

Appendix O
Cultural Resources

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APPENDIX O

CULTURAL RESOURCES SURVEY

O.1 Background

The Canadian National Railway Company and Grand Trunk Corporation (collectively, CN or the Applicants) are seeking authorization from the Surface Transportation Board (Board) to acquire control of EJ&E West Company, a wholly owned non-carrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E). Appendix O presents Board's Section of Environmental Analysis (SEA) methods for identification and analysis of effects on significant cultural resources associated with the proposed acquisition. For the purposes of this document, a cultural resource is any prehistoric or historic archeological site or any aboveground resource more than 50 years of age, for which information was gathered to evaluate its significance. A significant cultural resource (historic property) is defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) (36 CFR 80004).

O.2 Cultural Resources Methodology

The Applicants are proposing to acquire control of EJ&E West Company and to use the EJ&E rail line to connect all five of CN's rail lines in Chicago (the Proposed Action). In accordance with the Section 106 process, SEA will evaluate the potential effects of the Proposed Action on historic properties and other cultural resources. In particular, SEA evaluated the potential effects on historic property in those locations where new construction is proposed. The Proposed Action involves construction of six new connections at various locations, extension of existing sidings, and installation of second track (double-tracking).

This section discusses the methods that SEA used for identification and analysis of effects of the Proposed Action on significant historic property. For the purposes of this document, a cultural resource is defined as any prehistoric or historic archeological site or object, or any above-ground resource that may be eligible for listing in the National Register of Historic Places (NRHP). A significant cultural resource (historic property) is defined as any prehistoric or historic district, site, building, structure, or object that is either included in or has been formally determined to merit inclusion in the NRHP (36 Code of Federal Regulations [CFR] 800.16[I]).

O.2.1 Overview

The methods used by the SEA to identify cultural resources and evaluate potential effects on these resources as a result of the Proposed Action and other alternatives include the following:

- Applicable regulations for analysis of effects
- Threshold screening processes
- Sources and types of data collected
- Criteria used to determine the significance of the cultural resources
- Criteria for determining the potential for adverse effects on significant cultural resources

O.2.2 Applicable Regulations and Guidance

SEA has reviewed a number of regulations and guidelines for evaluating potential effects on cultural resources as a result of the Proposed Action and other alternatives, including the following:

- National Historic Preservation Act (16 United States Code [USC] 470-470t, 110 as amended)
- National Environmental Policy Act (NEPA) (42 USC 4321 et seq.)
- Protection of Historic Resources (36 CFR 800)
- Archeological Resource Protection Act of 1979 (16 USC 470aa-mm as amended)
- Archeological and Historic Preservation Act of 1974 (16 USC 469-469c)
- Protection of Archeological Resources (43 CFR 7)
- American Indian Religious Freedom Act (42 USC 1996)
- Native American Graves Protection and Repatriation Act (Public Law [PL] 101-601, 25 USC 3001)
- Native American Graves Protection and Repatriation Acts Regulations (43 CFR 10)
- Protection and Enhancement of the Cultural Environment (Executive Order 11593)
- The Board's environmental regulations (49 CFR 1105)
- Guidelines for Evaluating and Documenting Traditional Cultural Properties (National Register Bulletin 38)

The Advisory Council on Historic Preservation (ACHP) has promulgated detailed guidelines for the implementation of the Section 106 process (see 36 CFR Part 800). These guidelines, most recently amended on August 5, 2004, contain the following sequence of procedures that SEA followed:

- Determine whether the Board has an undertaking that could affect historic properties (36 CFR 800.3[a]).
- Identify the appropriate State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer (THPO)¹ to consult during the process (36 CFR 800.3[c]).
- Plan for public involvement and identify other potential consulting parties² (36 CFR 800.3[e] and [f]).
- Determine the area of potential effect (APE)³ (36 CFR 800.4[a][1]).
- Identify cultural resources within the APE⁴ (36 CFR 800.4[b]), including traditional cultural properties (TCP)⁵.
- Evaluate the significance of adverse effects to cultural resources.
- Assess potential adverse effects by applying ACHP criteria of adverse effect (36 CFR 800.5[a]), if historic properties are affected
- Develop measures to avoid, minimize, or compensate for adverse effects to historic properties⁶ (36 CFR 800.6[b]).

¹ The THPO is the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands.

² Consistent with 36 CFR 800.2(d)(3), the agency official may use the agency's procedures for public involvement under NEPA or other program requirements in lieu of public involvement requirements in the Section 106 process provided that these methods lead to adequate opportunities for public involvement consistent with Section 106.

³ The APE is the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR 800.16[d]).

⁴ Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts (36 CFR 800.4[b][2]).

⁵ A TCP is a historic property "that is eligible for inclusion in the NRHP because of its association with cultural practices or beliefs of a living community that (a) are rooted in a community's history and (b) are important in maintaining the continuing cultural identity of the community" (National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties).

⁶ If a Federal agency and the SHPO/THPO fail to reach a solution to deal with adverse effects, the Section 106 process requires the agency to invite the ACHP to join the consultation and help the parties reach resolution. The ACHP may

Federal agencies are authorized to use the preparation of Environmental Impact Statements and Environmental Assessments under NEPA to meet Section 106 needs in lieu of following the specified ACHP process (36 CFR 800.8[c]).

O.2.3 Data Sources

SEA used data from several sources during review of the potential impacts on cultural resources as a result of the Proposed Action and other alternatives:

- Local histories and related documents, including aerial photographs and Internet sites
- Historic land use and fire insurance maps
- Historic maps provided by CN, local governments, and the appropriate SHPOs and THPOs
- Consultation with local and regional cultural resources experts as well as designated representatives of federally recognized Indian tribes
- Literature on the history of the existing rail systems
- Other consulting parties' information, including lists of those properties that may be of religious and cultural significance to Indian tribes
- Inventories of standing structures owned and/or operated by the railroads and provided by CN along with examples of standing-structures including bridges, buildings, yards, and other facilities

O.2.4 Screening Process

SEA, in consultation with the appropriate SHPOs, THPOs, and tribes, defined the APE to include only those areas that could reasonably be affected by the Proposed Action and other alternatives. Consistent with the Board's past evaluations, these are:

- Sites for construction of new rail lines or facilities
- Changes in train traffic that exceed the Board's thresholds for required review

The geographical extent of the APE for the Proposed Action will vary according to the nature of each site-specific action. Therefore, SEA used a refined threshold screening process with the following guidelines to determine whether the Proposed Action and other alternatives have the potential to affect cultural resources:

- Construction of proposed rail lines or facilities or maintenance of existing rail lines or facilities that would result in the physical destruction, damage, removal, or alteration of a cultural resource. This includes intentional demolition to clear a site.
- Construction that would damage archeological resources if it extended into previously undisturbed areas
- Construction that would change the location of the tracks with respect to an existing association with a cultural resource and thereby cause the isolation from or alteration of the character of the resource's setting or indirectly lead to its neglect
- Increases in train traffic that meet or exceed Board thresholds for required review

Per Board guidance found at 49 CFR 1105.8, the APE will be limited to the actual right-of-way of the railroad property. The APE also includes property to be acquired by the railroad in order to support proposed construction activities. If historic property is found within the APE, SEA will conduct

also choose to participate in the Section 106 process when an undertaking has substantial impacts on important historic properties, presents important questions of policy or interpretation, has the potential for presenting compliance problems, or presents issues of concern to Indian tribes or Native Hawaiian organizations (36 CFR 800.7).

additional analysis through site visits, conducted by the SEA's federally qualified archaeologists and architectural historians.

SEA determined whether or not potential historic property located within the APE meets NRHP criteria for eligibility. SEA submitted their formal findings to the appropriate SHPO or THPO for review and comment. SEA, CN, and the appropriate SHPO or THPO then developed strategies to avoid, reduce, or compensate for adverse effects on historic properties within the APE.

O.2.5 Analytical Methods

SEA followed a multi-step procedure to identify and evaluate cultural resources potentially affected by the Proposed Action and other alternatives.

O.2.5.1 Identification of Historic Property

SEA's professionally qualified archaeologists and historians identified cultural resources in the APE with the aid of various data sources. For instance, SEA contacted SHPOs (and THPOs where tribal lands are involved) as well as elected heads of federally recognized tribes with historic claims to the APE. These contacts were in relation to recommendations about specific activities and siting locations of each proposed alternative. Outside parties provided input about possible TCPs associated with the Proposed Action and other alternatives.

