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SERVICE DATE - AUGUST 31, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-565 (Sub-No. 2X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT
EXEMPTION—IN MIDDLESEX COUNTY, MA

Decided: August 28, 2001

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 4.17 miles of railroad between milepost QBH-2.60 near Sherborn and milepost QBH-6.77 near Holliston, in Middlesex County, MA. Notice of the exemption was served and published in the Federal Register on August 2, 2001 (66 FR 40314-15). The exemption is scheduled to become effective on September 1, 2001.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 7, 2001.¹ In the EA, SEA initially stated that states that the Massachusetts State Historic Preservation Officer (SHPO) has not yet completed its review of the proposed abandonment and recommended that a condition be imposed requiring NYC to retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). In a letter dated July 19, 2001, SHPO advised SEA that the Grove Street Bridge No. 25.34 is not eligible for listing in the National Register of Historic Places. Therefore, according to SEA, the section 106 condition need not be imposed.

SEA also indicated that the right-of-way may be suitable for public use following abandonment. On August 16, 2001, the Town of Sherborn (Sherborn) and the Town of Holliston (Holliston) each filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and for a public use condition under 49 U.S.C. 10905, in order to negotiate with CSXT for acquisition of the right-of-way for use as a recreational trail.

Sherborn and Holliston request that CSXT be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms, and that CSXT be barred from removing or destroying any trail-related structures, such as bridges,

¹ While this decision embraces STB Docket No. AB-55 (Sub-No. 594X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Middlesex County, MA, the environmental conditions discussed in this decision are imposed on the proposed abandonment.

trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. Sherborn and Holliston state that they need the full 180-day period to assemble title and appraisal information and begin negotiations with CSXT. Sherborn and Holliston submitted statements indicating their willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By letter filed August 24, 2001, CSXT indicated its willingness to negotiation with Sherborn and Holliston for interim trail use.²

The trail use request of Sherborn and Holliston complies with the requirements of 49 CFR 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonment–Use of Right-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period requested. See 49 CFR 1152.28(a)(2). The parties have satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with the

² CSXT states in the event that Sherborn and Holliston decide not to share the same ultimate goal, it will later notify the Board that it has decided to negotiate with one of the parties.

respect to the public use condition, CSXT is not required to deal exclusively with Sherborn and Holliston, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on August 2, 2001, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the conditions that CSXT keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track material or signal equipment), for a period of 180 days from the effective date (until February 28, 2002), to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the expiration of the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (if the user is immune from liability, it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminal trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by February 28, 2002, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.
7. This decision is effective on its service date.

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By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary