

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-1258

**ALLOY PROPERTY COMPANY, LLC – ADVERSE ABANDONMENT –
CHICAGO TERMINAL RAILROAD IN CHICAGO, IL**

**ALLOY PROPERTY COMPANY, LLC’S COMMENTS ON
ENVIRONMENTAL ASSESSMENT**

Alloy Property Company, LLC (“Alloy”) submits these comments in response to the Board’s Environmental Assessment, served on November 13, 2017 (“Environmental Assessment”). In that assessment, the Office of Environmental Analysis (“OEA”) recommended that two conditions be imposed on any decision granting adverse abandonment authority to Alloy in this proceeding and concluded that “if the recommended conditions are imposed, abandonment of the Line will not significantly affect the quality of the human environment.” *See* Environmental Assessment at 4. Alloy generally agrees with the conclusions in the Environmental Assessment, but Alloy believes that the two conditions recommended by OEA should be modified to better link those conditions to the underlying concerns that prompted them.

First, OEA recommended a condition that would require both Alloy and CTM to “take no steps to alter the historic integrity of all sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places” and requires both Alloy and CTM to

participate in the Section 106 consultations. Environmental Assessment at 4. As OEA explained in the Environmental Assessment, this condition recommendation was predicated on comments from the Illinois Historic Preservation Office (State Historic Preservation Office, or “SHPO”), that it believed that the swing bridge on the Line may be eligible for listing on the National Register of Historic Places. *See id.* at 3.¹

Alloy has no objection to a condition requiring it to consult with the SHPO prior to any alterations to the swing bridge. However, Alloy believes that the condition should be explicitly limited to the swing bridge, which is the only structure on the Line that the SHPO identified as eligible for listing on the National Register of Historic Places. Rather than making the condition applicable to “all sites, buildings, structures, and objects” eligible for listing or listed in the National Register of Historic Places, the Board should make clear that the condition only requires consultation for modifications to the swing bridge. Such a modification would ensure that the condition is narrowly tailored to respond to the SHPO’s concerns.

The condition should also be altered so that it applies only to Alloy, and not to Alloy and CTM jointly. In this adverse abandonment case, the condition for Section 106 consultation should only be placed on the applicant, which is Alloy.²

¹ *See also* Letter from R. Leibowitz to M. Warren at 1, attached as Exhibit 13 to Alloy’s Environmental Report (filed Sept. 1, 2017).

² *See, e.g., Stewartstown R.R. Co.—Adverse Abandonment—in York Cty., PA*, at 6, STB Docket No. AB-1071 (Aug. 12, 2011) (Environmental Assessment recommending that Section 106 consultation condition be placed only on the non-

Alloy should not be required to jointly consult with CTM and the SHPO about the bridge.

Alloy therefore suggests the following modified language for the historic consultation condition:

Alloy Property Company, LLC (“Alloy”) shall retain any interest it has in the swing bridge located south of W. Cortland Street that spans the North Branch of the Chicago River (“Swing Bridge”) and take no steps to alter the historic integrity of the Swing Bridge, until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. Alloy shall report back to the Office of Environmental Analysis regarding any consultations with the State Historic Preservation Officer, any other Section 106 consulting parties, and the public regarding the Swing Bridge. Alloy may not file its consummation notice or initiate any salvage activities related to removal of the Swing Bridge (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

Second, the Environmental Assessment recommended a condition requiring consultation with the National Geodetic Survey (“NGS”) and notification to NGS before beginning any salvage activities that will disturb or destroy any geodetic station markers. Environmental Assessment at 4. Alloy has no objection to consulting with NGS regarding any geodetic station markers that could be disturbed by the abandonment. However, Alloy does not believe that any geodetic station markers exist over the Line at issue in the abandonment, and therefore this condition is unnecessary.

railroad applicant); *Denver & Rio Grande Ry. Historical Foundation—Adverse Abandonment—in Mineral Cty., CO*, at 4, STB Docket No. AB-1014 (Jan. 29, 2008) (same); *Norfolk So. Ry. Co.—Adverse Abandonment—St. Joseph Cty., IN*, at 4, STB Docket No. AB-290 (Sub-No. 286) (Dec. 22, 2006) (same).

When Alloy initially consulted with NGS regarding the abandonment, Alloy was considering an application to abandon the CTM Line originating at Union Pacific's North Avenue Yard and proceeding east and south to Goose Island, a distance of approximately 2.875 miles in Chicago, Cook County, Illinois to a terminus near the intersection of Chicago Avenue and Halsted Street in the "Goose Island" district of Chicago. Environmental Report at 1-2. Using this initial definition of the Line, NGS determined that approximately 3 geodetic survey marks may be located in the area proposed for abandonment. *See* email from S. Monroe to M. Warren re: NGS Response, STB Docket AB-1258, attached to Alloy's Environmental Report as Exhibit 12.

Following the filing of the Environmental Report and its initial NGS consultations, Alloy narrowed the scope of the proposed abandonment to the track that exists between the western end of North Elston Avenue and the terminus of the line on Goose Island, a distance of approximately 2.625 miles. *See* Letter from M. Warren to C. Brown, STB Docket No. AB-1258 (filed Sept. 18, 2017); Application for Adverse Abandonment at 1 n.1, 29, STB Docket No. AB-1258 (filed Oct. 11, 2017).

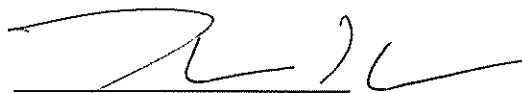
A review of the location of the geodetic survey markers identified by NGS indicates that those markers fall outside the smaller footprint of the proposed abandonment. Each of the markers is located west of Elston Avenue in the vicinity of Union Pacific's North Avenue Yard. Alloy informed NGS that it no longer

believed that any of the geodetic markers were impacted by the proposed abandonment on November 21, 2017. *See Exhibit 1.*

On December 7, 2017, Alloy received a response from NGS stating that “NGS has no other concerns other than the safety of the geodetic marks shared with you. You only needed to contact NGS if these station marks were going to be disturbed.” *See Exhibit 2.* This response confirms that the only geodetic marks about which NGS was concerned are the three markers in the vicinity of North Avenue Yard, none of which are located on the Line for which Alloy is currently seeking abandonment.

Alloy requests that the Board remove this condition from the environmental assessment, as none of the geodetic markers is located within the Line and thus no markers will be disturbed by any salvage activities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew J. Warren', is written over a horizontal line.

Matthew J. Warren
Hanna M. Chouest
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

*Counsel to Alloy Property
Company, LLC*

Dated: December 11, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2017, I caused the foregoing Comments On Environmental Assessment to be served by first class mail or more expedient method upon the following:

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., NW
Suite 717
Washington, DC 20036

David Michaud
Iowa Pacific Holdings, LLC
118 Southern Clinton Street
Suite 400
Chicago, IL 60661

Charles A. Spitulnik
Kaplan, Kirsch, Rockwell
1001 Connecticut Ave, NW
Suite 800
Washington, DC 20036



Alec Weingart

EXHIBIT 1



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SHANGHAI
SINGAPORE
SYDNEY
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FOUNDED 1866

November 21, 2017

Juliana P. Blackwell, Director
National Geodetic Survey, NOAA
1315 East-West Highway
Silver Spring, MD 20910-3282

Re: STB Docket No. AB-1258, *Alloy Property Company, LLC – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*

Dear Director Blackwell:

I am writing about the above-referenced proceeding before the Surface Transportation Board (“STB”), in which Alloy Property Company, LLC (“Alloy”) is seeking abandonment of the Chicago Terminal Railroad’s (“CTR’s”) authority to operate over portions of CTR’s lines in Chicago, Illinois beginning at the western right-of-way line of North Elston Avenue and proceeding east and south to a terminus near the intersection of Chicago Avenue and Halsted Street in the “Goose Island” district of Chicago. As explained below, Alloy has narrowed the geographic scope of its proposed abandonment, and as a result any salvage activities resulting from abandonment should have no impact on any geodesic markers.

We previously corresponded with your office about this planned application on June 15, 2017, and July 17, 2017. At that time, Alloy was considering seeking abandonment of CTR’s line beginning at Union Pacific’s North Avenue Yard, and Alloy’s correspondence indicated that it was contemplating this broader abandonment. Simon Monroe responded on June 19, 2017 with information on three geodetic survey markers that the National Geodetic Survey (“NGS”) believed were located in the area then proposed for abandonment: markers ME1898, ME1958, and ME1904. *See* Attachment 1. The three markers are all located west of Elston Avenue in the vicinity of Union Pacific’s North Avenue Yard.

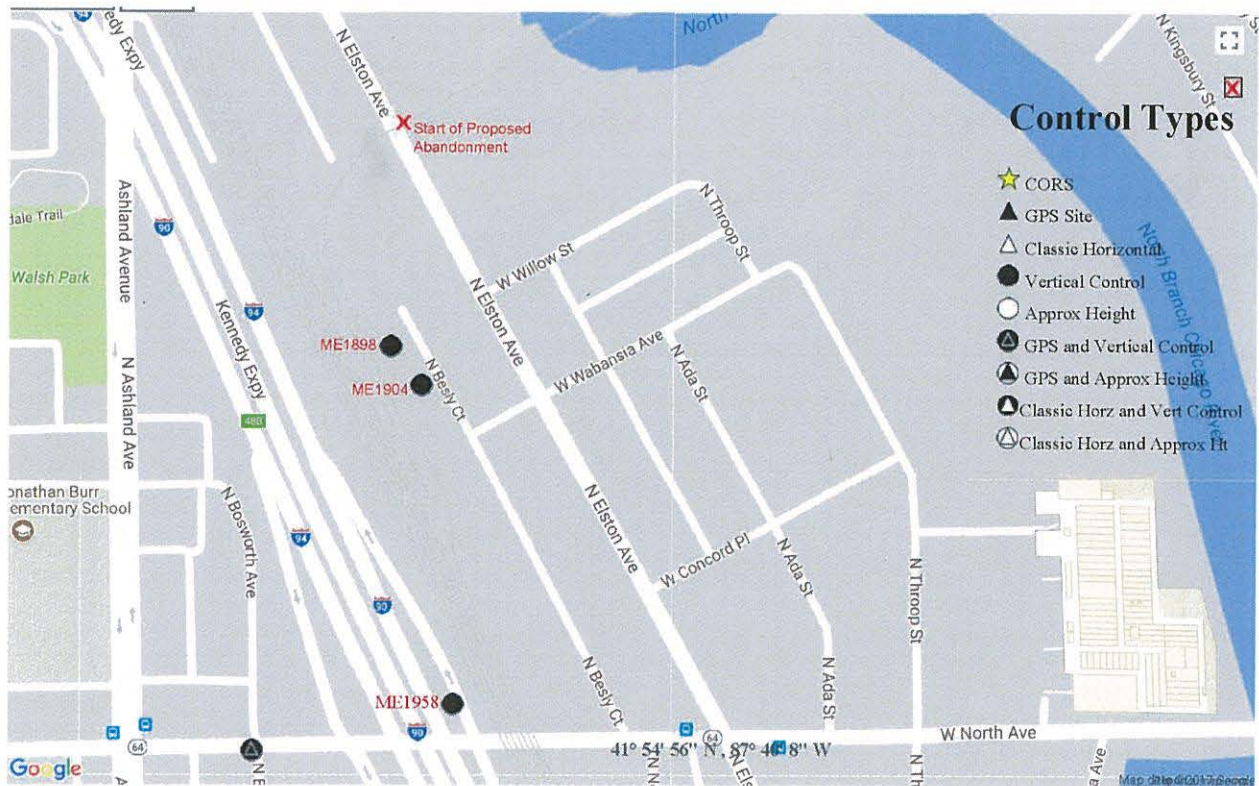
Since our previous correspondence, Alloy has filed its abandonment application, which specifically does not propose abandonment of CTR’s line west of



Juliana P. Blackwell, Director
National Geodetic Survey, NOAA
Page 2

Elston Avenue to North Avenue Yard. *See Application, STB AB-1258, at 1 & Ex. 1 (filed Oct. 11, 2017).*¹

In light of the current smaller footprint of the abandonment, it does not appear that geodesic markers ME1898, ME1958, and ME1904 would be affected by any salvage activity that might occur after abandonment. The map below illustrates that those markers are not on the line currently proposed for abandonment.



Please let us know whether you agree with this assessment, and if NGS would have any objection to Alloy requesting that the STB not impose a condition on the abandonment requiring that Alloy and NGS consult about any planned salvage activity.

¹ The cited page and map exhibit are enclosed as Attachment 2. The full application is available at

<https://www.stb.gov/Filings/all.nsf/WEBUNID/DF1463F05044182852581B70047B0A5?OpenDocument>.



Juliana P. Blackwell, Director
National Geodetic Survey, NOAA
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If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. J. Warren", written over a horizontal line.

