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OEA

SERVICE DATE – JANUARY 8, 2013

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB 55 (Sub-No. 724X)

**CSX Transportation, Inc. – Abandonment Exemption –
in Ewing Township, Mercer County, N.J.**

BACKGROUND

In this proceeding, CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Ewing Township, Mercer County, New Jersey. The rail line proposed for abandonment extends approximately 1.67 miles from milepost QAT 32.82, at the connection to the CSXT main line near Railroad Avenue and Water Drive, to milepost QAT 34.49, at the end of the rail line (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (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.

ENVIRONMENTAL REVIEW

CSXT submitted an Environmental Report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. CSXT served the Environmental 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)].¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

CSXT states that no local traffic has moved over the Line for at least two years and that there is no overhead traffic. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; the

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 103 (Sub-No. 20X).

transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

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. In the present case, CSXT states that it intends to reclassify a portion of the Line, located between milepost QAT 32.80 and milepost QAT 34.20, a distance of approximately 1.40 miles, as industrial lead and would not conduct any salvage operations on this section. The remaining 0.29 miles would be salvaged and ownership would be transferred to a private school, Christina Seix Academy, which plans to utilize the right-of-way as an access road. CSXT states that it intends to remove tracks, ties, and the upper layer of ballast from this latter section of the Line, located between milepost QAT 34.20 and milepost QAT 34.49, but would not disturb the underlying roadbed. All salvage activities would be conducted using the right-of-way and existing public and private roads for access; no new access roads are planned.

In its comments, the Mercer County Planning Board (Mercer County) states that it has no objection to the abandonment on environmental grounds, but expresses its concern that future potential transit service could be lost if the right-of-way is developed for non-transportation use. Ewing Township (Ewing) submitted comments concurring with Mercer County and requesting that any future use of the right-of-way be limited to transportation. Ewing also requests that no new structures be permitted along the right-of-way until Mercer and Ewing have determined that the right-of-way is not feasible for use as a transit corridor. CSXT notes that, if the proposed abandonment is approved, the right-of-way would be used for transportation purposes, in the form of reclassified industrial lead track between mileposts QAT 32.80 and QAT 34.20, and as an access road between mileposts QAT 34.20 and QAT 34.49. Accordingly, OEA has concluded that the proposed abandonment is consistent with existing local land use plans.

The National Resources Conservation Service (NRCS) submitted comments stating that the soils in the area adjacent to the Line are classified as prime farmland and farmland of statewide importance. However, NRCS also notes that the area that would be affected by the proposed abandonment is primarily urban and not currently under agricultural production. Accordingly, no mitigation regarding the conservation of prime farmland is recommended.

The New Jersey Department of Environmental Protection submitted comments stating that there is no violation or record of enforcement action at the location of the proposed abandonment.

OEA notes that the Line may cross a stream and a freshwater wetland between mileposts QAT 32.80 and QAT 34.49.² Because CSXT does not intend to conduct any salvage activity on this section of the Line, OEA believes that the proposed abandonment would not affect the flow of water or the health of wetland ecosystems in the project area.

CSXT has requested comments from the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers regarding the need for permitting under the Clean Water Act, but has received no responses to date. CSXT states that it does not intend to disturb the underlying roadbed or perform any activities that would cause sedimentation or erosion of the soil. CSXT does not anticipate any dredging or use of fill material during salvage operations or the deposition of any materials into waterways or wetlands. CSXT also states that no salvaged material or debris would be discarded along the right-of-way and any work along the right-of-way would be subject to appropriate measures to prevent or control spills from fuels, lubricants or any other pollutant materials. OEA believes that the abandonment as proposed would not result in the discharge of dredge or fill material into the waterways or wetlands of the United States; erosion or sedimentation affecting waterways; or any other negative impact to water quality. Accordingly, permitting under Sections 402 and 404 of the Clean Water Act (33 U.S.C. § 1342 and 33 U.S.C. § 1344) would not be required.

