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SERVICE DATE - JULY 15, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 612X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN GREENVILLE, SC

Decided: July 12, 2002

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon approximately 1.31 miles of rail line between Valuation Station 47+50 and Valuation Station 115+11.5 in Greenville, Greenville County, SC. Notice of the exemption was served and published in the Federal Register (67 FR 31864) on May 10, 2002. The exemption became effective on June 11, 2002.

By letter received on June 7, 2002, the City of Greenville (City) late-filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905,¹ in order to negotiate with CSXT for use of the right-of-way as a recreational trail.² The City's request indicated that it was also mailed to CSXT on May 30, 2002. The City requests that CSXT be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that CSXT be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the

¹ The Board's Section of Environmental Analysis (SEA) served an environmental assessment on May 17, 2002, which indicated that the right-of-way may be suitable for other public use following abandonment.

² The May 10 notice provided that trail use/rail banking requests had to be filed by May 20, 2002, and that requests for public use conditions had to be filed by May 30, 2002. In revising its abandonment rules 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 requests will prejudice any party, they 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).

abandonment exemption. The City states that the time period is needed because they have not had the opportunity to assemble or review title information, complete a trail plan, or commence negotiations with CSXT. The City 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, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed July 3, 2002, CSXT states that it is willing to negotiate for interim trail use for a portion of the line.³

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. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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). The City has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the 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. Here,

³ Although CSXT is only willing to negotiate with the City for an unspecified portion of the 1.31-mile line because it intends to utilize part of the line for railroad purposes, a NITU will be issued for the entire line. There is no need to specify the exact parameters of the trail use condition at this time because abandonment authority is permissive, and negotiations for trail use depend upon the carrier's consent. CSXT thus may negotiate with the City for trail use over any portion of the line CSXT chooses, and, similarly, CSXT may revoke its consent to negotiate at any time and may request the Board to end or not extend the trail use negotiation period for that portion of the line.

however, while both conditions will be imposed at this time, the public use condition will expire on December 8, 2002 (180 days from the effective of the exemption), while the trail use negotiation period will run for 180 days from the service date of this decision, or until January 11, 2003. 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 the City, but may engage in negotiations with other interested persons.

As conditioned, this decision 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. Upon reconsideration, the notice served and published in the Federal Register on May 10, 2002, exempting abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the condition that CSXT keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels, for a period of 180 days after the June 11, 2002 effective date (until December 8, 2002), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.
3. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same portion of the line.
4. 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 (if the user is immune from liability, 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.
5. 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.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by January 11, 2003, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary