

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

WILLIAM A. MULLINS

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242203

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Office of Proceedings
December 6, 2016
Part of
Public Record

(202) 663-7823 (Direct Dial)

E-Mail: wmullins@bakerandmiller.com

December 6, 2016

BY E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Norfolk Southern Railway Company – Abandonment Exemption – In Kalamazoo, Michigan, AB-290 (Sub-No. 385X), Grand Elk Railroad, L.L.C. – Discontinuance of Service Exemption – In Kalamazoo, Michigan, AB-1246X

Notice of Consummation & Transfer of Responsibility for Complying with Salvaging Conditions

Dear Ms. Brown:

On August 24, 2016, Norfolk Southern Railway Company (“NSR”) and Grand Elk Railroad, L.L.C. (“GDLK”) filed a verified notice of exemption (“Notice”) under 49 C.F.R. part 1152 subpart F – Exempt Abandonments And Discontinuances Of Service And Trackage Rights for NSR to abandon and GDLK to discontinue service over an approximately 0.1 mile rail line (referred to herein as the “NSR Line”) extending from milepost IJ 44.6 to milepost IJ 44.7 in Kalamazoo, Michigan. Notice of the exemption was served and published in the Federal Register on September 13, 2016 (81 FR 62967) (“Sept. 13th Decision”). The Notice became effective on October 13, 2016.

As indicated in the Notice, NSR has been in ongoing negotiations to sell the NSR Line to Treystar Holdings, L.L.C. (“Treystar”) once the NSR abandonment authority and GDLK’s discontinuance authority became effective.¹ Recently, NSR finalized its agreement to sell the NSR Line to Treystar’s affiliate, River’s Edge Partners, LLC (“REP”). NSR and REP desire to close the sale effective immediately.

¹ NSR is the fee simple owner of the underlying right-of-way and the NSR Line.

Cynthia T. Brown
December 6, 2016
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In a decision served September 16, 2016, the Board's Office of Environmental Analysis ("OEA") issued its Environmental Assessment, which recommended that the Board impose four self-executing salvage conditions.² The Board issued a decision on October 12, 2016 imposing the four recommended conditions ("Oct. 12th Decision").³ The exemption became effective October 13, 2016. As indicated by the Oct. 12th Decision, the conditions imposed by the Board must be satisfied prior to commencing salvage.

Under existing precedent, a condition imposed under the National Environmental Policy Act ("NEPA") that is related to salvage activities is not a regulatory barrier to consummation of abandonment authority.⁴ As explained by the Board in its Consummation Decision, "a notice of consummation may be filed prior to satisfying ... salvage condition[s];" however, "filing a notice of consummation in that situation does not remove the condition, which must still be satisfied if and when salvage activities are conducted." *Id.* Moreover, when consummation of a line subject to NEPA conditions is sold prior to the owner satisfying the salvaging conditions imposed, the successor interest must show that it agrees to abide by the salvage conditions, by including the conditions in the instrument of conveyance. *Id.* at 5.

Because REP will acquire the NSR Line prior to salvage, and the salvage conditions have not yet been fulfilled, REP has agreed to abide by the salvage conditions. Consistent with the Consummation Decision, NSR and REP have executed Amendment 1 to the Purchase and Sale Agreement (Instrument of Conveyance) that requires REP to abide by and fully comply with any salvage conditions imposed by the Board and to be solely responsible for any liabilities or obligations arising from such Board imposed salvage conditions.⁵ Likewise, because NSR desires to consummate the abandonment and transfer the Line to REP, NSR hereby notifies the Board that in accordance with the provisions of 49 C.F.R. § 1152.29(e)(2) and the Board's Sept. 13th Decision and Oct. 12th Decision, NSR and GEK have consummated the abandonment and discontinuance authority. Responsibility for complying with the salvage conditions will be transferred from NSR to REP shortly after this consummation notice is filed.

² A copy of this decision is Exhibit A to the November 1, 2016 Amendment 1 to the December 17, 2005 Agreement of Purchase and Sale.

³ A copy of this decision is Exhibit B to the November 1, 2016 Amendment 1 to the December 17, 2005 Agreement of Purchase and Sale.

