroom/nsf/fc695db5bc7ebe2c852572b80040c45f/5a5e1d823ef6d8e9852575fa00429fc9?OpenDocument)
- > OpenDocument
- > Link to Notice of Exemption (this included the historic report);
- > <http://www.stb.dot.gov/decisions/readingroom>.
- > [nsf/WEBUNID/898B9EDB75CF8FB1852575F5005032CC?OpenDocument](http://www.stb.dot.gov/decisions/readingroom/nsf/WEBUNID/898B9EDB75CF8FB1852575F5005032CC?OpenDocument)



SHPO.pdf