SEA considered those cultural resources that were previously identified in the APE. SEA also assessed the likelihood of encountering previously unknown, significant archeological resources in emergency situations (36 CFR 800.12) or through post-review discovery (36 CFR 800.13). Finally, SEA reviewed information about historic buildings and structures within the APE and made a preliminary determination about their condition and historic integrity.

SEA compared information from the data sources with results from site visits. The site visits were to accomplish four goals:

- Confirm the existence of the known cultural resources.
- Identify previously undocumented cultural resources.
- Evaluate the historic integrity and historic significance of the resources.
- Verify possible adverse effects to historic properties.

Depending upon the results of the Section 106 process, SEA plans to present the resulting comparison and appropriate documentation in a *Historic Property Report* to SEA (see description under Section 1.5.4.) or in the appropriate sections of the NEPA document.

O.2.5.2 Determination of Adverse Effect

Using the criteria of adverse effect developed by the ACHP (36 CFR 800.5), SEA evaluated whether the Proposed Actions would result in an adverse effect to historic properties, if any are identified within the APE. These criteria provided the basis for determining the Proposed Action's potential effect on historic properties.

In accordance with 36 CFR 800.5(a)(1), an action has an adverse effect on a historic property when it "may alter, directly or indirectly, any of the characteristics of a historic property that may qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association."

SEA applied the criteria of adverse effect to determine the types and magnitude of potential effects resulting from the Proposed Actions. Under these criteria, the Proposed Action could cause the following four types of adverse effects under 36 CFR 800.5(a)(2):

- Physical destruction of, alteration of, removal of, or damage to all or part of the property as well as changes of the character of the property's use or of physical features that would diminish the ability of those features to continue to contribute to the property's historical significance
- Introduction of visual, atmospheric, or audible elements that diminish the property's significant historic features
- Neglect of a property causing its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe
- Transfer of ownership of a historic property to/from railroad ownership, through transfer, lease, or sale

The outcome of the determination of adverse effects to each historic property, if present within the APE, is summarized in the *Historic Property Report* that would be prepared by SEA and their consultants. SEA's consultants satisfy the professional qualifications standards of the Secretary of the Interior (36 CFR Part 61, Appendix A).

O.2.5.3 Historic Property Report

SEA prepared a *Historic Property Report*, which includes the following information for each proposed alignment, in accordance with Board regulations under 49 CFR 1105.8(d):

- U.S. Geological Survey (USGS) topographic maps, aerial photographs (if available), and plan maps showing the site of Proposed Actions and the approximate dimensions of sites or structures that were part of the Proposed Actions
- Written descriptions of the rights-of-way and the topography and urban and/or rural characteristics of the surrounding areas
- Photographs of railroad structures on the property that were at least 50 years old as well as photographs of the immediately surrounding area
- Dates of construction of structures and the dates and extents of major alterations, if available
- Brief narrative histories of CN's operations in the areas, including explanations of what, if any, changes were anticipated for the cultural resources as a result of the Proposed Actions
- Brief summaries of documents in CN's possession (for example, architectural or engineering drawings) that are potentially useful for documenting historic structures
- Descriptions (based on readily available information in CN's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or human-made) that could have potentially hindered the archeological recovery of resources (for example, swampy conditions or the presence of toxic wastes), and the surrounding terrain
- Copies of correspondence between CN and any SHPO or THPO
- Results of site visits and field investigations by CN's federally qualified archaeologists and historians
- Recommendations about each cultural resource's condition and historical significance
- Identification of adverse effects to historic properties within the APE and recommendations for mitigation strategies to avoid or reduce any adverse effects to those properties

SEA submitted their recommendations in the *Historic Property Report*. As the responsible Federal agency, the Board will make a formal determination of eligibility for each potential historic property and submit these determinations to the SHPO or THPO for review and comment. If necessary, the

Historic Property Report may be presented in two volumes. If so, Volume 1 will address historic buildings and structures within the APE; Volume 2 will address archaeological resources within the APE. The results of the Section 106 process will be summarized in the NEPA document.