Matthew J. Warren
Counsel to Alloy Property Company, LLC

Attachments

Attachment 1

From: Simon Monroe
To: Warren, Matthew J.
Cc: SURFACE TRANSPORTATION BOARD; Christine Gallagher; Simon Monroe
Subject: NGS Response, STB Docket AB-1258
Date: Monday, June 19, 2017 4:43:32 PM

> -----
> Thank you for sharing your railroad abandonment environmental report for
> CHICAGO, Cook County, ILLINOIS.
>
> Approximately 03 geodetic survey marks may be located in the area
> described. If marks will be disturbed by the abandonment, [THE RAILROAD]
shall consult with the National Geodetic Survey (NGS) at least 90 days prior
to beginning salvage activities that will disturb, or destroy any geodetic
station marks. These marks are described on the attached file. Additional
advice is provided at <http://geodesy.noaa.gov/marks/railroads/>

> -----
>
> |Dist|PID...|H V|Vert_Source|Approx.|Approx..|Stab|Designation>

|---|---|---|---|
-|---|---|---|---|---|---|---|

|...|ME1898|1934|CGS...|.
1|88/ADJUSTED|N415448.....|W0873955.....|B...|G|C 18

|...|ME1958|1973|NGS...|.
1|88/ADJUSTED|N415439.1....|W0873952.9....|B...|G|C 274

|...|ME1904|UNK.|CNWRR|.
1|88/ADJUSTED|N415447.....|W0873954.....|B...|G|RV 4

>

Attachment 2

Pursuant to 49 U.S.C. § 10903(a) and 49 C.F.R. § 1152.22, Alloy Property Company, LLC (“Alloy”) applies for a determination that the public convenience and necessity require the adverse abandonment of the authority of the Chicago Terminal Railroad (“CTR”) to operate over portions of CTR’s lines in Chicago, Illinois beginning at the western right-of-way line of North Elston Avenue and proceeding east and south to Goose Island (the “Line”).¹

The “primary question” in an adverse abandonment case is whether “removal of [the Board’s] jurisdiction as a shield against state law is in the public interest.”² To decide this question, the Board weighs any need for rail transportation against the cited reasons for abandoning rail service and determines whether the public interest justifies continued Board jurisdiction to “shield” the railroad line from the ordinary operation of state property law.³

¹ A map of the Line is attached to this application as Exhibit 1. This application does not seek abandonment of any of CTR’s tracks and operations in Elk Grove Village, Illinois or in Bensonville, Illinois, and it does not seek abandonment of the portion of CTR’s North Avenue Line between Union Pacific’s North Avenue Yard and the western side of North Elston Avenue.

² *CSX Corp. & CSX Transp., Inc. – Adverse Abandonment Application – Canadian Nat’l Ry. Co., & Grand Trunk W. R.R. Inc.*, STB Docket No. AB-31 (Sub-No. 38), at 6 (STB served Feb. 1, 2002) (“*Grand Trunk*”); *see also Minn. Commercial Ry. Co. – Adverse Discontinuance – In Ramsey Cty., MN*, STB Docket No. AB-882, at 3 (STB served Jul. 16, 2008) (“*Minn. Commercial*”) (“we do not allow our jurisdiction to be used to shield a line from the legitimate processes of state law where no overriding Federal interest exists.”); *Modern Handcraft, Inc. – Abandonment in Jackson Cty., MO*, 363 I.C.C. 969, 972 (1981) (“We will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce.”).

³ *Paulsboro Ref. Co. LLC – Adverse Abandonment – in Gloucester Cty., N.J.*, STB Docket No. AB-1095 (Sub-No. 1) (STB served Dec. 2, 2014); *Grand Trunk* at 6 (“Where no overriding federal interest exists, we will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of state law.”); *see also City of*

EXHIBIT 1

EXHIBIT 2

From: Simon Monroe
To: [Warren, Matthew J.](#)
Subject: NGS Response, STB Docket AB-1258
Date: Thursday, December 07, 2017 2:33:12 PM

Mr. Warren,
 NGS has no other concerns other than the safety of the geodetic marks shared with you.
 You only needed to contact NGS if these station marks were going to be disturbed.

Sincerely,

NGS

> -----
 > Thank you for sharing your railroad abandonment environmental report for
 > CHICAGO, Cook County, ILLINOIS.
 >
 > Approximately 03 geodetic survey marks may be located in the area
 > described. If marks will be disturbed by the abandonment, [THE RAILROAD]
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 > |Dist|PID...|H V|Vert_Source|Approx.|Approx..|Stab|Designation>

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|...|ME1898|1934|CGS...|. 1|88/ADJUSTED|N415448.....|W0873955.....|B...|G|C 18

|...|ME1958|1973|NGS...|. 1|88/ADJUSTED|N415439.1....|W0873952.9....|B...|G|C 274

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