



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

May 24, 2024

Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Townson, MD 21204

By email at lou@lgraillaw.com

**Re: Docket No. AB 1244X, Columbia & Cowlitz Railway, LLC – Abandonment
Exemption – in Cowlitz County, Wash.; Circulation of Draft Memorandum
of Agreement**

Dear Mr. Gitomer:

On August 11, 2017, Columbia & Cowlitz Railway, LLC (CLC) filed a notice of exemption under 49 CFR § 1152.50 with the Surface Transportation Board (Board) seeking exemption from the requirements of 49 U.S.C. § 10903 to abandon a line of railroad located in Cowlitz County, Washington. The rail line proposed for abandonment extends approximately 7 miles from milepost 1.5 near Longview, Washington to milepost 8.5 at Ostrander Junction (the Line). If the Board grants abandonment authority, CLC will be able to salvage any track and related material from the rail corridor, dismantle any rail-related structures within the corridor, and dispose of the right-of-way. The Board's approval of this proposed abandonment is considered an undertaking under Section 106 of the National Historic Preservation Act (NHPA).

The Board's Office of Environmental Analysis (OEA) is responsible for ensuring the Board's compliance with the National Environmental Policy Act and related environmental laws, including NHPA. In consultation with the Washington State Department of Archaeology and Historic Preservation (SHPO), in 2017, OEA determined that the Line proposed for abandonment is part of the approximately 31.3-mile Weyerhaeuser Woods Railroad, which is an historic property eligible for listing in the National Register of Historic Places. The Line, as part of the Weyerhaeuser Woods Railroad, is significant for its association with the broader rail system of the Weyerhaeuser timber company, that rail system's contributions to American railroading history, and the development of the logging industry in Washington.

OEA further determined, in consultation with the SHPO, that the proposed abandonment could have an adverse effect on the Weyerhaeuser Woods Railroad. OEA is continuing consultation with the SHPO and the other Section 106 consulting parties on methods to avoid, reduce, or mitigate adverse effects, and has prepared the attached Draft Memorandum of Agreement (Draft MOA) for your information and review. OEA is providing a 30-calendar day

review period for the Draft MOA, and comments are due to be submitted by June 24, 2024.

Comments can be submitted via the Board's website under the "Environmental Comments" tab or can be emailed to Alan Tabachnick, the Board's Federal Preservation Officer at alan.tabachnick@stb.gov. If you have any questions or require additional information, please contact Mr. Tabachnick at 202-245-0367 or via email. We look forward to your comments on the Draft MOA.

Sincerely,

A handwritten signature in dark ink, appearing to read "Danielle Gosselin". The signature is fluid and cursive, with the first name "Danielle" and last name "Gosselin" clearly distinguishable.

Danielle Gosselin
Director
Office of Environmental Analysis

Enclosure

**MEMORANDUM OF AGREEMENT
AMONG THE SURFACE TRANSPORTATION BOARD,
COLUMBIA & COWLITZ RAILWAY, LLC., AND
WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC
PRESERVATION REGARDING DOCKET NO. AB 1244X**

**COLUMBIA & COWLITZ RAILWAY LLC
- ABANDONMENT EXEMPTION –
IN COWLITZ COUNTY, WASHINGTON**

WHEREAS, On August 11, 2017, 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 CLC to abandon an approximately 7-mile rail line between milepost 1.5 at Longview and milepost 8.5 at Ostrander Junction in Cowlitz County, Wash. (the Line). The Line is approximately 50-100 feet wide; 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 CLC 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 May 24, 2023, Cowlitz County notified the Board that it was withdrawing its request for interim trail use/rail banking over the Line; and

WHEREAS, by decision served on May 25, 2023, the Board vacated the NITU issued on September 29, 2017, and reinstated CLC’s abandonment authority, subject to any outstanding conditions; and

WHEREAS, this MOA was developed to address historic resources located within the APE of 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 which ranges in width from 50 to 100 feet; and

WHEREAS, 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 Washington SHPO pursuant to regulations at 36 C.F.R. Part 800, implementing Section 106 of the NHPA, and determined that the proposed abandonment would have an adverse effect on the historic resource; and

WHEREAS, OEA wrote to the following Tribes informing them of the Undertaking and requesting 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 salvage activities, CLC should cease work in the immediate area, notify the Tribe and Washington 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. Accordingly, these measures are added as stipulations to this MOA; and

WHEREAS, this MOA was developed in consultation with CLC and with 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 Washington SHPO and CLC regarding ways to avoid, minimize, or mitigate potential effects to historic resources as a result of abandonment and the Board, Washington SHPO, and CLC 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; and

NOW, THEREFORE, the Board, Washington SHPO, and CLC 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 CLC agree that execution of the MOA and its subsequent submission to ACHP, in accordance with 36 C.F.R. § 800.6(b)(1)(iv), evidences that the Board has afforded the ACHP an opportunity to comment on the proposed abandonment, and that the Board has satisfied 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 Washington SHPO, CLC shall prepare a comprehensive documentation package focusing on the history, development, and construction of the Line from milepost 1.5 at Longview to milepost 8.5 at Ostander Junction. CLC shall include copies of any historic images, plans, and drawings of the Line in the documentation package. Documentation shall include a full historic context, presenting a narrative history of the Line accompanied by a photographic record. The photographic record shall document extant historic structures and small elements of the Line, including: railroad grade prisms, trestles, bridges, tunnels, signs, switches, wyves, culverts, buildings, rolling stock, significant horizontal and vertical grade alignments, which may or may not receive an individual Historic Property Inventory Form (HPI) depending on age and character-defining features.

The documentation package shall include at least nine (9) HPI forms, with the resources documented at the intensive level (Washington State Standards for Cultural Resources Reporting, updated April 19, 2023).¹ One HPI form shall be completed for the overall rail line alignment. The remaining eight (8) HPI forms, and any additional HPI forms that may be needed, shall be used to record extant historic structures, objects, and features of the Line that are 45 years in age or older which would be considered as character-defining features (such as bridges, tunnels, and trestles) contributing to the NRHP eligibility of the Line. These tasks shall be performed by a qualified historic preservation professional meeting the Secretary of the Interior's Professional Qualifications as defined in 36 C.F.R. Part 61 in architectural history or history.

At least one draft of the historic context documents and HPI forms shall be provided to Washington SHPO for review and comment before completion and submittal. The

¹ Washington State Standards for Cultural Resource Reporting, <https://dahp.wa.gov/project-review/washington-state-standards-for-cultural-resource-reporting> (last accessed March 18, 2024).

documentation package shall be completed in compliance with Washington State Standards for Cultural Resources Reporting, updated April 19, 2023.²

- B. All documentation shall be submitted to Washington SHPO using the web-based WISAARD database. CLC shall notify OEA and Washington SHPO, in writing that it has submitted the documentation using the WISAARD database. The final documentation package shall be delivered to Washington SHPO and other parties of interest, such as the Cowlitz County Historical Society, in both hard copy and electronic format, which meet archival standards.

II. DURATION

This MOA will expire if its terms are not carried out within 3 (three) 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.

CLC 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, OEA shall consult with such party to resolve the objection. If OEA determines that such objection cannot be resolved, OEA will:

- A. Forward all documentation relevant to the dispute, including the OEA's proposed resolution, to the ACHP. The ACHP shall provide OEA 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, OEA 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.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day time period, OEA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, OEA 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 to the ACHP with a copy of such written response.
- C. OEA'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.

² Id.

IV. UNANTICIPATED DISCOVERIES

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

1. If any planned salvage³ activities would require ground disturbance, then CLC shall notify Washington SHPO, and shall coordinate 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 during salvage, CLC 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 Washington SHPO pursuant to 36 C.F.R. § 800.13(b).
3. Upon notification of the discovery, OEA shall consult with Washington SHPO, Cowlitz Indian Tribe, other federally recognized Tribes, CLC, 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 Washington SHPO and appropriate federally recognized Tribes, shall have 30 calendar days following notification to determine NRHP eligibility. OEA may assume the newly discovered resource to be eligible for the NRHP.
 - b. If the find is determined to be potentially significant, OEA shall consult with Washington SHPO and appropriate federally recognized Tribes regarding appropriate measures for site treatment pursuant to 36 C.F.R. § 800.6(a). Once notified, 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 Washington SHPO and/or appropriate

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.

Tribes; and/or

- iii. Preparation and implementation of a mitigation plan by OEA in consultation with federally recognized Tribes for approval by Washington SHPO.

- B. If human skeletal remains are found during any ground disturbing construction activities, all activity that may cause further disturbance to those remains shall cease. The area of the find shall be secured and protected from further disturbance until Washington SHPO provides notice to proceed. The finding of human skeletal remains shall be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains shall 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 that the remains are non-forensic, then the medical examiner/coroner will report that finding to Washington SHPO who will then take jurisdiction over the remains. Washington SHPO will then 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. Finally, Washington SHPO will 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 new 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.

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, CLC, and Washington SHPO.

**MEMORANDUM OF AGREEMENT
AMONG THE SURFACE TRANSPORTATION BOARD, WASHINGTON STATE
DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION, AND
COLUMBIA & COWLITZ RAILWAY, LLC.**

REGARDING

**DOCKET NO. AB 1244X - COLUMBIA & COWLITZ RAILWAY LLC -
ABANDONMENT EXEMPTION - IN COWLITZ COUNTY, WASHINGTON**

SIGNATORY

Surface Transportation Board

Signature: _____
Danielle Gosselin, Director, Office of Environmental Analysis

Date: _____

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SIGNATORY

Washington State Department of Archaeology and Historic Preservation

Signature: _____

Date: _____

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REGARDING

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ABANDONMENT EXEMPTION - IN COWLITZ COUNTY, WASHINGTON**

INVITED SIGNATORY

Columbia & Cowlitz Railway, LLC.

Signature: _____

Date: _____

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ABANDONMENT EXEMPTION - IN COWLITZ COUNTY, WASHINGTON**

CONCURRING PARTY

Cowlitz Indian Tribe

Signature: _____

Printed Name/Title: _____

Date: _____

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**DOCKET NO. AB 1244X - COLUMBIA & COWLITZ RAILWAY LLC -
ABANDONMENT EXEMPTION - IN COWLITZ COUNTY, WASHINGTON**

CONCURRING PARTY

Confederated Tribes of Siletz Indians of Oregon

Signature: _____

Printed Name/Title: _____

Date: _____

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ABANDONMENT EXEMPTION - IN COWLITZ COUNTY, WASHINGTON**

CONCURRING PARTY

Confederated Tribes of the Grand Ronde Community of Oregon

Signature: _____

Printed Name/Title: _____

Date: _____