⁴ See Consummation of Rail Line Abandonments that are Subject to Historic Preservation and Other Environmental Conditions, EP 678, FN 1 (April 23, 2008) ("Consummation Decision"), discussing Santa Clara Valley Transportation Authority – Abandonment Exemption—In Santa Clara and Alameda Counties, CA, AB-980X (Consummation Notice filed on May 8, 2007).

⁵ Per the Consummation Decision, a redacted copy of the Instrument of Conveyance transferring salvage responsibility from NSR to REP is being submitted to the Board for inclusion in this proceeding. See Exhibit 1.

BAKER & MILLER PLLC

Cynthia T. Brown
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Should you have any questions concerning this Notice of Consummation & Transfer of Responsibility for Complying with Salvaging Conditions, please contact the undersigned counsel for NSR.

Sincerely,



William A. Mullins
Counsel for Norfolk Southern Railway
Company and Grand Elk Railroad, L.L.C.

Enclosure

cc: Greg Summy
LaWada Poarch
Robert Brown (REP)



Norfolk Southern Corporation
Real Estate Department
8000 Ravines Edge Court
Suite 100
Columbus, Ohio 43235

Christopher F. Jones
Property Manager
(614) 438-6912
(614) 438-6939 FAX
cfjones@nscorp.com

Mr. Robert Brown, Managing Partner
Treystar Holdings, LLC
7950 Moorsbridge Road
Portage, Michigan 49024

November 1, 2016

Re: Norfolk Southern Railway Company – Abandonment Exemption – In Kalamazoo, Michigan, AB-290 (Sub-No. 385X), Grand Elk Railroad, L.L.C. – Discontinuance of Service Exemption – In Kalamazoo, Michigan, AB-1246X

Amendment 1 – To December 17, 2015 Agreement of Purchase and Sale

Dear Mr. Brown:

Norfolk Southern Railway Company (“NSR”) and River’s Edge Partners, LLC¹ (“REP”) are parties to an Agreement of Purchase and Sale dated December 17, 2015 (“Agreement”) pursuant to which REP agreed to acquire NSR’s interest in real estate and trackage located from milepost 1J 44.6 to milepost 1J 44.7 and related non-rail parcels in Kalamazoo, Michigan (the “Premises”). The Parties now wish to amend the Agreement as explained herein by entering into this Amendment 1, the terms of which are contained in this letter.

Pursuant to the terms of the Agreement, on August 24, 2016, NSR and Grand Elk Railroad, L.L.C. (“GDLK”) filed a verified notice of exemption (“Notice”) under 49 C.F.R. part 1152 subpart F – Exempt Abandonments And Discontinuances Of Service And Trackage Rights for NSR to abandon and GDLK to discontinue service over an approximately 0.1 mile rail line (referred to herein as the “NSR Line”) extending from milepost 1J 44.6 to milepost 1J 44.7 in Kalamazoo, Michigan. Notice of the exemption was served and published in the Federal Register on September 13, 2016 (81 Fed. Reg. 62,967).

¹ Previous filings indicated that NSR planned to sell the Premises to Treystar. Treystar is the parent company of REP.

On September 16, 2016, the Board's Office of Environmental Analysis ("OEA") issued an environmental assessment ("EA"), which is attached hereto as Exhibit A and made a part hereof, recommending that the Board impose four conditions that must be satisfied prior to the commencement of salvage activities on the NSR Line. Comments concerning the EA were due October 3, 2016. In the Final EA, issued October 4, 2016, OEA withdrew its original recommendation that NSR be required to consult with USFWS prior to commencing salvage activities.

On October 12, 2016, the Board reopened the proceeding and imposed the following conditions (See Exhibit B, Copy of October 12th Decision, which is attached hereto and made a part hereof):

1. Prior to the commencement of any salvage activities, NSR shall consult with the National Geodetic Survey ("NGS"), and if NGS identifies geodetic station markers that may be affected by the proposed abandonment, NSR shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order for NGS to plan for the possible relocation of the markers;
2. Prior to the commencement of any salvage activities, NSR shall consult with the U.S. Army Corps of Engineers (the "Corps") regarding the potential impact of salvage activities on floodplain management and shall comply with the reasonable recommendations of Corps, and NSR shall report the results of any consultations with the Corps to OEA; and
3. In the event that any unanticipated archaeological sites or associated artifacts are discovered during salvage activities, NSR will immediately cease all work and notify OEA and the Michigan State Historic Preservation Office ("SHPO") pursuant to 36 C.F.R. § 800.13(b); and (b) OEA shall then consult with the SHPO, NSR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

The October 12, 2016 decision ordered that the exemption is effective October 13, 2016, subject to the recommended environmental conditions. The imposition of such conditions, however, does not bar NSR from consummating the abandonment authority granted and transferring the Premises to REP as long as REP – the salvaging entity in this case – agrees to fulfill the Board imposed consultation or pre-salvage environmental conditions before undertaking any salvage activity.² Accordingly, the Parties wish to enter into this Amendment 1 to amend the Agreement so as to require REP to satisfy the conditions imposed by the Board prior to its commencement of salvage activities for the NSR Line and to be solely responsible for any liabilities or obligations arising from such Board imposed pre-salvage conditions.

² Consummation of Rail Line Abandonments that are Subject to Historic Preservation and Other Environmental Conditions. EP 678 (April 23, 2008).

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Robert Brown
River's Edge Partners, LLC
November 1, 2016
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More specifically, REP agrees to the following:

1. Prior to the commencement of any salvage activities, REP shall consult with the National Geodetic Survey ("NGS"), and if NGS identifies geodetic station markers that may be affected by the proposed abandonment, REP shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order for NGS to plan for the possible relocation of the markers;
2. Prior to the commencement of any salvage activities, REP shall consult with the U.S. Army Corps of Engineers (the "Corps") regarding the potential impact of salvage activities on floodplain management and shall comply with the reasonable recommendations of Corps, and REP shall report the results of any consultations with the Corps to OEA; and
3. In the event that any unanticipated archaeological sites or associated artifacts are discovered during salvage activities, REP will immediately cease all work and notify OEA and the Michigan State Historic Preservation Office ("SHPO") pursuant to 36 C.F.R. § 800.13(b); and (b) OEA shall then consult with the SHPO, REP, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

By signing in the space below and returning one fully executed original to me for our records, REP consents to this Amendment I as an amendment to the Agreement whereby REP agrees to abide by and fully comply with the three pre-salvage conditions imposed by the Board in the above referenced proceeding and to be solely responsible for any liabilities or obligations arising from such Board imposed pre-salvage conditions.

Respectfully,

By:

Printed Name: Solomon Jackson

Norfolk Southern Railway Company

Title: Real Estate Manager

Acknowledged and Accepted on By:

Robert Brown

River's Edge Partners, LLC

Managing Partner

cc: Honigman Miller Schwartz & Cohn LLP

45417
OEA

SERVICE DATE – SEPTEMBER 16, 2016

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

ENVIRONMENTAL ASSESSMENT

Docket No. AB 290 (Sub-No. 385X)

Norfolk Southern Railway Company—Abandonment Exemption—in Kalamazoo, Mich.

Docket No. AB 1246X

Grand Elk Railroad, LLC—Discontinuance of Service Exemption—in Kalamazoo, Mich.

BACKGROUND

In this proceeding, Norfolk Southern Railway Company (NSR) and Grand Elk Railroad, LLC (GDLK) filed a joint notice of exemption under 49 C.F.R. § 1152 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Kalamazoo, Kalamazoo County, Michigan. The joint notice seeks authority from the Surface Transportation Board (the Board) for NSR to abandon and GDLK to discontinue rail service over the approximately 0.1-mile rail line, which extends from milepost IJ 44.6 to milepost IJ 44.7 in the City of Kalamazoo (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA). If the notice becomes effective, NSR, as the owner of the Line, will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

ENVIRONMENTAL REVIEW

NSR submitted a combined Environmental and Historic Report on behalf of NSR and GDLK that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. NSR served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Board's environmental rules [49 C.F.R. § 1105.7(b)].¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 290 (Sub-No. 385X).

Diversion of Traffic

The Environmental Report submitted by NSR states that no traffic has moved over the Line in at least two years and that there have been no requests for service in that time. Accordingly, the proposed abandonment and discontinuance would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

Salvage Activities

If abandonment and discontinuance authority is granted in this proceeding, NSR states that it would convey the Line to Treystar Holdings, LLC (Treystar), which would be responsible for conducting salvage. Salvage activities would include removing the rail, ties, and related track material from the right-of-way and removing a bridge over Portage Creek, the only structure on the Line. NSR states that Treystar would not remove any ballast, regrade the right-of-way, or disturb the soil underlying the rail right-of-way. Therefore, the contour of the existing underlying roadbed would remain intact and that existing drainage systems would not be altered.

Land Use

The City of Kalamazoo has submitted comments stating that the proposed abandonment and discontinuance would not negatively affect local land use. Because the proposed abandonment would be limited in scope and would take place within an existing rail right-of-way, OEA does not anticipate that the proposed abandonment would be inconsistent with any existing land use plans.

The U.S. Natural Resource Conservation Service (NRCS) has commented that, because salvage activity would take place within an existing rail corridor, the proposed abandonment and discontinuance would not result in the conversion of prime farmland. OEA concurs with the conclusions of NRCS and is not recommending any mitigation related to the conservation of agricultural land is recommended.

The National Geodetic Survey (NGS) has not submitted comments regarding the potential impact of the proposed abandonment to any geodetic survey markers that may be present in the project area. Accordingly, OEA is recommending a condition requiring NSR to consult with NGS prior to beginning salvage activities.

Coastal Zone Compliance

The Michigan Department of Environmental Quality (MDEQ) submitted comments stating that the Line is not located within the Michigan coastal management boundary. Accordingly, no adverse effects to coastal resources are anticipated from the proposed abandonment and discontinuance and no mitigation related to coastal resources is recommended.

Water Resources

The Line crosses Portage Creek, a small stream that enters the Kalamazoo River.² If abandonment and discontinuance authority is granted in this proceeding, the bridge over Portage Creek would be removed.

NSR requested comments from the U.S. Army Corps of Engineers (the Corps) and MDEQ regarding the potential impact of the proposed abandonment and discontinuance on water resources. In its response, the Corps states that a portion of the Corps' regulatory responsibilities in the project area was assumed by the MDEQ. The Corps indicates that the Corps permit would not be required for the proposed abandonment and discontinuance, but that a MDEQ permit may be required. By email dated March 4, 2016, the Water Resources Division of MDEQ informed NSR that MDEQ does not oppose the proposed abandonment and discontinuance and has no further comments regarding potential environmental impacts.

The Environmental Analysis Branch of the Corps submitted comments by letter dated March 29, 2016 stating that the Corps' civil works program does not include any current plans to develop waterways in the vicinity of the Line. The Corps notes that the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps indicate that the mapped floodplains exist in the project area. The Corps notes that effects on floodplains could occur during salvage if the ground surface elevation within the floodplain were to change as a result of salvage activities. The Corps recommends that the project be coordinated with county officials and the State of Michigan regarding the applicability of a floodplain permit to ensure compliance with county and state floodplain management regulations and acts. The Corps notes that, if salvage is limited to the removal of rails and ties, salvage would not be expected to affect floodplains.

By letter dated April 28, 2016, the Corps submitted additional comments stating that the removal of the bridge over Portage Creek could result in increased flood elevations downstream if the bridge is holding back flood flows. The Corps notes that FEMA flood maps indicate that some constriction is present at the location of the bridge, which may be due to the presence of the bridge deck, the creek banks, the rail bed, or some combination of those factors. The Corps recommends that hydraulic modeling be used to assess the potential for adverse effects from the removal of the bridge.

OEA notes that NSR intends to convey the Line to a salvage company for salvage. NSR expects that salvage would consist of removing rail, ties, and related material, and the removal of the bridge over Portage Creek. To address the Corps' concerns regarding potential impacts to floodplains, OEA is recommending a condition requiring NSR to consult with the Corps prior to beginning any salvage activities regarding the potential for impacts to floodplain management resulting from the removal of the Portage Creek bridge and to comply with the recommendations of that agency to avoid or mitigate any such impact.

² U.S. Fish and Wildlife Service, National Wetlands Inventory, <http://www.fws.gov/wetlands/Data/Mapper.html> (last visited September 12, 2016).

Hazardous Materials

NSR states that there are no hazardous waste sites or sites where hazardous material spills have occurred on or adjacent to the right-of-way. OEA's review has confirmed that there are no federally listed remediation sites in the vicinity of the Line.³ Accordingly, no mitigation regarding hazardous waste sites or hazardous material spills is recommended.

Biological Resources

The U.S. Fish and Wildlife Service (USFWS) submitted comments identifying federally listed threatened and endangered species that may be located in the vicinity of the Line. OEA also conducted a search of the USFWS Information, Planning, and Conservation System in order to identify protected species.⁴ The table below shows the protected species known or thought to occur in Kalamazoo County, Michigan, as identified by USFWS and by OEA's search. OEA notes that, based on a search using the USFWS critical habitat mapping tool, the Line is not located in or near critical habitat for any of the species identified.⁵

Protected Species in Kalamazoo County, Michigan	
Mammals	Status
Indiana bat (<i>Myotis sodalist</i>)	Endangered
Northern long-eared bat (<i>Myotis septentrionalis</i>)	Threatened
Reptiles	
Eastern Massasauga (<i>Sistrurus catenatus</i>)	Proposed Threatened
Insects	
Mitchell's Satyr Butterfly (<i>Neonympha mitchellii mitchellii</i>)	Endangered

The Indiana bat (*Myotis sodalist*) and Northern long-eared bat (*Myotis septentrionalis*) are typically found in forests, where the bats roost during in trees during the summer, or caves, where they hibernate in the winter. Mitchell's satyr butterfly (*Neonympha mitchellii mitchellii*) is restricted to fens, a type of wetland typically associated with groundwater from seeps and springs. The Eastern Massasauga rattlesnake (*Sistrurus catenatus*) is not currently listed as a federally protected threatened or endangered species but is proposed for listing as threatened;

³ Environmental Protection Agency, NEPAassist, <http://nepassisttool.epa.gov/nepassist/entry.aspx> (last September 14, 2016).

⁴ U.S. Fish and Wildlife Service, Information, Planning, and Conservation System, <http://ecos.fws.gov/ipac/> (last visited September 14, 2016).

⁵ U.S. Fish and Wildlife Service, Critical Habitat Portal, [http://ecos.fws.gov/crithab/](http://ecos.fws.gov/ipac/http://ecos.fws.gov/crithab/) (last visited September 14, 2016).

individuals of this species are typically found in wet areas, including marshes and areas along rivers and lakes.

OEA notes that the Line is located in a heavily developed and largely industrial area within the City of Kalamazoo. Based on the information available to date, including OEA's review of satellite imagery of the project area, OEA believes that it is unlikely that suitable habitat exists within the project area for any of the species identified above. Because salvage activities would be limited in scope and confined to an existing rail right-of-way in a developed area, OEA believes that the proposed abandonment and discontinuance would not adversely affect any individuals of those species that might be present. However, because the Line crosses a waterway and adjacent areas where wetlands may exist, OEA is recommending a condition requiring NSR to consult with USFWS prior to conducting salvage activities and to comply with the recommendations of that agency regarding avoiding or mitigating potential impacts to protected species.

Air Quality

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality.

Noise

Noise associated with salvage activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Summary

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. OEA is providing a copy of this EA to the following agencies for review and comment: USFWS, NGS, and the Corps.

HISTORIC REVIEW

According to NSR, the Line was constructed between 1886 and 1888 as part of the Chicago, Kalamazoo, and Saginaw Railway (CK&S). Ownership of the Line passed to Michigan Central Railroad (MC) in 1906 and to New York Central Railroad (NYC) in 1930. In 1968, NYC and the Pennsylvania Railroad merged to form the Penn Central Transportation Company (Penn Central), which went bankrupt in 1970. In 1976, Penn Central, along with a number of other bankrupt railroads, was reorganized into the Consolidated Rail Corporation (Conrail). Conrail commenced operations and assumed control of the Line on April 1, 1976. NSR acquired the Line in 1999.

The only structure on the Line is a bridge over Portage Creek located approximately at Milepost IJ 44.65. The bridge has two spans with an open deck, I-Beam on framed bents with stone and concrete abutments. The date of construction of the bridge is unknown.

