

4.0 SUMMARY OF HISTORIC PRESERVATION REVIEW PROCESS

4.1 Introduction

This chapter provides a summary of all the cultural resources review that has been completed during the course of this proceeding. It includes a historic preservation compliance history, a synopsis of the studies completed, an impacts assessment of each of the alternatives, and an overview of measures that would be taken to mitigate adverse effects on National Register of Historic Places (National Register) eligible or listed properties identified in the project area, pursuant to the Programmatic Agreement (PA)¹ that has been entered into in accordance with 36 CFR 800.14(b), to meet the Board's obligations under Section 106 of the National Historic Preservation Act (NHPA) 16 U. S. C. 470(f) (Section 106).

4.2 Discussion and Chronology of the 106 Process for this Proceeding

Section 106 requires Federal agencies to follow steps to identify, evaluate, and resolve or mitigate adverse effects to National Register listed or eligible historic properties within the project's Area of Potential Effect (APE). The APE for each alternative route included a corridor of about 2,000 feet in width, or 1,000 feet on either side of the center line of each alignment. In this proceeding, the Section of Environmental Analysis (SEA) has conducted the Section 106 process in consultation with the Texas Historical Commission (THC) or State Historic Preservation Officer (SHPO); the Advisory Council on Historic Preservation (ACHP); Southwest Gulf Railroad (SGR); representatives of local governments; and federally recognized Tribe(s) that may attach traditional religious or cultural importance to properties located within the APE(s). The recognized Tribes consulted in this process include: the Kiowa Tribe of Oklahoma, Mescalero Apache Tribe, and Wichita and Affiliated Tribes of Oklahoma. The Tap Pilam-Coahuiltecan Nation, a non-Federally or state recognized Tribe, was also included in consultations due to its ancestral connections to the Quihi area. SEA also has added other consulting parties throughout the entire Section 106 process and has considered the views of the public.²

SEA has conducted four detailed cultural resources studies as part of its historic review: The Preliminary Cultural Resources Assessment (Study 1); Technical Memorandum: Supplement to the Preliminary Cultural Resources Assessment (Study 2); a Rural Historic Landscape Study (landscape study Study 3); and Technical Memorandum: A Reconnaissance Survey of the Eastern Alternatives (Study 4).³ As discussed below, these studies and the public concerns raised by commenters about the potential effects of the original Alternatives on the Quihi and Upper Quihi Rural Historic Districts led SEA to study additional Eastern Alternatives in the Supplemental Draft Environmental Impact Statement

¹ A PA stipulates the process that the parties must follow, if the proposal is authorized, to continue to identify, evaluate, assess, and resolve potential effects on historic properties in the project area.

² The additional Section 106 consulting parties are: the Honorable Ciro Rodriguez of the U.S. House of Representatives; Comanche Nation of Oklahoma; Mr. Archie Gerdes; Kiowa Tribe of Oklahoma; Medina County Environmental Action Association (MCEAA); Medina County Historical Commission; Mescalero Apache Tribe; Quihi and New Fountain Historical Society; Schweers Historical Foundation; Tap Pilam Coahuiltecan Nation of Texas; Coahuiltecan Research Associates; Wichita and Affiliated Tribes of Oklahoma; Dr. Thomas Hester; Harold Weiblen, Weiblen Farms; the Michael Churchill Jones Ranch Trust; Donato Rio Jr., Joseph and Vicki Solomon; Russell Mangold; Curtis Saathoff; Lester R. Landrum; Joe H. and Erna L. Balzen; Richard Fournier; Madelyn Schott; Lynette Stewart, and Larry Saiers.

³ Studies 1 and 2 are included in Appendix I of the DEIS; Studies 3 and 4 can be found in Appendix F of the Supplemental DEIS (SDEIS).

(SDEIS). SEA has also completed additional historic review of the potential adverse effects that would result from construction of the Modified Eastern Bypass Route (a slight modification of the Eastern Bypass Route analyzed by SEA in Chapter 2 of this Final Environmental Impact Statement or FEIS).⁴

Indeed, SGR has stated in writing (see #EI-2712 and #EI-3040 in Appendix A-2 of this FEIS) that it no longer seeks approval for the original preferred alignment (Proposed Route) through Quihi and does not oppose SEA's recommendation in the SDEIS to designate both the Eastern Bypass Route and the MCEAA Medina Dam Alternative as environmentally preferable routes. Of these two alternatives, SGR favors the Eastern Bypass Route. Subsequently, SGR has advised SEA that it does not oppose the Weiblen Modification to the Eastern Bypass Route (designated as the Modified Eastern Bypass Route in this FEIS), which SEA also recommends as environmentally preferable. In addition, all of the necessary Section 106 signatory parties (THC, ACHP, SEA, and SGR) have signed the PA, which sets forth the historic preservation process only for the environmentally preferable Eastern Alternatives, should the Board authorize any of these routes to be built.

Study 1: Preliminary Cultural Resources Assessment

SEA completed the Preliminary Cultural Resources Assessment in October 2003 and circulated it to the Section 106 consulting parties identified at that time. The study set forth SEA's preliminary conclusions and recommendations regarding cultural resources identified in the proposed project area (see DEIS, Appendix I-2) and the potential impacts on National Register eligible or listed cultural resources from the construction and operation of the Proposed Route, Alternative 1, Alternative 2, and Alternative 3, as well as impacts to cultural resources that could result from the No-Action or trucking alternative.

In response to the report, SEA received a number of comments from Section 106 consulting parties and members of the public expressing concerns regarding the potential adverse impacts of the proposed project on the Quihi area.

Study 2: Technical Memorandum: Supplement to the Preliminary Cultural Resources Assessment

Based on those comment letters and the results of its own independent investigation, SEA decided to augment the Preliminary Cultural Resources Assessment with additional research and fieldwork within the APE's for the Proposed Route, Alternative 1, Alternative 2, Alternative 3, and the No-Action or trucking alternative. The results of the study were included in the Technical Memorandum: Supplement to the Preliminary Cultural Resources Assessment included in the DEIS as Appendix I-4. This study indicated that the entire Quihi, Texas, area was likely part of a rural historic landscape potentially eligible for listing in the National Register.

Study 3: Rural Historic Landscape Study

A number of comments on the DEIS raised concerns that the cultural resources analysis conducted to that point was inadequate. In particular, the THC and ACHP indicated that it would be appropriate to further assess the potential rural historic landscape (including providing a better idea of its boundaries; determining its non-contributing and contributing elements; and the overall eligibility of the district) and to examine whether additional rail line alternatives could potentially avoid any landscape

⁴ SEA did more extensive and comprehensive analysis of potential historic sites and structures for this project than in the other construction cases that have come before the Board. As the environmental review progressed, it became increasingly apparent that the alternatives initially analyzed in the Draft Environment Impact Statement (DEIS), the Proposed Route, Alternative 1, Alternative 2, Alternative 3, and the No-Action Alternative, would have significant adverse effects to Quihi, an area of unusual historic importance to the state of Texas.

determined by SEA as National Register eligible. In response, SEA completed a study of the potential rural historic landscape (Rural Historic Landscape Study) (see Appendix F-2 of the SDEIS) that included an in-depth analysis of three additional rail line alternatives to the east (the Eastern Alternatives: the Eastern Bypass Route, the MCEAA Medina Dam Alternative, and SGR's Modified Medina Dam Route).⁵ SEA determined that these routes would largely avoid the Quihi area and would likely have fewer impacts to significant historic properties than the alternatives studied in the DEIS. (The results of the above analysis are set out in Chapter 5 of the SDEIS.)

The landscape study identified three rural historic landscapes,⁶ each determined by SEA as eligible for listing in the National Register,⁷ as historic districts:⁸ the Quihi Rural Historic District, the New Fountain Rural Historic District, and the Upper Quihi Rural Historic District (see Figures 2-7 and 2-8 in Chapter 2 of this FEIS). The landscape study indicated that, of the three, the Quihi Rural Historic District is the most significant landscape, eligible for listing in the National Register at the state level of significance (meaning that it is important to the overall history of Texas) due to its rare architectural setting within a relatively unaltered Texas pioneer landscape. The New Fountain Rural Historic District and Upper Quihi Rural Historic District were determined to be eligible for the National Register at the (lesser) local level of significance.

The landscape study showed that both the Quihi Rural Historic District and the Upper Quihi Rural Historic District are located within the APEs of the alternatives examined in the DEIS (the Proposed Route, Alternative 1, Alternative 2, Alternative 3, and the No-Action Alternative). The New Fountain Rural Historic District would not be directly impacted by any of the routing alternatives. Overall, impacts would be substantially greater for those alternatives that would impact both the Quihi Rural Historic District and the Upper Quihi Rural Historic District. The landscape study also showed that the Eastern Alternatives examined in the SDEIS would all impact the Upper Quihi Rural Historic District, but to a much lesser degree than the routes studied in the DEIS, and would not affect the Quihi Rural Historic District (see Figures 2-7 and 2-8 in Chapter 2 of this FEIS).⁹

⁵ A map of all of the alternatives that have been studied in this proceeding can be found at Figure ES-1 in the Executive Summary of this FEIS.

⁶ "A rural historic landscape is defined as a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention and that possesses a significant concentration, linkage, or continuity of areas or land use, vegetation, buildings, and structures, roads, and waterways, and natural features." *National Register Bulletin 30: Guidelines for Evaluating and Documenting Rural Historic Landscapes*, at 2. National Park Service, 1989 (Revised 1999) (*National Register Bulletin 30*).

⁷ The National Register was established under Section 101 of NHPA to serve as the Nation's formal list of significant cultural resources. Only properties listed in or eligible for listing in the National Register are given consideration under Section 106 of NHPA.

⁸ Rural historic landscapes are determined eligible for listing in the National Register as either sites or historic districts (*National Register Bulletin 30* at 3).

⁹ Section 5.1 of the SDEIS describes in more detail the landscape study that was conducted; Section 5.2 of the SDEIS presents the results of the reconnaissance survey for the Eastern Alternatives; and Section 5.3 of the SDEIS compares the overall cultural resources impacts of all of the routing alternatives studied for this proceeding.

Study 4: Technical Memorandum: Reconnaissance Survey of the Eastern Alternatives

To further compare the potential cultural resources impacts of the Eastern Alternatives to those of the alternatives studied in the DEIS, SEA conducted a reconnaissance survey of the Eastern Alternatives similar to those previously completed in Studies 1 and 2, described above. (Appendix F-1 of the SDEIS contains this study.) The reconnaissance survey indicated, that of the three Eastern Alternatives, the Eastern Bypass Route would have a slightly greater combined cultural resource impact within the project area than either the MCEAA Medina Dam Alternative or SGR's Modified Medina Dam Route. However, all of the Eastern Alternatives would have a significantly lesser cultural resource impact than the alternatives studied in the DEIS. Largely because of historic preservation, the SDEIS concluded that the Eastern Bypass Route or the MCEAA Medina Dam Alternative would be the environmentally preferable alternatives for this rail construction project. SGR's Modified Medina Dam Alternative was not found to be environmentally preferable because of potential environmental concerns not related to historic preservation.

As a result of comments received on the SDEIS, SEA decided to consider a Modified Eastern Bypass Route that would follow much of the same right-of-way as the Eastern Bypass Route, as proposed in the SDEIS, but would bypass properties owned by the Weiblen family as well as the Castroville West Subdivision (see Chapter 2 of this FEIS, Figures 2-7 and 2-8). As previously noted in Section 2.4.1.14 of this FEIS, the Modified Eastern Bypass Route would have slightly greater cultural resources impacts than the other three Eastern Alternatives, but those impacts would be significantly less than the original alternatives studied in the DEIS.¹⁰

4.3 Overall Cultural Resources Impacts

The overall cultural resource impacts for all the alternatives that have been studied are summarized in Table 4.3-1, below. As discussed in more detail in Chapter 5 of the SDEIS, Alternative 1 and the No-Action Alternative would have the most potential impacts on cultural resources. Alternative 1 would be located near more known and suspected historic structures (over twice as many as any other alternative); it would intersect the largest acreage within two historic districts (including the core of original Quihi); and would cross the most amount of terrain with a high potential for containing archeological resources. The No-Action Alternative likely would have fewer archaeological impacts (because it would involve less ground disturbance than the rail alternatives), but would have a greater impact on the historic districts due to necessary road improvements, visual impacts, and vibration (depending on the distance from the roadway to the historic structures), as well as the noise effects from high volumes of truck traffic. Alternative 2 has the next highest potential for cultural resources impacts. Although it ranks fourth in total historic district acreage impacted, it is second in the number of individual National Register-eligible resources within the APE and has higher potential to affect archaeological resources. The Proposed Route and Alternative 3 are next in potential impacts. Both would cross relatively large areas within two historic districts, but these alternatives would be situated further east from the core of the Quihi Rural Historic District than Alternative 1 and Alternative 2, and would encounter fewer individual National Register-eligible resources.

All of the Eastern Alternatives would have fewer cultural resources impacts than the original four rail routes studied. Of these alternatives, the Modified Eastern Bypass Route would have slightly more cultural resources impacts than any of the other Eastern Alternatives.

¹⁰ As discussed in more detail in Chapter 2 of this FEIS, this FEIS recommends that the following alternatives be authorized as environmentally preferable, should the Board decide to approve this project: the Eastern Bypass Route (including the Modified Eastern Bypass Route) and the MCEAA Medina Dam Alternative.

SGR's Modified Medina Dam Route would cover more acreage in the Upper Quihi Rural Historic District than the Modified Eastern Bypass Route; however, the Modified Eastern Bypass Route would likely have a greater impact because it would intersect with an older portion of the district in relatively close proximity to two German-Alsatian farms and an historic road remnant. It is also more likely to include prehistoric and historic archaeological sites.¹¹ The Eastern Bypass Route would rank next highest in likely cultural resource impacts.

Table 4.3-1 Summary of Cultural Resources Impacts

Routes	Rail Routes Studied in the DEIS				Rail Routes Studied in the SDEIS			FEIS	
	Proposed Route	Alternative 1	Alternative 2	Alternative 3	Eastern Bypass Route	MCEAA Medina Dam Alternative	SGR's Modified Medina Dam Route	Modified Eastern Bypass Route	No-Action Alternative
Length (miles)	7.5	9.0	7.0	7.5	9.2	9.9	10.9	9.1	---
Known Prehistoric Sites within about 1000 feet (National Register eligible)	None	None	None	41ME133 (100 ft east)	None	None	None	41ME132	---
Overall Ranking of Potential Archaeological Site Impacts (1=highest)	3	1	2	4	7	6	8	5	Possibly less impacts than rail alternatives
Known Historic Resources	7	22	10	8	7	5	8	9	---
National Register Listed Historic Resources	1	0	1	0	0	0	0	0	---
Total Acreage of Rural Historic District(s) Crossed	1169	1280	1161	1217	709	636	863	709	More impact on districts than rail alternatives
Overall Ranking of Cultural Resources Impacts	3	1	2	4	6	7	7	5	1

SGR's Modified Medina Dam Route and the MCEAA Medina Dam Alternative would be the least likely of all the alternatives to have potential cultural resource impacts. The SGR Modified Medina Dam Route would cross FM 2676 and Quihi Creek in an area containing more modern farms that are both larger in size and have fewer visual barriers. The MCEAA Medina Dam Alternative would cross more

¹¹ The APE of the Modified Eastern Bypass Route intersects previously recorded prehistoric archaeological site 41ME132, known as the Buddy Mangold Site, which has produced artifacts as much as 10,000 years old and may be eligible for the National Register.

archaeologically sensitive terrain than the SGR Modified Medina Dam Route, but would skirt the northern and eastern margins of the Upper Quihi Rural Historic District.

4.4 Section 106 Consultations Following Issuance of the SDEIS

SEA issued the SDEIS in December 2006, recommending the Eastern Bypass Route and the MCEAA Medina Dam Alternative as the two environmentally preferable alternatives. To select the preferred route(s), SEA considered first that all the Eastern Alternatives (including the Modified Eastern Bypass Route) would have the potential to cause fewer impacts to cultural resources and to the 100-year floodplain than any of the original alternatives. Furthermore, even though the Eastern Alternatives would be somewhat longer, SEA concluded that the increased impacts from the longer lengths of the Eastern Alternatives would not be significantly different in terms of cultural resource impacts than would be caused by the original alternatives studied in the DEIS. SEA next determined that SGR's Modified Medina Dam Route was not environmentally preferable because it would cause more impacts to transportation and traffic safety, would require more high order stream crossings, and was longer than either the Eastern Bypass Route, the Modified Eastern Bypass Route, and the MCEAA Medina Dam Route. Given that the distinctions between the Eastern Bypass Route and the MCEAA Medina Dam Route were not sufficient to designate one or the other as the environmentally preferable route, SEA designated the Eastern Bypass Route and the MCEAA Medina Dam Alternative as the Environmentally Preferable Alternatives.

In a letter dated January 29, 2007, SGR advised SEA (see #EI-2712 in Appendix C of this FEIS) that it did not take issue with SEA's conclusions about alternatives in the SDEIS and indicated that it continued to favor the Proposed Route. SGR also presented SEA with voluntary mitigation that it believed would make the Proposed Route an additional environmentally preferable option (see #EI-2658 in Appendix A-2 of this FEIS). On March 26, 2007, SEA held a meeting in San Antonio, Texas, hosted by ACHP to provide an opportunity for the project's "official" Section 106 consulting parties to comment on SGR's proposed voluntary mitigation (with SEA participating by phone)¹². During the meeting, a number of parties continued to raise historic preservation concerns about the Proposed Route.

In response, SGR submitted a revised voluntary mitigation proposal to SEA and the Section 106 consulting parties regarding the proposed route. On April 20, 2007, SEA held a follow-up conference call to discuss the revisions. During the conference call and in subsequent comment letters, a number of Section 106 consulting parties indicated that neither the original nor revised proposals presented by SGR for the Proposed Route would adequately mitigate the likely adverse effects to the Quihi area.

By letter dated April 27, 2007, the ACHP provided formal comments to SEA (#EI-2921), suggesting that SEA should undertake further analysis of historic properties in the project area to better guide the ongoing discussions regarding whether the Proposed Route could be considered one of the environmentally preferable alternatives. Specifically, the ACHP recommended that SEA request a formal determination of eligibility (DOE) from the Keeper of the National Register (Keeper) as to:

- Whether the Quihi and the Upper Quihi Rural Historic Districts are eligible for the National Register as separate districts or as a single district;
- The appropriate boundaries of any eligible district(s);
- A determination of the contributing and non-contributing elements of any eligible historic district(s), considering both significance and integrity, including any rural landscape

¹² The "official" signatory parties in this proceeding are SGR, THC, ACHP, and SHPO. See 36 CFR800.2(a).

elements (land uses and activities, patterns of spatial organization, circulation networks, boundary demarcations, etc.); and

- The significance of cenotés¹³ within any eligible historic district(s) and the basis of their importance to Indian Tribes.

