

**SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS**

FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN DOCKET NO. AB 1258

March 7, 2018

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

() Notice of Exemption () Petition for Exemption (X) Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

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OEA served an Environmental Assessment (EA) for this adverse or third-party abandonment proceeding on November 13, 2017 for public review and comment. In the EA, OEA recommended two environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments on the EA

OEA received three comments after issuance of the EA. Alloy Property Company, LLC (Alloy), the third-party applicant, submitted comments requesting modifications to the two conditions recommended in the EA. Alloy suggested that the Section 106 condition recommended by OEA under the National Historic Preservation Act (NHPA) should be explicitly limited to the swing bridge, stating that the State Historic Preservation Officer (SHPO) had identified only the swing bridge as eligible for listing on the National Register of Historic Places and as being adversely affected by the proposed abandonment. See SHPO's letter to OEA dated July 6, 2017. Therefore, OEA recommends that the Section 106 condition recommended in the EA be modified to apply only to the swing bridge.

Alloy also requested that the Section 106 condition be modified to apply only to Alloy, rather than to both Alloy and the Chicago Terminal Railroad (CTM) jointly. In the past, OEA has determined on a case-by-case basis whether to impose Section 106 conditions on both the third-party applicant and the railroad with authority to operate over the rail line or solely on the third-party applicant. Adverse abandonment cases are unique in that the applicant before the Board typically does not have any current interest in the rail line and consequently must either work cooperatively with the owning railroad to document historic sites and structures on the line or wait until the third-party abandonment has been granted and the line is no longer part of the national rail system subject to the Board's jurisdiction to complete the Section 106 process. The relationship between the two entities may vary, affecting the success of documenting the potentially historic resources on the rail line.

After the Board authorizes an adverse abandonment, the railroad with authority to provide rail service retains its interest in the right-of-way until the third-party applicant can take over the property. In this case, requiring both the third-party applicant and the railroad to retain their interest in and take no steps to alter the historic integrity of the swing bridge would require that the swing bridge remains intact until the Section 106 process is completed, thus ensuring that the Board can fulfill its obligations under the NHPA. Therefore, OEA's final recommended Section 106 condition will continue to require both Alloy and CTM to retain their interest in and take no steps to alter the historic integrity of the swing bridge until the Section 106 process is completed. However, the rest of OEA's final Section 106 condition will apply only to Alloy, and not to CTM. Alloy is the party seeking adverse abandonment authority here and thus should be the party responsible for conducting the historic consultation.¹ Alloy should also be the party prevented from filing a consummation notice or conducting salvage activities for the swing bridge until the Section 106 process is completed and the Board has removed the 106 condition.

Alloy suggested that the National Geodetic Survey (NGS) consultation condition recommended in the EA be removed. Alloy stated that it does not believe that any geodetic station markers exist along the line proposed for abandonment because Alloy has narrowed the scope of the proposed abandonment from 2.875 miles to 2.625 miles. On June 19, 2017, NGS submitted comments on the 2.875 miles stating that 3 geodetic station markers are located in the area of the proposed abandonment. However, OEA received additional correspondence from NGS dated September 8, 2017 (presumably after NGS learned that Alloy shortened the length of the line proposed for abandonment to 2.625 miles) stating that 2 geodetic station markers are located in the area proposed for abandonment. Therefore, OEA continues to believe that the NGS consultation condition is warranted here and recommends that it be imposed upon any decision granting abandonment authority.

The Miami Tribe of Oklahoma (Miami Tribe) commented that it has no objection to the proposed abandonment. However, the Miami Tribe requested immediate consultation if any human remains or Native American cultural items falling under the Native American Graves Protection and Repatriation Act (NAGPRA) or archeological evidence is discovered during any phase of the proposed abandonment. Accordingly, OEA is recommending that an unanticipated discovery condition be imposed upon any decision granting abandonment authority.

The U.S. Coast Guard (Coast Guard) commented that the proposed abandonment includes the federally permitted drawbridge over the North Branch Canal of the Chicago River, a federal navigable waterway, and a bridge under the jurisdiction of the Coast Guard. The Coast Guard indicated that the federal permit is transferable, with all the responsibilities and requirements to comply with federal bridge statutes and regulations transferred to the new legal owner. Accordingly, OEA is recommending that a condition be imposed upon any decision

¹ OEA, in concert with the Advisory Council on Historic Preservation, has delegated preliminary consultation with SHPOs to rail abandonment applicants. The Board retains overall responsibility for the Section 106 review but relies on applicants to furnish information on sites and structures on the rail line that is the subject of the abandonment filing. See 36 C.F.R. 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009).

granting abandonment authority requiring Alloy to consult with the U.S. Coast Guard regarding the permit for the swing bridge.

Modifications to the EA

Upon further review, OEA recommends that an additional condition be imposed upon any decision granting abandonment authority requiring CTM to cooperate as necessary to facilitate the successful and timely completion of the recommended conditions set forth below. As discussed above, the third-party applicant does not typically have any right to access the property until the adverse abandonment is granted and the line is no longer part of the national rail network. OEA believes that requiring CTM to cooperate with Alloy as necessary while Alloy complies with the recommended environmental and historic conditions would improve and expedite the process and ensure compliance with the conditions that must be satisfied before salvage.

Conclusions

The EA comment period has ended. Accordingly, OEA recommends that the conditions recommended in the EA, as modified by the recommendations in this document, and the additional conditions recommended in this document should be imposed upon any decision granting adverse abandonment authority. The final recommended conditions are:

1. Alloy Property Company, LLC (Alloy) and the Chicago Terminal Railroad shall retain their interest in and take no steps to alter the historic integrity of the swing bridge located on the rail line until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. Alloy shall report back to the Office of Environmental Analysis regarding any consultations with the State Historic Preservation Officer, any other Section 106 consulting parties, and the public. Alloy may not file a consummation notice or initiate any salvage activities for the swing bridge until the Section 106 process has been completed and the Board has removed this condition.
2. Alloy Property Company, LLC shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.
3. In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, Alloy Property Company, LLC (Alloy) will immediately cease all work and notify the Office of Environmental Analysis (OEA), interested federally recognized tribes, the Illinois State Historic Preservation Officer (SHPO) and the Miami Tribe of Oklahoma Tribal Preservation Officer (THPO) pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO (or THPO), interested federally recognized tribes, Alloy, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

4. Prior to the commencement of any salvage activities, Alloy Property Company, LLC shall consult with the United States Coast Guard regarding the permit for the swing bridge.
5. The Chicago Terminal Railroad shall cooperate as necessary to facilitate the successful and timely completion of the above conditions.

If the above conditions are imposed, OEA believes that the proposed action will not significantly affect the quality of the human environment.

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