

SERVICE DATE – MARCH 10, 2022

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 793X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN ALLEGHENY
COUNTY, PA.

Decided: March 10, 2022

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 0.85-mile rail line on the River Branch, Baltimore Division, P&W Subdivision between Val. Sta. 40+75 and the end of the line at Val. Sta. 85+76, in Pittsburgh, Allegheny County, Pa. (the Line).¹ Notice of the exemption was served and published in the Federal Register on July 11, 2019 (84 Fed. Reg. 33,115).

By decision and notice of interim trail use or abandonment (NITU) served on August 9, 2019, this proceeding was reopened and a 180-day period was authorized for the City of Pittsburgh (the City) to negotiate an interim trail use/rail banking agreement with CSXT for the Line pursuant to the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d).² By a series of decisions, the negotiating period under the NITU was extended, most recently until February 5, 2022. See CSX Transp., Inc.—Aban. Exemption—in Allegheny Cnty., Pa., AB 55 (Sub-No. 793X), slip op. at 1 (STB served Feb. 1, 2021).

On January 28, 2022, CSXT filed a letter stating that negotiations with the City have not resulted in an agreement and requesting that the NITU be terminated. On January 31, 2022, the City requested an extension of the negotiation period for its NITU. On the same day, Georgetown and High Line Railway Company, LLC (GHL), filed a request for a NITU for the Line. By letter filed on February 7, 2022, CSXT notified the Board that it is willing to negotiate an agreement for interim trail use with GHL.

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). Therefore, because CSXT has not agreed to the City's request and in fact requests that the existing NITU be terminated, an extension of the City's NITU will not be granted.

¹ In the same jointly filed notice, Allegheny Valley Railroad Company sought to discontinue service over the Line. Allegheny Valley R.R.—Discontinuance of Serv. Exemption—in Allegheny Cnty., Pa., AB 1233 (Sub-No. 1X).

² The August 9, 2019 decision also imposed a public use condition that expired on February 6, 2020.

With respect to GHL's request for issuance of a NITU, pursuant to 49 C.F.R. § 1152.29, GHL submitted a statement of willingness to assume legal and tax liability and managerial responsibility for the right-of-way and acknowledges that the 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.

Because GHL's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for interim trail use, a NITU applicable to GHL will be issued. The parties may negotiate an agreement for the right-of-way during the one-year period prescribed below. 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). 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 possible future reconstruction and reactivation of the right-of-way for rail service.

Accordingly, this proceeding will be reopened and a replacement NITU will be issued for the Line.

It is ordered:

1. This proceeding is reopened.
2. The City's request to extend the NITU negotiating period is denied.
3. The NITU served on August 9, 2019, is vacated.
4. A replacement NITU applicable to GHL as interim trail sponsor for the Line is issued, effective on the service date of this decision and notice, to permit GHL to negotiate with CSXT for trail use for the Line, for a period of one year from the service date of this decision, until March 10, 2023.
5. 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 trail 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.
6. 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 5 above.

7. 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).

8. 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.

9. If an agreement for interim trail use/rail banking is reached by March 10, 2023, 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.

10. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.