

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB 1303X

**Somerset Railroad Corporation – Abandonment Exemption –
in Niagara County, N.Y.**

BACKGROUND

In this proceeding, Somerset Railroad Corporation (SRC) filed a petition under 49 U.S.C. § 10502 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Niagara County, New York. The rail line proposed for abandonment extends approximately 13.39 miles from Milepost 2.2 at Lockport to the end of the line at the gates of the decommissioned Somerset power generation station (the Line). A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If the Board grants the exemption, the railroad would be able to salvage track, ties, and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

The Line is in a largely rural area of western New York, and the width of the Line's right-of-way is generally 80 feet. According to SRC, the Line was constructed by SRC in 1982 to provide rail service to the Somerset power generation station, a coal-fired power plant owned by SRC's parent company, Riesling Power, LLC. The last unit coal train was received at the power plant in December 2019, and the power plant was decommissioned as of March 31, 2020. There are nine bridges on the Line; however, none is over 50 years old.

ENVIRONMENTAL REVIEW

SRC submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly because of the proposed abandonment of the Line, including salvage. SRC served the E&H Report on appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)]¹ implementing the National Environmental

¹ The E&H Report is available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "1303" "0" "X" sequentially in the four boxes for "Docket Number," then

Policy Act. The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to SRC, traffic has not moved on the Line since December 2019, and the only customer on the Line has ceased operations. Therefore, the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. Nor would the proposed abandonment adversely impact the development, use and transportation of energy resources or recyclable commodities or the transportation of ozone-depleting materials.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. Should the Board authorize the proposed abandonment, SRC intends to salvage the Line's rails, rail ties and other track materials but leave the bridges in place. SRC states that it intends to comply with applicable federal, state, and local water quality standards during salvage activities.

SRC requested comments from the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species under the Endangered Species Act (16 U.S.C. § 1531 *et seq.*). To date, USFWS has not provided comments. To identify protected species in the project area, OEA conducted a search of the USFWS Information for Planning and Consultation (IPaC) system.² No threatened or endangered species or critical habitat is listed in the project area. Therefore, OEA has determined that the proposed abandonment would have no impact on federally listed threatened and endangered species. OEA is providing USFWS – New York Field Office in Cortland, New York a copy of this Draft EA for review.

SRC requested comments from the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) regarding potential impacts to prime farmland and prime farmland soils. NRCS has not responded to date. Therefore, OEA is providing a copy of this Draft EA to NRCS – Lockport Service Center for review.

SRC also submitted the E&H Report to the U.S. Army Corps of Engineers, Buffalo District (USACE) for comments on potential permitting requirements under Section 404 of the Clean Water Act (33 U.S.C. § 1344). To date, OEA has not received a response from USACE.

selecting "Search." The E&H Report was filed on September 14, 2020 and a correction was filed on October 7, 2020.

² U.S. Fish and Wildlife Service, Information for Planning and Consultation (IPaC), <https://ecos.fws.gov/ipac/location/index> (last accessed November 3, 2020).

Because SRC does not intend to remove existing bridges, OEA does not anticipate that any salvage would occur within streams, wetlands and other waters of the United States that are regulated by USACE under the Clean Water Act. OEA is providing a copy of this Draft EA to the USACE for review.

The U.S. Environmental Protection Agency, Region 2 (USEPA) responded to SRC's E&H Report. USEPA stated that there are several impaired streams and several wetlands in the vicinity of the proposed abandonment, and best management practices should be used to avoid impacts to those areas. Because SRC does not intend to remove existing bridges, OEA does not anticipate the need for salvage activities to occur within streams and wetlands. However, erosion and sediment control measures may be appropriate depending on the proximity of streams and wetlands to proposed salvage activities. Accordingly, OEA is recommending that SRC consult with USEPA regarding the scope of proposed salvage activities and the appropriate best management activities that may need to be implemented. OEA is also providing a copy of this Draft EA for USEPA review.

SRC requested comments from the New York State Department of Environmental Conservation (NYDEC) regarding potential impacts from the proposed abandonment. To date, OEA has not received a response from NYDEC. Accordingly, OEA is providing a copy of this Draft EA to the NYDEC for review.

The National Geodetic Survey (NGS) has indicated that two geodetic survey markers are present in the right-of-way and could be disturbed by the proposed abandonment. Accordingly, OEA recommends a condition requiring SRC to notify NGS at least 90 days prior to beginning abandonment-related salvage activities to allow time for the geodetic survey markers to be preserved.

The proposed abandonment is near the New York coastal zone management area. SRC consulted with the New York Department of State, Office of Planning, Development & Community Infrastructure (State Coastal Zone Management Agency or CZMA) regarding the requirement for coastal management consistency certification under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.). In response, the New York CZMA stated that the proposed abandonment is located outside the regulated coastal area. Therefore, a coastal zone consistency review is not required.

Based on all the information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the following agencies for review and comment:

- U.S. Fish and Wildlife Service, New York Field Office, Cortland, New York,
- Natural Resources Conservation Service, Lockport Service Center, Lockport, New York,
- U.S. Army Corps of Engineers, Buffalo District, Buffalo, New York,

- U.S. Environmental Protection Agency, Region 2, New York, New York, and
- New York State Department of Environmental Conservation, Albany, New York.

HISTORIC REVIEW

SRC served the E&H Report on the New York State Office of Parks, Recreation and Historic Preservation (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).³ As part of its public outreach, SRC also placed a notice of the proposed abandonment in The Buffalo News on August 25, 2020 and notified local governments of the proposed abandonment. In an August 10, 2020 letter to SRC, the SHPO stated that “no historic properties, including archaeological and/or historic resources will be affected by this undertaking.”

