

SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS

#EO-424
DAW

POST POST ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN STB DOCKET NO. AB-6 (Sub-No. 453X)

February 20, 2007

ABANDONMENT TYPE

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

Notice of Exemption Petition for Exemption Regulated Abandonment

NO NEW COMMENTS WERE RECEIVED

NEW COMMENTS WERE RECEIVED

On December 7, 2006, the Surface Transportation Board (Board) issued a decision in this proceeding indicating that the abandonment was subject to the following environmental conditions: (1) BNSF Railway company (BNSF) shall consult with the Washington State Department of Ecology Northwest regional Office (WDOE) to ensure appropriate consideration of the National Pollutant Discharge Elimination System (NPDES) requirements and comply with the reasonable NPDES requirements; (2) BNSF shall consult with the U.S. Fish and Wildlife Service (USFWS), the Washington State Department of Fish and Wildlife's (WDFW) Priority Habitat and Species Program, and the Washington Department of Natural Resources to assess potential impacts to the Bald eagle or other Federally or state listed threatened or endangered species, identify any appropriate mitigation measures that may be warranted, and report the results of the USFWS and WDFW consultations to the Section of Environmental Analysis (SEA) in writing; (3) BNSF shall consult with the National Marine Fisheries Service (NMFS) to assess potential impacts to the Chinook salmon and its habitat, and report the results of the NMFS consultations to SEA in writing; (4) BNSF shall consult with the U.S. Army Corps of Engineers (Corps) regarding its requirements, and if applicable, comply with the Corps' reasonable requirements; (5) BNSF shall consult with WDOE to determine whether state coastal management consistency certification is required, and, if so, be prohibited from performing any salvage activities until it obtains the certification and be required to notify SEA, pursuant to the Coastal Zone Management Act and the Board's environmental regulations at 49 CFR 1105.9; and (6) BNSF shall retain its interest and take no steps to alter the historic integrity of all sites, buildings and structures within the proposed abandonment's right-of-way that are eligible for listing or are listed in the National Register until the Section 106 process has been completed, and shall report to SEA the results of any consultation with the Washington State Department of Archaeology and Historic Preservation State Historic (State Historic Preservation Officer or SHPO).

On February 13, 2007, BNSF submitted correspondence from the various agencies (attached) that SEA believes comply with all six of the conditions (1-6). Specifically, WDOE commented that the salvage activities associated with the abandonment do not constitute as clearing, grading and/or excavating under its ordinance, nor is the project considered a "significant contributor of pollutants" to waters of the state. Therefore, the WDOE has

determined that the project does not require an NPDES permit. The USFWS and WDFW indicated that salvage activities should be avoided between January 1 and August 15 in order to fully protect the Bald eagle and its habitat during breeding season. The NMFS commented that it does not believe the project will adversely affect Puget Sound Chinook Salmon, Critical Habitat of Puget Sound Chinook Salmon, or Essential Fish Habitat protected under the Magnuson-Stevens Fisheries Conservation and Management Act. Therefore, the NMFS concluded that no further consultation would be necessary. The Corps commented that its jurisdictional authority to non-navigable waters of the U.S., such as the Mercer Slough and associated wetlands, is limited to filling and dredging, and under this proposal, the salvage process will be limited to track and tie removal. As such, the Corps has determined that a Section 404 permit is not required. The WDOE commented that the proposed abandonment is consistent with Washington's Coastal Zone Management Program, therefore no further consultation is necessary. The SHPO commented that the abandonment will not compromise the overall integrity of the railroad and therefore should have no effect on historic properties.

Based on the information provided, SEA recommends that the six previously imposed conditions (1-6) be removed.

SEA CONTACT: Diana Wood, (202) 565-1552, and at (202) 245-0302 after March 5, 2007

Attachments



Home Compose Address Book Options Logout

Username: **Li**
(liz.waite@stri

-  **Inbox**
-  **Drafts**
-  **Deleted Items**
-  **Sent**
-  **Scheduled**

Message

Delete **Delete permanently**

Move to **Delete**

From: "Shervey, Jerry (ECY)" <GSHE461@ecy.wa.gov>

To: liz.waite@stricklandpllc.com

Subject: RE: Railroad Abandonment in Wilburton, WA

Date: 18-Dec-06 05:07 PM

Reply

Reply All

Forward

InLine Text

< Prev

Based on the description you have provided below, this project does NOT need to apply for coverage under the State of Washington's general NPDES (CWA sec 402) permit for Construction Stormwater discharge. The project removes rails and ties for 0.65 miles with no structure demolition, so it does not qualify as clearing, grading and/or excavation. This work effort should still use all know reasonable methods to prevent pollution from the work area. The Department of Ecology can require a project to obtain NPDES permit coverage if the project is deemed to be a "significant contributor of pollutant" to waters of the State. The project as described does not require coverage under the State NPDES Construction Stormwater General Permit. Please check with us again if the project scope or description changes from what you have described.

