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SERVICE DATE - AUGUST 13, 1999

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-167 (Sub-No. 1095X)

CONSOLIDATED RAIL CORPORATION¹—ABANDONMENT EXEMPTION—
LANCASTER AND CHESTER COUNTIES, PA

Decided: August 6, 1999

This decision denies a petition for reconsideration of our decision served October 2, 1997, in this proceeding filed by a group called the Friends of the Atglen-Susquehanna Trail, Inc. (FAST). The decision also terminates the section 106 process of the National Historic Preservation Act (16 U.S.C. 470f) (NHPA), removes a stay condition we previously imposed on Consolidated Rail Corporation (Conrail) with regard to certain designated historic resources, and imposes appropriate conditions to mitigate harm to those resources.

BACKGROUND

On October 3, 1989, Conrail filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 66.5 miles of track called the Enola line in Lancaster and Chester Counties, PA. By decision served February 22, 1990, our predecessor agency, the Interstate Commerce Commission (ICC), imposed a historic preservation condition that required Conrail to retain its interest in and take no steps to alter the historic integrity of the bridges on the line until completion of the section 106 process of NHPA.² The purpose of this “stand still” condition³ was to

¹ By decision served July 23, 1998, we approved, subject to certain conditions, the acquisition of control of Consolidated Rail Corporation (Conrail), and the division of Conrail’s assets, by CSX Corporation and CSX Transportation, Inc. (jointly, CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (jointly, NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company — Control and Operating Leases/Agreements — Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). CSX and NS effected control of Conrail on August 22, 1998, and they effected the division of Conrail’s assets on June 1, 1999.

² The Section of Environmental Analysis (SEA) (then known as the Section of Energy and Environment) issued an Environmental Assessment (EA) on November 1, 1989. In the EA, SEA stated that “[t]he Pennsylvania Historical and Museum Commission has not yet completed its review of the 83 bridges found on the line that may be potentially eligible for inclusion in the National

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permit appropriate mitigation to be devised for these bridges. SEA then began negotiations with the Pennsylvania Bureau of Historic Preservation (SHPO) and Conrail, seeking to reach an agreement on mitigation measures.

More than 6 years after the notice of exemption was filed, on April 15, 1996, while these mitigation efforts were continuing, FAST filed a petition seeking to reopen the proceeding.⁴ Specifically, FAST requested that we broaden the historic preservation condition previously imposed so that it would apply to the entire property as a linear resource, rather than applying only to the bridges on the line. To justify reopening, FAST included material it called new information, consisting of a letter⁵ dated February 24, 1994, from the Director of the Pennsylvania Bureau of Historic Preservation, Brenda Barrett, to Wendy Tippetts of “TWO.”⁶ In that letter, Ms. Barrett

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Register of Historic Places. This was based on a phone conversation of October 25, 1989 with the Pennsylvania State Historic Preservation Officer.” As a result of this consultation, the review of potentially eligible historic sites focused solely on the bridges located on the Enola Branch. SEA then recommended imposition of a condition limited to preserving these bridges until appropriate mitigation could be determined, and that condition was imposed by the ICC in the decision served February 22, 1990.

This condition amounts to a temporary stay relating to certain bridges that provides time for the identification of historic properties and permits the evaluation of various mitigation alternatives. It is thus not a substantive condition and does not permit us to later convert the abandoned right-of-way into a trail against the railroad’s wishes, which apparently has become the goal of FAST.

³ The ICC also imposed public use and interim trail use conditions and permitted Conrail, subject to these conditions, to salvage track and material from the line. The decision provided that, if no interim trail use agreement was reached, Conrail was authorized to completely abandon the line. By decision served April 19, 1993, the trail use condition was vacated, and Conrail was permitted to abandon the line. That decision made no reference to the previously imposed historic preservation condition, which remained in effect.

⁴ Conrail had by this time taken a number of steps to comply with the section 106 process, including submitting various maps to the SHPO on January 30, 1990. The SHPO acknowledged receipt of the maps by letter to Conrail on March 5, 1990, and added that it would “advise you shortly what additional archaeological survey would be required if the bridges were to be removed.” The record does not indicate that the SHPO provided Conrail with any further identification of archaeological sites.

⁵ Although the ICC was sent a copy of this letter in February 1994, Conrail apparently was not notified of it.

⁶ This organization is not further identified. Ms. Barrett also sent a virtually identical letter
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expressed a different position from the official position taken before the ICC in 1989, stating that the entire Enola Branch line was eligible for listing in the National Register of Historic Places. As noted above, the SHPO's original concern was limited to the bridges on the Enola Branch.

By decision served October 2, 1997, we denied FAST's petition, stating that we would not broaden the previously imposed condition at that late date. We noted (slip op. at 2) that "[n]either FAST nor the SHPO has provided any justification for the SHPO's apparently changed position with regard to eligibility of the entire line in the National Register."

We determined that expanding the historic preservation condition was unjustified and would only add further delay to the process. The Board, however, modified the original condition imposed by the ICC so that it would apply only to those bridges that had been determined by the SHPO as eligible for listing in the National Register and to potential archaeological sites near certain bridges, as noted in the SHPO's September 4, 1991 letter to J. Mikowychok of the Lancaster County Department of Parks and Recreation.⁷

On October 24, 1997, FAST filed a petition for reconsideration of the Board's decision not to reopen the proceeding to expand the historic preservation condition so as to preserve the entire line. FAST argues that "the subject rail line is a resource of national significance which is in imminent danger of being lost unless the Board takes action." FAST maintains that, at the time the SHPO made its initial determination concerning the eligibility of certain bridges, it did not have before it the information necessary to make an eligibility determination as to the entire line. Conrail replied, claiming that FAST has submitted no new evidence justifying reconsideration.

Early in 1998, SEA, after extensive negotiations and consultations with Conrail and the SHPO, developed a proposed Memorandum of Agreement (MOA) concerning mitigation for certain bridges. Under the terms of the proposed MOA, Conrail would be required to document (to state standards) certain bridges, which would then be removed pursuant to an order of the Pennsylvania Public Utility Commission (PUC).⁸ In addition, Conrail would fund and furnish

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on April 19, 1994, to a Mr. Mike Keiser of the Pennsylvania Department of Transportation.

⁷ The historic preservation condition now states: "Conrail shall retain its interest in and take no steps to alter the historic integrity of the thirty-two bridges eligible for the National Register and the potential archaeological sites near thirty-six of the bridges."

⁸ On September 24, 1993, Conrail filed an application with the PUC to abolish the rail-highway crossings on the line. The PUC held a number of hearings, and eventually ordered that Conrail attempt to mediate with members of the public and FAST concerning efforts to preserve historic bridges on the line. The mediation resulted in settlement agreements between Conrail and a number of townships. Conrail was to convey segments of the line to the townships through which
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materials for a display relating to the Enola Branch line in a transportation museum administered by the SHPO.⁹

By letters dated December 14, 1998, SEA submitted the proposed MOA, together with supporting data required by 36 CFR 800.8, to the Advisory Council on Historic Preservation (ACHP or Council) and to the SHPO in order to obtain their comments and continue consultations on avoiding or reducing effects on historic properties. In addition, SEA circulated the draft MOA to FAST and the Historic Preservation Trust of Lancaster County (the MOA was also made available by SEA to any other group that may have had an interest in evaluating the provisions of the agreement) for their review and comment pursuant to 36 CFR 800.5(e)(1). SEA expressed its intention to incorporate timely comments from ACHP, the SHPO, and any interested party, as appropriate. SEA also advised that further consultation could be terminated if it appeared that consultation would be unproductive.

By letter dated January 13, 1999, ACHP acknowledged receipt of SEA's December 14, 1998 letter appending the proposed MOA, but claimed that issues concerning identification of historical properties remained outstanding. ACHP—citing 36 CFR 800.4(c)(1) of its regulations, which provides that “the passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible”—maintained that we are required to open the case to identify additional properties as historic, including a determination on the historical significance on the entire Enola Branch line. Moreover, ACHP contended that “serious shortcomings” existed in our section 106 process, especially with regard to the public's involvement with the process, and that more information, as well as a meeting to be scheduled by the Board with the SHPO, Conrail, and ACHP participating, was needed before the Council could engage in a meaningful review of the undertaking.

On February 1, 1999, SEA responded to ACHP's January 13, 1999 letter, stating that SEA had already undertaken and completed an extensive process, including ample public notice and

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the segment passed. The townships were to assume future ownership and maintenance responsibility for the line and bridges and Conrail was to contribute money for maintenance of bridges that were to remain in place. Some bridges, deemed to present highway safety hazards, were to be removed. On October 9, 1997, the PUC ordered that the rail-highway crossings on the line be closed and that bridges determined to present serious safety hazards, including five identified as historic, be removed. We understand that the PUC decision has been appealed. Conrail has yet to remove the bridges while the historic preservation condition remains outstanding.

⁹ Conrail, in a letter dated August 4, 1998, to the SHPO, enclosed a copy of the MOA, which had been signed by the Chief of SEA, and stated in the letter that the MOA was acceptable to Conrail. Conrail also indicated it would sign the MOA as soon as it received a signed copy thereof from the SHPO.

opportunities for public participation, to identify historic resources involved in the proposed abandonment. SEA noted that the identification phase of the section 106 process had been completed and that the Board was now properly engaged in the mitigation phase of the process. SEA also noted that ACHP's own regulations regarding re-evaluation of properties after the passage of time, quoted above, are permissive, not mandatory, as are the Board's regulations on reconsideration. SEA concluded by stating that comments from ACHP regarding mitigation would be welcomed and thoroughly considered.

By letter dated February 26, 1999, ACHP responded that SEA had "failed to clarify why the properties within the area of potential effect should be viewed as discrete historic properties rather than as a rail line with contributing elements." ACHP also stated that it had referred the matter to the Keeper of the National Register of Historic Places for a determination on whether the properties at issue are eligible for listing in the National Register.¹⁰ In addition, ACHP renewed its request for more background information and argued that "any further efforts on the part of the [Board] to finalize the current draft Memorandum of Agreement will be in violation of the statutory and regulatory requirements of Section 106."

DISCUSSION AND CONCLUSIONS

We will deny FAST's petition for reconsideration. A petition for reconsideration must be supported by a showing of material error or that the prior action will be materially affected because of new evidence or changed circumstances. 49 CFR 1115.3(b). Petitioner has not made the required showing here.

FAST's attempts to explain the SHPO's apparent change of position on the eligibility of the entire line in the National Register and its submission of one new exhibit—a letter from the Curator of Transportation of the National Museum of American History to Randolph Harris of the Historic Preservation Trust of Lancaster County, PA—do not amount to changed circumstances or new evidence sufficient to warrant our reconsideration of this matter. The additional testimonial about how this right-of-way could be used for trail purposes is clearly not a changed circumstance or new evidence: that material could have been presented earlier. In any event, the Curator carefully states that he takes ". . . no formal position . . ." here. Thus, we cannot give substantial weight to this statement.

¹⁰ On April 16, 1999, the Keeper of the National Register issued a one page form entitled, "Determination of Eligibility Notification." The form set forth in one paragraph the Keeper's conclusion, based on the request of ACHP, that:

the entire Enola Branch Line is eligible for the National Register of Historic Places for its historic and engineering significance. . . . The Enola Branch Line differed from other railroads of the period in that it was designed to have no contact with other vehicular routes, and it was to run almost completely level and in a straight line.

FAST has re-submitted the February 24, 1994 letter from the SHPO to Ms. Tippetts. That letter was already disposed of in our October 2 decision. FAST has not explained the apparent discrepancy between that letter and the SHPO's official position before the ICC on this matter. The SHPO never modified that position—that its concern was limited to bridges—by filing a petition with us asking for the entire line to be identified as historic. Indeed, a letter sent to Conrail as late as January 27, 1998, confirms that the SHPO's concerns were still limited to bridges and that the SHPO would not broaden its original position.¹¹

Similarly, the Keeper's recently submitted pro forma statement that the entire line is historic does not justify reopening of the ICC's 1990 administratively final decision completing the identification phase. The ICC's decision was based on an agreement between the SHPO and SEA about the properties that should be protected, i.e., certain bridges. Under these circumstances, to restart the process now to address mitigation for the entire line would add inexcusable delay to a process that has already taken much too long.