Pursuant to Section 7 of the Endangered Species Act at 50 C.F.R. § 402, OEA conducted a search of the U.S. Fish and Wildlife Service (USFWS) Endangered Species Database to identify any federally-listed endangered or threatened species that may be affected by the proposed abandonment.³ The search indicated that the following protected species are known or thought to be present in the county in which the Line is located:

- Swamp pink (*Helonias bullata*)- Threatened
- Indiana Bat (*Myotis sodalis*)- Endangered
- Bog turtle (*Clemmys muhlenbergii*)- Threatened

In its comments, USFWS notes that the Indiana Bat has a potential habitat in Ewing Township and recommends that CSXT make a determination as to whether the proposed project may affect this species. According to USFWS, activities that may affect the Indiana Bat include the cutting of trees of more than five inches in diameter, clearing more than five acres, and large-scale spraying of insecticides. OEA notes that the other two protected species listed above, swamp pink (a plant) and the bog turtle, are wetland species that are unlikely to occur in any area that would be affected by salvage activities. CSXT states that, because the proposed abandonment involves only the removal of track material and upper ballast, there would be no negative impacts to endangered or threatened species as a result of the project. Given the limited

² U.S. Fish and Wildlife Service. National Wetlands Inventory. Available online at <http://www.fws.gov/wetlands/data/index.html> (data retrieved January 2, 2013).

³ U.S. Fish and Wildlife Service. Information, Planning, and Conservation System. Available online at: <http://ecos.fws.gov/ipac> (data retrieved January 2, 2013).

scope of the proposed abandonment, OEA concurs with this determination of no effect to endangered and threatened species. Accordingly, no mitigation regarding biological resources is recommended.

CSXT states, and OEA review has confirmed, that the Line is not located in any wildlife sanctuaries or refuges, national or state parks or forests, or other protect areas. Accordingly, no mitigation regarding protected areas is recommended.

CSXT state that there are no known hazardous waste sites or sites where hazardous material spills have occurred on or adjacent to the right-of-way. Accordingly, no mitigation regarding hazardous waste sites or hazardous material spills is necessary.

OEA believes that any air emissions associated with salvage operations would be temporary and would not have a significant impact on air quality. Noise associated with salvage 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 salvage activities 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 EA to the following agencies for review and comment: Mercer County Planning Board and Ewing Township.

HISTORIC REVIEW

According to CSXT, the Line was acquired by the Delaware and Bound Brook Railroad (D&BB) in 1876 and was purchased by CSXT from Conrail Corporation in 1999. The right-of-way is approximately 100 feet wide, and extends approximately 1.67 miles in an urbanized section of Ewing Township. There are no bridges or other structures on the Line.

OEA has not received comments from the New Jersey Historic Preservation Office (State Historic Preservation Officer or SHPO) and therefore has not been able to consider the SHPO's opinion before determining if the Line may be potentially eligible for listing on the National Register of Historic Places (Register). Accordingly, we are recommending a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the Register until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the

proposed abandonment.⁴ The search did not identify any federally-recognized tribes with known ancestral connections to the project area. Accordingly, no consultation with federally-recognized tribes is recommended.

CONDITIONS

We recommend that the following condition be imposed on any decision granting abandonment authority:

- 1. CSX Transportation, Inc. (CSXT) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. CSXT shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the New Jersey Historic Preservation Office (State Historic Preservation Officer or SHPO) and the public. CSXT may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.**

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.

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 Federal Register notice.

⁴ U.S. National Park Service. Native American Consultation Database. Available online at: <http://grants.cr.nps.gov/nacd/index.cfm> (data retrieved January 2, 2013).

TRAILS USE

A request for a notice of interim trail use (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).

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

If you wish to file comments regarding this Environmental Assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Joshua Wayland, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB 55 (Sub-No. 724X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Joshua Wayland, the environmental contact for this case, by phone at (202) 245-0330, fax at (202) 245-0454, or e-mail at waylandj@stb.dot.gov.

Date made available to the public: January 8, 2013

Comment due date: January 23, 2013

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