

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

SUPPLEMENTAL FINAL ENVIRONMENTAL ASSESSMENT

Docket No. AB 1243X

**Patriot Woods Railroad LLC — Abandonment Exemption —
in Cowlitz County, Wash.**

In this proceeding, Patriot Woods Railroad, LLC (PW) filed a notice of exemption with the Surface Transportation Board (Board) under 49 C.F.R. § 1152.50 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Cowlitz County, Washington. The rail line proposed for abandonment extends approximately 21.5 miles from milepost 8.5 at Ostrander Junction to milepost 30 in Cowlitz County (the Line). By decision dated September 29, 2017, the Board imposed a historic preservation condition pursuant to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108.

The Section 106 historic preservation condition imposed by the Board in its September 29, 2017 decision requires PW to: (a) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effects) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the NHPA has been completed; (b) report back to the Office of Environmental Analysis (OEA) regarding any consultations with the Washington State Department of Archaeology and Historic Preservation (Washington SHPO), appropriate federally recognized tribes, and the public; and (c) not file a consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

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

Conclusions

For the reason stated above, OEA recommends that the Board remove the Section 106 condition that was imposed in the September 29, 2017 decision.

By the Board, Danielle Gosselin, Acting Director, Office of Environmental Analysis.

**MEMORANDUM OF AGREEMENT
AMONG THE SURFACE TRANSPORTATION BOARD,
PATRIOT WOODS RAILROAD, LLC. AND
WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC
PRESERVATION**

**REGARDING DOCKET NO. AB 1243X
PATRIOT WOODS RAILROAD LLC
—ABANDONMENT EXEMPTION—
IN COWLITZ COUNTY, WASHINGTON¹**

WHEREAS, On August 11, 2017, Patriot Woods Railroad, LLC (“PW”) and Columbia & Cowlitz Railway, LLC (“CLC”) filed a notice of exemption with the Surface Transportation Board (“Board”) under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. §10903 for PW to abandon and CLC to discontinue service over, an approximately 21.50-mile line between milepost 8.5 at Ostrander Junction and the end of the line at milepost 30 in Cowlitz County, Wash. (the “Line”). The Line is approximately 20-feet wide, 10 feet on each side of the centerline; and,

WHEREAS, the rail line abandonment constitutes an Undertaking, as defined in 36 C.F.R. § 800.3(a); and,

WHEREAS, in a decision served on September 29, 2017, the Board imposed a condition on the proposed abandonment that requires PW to retain its interest in and take no further steps to alter the historic integrity of all historic properties within the project right-of-way (the “Area of Potential Effect” or “APE”) that are eligible for listing or are listed on the National Register of Historic Places (“NRHP”) until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108 (“NHPA”), has been completed and the Board has removed this condition; and,

WHEREAS, by decision and notice of interim trail use or abandonment (“NITU”) served on September 29, 2017, the Board reopened the proceeding and implemented interim trail use/rail banking under the National Trails System Act (“Trails Act”), 16 U.S.C. § 1247(d), and 49 C.F.R. §1152.29; and,

WHEREAS, on August 24, 2018, PW notified the Board that it had terminated negotiations with Cowlitz County for interim trail use/rail banking over the Line; and,

WHEREAS, by decision served on November 2, 2018, the Board vacated the NITU issued on September 29, 2017, and reinstated PW’s abandonment authority, subject to any outstanding conditions; and,

¹ In the same jointly filed notice, Columbia & Cowlitz Railway, LLC sought to discontinue service over the same rail line. *Columbia & Cowlitz Ry.—Discontinuance of Serv. Exemption—in Cowlitz Cty., Wash.*, Docket No. AB 1244 (Sub-No. 1X).