FAST has not shown material error in our October 2, 1998 decision. Although FAST refers to various provisions of the Code of Federal Regulations, FAST does not indicate that any of these provisions have been violated here. In fact, as discussed below, all applicable laws and regulations have been satisfied. Accordingly, we have no grounds for modifying our previous decision denying FAST's petition, and we will not do so.

We will also terminate the section 106 process and remove the historic preservation condition. Section 106 requires the agency to "take into account" the effect of its licensing decisions on properties included in or eligible for inclusion in the National Register of Historic Places and to afford ACHP a reasonable opportunity to comment.¹²

¹¹ The SHPO also acknowledged in this letter, which the SHPO copied to both ACHP and FAST, that “. . . the next step in the Section 106 process is the preparation of a Memorandum of Agreement”

¹² Regulations implementing section 106 at 36 CFR part 800 involve a number of steps. First, the agency responsible for the licensing decision must identify historic properties that may be affected by an undertaking. The agency bases this determination on background information, which could include surveys or field studies, and consultation with the appropriate SHPO. Second, if the agency identifies historic properties, it must assess what effect its licensing decision will have on the properties — no effect, no adverse effect, or an adverse effect. Third, if the effect is adverse, the agency must attempt to find ways to mitigate the harm to historic properties. This involves consulting with the SHPO and others in an effort to develop an MOA that outlines mitigation measures that the agency will take to minimize or avoid harm to the properties.

If an MOA is executed—that is, agreed upon and signed by the agency, SHPO, and ACHP—the agency may then issue its license in compliance with the terms of the MOA. If, on the

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Our regulations¹³ are designed to strike a balance between the section 106 process and our own regulatory programs. In revising the environmental rules in 1991, the ICC noted that the historic consultation process had become “unduly burdensome and not particularly efficacious in ICC proceedings” Implementation of Environmental Laws, 7 I.C.C.2d 807, 826 (1991) (Implementation). The ICC also observed that:

Where historic property is involved, our ability to protect it is very limited. . . . We do not have the power to force a railroad to sell (or donate) its property, or impose a restrictive covenant upon the deed, as a condition to obtaining abandonment . . . authority. Nor can we deny . . . approval of a transaction solely on the ground that it would adversely affect historic resources. Thus, as a practical matter, documentation of the historic resources involved in the proposal under review . . . is the only form of nonconsensual mitigation available to us. . . . Any attempt to either preclude or force a railroad to sell (or donate) its property for a non-rail purpose, as a condition to obtaining abandonment . . . authority, would plainly constitute an unauthorized taking under the Fifth Amendment.”

Id. at 828-29.

We have met our section 106 obligations within the limits of our conditioning authority here. The ICC, in consultation with the SHPO, first identified historic properties on the Enola Branch line. After completion of this identification step, and again in consultation with the SHPO, the ICC determined that abandonment would result in an adverse effect on the historic properties.¹⁴ SEA then consulted extensively with the SHPO and Conrail, in accordance with 36 CFR

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other hand, there is no MOA, and consultation has become unproductive, the agency, SHPO, or ACHP may terminate the consultation process. The agency must then submit documentation to ACHP, request its written comments, and then take these written comments into account in deciding if and how to proceed.

¹³ See 49 CFR 1105.8.

¹⁴ We note that the SHPO has acknowledged that the first two steps of the process were completed in 1994. In two separate letters dated April 10, 1996, and April 12, 1996, attached, respectively, as Exhibits T and U to FAST’s petition for reconsideration, the SHPO wrote:

Section 106 review is a three-step process involving identification, determination of effect and mitigation. The first two steps were completed with the [Pennsylvania Bureau of Historic Preservation] decisions on December 12, 1989 and October 17, 1994 which stated that there would be an adverse effect if bridges were altered or destroyed. The final section of the 106 review process, mitigation, has not been completed.

800.5(e)(4), to seek ways to avoid or reduce these adverse effects. Although these mitigation efforts did not result in the formal MOA which it sought,¹⁵ SEA was able to fashion an arrangement with Conrail whereby appropriate historical preservation mitigation measures for the bridges will be achieved. These measures, set forth in the appendix to this decision and which we will impose as conditions,¹⁶ provide, among other things, that Conrail will perform recordation of five bridges to State Level Recordation Standards and also provide funding for the development of an interpretive display outlining the history of the Enola Branch.

In addition, SEA submitted the proposed MOA to the Council, and requested its comments, pursuant to ACHP regulations at 36 CFR 800.5(e)(6).¹⁷ Rather than provide input relevant to this stage of the section 106 process, however, ACHP responded by submitting letters raising questions concerning the “identification phase” of the section 106 process, even though that phase was completed years ago and reopening of that process has not been justified here. The Council has been provided with ample opportunities to submit comments relevant to the sole remaining environmental issue—appropriate mitigation of the previously identified adverse effects of the abandonment. But ACHP has declined to submit substantive comments at this time because it questions the conclusions reached many years ago during the identification phase.

It is evident that consultation with ACHP has reached an impasse, and that it would be fruitless to pursue this matter further with it. The “stand still” historic preservation condition that the ICC originally imposed in this case has been in place for over 10 years. Despite a great deal of work to resolve differences among concerned parties, these differences have not been resolved. In spite of our efforts to involve ACHP in the current phase of the section 106 process—the mitigation of adverse effects on previously identified historical properties—ACHP will not respond on this topic and instead continues to seek to dictate the Board’s procedures and compel us to reopen this

¹⁵ A formal MOA was not entered into because the SHPO, in spite of extensive discussions and apparent general agreement with its provisions, did not sign the draft MOA. As noted, various correspondence between the parties indicates that Conrail had agreed to comply with all of the provisions requested by the SHPO, and those provisions are incorporated into the conditions we are imposing here.

¹⁶ Although the Board’s conditioning powers are generally limited to requiring appropriate documentation of historic rail property (see Implementation, at 830), we may impose this condition here because Conrail has voluntarily agreed to it.

¹⁷ By submitting the proposed MOA to ACHP, together with the supporting documentation, SEA provided the Council with all information concerning the undertaking specified in ACHP’s regulations for terminating consultation, thus permitting the section 106 process to move forward without additional delay. This was appropriate in light of the fact that this proceeding is over 10 years old and that SEA had already undertaken and completed an extensive environmental process, including ample public notice and opportunities for public participation.

case and declare this entire rail line historic.¹⁸ Rather, having determined that further consultation would be fruitless in this matter, we will terminate the section 106 consultation process. We will treat the Council's letters of January 13, 1999, and February 26, 1999, as its comments and recommendations on the undertaking. We have taken these comments into account, and the section 106 process is now complete.

We have fully complied with NHPA, including extensive consultations with the appropriate parties to ensure that all effects from the proposed abandonment on historic resources have been taken into account. We have examined the proposed MOA and believe it constitutes appropriate historic mitigation for the bridges at issue, and we will impose that proposed MOA as a condition in this decision.

We have furnished both FAST and Lancaster County with copies of the draft MOA. Although they have declined to comment, it is clear that we have provided ample opportunity for interested parties to participate. These entities, which are on our service list, will receive copies of this decision.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for reconsideration filed by FAST is denied.
2. The section 106 process is terminated and the previously imposed historic preservation condition, as modified, is removed.

¹⁸ Even if we were to identify the line as historic at this late date, we would not and could not impose the relief FAST seeks, which is permanent preservation of the line as a historic trail. The section 106 process only involves the identification and preservation of records of the right-of-way here. It does not provide for the preservation of the right-of-way itself. The "stand still" historic preservation condition that the ICC originally imposed in this case is not a substantive condition—it is merely a temporary arrangement (albeit one which has been in place for over 10 years) to maintain the status quo while the section 106 process is completed. FAST wants to use this process to convert a temporary stay into a permanent one with the hope of turning the line into a trail. This is clearly more than merely expanding the original condition that related to certain bridges.

We note that unsuccessful negotiations to convert the rail right-of-way to a trail occurred over a period of 2 years between Conrail and Lancaster County. After these negotiations ended, FAST approached Conrail about acquiring the line for a trail. Conrail states that it was willing to convey the property to FAST, but FAST was unable to acquire certain guarantee agreements in order to satisfy PUC requirements.

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3. Conrail shall comply with the terms of the proposed MOA, attached as the appendix to this decision.

4. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

APPENDIX

MEMORANDUM OF AGREEMENT

BETWEEN
THE SURFACE TRANSPORTATION BOARD
AND
THE PENNSYLVANIA STATE HISTORIC
PRESERVATION OFFICE

SUBMITTED TO
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 CFR 800.5(e)(4)

REGARDING
ABANDONMENT OF CONRAIL ENOLA LINE
LANCASTER AND CHESTER COUNTIES, PENNSYLVANIA

WHEREAS, on October 3, 1989, Consolidated Rail Corporation (Conrail) filed a Notice of Exemption, designated Docket No. AB-167 (Sub-No. 1095X), with the Interstate Commerce Commission (ICC) pursuant to 49 CFR 1152.50, to abandon a line of railroad in Lancaster and Chester Counties, Pennsylvania;

WHEREAS, on November 1, 1989, the ICC served its Environmental Assessment, which noted that the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470, had not been completed because the Pennsylvania Historical and Museum Commission (the designated State Historic Preservation Officer for the Commonwealth of Pennsylvania) (SHPO) had not completed its review of the bridges on the line;

WHEREAS, by letter dated December 12, 1989, SHPO identified 33 bridges on the line as eligible for listing in the National Register;

WHEREAS, by decision served February 22, 1990, the ICC imposed a condition on the abandonment prohibiting Conrail from taking steps to alter the historic integrity of the bridges on the line pending completion of the Section 106 process;

WHEREAS, on September 24, 1993, Conrail filed with the Pennsylvania Public Utility Commission (PUC) an application to abolish the various rail-highway crossings on the abandoned line;

WHEREAS, the PUC held various hearings and conferences and authorized mediation with Conrail and representatives of the public, including Friends of the Atglen-Susquehanna Trail (FAST), concerning efforts to preserve the historic bridges on the abandoned line;

WHEREAS, within the context of the PUC proceeding and as a result of mediation, settlement agreements were reached between Conrail and the Pennsylvania Department of Transportation (PennDOT) and between Conrail and the Townships of West Sadsbury, Sadsbury, Eden, Bart, Providence, Martic and Conestoga;

WHEREAS, pursuant to the settlement agreements with the Townships and PennDOT which were approved and adopted by the PUC, Conrail will convey segments of the abandoned rail line to the Townships through which each segment passes, the Townships will assume future ownership and maintenance responsibility for the line and the crossing structures, Conrail will contribute an agreed sum of money to the Townships for future maintenance of the crossing structures which are to remain in place, and certain other crossing structures, deemed to constitute serious highway safety hazards, will be removed;

WHEREAS, on October 9, 1997, the PUC ordered that the various rail-highway crossings on the abandoned line be closed and that a number of bridges deemed to constitute serious safety hazards be removed, including five bridges previously identified by the SHPO as eligible for inclusion in the Federal Register;

WHEREAS, the PUC ordered that an additional eligible bridge should be removed only if Penn DOT does not within 2 years let a contract to realign Marticville Road (SR 324), which passes beneath the bridge, and PennDOT has agreed to provide for realignment of that road to bypass the bridge;

WHEREAS, the five eligible bridges to be removed were identified by the PUC as Bridge Numbers 2 (Orchard Buck Road, at railroad milepost 4.70), 10 (Pumping Station Road, at railroad milepost 11.68), 15 (Oak Bottom Road, at railroad milepost 14.46), 16 (U.S. Route 222, at railroad milepost 14.62), and 21 (Hollow Road at railroad milepost 18.08);

WHEREAS, the Surface Transportation Board (STB), successor to the ICC, has determined, in consultation with SHPO, that closing the rail-highway crossings as ordered by the PUC will have an adverse effect on the five eligible bridges to be removed, and removal of the bridges will result in loss of the Enola Line (also sometimes called the Low Grade Line) right-of-way as a linear resource;

WHEREAS, opportunities to comment have been afforded to the public and to interested parties, and include opportunities afforded in connection with the development

of the ICC's Environmental Assessment served on November 1, 1989; the various hearings, conferences and mediation sessions held or sponsored by the PUC; a public meeting held in Providence Township on December 29, 1997, pursuant to newspaper advertisement and mail notice to known interested parties; and a meeting held at the offices of the SHPO on January 13, 1998, at the request of the Historic Preservation Trust of Lancaster County (HPT) which invited the following parties to participate in the meeting: Lancaster County Planning Commission, FAST, Lancaster County Conservancy, Preservation Pennsylvania, Pennsylvania Historical and Museum Commission, National Trust for Historic Preservation, Advisory Council on Historic Preservation, Lancaster Chapter of Sierra Club, Lancaster Greens, Chesapeake Bay Foundation, Citizens for Responsible Growth, U. S. Army Corp of Engineers, and Conrail;

WHEREAS, interested parties commenting on the proposal at these meetings included HPT, Preservation Pennsylvania, FAST, PennDOT, a supervisor of Martic Township, representatives of Providence and Conestoga Townships, and a resident of West Salisbury Township;

WHEREAS, by letter dated January 27, 1998, SHPO recommended that appropriate mitigation for the adverse effects would be recordation of the five bridges to be removed to State Level Recordation Standards and development of an interpretative display outlining the history of the line for placement in the Pennsylvania Railroad Museum;

WHEREAS, the Pennsylvania Railroad Museum has recommended that an appropriate display would be a 6 - to - 8 minute video, which could be produced at a cost of \$15,437.00;

WHEREAS, the STB only has power to require documentation as mitigation (Implementation of Environmental Laws, 7 I.C.C. 2d 807, 829 (1991)), but a railroad applicant may consent to provide additional mitigation;

WHEREAS, STB and SHPO have invited Conrail to become a consulting party pursuant to 36 C.F.R. 800.1(c)(2)(ii), in order to advance the objectives of Section 106, and to concur in this MOA;

WHEREAS, notwithstanding the provisions of 49 CFR 1105.8(f) that a historic condition in an abandonment case normally will not extend beyond the 330-day statutory time period for abandonment proceedings, Conrail is willing to become a consulting party, to concur in this MOA, to provide recordation of the five bridges to State Level Recordation Standards, and to provide funding of \$15,437.00 for the proposed display to be developed for placement in the Pennsylvania Railroad Museum.

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NOW, THEREFORE, STB and SHPO agree that the following stipulations shall be implemented in order to take into account the effects of the rail line abandonment on historic properties.

STIPULATIONS

A. The STB shall insure that Conrail will perform recordation of the five bridges identified as bridge numbers 2, 10, 15, 16 and 21 to State Level Recordation Standards prior to demolition of the bridges.

B. The STB shall insure that Conrail will comply with the terms of its agreement to provide funding in the amount of \$15,437.00 to the Railroad Museum of Pennsylvania for development of a public, interpretative display outlining the history of the Enola Line.

C. Administrative Conditions:

1. Any party to this MOA may propose to the STB that it be amended, whereupon the STB will consult with the other parties in accordance with 36 CFR 800.5(e)(5).

2. Should the STB determine that it cannot implement the terms of this MOA or should the SHPO determine that this MOA is not being properly implemented, the STB or the SHPO may propose that this MOA be terminated, explaining the reasons for termination, and suggesting consultation. If after 30 days no agreement is reached, the STB may terminate this MOA by notifying all parties, and shall consult in accordance with 36 CFR 800.5(e)(4) or request comments of the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR 800.6(b).

3. This MOA shall remain in effect until completion of recordation of the five bridges as provided in Stipulation A and the provisions of funding by Conrail for development of a public display as provided in Stipulation B, or until 330 days from the date of execution hereof, whichever shall first occur.

D. Completion of Process

1. Execution of this MOA by the STB and the SHPO, its acceptance by the Council pursuant to 36 CFR 800.6(a)(1),(i) or (ii) or further comments by the Council pursuant to 36 CFR 800.6(a)(1)(iii), and implementation of its terms, shall determine that the STB has afforded the Council an opportunity to comment on the abandonment of the Enola Line and its effects on historic properties, and that the STB has taken into account the effects of the line abandonment on historic properties.

2. Upon acceptance of this MOA by the Council, the furnishing of comments by the Council pursuant to 36 CFR 800.6(a)(2) and consideration of those comments pursuant to 36 CFR 800.6(c)(2), the furnishing of Council views pursuant to

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36 CFR 800.6(e)(1), or termination of this MOA, the Section 106 process as it pertains to abandonment of the Enola Line shall be completed.