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register of Historic Places. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad’s historic report, all relevant correspondence, and this Draft EA, which have been provided to the SHPO and made available to the public through posting on the Board’s website at www.prod.stb.gov.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development’s Tribal Directory Assessment Tool to identify federally recognized Tribes that may have ancestral connections to the project area.⁴ The database indicated that the following federally recognized Tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment:

- Seneca Nation of Indians,
- Seneca-Cayuga Nation,
- Tonawanda Band of Seneca, and
- Tuscarora Nation.

OEA is sending a copy of this Draft EA to these Tribes for review and comment.

³ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found at a link on the bottom of the Board’s website overviewing historic preservation at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

⁴ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed November 3, 2020).

CONDITIONS

OEA recommends that the following conditions be imposed on any decision granting abandonment authority:⁵

1. Somerset Railroad Corporation shall notify the National Geodetic Survey at NGS.Infocenter@noaa.gov at least 90 days prior to beginning abandonment-related salvage activities.
2. Somerset Railroad Corporation shall consult with the U.S. Environmental Protection Agency, Region 2 regarding the scope of proposed abandonment-related salvage activities and appropriate best management practices to protect streams and wetlands.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁶

⁵ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

⁶ Board decisions are available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records;" selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "1303" "0" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

TRAIL USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of notice of the petition for exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29). The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁷

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://prod.stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed in the comment field provided, and lengthier comments can be attached as Word, Adobe Acrobat, or other file formats. If you have any questions, please contact Dave Navecky by email at david.navecky@stb.gov or by phone at 202-245-0294.

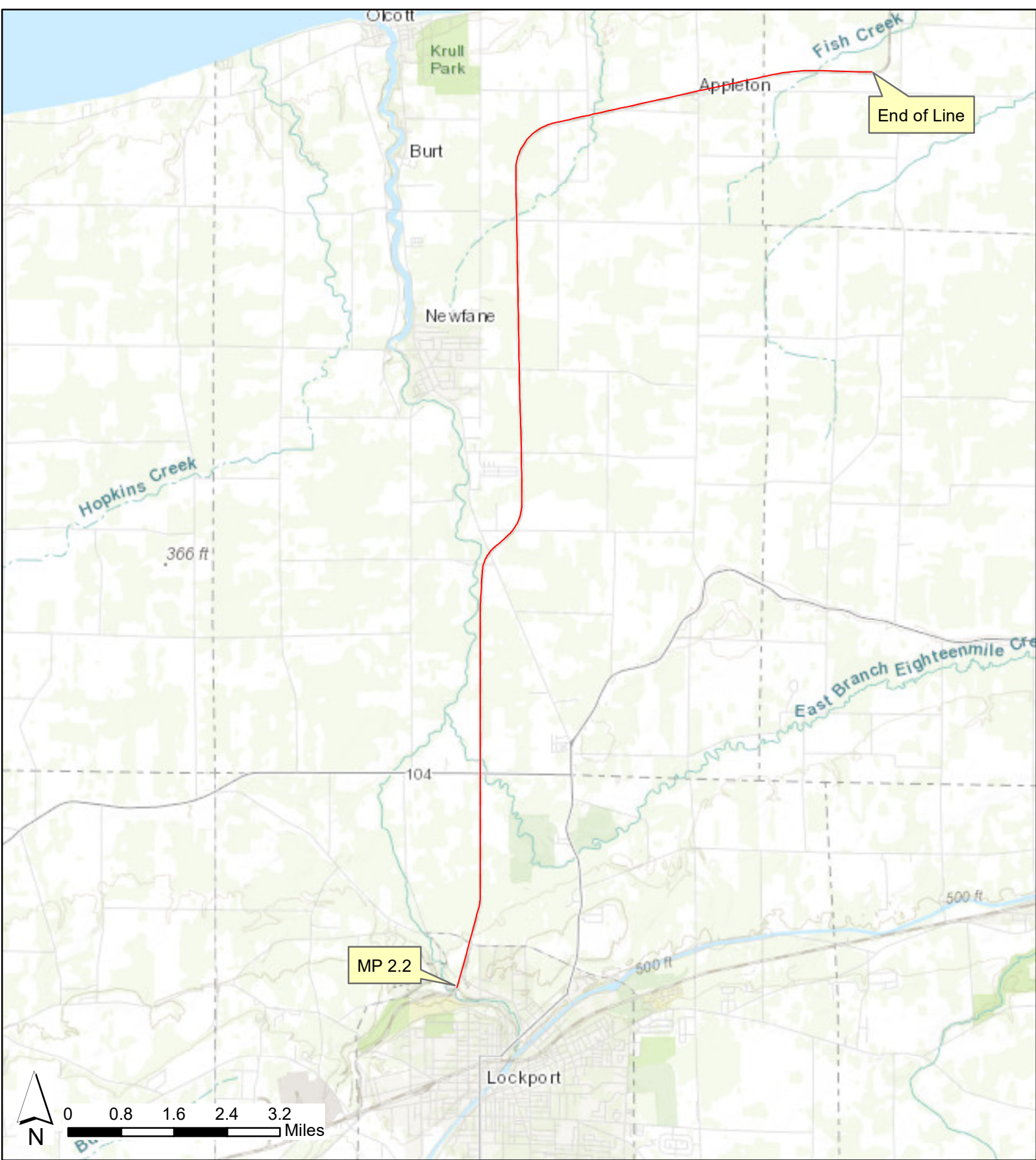
Date made available to the public: December 4, 2020.

Comment due date: January 4, 2021.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachments

⁷ Id.



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Legend

— the Line

Note: Maps produced by the STB's Office of Environmental Analysis are based on information provided by the applicant and are for reference purposes only.

