

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 402X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
THE CITY OF DETROIT, MICH.

Decided: November 8, 2018

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon rail service in NSR's Detroit Boat Yard. Specifically, NSR seeks to abandon: (1) approximately 0.63 miles of track extending from milepost D 1.38 (at switch) to a point without a milepost approximately 3,303 feet to the north (Segment A); and (2) NSR's common carrier operating interest over approximately 0.49 miles of connecting track jointly owned and operated by NSR and CSX Transportation, Inc. (CSXT), extending from milepost D 1.23 to milepost D 1.72 (near West Jefferson Ave.) in the City of Detroit, Mich. (Segment B) (collectively, Line).¹ Notice of the exemption was served and published in the Federal Register on October 10, 2018 (83 Fed. Reg. 51,041). The exemption is scheduled to become effective on November 9, 2018.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on October 15, 2018, recommending that three environmental conditions be imposed on any decision granting abandonment authority. In the EA, OEA noted that NSR initiated consultation with the Michigan State Historic Preservation Office (the SHPO) under Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) by providing the SHPO with a copy of its Historic Report prior to filing its verified notice of exemption with the Board, pursuant to 36 C.F.R. § 800.4(d)(1). By letter dated August 21, 2018, the SHPO declined to provide any preliminary comments on the Historic Report and requested that the Board, as the federal agency with the responsibility for Section 106, provide the SHPO with an adequately documented finding and request the SHPO's concurrence on that finding. OEA concluded in its EA that no historic properties within the Area of Potential Effects (APE) would be affected by the abandonment.² To allow the SHPO sufficient time to review and comment on this finding,

¹ CSXT's right to operate over Segment B will be unaffected by NSR's abandonment.

² OEA has determined that the APE does not encompass the entire rail right-of-way. Because CSXT would continue to operate Segment B as a common carrier rail line, no physical or jurisdictional changes would occur on that segment, and no effects to historic properties would occur. OEA would assess and address any potential effects to historic properties along that segment, if any historic properties are present, if and when CSXT seeks abandonment authority from the Board. Accordingly, the APE is limited to the right-of-way of Segment A.

OEA recommended that the Board impose a mitigation condition temporarily barring consummation of the proposed abandonment until the condition is removed. OEA indicated that, if the SHPO does not object to OEA's finding, OEA would issue a Supplemental EA recommending that the Board remove the mitigation condition so that NSR can consummate the proposed abandonment.

In the EA, OEA also stated that the Line is located within the Michigan Coastal Zone Management Program (Michigan CZMP) boundary. Pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.) and the Board's environmental rules, NSR provided its Environmental Report to the Office of the Great Lakes (OGL), which oversees the Michigan CZMP, and requested comments from OGL regarding potential impacts to coastal resources and uses. As of October 15, 2018, OGL had not responded. To provide OGL the opportunity to review and comment on the proposed abandonment, OEA recommended a condition requiring NSR to consult with the OGL and obtain state coastal management consistency certification prior to beginning salvage activities or consummating the proposed abandonment.

The EA also stated that the National Geodetic Survey (NGS) submitted comments stating that 11 geodetic survey marks are located in the project area. Accordingly, OEA recommended a condition requiring NSR to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station marks in order to plan for the possible relocation of the geodetic station marks by NGS.

OEA issued its final EA on November 2, 2018, noting that it received several comments. The Detroit District of the U.S. Army Corps of Engineers (the Corps) commented that Segment A appears to cross areas delineated as 1-percent-annual-change floodplain under the National Flood Insurance Program. The Corps stated that, because salvage activities would involve only the removal of track and related material and the smoothing of the remaining roadbed to a level surface, the Corps expects that effects to the floodplain would be negligible. The Corps recommends, however, that NSR coordinate with appropriate agencies regarding the applicability of a floodplain permit. In response to these comments, OEA recommends an environmental mitigation condition requiring NSR to consult with the floodplains management office of the Water Resources Division of the Michigan Department of Environmental Quality (MDEQ) and comply with the reasonable recommendations of that agency with regarding to potential impacts of the proposed abandonment to floodplains.

Concerning the Section 106 process, NSR reported that the SHPO is currently reviewing the record and that the SHPO intends to provide comments on OEA's finding of no historic properties affected no later than November 19, 2018. Accordingly, to allow the SHPO sufficient time to provide comments, OEA recommends that the Section 106 condition previously recommended in the EA be imposed on any decision granting abandonment authority.

Additionally, on November 2, 2018, OEA received comments from MDEQ regarding consistency with the Michigan CZMP, pursuant to the Coastal Zone Management Act. MDEQ

stated that the proposed abandonment would be consistent with the Michigan CZMP provided that all applicable environmental permits, if any, are compiled with. In response to MDEQ's comments, OEA no longer recommends that NSR consult with the OGL and obtain state coastal management consistency certification.

In sum, in the final EA, OEA recommends that three conditions, including two of the three conditions previously recommended in the EA and one additional condition related to floodplain management, be imposed upon any decision granting abandonment authority. In light of OEA's analysis and recommendation, the three conditions recommended in the final 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 October 10, 2018, exempting the abandonment of the Line described above, is subject to the conditions that NSR shall:
 - (1)(a) 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 rail right-of-way that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed,
 - (b) report back to OEA regarding any consultations with the SHPO and any other Section 106 consulting parties and the public, and
 - (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition;
 - (2) consult with NGS and 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; and
 - (3) prior to undertaking any abandonment-related salvage activities, consult with the Water Resources Division of MDEQ regarding potential impacts of the proposed abandonment to floodplains and follow the reasonable recommendations of that agency to address potential impacts to floodplains.
3. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.