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September 24, 2003

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VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

208989



Re: **Docket No. AB-227 (Sub-No. 9X)**
Wheeling & Lake Erie Railway Company -- Abandonment
Exemption -- In Harrison and Jefferson Counties, Ohio

Dear Secretary Williams:

By decision served October 19, 1999 in the above-captioned proceeding, the Board granted the petition for exemption of Wheeling & Lake Erie Railway Company ("W&LE") to abandon a W&LE rail line (the "Valley Line") extending from milepost 188.5 near Unionvale, Ohio to milepost 205.54 near Warrenton, Ohio. The Board imposed several conditions on the abandonment exemption, including (as relevant here) an historic preservation condition requiring compliance with the section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f.

Earlier this year, the Board's Section of Environmental Analysis ("SEA"), the Ohio Historic Preservation Office ("SHPO") and W&LE entered into a Memorandum of Agreement ("MOA") intended to mitigate any adverse effects on historic properties resulting from the proposed abandonment. (A copy of the MOA is attached.) In light of the MOA and upon SEA's recommendation, the Board in a decision served August 4, 2003 reopened this proceeding and removed the historic preservation condition previously imposed on W&LE's abandonment of the Valley Line. Under standard Board practice, W&LE would be required to consummate the abandonment of the Valley Line, if at all, within 60 days of the removal of this regulatory barrier to consummation, *i.e.* by October 3, 2003. 49 C.F.R. §§ 1152.29(e)(2), 1152.60(e); *see* October 1999 Decision at 5.

The MOA, however, requires that W&LE provide certain recordation on Ohio Historic Inventory Forms, and that the SHPO have 60 days to review and approve such documentation, *prior* to "the abandonment and removal of the tracks." MOA, §§ I.A.1, I.A.9. That process is ongoing, but will likely not be completed by October 3, 2003. Given the

FLETCHER & SIPPEL LLC

Mr. Vernon A. Williams

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consensual and binding nature of the MOA, these pre-abandonment requirements are arguably a "regulatory barrier to consummation" that tolls the abandonment consummation period until the requirements are satisfied. For obvious reasons, W&LE wishes to assure that this understanding is correct, and that its abandonment authority does not expire while compliance with the requirements of the MOA is proceeding.

Accordingly, W&LE respectfully requests that the Board clarify pursuant to 49 C.F.R. § 1152.29(e)(2) that the consummation period in this proceeding extends until 60 days after satisfaction of the pre-abandonment requirements of the MOA.

Ten copies of this letter are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope. If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

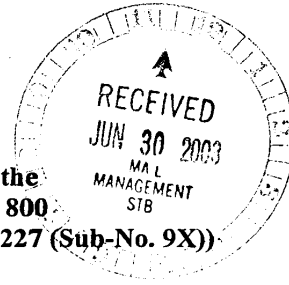


William C. Sippel
Attorney for Wheeling & Lake Erie
Railway Company

WCS:tjl

Enclosures

MEMORANDUM OF AGREEMENT
Between the Surface Transportation Board and the
Ohio Historic Preservation Office Under 36 CFR 800
Regarding the Abandonment of Railroad (STB Docket No. AB-227 (Sub-No. 9X))
In Harrison and Jefferson Counties, Ohio



WHEREAS, on July 1, 1999, the Wheeling & Lake Erie Railway Company (W&LE) filed with the Surface Transportation Board (STB) a petition under 49 U.S.C. 10502 for an exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 18 miles of railroad known as the Valley Line located in Harrison and Jefferson Counties, Ohio; and,

WHEREAS, by decision served October 19, 1999, the STB granted W&LE's petition subject to certain conditions, including that W&LE retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and,

WHEREAS, the proposed abandonment will involve the removal of tracks and the cessation of use of the Long Run Tunnel and the Adena Tunnel, and will change the setting for the Dillonvale Depot all of which are 50 years old or older (please refer to Attachment A: Project Map Showing Properties with Standard Mile Post Measurements); and,

WHEREAS, the STB has determined, in consultation with W&LE and the Ohio Historic Preservation Office (OHPO), that the abandonment, removal of tracks, and cessation of use may have an adverse effect on properties meeting the criteria for National Register of Historic Places eligibility, specifically the Long Run Tunnel, the Adena Tunnel, and the Dillonvale Depot; and,

WHEREAS, on February 11, 2002, pursuant to 36 CFR 800.6(a)(1) and 36 CFR 800.11(e), the STB notified the Advisory Council on Historic Preservation of its determination that the proposed abandonment may adversely affect historic properties; and,

WHEREAS, the STB has consulted with OHPO in accordance with 36 CFR Part 800; and,

WHEREAS, the STB has invited W&LE to participate in the consultation for this undertaking; and,

WHEREAS, the consulting parties agree to the following stipulations and conditions in order to mitigate impacts to the Long Run Tunnel, the Adena Tunnel, and the Dillonvale Depot in carrying out the undertaking; and,

WHEREAS, to the best of the parties' knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony, as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered; and,

WHEREAS, W&LE has made a good faith effort to locate original architectural plans and dates of construction for the Long Run Tunnel, the Adena Tunnel, and the Dillonvale Depot, but no architectural plans or actual construction dates have been located;

NOW, THEREFORE, the STB, with the assistance of W&LE shall ensure that the following stipulations, terms and conditions will be implemented in a timely manner and with adequate resources in compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470).

I. STIPULATIONS

A. Recordation:

1. The STB shall ensure that recordation on Ohio Historic Inventory Forms with continuation sheets, commensurate with HABS/HAER Level II as supplemented or modified herein, of the Long Run Tunnel, the Adena Tunnel, and the Dillonvale Depot are carried out by W&LE prior to the abandonment and removal of tracks.

2. The recordation will include measurements of the size of the two tunnels and the depot building in accordance with the requirements of the Ohio Historic Inventory Form. This recording is at a level of a site plan, and not at the level of HABS Level I measured drawings.

3. The photographic documentation will include both archivally stable black and white prints and color prints, prepared and mounted on suitable card stock, without adhesive, and with labels. Digital images may not be substituted for either the black and white prints or the color prints, but may be included to augment the documentation. The photographs are to be based on 35 mm negatives.

4. The photographic documentation is to be agreed upon in prior consultation with the Ohio Historic Preservation Office and is to include at least 10 photographs of each of the two tunnels, and 10 photographs of the depot.

5. W&LE will ensure that the photographs are keyed to mapping and that they accurately show the conditions in and around the properties and that they accurately show any significant construction details, especially names and dates on the portals to the tunnels.

6. To the extent feasible and safe, W&LE will include interior photographs of the tunnels and depot.

7. W&LE will provide the approximate dates of construction of the tunnels and depot on the Ohio Historic Inventory Forms.

8. The STB's Section of Environmental Analysis, with the assistance of National Archives research personnel, will conduct an in-person search of records of the National

Archives, which include the valuation schedules of the former Interstate Commerce Commission, for any information on the tunnels and depot, and will provide a written report of the results of the search to W&LE and OHPO.

9. W&LE will provide original copies of the documentation to OHPO for review and approval prior to the abandonment and removal of the tracks. The documentation will be submitted to OHPO as a complete packet for review and approval. OHPO will have 60 days to review and comment on the completed documentation packet, but will make a good faith effort to complete its review sooner, if possible.

B. Additional Documentation:

1. After approval by OHPO, W&LE will provide original copies of the documentation above, including selected photographs, to the public libraries in Adena, Dillonvale, Cadiz and Steubenville.

C. Barricading of the Tunnels After Abandonment:

1. Should W&LE decide to fence or barricade the tunnel entrances after abandonment, W&LE will, to the extent feasible, construct any fencing or barriers to the tunnels without attaching to the architectural elements of the portals, tunnel entrances, or tunnel interior. If any attachments are required, W&LE will consult with OHPO to consider alternate designs to reduce or minimize impacts to the architectural elements. W&LE will offer OHPO an opportunity to comment on plans to construct fencing or barriers at the tunnels.

D. Discovery:

If any previously unidentified historic properties should be discovered, or if unanticipated effects to known historic properties should occur, W&LE shall immediately cease work in the immediate area and notify OHPO. With the review and approval of OHPO, W&LE will develop a plan in consultation with the STB to complete the proposed project while seeking to avoid, minimize, or mitigate the effects to the historic property.

II. Modification, Amendment, or Termination of the Agreement:

E. Amendments:

Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement. Any party to this agreement may propose to the other parties that it be amended. If any party to this agreement determines that the terms cannot be met or believes a modification is necessary, that party will promptly request consideration of an amendment. If the parties agree, then an amendment will be executed in the same manner as the original agreement.

F. Dispute Resolution:

Should OHPO, or W&LE, or any other consulting party object to any aspect of this agreement's implementation, the STB shall attempt to resolve the dispute by consulting with the objecting party and other consulting parties, as appropriate. If the STB is unable to resolve the dispute, then the STB shall seek comments from the Advisory Council on Historic Preservation in accordance with 36 CFR 800.7(a). The responsibility of the STB to carry out all actions under this agreement that are not subject to dispute will remain unchanged. The STB will take into account the comments of the Advisory Council on Historic Preservation in reaching a final decision on the dispute as described in 36 CFR 800.7(c). If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the Advisory Council on Historic Preservation to assist in resolving the dispute.

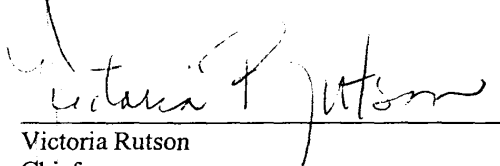
G. Duration:

If the proposed undertaking has not been implemented within five (5) years of the execution of this agreement, then the agreement shall be null and void, unless the signatories agree in writing to an extension for carrying out its terms.

The scope of this agreement is limited to this abandonment proceeding. Execution of this Memorandum of Agreement by STB and OHPO, concurred in by W&LE, and implementation of its terms, evidence that STB has afforded the Advisory Council on Historic Preservation an opportunity to comment on the abandonment of portions of the W&LE railroad line in Harrison and Jefferson Counties, Ohio, and that the STB has taken into account the effects of the undertaking on historic properties.

SIGNATURE OF THE PARTIES

SURFACE TRANSPORTATION BOARD



Victoria Rutson

Chief

Section of Environmental Analysis

Date: 3/18/03

STATE HISTORIC PRESERVATION OFFICE:

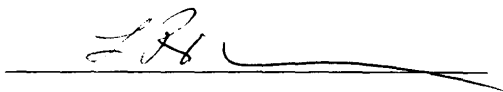


Mark Epstein, Department Head

Ohio Historic Preservation Office

Date: 6/18/03

WHEELING & LAKE ERIE RAILWAY COMPANY:



Date: 4/10/05

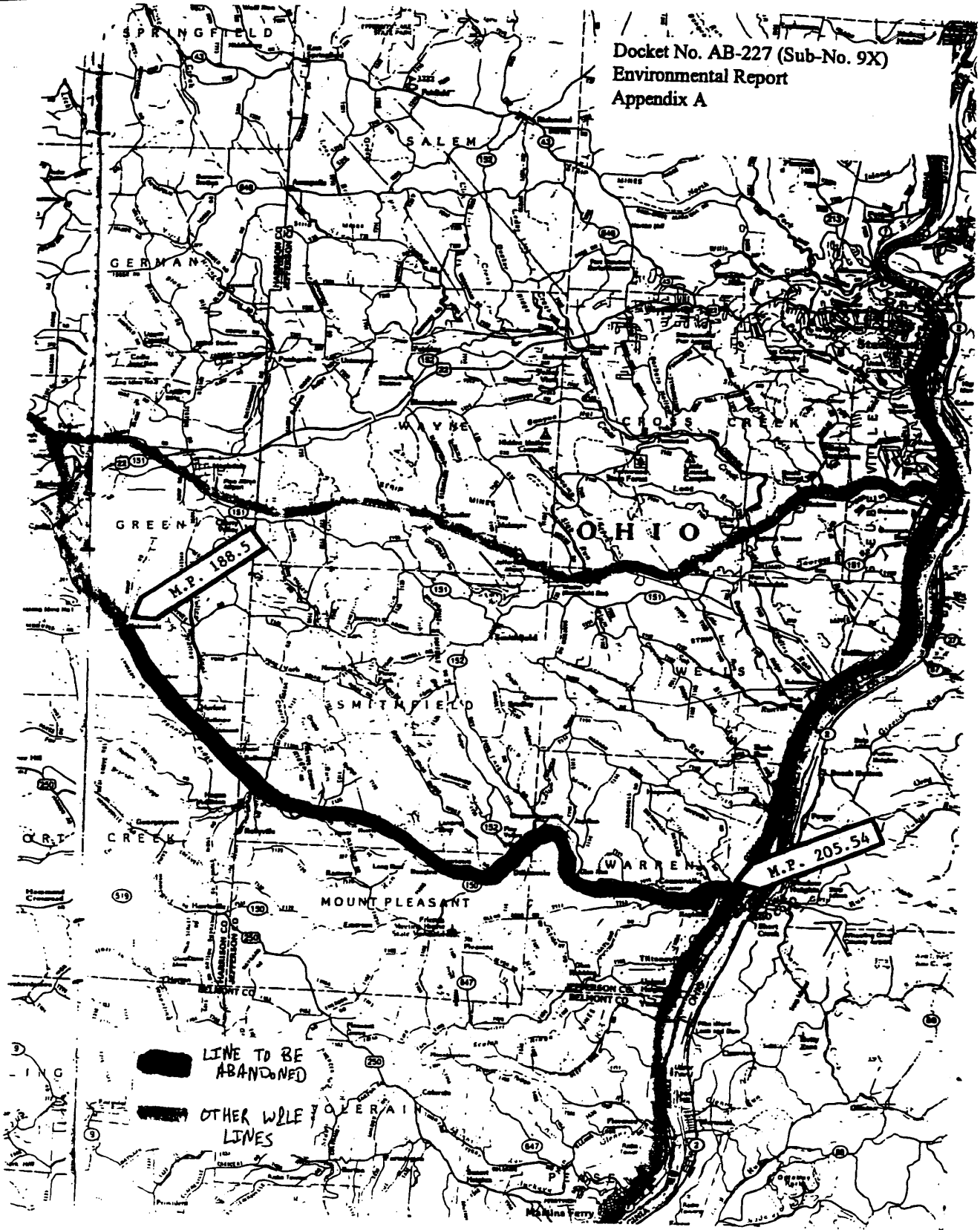
**ATTACHMENT A: PROJECT MAP SHOWING PROPERTIES WITH STANDARD
MILE POST MEASUREMENTS**

