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SERVICE DATE – DECEMBER 2, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 663X)

CSX TRANSPORTATION, INC.–ABANDONMENT
EXEMPTION–JEFFERSON COUNTY, NY

Decided: December 1, 2005

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 1.1-mile line on its Northern Region, Albany Division, St. Lawrence Subdivision, between milepost 1.5 and the end of the track, milepost 2.6, near Watertown, in Jefferson County, NY. Notice of the exemption was served and published in the Federal Register on November 3, 2005 (70 FR 66894). The exemption is scheduled to become effective on December 3, 2005.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 8, 2005. In the EA, SEA notes that the proposed abandonment does not appear to be located in the coastal zone. However, because of the proposed abandonment's proximity to the Black River, the New York State Department of State's Division of Coastal Resources (Coastal Resources) stated, in a telephone conversation with SEA, that the proposed abandonment may impact significant habitat. SEA states that Coastal Resources had not completed its review of the proposed abandonment. Therefore, SEA recommends that CSXT consult with Coastal Resources regarding its concerns to determine whether New York State Coastal Management consistency certification is required. If consistency certification is required, SEA recommends that CXST be prohibited from performing any salvage activities until it obtains a consistency certification and reports to SEA, pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.

SEA also states that CSXT has indicated that it is unaware of any designated wetland or 100-year flood plains within the proposed project area, and the proposed abandonment would not involve the discharge of fill material in waters of the United States. However, the United States Army Corps of Engineers (Corps), Buffalo District, had not commented on the railroad's environmental report at the time the EA was prepared. Therefore, SEA recommends that, prior to commencement of salvage activities, CSXT consult with the Corp's Buffalo District, regarding its requirements and, if applicable, comply with the reasonable requirements of the Corps.

SEA further states that the U.S. Environmental Protection Agency, Region 2 (EPA), reviewed the proposed project and did not have any concerns. EPA, however, recommended that CSXT contact Mr. Richard E. Draper at the New York State Department of Environmental Conservation (NY DEC) regarding permit coverage. Therefore, SEA recommends that, prior to

commencement of any salvage activities, CSXT consult with Mr. Richard E. Draper at the NY DEC regarding permit coverage, comply with the reasonable requirements of NY DEC, and report the results of its consultation to SEA.

Finally, SEA stated in the EA that CSXT indicated that prime farmland may exist in the vicinity of the proposed project. Mr. Ed Moffett, District Conservationist with the U.S.D.A. Natural Resource Conservation Service (NRCS), requested additional information and maps of the proposed project area in order to determine whether the proposed project might affect prime farmland. In the EA, SEA recommended that CSXT consult with the District Conservationist, Mr. Ed. Moffett, 315-782-7289, and report the results of the consultation to SEA prior to commencement of any salvage activities. SEA also stated in the EA that the New York State Historic Preservation Office (SHPO) had not completed its assessment of the proposed abandonment and, pending completion of the SHPO's review, SEA recommended that a condition be imposed on any decision granting abandonment authority requiring CSXT to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

SEA has indicated that, in a letter dated November 9, 2005, Mr. Moffett states that the proposed project would not cause any negative impact to prime or important farmland, and that, in a letter dated November 3, 2005, SHPO indicated that it had completed its review and has determined that the proposed abandonment and removal of rails, ties, and ballast will have no effect on resources listed in or eligible for inclusion in the National Register of Historic Places. Therefore, SEA recommends that the previously recommended consultation with NRCS is no longer necessary. Also, based on the SHPO's comment, SEA recommends that the previously recommended section 106 condition not be imposed as it is also no longer necessary.

Comments to the EA were due November 22, 2005. By letter dated November 3, 2005, the U.S. Fish and Wildlife Services (USFWS) submitted a comment indicating that there is no critical habitat in the proposed project area. However, impact on the Federally and State listed endangered Indiana bat (*Myotis sodalis*) may occur within the proposed project area. The USFWS provided a fact sheet about the Indiana bat and recommends that CSXT consult with both the USFWS office (Mark Clough or Michael Stoll, 607-753-9334) and the NY DEC Endangered Species Unit (Peter Nye, 518-402-8859). On November 9, 2005, CSXT submitted a letter in response to USFWS and provided additional information about the proposed abandonment. CSXT requested that USFWS determine that the proposed project will have no impact or effect on the Indiana bat. SEA states that it has not received a response from the USFWS. Therefore, to address the concerns regarding the Indiana bat, SEA recommends that CSXT consult with both USFWS and NY DEC regarding potential impacts from salvaging activities to the Indiana bat, which may occur in the vicinity of the line and report the results of the consultation to SEA prior to commencement of any salvage activities.

The environmental conditions recommended by SEA, as supplemented and modified based on comments received, will be imposed. Based on SEA's recommendation, the proposed

abandonment, if implemented as conditioned, will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the conditions that, prior to commencement of salvage activities, CSXT shall:
(1) consult with the Coastal Resources to determine whether a New York State Coastal Management consistency certification is required. If a consistency certification is required, CSXT shall be prohibited from performing any salvage activities until it obtains a consistency certification and reports to SEA pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.; (2) consult with the Corps, Buffalo District, regarding its requirements and, if applicable, comply with the reasonable requirements of the Corps; (3) consult with Mr. Richard E. Draper at the NY DEC regarding permit coverage, comply with the reasonable requirements of the NY DEC, and report the results of the consultation to SEA; and (4) consult with both USFWS (Mark Clough or Michael Stoll, 607-753-9334) and the NY DEC (Peter Nye, Endangered Species Unit, 518-402-8859) regarding potential impacts from salvaging activities to the Indiana bat, which may occur in the vicinity of the line and report to SEA the results prior to the commencement of salvage operations.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary