

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 691X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN WORCESTER COUNTY, MASS.

Decided: December 23, 2010

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments for CSXT to abandon a 4.2-mile line of railroad between milepost QBU 0.0 (Fitchburg) and milepost QBU 4.2 (Leominster), in Worcester County, Mass. Notice of the exemption was served and published in the Federal Register on November 20, 2008 (73 Fed. Reg. 70,405-06) (2008 notice). The exemption became effective on December 20, 2008.

The 2008 notice provided that, if consummation was not affected by CSXT's filing of a notice of consummation by November 20, 2009, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire on that date.<sup>1</sup> On November 19, 2009, CSXT filed a request under 49 C.F.R. § 1152.29(e)(2) to extend, until November 20, 2010, the time to file its notice of consummation. In a decision served on November 19, 2009, the Board extended the consummation date until November 20, 2010.

On November 19, 2010, the Georgetown and High Line Railway Company, LLC (GHLR), filed a request for issuance of a notice of interim trail use (NITU) under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 for the line. GHLR 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, and for the payment of any and all taxes that may levied or assessed against, the right-of-way, as required at 49 C.F.R. § 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 its request, GHLR asks that the NITU be issued for a one-year period because of difficulties associated with obtaining funding during the economic downturn.<sup>2</sup> CSXT responds that it is willing to negotiate with GHLR for interim trail use on the line and that it agrees to the one-year negotiating period.

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<sup>1</sup> By decision served on December 17, 2008, the exemption was made subject to an environmental consultation condition that is not a barrier to CSXT's consummation of the abandonment.

<sup>2</sup> Although the request exceeds the customary request of 180 days (here, December 27, 2011), the Board has granted such requests in the past. See, e.g., S. Pac. Transp. Co.—Aban.

Because GHLR's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued for the right-of-way between milepost QBU 0.0 and milepost QBU 4.2. The parties may negotiate an agreement during the one-year period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within one year, CSXT may fully abandon the line subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. 49 C.F.R. § 1152.29(d)(2).

As conditioned, this decision and notice 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 exemption is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit GHLR to negotiate with CSXT for trail use for the portion of the right-of-way between milepost QBU 0.0 and milepost QBU 4.2, for a period of one year from the service date of this decision and notice of interim trail use or abandonment until December 27, 2011.
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.

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( . . . continued)

Exemption—in Wendel-Alturas Line in Modoc & Lassen Counties, Cal., AB 12 (Sub-No. 184X)  
(STB served Sept. 1, 2005).

6. If an agreement for interim trail use/rail banking for the portion of the right-of-way between milepost QBU 0.0 and milepost QBU 4.2 is reached by December 27, 2011, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon that portion provided the other conditions imposed in this proceeding are met. 49 C.F.R. § 1152.29(d)(1).

7. This decision is effective on its service date.

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