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SERVICE DATE – JULY 17, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 678X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN CLAY COUNTY, IL

Decided: July 16, 2007

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.86-mile line of railroad on its Northern Region, Louisville Division, Illinois Subdivision, from milepost BXO 74.14 to milepost BXO 75.0, known as the Flora North Branch, City of Flora, in Clay County, IL. Notice of the exemption was served and published in the Federal Register on May 25, 2007 (72 FR 29362). The exemption became effective on June 27, 2007.¹

On June 25, 2007, the City of Flora, IL (the City), late-filed a request for issuance of a notice of interim trail use (NITU) for the line 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. 10905,² to negotiate with CSXT for acquisition of the ROW as a recreational trail. The City has submitted a statement of willingness to assume 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 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 ROW, as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. By filing dated June 28, 2007, CSXT

¹ The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) on June 1, 2007, recommending that an environmental condition be imposed on the proposed abandonment. By decision served on June 26, 2007, the exemption was made subject to that condition.

² In the EA, SEA indicated that the right-of-way (ROW) may be suitable for other public use following abandonment. The May 25, 2007 notice provided that trail use/rail banking requests were to be filed by June 4, 2007, and that requests for public use conditions were to be filed by June 14, 2007. 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 retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice and party, it will be accepted. See Wheeling & Lake Erie Railway Company–Abandonment Exemption–in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

states that it concurs with the request and is willing to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. 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, provided that the environmental condition imposed in this proceeding is met. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

As noted above, the City also has requested a 180-day public use condition. The City requests that CSXT be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms for a 180-day period from the effective date of the abandonment. The City states that the time period is needed to complete a trail plan and commence negotiations with CSXT.

As an alternative to interim trail use under the Trails Act, the ROW 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 the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the June 27, 2007 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 ROW, CSXT must keep the remaining ROW 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 ROW 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 the City, but may engage in negotiation with other interested persons.

As conditioned, 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.

2. The late-filed request for a NITU under 16 U.S.C. 1247(d) and for a public use condition under 49 U.S.C. 10905 is accepted.

3. Upon reconsideration, the notice served and published in the Federal Register on May 25, 2007, 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 for a period of 180 days commencing from the June 27, 2007 effective date of the exemption (until December 24, 2007).

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 ROW, including bridges, trestles, culverts and tunnels, until December 24, 2007, 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 December 24, 2007, 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 ROW.

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 ROW.

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 December 24, 2007, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided the environmental condition imposed in this proceeding is met. See 49 CFR 1152.29(d)(1).

9. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary