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OEA

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB-55 (Sub-No. 740X)

**CSX Transportation, Inc. — Abandonment Exemption —
in Niagara Falls, Niagara, NY**

BACKGROUND

On May 7, 2015, CSX Transportation Inc. (CSXT) filed a notice of exemption under 49 C.F.R. § 1152.50 with the Surface Transportation Board (Board). CSXT seeks exemption from the requirements of 49 U.S.C. § 10903 in connection with the proposed abandonment of a line of railroad and any associated common carrier obligation in Niagara Falls, Niagara County, New York. CSXT proposes to abandon a small segment of the Northern Region, Albany Division, Niagara Subdivision. Approximately 0.48 miles of line known as the County Industrial Track from milepost QDD 173.81, south of Lafayette Avenue, to milepost QDD 173.33, north of University Drive in the northern portion of the city, would be abandoned. The right-of-way is 33 feet wide and may be subject to reversionary interests. No federally granted rights-of-way are included. A site map showing the rail line proposed for abandonment is attached (Figure 1). If the notice becomes effective, CSXT will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

Based on an examination of maps and aerial imagery, the landscape of this section of the County Industrial Track is generally a mix of suburban residential areas and light industry with some partially wooded areas. It traverses a level grade and crosses three public roads at-grade. The line traverses U.S. Postal Service ZIP Code area 14305. A railroad station at OPSL 40730 and FSAC 17780 serves the line. The proposed abandonment would not result in closure of this station. According to CSXT, the line has been out of service for over two years with no freight or passenger service.

ENVIRONMENTAL REVIEW

In accordance with the Board's environmental rules (49 C.F.R. 1105), CSXT submitted to the Board's Office of Environmental Analysis (OEA) a combined Environmental and Historic Report, in which CSXT concludes that the quality of the human environment would not be significantly affected as a result of the proposed abandonment. CSXT served the report on a

number of appropriate federal, state, and local agencies as required by 49 C.F.R. § 1105.7(b).¹ OEA has reviewed and investigated the record in this proceeding in preparation of this Environmental Assessment (EA).

Proposed Salvage Activities

If the Board grants abandonment authority, CSXT may proceed with plans to salvage track and materials and to sell or lease the real estate. CSXT indicates that salvage may include removal of the rail, crossties, and possibly the upper layer of ballast. No new access roads or access points are required for salvage and no ground disturbance will occur below grade.

Transportation System

According to CSXT, no local or overhead traffic has moved over the line for more than two years, hence OEA expects no significant rail-to-truck diversions. Since no existing or future shipping would divert from the line, the proposed abandonment and discontinuance would not adversely affect existing regional or local transportation systems.

Land Use

To help assess the consistency of the proposed abandonment with current and future land use, CSXT consulted with local governments, including the city of Niagara Falls and county of Niagara. Additionally, CSXT consulted with the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) and the National Geodetic Survey (NGS). While CSXT has yet to receive a response from local governments, the NRCS and NGS have commented. NRCS indicates that the proposed abandonment would not affect prime agricultural land. The NGS, which maintains the National Spatial Reference System, indicates no land survey markers are present within the proposed abandonment right-of-way.

Energy

As no change in shipping would result from the abandonment, OEA foresees no effect on the development, use and transportation of energy resources or recyclable commodities or transportation of ozone-depleting materials. The abandonment would not result in a diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. There would be no increase or decrease in overall energy efficiency.

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-55 (Sub-No. 740X).

Water Resources

The proposed abandonment is set in an area of minimal topographic relief less than half a mile east of the deeply entrenched Niagara River. No streams are crossed and no wetlands are within or adjacent to the right-of-way. The line is not within a flood hazard zone.² CSXT indicates that salvage would not cause sedimentation or erosion of soil and no dredging or use of fill would be necessary. Additionally, CSXT indicates that appropriate measures would be taken to prevent spills from fuels, lubricants or other pollutants. CSXT believes that no permit under Sections 402 or 404 under the Clean Water Act (CWA) would be required.

To address the potential of salvage activities to impact water resources, CSXT consulted the U.S. Army Corps of Engineers (COE), New York, New York office, the New York Department of Environmental Conservation (DEC) in Albany, and the U.S. Environmental Protection Agency (EPA), Region 2 Office, in New York City. CSXT received no response from the COE, but this may be due to correspondence with an office without direct regulatory oversight over Niagara County. OEA will send a copy of this EA to the Buffalo District office to afford an opportunity to comment. The EPA responded to CSXT indicating that it has no comments on the abandonment. The New York DEC commented that no storm water permit would be required if ground disturbance below ballast is not planned.

Based on CSXT's proposal for salvage activities and the absence of water resources in the right-of-way, OEA anticipates no stream or wetland impacts and no permitting requirements under Sections 402 or 404 of the CWA. As noted above, in lieu of additional consultation with the COE, the OEA will include this agency on the service list for this EA to afford this agency an additional opportunity to comment.

Air Quality and Noise

The proposed abandonment would have no significant effect on air quality in the Niagara Falls area as rail traffic has ceased along the line and no future traffic would occur. Abandonment would not result in noise that would affect significant receptors such as public facilities and private residences. Noise and emissions associated with salvage activities would be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

² U.S. Environmental Protection Agency (<http://nepassisttool.epa.gov/>).

Safety and Hazardous Waste

CSXT reports that the proposed abandonment is unlikely to affect public health and safety. With no future use of the line, the proposed abandonment would pose no safety risk from rail traffic. With the abandonment, CSXT expects no future transportation of hazardous materials or chemicals nor is such transportation necessary for salvage activities. Finally, CSXT reports no known hazardous waste sites or spills in the right-of-way. CSXT reports that elimination of three at-grade road crossings would contribute to public safety.

Biological Resources

In its Environmental Report, CSXT indicates that salvage would not affect endangered or threatened species. Further, CSXT indicates the abandonment area is outside of any wildlife refuge or sanctuary, National or State park or forest. CSXT consulted with the U.S. Fish & Wildlife Service (USFWS), Region 5 office as well as the National Park Service, Northeast Regional Office, but received no response.

Through the USFWS Environmental Conservation Online System, OEA generated an IPAC Trust Resource Report for the proposed abandonment area.³ The Northern Long-eared Bat (*Myotis septentrionalis*) is a possible consideration for the project area. The USFWS recently listed the bat as a threatened species. No critical habitat has been identified for this species. Based on the limited size of the right-of-way and limited scope of the proposed salvage, e.g. no ground disturbance and no tree removal, the OEA believes that the project has little potential to adversely affect the Northern Long-eared Bat. However, because the USFWS has yet to comment on the project, OEA recommends a condition requiring CSXT to consult with the USFWS prior to conducting salvage operations.

Coastal Zone Management

Regarding consistency of the proposed abandonment with coastal zone management, CSXT indicates a belief that salvage should not have an adverse impact on any coastal zone, land or water uses. CSXT consulted with the New York Department of State, Office of Planning and Development, which implements the state's coastal zone management program, but CSXT has yet to receive a response. Based on examination of the New York State Coastal Boundary Map,⁴ the OEA believes the northern portion of the right-of-way proposed for abandonment is within the state's Coastal Area Boundary. Accordingly, we recommend a condition on any decision granting abandonment authority. This condition will require consultation with the New York

³ IPAC (Information for Planning and Conservation) is an online project planning tool offered by the U.S. Fish & Wildlife Service (<https://ecos.fws.gov/ipac/>)

⁴ The New York State Coastal Management Program provides an estimation of official coastal area boundaries at http://appext20.dos.ny.gov/coastal_map_public/map.aspx; Office for Coastal Management (<http://coast.noaa.gov/czm/mystate>).

DOS prior to initiating salvage activities to determine whether state coastal management consistency certification is required. If consistency certification is required, the railroad shall be prohibited from performing any salvage activities until it obtains consistency certification and shall then notify the OEA, pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq. and the Board's environmental regulations at 49 CFR 1105.9.

HISTORIC REVIEW

To facilitate compliance with Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 306108) and its implementing regulations, 36 C.F.R. 800, CSXT served a Historic Report on the State Historic Preservation Officer (SHPO), New York State Office of Parks, Recreation and Historic Preservation, Division for Historic Preservation, pursuant to 49 C.F.R. § 1105.8(c). Section 106 of the NHPA requires consideration of the potential for a federally approved project to affect historic properties, i.e., sites, buildings, structures that are eligible for or listed on the National Register of Historic Places (NRHP). Based on CSXT's Historic Report, OEA defines the Area of Potential Effects for this undertaking as the .48 mile 33 feet wide right-of-way. Any potential adverse effects within this APE would result from the proposed salvage of the tracks, ties and ballast. CSXT plans no removal of bridges or other structures. Any post-abandonment land use of the right-of-way is beyond the jurisdiction of the Board.⁵