SEA followed up on the ACHP's recommendations in a letter to the Keeper dated June 5, 2007 (see #EO-517 in Appendix A-2 of this FEIS). On July 24, 2007, the Keeper responded (see #EI-3030 in Appendix A-2 of this FEIS), requesting additional information.

On August 3, 2007, SGR submitted a letter to SEA (#EI-3040) stating that it now preferred the Eastern Bypass Route to the alternatives that would have the most impacts on both the Quihi and Upper Quihi Rural Historic Districts (Alternative 1, Alternative 2, Alternative 3, and the Proposed Route). Accordingly, SEA notified the Keeper that it no longer required a DOE related to the Proposed Route. This essentially eliminated the Proposed Route and all the other alternatives studied in the DEIS from further consideration in this environmental review. SGR has recently stated in writing (see #EI-2712 and #EI-3040 in Appendix A-2 of this FEIS) that it no longer seeks approval for the original preferred alignment (Proposed Route) through Quihi and does not oppose SEA's recommendation in the SDEIS to designate both the Eastern Bypass Route and the MCEAA Medina Dam Alternative as environmentally preferable routes. Of these two alternatives, SGR favors the Eastern Bypass Route. Subsequently, SGR has advised SEA that it does not oppose the Weiblen Modification to the Eastern Bypass Route (designated as the Modified Eastern Bypass Route in this FEIS), which SEA also recommends as environmentally preferable.

4.5 Programmatic Agreement (PA) Process

SEA subsequently developed a PA with SGR, the THC, and ACHP, pursuant to 36 CFR 800.14(b) (see Appendix A-3 of this FEIS). The PA initially included stipulations for the further identification, evaluation, and effect assessment of National Register eligible or listed historic properties within the APE(s) for any of the alternatives that might be authorized by the Board. The PA was circulated to all of the Section 106 consulting parties and made available for public notice and comment through the issuance of a notice in the *Federal Register* on October 18, 2007. A summary of the comments received in response to the notice is provided in Appendix A-4 of this FEIS.

Some of the comments raised concerns that, notwithstanding SGR's August 2007 letter indicating that it now favors the Eastern Bypass Route to its original preferred route, the Board could still authorize one or more of the routing alternatives that would intersect the Quihi Historic District. Both the THC and ACHP urged SEA to add language to the PA that would address this concern. Based on consultation with the consulting parties, SEA subsequently inserted a change to the Amendments and Noncompliance (Stipulation XI) clause of the PA that specifically states that: "the Section 106 process will be reinitiated in the event the Board approves an alignment other than the Eastern Bypass Route and/or MCEAA Medina Dam Alternative and/or a modification of one of these two routes. Once resumed, the Section 106 process will be concluded within a three month time period unless agreed to otherwise by the signatories." All of the official consulting parties indicated that they were satisfied with these terms.

The PA has measures for the resolution of adverse effects, the treatment of human remains, curation of artifacts and records, and monitoring and reporting. The PA includes provisions to allow minor route adjustments when needed to avoid and protect significant resources (including archaeological sites such as 41ME132, and historic sites and structures), as well as provisions to ensure implementation

¹³ A cenoté is a type of sinkhole containing groundwater. The term is derived from a word used by the low-land Maya to refer to locations where groundwater is accessible.

of appropriate alternative mitigation measures. The PA also includes a dispute resolution clause and measures for amendment, noncompliance, and termination. The term of the PA is five years from the date of its execution by the ACHP.

The PA has been signed by all the necessary parties and adequately resolves all of the concerns involving historic preservation that have been raised by the parties in this case (a copy of the Executed PA appears at Appendix A-3 of this FEIS). SGR is obligated to comply with the PA pursuant to SEA's recommended Mitigation Measure #F-77.