

SERVICE DATE – SEPTEMBER 29, 2020

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB-303 (Sub-No. 56X)

**Wisconsin Central Ltd. – Abandonment Exemption –
In Kaukauna, Outagamie County, Wis.**

BACKGROUND

In this proceeding, Wisconsin Central Ltd. (WCL) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in the City of Kaukauna in Outagamie County, Wisconsin. The rail line proposed for abandonment extends approximately 0.30 miles from milepost 114.0 to the end of the track at milepost 113.70 (the Line). A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

According to WCL, the right-of-way is 100 feet wide, 50 feet from the centerline of the track on either side, and there are no bridges, culverts, or structures on the Line. The Line curves along the southern bank of the Fox River, which lies North and West of the Line. The southwestern terminus is approximately 200 feet west of the end of Holly Court, and curves approximately the same distance around the cul-de-sacs at the ends of Laurel Lane, McFarland Place, and Shamrock Court, all of which are residential streets with single family homes. Beyond the southwestern terminus of the Line is an industrial facility.

According to WCL, the Line was constructed in 1871-1874 by the Appleton and New London Railway Company, a predecessor of the Milwaukee, Lake Shore and Western Railway Company (“MLS&W”), as part of a route between Manitowoc and Appleton, Wisconsin. Chicago & North Western Railway Company (“CNW”) acquired MSL&W in 1893. The Line and surrounding CNW trackage was acquired in 1988 by Fox River Valley Railroad Corporation, and in 1993 by Fox Valley & Western Ltd. (“FVW”), a WCL affiliate. FVW was merged into WCL in 2002. According to WCL, the portion of rail line beyond the Line at milepost 113.7 was sold under a notice of interim trail use (NITU) in 2015.¹ The Line was included within the milepost limits in that docket and an exemption was received for abandonment, but WCL

¹ Wisconsin Central Ltd. -- Abandonment Exemption -- In Outagamie County, Wis.,
Docket No. AB-303 (Sub-No. 40X) (STB served March 20, 2013).

allowed that authority to laps between milepost 114.0 and 113.7 because at the time, the Line was not an element of the planned trail system.

WCL anticipates conveyance of a portion of the Line post-abandonment to facilitate the construction and use of a new pedestrian bridge to span the Fox River. According to WCL, the City of Kaukauna plans to acquire a portion of the Line to construct the bridge to connect two existing trails, which would not be possible unless WCL abandons its common carrier status on the Line. Both the City of Kaukauna and the Village of Little Chute, as partners seeking to connect the existing trails, have filed letters with the Board supporting the proposed abandonment.

ENVIRONMENTAL REVIEW

WCL submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment, including salvage. WCL served the E&H Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)]² implementing the National Environmental Policy Act. The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to WCL, no local traffic has moved over the Line in over two years, and overhead traffic on the Line has been rerouted. Therefore the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. Nor would the proposed abandonment adversely impact the development, use and transportation of energy resources or recyclable commodities or the transportation of ozone-depleting materials.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. WCL has stated that it intends to use existing access points to the right-of-way when conducting salvage activities. While WCL intends to salvage the rail, ties, and track materials from the Line, WCL does not intend to disturb the railbed and subgrade.

² The E&H Report is available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records," selecting "Filings" in the "Search for" dropdown menu; entering "AB" "303" "56" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The E&H Report was filed on September 1, 2020.

According to WCL, the proposed abandonment is consistent with local land use planning. The Line lies entirely within the City of Kaukauna, whose officials submitted a filing to the Board supporting the proposed abandonment.

To WCL's knowledge, no hazardous materials have been handled on this Line in at least two years, and none would be handled on the Line should the Board approve the proposed abandonment. Similarly, WCL reports that no known hazardous waste sites are present or hazardous waste materials spills have occurred on the Line.

