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Mack H. Shumate, Jr.
Senior General Attorney, Law Department

January 22, 2013

VIA E-FILE

Phillis Johnson-Ball
Deputy Director, Office of Environmental Analysis
Surface Transportation Board
Section of Environmental Analysis
1925 "K" St., N.W.
Washington, DC 20423-0001

RE: Proposed Abandonment of the Stillwater Industrial Lead from Milepost 4.69 to Milepost 5.50, a distance of 0.81 miles in Washington County, Minnesota; STB Docket No. AB-33 (Sub-No. 234X)

Dear Ms. Ball:

It is understood by the Union Pacific Railroad Company ("Union Pacific") that the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f) (NHPA) is deemed satisfied in light of the Memorandum of Agreement ("MOA") that has been entered into by the Minnesota Department of Transportation ("MnDOT") and the Minnesota Historical Society, State Historic Preservation Office ("SHPO"), relevant sections of which having been filed with the Surface Transportation Board (the "Board") by letter dated December 13, 2012 from the SHPO, a copy of which is attached hereto as Exhibit A and hereby made a part hereof.

Therefore, in accordance with our recent telephone conversation and your prior email to Ray Allamong, Union Pacific's Senior Manager of Rail Line Planning, dated January 10, 2013, Union Pacific hereby confirms to the Board that Union Pacific **cannot undertake any salvage activities on the Line** upon authorization to complete and consummate the abandonment of Union Pacific's remaining operating interest in the Stillwater Industrial Lead (the "Line") by the Board. Not only was the underlying right of way previously sold to the City of Stillwater, recently the track structure, including all rails and ties which make up the Line, was also sold intact to the City of Stillwater thereby removing Union Pacific's ability to salvage said track structure. The City of Stillwater now controls the track structure as legal custodian thereof. The City of Stillwater, in conjunction with MnDOT, will pursuant to the MOA between the SHPO and MnDOT, be responsible for the future use and disposition of the track structure. A letter from the City of Stillwater will be filed with the Board indicating that the City of Stillwater will not salvage the track structure which makes up the Line until the 106 condition is removed by the SHPO as contemplated by the MOA.



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Sincerely yours,

A handwritten signature in black ink that reads "Mack H. Shumate, Jr." The signature is written in a cursive style with a large, prominent initial 'M'.

Mack H. Shumate, Jr.

MHS:dro
Enclosures

EXHIBIT A



December 13, 2012

Ms. Victoria Rutson
Section of Environmental Analysis
Surface Transportation Board
Washington, D.C. 20423

RE: STB No. AB-33 (Sub. No. 234X)
Proposed abandonment of the Stillwater Industrial Lead from M.P. 469 to 5.5
Union Pacific Railroad
Washington County
SHPO Number: 2006-0286

Dear Ms. Rutson:

We understand that the Surface Transportation Board and the City of Stillwater would like to consummate the proposed rail abandonment referenced above, but that the necessary Sec. 106 review is not yet complete. There seems to be a great deal of confusion about the status of the rail abandonment, and its relationship to the St. Croix River Crossing project.

Please note that a Memorandum of Agreement (MOA) has been signed for the St. Croix River Crossing Project that contains commitments associated with protecting archaeological resources immediately adjacent to and below the proposed rail abandonment site. The stipulations are intended to ensure that National Register-eligible cultural resources are not harmed by the proposed St. Croix River Crossing project, including Loop Trail construction on the subject rail segment.

The pertinent protective commitments are contained in Stipulation IV.F.1 and 2 of the River Crossing MOA (excerpt attached). Under these stipulations, MnDOT has agreed to prepare, in consultation with our office and others, a stabilization report identifying measures to protect the South Main Archaeological District, which has been determined eligible for listing in the National Register; and to incorporate the recommended stabilization measures into plans for the new Loop Trail proposed for portions of the rail corridor. However, neither stabilization report nor trail plans are complete at this point. Further, that MOA directly governs the River Crossing project, and only indirectly relates to the rail abandonment. Lastly, I note that the Surface Transportation Board was not a party to the River Crossing MOA, and therefore is not governed by its provisions.

Regarding the rail abandonment, Dennis Gimmetad (my predecessor) sent you a letter dated January 5, 2009. This letter expressed concern that disturbance of the rail corridor by any machinery, such as that needed to remove tracks, rails or ballast, would very likely result in destabilization of the slope and harm to the adjacent archaeological resources.

Further, it appears that the tracks may currently act as a stabilizing factor, and their removal might result in accelerated erosion and site damage. Mr. Gimmetad noted that MnDOT anticipated building the Loop Trail as part of the overall St. Croix River Crossing project, and that MnDOT is committed to address stabilization of the track/trail bed and protection of the archaeological district. Because removal of the tracks prior to trail construction could cause

between the natural and built features in the SCLD, identify and illustrate important views to, from and within the SCLD, and promote understanding of the SCLD and its significant features to a wide audience. The study will begin at the time of FHWA authorization of funding for the Project.

- a. The study will utilize historic and contemporary images, maps, and text to illustrate the defining characteristics and features of the landscape, their interrelationships, and the associated viewsheds. This product will include existing pre-construction views of the Riverway from the SCLD and views from the Riverway to the district prior to construction.
- b. Mn/DOT will submit a draft study to the SHPOs, NPS and Stillwater HPC for review and comment. The parties will have thirty (30) days from the date of receipt of the draft to provide their review comments. Mn/DOT will take into account the comments received in developing the final study.
- c. Mn/DOT will submit the final study to the SHPOs for review and concurrence. Mn/DOT will ensure that the approved final study is completed prior to opening of the new bridge.
- d. The final study documentation will be formatted for easy reference and use, and for Internet application. Mn/DOT will present the completed final study to the public at a meeting of the Stillwater HPC.

F. South Main Archaeological District

1. Prior to initiating Project construction, Mn/DOT, in consultation with the MnSHPO, the Stillwater HPC, and the City of Stillwater, will complete a condition and stabilization report identifying those measures needed to stabilize and protect the Hersey and Bean Saw Mill and Hersey and Bean Planing Mill archeological sites in such a way as to avoid adversely affecting the historic properties' above and below-ground qualifying characteristics. Mn/DOT will use the report to develop the stabilization needed in order to construct the Loop Trail. The report will be made available to the City of Stillwater for future park planning. Mn/DOT will ensure that the protective measures that have been identified are implemented by inclusion in the Project special provisions and plans.
2. If Mn/DOT determines that an adverse effect to this historic property cannot be avoided, then Mn/DOT will consult with the MnSHPO, Stillwater HPC and City of Stillwater to develop mitigation measures. If the parties can reach agreement on mitigation, Mn/DOT will record those measures through a letter agreement with the MnSHPO and then implement the measures. If the parties cannot agree, Mn/DOT will submit the matter to FHWA for resolution in accordance with Stipulation XIII.

3. If Mn/DOT proposes to use any area of the Hersey and Bean Archaeological Site as a staging area, Mn/DOT will consult with the MnSHPO to ensure that the use will not result in adverse effects to the historic archaeological site and its setting.
4. City of Stillwater MOU: Mn/DOT will ensure that the terms of the MOU that will be executed with the City of Stillwater will be consistent with this Amended MOA. The function of the MOU is to document the terms of municipal consent from the City which is required under Minnesota statutes.

