

#ED-2371

**SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS**

FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
DOCKET NO. AB 55 (SUB-NO. 736X) AND
DOCKET NO. AB 290 (SUB-NO. 368X)

October 31, 2014

ABANDONMENT TYPE

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

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

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

In this proceeding, the CSX Transportation, Inc. (CSXT) and the Norfolk Southern Railway Company (NSR) filed a notice under 49 C.F.R. § 1152.52 for CSXT to abandon and NSR to discontinue service over approximately 1.18 miles of rail line on CSXT's Second Creek Spur located on its Huntington Division, KD Subdivision, between milepost OKS 275.09 (Valuation Station 15304+87), at the end of the track, and milepost OKS 276.27 (Valuation Station 15368+89), near West Baxter Avenue in Knoxville, Knox County, Tennessee (the Line).

The Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) for this proceeding on October 10, 2014 for public review and comment. In the EA, OEA recommended three environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments

OEA received three comments during the comment period, as well as clarification from CSXT regarding the removal of a bridge on the Line as part of the salvage process. The referenced comments are attached and discussed in further detail below.

The U.S. Fish and Wildlife Service (USFWS) commented that it believes the requirements of Section 7 of the Endangered Species Act have been fulfilled, but added that it would need to be notified if new information becomes available or the proposed action is modified. USFWS also provided a number of recommendations regarding salvage. Specifically, USFWS is recommending that an erosion and sediment control plan be prepared pursuant to the National Pollutant Discharge Elimination System (NPDES) permit requirements and that if any in-stream work is contemplated, that it be conducted during low flow; include a site restoration component; provide minimal disruption to the streambed; employ the use of staging areas; and

prevent toxic emissions into the aquatic environment. USFWS also recommends that best management practices be implemented during bridge removal. OEA notes that USFWS's concerns are addressed in recommended condition 1, which would require CSXT to consult with the Tennessee Division of Water Pollution Control (WPC) prior to initiating salvage operations to determine if a stormwater permit under Section 402 of the Clean Water Act Act's NPDES program and an Aquatic Resources Alteration Permit (APAP) under Section 401 Water Quality Certification may be required.

The City of Knoxville commented that it is interested in acquiring the Line for public use, providing that CSXT remove the bridge that travels over Second Creek (creosote wood trestle bridge # 191) near Bernard Avenue at milepost OKS 276.00. The City states that the bridge has caused significant flooding hazards to the community because it is very low in elevation and frequently collects debris during storm events, causing water to back up and flood upstream properties. In addition to the flooding problems, the City inspected the bridge and determined that it is not fit for use as a trail-related structure and is currently working with CSXT to resolve the matter. CSXT has since confirmed that the bridge would be removed during the salvage process in the attached email.

Although the U.S. Army Corps of Engineers (Corps) previously commented that a Section 404 permit would not be required under the Clean Water Act (33 U.S.C. § 1344) because the proposed action would not involve the discharge of dredge or fill material into waterways or wetlands of the United States, it was not known at that time that the previously referenced bridge over Second Creek would be removed during the salvage process. Because this operation may result in the discharge of dredge or fill material into Second Creek, OEA is adding a new condition (Condition 3) that would require CSXT to consult with the Corps prior to initiating the salvage process to determine if a Corps permit would be required.

The Tennessee Historical Commission (State Historic Preservation Office or SHPO) commented that there are no National Register of Historic Places (National Register) listed or eligible properties that would be affected within the right-of-way (the Area of Potential Effect, or APE) by the proposed abandonment and discontinuance of service. Therefore, 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, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. Accordingly, OEA has removed the previously recommended Condition 3 pertaining to Section 106 review. 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 <http://www.stb.dot.gov>.

Conclusion

The EA comment period has ended. Accordingly, OEA recommends that the one Section 106 SHPO consultation condition (Condition 3) recommended in the EA be removed and that a

new Corps consultation condition be added (new Condition 3). OEA recommends that the following three conditions should be imposed upon any decision granting abandonment authority. The conditions are:

1. The CSXT Transportation, Inc. (CSXT) shall consult with the Tennessee Division of Water Pollution Control (WPC) prior to initiating salvage operations to determine if a stormwater permit under Section 402 of the Clean Water Act Act's National Pollutant Discharge Elimination System (NPDES) and an Aquatic Resources Alteration Permit (APAP) under Section 401 Water Quality Certification may be required. CSXT shall comply with WPC's reasonable requirements.
2. CSXT shall consult with Knox County's Engineering and Public Works (EPW) prior to initiating salvage operations to determine if any land disturbance permits may be required. CSXT shall comply with EPW's reasonable requirements.
3. CSXT shall consult with the U.S. Army Corps of Engineers (Corps) prior to initiating salvage activities for potential impacts to waters of the United States, including wetlands, and shall comply with the reasonable requirements of the Corps.

OEA concludes that if the above conditions are imposed, the proposed action would not significantly affect the quality of the human environment.

Attachments

OEA CONTACT: Diana Wood 
202-245-0302
woodd@stb.dot.gov

Distribution: Office of Proceedings
OEA Chron
ECT



United States Department of the Interior

FISH AND WILDLIFE SERVICE
446 Neal Street
Cookeville, TN 38501

September 29, 2014

Ms. Jo Ann Burroughs
CSX
500 Water Street - J-315
Jacksonville Florida 32202

Subject: FWS #14-CPA-0748. Proposed Abandonment of CSX Transportation Common Carrier Obligation and Norfolk Southern Railway Company Discontinuance of Trackage Rights, Knoxville, Knox County, Tennessee.

Dear Ms. Burroughs:

Thank you for your correspondence of June 26, 2014, regarding proposed abandonment of CSX Transportation (CSXT) common carrier obligation and Norfolk Southern Railway Company (NSR) discontinuance of trackage rights in Knoxville, Knox County, Tennessee. This proposal is for CSXT to abandon service and discontinuance of the trackage rights in the Huntington Division, KD Subdivision from Railroad Milepost OSK 275.09 to OSK 276.27. The Distance is approximately 1.18 miles, also known as the Second Creek Spur. U.S. Fish and Wildlife Service (Service) personnel have reviewed the information submitted and we offer the following comments.

Endangered species collection records available to the Service do not indicate that federally listed or proposed endangered or threatened species occur within the impact area of the project. We note, however, that collection records available to the Service may not be all-inclusive. Our data base is a compilation of collection records made available by various individuals and resource agencies. This information is seldom based on comprehensive surveys of all potential habitat and thus does not necessarily provide conclusive evidence that protected species are present or absent at a specific locality. However, based on the best information available at this time, we believe that the requirements of section 7 of the Endangered Species Act of 1973, as amended, are fulfilled. Obligations under section 7 of the Act must be reconsidered if (1) new information reveals impacts of the proposed action that may affect listed species or critical habitat in a manner not previously considered, (2) the proposed action is subsequently modified to include activities which were not considered during this consultation, or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

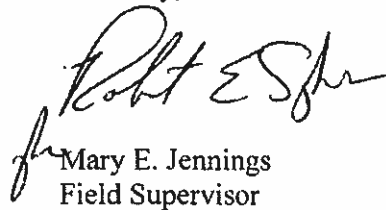
Information available to the Service does not indicate that wetlands exist in the vicinity of the proposed project. However, our wetland determination has been made in the absence of a field inspection and does not constitute a wetland delineation for the purposes of Section 404 of the Clean Water Act. The Corps of Engineers and Tennessee Department of Environment and Conservation should be contacted if other evidence, particularly that obtained during an on-site inspection, indicates the potential presence of wetlands.

When removing the track and bridge over and near Second Creek, we recommend that an erosion and sediment control plan be prepared in accordance with National Pollutant Discharge Elimination System (NPDES) permitting program guidelines prior to the initiation of any construction activities. All work within the project area should be scheduled during the low-flow period. If in-stream access is required, we recommend the use of temporary pads of clean shot rock with no earth fill. Fill material must not be taken from the streambed. Shot rock should be removed following instream activity and the streambed restored to original condition. Any intrusions into flowing waters should not extend more than one-third the distance from shore so that no more than one-third of the stream is obstructed at any time. Equipment staging and maintenance areas should be developed an adequate distance from Second Creek to avoid entry of petroleum-based pollutants into the water. Concrete and cement dust must be kept out of the stream as they alter water chemical properties and can be toxic to aquatic species.

Best management practices (BMPs) should be utilized throughout the entire construction project to minimize runoff of sediment into Second Creek. All sediment structures should be inspected and cleaned regularly to ensure the maximum level of sediment control. If structures fail or are found to be inadequate, work should cease and not resume until appropriate corrective measures have been taken. Provided that BMPs are properly implemented, and the bridge is removed with minimal aquatic impact, we would have no objection to authorization of this bridge replacement.

Thank you for the opportunity to review this proposal. If you have any questions regarding our comments, please contact Sarah Harrison of my staff at 931/525-4991 or by email at sarah_sorenson@fws.gov.

Sincerely,



Mary E. Jennings
Field Supervisor

#E1-20567



RE: AB 55 (Sub-No. 736X) - Need Quick Response

Louis E. Gitomer

to:

'Diana.Wood@stb.dot.gov'

10/30/2014 12:26 PM

Hide Details

From: "Louis E. Gitomer" <Lou@lgraillaw.com>

To: "'Diana.Wood@stb.dot.gov'" <Diana.Wood@stb.dot.gov>

History: This message has been replied to.

2 Attachments



SHPO Response Letter.pdf Bridge Second Creek.docx

Diana - The bridge that the City of Knoxville wants to have removed was built by Louisville & Nashville Railroad (L & N) in 1911. It is a timber ballast deck bridge located at CSXT Milepost Marker 0KS 276.00 or L & N Milepost Marker 00C 276.00 and traverses the Second Creek Spur near Bernard Avenue. The structure has been modified as necessary throughout its existence to maintain safe railroad operation and to perform routine maintenance. The bridge was included in the Historical report to the Tennessee Historical Commission and found *"There are no National Register of Historic Places Listed or Eligible Properties Affected by this Undertaking"* on July 15, 2014, attached hereto. Let me know if you need more. Lou

Louis E. Gitomer

600 Baltimore Avenue, Suite 301

Towson, MD 21204

(410) 296-2250

Lou@lgraillaw.com

This email message may contain information that is privileged and/or confidential. The information contained in this email message is intended only for use of the person to whom it is addressed. If the

reader of this message is not (1) the intended recipient or (2) the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (410) 296-2250 or email at Lou@lgraillaw.com, and destroy the original message. Thank you.

From: Diana.Wood@stb.dot.gov [<mailto:Diana.Wood@stb.dot.gov>]
Sent: Thursday, October 30, 2014 10:23 AM
To: Louis E. Gitomer
Cc: Melanie Yasbin
Subject: RE: AB 55 (Sub-No. 736X) - Need Quick Response

Lou:

I'm writing the Final EA in this case and need to know if the bridge to be removed is the same bridge that the City of Knoxville wants removed, and also if its the one bridge on the line that is 50 years or older.

Thanks

Diana

Diana F. Wood
 Office of Environmental Analysis
 Surface Transportation Board
 395 E Street SW Room 1110
 Washington, DC 20423
 202-245-0302 (phone)
 202-245-0454 (fax)

From: "Louis E. Gitomer" <Lou@lgraillaw.com>
 To: "'Diana.Wood@stb.dot.gov'" <Diana.Wood@stb.dot.gov>, Melanie Yasbin <Melanie@lgraillaw.com>
 Date: 10/07/2014 01:36 PM
 Subject: RE: AB 55 (Sub-No. 736X) - Need Quick Response

Diana – CSXT will remove the bridge as part of the abandonment. Let me know if you have any other questions. Lou

Louis E. Gitomer
 600 Baltimore Avenue, Suite 301
 Towson, MD 21204
 (410) 296-2250
Lou@lgraillaw.com

This email message may contain information that is privileged and/or confidential. The information contained in this email message is intended only for use of the person to whom it is addressed. If the reader of this message is not (1) the intended recipient or (2) the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error,

please immediately notify us by telephone (410) 296-2250 or email at Lou@lgraillaw.com, and destroy the original message. Thank you.

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

Sent: Tuesday, October 07, 2014 10:31 AM

To: Louis E. Gitomer; Melanie Yasbin

Subject: AB 55 (Sub-No. 736X) - Need Quick Response

Lou or Melanie:

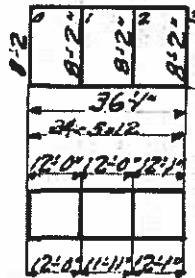
I'm working on the EA for the above and need to know if bridge removal will be part of the salvage process in this proceeding.

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington, DC 20423
202-245-0302 (phone)
202-245-0454 (fax)

BRIDGE No. 191 MUNSON CREEK

MILE 276.0-5

KYOK. DIVISION
SECOND CREEK SPUR BRANCH



Conc. Pedestals

G.P. + Det B 11192

W.W. West side

Alignment 4 Pole

Bent Cross Frame 181
on Conc.

Deck Cross 181

Average Penetration of Piles

Ft. B. M. in Deck

For Deck See Sheet No. 20

Lin. ft. of Piling

Ft. B. M. in Bents

CNK00124

614537



#E1-20565

236878

ENTERED
Office of Proceedings
October 23, 2014
Part of
Public Record

October 16, 2014

Ms. Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, S.W.
Washington, DC 20423-0001

Re: CSX Transportation, Inc. Abandonment in Knox County, Tennessee, AB-55 (sub-no.736x)
Clarification to Item 2 under A: Public Use Condition

Dear Ms. Brown:

This letter is submitted as an addendum to the request letter referenced above, dated October 14, 2014, as a clarification for Item 2 under section A: Public Use Condition. *An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels.*

On September 24, 2013, the City of Knoxville requested to CSX Transportation, Inc. to remove the Creosote Wood Trestle #191 over Second Creek at Milepost OKS 276 to prevent further flooding hazards for the community. This particular trestle sits low in the creek, has several timber pilings in the creek bed, and causes significant flooding of upstream property. At that time the City of Knoxville inspected the structure and determined the wood trestle members to be unfit as a trail-related structure and therefore it is specifically excluded from the City's request of trail-related structures to remain.

The request letter for removal of the Creosote Wood Trestle #191 is attached.

Please accept this clarification as part of the City's request to preserve beneficial structures.

Sincerely,

William Lyons on behalf of Madeline Rogero, Mayor
City of Knoxville

c: CSX Transportation, Inc.



File Copy

CITY OF KNOXVILLE



Engineering
James R. Hagerman, P.E.
Director of Engineering

September 24, 2013

Ms. Elizabeth Steel
CSX Transportation, Inc.
500 Water Street, 15th Floor
Jacksonville, FL 32202

Re: Removal of Creo Wood Trestle #191 over 2nd Creek: GIS valmap 30564,
Milepost OKS 276. Discontinued 2004 under AB55-641X TN 35A.

Dear Ms Steel:

The discontinued wood trestle over Second Creek just south of Bernard Street in Knoxville Tennessee collects large amounts of debris and blocks significant amount of flow due to the very low design and thick support timbers. The blockages back up water in the creek, which contributes to flooding and bank erosion upstream.

