

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 807X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN MUSKEGON COUNTY, MICH.

Decided: August 8, 2022

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 3.81-mile rail line that runs between milepost CGCS 56.35 and milepost CGCS 60.16 on the South Horn Spur in Muskegon County, Mich. (the Line).<sup>1</sup> Notice of the exemption was served and published in the Federal Register on July 11, 2022 (87 Fed. Reg. 41,158). The exemption is scheduled to become effective on August 10, 2022.

The City of Muskegon, Mich. (Muskegon), filed a request for issuance of a notice of interim trail use or abandonment (NITU) on July 21, 2022, to establish interim trail use/rail banking on two miles of the Line between milepost CGCS 56.35 and milepost CGCS 58.35 (the Segment) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). CSXT filed a letter on August 1, 2022, agreeing to negotiate with Muskegon toward an interim trail use agreement for the Line.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on July 15, 2022, recommending that five conditions be imposed on any decision granting abandonment authority. First, in the Draft EA, OEA stated that the National Geodetic Survey (NGS) had indicated that there may be geodetic survey markers in the right-of-way that could be disturbed by the proposed abandonment. Accordingly, OEA recommended a condition requiring CSXT to notify NGS at least 90 days prior to beginning abandonment-related salvage activities to allow time for any geodetic survey markers to be preserved.

Second, OEA provided in the Draft EA that the U.S. Fish and Wildlife Service (USFWS) submitted comments regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species. USFWS identified seven threatened and endangered species and one candidate species. The Draft EA stated that, based on information provided by CSXT, USFWS recommended that CSXT require personnel

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<sup>1</sup> In the same jointly filed verified notice, Michigan Shore Railroad division, Mid-Michigan Railroad, Inc., sought to discontinue service over the Line. See Mich. Shore R.R. Div., Mid-Mich. R.R.—Discontinuance of Serv. Exemption—in Muskegon Cnty., Mich., AB 364 (Sub-No. 17X) (STB served July 11, 2022).

conducting salvage to receive Eastern Massasauga Rattlesnake (EMR) safety training prior to the commencement of any abandonment-related salvage activities and report observations of EMRs and any other threatened and endangered species during salvage to USFWS.

Third, in the Draft EA, OEA noted that CSXT requested a consistency certification concurrence from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) – State Coastal Zone Management Agency (CZMA). Because CZMA had not yet submitted comments as of the service date of the Draft EA, OEA recommended a condition requiring CSXT to consult with CZMA and obtain state coastal management consistency certification, if necessary.

Fourth, the Draft EA provided that the U.S. Army Corps of Engineers (Corps) noted that the Line appears to pass through parts of the 100-year floodplain, as delineated under the National Flood Insurance Program, and that the Corps recommended that CSXT coordinate with local and state officials regarding the applicability of a floodplain permit prior abandonment-related salvage activities. Therefore, OEA recommended a condition requiring CSXT to (1) consult with EGLE and the Muskegon County Water Resources Commissioner’s office regarding potential impacts to the 100-year floodplain prior to commencement of any abandonment-related salvage activities, and (2) comply with the reasonable requirements of each agency.

Fifth, OEA stated in the Draft EA that CSXT had served an environmental and historic report on the Michigan State Historic Preservation Office (State Historic Preservation Office, or SHPO), pursuant to 49 C.F.R. § 1105.8(c), but that the SHPO had responded that the project information submitted was incomplete and therefore the SHPO could not initiate the Section 106 review process. In turn, OEA was unable to consider the SHPO’s opinion regarding whether the Line may be eligible for listing on the National Register of Historic Places as of the service date of the Draft EA. Accordingly, OEA recommended a condition requiring CSXT to (1) 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, or APE) 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, 54 U.S.C. § 306108, has been completed, and (2) report back to OEA regarding any consultations with the SHPO and the public.

OEA issued its Final Environmental Assessment (Final EA) on August 5, 2022, indicating that comments were received from NGS and EGLE’s Water Resources Division. NGS commented that potential conflicts related to the geodetic survey markers within the rail right-of-way have been resolved and, therefore, no further action is necessary. Accordingly, OEA no longer recommends a condition requiring CSXT to consult with NGS prior to beginning abandonment-related salvage activities.

The Final EA also states that EGLE certified by letter that the proposed abandonment would be consistent with Michigan’s Coastal Management Program, provided that CSXT obtains and complies with all required permits. OEA considered EGLE’s comments and determined that, pursuant to the Coastal Zone Management Act, 16 U.S.C. §§ 1451-1464, the proposed

abandonment would not adversely affect coastal resources. As such, OEA no longer recommends a condition requiring CSXT to consult with EGLE regarding coastal zone consistency.

Interim Trail Use. Muskegon's request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and CSXT states that it is willing to negotiate interim trail use with Muskegon. Because CSXT agrees to Muskegon's request for a NITU and Muskegon's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the one-year period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2), (h). If no agreement is reached within one year, CSXT may fully abandon the Segment, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This decision, and the proposed abandonment if implemented as conditioned, 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. The notice served and published in the Federal Register on July 11, 2022, 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 to permit the parties to negotiate for trail use for the rail line, for a period of one year from the service date of this decision and notice, until August 9, 2023. The abandonment is also subject to the following conditions:<sup>2</sup>

(a) CSXT shall require personnel conducting salvage to receive EMR safety training prior to the commencement of any abandonment-related salvage activities and report observations of EMRs and any other threatened and endangered species during salvage to the USFWS.

(b) CSXT shall consult with EGLE and the Muskegon County Water Resources Commissioner's office prior to commencement of any abandonment-related salvage activities regarding potential impacts to the 100-year floodplain and shall comply with the reasonable requirements of each agency.

(c) 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 APE that are eligible for listing or listed in the National Register of Historic Places until the Section 106

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<sup>2</sup> If Muskegon implements trail use on the Line (or a portion thereof), compliance with the conditions is not required with respect to any portion of the Line designated for trail use for the duration of such use.

process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. CSXT shall report back to OEA regarding any consultations with the 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.

3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.

5. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h).

6. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by August 9, 2023, for the right-of-way, interim trail use/rail banking may be implemented. If no agreement is reached, CSXT may fully abandon the Segment, subject to any outstanding conditions.

8. This decision and notice is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.