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SERVICE DATE – AUGUST 20, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 511 (Sub-No. 5X)

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS—ABANDONMENT  
EXEMPTION—IN HOWARD COUNTY, IND.

Decided: August 19, 2010

Central Railroad Company of Indianapolis (CERA) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 2.84 miles of rail line on CERA's Tipton Industrial Lead between milepost 55.66 and milepost 58.5, in Howard County, Ind. Notice of the exemption was served and published in the Federal Register on July 22, 2010 (75 Fed. Reg. 42,814-15). The exemption is scheduled to become effective on August 21, 2010.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 27, 2010. In the EA, SEA indicates that CERA served its historic report on the Indiana State Historic Preservation Office (SHPO) pursuant to 49 C.F.R. § 1105.8(c). However, SEA states that it has not heard from the SHPO regarding its opinion on the potential for the line to contain properties eligible for listing on the National Register of Historic Places (National Register) pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA). Accordingly, SEA recommends a condition that CERA be required to 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 project right-of-way (the Area of Potential Effect) that are eligible for listing or are listed in the National Register until the Section 106 process of the NHPA has been completed. SEA also recommends that CERA be required to report back to SEA regarding any consultations with the SHPO, the public, and any other Section 106 consulting parties that have been identified, and that CERA not be allowed to consummate the abandonment or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

Additionally, SEA indicates that it conducted a search of the Native American Consultation Database (Database) at <http://home.nps.gov/nacd/> to identify Federally recognized tribes that may have ancestral connections to the project area and would need to be contacted as part of the Section 106 process. According to SEA, the Database indicated that the Miami Tribe of Oklahoma was shown as having a potential interest in the proposed undertaking. Accordingly, SEA states in the EA that it is sending a copy of the EA to this tribe for review and comment.

Comments to the EA were due by August 11, 2010. According to SEA, in a letter from the SHPO dated July 14, 2010, the SHPO indicated that that the proposed abandonment would not result in adverse effects to any properties known to be eligible for listing or to be listed on the National Register. Therefore, SEA now makes a finding of “no historic properties affected” pursuant to 36 C.F.R. § 800.4(d)(1) and recommends that no Section 106 condition be imposed on any abandonment authorization. Based on the contents of the SHPO’s letter, SEA now recommends imposition of a new condition: that, in the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during the railroad’s salvage activities, CERA be required immediately to cease all work and to notify SEA, interested Federally recognized tribes, and the SHPO, pursuant to 36 C.F.R. § 800.13(b). SEA shall then consult with the SHPO, interested Federally recognized tribes, CERA, and other consulting parties to determine whether mitigation measures are necessary. No other comments were received. Accordingly, the Section 106 condition recommended by SEA in the EA will not be imposed, and the condition now recommended by SEA will be imposed.

In the EA, SEA states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On August 2, 2010, the City of Kokomo (City) filed a request for the issuance of a notice of interim trail use (NITU) for 2 segments of the right-of-way totaling 2.35 miles (the 2 segments) to negotiate with CERA for acquisition of the 2 segments for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29. The 2 segments are comprised of the right-of-way between: (1) milepost 55.66 near Gano Street and milepost 57.39 at the south right-of-way of the proposed U.S. 35, a distance of 0.62 miles; and (2) milepost 57.88 at the north right-of-way of the proposed U.S. 31 and milepost 58.5 at the south end of the Nickel Plate Trail, a distance of 1.73 miles. The City also has submitted a statement of willingness to assume full 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 right-of-way for the 2 segments, 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 reconstruction and reactivation for rail service. In a response filed on August 2, 2010, CERA states that it is willing to negotiate with the City for interim trail use for the 2 segments.

Because the City’s request complies with the requirements of 49 C.F.R. § 1152.29, and CERA is willing to negotiate with the City for trail use, a NITU will be issued for the 2 segments. 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, CERA may fully abandon the line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

The City also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the 2 segments. The City requests that CERA be prohibited from disposing of the corridor,

other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that CERA be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, ballast, culverts, and tunnels, for a 180-day period from the effective date of the abandonment. The City's justification for its request is that these structures have considerable value for recreational trail purposes. The City indicates that the corridor connects to the north with another 37-mile public trail and that the requested public use condition would allow this trail to be connected to a population center of approximately 46,000 residents. The City states that the 180-day period is needed to review title information and to begin negotiations with CERA.

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 Aban.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 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 C.F.R. § 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, requiring CERA to keep intact the right-of-way for the 2 segments (including bridges, trestles, ballast, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the August 21, 2010 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, however, while both conditions will be imposed at this time, the public use condition will expire on February 17, 2011, while the trail use negotiating period will run 180 days from the service date of this decision and notice (until February 16, 2011). If a trail use agreement is reached on a portion of the right-of-way for the 2 segments prior to February 17, 2011, CERA 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, CERA is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

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. Upon reconsideration, the notice served and published in the Federal Register on July 22, 2010, exempting the abandonment of the line described above, is modified to the extent necessary: (1) to implement interim trail use/rail banking as set forth below to permit the City to negotiate with CERA for trail use of the 2 segments, for a period of 180 days from the service date of this decision and notice (until February 16, 2011); and (2) to permit public use negotiations as set forth below, for a period of 180 days commencing from the August 21, 2010 effective date of the exemption (until February 17, 2011). It is also subject to the condition that, in the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during the railroad's salvage activities, CERA shall immediately cease all work and notify SEA, interested Federally recognized tribes, and the SHPO. SEA shall then consult with the SHPO, interested Federally recognized tribes, CERA, and other consulting parties to determine whether mitigation measures are necessary.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, CERA may discontinue service over the line. CERA shall keep intact the right-of-way for the 2 segments, including bridges, trestles, ballast, culverts, and tunnels, and shall refrain from disposing of the corridor (other than tracks, ties, and signal equipment), for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the 2 segments for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period, the public use condition will expire to the extent 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 (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.
5. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations 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 February 16, 2011, interim trail use may be implemented. If no agreement is reached by that time, CERA may fully abandon the line, after the conditions imposed in this proceeding are met. See 49 C.F.R. § 1152.29(d)(1).

8. This decision is effective on its service date.

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