The construction of this bridge and side-track was authorized by City Ordinance #96 on November 25, 1924. The Louisville & Nashville Railroad Company accepted and agreed to abide by the terms of the ordinance via a letter dated December 3, 1924. Both documents are enclosed for your convenience. Section 5 of the ordinance requires the railroad to remove the side-track *"within ninety [90] days after a written notice demanding such removal"*.

CSX officially discontinued the use of the bridge in 2004. The City notified CSX of the flooding problems in January of this year and has requested that the bridge be removed. Within a few months the winter and spring flooding season will return along with more natural debris. **Therefore, the City of Knoxville hereby demands the removal of the side-track, specifically the low bridge, authorized by Ordinance #96, the public good requiring it.**

If CSX wishes to keep the side-tracks in place for future use, please contact me or Stephen King at (865) 215-2148 to discuss the details and timeline of an alternate proposal to either remove the nuisance bridge or replace the low bridge with a single span over the creek. Thank you for helping improve the safety and quality of Knoxville's streams.

Sincerely,

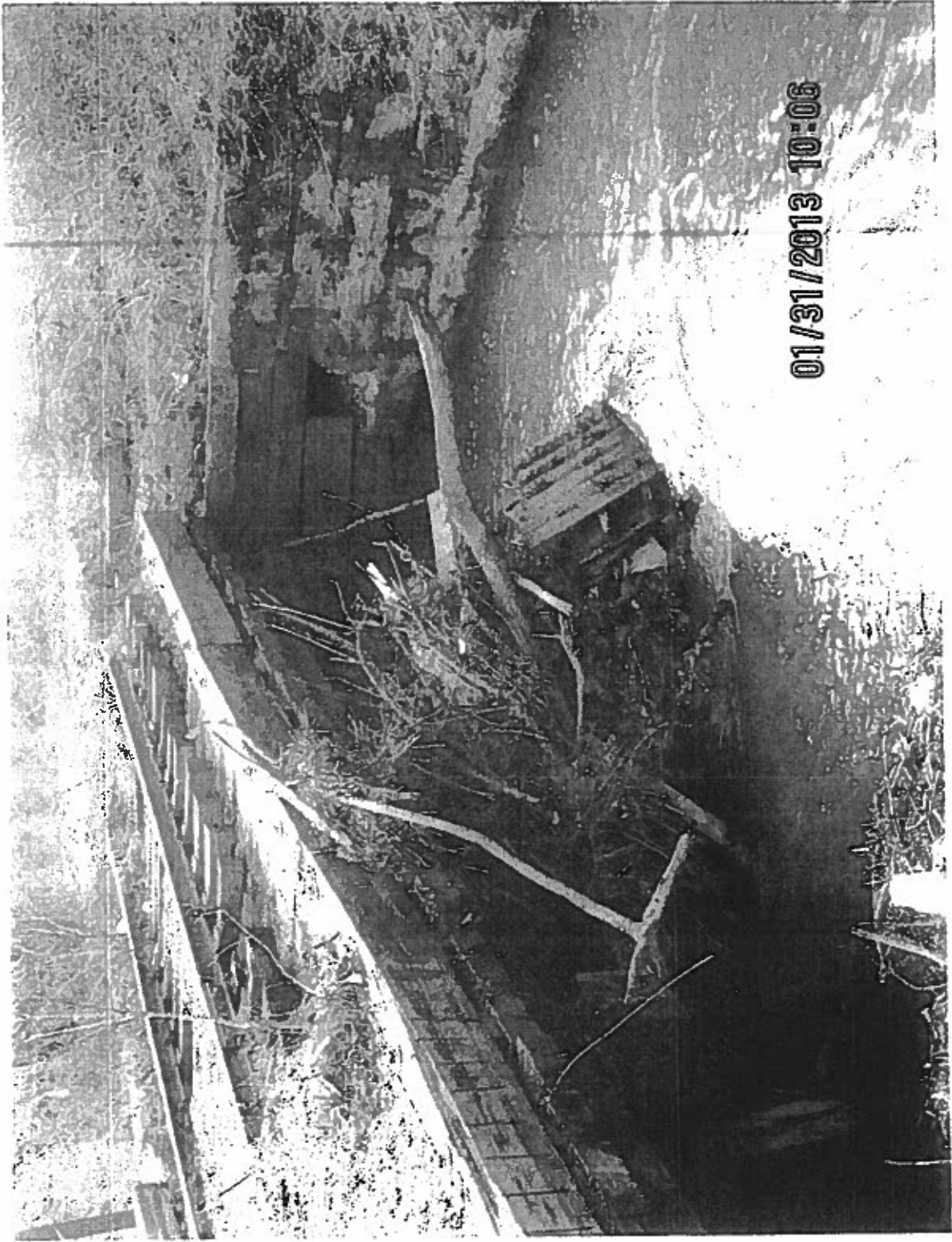
David W. Hagerman, P.E., Stormwater Management

Cc: Tim Browning, CSX Transportation Inc., Contract Manager, Property Services
Stephen J. King, P.E., Deputy Director of Engineering
Lisa B. Hatfield, Esq., Law Department

enclosure

City County Building • Room 480 • 400 Main Street • P.O. Box 1631 • Knoxville, Tennessee 37901
Office: 865-215-2148 • Fax: 865-215-2631
www.CityOfKnoxville.org





Letter from Supd. L & N.
Railroad Co accepting
Ordinance #96 - (Sidetrack
on Van St etc.)

MS #10
Page 387

LOUISVILLE & NASHVILLE RAILROAD COMPANY

KNOXVILLE DIVISION

OFFICE OF THE SUPERINTENDENT

12-24-24

KNOXVILLE, TENN. Dec. 3, 1924.

Mr. Frederick A. Ault,

IN YOUR REPLY REFER
TO DATE AND FILE NO. 4669.

Recorder, City of Knoxville,
Knoxville, Tenn.,

Dear Sir:-

The Louisville & Nashville Railroad Company hereby
accepts, and agrees to abide by the terms of, Ordinance No.
96, passed on November 25, 1924, and recorded in Minute Book
No. 10, page 369, which ordinance authorizes and permits us
to lay a side-track on and along Van Street, between Munson
Street and West Fifth Avenue.

Yours truly,

R. Monahan

Superintendent.

RMA/ART



AN ORDINANCE AUTHORIZING AND PERMITTING THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY TO LAY A SIDETRACK ON VAN STREET BETWEEN MUNSON STREET AND WEST FIFTH AVENUE IN THE CITY OF KNOXVILLE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KNOXVILLE:

SECTION 1. That the Louisville & Nashville Railroad Company be and is hereby authorized and permitted to lay a side track on and along Van Street between Munson Street and West Fifth Avenue.

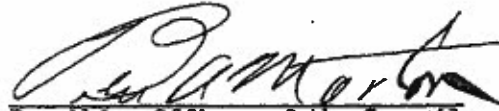
SECTION 2. That said side track shall be laid as shown on the blue print of the plan therefor, hereto attached marked Exhibit "A", and made a part of this ordinance; the detailed plans and specifications to be subject to the approval of the Director of Public Services.

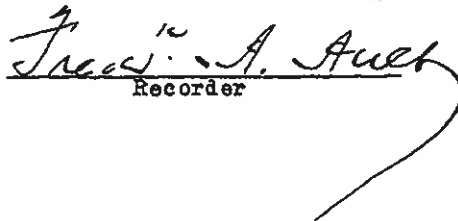
SECTION 3. That the Louisville & Nashville Railroad Company, in consideration of this permit, shall indemnify and save harmless the City of Knoxville from any and all liability for damages to person or property resulting from the construction of the said side track, and shall forever maintain that portion of the street between the outer rails of said side track and eighteen inches on either side thereof, in as good condition and with like material, whether macadam or hard surface, as the remainder of the street is improved with and shall pay all costs and expenses therefor.

SECTION 4. That the Louisville & Nashville Railroad Company shall, in doing said work, protect all pipes, wires and conduits of the City, or any public service company, and make any necessary repairs to correct any damages done by reason of the construction and maintenance of said side track.

SECTION 5. That said side track shall be removed by the Louisville & Nashville Railroad Company within ninety days after a written notice demanding such removal, the public good requiring it.

SECTION 6. That this ordinance shall take effect seventeen days from and after its passage, the welfare of the City requiring it; provided however, that unless its terms are accepted in writing by the Louisville & Nashville Railroad Company within fifteen days after its final passage, then it shall be null and void..


Presiding Officer of the Council


Recorder

Mr. # 10
Nov. 25 - 1924

Ordinance #96

Authorizing L. & N.
Ry. Co. to lay a
street track on Van
St. St. between
W. 1st Ave. & N. 1st Ave.

CITY RECORDERS FILE
P-2555 RETURN

Nov. 25. 1924

HEI-20566



TENNESSEE HISTORICAL COMMISSION

STATE HISTORIC PRESERVATION OFFICE

2941 LEBANON ROAD

NASHVILLE, TENNESSEE 37214

OFFICE: (615) 532-1550

www.tnhistoricalcommission.org

July 15, 2014

Ms. Jo Ann Burroughs
CSX
500 Water St./J-315
Jacksonville, Florida, 32202

RE: STA, AB-290(SUB NO. 368X), KNOXVILLE, KNOX COUNTY

Dear Ms. Burroughs:

In response to your request, received on Monday, July 7, 2014, we have reviewed the documents you submitted regarding your proposed undertaking. Our review of and comment on your proposed undertaking are among the requirements of Section 106 of the National Historic Preservation Act. This Act requires federal agencies or applicant for federal assistance to consult with the appropriate State Historic Preservation Office before they carry out their proposed undertakings. The Advisory Council on Historic Preservation has codified procedures for carrying out Section 106 review in 36 CFR 800. You may wish to familiarize yourself with these procedures (Federal Register, December 12, 2000, pages 77698-77739) if you are unsure about the Section 106 process.

After considering the documents you submitted, we determine that THERE ARE NO NATIONAL REGISTER OF HISTORIC PLACES LISTED OR ELIGIBLE PROPERTIES AFFECTED BY THIS UNDERTAKING. We have made this determination either because: the undertaking will not alter any characteristics of an identified eligible or listed Historic Property that qualify the property for listing in the National Register, the undertaking will not alter an eligible Historic Property's location, setting or use, the specific location, scope and/or nature of the undertaking precluded affect to Historic Properties, the size and nature of the undertaking's area of potential effects precluded affect to Historic Properties, or, no National Register listed or eligible Historic Properties exist within the undertaking's area of potential effects. Therefore, we have no objections to your proceeding with your undertaking.

If your agency proposes any modifications in current project plans or discovers any archaeological remains during the ground disturbance or construction phase, please contact this office to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act. If you are applying for federal funds, license or permit, you should submit this letter as evidence of consultation under Section 106 to the appropriate federal agency, which, in turn, should contact us as required by 36 CFR 800. If you represent a federal agency, you should submit a formal determination of eligibility and effect to us for comment. You may find additional information concerning the Section 106 process and the Tennessee SHPO's documentation requirements at <http://www.tennessee.gov/environment/hist/federal/sect106.shtm>. You may direct questions or comments to Joe Garrison (615) 770-1092. This office appreciates your cooperation.

Sincerely,

E. Patrick McIntyre, Jr.

E. Patrick McIntyre, Jr.
Executive Director and
State Historic Preservation Officer

EPM/jyg