

SERVICE DATE – JANUARY 31, 2023

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB 541 (Sub-No. 3X)

**Portland & Western Railroad, Inc. – Abandonment Exemption –
In Washington County, Or.**

BACKGROUND

In this proceeding, Portland & Western Railroad, Inc. (PNWR) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking an exemption from the prior approval requirements of 49 U.S.C. § 10903 for the abandonment of a line of railroad in Washington County, Oregon. The rail line proposed for abandonment extends approximately 5.6 miles from milepost 10.28 in Forest Grove, Or. to milepost 4.68 in Hillsboro, Or. (the Line). A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If the notice becomes effective, the railroad will 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 within Zip Codes 97116, 97113, 97123, and 97124, entirely in Washington County, Or. According to PNWR, the Line is located in the suburbs of Portland and is crossed by several local roadways.

PNWR states that the Line has been out of service since November 2015 and because the Line is stub-ended, it provided no overhead traffic. PNWR states that because it planned to file a notice of exemption in February 2020, it served an Initial Environmental and Historic Report (Initial E&H Report) on the relevant agencies and the Oregon State Historic Preservation Office. However, PNWR did not file its notice of exemption in 2020 and has now provided a Revised Environmental and Historic Report (Revised E&H Report). PNWR owns a perpetual freight easement for the Line, as well as the rail and track materials, and the underlying property is owned by the Oregon Department of Transportation (ODOT). PNWR states that salvage, if any, would take place within the right-of-way and would be surface work only and would not disturb subsurface resources.

ENVIRONMENTAL REVIEW

As explained above, PNWR submitted a Revised 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. PNWR served its Revised E&H Reports 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

As noted above, PNWR states no local traffic or overhead traffic has moved over the Line in the last two years. 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. PNWR states that, the right-of-way itself would be used to access and remove the track material. According to PNWR, it intends to remove, sell, and salvage the rail ties and track and remove and re-use some of the crossing warning systems.

Land Use

Because the Line has been out of service since 2015 and because abandonment-related salvage activities would be limited in scope, OEA does not anticipate impacts to land use.

¹ The Revised E&H Report is available for viewing on the Board's website at www.stb.gov by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "541" "3" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The Revised E&H Report was filed on November 23, 2022.

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The National Geodetic Survey (NGS) has indicated that no geodetic survey markers will be affected by the proposed abandonment. Therefore, no further consultation with NGS is recommended.

Based on PNWR's Revised E&H Report and OEA's review of available information, the Line does not pass through and is not immediately adjacent to any state parks or forests, national parks or forests, or wildlife sanctuaries. Accordingly, no mitigation related to protected areas is warranted or recommended.

Safety

OEA does not believe that the proposed abandonment would have any adverse effect on public health or safety because of the limited scope of salvage activities.

Biological Resources

PNWR 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. OEA conducted a search of the USFWS Information for Planning and Consultation (IPaC) system to obtain a list of threatened and endangered species.² IPaC identified eight protected threatened or endangered species and one candidate species in the area of the proposed abandonment:

Pacific Marten, Coastal Distinct Population Segment (*Martes caurina*), an threatened mammal

Marbled Murrelet (*Brachyramphus marmoratus*), a threatened bird

Northern Spotted Owl (*Strix occidentalis caurina*), a threatened bird

Streaked Horned Lark (*Eremophila alpestris strigata*), a threatened bird

Fender's Blue Butterfly (*Icaricia icarioides fenderi*), a threatened insect

Monarch Butterfly (*Danaus plexippus*), a candidate insect

Kincaid's Lupine (*Lupinus sulphureus ssp. kincaidii*), a threatened flowering plant

Nelson's Checker-mallow (*Sidalcea nelsoniana*), a threatened flowering plant

Willamette Daisy (*Erigeron decumbens*), an endangered flowering plant

Additionally, nine migratory bird species were identified. OEA notes that the Line does not cross critical habitat for any federally listed threatened or endangered species. Because there would be no disturbance to their natural habitat (the lack of any tree felling or suitable habitat likely occurring within the developed rail right-of-way), the limited scope of salvage-related

² U.S. Fish and Wildlife Service, IPaC Information for Planning and Consultation Tool, <https://ecos.fws.gov> (last accessed January 19, 2023), Project Code: 2023-0035787.

activities, and the absence of any critical habitat, OEA has determined that the proposed abandonment would have ***no effect*** on threatened or endangered species. USFWS's Oregon Fish and Wildlife Office commented that it does not disagree with a ***no effect*** determination to the species listed above, from the IPaC system. OEA is providing USFWS – Region 1 and the Oregon Fish and Wildlife Office a copy of this Draft EA for review.

Water Resources

The Oregon Department of Land Conservation and Development has indicated that the project is not in Oregon's coastal zone. Therefore, no further consultation is required.

The U.S. Army Corps of Engineers Portland District (the Corps) commented that if there is any discharge of fill material into waters of the United States or adjacent wetlands, ditches, swales, creeks or rivers, then a Corps permit, pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, may be necessary. Accordingly, OEA is recommending a condition requiring PNWR to consult with the Corps prior to commencement of salvage-related activities regarding its requirements, and if applicable, comply with the reasonable requirements of the Corps.

The Oregon Department of Environmental Quality (ODEQ) responded via telephone that ODEQ permitting may be required. Therefore, OEA is recommending that any decision granting abandonment authority be conditioned to include consultation with ODEQ to confirm whether permitting is necessary.

Air Quality and Noise

OEA believes that any air emissions associated with abandonment activities would be temporary and would not have a significant impact on air quality. Similarly, any noise related to abandonment activities would also be temporary and should not have a significant impact on the area surrounding 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 the following agencies for review and comment: USFWS – Region 1, USFWS Oregon Fish and Wildlife Office, the Corps (Portland District), and ODEQ.

HISTORIC REVIEW

PNWR served its Revised E&H Report on the Oregon State Historic Preservation Office (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).³ OEA has not heard from the SHPO in response to the Revised E&H Report and, therefore, has not been able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register of Historic Places. Accordingly, OEA is recommending a condition requiring the railroad to 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 Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process.

Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://www.stb.gov/resources/environmental/historic-preservation-overview>.

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 right-of-way (the APE) of the proposed abandonment: Confederated Tribes of Siletz Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon Confederated Tribes of the Warm Springs Reservation of Oregon. Accordingly, 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://www.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 January 24, 2023).

CONDITIONS

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

1. Portland & Western Railroad, Inc. (PNWR) shall consult with the U.S. Army Corps of Engineers (the Corps) prior to beginning any abandonment-related salvage activities that could result in the discharge of fill material into waters of the U.S., including wetlands, ditches, swales, creeks or rivers. PNWR shall follow the Corps' reasonable requirements for obtaining a Corps permit under Section 404 of the Clean Water Act, if the Corps determines that such a permit would be necessary.
2. Portland & Western Railroad, Inc. (PNWR) shall 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 Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. PNWR shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the State Historic Preservation Office, Tribal Historic Preservation Office (if on tribal lands), and any other Section 106 consulting parties that have been identified and the public. PNWR may not file its 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 this condition.

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 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.

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.

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

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 the notice of 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

OEA encourages interested parties to submit their comments on the Draft EA electronically through the Board's website at <https://www.stb.gov/>. From the Board's home page, select "File an Environmental Comment" below the "Need Assistance?" button. Log-in accounts are not needed to file environmental comments electronically, and brief comments can

⁶ Board decisions are available for viewing on the Board's website at www.stb.gov by clicking "Search STB Records;" selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "541" "3" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

⁷ Id.

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be typed in the comment field, and lengthier comments can be attached as Word, Adobe Acrobat, or other file formats.

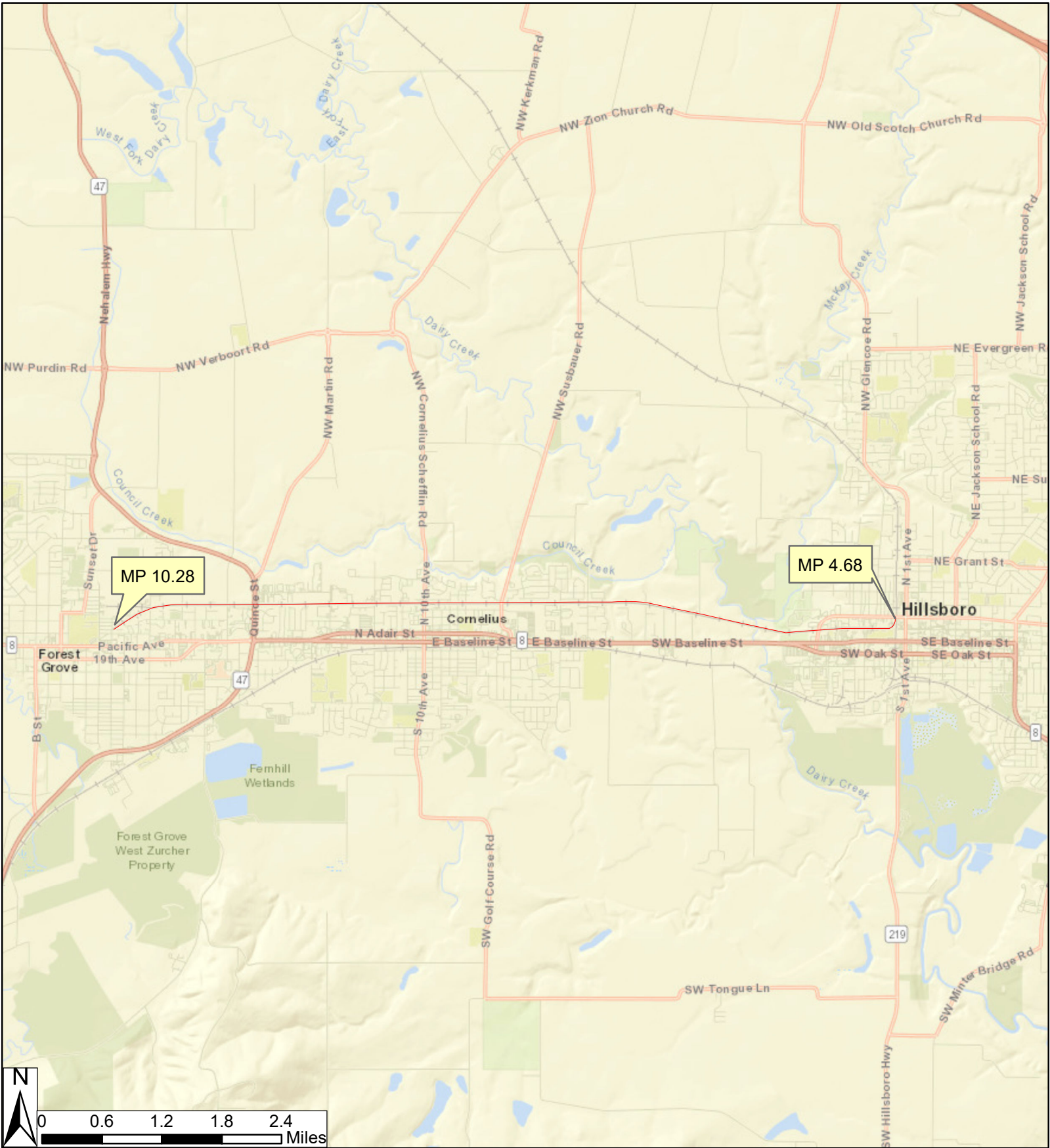
Alternatively, comments submitted by mail should be addressed to: Elizabeth Webster, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, Attention: Environmental Filing, Docket No. AB 541 (Sub-No. 3X). If you have any questions, please contact Elizabeth Webster by email at Elizabeth.Webster@stb.gov or by phone at 202-245-0387.

Date made available to the public: January 31, 2023.

Comment due date: February 15, 2023.

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

Attachment



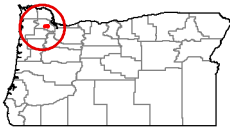
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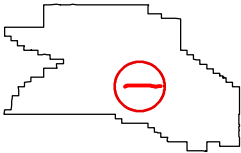
Legend

 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.



Massachusetts



Hampshire County