G. Louis Kriesel Farmstead

1. WisDOT will construct a berm on land currently owned by Dennis and Georgeann Kilbane in order to screen the Kriesel Farmstead from the Project. WisDOT will design this berm in consultation with Dennis and Georgeann Kilbane. But it will accommodate, to the maximum extent possible, the continued use for agricultural purposes, the land to the south of the Kriesel Farmstead farm buildings. This berm will be based on the concepts presented in "Highway Profile Options at Kriesel Farm" in the VQM.
2. Before completion of the final Project design in Wisconsin, WisDOT will submit a draft plan for applying the general concepts set forth in the VQM (see Stipulation II. C.) to the WisSHPO for review and concurrence. As part of the plan, WisDOT will consider installing landscape elements along a line near the south boundary, within 500 feet on either side of the current driveway access to the Kriesel Farmstead, and roughly parallel to the centerline of the proposed new frontage road as shown for Alternative B1 in the Supplemental Final EIS for the Project. WisDOT will use text, photographs and other exhibits, as appropriate, to develop this plan. WisDOT will consider the cost effectiveness in reaching a final decision on any proposed landscaping.

V. NATIONAL REGISTER NOMINATIONS

- A. Minnesota Properties: In consultation with the MnSHPO, Mn/DOT will prepare National Register nomination forms for the Log Cabin Restaurant; the Bergstein Shoddy Mill and Warehouse, if it is not demolished pursuant to Stipulation IV.B.5 and if it remains eligible on its new site per concurrence from the MnSHPO; the St. Croix Overlook - South and the South Main Archaeological District prior to authorization of funding by FHWA for the Project.
- B. Wisconsin Properties: Within one year of the signing of the Record of Decision for the Project, WisDOT will submit the required completed National Register nomination forms to the WisSHPO for final nomination of the Nicholas Thelen Farmstead and Louis Kriesel Farmstead to the NRHP.

significant adverse effects to the archaeological site, MnDOT indicated that they are prepared to remove the tracks at the time of trail construction.

Based on these earlier discussions and commitments, the MN SHPO is willing to concur that the proposed rail abandonment project will cause no adverse effect on the South Main Archaeological District, provided that:

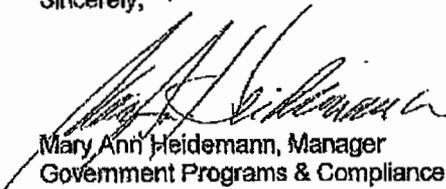
1. MnDOT, in consultation with the SHPO, completes a stabilization report containing measures necessary to protect the South Main Archaeological District,
2. The recommended protective measures are incorporated into plans for the Loop Trail, with the plans to be reviewed and approved by SHPO, and
3. The tracks, rails and ballast materials are left in place on this segment during the rail abandonment process, pending stabilization and trail construction by MnDOT.

It is especially important to note that the rail segment to be abandoned should be left undisturbed, with no use of machinery or removal of materials. We recently received an e-mail from Dave Magnuson, attorney for the City of Stillwater. Mr. Magnuson asked our office to clear this project so the STB's "protective condition" could be removed and "salvage could be undertaken." Salvage is exactly what we do not want to occur, lest it damage nearby archaeological sites.

I believe it is up to the STB as the responsible federal agency to receive and accept the assurance from MnDOT that conditions 1 and 2 will be met, since STB was not a signatory to the MOA containing these stipulations. Similarly, it is up to STB to alert all parties that salvage operations should not occur as part of the rail abandonment undertaking. **If salvage remains as part of the project, we believe that adverse effects may result.** This would trigger the preparation of an MOA for the rail abandonment project, to resolve the anticipated adverse effect.

Please send us documentation for our files that the above conditions will be met, and that salvage operations will be removed from the scope of this project. If you have questions on this letter, you can reach me at (851) 259-3456.

Sincerely,


Mary Ann Heidemann, Manager
Government Programs & Compliance

Enclosure: Stipulations IV.F.1 and 2 from St. Croix River Crossing MOA

cc: Jackle Siuss, MnDOT Cultural Resources Unit
Mike Pogge, City of Stillwater
Dave Magnuson, Magnuson Law Firm
Raymond Allamong, Union Pacific
Michelle Terrell, Two Pines Resource Group