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SERVICE DATE – DECEMBER 3, 2012

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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 670X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN MIDDLESEX
COUNTY, MASS.

Decided: December 3, 2012

This decision grants a further extension of time for the parties to negotiate a trail use/rail banking agreement.

By decision and notice of interim trail use or abandonment (NITU) served on October 25, 2006, the Board granted the petition for exemption filed by CSX Transportation, Inc. (CSXT) for abandonment of a 2.39-mile line known as the Saxonville Industrial Track, extending between milepost QBX 0.15 and the end of the line at milepost QBX 2.54, in Middlesex County, Mass. The exemption was subject to public use, environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the Town of Natick, Mass. (Town), to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). By a series of decisions, the NITU negotiation period was extended until April 26, 2012.

On October 16, 2012, the Town filed a request for an extension of time of its NITU negotiation period for an additional 180 days.¹ The Town explains that the time is needed because, recently, a study of the feasibility of shared transit and recreation along the 2.39-mile corridor had been completed and that an updated appraisal is pending. The Town states that it and CSXT wish to continue negotiations. In a response filed on October 23, 2012, CSXT states that it has continued to negotiate interim trail use/rail banking with the Town and agrees with an extension of the NITU negotiation period until April 21, 2013. CSXT emphasizes that it has not consummated the abandonment. Given the information provided by the Town, and because

¹ On October 31, 2012, the Town filed a follow-up letter stating that, in the October 16, 2012 letter, it had indicated that by a series of decisions, the NITU negotiation period had previously been extended until October 23, 2012, and requested an additional 180-day extension from that date. The Town also states that, although negotiations continued between it and CSXT, they did not realize that the Town had failed to submit its request asking to extend the negotiation period from April 26, 2012, to October 23, 2012, and apologizes for the error.

CSXT agrees with the Town's request for an extension of time to negotiate, we will grant the request to extend the negotiating period under the NITU until April 21, 2013.

Where, as here, the carrier consents to continuing negotiations and has not consummated the abandonment, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, a further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended to April 21, 2013. 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) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Town's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to April 21, 2013.
3. If an agreement for interim trail use/rail banking is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
4. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

² See Rail Abans.–Use of Rights-of-Way as Trails–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).