WCL requested comments from the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species. USFWS advised project reviewers to use the USFWS Information for Planning and Conservation (IPaC) system to identify protected species in the project area, and OEA conducted a search.³ One endangered species, the Northern long-eared bat (*Myotis septentrionalis*), is located in the area of the proposed abandonment. According to the IPaC report, there is no critical habitat for this species in the project area. OEA has determined that this federally listed endangered species would not be affected because a developed rail line right-of-way with no structures is not suitable habitat for any individuals of this species. OEA is providing the USFWS Green Bay Ecological Services Field Office a copy of this EA for its review.

The Line is not located within Wisconsin's Coastal Zone. Therefore no coastal management consistency certification would be required by the Wisconsin Coastal Management Program.

WCL does not anticipate the discharge of any pollutants in relation to the proposed abandonment. In addition, no material will be disposed of into waterways as part of WCL's planned salvage activities. Accordingly, OEA believes that no permits under Section 402 of the Clean Water Act would be required for the proposed abandonment.

WCL does not intend to appreciably remove or alter the contour of the roadbed underlying the Line, and disturbed areas would be limited to the right-of-way wherever possible. WCL also has no plans to undertake in-stream work or dredge and/or fill any materials in connection with the proposed abandonment. However, OEA reviewed the Wisconsin Department of Natural Resources (WDNR) Surface Water Data Viewer and determined that the Line passes through the 100-year floodplain.⁴ Accordingly, OEA recommends that a condition be imposed on any decision granting abandonment authority requiring WCL to consult with the U.S. Army Corps of Engineers (Corps), WDNR and the Federal Emergency Management Agency (FEMA) prior to commencement of any abandonment-related salvage activities

³ <https://ecos.fws.gov/ipac> (last accessed September 25, 2020).

⁴ <https://dnr.wisconsin.gov/topic/SurfaceWater/swdv> (last accessed September 28, 2020)

regarding potential impacts to the floodplain. OEA is providing a copy of this Draft EA to the appropriate offices of the Corps, FEMA, and WDNR for review.

OEA believes that any air emissions associated with abandonment activities would be temporary and would not have a significant impact on air quality. Similarly, any noise related to abandonment activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the following agencies for review and comment: USFWS, Corps, WDNR, and FEMA.

HISTORIC REVIEW

WCL served the E&H Report on the Wisconsin Historical Society (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).⁵ Based on available information, the SHPO has submitted comments stating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment.

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, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. 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 Draft EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <https://prod.stb.gov>. Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development's Tribal Directory Assessment Tool (TDAT) to identify

⁵ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found at a link on the bottom of the Board's website overlooking historic preservation at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

federally recognized Tribes that may have ancestral connections to the project area.⁶ The database indicated that the following federally-recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment: the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little Traverse Bay Bands of Odawa Indians, Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Oneida Tribe of Indians of Wisconsin; and the Stockbridge Munsee Community, Wisconsin. Accordingly, OEA is sending a copy of this Draft EA to these Tribes for review and comment.

CONDITIONS

OEA recommends that the following condition be imposed on any decision granting abandonment authority:⁷

To ensure that the 100-year floodplain is not adversely affected, Wisconsin Central Ltd. shall consult with the U.S. Army Corps of Engineers, the Wisconsin Department of Natural Resources, and the Federal Emergency Management Agency prior to commencement of any abandonment-related salvage activities regarding potential impacts to the floodplain and shall comply with their reasonable requirements.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended condition is 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.

⁶ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed September 25, 2020).

⁷ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with this condition is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

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 Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁸

TRAIL USE

A request for a NITU is 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 Federal Register notice is also issued as a Board decision and is available on the Board's website.⁹

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

As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://prod.stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed in the comment field provided, and lengthier comments can be attached as Word, Adobe Acrobat or other file formats. If you have any questions, please contact Adam Assenza by email at adam.assenza@stb.gov or by phone at 202-245-0301.

Date made available to the public: September 29, 2020.

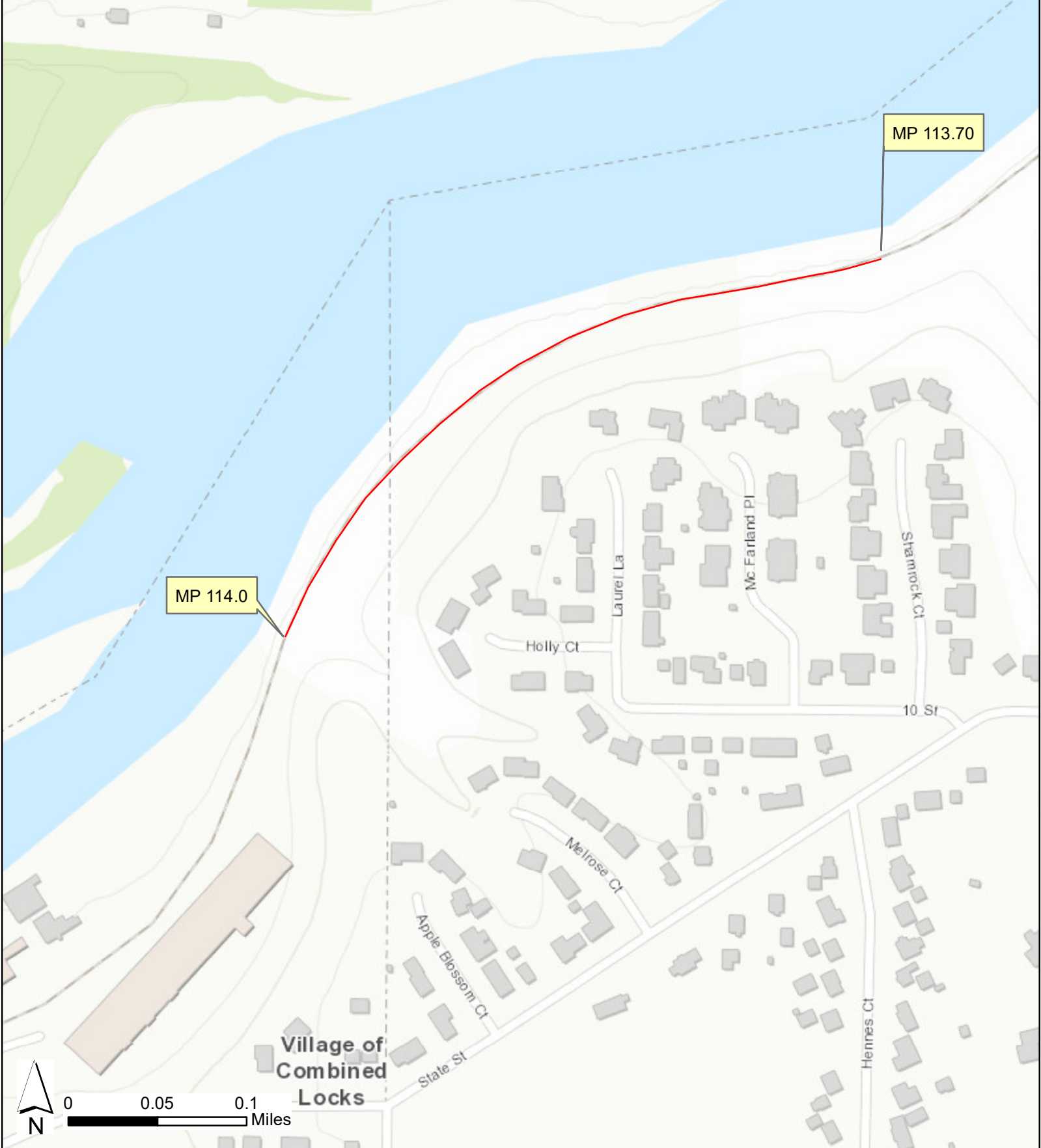
⁸ Board decisions are available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records," selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "303" "56" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

⁹ Id.

Comment due date: October 14, 2020.

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

Attachment

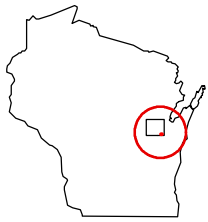


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Abandonment Exemption
City of Kaukauna
Outagamie County, Wisconsin

Legend

 the Line

Note: Maps produced by the STB's Office of Environmental Analysis are based on information provided by the applicant and are for reference purposes only.



Location in State