

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB 1300X

**Cattaraugus Local Development Corp. – Abandonment Exemption –
In Cattaraugus County, N.Y.**

BACKGROUND

In this proceeding, Cattaraugus Local Development Corporation (CLDC) is seeking an exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Cattaraugus County, New York. The rail line proposed for abandonment extends approximately 12.14 miles from milepost 426.5, in the Town of New Albion, to the city line of the City of Salamanca in the Town of Salamanca, which is near milepost 414.1 (the Line). CLDC states that milepost 414.1 is the closest mile marker to the southern boundary of the Line but the actual milepost, if it existed, would be milepost 414.36. 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, CLDC will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

CLDC, a not-for-profit corporation established to create community and economic development opportunities throughout Cattaraugus County, states that it acquired the Line in 2000 from the Cattaraugus County Industrial Development Agency (IDA). CLDC explains that IDA acquired the Line from the Trustees of the Erie Lackawanna Railway Company, pursuant to an order of the U.S. District Court for the Northern District of Ohio, Eastern Division, dated February 28, 1980. CLDC states that IDA contracted with the New York & Lake Erie Railroad Company (NY&LE) to operate IDA's railroad holdings, and by the early 1990s, the Line was no longer in operation. According to CLDC, NY&LE took steps toward initiating an abandonment proceeding in 1996, going as far as obtaining a docket number from the Board and providing notice to certain entities, but there is no record that NY&LE proceeded with a formal abandonment proceeding. CLDC asserts that NY&LE's actions led IDA to believe abandonment had been approved, and IDA treated the Line as if it had been legally abandoned.

CLDC states that, when it acquired the Line in 2000, it began developing the Line into the Senator Pat McGee Trail (McGee Trail) "as a Rails-to-Trails Program" and that the McGee Trail opened in 2005. In September 2016, CLDC began taking steps to transfer ownership of the Line to New York State for continued operation of the McGee Trail. CLDC states that, as part of

that process, it became aware, in May 2019, that a certificate of abandonment from the Board had never been recorded in the real property records in Cattaraugus County. According to CLDC, its research indicates that formal abandonment was never finalized.

On March 4, 2020, CLDC filed a petition for declaratory relief, requesting that the Board declare that the Line has been “de facto abandoned” pursuant to 49 U.S.C. § 10502, or, in the alternative, that CLDC may satisfy the requirements for an exempt abandonment under the Board’s exemption procedures pursuant to 49 U.S.C. § 10502. Because abandonment authority has not been granted for the Line, it remains a rail line subject to the Board’s jurisdiction. Given CLDC’s alternative request for a finding that CLDC may satisfy the requirements for an abandonment exemption, the Board docketed CLDC’s petition under Docket No. AB 1300X for consideration under the Board’s abandonment exemption procedures in its August 4, 2020 decision addressing CLDC’s petition for declaratory relief.

In its August 4, 2020 decision, the Board also directed CLDC to obtain acquisition authority before the abandonment proceeding could move forward because CLDC did not obtain acquisition authority from the Board when it purchased the Line in 2000. CLDC filed its notice of exemption on September 1, 2020 and modified its filing on September 8, 2020. Notice was served and filed in the Federal Register on September 24, 2020, and the exemption became effective on October 8, 2020.

ENVIRONMENTAL REVIEW

CLDC submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Line, including salvage. CLDC served the E&H Report on a number of 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 Policy Act. The Board’s Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

CLDC states that operations on the Line ceased in the early 1990s. CLDC began developing the Line into the McGee Trail when it acquired the Line in 2000, and the McGee Trail opened in 2005. 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.

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” “1300” “0” “X” sequentially in the four boxes for “Docket Number,” then selecting “Search.” The E&H Report was filed on November 16, 2020.

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. As discussed above, CLDC began developing the Line into the McGee Trail when it acquired the Line in 2000. The McGee Trail opened in 2005. Rails were removed and salvage activities were conducted at that time. CLDC states that abandonment of the Line could result in the removal of any remaining track and crossties.

The U.S. Environmental Protection Agency, Region 2 indicates that it does not have any comments or concerns at this time, and notes that the McGee Trail is a good example of the reuse of an old rail line for public recreation and enjoyment.

CLDC states that it does not believe that any prime agricultural land would be affected by the proposed abandonment.

The Line is not located within a New York State designated Coastal Management Area. Accordingly, the proposed abandonment would not affect any land or water uses in a coastal zone or result in any coastal zone impacts.

CLDC states that no wildlife sanctuaries or refuges, National or State parks or forests would be adversely affected by the proposed abandonment.

CLDC 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. 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 The following four species were identified as federally endangered or threatened species that may potentially be present in the project area: Northern Long-eared Bat, Clubshell clam, Northern Riffleshell clam, and Raged Bean clam. According to the IPaC report, there is no critical habitat for these species in the project area. OEA has determined that these federally listed threatened or endangered species would not be affected by abandonment-related salvage activities. As previously discussed, the Line was developed into the McGee Trail which opened in 2005. Most of the track was removed and salvage activities were conducted at that time. Salvage conducted in the project area as a result of the proposed abandonment, if any, would be minimal. OEA is providing USFWS, New York Ecological Services Field Office in Cortland a copy of this EA for its review.

² U.S. Fish and Wildlife Service, Information for Planning and Consultation System, <http://ecos.fws.gov/ipac> (last visited November 20, 2020).

OEA does not believe that there would be any air emissions or noise associated with the proposed abandonment because, as previously discussed, there would be no salvage activities conducted in the project area as a result of the proposed abandonment.

Based on all 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 USFWS for review and comment.

HISTORIC REVIEW

CLDC served the E&H Report on the New York State Department of Parks, Recreation, and Historic Preservation (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).³ Based on available information, the SHPO has submitted comments indicating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment. Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

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. 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 <https://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 (TDAT) 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 APE of the proposed abandonment: Seneca Nation of Indians, Seneca-Cayuga Nation, and Tonawanda Band of

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 20, 2020).

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

CONDITIONS

OEA recommends that no conditions be imposed on any decision granting abandonment authority.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, abandonment of the Line will 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.⁵

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 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.⁶

⁵ 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" "1300" "0" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

⁶ Id.

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

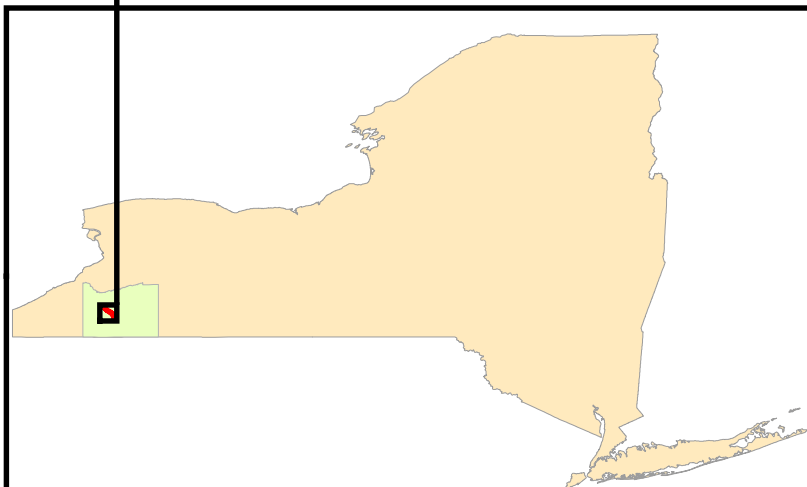
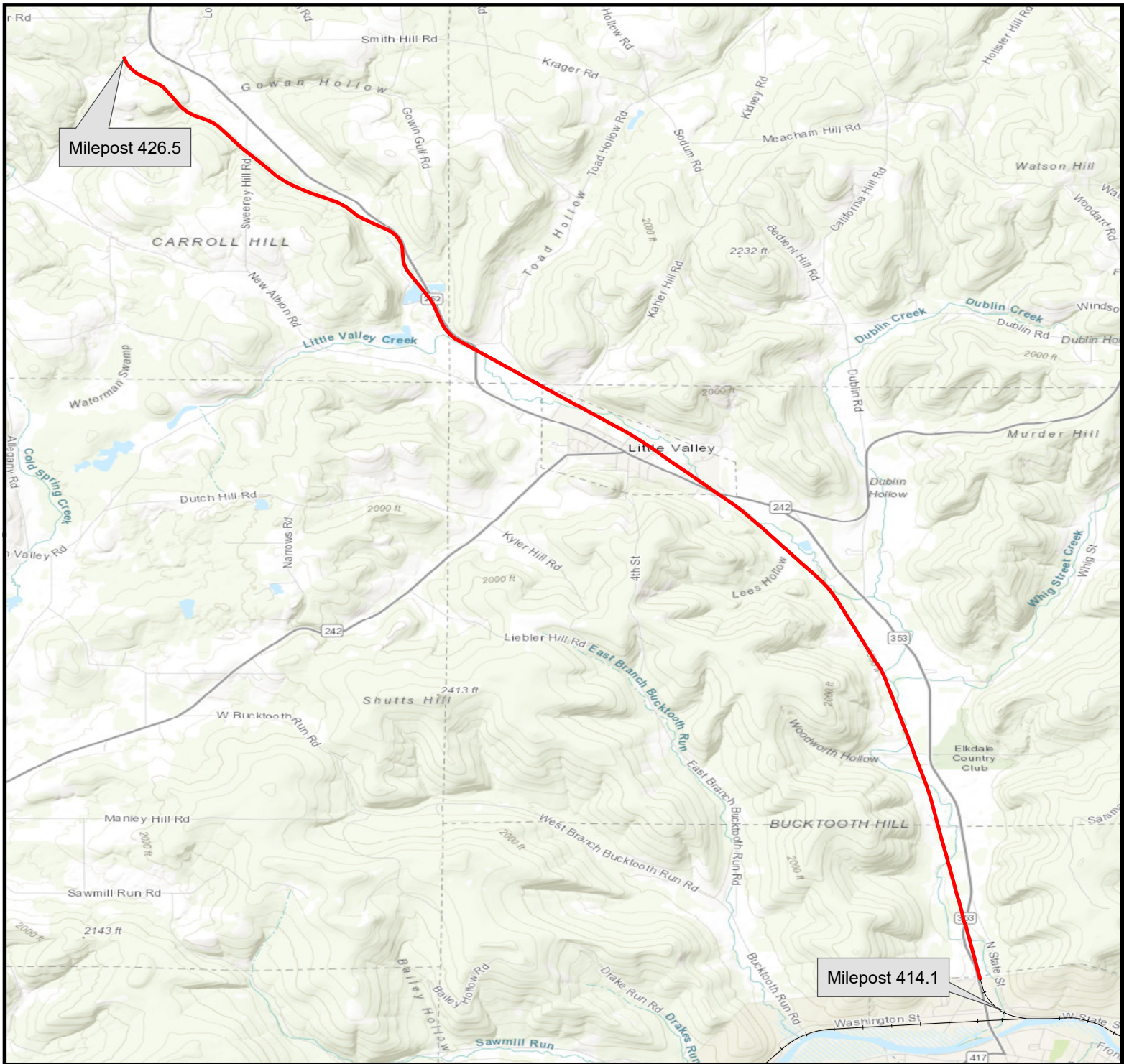
As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://prod.stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed 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 Kenneth Blodgett by email at kenneth.blodgett@stb.gov or by phone at 202-245-0305.

Date made available to the public: December 18, 2020.

Comment due date: January 15, 2021.

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

Attachment



Project location in Cattaraugus County, New York

Docket No. AB 1300X
Cattaraugus Local Development Corp.
Abandonment in Cattaraugus County, N.Y.

The Line
Other Rail Lines
Cattaraugus County

0 0.5 1 2 3 Miles

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