

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 688X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN MARION
COUNTY, IN

Decided: November 3, 2008

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.01-mile line of railroad, known as the Arlington Industrial Track, located on its Northern Region, Great Lakes Division, Indianapolis Belt Subdivision, extending from milepost QIA 1.11 (English Ave.) to the end of the track at milepost QIA 0.1 in Marion County, IN. Notice of the exemption was served and published in the Federal Register on October 3, 2008 (73 FR 57727). The exemption is scheduled to become effective on November 4, 2008. In this decision, the Board is granting requests for imposition of interim trail use/rail banking and public use conditions.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 10, 2008, requesting comments by October 27, 2008. In the EA, SEA recommended that the Board not impose environmental conditions on any decision granting abandonment authority. No comments to the EA were filed by the October 27, 2008 due date. Therefore, no condition will be imposed. Because no environmental or historic preservation issues have been raised by any party or identified by SEA, a Finding of No Significant Impact under 49 CFR 1105.10(g) will be made pursuant to 49 CFR 1011.7(b)(9).

In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On October 24, 2008, Indiana Trails Fund, Inc. (ITF) late-filed a request for issuance of a notice of interim trail use (NITU) for the 1.01-mile line of railroad under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, and for a public use condition under 49 U.S.C. 10905.¹ ITF has submitted a statement of willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in

¹ The October 3, 2008 notice of exemption provided that any request for trail use/rail banking filed under 49 CFR 1152.29 had to be filed by October 14, 2008, and any request for a public use condition filed under 49 CFR 1152.28 had to be filed by October 23, 2008. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board stated that it would retain the policy of accepting filings after the due date when good cause is shown. Because ITF's late-filed request has not delayed the proceeding and will not prejudice any party, ITF's request will be accepted.

which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way for trail purposes, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. By letter dated October 28, 2008, CSXT states that it agrees to negotiate with ITF for interim trail use.

Because ITF's request complies with the requirements of 49 CFR 1152.29, and CSXT agrees to negotiate for trail use, a NITU will be issued for the 1.01-mile line. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As noted above, ITF also requested a 180-day public use condition. ITF requests that CSXT be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that CSXT be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment exemption. ITF states that the time period is needed to begin negotiations with the carrier.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because ITF has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the November 4, 2008 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with ITF, but may engage in negotiations with other interested persons.

This action 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 and the late-filed request by ITF for interim trail use/rail banking and public use is accepted.

2. Abandonment of the involved rail line will have no significant effect on the quality of the human environment and conservation of energy resources or on historic resources.

3. Upon reconsideration, the notice served and published in the Federal Register on October 3, 2008, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the November 4, 2008 effective date of the exemption until May 3, 2009.

4. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, CSXT may discontinue service and salvage track and related materials. CSXT shall keep intact the right-of-way, including bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before May 3, 2009, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

5. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

7. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by May 3, 2009, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

9. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary