



***SURFACE TRANSPORTATION BOARD***  
***Washington, DC 20423***

*Office of Environmental Analysis*

March 19, 2024

Julianne Polanco  
State Historic Preservation Officer  
California Office of Historic Preservation  
1725 23<sup>rd</sup> St. Ste 100  
Sacramento CA 95816

Re: Docket No. AB 6 (Sub-No. 501X), BNSF Railway Company — Abandonment Exemption — In Contra Costa County, Cal.; SHPO ID ER-22-802, Request for Concurrence

Thank you for speaking with the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) on February 6<sup>th</sup> regarding the above-mentioned abandonment proceeding. This letter further clarifies the issues discussed on that call and requests concurrence with OEA's No Adverse Effect determination.

On March 9, 2023, BNSF Railway Company (BNSF) filed for authority from the Board to abandon a line of railroad in Contra Costa County, California. The rail line proposed for abandonment, known as Line Segment 7258, extends approximately 0.79 miles from milepost 1190.9 to milepost 1191.69 near Point Richmond (the Line). OEA issued a Draft EA on April 3, 2023 for public review and comment. No comments were received. OEA then issued a Final EA on April 24, 2023.

Because OEA had not heard from the California State Historic Preservation Officer (SHPO), the EA recommended that the Board impose a Section 106 condition requiring BNSF to (1) 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 until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed; (2) report back to OEA regarding any consultations with the SHPO and the public; and (3) 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. The Board imposed this Section 106 condition in its decision dated April 27, 2023 authorizing the proposed abandonment.

On our call, we discussed whether the Board could impose post-abandonment preservation conditions on the Line. However, we explained that the Board cannot impose

involuntary historic preservation conditions under Section 106 that would limit or dictate use of the rail property post-abandonment (if the Board ultimately decides to grant authority). This is because rail property is private property over which the Board has economic regulatory authority only while it is part of the interstate rail system within the Board's jurisdiction. This jurisdiction ends when the Line is abandoned, and therefore, historic conditions must be satisfied before a carrier consummates any abandonment authority. Further, the Board has found that imposing involuntary post-abandonment land use restrictions under Section 106 on private property without compensation would constitute an unconstitutional taking of private property under the Fifth Amendment. *See In re Implementation of Env't Laws*, 7 I.C.C.2d 807, 828-29 (1991).

In this case, BNSF has stated that it does not intend to conduct any salvage or ground disturbing activities in connection with the proposed abandonment, and thus there would be no changes to any of the historic properties or to their setting. Therefore, OEA has determined that the proposed abandonment would have No Adverse Effect to historic properties and that no additional documentation or Section 106 mitigation is required. OEA requests your office's concurrence with this determination so that OEA can complete the Section 106 process, and the Board can lift the Section 106 historic preservation condition.

Please feel free to contact Adam Assenza of my staff at [adam.assenza@stb.gov](mailto:adam.assenza@stb.gov) or 202-245-0301 with any additional questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Danielle Gosselin".

Danielle Gosselin  
Director  
Office of Environmental Analysis