

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 684X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN SHELBY
COUNTY, TN

Decided: October 26, 2007

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 13.34-mile rail line on CSXT's Southern Region, Nashville Division, Memphis Terminal Subdivision, between milepost ONI 210.66 near Cordova and milepost ONI 224 in Memphis, known as the Cordova Branch, in Shelby County, TN. On September 27, 2007, notice of the exemption was served and published in the Federal Register (72 FR 54977-78).¹ The exemption is scheduled to become effective on October 27, 2007.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 2, 2007. In the EA, SEA recommends two conditions. First, SEA notes that the National Geodetic Survey (NGS) has advised SEA that three geodetic station markers have been identified that may be affected by the proposed abandonment. Therefore, SEA recommends that CSXT be required to consult with and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers to provide NGS time to plan for the possible relocation of the station markers.

Second, SEA states that the Tennessee State Historic Preservation Officer (SHPO) commented that additional information is required for its review before it can determine if the rail line potentially may be eligible for listing in the National Register of Historic Places (National Register). Because the SHPO has not completed its review, SEA recommends that CSXT 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 right-of-way that are eligible for listing or are listed in the National Register until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f), has been completed. SEA also recommends that CSXT be required to report back to SEA regarding any consultations with the

¹ By petition for exemption filed on August 21, 2007, and reinstated on September 7, 2007, CSXT sought an exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904. Because no notice of intent to file an OFA was submitted by the October 9, 2007 due date for such notices, the request for an exemption from the OFA provisions is moot and requires no Board action.

SHPO or the public regarding this matter and that CSXT be prohibited from filing its consummation notice or initiating any salvage activities related to the proposed abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

Comments to the EA were due on October 17, 2007. SEA did not receive any additional comments. Accordingly, the conditions recommended by SEA in the EA will be imposed.

On October 5, 2007, Memphis Community Connector (MCC) 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), and 49 CFR 1152.29, to enable it to negotiate with CSXT for use of the line for interim trail use. MCC also has submitted a statement of willingness to assume full responsibility for 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 has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on October 19, 2007, CSXT indicates a willingness to negotiate with MCC for interim trail use and rail banking.

Because MCC'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 the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

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 exemption of the abandonment of the rail line described above, and covered by the notice served and published in the Federal Register on September 27, 2007, is subject to the conditions that CSXT shall: (1) consult with NGS and notify NGS 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; (2) 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 proposed abandonment's right-of-way that are eligible for listing or are listed in the National Register until the section 106 process has been completed, report back to SEA regarding any consultations with the SHPO or the public regarding this matter, and be prohibited from filing a consummation notice or initiating any salvage activities until the section 106 process has been completed and the Board has removed this condition. It also is modified to the extent necessary to implement interim trail

use/rail banking as set forth below to permit MCC to negotiate with CSXT for trail use of the subject line, for a period of 180 days commencing from the service date of this decision and notice (until April 23, 2008).

3. 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.

4. 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.

5. 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.

6. If an agreement for interim trail use/rail banking is reached by April 23, 2008, 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).

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary