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SERVICE DATE – LATE RELEASE AUGUST 4, 2014

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 709X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN MARION
COUNTY, IND.

Decided: August 4, 2014

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 C.F.R. pt. 1152 Subpart F—Exempt Abandonments to abandon an approximately 1.49-mile rail line on the Northern Region, Great Lakes Division, The City Terminal Subdivision, between north of West 29th Street, milepost QIY 3.69, and the end of track south of Langsdale Avenue, milepost QIY 2.20, in The City, Marion County, Ind. (the Line). Notice of the exemption was served and published in the Federal Register on July 3, 2014 (79 Fed. Reg. 38,126). The exemption is scheduled to become effective on August 5, 2014.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on July 11, 2014. In the EA, OEA stated that the Indiana State Historic Preservation Officer (SHPO) submitted comments indicating that it has identified properties within the area of the proposed abandonment that are either listed in the National Register of Historic Places (The City Parks and Boulevard System) or meet the criteria of eligibility for inclusion (Bridge QIY 3.10 and Central Canal). The SHPO requested additional information from CSXT and stated that once the information was received, it would resume identification and evaluation procedures for the proposed abandonment. Accordingly, OEA recommended a condition requiring CSXT 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) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. §470f.

Comments to the EA were due by July 25, 2014. OEA issued a Final EA on July 28, 2014, noting that it received a single comment from the SHPO requesting scaled photographs and plan views that would provide information regarding the Line's features for the archeological record. In addition, the SHPO recommended that additional parties be invited to participate in the consultation. Therefore, OEA continues to recommend that the Section 106 condition previously recommended in the EA be imposed upon any decision granting abandonment authority. Accordingly, the condition recommended by OEA in the Final EA will be imposed. Based on OEA's recommendation the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On July 7, 2014, Indiana Trails Fund, Inc. (ITF), filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with CSXT for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29. On July 22, 2013, the City of Indianapolis (the City) filed a request for the issuance of a NITU on the Line as well. Pursuant to 49 C.F.R. § 1152.29, ITF and the City have submitted statements of willingness to assume financial responsibility for management of the right-of-way, for any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. By letters filed on July 11, 2014, and July 15, 2014, respectively, CSXT states that it is willing to negotiate with ITF and the City for interim trail use for a period of 180 days.

Because the requests comply with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. CSXT may negotiate with ITF and/or the City for an interim trail use agreement for the right-of-way during the 180-day period prescribed below. If an interim agreement is reached (and thus, interim trail use is established) with either party, that party shall notify the Board within 10 days that an agreement has been reached. If an interim agreement is reached (and thus, interim trail use is established) with both parties jointly, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, CSXT may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Both ITF and the City have also requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. They ask that CSXT be prohibited from disposing of the corridor, other than the track, ties, and signal equipment, except for public use on reasonable terms, and that CSXT be barred from removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels for a 180-day period from the effective date of the abandonment authorization. ITF's justification for its request is that this railroad corridor will provide a bicycling and walking corridor for both a transportation link within Marion County, and a recreation facility to enhance The City's strong tourism center. The City's justification for its request is that the rail corridor is located just south of an existing Central Canal Towpath, a multi-use trail that accommodates hikers, bikers, equestrians, and other appropriate uses. The City also notes that the corridor provides important wildlife habitat and greenspace and its preservation as a recreational trail is consistent with that end.

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 Abans.—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 ITF and the City have satisfied these requirements, a 180-day public use condition will be imposed, requiring CSXT to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the August 5, 2014 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. While both conditions will be imposed at this time, the public use condition will expire on February 1, 2015, but the trail use negotiating period will run 180 days from the service date of this decision and notice, until January 31, 2015. If a trail use agreement is reached on a portion of the right-of-way prior to February 1, 2015, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day public use condition 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 ITF or the City, but may engage in negotiations with other interested persons.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on July 3, 2014, 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 to permit ITF and the City to negotiate with CSXT for trail use for the line for a period of 180 days from the service date of this decision and notice, until January 31, 2015, and to permit public use negotiations as set forth below for a period of 180 days from the August 5, 2014, effective date of the exemption (until February 1, 2015). The abandonment exemption is also made subject to the condition that CSXT shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. CSXT shall report back to the Office of Environmental Analysis regarding any consultations with the SHPO, any other Section 106 consulting parties, and the public. CSXT may not file its consummation notice 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.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, CSXT may discontinue service and salvage track and related materials. CSXT shall otherwise keep intact the right-of-way, including potential trail-related structures

such as bridges, trestles, culverts, and tunnels, for a period of 180 days (until February 1, 2015) to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by January 31, 2015, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the line, upon expiration of the public use condition imposed here.

9. This decision is effective on its service date.

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