

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB 1109X

City of Belfast, Maine – Abandonment Exemption – in Belfast, Me.

BACKGROUND

In this proceeding, the City of Belfast, Maine (the City) filed a petition under petition under 49 C.F.R. § 10502 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in the City, the county seat of Waldo County, Maine. The rail line proposed for abandonment consists of a portion of the Belfast and Moosehead Lake Railroad, extending approximately 2.0 miles from Milepost 0.33 near the U.S. Route 1 overpass to Milepost 2.33 near Oak Hill Road (the Line). Maps depicting the Line in relationship to the area served are appended to this Environmental Assessment (EA).

The City originally filed a notice of exemption under 49 C.F.R. § 1152.50 in connection with abandonment of the Line on June 25, 2013. Prior to issuing a decision regarding the notice of exemption, the Surface Transportation Board (the Board) requested that the City provide additional information regarding the history and ownership of the Line. On July 26, 2013, the City provided the requested information as a supplemental filing. According to its supplemental filing, the City acquired the Line on July 2, 2010 from Unit Property Management, the previous owner of the Line. On August 13, 2013, the Board issued a decision holding the proceeding in abeyance in order for the Board to consider the information contained the supplemental filing. On September 23, 2013, the City filed a Notice of Exemption under 49 U.S.C §§ 10901 and 10502 and 49 C.F.R. §1150.31 *et seq.* seeking approval of its 2010 acquisition of the Line.¹

On December 9, 2013, the City filed its petition for exemption incorporating all information provided in the two notices. If the petition becomes effective, the City will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

ENVIRONMENTAL REVIEW

The City submitted an Environmental Report 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. The City served

¹ Filings and decisions related to this proceeding are available for viewing on the Board's website at www.stb.dot.gov.

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)].² The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

OEA issued an EA in connection with the original notice of exemption on July 19, 2013. In the EA, OEA recommended three environmental conditions and concluded that the proposed abandonment would not significantly affect the quality of the human environment. No environmental comments were received during the public comment period for the original EA.

OEA is now issuing this EA in response to the City's petition for exemption in order to provide additional time for public review of and comment on the proposed abandonment.

Diversion of Traffic

The City states no local rail traffic has moved over the Line for at least two years and that there is no overhead traffic. Since 1990, the sole use of the Line has been a closed-loop tourist excursion service run by various operators. From 2011 through 2012, the tourist service was operated by the Brooks Preservation Society, under the terms of a now expired lease granted by the City. Should the abandonment be approved, tourist traffic would continue to operate from the area of City Point at approximately Milepost 2.33.

Because no freight traffic has moved over the Line since 1990, the proposed abandonment would not adversely impact the development, use, or transportation of energy resources or recyclable commodities; the 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. The City states that the proposed abandonment would result in a slight decrease in energy use by the tourist train.

Salvage Activities

If abandonment authority is granted in this proceeding, the City states that it intends to convert the Line for use as a recreational walking and biking trail. The City has filed a request for a Notice of Interim Trail Use (NITU) with the Board, which would allow the Line to be 'railbanked' under the provisions of the National Trails Act (Trails Act).³ Should the proposed abandonment be approved, the City would salvage track and ties. If the request for a NITU is approved, the City would then level and widen the existing rail bed to approximately 10 feet wide and lay a stone dust trail surface over the rail bed. An existing trestle bridge located at approximately Milepost 2.0 would be left intact, but some rotten or split timbers would be replaced. All activities would occur within the existing publically owned right-of-way by a properly licensed contractor.

² 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 1109X.

³ 16 U.S.C. § 1247(d).

OEA notes that the Trails Act gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad rights-of-way that otherwise would be abandoned. The Board's role under the Trails Act is ministerial.⁴ The Board does not conduct an environmental review of a potential conversion to interim rail use and railbanking because a conversion does not exercise sufficient federal control so as to qualify as a "major Federal action" under the National Environmental Policy Act.⁵ Accordingly, this EA considers only those activities related to the salvage and abandonment of the Line. It does not consider post-abandonment activities related to the construction of a recreational trail, although such activities may require review or permitting under existing local, state, or federal regulations.

The City states that the proposed abandonment is consistent with existing local land use plans. The project is also referenced in the City's Downtown Waterfront Master Plan as part of a local effort to improve public access to the waterfront.

The City states, and OEA review has confirmed, that the Line is located within a coastal zone as defined by the Maine Coastal Program. According to the City, a feasibility study for the proposed abandonment and the subsequent conversion to a recreational trail was conducting with grant funding provided by the Maine Coastal Program. Public hearings were held as a part of this study. The City states that the proposed abandonment is intended to improve recreational access in accordance with the goals of the Maine Coastal Management Plan. The City states that the proposed abandonment is not listed as subject to review under the Maine Coastal Management Plan and has provided actual notice of the proposal to the Maine Coastal Program as required by the Board's environmental rules.⁶ Given the limited scope of proposed salvage activities, OEA believes the proposed abandonment to be consistent with the Maine Coastal Management Plan. OEA is sending a copy of this EA to the Maine Coastal Program for their comment and review.

The U.S. Natural Resource Conservation Service (NRCS) submitted comments stating that the area in which the Line is located does not contain any land considered to be prime farmland. According to NRCS, there are areas along the Line that contain soil types that are considered farmland of statewide importance. Because salvage activity would be confined to an existing rail corridor, and because no prime farmland is present in the vicinity of the Line, no mitigation regarding the conservation of agricultural land is recommended.

The Line crosses one water body, the Passaassawakaeg River and much of the Line is adjacent to the river. In its review of the best available data, OEA has concluded that the Line may also cross areas containing wetlands. The City states that there is a vernal pool located near the Line, but outside of the right-of-way.

⁴ Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990).

⁵ 40 C.F.R. § 1508.18.

⁶ 49 C.F.R. § 1105.9.

The City states that it has consulted with the U.S. Army Corps of Engineers (the Corps) and has determined that the proposed abandonment would not require a Corps permit under Section 404 of the Clean Water Act.⁷ To date, OEA has not received comments from the Corps. However, because salvage activity would be confined to the existing rail right-of-way, and because no dredged or fill material would be discharged into wetlands or waters of the United States, OEA concurs with the City's determination that a Section 404 permit would not be required. OEA is sending a copy of this EA to the Corps for its review and comment.

The City states that a permit under Section 402 of the Clean Water Act⁸ would not be required because the proposed abandonment would not result in the discharge of pollutants. OEA has not received comments from the Maine Department of Environmental Protection (MDEP) or the U.S. Environmental Protection Agency (USEPA) regarding any potential impacts of the proposed project on water quality. Because salvage activities would be limited to the removal of track and ties, and because work would be performed within the existing rail right-of-way, OEA concurs with the City's determination that a CWA Section 402 permit would not be required. OEA is sending a copy of this EA to MDEP and USEPA Region 1 for their review and comment.

The City states that there are no known hazardous waste sites or sites where hazardous material spills have occurred on or adjacent to the right-of-way. OEA review has confirmed that there are no listed Superfund sites in the vicinity of the Line.⁹ Accordingly, no mitigation regarding hazardous waste sites or hazardous material spills is recommended.

OEA conducted a search of the USFWS Environmental Conservation Online System in order to identify any federally listed endangered or threatened species that may be present in the vicinity of the Line.¹⁰ The table below shows the protected species known or thought to occur in the county in which the proposed abandonment is located.

⁷ 33 U.S.C. § 1344.

⁸ 33 U.S.C. § 1342.

⁹ Environmental Protection Agency, NEPAassist, <http://nepassisttool.epa.gov/nepassist/entry.aspx> (last visited January 22, 2014).

¹⁰ U.S. Fish and Wildlife Service, Environmental Conservation Online System, <http://ecos.fws.gov/ecos/indexPublic.do> (last visited January 22, 2014).

Federally Listed Threatened and Endangered Species in Waldo County, Maine			
Group	Common Name	Scientific Name	Status
Fishes	Atlantic salmon	<i>Salmo salar</i>	Endangered
Reptiles	Hawksbill sea turtle	<i>Eretmochelys imbricate</i>	Endangered
	Leatherback sea turtle	<i>Dermochelys coriacea</i>	Endangered
	Green sea turtle	<i>Chelonia mydas</i>	Threatened

The U.S. Fish and Wildlife Service (USFWS) submitted comments stating that, based on the available information, the only federally listed endangered species known to exist in the project area is the Atlantic salmon (*Salmo salar*). USFWS notes that the Line falls within the Gulf of Maine Distinct Population Segment (GOM DPS) of Atlantic salmon, which includes all naturally reproducing and conservation hatchery populations of Atlantic salmon from the Androscoggin River northward along the Maine coast to the Dennys River. Much of this area has been designated as critical habitat for the Atlantic salmon. However, the proposed abandonment is located in a watershed that has been excluded from critical habitat designation by the National Marine Fisheries Service (NMFS). USFWS and NMFS have joint jurisdiction over the conservation of Atlantic salmon population under the Endangered Species Act.

Threats to Atlantic salmon include overfishing, habitat change, and pollution. Construction and other development projects have the potential to release sediment pollution that can negatively affect spawning grounds.¹¹ OEA believes that, as described, the proposed abandonment would not result in the discharge of sediments that could potentially affect Atlantic salmon. OEA does not anticipate potential impacts to any other protected species that may be present in the project area. Accordingly, OEA concurs with the City’s determination of no effect to federally listed threatened or endangered species.

In its comments, USFWS states that there is an active bald eagle nest site located near the Line. USFWS notes that the bald eagle is no longer listed as a federally threatened or endangered species. However, the species is protected under the Bald and Golden Eagle Protection Act¹² and the Migratory Bird Treaty Act.¹³ Under these laws, bald eagles are protected from ‘take,’ meaning to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb. ‘Disturb’ means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

Based on available information, the active bald eagle nest site appears to be located

¹¹ U.S. Fish and Wildlife Service Northeast Region, Atlantic Salmon, <http://www.fws.gov/northeast/atlanticsalmon/> (last visited January 22, 2014).

¹² 16 U.S.C. § 668.

¹³ 16 U.S.C. § 703.

approximately 200 feet from the Line at its nearest point. USFWS generally recommends a buffer zone of 330 or 660 feet, depending on the terrain and project type, to avoid disturbing active nest sites. Because salvage activity related to the proposed abandonment would be minor and confined to the rail right-of-way, OEA believes that disturbance of the nest is unlikely. However, due to the proximity of the proposed project to the nest site, we are recommending a condition requiring the City to consult with USFWS regarding appropriate measures that can be taken to avoid disturbing the nest site and to comply with all reasonable recommendations.

USFWS recommends that the City consult with the Maine Department of Inland Fisheries and Wildlife (MDIF&W) and the Maine Natural Areas Program (MNAP) regarding potential impacts to state threatened and endangered species. Accordingly, OEA is recommending a condition requiring the City to consult with these agencies prior to beginning salvage activities.

The City has requested comments from the National Park Service (NPS) regarding the potential impact of the proposed abandonment on wildlife sanctuaries or refuges, parks, or other protected areas, but has received no response to date. In its review of available geospatial data, OEA has concluded that the proposed abandonment is not located in or adjacent to any local or national park; wildlife sanctuary or refuge; or other protected area. Accordingly, no mitigation regarding protected areas 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 the City to consult with NGS prior to beginning salvage activities.

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 their review and comment: the Corps, MDEP, USEPA, USFWS, MDIF&W, and MNAP.

HISTORIC REVIEW

According to the City, the Line is a segment of the Belfast and Moosehead Lake Railroad, which was founded in 1867 following approval by the Maine Legislature. The Line was fully constructed by 1870 and operated until 1925 as the Belfast Branch of the Maine Central Railroad. The City assumed the operation of the Line in 1925. Scheduled point-to-point passenger service ended in March, 1960, although freight shipping continued through the 1970s and 1980s. During this time, the Line was used to transport commodities such as fish, poultry, pulp, leather, and other materials. By 1989, all freight customers had closed or relocated, and there were no freight shipments on the Line after that time.

Since 1990, a series of tourist excursion operators have used the Line. In 1998, the City purchased the downtown area of the Line along Belfast Harbor, which had included the rail yard and station. Unity Property Management owned the remainder of the Line from 1995 to 2003

and operated out of the town of Unity, Maine starting in 1995. The Railstar Corporation held possession of the railroad from 2003 to 2005. The City purchased the remainder of the Line in July, 2010. Should the proposed abandonment be approved, the Brooks Preservation Society would operate from the area of City Point at approximately Milepost 2.33 beginning in 2013, allowing it to have a permanent base of operations at the City Point Railroad Museum. The City states that it intends to incorporate the planned rail trail with the railroad facilities at City Point, with the goal of informing visitors and resident of the history of the Line.

There is one structure on the Line, a trestle bridge located at approximately Milepost 2.0. The City states that, although the construction date of the bridge is unknown, the track laid on the bridge is dated 1903, suggesting that the structure is likely more than 100 years old. The City does not believe that the bridge has been substantially altered or reconstructed at any point. It is the opinion of the City that the bridge may meet the criteria for inclusion in the National Register of Historic Places (National Register) due to its age and its significance to the Belfast and Moosehead Lake Railroad and the history of transportation in the mid-coast Maine region. Should the proposed abandonment be approved, the City states that it plans to leave the bridge intact, but would replace some rotten or split timbers. The bridge would then be incorporated into a recreational trail if the request for a NITU is granted.

The Maine Historic Preservation Commission (State Historic Preservation Office or SHPO) submitted comments stating that the proposed abandonment would have no effect on historic properties. The SHPO notes that that the Line may be eligible for listing in the National Register. The SHPO recommends that the trestle bridge, as well as any existing railroad signals, mile markers, and similar fixtures, be retained and preserved. The SHPO encourages the City to incorporate these features into any future recreational trail project. OEA concurs with the SHPO's finding of no effect on historic properties and notes that the City intends to preserve the historic integrity of the Line and its associated structures should the abandonment be approved.

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.¹⁴ The search did not identify any federally recognized tribes that may have knowledge regarding properties of traditional religious and cultural

¹⁴ National Park Service, National NAGPRA Program Native American Consultation Database, <http://grants.cr.nps.gov/nacd/index.cfm> (last visited January 22, 2014).

significance within the right-of-way of the proposed abandonment.

CONDITIONS

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

- 1. The City of Belfast, Maine (the City) shall consult with the U.S. Fish and Wildlife Service (USFWS) prior to beginning salvage activities regarding potential impacts to an active bald eagle nest that has been identified near the project site. The City shall comply with all reasonable recommendations in order to prevent the disturbance of the nest.**
- 2. The City of Belfast, Maine (the City) shall consult with the Maine Department of Inland Fisheries and Wildlife and the Maine Natural Areas Program prior to beginning salvage activities regarding potential impacts to state threatened and endangered species, species of special concern, and significant wildlife habitats. The City shall comply with these agencies' reasonable recommendations.**
- 3. The City of Belfast, Maine (the City) shall consult with the National Geodetic Survey (NGS) prior to beginning salvage activities. If NGS identifies geodetic station markers that may be affected by the proposed abandonment, the City 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.**

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.

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.

The City has filed a request for public use pursuant to 49 C.F.R. § 1152.28.

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).

The City has submitted a request for a NITU pursuant to 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 Nos. AB 1109X 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: January 24, 2014

Comment due date: February 3, 2014

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