

SERVICE DATE – OCTOBER 7, 2022

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 763X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN LOGAN COUNTY, W. VA.

Decided: October 7, 2022

In September 2016, CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 3.29-mile rail line on its Southern Region, Florence Division, Logan Subdivision, between milepost CLX 0.0 near Man and milepost CLX 3.29 near Garnette, in Logan County, W. Va. (the Line). The Board served and published the Notice of the exemption in the Federal Register on September 27, 2016 (81 Fed. Reg. 66,322).

On October 26, 2016, the Board reopened the proceeding and issued a notice of interim trail use or abandonment (NITU) authorizing Georgetown and High Line Railway Company, LLC (GHL) to negotiate an interim trail use/rail banking agreement with CSXT under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.¹ The NITU negotiating period has been extended several times, most recently until October 24, 2022. The most recent extension decision, served on October 25, 2021, noted that any further extension request would require a showing of “extraordinary circumstances” under the rule adopted in Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019).

On September 8, 2022, as amended on September 12, 2022, the Hatfield McCoy Regional Recreation Authority (HMRRA) filed a petition indicating its intent to become the trail sponsor for a portion of the Line.² Pursuant to 49 C.F.R. § 1152.29, HMRRA submitted a statement of its willingness to assume financial responsibility for the right-of-way and has acknowledged 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.

¹ The Board’s 2016 decision also imposed a consultation condition concerning unanticipated archeological discoveries and a historic preservation condition under Section 106 of the National Historic Preservation Act.

² HMRRA’s trail use request does not include the portion of the Line from milepost CLX 0.0 to milepost CLX 0.11, because, according to HMRRA’s map attached to the September 8 filing, that property is not owned in fee by CSXT.

Also on September 8, 2022, the National Association of Reversionary Property Owners (NARPO) replied in opposition to HMRRA's request on the ground that HMRRA has failed to show "extraordinary circumstances" justifying the request. On September 15, 2022, GHJ responded that it withdraws its request to negotiate with CSXT and supports HMRRA's request. In a letter filed on September 19, 2022, CSXT indicates its willingness to negotiate with HMRRA for interim trail use.

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). Because HMRRA'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 HMRRA will be issued.

The new NITU, like the NITU being vacated here, will expire on October 24, 2022. As noted above, any further extension of the negotiating period would require a showing of extraordinary circumstances.³ The Board has explained that a showing of "extraordinary circumstances" might include, for example, specific evidence that necessary financing is imminent or specific evidence of problems or complications demonstrably beyond the negotiators' control that arise in connection with an unusually lengthy, multi-jurisdictional trail. Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al., slip op. at 10-11. It is unlikely that issues within negotiators' control, such as insurance coverage, title review, appraisal issues, or personnel turnover, will constitute extraordinary circumstances. Id. at 11.

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), (h). If no agreement is reached by October 24, 2022, 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 portion of the Line as described above.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on October 26, 2016, is vacated.
3. A replacement NITU applicable to HMRRA as interim trail sponsor is issued for the portion of the Line as described above, effective on the service date of this decision and notice,

³ For purposes of determining whether extraordinary circumstances must be shown, the time periods of successive NITUs are tacked together and considered cumulatively. See CSX Transp., Inc.—Aban. Exemption—in Alachua Cnty., Fla., AB 55 (718X), slip op. at 3 (STB served Apr. 16, 2020).

to permit HMRRA to negotiate with CSXT for trail use for the portion of the Line, until October 24, 2022.

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 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.

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 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. See 49 C.F.R. § 1152.29(d)(2), (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 October 24, 2022, 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.

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

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