NSR served the Historic Report on the Michigan State Historic Preservation Office (SHPO), pursuant to 49 C.F.R. § 1105.8(c). The SHPO has submitted comments stating that the proposed abandonment and discontinuance would have no effect on historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register). The SHPO requests that, should project plans change or should artifacts or remains be encountered during salvage activities, NSR should cease work and report to the SHPO immediately. OEA has reviewed the record and the information provided by the SHPO, and concurs with the SHPO's comments. We are therefore recommending a condition requiring NSR to cease abandonment activities and report to the SHPO and OEA in the event that unanticipated archaeological sites or artifacts are discovered.

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, we have determined that no known historic properties listed in or eligible for inclusion in the National Register would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment. 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 EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at www.stb.dot.gov.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the National Park Service Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area.⁶ 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:

- Citizen Potawatomi Nation, Oklahoma;
- Forest County Potawatomi Community, Wisconsin;
- Hannahville Indian Community, Michigan;
- Nottawseppi Huron Band of the Potawatomi, Michigan;
- Ottawa Tribe of Oklahoma;
- Pokagon Band of Potawatomi Indians, Michigan and Indiana;
- Prairie Band of Potawatomi Nation; and
- Saginaw Chippewa Indian Tribe of Michigan.

Accordingly, OEA is sending a copy of this EA to those tribes for review and comment.

⁶ National Park Service, National NAGPRA Program Native American Consultation Database, <http://grantsdev.cr.nps.gov/Nagpra/NACD/> (last visited September 14, 2016).

CONDITIONS

We recommend that the following conditions be imposed on any decision granting abandonment authority:

- 1. Prior to the commencement of any salvage activities, Norfolk Southern Railway Company (NSR) shall consult with the National Geodetic Survey (NGS). If NGS identifies geodetic station markers that may be affected by the proposed abandonment, NSR shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order to plan for the possible relocation of the geodetic station markers by NGS.**
- 2. Prior to the commencement of any salvage activities, Norfolk Southern Railway Company (NSR) shall consult with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of salvage activities on federally listed threatened and endangered species in the project area and shall comply with the reasonable recommendations of USFWS to mitigate any potential impacts. NSR shall report the results of any consultations with USFWS to the Board's Office of Environmental Analysis.**
- 3. Prior to the commencement of any salvage activities, Norfolk Southern Railway Company (NSR) shall consult with the U.S. Army Corps of Engineers (the Corps) regarding the potential impact of salvage activities on floodplain management and shall comply with the reasonable recommendations of those agencies. NSR shall report the results of any consultations with the Corps to the Board's Office of Environmental Analysis.**
- 4. In the event that any unanticipated archaeological sites or associated artifacts are discovered during salvage activities, Norfolk Southern Railway Company (NSR) will immediately cease all work and notify the Office of Environmental Analysis (OEA) and the Michigan State Historic Preservation Office (SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, NSR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.**

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended condition is 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 would 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 Federal Register notice.

TRAILS USE

Requests for a notice of interim trail use (NITU) are 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).

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

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Joshua Wayland, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-290 (Sub-No. 385X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Joshua Wayland, the environmental contact for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at waylandj@stb.dot.gov.

Date made available to the public: September 16, 2016.

Comment due date: October 3, 2016.

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

45468
DO

SERVICE DATE – LATE RELEASE OCTOBER 12, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 385X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
KALAMAZOO, MICH.

Decided: October 12, 2016

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 0.1-mile rail line, between mileposts IJ 44.6 and IJ 44.7, in Kalamazoo, Mich. (the Line). Notice of the exemption was served and published in the Federal Register on September 13, 2016 (81 Fed. Reg. 62,967).¹ The exemption is scheduled to become effective on October 13, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on September 16, 2016. In the EA, OEA states that the National Geodetic Survey (NGS) has not submitted comments regarding the potential impact of the proposed abandonment on any geodetic station markers that may be present in the project area. Accordingly, OEA recommends that a condition be imposed requiring NSR to consult with NGS prior to beginning any salvage activities.

According to OEA, the Environmental Analysis Branch of the U.S. Army Corps of Engineers (Corps) states that the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps indicate that floodplains exist in the project area. The Corps notes that effects on floodplains could occur during salvage if the ground surface elevation within the floodplains were to change as a result of salvage activities. The Corps recommends that the project be coordinated with county officials and the State of Michigan regarding the applicability of a floodplain permit to ensure compliance with county and state floodplain management acts and regulations. If salvage is limited to the removal of rails and ties, the Corps notes that salvage would not be expected to affect floodplains. Further, the Corps submitted additional comments stating that the removal of a bridge over Portage Creek could result in increased flood elevations downstream if the bridge is holding back flood flows. The Corps notes that FEMA flood maps indicate that some constriction is present at the location of the bridge, which may be due to the presence of the bridge deck, the creek banks, the rail bed, or some combination of those factors. The Corps recommends that hydraulic modeling be used to assess the potential for adverse effects from the removal of the bridge.

¹ Grand Elk Railroad, L.L.C. joined in filing this notice of exemption to obtain Board authorization to discontinue service over the same rail line segment. Grand Elk R.R.—Discontinuance of Service Exemption—in Kalamazoo, Mich., Docket No. AB 1246X.

OEA states that NSR intends to convey the Line to a salvage company for salvage. OEA states that NSR expects that salvage would consist of removing rail, ties, related materials, and the bridge over Portage Creek. To address the Corps' concerns regarding potential impacts to floodplains, OEA recommends that a condition be imposed requiring NSR to consult with the Corps prior to beginning any salvage activities regarding the potential for impacts to floodplain management resulting from the removal of the Portage Creek bridge and to comply with the recommendations of the Corps to avoid or mitigate any impact.

OEA further states that the Line is located in a heavily developed and largely industrial area within the City of Kalamazoo. The U.S. Fish and Wildlife Service (USFWS) submitted comments identifying federally listed threatened and endangered species that may be located in the vicinity of the Line, and OEA conducted a search of the USFWS Information, Planning, and Conservation System to identify protected species. USFWS and OEA identified four protected species known or thought to occur in Kalamazoo County, Michigan, but OEA notes that the Line is not located in or near critical habitat for any of the species. Based on the information submitted, including OEA's review of satellite imagery of the project area, OEA states that it is unlikely that suitable habitat exists within the project area for any of the protected species. Because salvage activities would be limited in scope and confined to an existing rail right-of-way in a developed area, OEA states that the proposed abandonment would not adversely affect any species that may be present. However, because the Line crosses a waterway and adjacent areas where wetlands may exist, OEA recommends that a condition be imposed requiring NSR to consult with USFWS prior to conducting salvage activities and comply with the recommendations of USFWS avoiding or mitigating potential impacts to protected species.

Further, OEA states that the Michigan State Historic Preservation Office (SHPO) submitted comments stating that the proposed abandonment would have no effect on historic properties listed in or eligible for inclusion in the National Register of Historic Places. The SHPO requests that, should the project plans change or should artifacts or remains be encountered during salvage activities, NSR should cease work and report to the SHPO immediately. OEA states that it has reviewed the SHPO's record and information and concurs with the SHPO's comments. OEA therefore recommends that a condition be imposed requiring NSR to cease abandonment activities and notify the SHPO and OEA in the event that unanticipated archaeological sites or artifacts are discovered.

Comments to the EA were due October 3, 2016. In the Final EA, issued October 4, 2016, OEA states that NSR informed OEA that it consulted further with USFWS during the comment period, and USFWS informed NSR that it does not have any concerns regarding the potential impact of the proposed abandonment to federally listed threatened and endangered species. OEA also received one comment from USFWS stating that no federally listed threatened or endangered species, or species proposed for listing, are known or thought to be present in the project area. OEA therefore recommends that the previously recommended condition requiring NSR to consult with USFWS prior to commencing activities not be imposed. Accordingly, three of the conditions recommended by OEA in the EA will be imposed.

Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the notice served and published in the Federal Register on September 13, 2016, exempting the abandonment of the Line described above is subject to the conditions that: (1) prior to commencement of any salvage activities, NSR shall consult with NGS, and if NGS identifies geodetic station markers that may be affected by the proposed abandonment, NSR shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order for NGS to plan for the possible relocation of the markers; (2) prior to commencement of any salvage activities, NSR shall consult with the Corps regarding the potential impact of salvage activities on floodplain management and shall comply with the reasonable recommendations of the Corps, and NSR shall report the results of any consultations with the Corps to OEA; and (3)(a) in the event that any unanticipated archaeological sites or associated artifacts are discovered during salvage activities, NSR will immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b); and (b) OEA shall then consult the SHPO, NSR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.