

EO-1131
Dw

SURFACE TRANSPORTATION STB
SECTION OF ENVIRONMENTAL ANALYSIS

POST POST ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
STB DOCKET NO. AB-1019X

January 13, 2009

ABANDONMENT TYPE

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

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

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

RECOMMENDATION: Remove Section 106 Condition in AB-1019X
Transit America, LLC – Abandonment Exemption –
In Buchanan County, Missouri

In this proceeding, Transit America, LLC (TA) filed a petition for exemption with the Surface Transportation Board (Board) seeking approval authority to abandon 2.0 miles of railroad in Buchanan County, Missouri. By decision served on December 1, 2008, the Board imposed two (2) environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments on the EA

Historic Condition (Condition 2)

The condition required TA 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) that are eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed and the Board has removed this condition.

The attached correspondence, dated November 21, 2008, from the Missouri Department of Natural Resources, State Historic Preservation Office (SHPO) indicates that the SHPO has determined that there are no National Register listed or eligible properties affected by this undertaking. The documentation for this finding, as specified

at 36 CFR 800.11 (d), consists of the railroad's historic report, all relevant correspondence, and the EA, which have been made available to the public through the Board's website. SEA therefore recommends that the Section 106 condition imposed by the Board in this proceeding be removed at this time.

U.S. Army Corps of Engineers Condition (Condition 1)

The condition required TA to consult with the U.S. Army Corps of Engineers (Corps) prior to commencement of any salvage activities of the rail line for potential impacts to waters of the United States, including wetlands, and to comply with the reasonable requirements of the Corps. Although the EA indicated that TA does not intend to salvage the portion rail line to be abandoned, SEA recommended this condition in the event that TA's plans change and it decides to salvage the rail line, following abandonment approval.

The attached correspondence from TA, dated December 22, 2008, states that rather than salvaging the rail line proposed for abandonment, TA intends to transfer the trackage and right-of-way to its affiliate Herzog Contracting Corporation (HCC), which will operate private, non-common carrier switching service on the line. The transfer of the rail line to a private carrier would not result in any salvage activities, and as such, no disturbance or discharge to waters of the United States, including wetlands. TA has indicated that it will comply with this condition in the event its plans change and it decides to salvage the rail line proposed for abandonment. Therefore, this condition remains unchanged, but would apply only if the line were salvaged.

SEA CONTACT:

Diana Wood 
(202) 245-0302
woodd@stb.dot.gov

Distribution:

Ann Newman, Office of Proceedings
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Attachments (2)

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#E1-16253
DAN
AB-1019X

December 5, 2008

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Hand Delivery

Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

**Attention: Victoria Rutson, Section of
Environmental Analysis**

**Re: Transit America, LLC - Abandonment Exemption in Buchanan
County, Missouri, STB Docket No. AB-1019X**

Dear Ms. Rutson:

On December 1, 2008, the Board issued its decision in the above-captioned proceeding, granting Transit America LLC's ("TA") requested abandonment exemption, subject to environmental and standard employee protective conditions. *See Transit America, LLC – Abandonment Exemption – In Buchanan County, MO*, STB Docket No. AB-1019X (Board served December 1, 2008). SEA had previously recommended in its Environmental Assessment of the proposed abandonment, dated October 10, 2008, that as a condition of the abandonment TA 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 until the section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, was completed. Consequently, in its recent decision the Board directed TA to report to SEA regarding any consultations with the Missouri SHPO, and indicated that SEA's recommended condition would not be removed until the section 106 process was completed. *Id.* at 4.

As directed, TA submitted the additional requested project information to the Missouri SHPO, and has since received the results of the Missouri SHPO's section 106 review process. An original and ten (10) copies are attached. As indicated therein, the Missouri SHPO has determined that there will be "no historic properties" affected by the proposed abandonment, and that the SHPO "has no objection to the initiation of project activities." *See Missouri SHPO Cultural Resource Assessment, Section 106 Review*, at 1. TA understands that the SHPO has also provided a copy of this report directly to SEA.

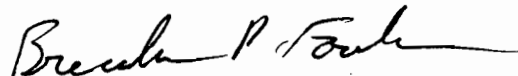
Surface Transportation Board – Section of Environmental Analysis

December 5, 2008

Page 2

As the section 106 review has been completed and the Missouri SHPO has no objection to the proposed abandonment, TA respectfully requests that the related condition be removed. Please do not hesitate to contact me with any questions related to this submission.

Sincerely,

A handwritten signature in black ink, appearing to read "Brendon P. Fowler", with a long horizontal flourish extending to the right.

Brendon P. Fowler
Counsel for Transit America, LLC

Enclosures

CULTURAL RESOURCE ASSESSMENT
Section 106 Review

CONTACT PERSON/ADDRESS

Brendon P. Fowler
K&L Gates, LLP
1601 K Street N.W.
Washington, D.C. 20006-1600

C:

Victoria Rutson, STB

PROJECT:

Abandonment of 2.0 Miles of Transit American LLC Railroad

FEDERAL AGENCY

FHWA

COUNTY:

BUCHANAN

The State Historic Preservation Office has reviewed the information submitted on the above referenced project. Based on this review, we have made the following determination:

☐

After review of initial submission, the project area has a low potential for the occurrence of cultural resources. A cultural resource survey, therefore, is not warranted.

☒

Adequate documentation has been provided (36 CFR Section 800.11). There will be "no historic properties affected" by the current project.

☐

An adequate cultural resource survey of the project area has been previously conducted. It has been determined that for the proposed undertaking there will be "no historic properties affected".

For the above checked reason, the State Historic Preservation Office has no objection to the initiation of project activities. PLEASE BE ADVISED THAT, IF THE CURRENT PROJECT AREA OR SCOPE OF WORK ARE CHANGED, A BORROW AREA IS INCLUDED IN THE PROJECT, OR CULTURAL MATERIALS ARE ENCOUNTERED DURING CONSTRUCTION, APPROPRIATE INFORMATION MUST BE PROVIDED TO THIS OFFICE FOR FURTHER REVIEW AND COMMENT. Please retain this documentation as evidence of compliance with Section 106 of the National Historic Preservation Act, as amended.

By:


Mark A. Miles, Deputy State Historic Preservation Officer

November 21, 2008

Date

MISSOURI DEPARTMENT OF NATURAL RESOURCES
STATE HISTORIC PRESERVATION OFFICE
P.O. Box 176, Jefferson City, Missouri 65102

For additional information, please contact Judith Deel, (573) 751-7862. Please be sure to refer to the project number:
006-BN-09



"Fowler, Brendon P."
<Brendon.Fowler@klgates.com>

12/22/2008 11:36 AM

To <Diana.Wood@stb.dot.gov>

cc

bcc

Subject RE: Transit America LLC - Abandonment Exemption in
Buchanan County, Missouri, STB Docket No. AB-1019X

#E1-16252
BFW
AB-1019X

History:

✉ This message has been replied to.

Hi Diana-

Thank you for your email. My understanding of the Corps consultation condition is that it requires consultation only in the event Transit America ("TA") decides to conduct any salvage activities on the line. *See Transit America LLC - Abandonment Exemption - In Buchanan County, MO, STB Docket No. AB-1019X, *2-3* (Board served December 1, 2008) (noting that "SEA recommends a condition requiring prior TA consultation with the Corps in the event TA decides to salvage the line" and ordering that "prior to conducting any salvage activities, [TA] shall consult with the Corps for potential impacts to waters of the United States...") (emphasis added).

Under the proposed abandonment, TA will transfer the trackage and right-of-way to its affiliate Herzog Contracting Corporation ("HCC"), which will operate non-common carrier switching service on the line. Consequently, as indicated in TA's earlier submissions, neither TA nor HCC will engage in any salvage activities and the line will be unchanged. *See Transit America LLC - Abandonment Exemption - In Buchanan County, MO, Environmental Assessment, STB Docket No. AB-1019X, *2* (SEA served October 10, 2008) ("EA") (noting that TA has indicated it does not intend to salvage the line, but recommending condition that TA consult with Corps "in the event TA should decide to salvage the rail line following abandonment approval.")

Because there will be no salvage activities, TA has not engaged in additional consultations with the Corps (the Corps filed initial comments on the proposed abandonment, see EA at *2). Please note that TA is not presently requesting that SEA or the Board remove that Corps consultation condition, and will fully comply with that condition and consult with the Corps in the unanticipated event that salvage operations are contemplated at some point in the future. Rather, as a precondition to filing its consummation notice, December 1 Decision at *4, TA has consulted with and completed the Section 106 review process with the Missouri SHPO as directed in the Board's December 1st decision and as more fully discussed in my prior letter. TA respectfully requests that the condition based on completion of the Section 106 process be correspondingly removed.

Thank you for your attention to this matter, and please feel free to contact me directly at the number below with any questions.

Sincerely,
Brendon

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From: Diana.Wood@stb.dot.gov [mailto:Diana.Wood@stb.dot.gov]

Sent: Friday, December 19, 2008 11:14 AM

To: Fowler, Brendon P.

Subject: Transit America LLC - Abandonment Exemption in Buchanan County, Missouri, STB Docket No. AB-1019X

On December 15, 2008, I received your letter requesting removal of the Section 106 condition for the above referenced abandonment exemption and am writing to remind you that the Board also imposed a Corps consultation condition. See attachment. Could you provide a status of your consultation with the Corps - in other words, did the Corps require (or not require) permits, mitigation? An email would suffice, and once I receive it, will write a clearance memo to Proceedings.

Thanks

Diana F. Wood
Section of Environmental Analysis
Surface Transportation Board
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