

SERVICE DATE – JANUARY 13, 2020

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 794X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN PINELLAS
COUNTY, FLA.

Decided: January 10, 2020

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments for CSXT to abandon an approximately 0.86-mile rail line on its Clearwater Subdivision, between milepost ARE 897.57 and milepost ARE 898.43, in St. Petersburg, Pinellas County, Fla. (the Line). Notice of the exemption was served and published in the Federal Register on September 9, 2019 (84 Fed. Reg. 47,339), and the exemption became effective on October 9, 2019.

On August 29, 2019, the City of St. Petersburg (the City) filed a request for issuance of a public use condition under 49 U.S.C. § 10905 and (as supplemented on September 4, 2019) a request for issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). The Georgetown High Line Railway Company LLC (GHL) also requested a NITU on August 29, 2019. In a response filed on September 3, 2019, CSXT notified the Board that it is willing to negotiate an agreement for interim trail use with GHL but not with the City.

The City filed a response to CSXT on September 9, 2019. The City claims that GHL is not a qualified trail sponsor, as it is a CSXT subsidiary, and does not intend to actually negotiate for interim trail use.¹ (City Reply 3-4, 7, Sept. 9, 2019 (filing ID 248450).) CSXT replied on September 30, 2019, acknowledging that GHL is a CSXT subsidiary and stating that it is a “placeholder” for a third-party trail sponsor who is not prepared to close on the purchase. (CSXT Reply 5-6, Sept. 30, 2019.) According to CSXT, “GHL will negotiate in the event that the third party backs out.” (Id. at 5)

On October 8, 2019, the Board, among other things, imposed the public use condition requested by the City and directed GHL to respond to the City’s September 9, 2019 filing challenging GHL’s status as a potential trail sponsor.² In its reply, filed October 18, 2019, GHL states that, although it is a wholly owned subsidiary of CSXT, it is not a rail carrier and it does

¹ On September 10, 2019, the National Association of Reversionary Property Owners filed a letter in support of the City’s September 9 reply.

² The October 8 decision also imposed two salvage-related conditions.

not own or operate any railroad. (GHL Reply 3, Oct. 18, 2019). Acknowledging that there is another potential rail sponsor that may seek a NITU in the future, GHL states that it views the line “as valuable property for trail use, and is ready, willing, and able to negotiate trail use with CSXT.” (Id. at 3-4.)

Because GHL has complied with the requirements of 49 C.F.R. § 1152.29, and because CSXT is willing to negotiate for trail use with GHL, GHL’s request for a NITU will be granted. The Board’s role under the Trails Act is limited. See Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001); Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990). Indeed, the Board “has no specific fitness or qualification for trail sponsors; it requires only [a] Statement of Willingness from the trail sponsor to assume liability and to pay taxes, and the acquiescence of the railroad in rail banking.” Nat’l Trails System Act & R.R. Rights-of-Way, EP 702, slip op. at 7 (STB served Apr. 30, 2012); see also 49 C.F.R. § 1152.29(a), (d)(1). GHL has submitted the requisite Statement of Willingness and CSXT has confirmed its willingness to negotiate for trail use with GHL. Nothing more is required. Further, in response to concerns that GHL does not intend to negotiate trail use, GHL has clarified that it is “ready, willing, and able” to negotiate trail use.

The City’s request for a NITU, however, will be denied. The interim trail use program is voluntary and consensual between the railroad and the trail sponsor. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Although the City’s request also complies with § 1152.29, CSXT does not agree to negotiate with the City. See 49 C.F.R. § 1152.29(d)(1) (“If . . . a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a [NITU]”); see also Nat’l Wildlife Fed’n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988).

CSXT and GHL may negotiate an interim trail use agreement for the right-of-way during the 180-day period prescribed below.³ 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. See 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, CSXT 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 possible future reconstruction and reactivation of the right-of-way for rail service.

The previously imposed public use condition will expire on April 6, 2020, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until July 11, 2020. If a trail use agreement is reached for a portion of the right-of-way prior to

³ Effective February 2, 2020, the Board has modified its rules regarding the number and duration of, and standard for granting, extensions of the NITU negotiating period (as well as the duration of the initial NITU negotiating period). See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019).

July 11, 2020, CSXT must keep the remaining right-of-way intact for the remainder of the public use condition period to permit public use negotiations.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on September 9, 2019, 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 GHF 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 July 11, 2020.
3. 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.
4. 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 paragraph 3 above.
5. 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. See 49 C.F.R. § 1152.29(d)(2) and (h).
6. 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.
7. If an agreement for interim trail use/rail banking is reached by July 11, 2020, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line, subject to any outstanding conditions.
8. The City's request for the issuance of a NITU is denied.
9. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.