



December 21, 2010

Robert A. Wimbish
Counsel for Norfolk Southern Railway Company
Baker & Miller PLLC
2401 Pennsylvania Avenue NW
Suite 300
Washington, District of Columbia 20037

Dear Mr. Wimbish:

Re: Norfolk Southern Railway Company – Abandonment Exemption – Lucas County, Ohio
STB Docket No. AB-290 (Sub-No. 290X)

This is in response to correspondence dated November 11, 2010 (received on November 15, 2010) regarding the disposition of 2.82 miles of railroad track in Toledo, Ohio by the Norfolk Southern Railway Company (NSR). My comments are made pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended, and the associated regulations at 36 CFR Part 800.

The Ohio Historic Preservation Office (OHPO) continues to recommend that the removal of the bridges at mileposts TW 0.54, TW 0.62, and TW 0.99 will result in an adverse effect on historic properties. It is our professional opinion that these bridges are eligible for listing in the National Register of Historic Places (NRHP) under Criterion C because they “embody the distinctive characteristics of a type, period, or method of construction” and are representative of bridge types that are rapidly disappearing from the regional landscape. We are not concerned about the effects of track removal on adjacent properties. Our December 24, 2009 letter mistakenly omitted an important “not” in the last sentence of the first paragraph on Page 2. It should have read “...Accordingly we offer the opinion that indirect effects that the proposed abandonment will have on adjacent historic properties will NOT meet the criteria of adverse effect.” We apologize for the confusion caused by this omission.

Your November 11, 2010 letter states that “NSR believes that none of the bridges possesses architectural or historic significance actually qualifying it for NRHP listing.” 36 CFR Section 800.4(c)(2) does provide an avenue for the federal agency official tasked with making decisions in the Section 106 process (note that this cannot be delegated to the applicant) to request a determination of eligibility from the Keeper of the National Register if the agency and the SHPO do not concur regarding this matter. Given the Surface Transportation Board’s lack of direct involvement in consultation, it is unclear whether the agency would be willing to make such a request on behalf of NSR. Rather than incurring the expense associated with preparing the necessary analysis to request a Keeper Determination of Eligibility and waiting for that process to run its course, we feel that it would be more efficient to simply move forward with consultation as prescribed in 36 CFR Section 800.6.

OHPO is prepared to enter into a Memorandum of Agreement with STB and NSR as soon as the agency documents its consideration of project alternatives that would avoid or minimize the adverse effect required by 36 CFR Section 800.6(a). We again ask that NSR document that it has made a good faith effort to offer the bridges to rails-to-trails organizations that may be interested in reusing them. In an email message sent on November 12, 2010, we suggested that you send letters to local rails-to-trails organizations offering the bridges to them while establishing a deadline for them to respond. It was our hope that you would do this in a timely manner. As of today we have not been copied on such correspondence.

OHIO HISTORICAL SOCIETY

Ohio Historic Preservation Office

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In an effort to assist NSR and STB in this matter, we have spoken with the Ohio Department of Transportation (ODOT), which maintains a page on its website that the agency frequently uses to notify rails-to-trails organizations of the availability of historic bridges. ODOT has expressed a willingness to post a notice regarding the availability of the NSR bridges on this webpage. To pursue this option, please contact Tom Barrett of ODOT's Historic Bridge Program by phone at (614) 466-3932 or by email at Tom.Barrett@dot.state.oh.us.

Once STB has submitted to OHPO documentation of its efforts to minimize the adverse effect by making the bridges available for reuse, the process of drafting a Memorandum of Agreement to mitigate the adverse effects resulting from this project can begin. A component of the mitigation required by the MOA would be the preparation of documentation that meets Historic American Engineering Records standards.

If you have any questions, please contact Justin Cook, History Reviews Manager, by phone at (614) 298-2000 or by email at jcook@ohiohistory.org. Thank you for your cooperation.

Sincerely,



Mark J. Epstein, Department Head
Resource Protection and Review

MJE:jc

Copy: Tom Barrett, Cultural Resources Review, Historic Bridge Program,
Office of Environmental Services, Ohio Department of Transportation, 1980 West Broad Street,
Columbus OH 43223
Najah Duvall-Gabriel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW,
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