Like many railroads, the line is part of an old railroad with a long history. The exact construction date is unknown but is likely from the late 19th century. CSXT associates the line with New York Central Railroad's consolidation of smaller lines in 1853. The line is absent from an 1854 map of Niagara Falls but appears on a 1904 map as part of the Erie and Wabash Railroad.⁶ By 1968, the New York Central merged with the Pennsylvania Railroad into the Penn Central Company. CSXT acquired the line in 1999 from Conrail.

The short section of line proposed for abandonment is unlikely to possess historical significance. The line that remains today is a remnant of a much larger and more elaborate local rail component for New York Central. The line terminates at the point of the proposed abandonment and has long been severed from its historic connection to the city of Lewiston to the north. No bridges or structures stand along the line, and the short section has no

⁵ For environmental reviews of rail line abandonments, the Board's role is limited to the anticipated impacts of the abandonment proposal before the agency. This includes the diversion of traffic to other rail lines or transportation modes and the consequences of removing the track and related structures. Iowa Southern R. Co. – Exemption – Abandonment, 5 I.C.C.2d 496, 501 (1989), *aff'd*, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990).

⁶ "Map of the Villages of Niagara Falls & Niagara City, New York" (1854), "Map of Niagara Falls Showing Electric Power Developments" (1904), available online via the James A. Gibson Library, <http://www.brocku.ca/library/maplibrary/historical-maps-of-niagara>.

distinguishable traits representing a typical time, method of construction or the work of a master. OEA considers the line proposed for abandonment ineligible for the NRHP.

CSXT submitted their Historic Report to the New York SHPO for comment to initiate the Section 106 process. In their report, CSXT states their belief that the line is not historically significant. The SHPO concluded that the undertaking will result in No Historic Properties Affected, confirming the absence of known historic properties within the APE.

Beyond consideration of the rail line, the proposed abandonment is unlikely to affect archaeological sites that may be eligible for the NRHP. Based on CSXT's commitment to avoid ground disturbance in salvage operations, OEA believes the project has no potential to affect archaeological sites.

Pursuant to the Section 106 of the NHPA, OEA has determined that approval of the abandonment would have no effect on historic properties. This finding is based on CSXT's consultation with the SHPO, the absence of historic properties in the APE, and the lack of potential to affect archaeological sites.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the National Native American Graves Protection and Repatriation Act, Online Native American Consultation Database and the U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, to identify federally-recognized tribes that may have ancestral connections to the land now part of Niagara County, New York.⁷ The search indicated that three tribes have traditional cultural ties to this area: Seneca Nation of Indians; Tonawanda Band of Seneca; Tuscarora Nation. OEA will ensure that these tribes receive a copy of this EA and have an opportunity to review and comment.

CONDITIONS

OEA recommends the Board impose the following conditions on any decision granting abandonment authority:

1. Prior to commencement of any salvage activities, the railroad shall consult with the U.S. Fish and Wildlife Service (USFWS) to assess potential impacts to the Northern Long-eared bat (*Myotis septentrionalis*) or other Federally listed threatened or endangered species. If the USFWS recommends an appropriate mitigation measure, the railroad shall comply with reasonable requirements. CSXT shall report the results of the USFWS consultations to the OEA in writing prior to the onset of salvage operations.
2. Prior to beginning any salvage activities, CSXT shall consult with the New York

⁷ U.S. National NAGPRA Program (<http://grants.cr.nps.gov/nacd/index.cfm>); U.S. Department of Housing and Urban Development (<http://egis.hud.gov/tdat/Tribal.aspx>).

Department of State to determine whether state coastal management consistency certification is required. CSXT shall obtain state coastal management consistency certification, as necessary. CSXT shall report the results of these consultations in writing to the OEA prior to the onset of salvage operations.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed and if the recommended mitigation measures are imposed, CSXT's abandonment of the portion of a segment of the County Industrial Track between milepost QDD 173.81 and QDD 173.33 in Niagara Falls, Niagara County, New York, 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, though CSXT notes the potential for reversionary property interests. 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 notice of exemption 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 Federal Register notice. 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 Jeff Irwin, 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. 740X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Jeff Irwin, the environmental contact for this case, by phone at (202) 245-0299, fax at (202) 245-0454, or e-mail at Jeffrey.Irwin@stb.dot.gov.

Date made available to the public: June 1, 2015.

Comment due date: June 15, 2015.

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

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Abandonment Exemption in Niagara Falls, NY

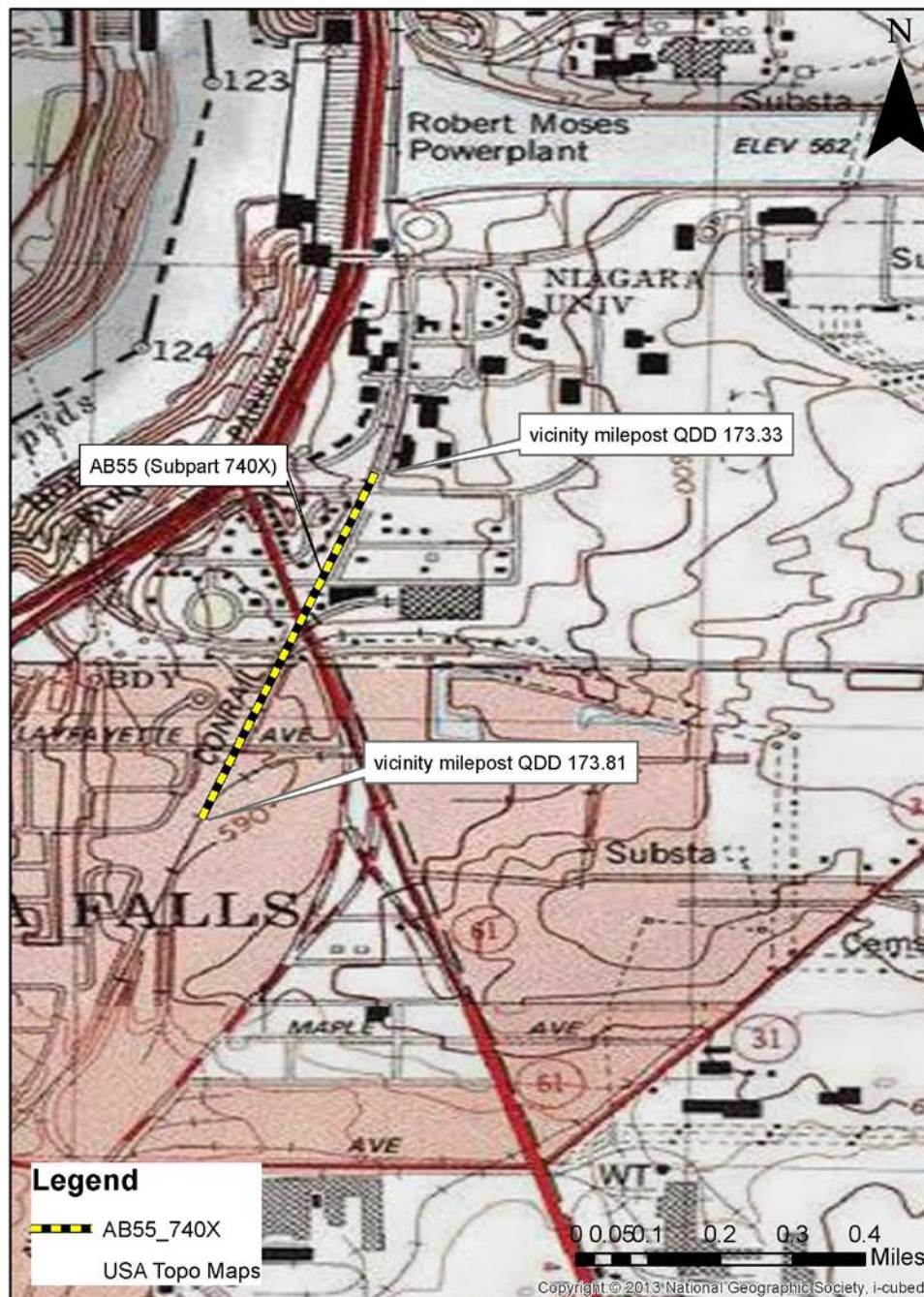


Figure 1. Rail line proposed for abandonment in Docket AB 55 (Sub No.-740X).