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SEA

SERVICE DATE – JANUARY 6, 2009

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB Docket No. AB-55 (Sub-No. 692X)

**CSX Transportation, Inc. – Abandonment Exemption –
in Niagara County, NY**

BACKGROUND

In this proceeding, CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of a line of railroad in Niagara County, New York. The rail line proposed for abandonment, known as the Wurlitzer Industrial Track, extends 1.06 miles from milepost QDJ 0.94 to milepost QDJ 2.00 in North Tonawanda, New York (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 significantly affected as a result of the abandonment or any post-abandonment activities. 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 CFR 1105.7(b)]. The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to CSXT, no local traffic, either passenger or freight, has moved over the Line for at least two years and any overhead traffic could be rerouted over other lines. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; 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 re-grading of the right-of-way.

The Line passes through an urbanized and semi-industrial area. The operating easement of the right-of-way is approximately 25 feet from the centerline of track.

CSXT states that if abandonment is granted, it plans to remove the rail, crossties, and possibly the upper layer of ballast. CSXT states that it does not intend to disturb any sub grade or sub grade structures. The operations and maintenance of the Line would cease and removal of the Line would result in the elimination of three public at-grade crossings. Removal of material would be accomplished by use of the right-of-way for access, along with existing public and private crossings, and no new access roads are contemplated. CSXT does not intend to perform any activities that would cause sedimentation or soil erosion, and does not anticipate any dredging or use of fill in the removal of material.

On October 27th, CSXT contacted various parties advising them of CSXT's intent to abandon the Line and requesting their input regarding the proposed abandonment. After an appropriate time for receipt of responses and pursuant to the requirements of 49 CFR 1105.7 and 1105.11, CSXT mailed out an initial Environmental Report to the appropriate parties on November 13, 2008.

CSXT received a response from the Niagara County Department of Economic Development to its October 27 inquiry. The response states that the Department supports "the recommendation that will be forthcoming from the City of North Tonawanda" (the City). The City responded on December 4th, stating that it believes that the abandonment has the potential for public use as a trail or bike path. CSXT states that the right-of-way may be suitable for other public purposes, but may be subject to reversionary interests affecting the transfer of title for other than rail purposes. CSXT believes the proposed abandonment is not inconsistent with local land use plans.

CSXT contacted the Natural Resources Conservation Service (NRCS). NRCS did not respond to the October 27th inquiry. CSXT states that while some prime farmland may exist in the vicinity of the abandonment, it feels the removal of the track material should not have an adverse impact on any existing farmland.

CSXT contacted the New York Department of State – Division of Coastal Resources regarding affects of the abandonment on land or water uses within a designated coastal zone, should one exist. No response was received to CSXT's October 27th inquiry. CSXT feels that the simple removal of track materials should not adversely impact land or water usage within any designated coastal zone.

SEA 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.

CSXT states that it believes the abandonment would result in an improvement to public health and safety by the elimination of three public road crossings. CSXT's records do not indicate the existence of any hazardous waste sites or hazardous material spills on the Line. In its December 4th response, the City states that it disagrees with CSXT and believes that the abandonment would not improve public safety. The City's reasoning is that abandonment of the Walck Road at-grade crossing would leave a dangerous vertical curve contiguous to a city ball field and parking lot, "causing impaired stopping site distance." Additionally, the City states that the line "runs directly through a known inactive, contaminated, industrial site where the potential for onsite contamination from the former Durez Site or contamination in the track ballast from leaking tank cars may exist."

SEA does not believe that removal of the Line would either cause or create impaired site distances beyond what already exists. Additionally, there is no evidence that any spill of hazardous material occurred, or hazardous waste sites exist within the right-of-way to be abandoned. We are sending this EA to the appropriate office of EPA, Region 2 and New York's Department of Environmental Conservation. Moreover, the Board's practice is to mitigate impacts either caused by abandonment or related to salvage of the rail line. Here, the City's concern regarding the possible impaired site line seems clearly to be a "pre-existing" condition. SEA does recommend that CSXT consult with the City regarding the City's concerns about contamination.

The U.S. Fish and Wildlife Service (USFWS) submitted a response acknowledging the receipt of CSXT's "no effect" and/or no impact determination and stated that no further Endangered Species Act coordination or consultation is required.

The National Park Service (the Service) was served a copy of the Environmental and Historical Report by CSXT. To date, the Service has not commented on the proposed abandonment. Based upon CSXT's review of the area, they state that the Line does not appear to be near any parks, wildlife sanctuaries, refuges, or forests.

CSXT contacted the U.S. Environmental Protection Agency (the EPA). The EPA responded stating that the New York State Department of Environmental Conservation is authorized to implement the Section 402 permit program in New York State and suggested CSXT contact that agency directly.

CSXT included the New York State Department of Environmental Conservation in its initial October 27th inquiry. To date, CSXT has received no response. CSXT states it does not contemplate any action known to be inconsistent with federal, state, and/or local water quality

standards. They further state that any necessary permits or applications will be obtained as well as complying with conditions or procedures required by regulatory agencies.

Subsequent to CSXT's mailing of the final Environmental and Historic Reports to SEA on December 11th, the U.S. Army Corps of Engineers (the Corps) submitted comments stating that "an in-house review of the information received indicates that the proposed work would not involve a discharge of dredged or fill material into Federal, jurisdictional wetlands or waters." The Corps requests that proper erosion control measures be taken to prevent unintentional discharges from entering waterways. CSXT states that during track removal, appropriate measures will be implemented to prevent and control spills from fuels, lubricants or any other pollutant materials from entering any waterways. No Section 10 or Section 404 permits should be required.

CSXT contacted the National Geodetic Survey via e-mail. To date, no response has been received.

Based on all information available to date, SEA does not believe that the abandonment would cause significant environmental impacts.

HISTORIC REVIEW

CSXT served the Environmental and Historic Report on the New York State Historic Preservation Officer; Parks, Recreation & Historic Preservation (SHPO), pursuant to 49 CFR 1105.8(c). The SHPO has submitted comments stating that in their opinion the project will have no effect upon cultural resources in or eligible for inclusion in the National Register of Historic Places.

Pursuant to the Advisory Council on Historic Preservation's regulations for implementing the Section 106 process of the National Historic Preservation Act at 36 CFR 800.5(c) and 36 CFR 800.8, we have determined that the proposed abandonment will not adversely affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 CFR 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.

SEA conducted a search of the Tribal Directory Assessment Tool at www.hud.gov/offices/cpd/environment/tribal/index.cfm to identify Federally recognized tribes that may have ancestral connections to the project area. The database indicated that the following three Federally recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment: Seneca Nation of New York, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York. Accordingly, SEA is sending a copy of this EA to these tribes for review and comment.

CONDITIONS

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

1. CSXT shall consult with the City of North Tonawanda regarding the City's concerns about contamination at the site described in the City's Dec 4, 2008 letter.

CONCLUSIONS

Based on the information provided from all sources to date, SEA 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 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

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 CFR 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 **Alan Cassiday**, 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. 692X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Alan Cassiday, the environmental contact for this case, by phone at (202) 245-0308, fax at (202) 245-0454, or e-mail at alan.cassiday@stb.dot.gov.

Date made available to the public: January 6, 2009.

Comment due date: January 20, 2009.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Anne K. Quinlan
Acting Secretary

Attachment