Adena Tunnel: Mile Post 191.94

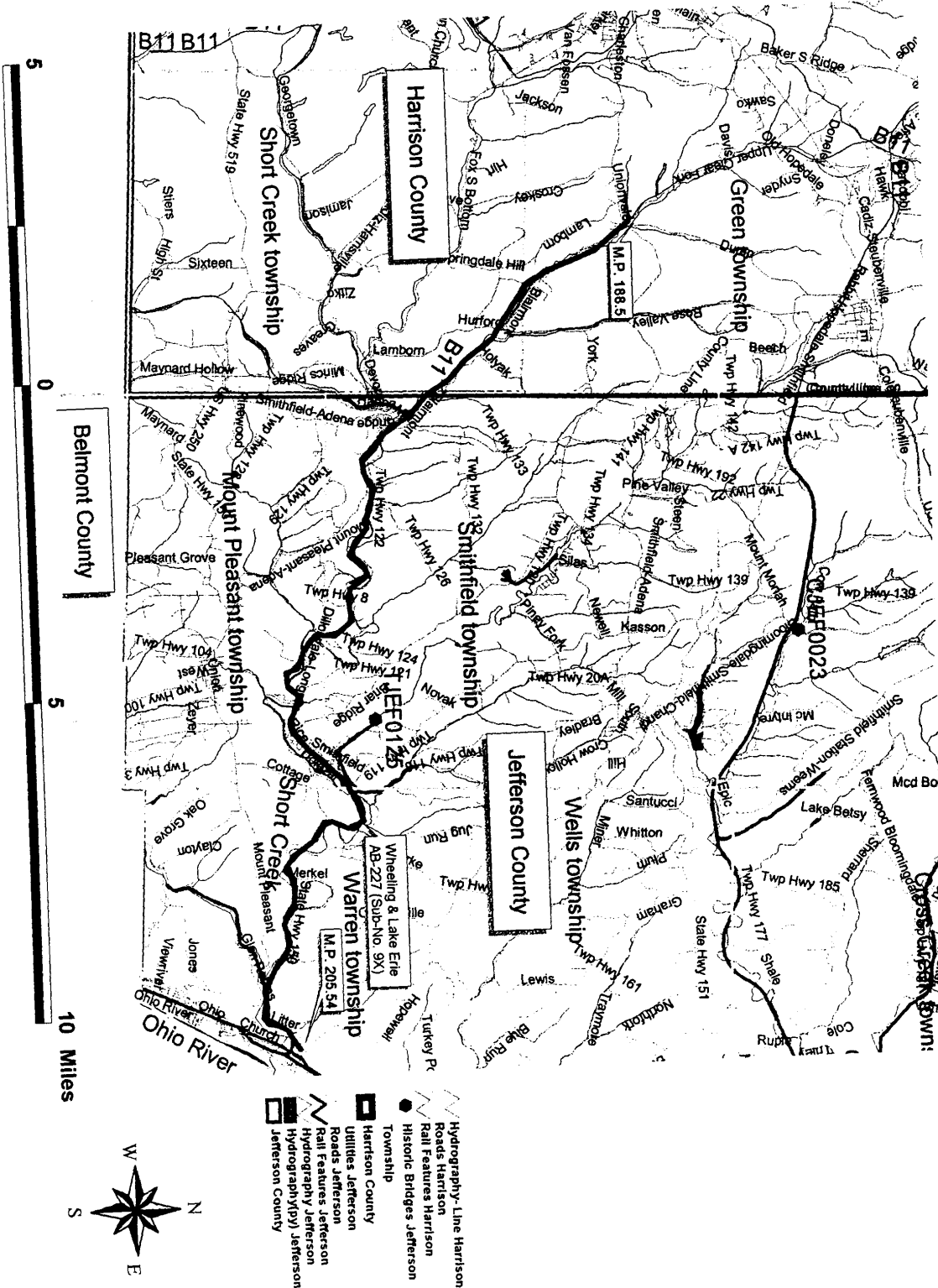
Long Run Tunnel: Mile Post 196.8

Dillonvale Depot: Mile Post 199.5

Docket No. AB-227 (Sub-No. 9X)
Environmental Report
Appendix A



Wheeling & Lake Erie Railway AB-227 (Sub-No. 9X)



**SURFACE TRANSPORTATION BOARD
OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS,
AND ADMINISTRATION**

MEMORANDUM

7/2/03

TO: Ann Newman, Environmental Coordinator
Office of Proceedings

FROM: Victoria Ruston, Chief 
Section of Environmental Analysis

RECOMMENDATION: **Remove Section 106 Condition in AB-227 (Sub-No. 9X) –
Wheeling & Lake Erie Railway Company – Abandonment
Exemption – in Harrison and Jefferson Counties, OH**

The decision in this proceeding, served October 19, 1999, imposed a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act (NHPA), 16. U.S.C. 470f.

The attached correspondence includes an executed Memorandum of Agreement (MOA) that was negotiated pursuant to the section 106 process. The filing of this MOA with the Advisory Council on Historic Preservation completes the Board's responsibilities under section 106 of NHPA.

We recommend that the section 106 condition imposed by the Board in this proceeding be removed.

Please let me or Rini Ghosh know if you need further information or justification.

Attachments

cc: Mr. David Snyder, Ohio Historical Society
Mr. William Sippel, Wheeling and Lake Erie Railway Company
Office of Congressional and Public Services (Public Docket) - 2 copies
SEA Chron

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

July 2, 2003

Mr. Don Klima, Director
Office of Planning and Review
Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

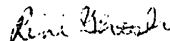
Re: AB-227 (Sub-No. 9X) – Wheeling & Lake Erie Railway Company –
Abandonment Exemption – in Harrison and Jefferson Counties, OH

Dear Mr. Klima:

The Section of Environmental Analysis (SEA) is the office within the Surface Transportation Board responsible for conducting the environmental review process pursuant to the National Environmental Policy Act, including the National Historic Preservation Act (NHPA). By letter dated February 11, 2002 (copy enclosed) SEA notified the Council of the finding of adverse effect to historic properties for the above-titled proceeding and provided the Council with required documentation.

Pursuant to 36 CFR 800.6(b)(1)(iv) of the regulations implementing section 106 of NHPA please find enclosed a copy of the Memorandum of Agreement (MOA) which resulted from the section 106 consultation process for the above-titled proceeding. The MOA will assist Wheeling & Lake Erie Railway Company in avoiding or mitigating any adverse effects resulting from the proposed abandonment. The filing of this MOA with the Council completes our compliance responsibilities under section 106 of NHPA.

Sincerely yours,



Rini Ghosh
Section of Environmental Analysis

cc: Mr. David Snyder, Ohio Historical Society
Mr. William Sippel, Wheeling and Lake Erie Railway Company
Office of Congressional and Public Services (Public Docket) - 2 copies
SEA Chron

Enclosures