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SERVICE DATE - DECEMBER 17, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 521X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN FULTON COUNTY, GA

Decided: December 12, 1997

By decision served November 21, 1997, the Board granted CSX Transportation, Inc. (CSXT), an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 0.58-mile portion of its railroad line known as the Atlanta Terminal Subdivision, extending from milepost 864.04 near Wheeler Street to milepost 864.62 at the end of the track at Simpson Street, in Fulton County, GA. The exemption is scheduled to become effective on December 21, 1997.

On November 18, 1997, the City of Atlanta (City) filed a petition requesting permission to late-file a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d) and imposition of a 180-day public use condition under 49 U.S.C. 10905.¹ The City simultaneously filed the requests.

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 abandonment exemption. The City states that the 180-day period is needed to conduct negotiations with CSXT. It submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that use of the right-of-way for trail purposes is subject to future reactivation for rail service. By facsimile transmitted December 2, 1997, CSXT indicates its willingness to negotiate with the City for interim trail use.

¹ The notice pursuant to 49 U.S.C. 10502(b) that was served and published in the Federal Register on August 22, 1997 (62 FR 44749) provided that any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 had to be filed no later than September 11, 1997. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), the Board stated that, when good cause is shown, filings would be accepted after the due date. Because there is no indication that the City's late-filed request would prejudice any 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).

Since the City's request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to enter into negotiations, 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.

The City's submission meets the requirements for a public use condition prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the time period requested. Accordingly, the requested 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 execution of a trail use agreement. 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.

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 decision served on November 21, 1997, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, and is subject to the condition that CSXT keep intact the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not track or track materials), for a period of 180 days after the December 21, 1997 effective date (until June 19,

1998) to enable any State or local government agency, or other interested person to negotiate for acquisition of the line for public use. 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 the trail use/rail banking agreement covers the same line segment.

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 specific date.

6. If an agreement for interim trail use/rail banking is reached by June 19, 1998, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.

7. This decision is effective on the service date.

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

Vernon A. Williams
Secretary

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