WHEREAS, this MOA was developed to address historic resources located within the APE for the Line; and,

WHEREAS, in rail line abandonment proceedings before the Board, the railroad right-of-way constitutes the APE, defined at 36 C.F.R. §800.16(d). The APE for both the archaeological and historic resources involved in this abandonment consists of the Line right-of-way(generally 10 feet from the center line of the track); and,

WHEREAS, the Washington State Department of Archaeology and Historic Preservation, acting in its designated capacity as the State of Washington’s Historic Preservation Officer (“Washington SHPO”), has concurred with the Board’s determination that the Line (known historically as the Columbia & Cowlitz Railway) is eligible for listing in the NRHP; and,

WHEREAS, the Board, through its Office of Environmental Analysis (“OEA”), consulted with the Washington SHPO pursuant to regulations at 36 C.F.R. Part 800, implementing Section 106 of the NHPA, and determined that the proposed abandonment will have an adverse effect on the historic resource; and

WHEREAS, OEA wrote to the following Tribes informing them of the Undertaking and requesting their comments: Confederated Tribes of Siletz Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; and the Cowlitz Indian Tribe. The Cowlitz Indian Tribe commented that, if archaeological or historic materials are encountered during project work, PW should cease work in the immediate area, notify the Tribe and the Department of Archaeology and Historic Preservation (SHPO), and take the following actions: (1) implement reasonable measures to protect the discovery site, including any appropriate stabilization or covering, (2) take reasonable steps to ensure the confidentiality of the discovery site, and (3) take reasonable steps to restrict access to the discovery site. These measures are added as stipulations to this MOA; and,

WHEREAS, this MOA was developed in consultation with PW and with the Washington SHPO pursuant to 36 C.F.R. §800.6. Both are signatories to this MOA; and,

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the Board has notified the Advisory Council on Historic Preservation (“ACHP”) of its adverse effect determination, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and,

WHEREAS, pursuant to 36 C.F.R. §800.6 the Board has consulted with the Washington SHPO and PW regarding ways to avoid, minimize, or mitigate potential effects to historic resources as a result of abandonment and the Board, Washington SHPO, and PW have all agreed upon the measures described below under “Stipulations;” and,

WHEREAS, the definitions listed in 36 C.F.R. §800.16 are applicable throughout this MOA.

NOW, THEREFORE, the Board, Washington SHPO, and PW agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the

effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking, and all of its parts until this MOA expires or is terminated. Additionally, the Board, Washington SHPO, and PW agree that the execution of the MOA and its subsequent submission to ACHP in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall pursuant to 36 C.F.R. § 800.6(c), be considered an agreement with ACHP for purposes of NHPA. Execution and submission of the MOA, and implementation of its terms, evidences that the Board has afforded the ACHP an opportunity to comment on the proposed action relating to the Line, and that the Board has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the NHPA for the Undertaking.

STIPULATIONS

The Board shall ensure that the following mitigation measures are carried out:

I. MITIGATION MEASURES

- A. In consultation with the DAHP, PW shall prepare a historic context document regarding the history, development, and construction of the CCR line from Olander Junction to milepost 30. To be included in the documentation are copies of any historic images, plans, and drawings of the CCR. The narrative history shall be accompanied by a photographic record which documents extant historic structures and small elements of the line which may or may not receive individual Historic Property Inventory Forms. These shall include but not limited to: railroad grade prisms, trestles, bridges, tunnels, signs, switches, wyes, culverts, buildings, rolling stock, significant horizontal and vertical grade alignments. The context will be accompanied by completion of no less than nine (9) Historic Property Inventory (HPI) forms; one for the overall alignment, and additional HPI forms to record extant historic structures, objects, and features of the CCR line that are 45 years in age or older and that would be considered as character-defining features (such as bridges, tunnels, and trestles) contributing to the National Register eligibility of the CCR. These resources shall be recorded at the intensive level. These tasks shall be performed by a qualified historic preservation professional meeting the Secretary of the Interior's Professional Qualifications as defined in 36 CFR Part 61 in architectural history or history. Expertise in industrial/engineering history is highly desirable. At least one draft of the context and HPIFs shall be provided to DAHP for review and comment before completion. This shall be completed in compliance with the Washington State Standards for Cultural Resources Reporting, updated as January 2, 2020.²
- B All Inventories will be submitted to Washington SHPO using the web-based WISAARD database. These documents shall be completed in compliance with the Washington State Standards for Cultural Resources Reporting, updated as January 2, 2020. PW shall notify OEA and DAHP, in writing that it has completed the Inventories using the WISAARD database. The final product shall be delivered to DAHP and

² Washington State Standards for Cultural Resource Reporting, <https://dahp.wa.gov/project-review/washington-state-standards-for-cultural-resource-reporting> (last accessed December 18, 2020).

other parties of interest, such as the Cowlitz County Historical Society in a hard copy and electronic format which meet archival standards.

II. DURATION

This MOA will expire if its terms are not carried out within 2 (two) years from the date of its execution. Prior to such time, the Board may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V below.

PW shall notify the Board and Washington SHPO in writing when it completes the mitigation measures set forth in Stipulation I by providing copies of the specified deliverables to Washington SHPO.

III. DISPUTE RESOLUTION

Should any signatory party to the MOA at any time object to any actions proposed or the manner in which the terms of the MOA are implemented, the Board shall consult with such party to resolve the objection. If the Board determines that such objection cannot be resolved, the Board will:

- A. Forward all documentation relevant to the dispute, including the Board's proposed resolution, to the ACHP. The ACHP shall provide the Board with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Board shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The Board will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day time period, the Board may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Board shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.
- C. The Board's responsibility to carry out all other actions subject to the terms of the MOA that are not the subject of the dispute remain unchanged.

IV. UNANTICIPATED DISCOVERIES

- A. Procedures for Unanticipated Discoveries of Cultural Resources and Historic Properties.

1. There are no known archaeological sites located within the right-of-way. However, if PW decides to salvage³ the rail line, and planned salvage operations would require ground disturbance, then PW shall notify Washington SHPO, and shall co-ordinate and schedule a pre-salvage meeting in which an archaeologist meeting the Secretary of Interior's professional qualification standards⁴ shall provide an overview of potential unanticipated cultural finds.
2. If any unreported or unanticipated archaeological sites or cultural resources are discovered, PW shall:
 - a. Immediately cease all work within 100 feet of the discovery;
 - b. Clearly mark and secure the area of discovery;
 - c. Implement interim measures to protect the discovery from looting and vandalism; and
 - d. Notify OEA, federally recognized Tribes, and the Washington SHPO pursuant to 36 C.F.R. §800.13(b).
3. Upon notification of the discovery, OEA shall consult with the Washington SHPO, federally recognized Tribes, PW, and other consulting parties, if any, to determine the NRHP eligibility of the discovery and whether appropriate mitigation measures, such as protection in place or archaeological data recovery plans, are necessary.
 - a. OEA, in consultation with the Washington SHPO and appropriate federally recognized Tribes, shall have 30 calendar days following notification to determine the NRHP eligibility. OEA may assume the newly discovered property to be eligible for the NRHP.
 - b. If the find is determined to be potentially significant, OEA shall consult with the Washington SHPO and appropriate federally recognized Tribes regarding appropriate measures for site treatment pursuant to 36 C.F.R. §800.6(a). Once presented, the Washington SHPO and federally recognized Tribes will have 30 calendar days to provide their objections or concurrence on the proposed actions. Mitigation measures may include:
 - i. Formal archaeological evaluation of the site;
 - ii. Visits to the site by the Washington SHPO and/or appropriate Tribes; and/or
 - iii. Preparation and implementation of a mitigation plan by OEA in consultation with federally recognized Tribes for approval by the Washington SHPO.

³ Salvage activities following abandonment of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any structures that may be present on the 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.

⁴ See 62 FR 33708.

- B. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity that may cause further disturbance to those remains will cease. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and determine whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then he or she will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected Tribes of the find. The State Physical Anthropologist will determine whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected Tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.
- C. Any report on unanticipated discoveries shall follow (1) procedures for the processing, analysis, and curation of collected materials as described in the ACHP's Handbook Treatment of Archaeological Properties, Part 111 of the Secretary of the Interior's Guidelines (48 FR 44734-37), and (2) currently accepted standards for analysis and curation of archaeological remains.

V. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VI. TERMINATION

If any signatory to the MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation V above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, the Board must either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The Board shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the Board and Washington SHPO and implementation of its terms evidence that the Board has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

VII. Counterparts

The MOA may be executed in any number of counterparts, each of which shall be an original, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

VIII. Effective Date

This MOA will take effect on the date that it has been executed by the Board, PW, and Washington SHPO.

SIGNATORY PARTIES:

SURFACE TRANSPORTATION BOARD

By:  _____ Date: 6/11/2021
Danielle Gosselin
Acting Director, Office of Environmental Analysis

WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC
PRESERVATION

By: Allyson Brooks Date: 12/21/2020

PATRIOT WOODS RAILROAD, LLC.

By:  _____ Date: 6-3-21