Gerald Shervey, PE
 Washington Department of Ecology
 NW Regional Office
 3190 160th Ave SE
 Bellevue, WA 98008-5452
 gshe461@ecy.wa.gov
 voice (425) 649-7215 Cel 206 799 2329 fax (425)649-7098
 work hours: 7:30am to 5:30 pm Monday-Thursday, alternate Fridays off

-----Original Message-----

From: Seeberger, Don (ECY)
Sent: Monday, December 18, 2006 8:18 AM
To: Shervey, Jerry (ECY)
Subject: FW: Railroad Abandonment in Wilburton, WA

FYI

-----Original Message-----

From: Cornett, Deborah
Sent: Monday, December 18, 2006 8:17 AM
To: Seeberger, Don (ECY)
Subject: FW: Railroad Abandonment in Wilburton, WA

Hi-fyi

-----Original Message-----

From: Liz Waite [mailto:liz.waite@stricklandpllc.com]

Sent: Friday, December 15, 2006 9:27 AM
To: Cornett, Deborah
Subject: Railroad Abandonment in Wilburton, WA

Ms. Coronett,

You were so helpful on the Olympia abandonment, I was wondering if I could consult with you again on another abandonment. This railroad abandonment is between BNSF mielpost 10.60 and 11.25, near Wilburton, WA. The tracks and ties may be removed, but all bridges and any structures will remian in tact. As requested previously, BNSF is required by the Surface Transportation Board to consult with the WDOE "to ensure appropriate consideration of the NPDES requirements and and comply with the reasonable requirements." BNSF does not anticipate the salvage process creating any soil disturbing activities where one or more acres would be disturbed as this railroad line abandonemnt is only 0.65 miles in length. Furthermore, BNSF salvage contractors are required not to place fills or other material in water bodies, including inland waterways. Any help you could provide would be appreciated. Plaes feel free to contact me at (202) 338-1325. I have attached a map of the proposed ab! andonment to this email. Thanks.

Liz Waite
Sidney Strickland and Associates, PLLC

CONFIDENTIALITY NOTICE --

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message 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 message in error, please delete this message from all computers and notify us immediately by return e-mail and/or telephone at (202) 338-1325. Thank you.

Add Folder

Edit Folder

Search

Search all folders

Go

Search Inbox

Go

Advanced Search



Liz Waite

From: Larry Fisher [fisheldf@DFW.WA.GOV]
Sent: Monday, December 18, 2006 11:13 AM
To: liz.waite@stricklandpllc.com
Subject: Re: Wilburton Railroad Abandonment



Strickland.doc (30
KB)

Ms. Waite:

Attached is the letter sent by WDFW. This indicates avoiding work on the project between Jan. 1 and Aug. 15 to fully protect bald eagles.

The letter also states to contact the federal services to obtain more information.

Larry Fisher
WDFW c/o DOE
3190 - 160th Ave. SE
Bellevue, WA 98008
425-649-7042
FAX 649-7098

>>> "Liz Waite" <liz.waite@stricklandpllc.com> 12/15/06 12:49 PM >>>
Mr. Fisher,

Thank you for your response dated August 29, 2006, regarding STB Docket No. AB-6 (Sub. No. 453X) in Wilburton, WA. Your response was included in BNSF's Environmental Report submitted to the Surface Transportation Board (STB). A copy of the Report was sent to you on September 29, 2006.

Based on the Environmental Report, the STB issued several conditions that BNSF must fulfill prior to commencing salvage activities. One such condition requires BNSF to "consult with WDFW to assess potential impacts to the Bald eagle or other Federally or state listed threatened or endangered species, [and] identify any appropriate mitigation measures that may be warranted."

In your August 29th response, you indicated that to fully protect Bald eagles and other bird species, project activities should be avoided during the breeding season. Could you please concur with this recommendation and provide any additional information you may have regarding the STB's recommended consultation? Any help you can provide is appreciated as BNSF desires to comply with all necessary steps to protect endangered species while fulfilling its abandonment salvage process. Please call me with any questions. Thanks in advance for your help.

Liz Waite
(202) 338-1325

CONFIDENTIALITY NOTICE --

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message 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 message in error, please delete this message from all computers and notify us immediately by return e-mail and/or telephone at (202) 338-1325. Thank you.

Liz Waite

From: John_Grettenberger@fws.gov
Sent: Friday, January 05, 2007 7:13 PM
To: Liz Waite
Subject: Re: Wilburton Railroad Abandonment

Dear Ms. Waite,

We concur with WDFWs recommendation, provided in the email below, that if you you avoid salvage work during the January 1 - August 15 breeding season that effects to bald eagles will be avoided.

John Grettenberger
Supervisor, Transportation Planning Branch
Western Washington Fish and Wildlife Office
U.S. Fish and Wildlife Service
510 Desmond Dr. SE, Suite 102
Lacey, Washington 98503

Phone # (360) 753-6044
[Http://westernwashington.fws.gov](http://westernwashington.fws.gov)

"Liz Waite"
<liz.waite@strickla
ndpllc.com>

01/03/2007 09:05 AM

To: john_grettenberger@fws.gov
cc: John Sims <john.sims@bnsf.com>
Subject: Wilburton Railroad Abandonment

Mr. Grettenberger,

As we discussed via phone, the Surface Transportation Board's (STB) Section of Environmental Assessment (SEA) has required BNSF to consult with the Fish and Wildlife Service concerning "potential impacts to the Bald eagle or other Federally or state listed threatened or endangered species." We have already contacted the Washington Department of Fish and Wildlife and they have inidicated that BNSF should avoid conducting salvage activities during the eagle's nesting season (see email below). Any response you have to this email that indicates that we have consulted would be appreciated. Thank you.

Liz Waite, Attorney
Sidney Strickland and Associates, PLLC

Ms. Waite:

Attached is the letter sent by WDFW. This indicates avoiding work on the project between Jan. 1 and Aug. 15 to fully protect bald eagles.

The letter also states to contact the federal services to obtain more information.

Larry Fisher
WDFW c/o DOE
3190 - 160th Ave. SE
Bellevue, WA 98008
425-649-7042
FAX 649-7098

>>> "Liz Waite" <liz.waite@stricklandpllc.com> 12/15/06 12:49 PM >>>
Mr. Fisher,

Thank you for your response dated August 29, 2006, regarding STB Docket No. AB-6 (Sub. No. 453X) in Wilburton, WA. Your response was included in BNSF's Environmental Report submitted to the Surface Transportation Board (STB). A copy of the Report was sent to you on September 29, 2006.

Based on the Environmental Report, the STB issued several conditions that BNSF must fulfill prior to commencing salvage activities. One such condition requires BNSF to "consult with WDFW to assess potential impacts to the Bald eagle or other Federally or state listed threatened or endangered species, [and] identify any appropriate mitigation measures that may be warranted."

In your August 29th response, you indicated that to fully protect Bald eagles and other bird species, project activities should be avoided during the breeding season. Could you please concur with this recommendation and provide any additional information you may have regarding the STB's recommended consultation? Any help you can provide is appreciated as BNSF desires to comply with all necessary steps to protect endangered species while fulfilling its abandonment salvage process. Please call me with any questions. Thanks in advance for your help.

Liz Waite
(202) 338-1325

CONFIDENTIALITY NOTICE --

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message 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 message in error, please delete this message from all computers and notify us immediately by return e-mail and/or telephone at (202) 338-1325. Thank you.

CONFIDENTIALITY NOTICE --

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message 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 message in error, please delete this message from all computers and notify us immediately by return e-mail and/or telephone at (202) 338-1325. Thank you.



State of Washington
DEPARTMENT OF FISH AND WILDLIFE
Mailing Address: 16018 Mill Creek Boulevard • Mill Creek, WA 98012
(425) 775-1311 • Fax (425) 379-2323

August 29, 2006

Sidney Strickland and Associates, PLLC
ATTENTION: Sidney L. Strickland, Jr.
3050 K St. NW, Suite 101
Washington, DC 20007-5108

Dear Mr. Strickland:

**SUBJECT: STB Docket No. AB-6 (Sub. No. 453X) BNSF Railway Company—
Abandonment Exemption—in King County, WA**

The Washington Department of Fish and Wildlife (WDFW) has reviewed your request to evaluate presence of endangered or threatened species, wildlife sanctuaries or refuges or areas designated as critical habitat adjacent to or near 0.65 miles of railroad line which is proposed to be abandoned near Wilburton in King County, Washington.

WDFW maintains a Priority Habitats and Species (PHS) database, as well a Salmonscape database, which I have reviewed to evaluate this request. Based on this review, the site is close to a large wetland (City of Bellevue park land) through which runs Mercer Slough (the downstream portion of Kelsey Creek). Bald eagles use this habitat for breeding, roosting, and foraging, and Chinook salmon use Mercer Slough for migrating and rearing.

However, the project location is separated from direct contact with the wetland and stream system partially by a secondary roadway (118th Ave. SE) and partially by a freeway (Interstate 405). Therefore, provided that adequate temporary erosion and sedimentation control practices are employed for the project, direct impacts to fish and wildlife would not be expected. In order to fully protect bald eagles and other bird species, it is recommended that project activities be avoided during the breeding season, which is January 1 to August 15 for bald eagles, according to the U.S. Fish and Wildlife Service.

Sidney Strickland and Associates, PLLC

Page 2

August 29, 2006

To obtain more complete information concerning critical habitat and effects determinations related to federally listed threatened and endangered species, the appropriate federal agencies (U.S. Fish and Wildlife Service and National Marine Fisheries Service) need to be contacted.

Thank you for the opportunity to provide this information. If there are any questions concerning this, I can be contacted at 425-649-7042 or fisheldf@dfw.wa.gov.

Sincerely,

Larry Fisher
Area Habitat Biologist

LF:lf:Strickland.doc



Home Compose Address Book Options Logout

Username: **Liz Waite**
(liz.waite@stricklandpllc.com)

- Inbox (3)**
- Drafts**
- Deleted Items**
- Sent**
- Scheduled**

Message

Delete **Delete permanently**

From: Thomas Sibley <Thomas.Sibley@noaa.gov>
To: Liz Waite <liz.waite@stricklandpllc.com>
Subject: Re: Wilburton Railroad Abandonment
Date: 20-Dec-06 03:50 PM

Move to Deleted Items **Go**

Reply

Reply To All

Forward
InLine Text

< **Previous** | **Next** > | **Close**

Ms Waite,

We have reviewed the information provided previously concerning this project. Based upon that information the NMFS does not believe the project will adversely affect Puget Sound Chinook Salmon, Critical Habitat of Puget Sound Chinook Salmon or Essential Fish Habitat protected under the Magnuson-Stevens Fisheries Conservation and Management Act. Therefore, no further consultation is necessary.

Tom Sibley
 North Puget Sound Branch Chief
 National Marine Fisheries Service

Liz Waite wrote:

- > **Mr. Sibley,**
- >
- > As discussed via phone earlier today, BNSF Railway Company (BNSF) has received abandonment authority from the Surface Transportation Board (STB) for a 0.65 line of railroad between milepost 10.60 and milepost 11.25, near Wilburton, WA, subject to several environmental conditions. One such condition requires BNSF to "consult with NMFS to assess potential impacts to the Chinook salmon and its habitat, and report the results of the NMFS consultations to [STB] in writing."
- >
- > This Wilburton railroad abandonment, STB Docket No. AB-6 (Sub. No. 453X) is governed by the STB's regulatory authority. This and any line of railroad must be abandoned under STB regulations before the line can be used for purposes other than railroad purposes, ie trails use, real estate sale, etc.
- >

> For any abandonment, BNSF bids its salvage packages out to independent contractors. The winning bidder will start work with the removal of the rails and metal parts of the track structure. Next the wooden ties are removed and separated into second hand ties, landscape quality ties and scrap ties (which are disposed of at an appropriate site). No bridges or structures on the Wilburton line will be removed. Culverts and the rail line embankment stay intact so as not to alter the prevailing waterflows along the line. BNSF salvage contractors are required not to place fills or other material in water bodies, including inland waterways. Contractors are also required to limit their activities to the width of the right-of-way. When the salvage process is complete, waterflows in the area should not be disrupted.

> As stated above, the STB is requiring BNSF to consult with NMFS and assess potential impacts to the Chinook salmon and its habitat. Your response to this inquiry would be greatly appreciated. I hope the information I have provided will be helpful. Please call me with any questions at (202) 338-1325. Thank you.

> Liz Waite

> Sidney Strickland and Associates, PLLC

> CONFIDENTIALITY NOTICE --

> This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message 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 message in error, please delete this message from all computers and notify us immediately by return e-mail and/or telephone at (202) 338-1325. Thank you.

Add Folder

Edit Folder

Search

Search all folders

Go

Search Inbox

Go

Advanced Search



Liz Waite

From: Green, James D NWS [James.D.Green@nws02.usace.army.mil]
Sent: Thursday, December 14, 2006 6:46 PM
To: Liz Waite
Subject: RE: Railroad Abandonment--Wilburton, WA (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Ms. Waite: The Corps jurisdictional authority in non-navigable waters of the United States such as Mercer Slough and wetlands is limited to Section 404 of the Clean Water Act. Under Section 404, a Department of the Army permit is required for the placement of dredged or fill material into these waters. The abandonment and removal of the rails and ties does not constitute a fill and thus, a Department of the Army Section 404 permit is not required for this activity.

Jim Green, Project Manager
Regulatory Branch, Corps of Engineers

-----Original Message-----

From: Liz Waite [mailto:liz.waite@stricklandpllc.com]
Sent: Thursday, December 14, 2006 12:51 PM
To: Green, James D NWS
Subject: Railroad Abandonment--Wilburton, WA

Mr. Green,

As you are aware, BNSF Railway Company is abandoning 0.65 miles of railroad line between milepost 10.60 and milepost 11.25, near Wilburton in King County, WA. BNSF intends to remove rails and ties, but does not plan to remove any bridges or structures. According to the Washington State Department of Transportation's Environmental Assessment for the 405 Corridor Program, the surface water located near the abandonment area is the Mercer Slough and its associated wetlands. The Surface Transportation Board has requested that we consult with the Army Corps regarding "permit requirements for bridge salvage and demolition work". Please contact me with any questions at (202) 338-1325.

Liz Waite

CONFIDENTIALITY NOTICE --

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message 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 message in error, please delete this message from all computers and notify us immediately by return e-mail and/or telephone at (202) 338-1325. Thank you.

Classification: UNCLASSIFIED
Caveats: NONE



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

February 9, 2007

Ms. Elizabeth E. Waite
Sidney Strickland and Associates
Suite 101
3050 K Street
Washington DC 20007-5108

RE: Federal Consistency — Burlington Northern Santa Fe Railroad Company
STB Docket No. AB-6 (Sub. No. 453x) Wilburton Abandonment

Dear Ms. Waite:

The Department of Ecology, Shorelands and Environmental Assistance Program received your request for concurrency with Washington's Coastal Zone Management Program to abandon 0.65 miles of railroad line between Milepost 10.60 and Milepost 11.25 near Wilburton, in King County, Washington.

Ecology agrees with your determination and assessment that the proposed action is consistent with Washington's Coastal Zone Management Program.

If you have any questions regarding this letter, please contact Penny Keys at (360) 407-6927.

Sincerely,


Brenden McFarland
Environmental Review and Transportation Section Manager
Shorelands and Environmental Assistance Program

cc: Penny Keys, Ecology



STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501

Mailing address: PO Box 48343 • Olympia, Washington 98504-8343

(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

December 4, 2006

Ms. Diana Wood
Surface Transportation Board
Case Control Unit
Washington, DC 20423

In future correspondence please refer to:

Log: 082506-03-STB

Property: BNSF Railway Abandonment near Wilburton, **Docket No. AB-6 (Sub-No. 453X)**

Re: Archaeology - No Historic Properties

Dear Ms. Wood:

Thank you for contacting our office with information on this proposed abandonment. We have reviewed all of the information included in your correspondence as well as additional materials received from the project proponent and have determined that the abandonment poses no threat to archaeological or cultural resources. We recognize that the railroad itself likely may be categorized as a historic property, but that the abandonment is minimal (impacting a non-contributing portion of the railroad grade) and will not compromise the overall integrity of the resource. We therefore determine a finding of **No Historic Properties Effected**.

BNSF has agreed to complete a thorough investigation of the historic railroad in the near future. BNSF has also agreed that the Wilburton Trestle, a resource listed on the Washington State Heritage Register, will not be impacted by the present undertaking and will continue as part of the active, BNSF-maintained alignment.

We would appreciate receiving any correspondence or comments from concerned tribes or other parties that you receive as you consult under the requirements of 36CFR800.4(a)(4).

These comments are based on the information available at the time of this review and on the behalf of the State Historic Preservation Officer in conformance with Section 106 of the National Historic Preservation Act and its implementing regulations 36CFR800.

Should additional information become available, our assessment may be revised. In the event that archaeological or historic materials are discovered during project activities, work in the immediate vicinity must stop, the area secured, and this office and the concerned tribes notified.

Sincerely,



Matthew Sterner, M.A., RPA
Transportation Archaeologist
(360) 586-3082
matthew.sterner@dahp.wa.gov

Cc: Mr. Sidney Strickland, Jr., Sidney Strickland and Associates, PLLC
Mr. Jerome Johnson, BNSF