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SERVICE DATE – MARCH 13, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 813X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN WORCESTER,
MASS.

Decided: March 13, 2024

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 0.38-mile rail line that runs between milepost QBU 4.2 and milepost QBU 4.58, on its Albany Division, Boston Subdivision, Fitchburg Branch, in Worcester, Mass. (the Line). Notice of the exemption was served and published in the Federal Register on November 17, 2023 (88 Fed. Reg. 80,375). The exemption became effective on December 17, 2023.

By decision served on December 15, 2023, the proceeding was reopened and the Board imposed a historic preservation condition under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, recommended by the Board’s Office of Environmental Analysis (OEA).

Removal of Section 106 Condition. In a Supplemental Final Environmental Assessment served on February 15, 2024, OEA states that on February 8, 2024, OEA received a letter from the Massachusetts Historical Commission stating that a determination of “no historic properties affected” would be appropriate for the proposed abandonment. As a result, OEA concludes that the proposed abandonment would not affect historic properties listed, or eligible for listing, in the National Register of Historic Places and recommends that the Board remove the Section 106 condition.

Accordingly, based on OEA’s recommendation, this proceeding will be reopened and the previously imposed Section 106 condition will be removed.

Interim Trail Use. On February 27, 2024, the City of Leominster, Mass. (the City), late-filed a request for a notice of interim trail use or abandonment (NITU) to negotiate with CSXT to establish interim trail use and rail banking for the Line, under the National Trails System Act, 16 U.S.C. § 1247(d).¹ On February 28, 2024, CSXT filed a letter agreeing to negotiate with the City toward a possible interim trail use/rail banking arrangement for the Line.

¹ The City also requested that the Board accept its late-filed NITU request. The City’s request will be granted. See 49 C.F.R. § 1152.29(e)(1); Ala. & Fla. Ry.—Aban. Exemption—in Geneva, Coffee, & Covington Cntys., Ala., AB 1073 (Sub-No. 1X), slip op. at 2 n.2 (STB served Mar. 24, 2022) (“The Board routinely grants late-filed requests for the issuance of a notice of interim trail use if the abandonment has not been consummated and the railroad indicates a willingness to negotiate.”).

The City's request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and CSXT has notified the Board that it is willing to negotiate with the City toward an agreement for interim trail use. Therefore, a NITU will be issued for the Line. The parties may negotiate an agreement during the one-year period prescribed below. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking 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 within one year, CSXT may fully abandon the Line. 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.

This action 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 Section 106 historic preservation condition imposed in the December 15, 2023 decision is removed.
3. The notice served and published in the Federal Register on November 17, 2023, 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 the City to negotiate with CSXT for trail use for the Line for a period of one year from the service date of this decision and notice, until March 13, 2025.
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 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) 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 for the Line by March 13, 2025, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line.

9. This decision is effective on its date of service.

By the Board, Mai T. Dinh, Director, Office of Proceedings.