

SERVICE DATE – DECEMBER 17, 2024

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 818X)

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

Decided: December 17, 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 1.8-mile rail line that runs between Lat/Long (39.74752, -86.18469) and Lat/Long (39.7294, -86.20626) on its Northeast Great Lakes Division, Indianapolis Terminal Subdivision, Craven Industrial track in Marion County, Ind. (the Line). Notice of the exemption was served and published in the Federal Register on November 18, 2024 (89 Fed. Reg. 90,815). The exemption is scheduled to become effective on December 18, 2024.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on November 22, 2024, recommending that two conditions be imposed on any decision granting abandonment authority. First, OEA stated that the National Geodetic Survey (NGS) had indicated that there may be geodetic survey markers in the right-of-way that could be disturbed by the proposed abandonment. Accordingly, OEA recommended a condition requiring CSXT to notify NGS at least 90 days prior to beginning abandonment-related salvage activities to allow time for any geodetic survey markers to be preserved.

Second, OEA stated that CSXT had served an environmental and historic report on the State of Indiana Department of Natural Resources Division of Historic Preservation & Archaeology (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). According to OEA, the SHPO reviewed known archaeological resources and historic buildings and structures within the proposed area of the proposed abandonment. The SHPO found no archaeological resources but stated that Big Eagle Creek Bridge (historic bridge ID: HB-1066) may meet the criteria of eligibility for listing on the National Register of Historic Places (National Register). SHPO further clarified that Big Eagle Creek Bridge consists of two spans per the Indiana Historic Sites and Structures Inventory: the Big Eagle Creek Bridge (IHSSI No. 098-392-02674) and the Iron Rail Road (IHSSI No. 097-392-56145). The SHPO stated that, based on available information, the proposed abandonment would not adversely affect the characteristics that qualify the Big Eagle Creek Bridge for the National Register. SHPO requested that any unanticipated discovery of prehistoric or historic archaeological artifacts or human remains uncovered during salvage activities be reported to the SHPO in adherence to Indiana Code 14-21-1-27 and 29 and applicable federal statutes. Accordingly, OEA recommended that the Board impose a condition on any decision granting abandonment

authority requiring that, in the event any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during CSXT's abandonment-related salvage activities, CSXT will immediately cease all work and notify OEA, interested federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO (or THPO), interested federally recognized tribes, the railroad, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

In the Draft EA, OEA also stated that the right-of-way may be suitable for other public use following the abandonment and salvage of the Line.

OEA issued its Final Environmental Assessment (Final EA) on December 12, 2024, indicating that no new comments were received. Accordingly, OEA recommends that the two conditions previously recommended in the Draft EA be imposed upon any decision granting abandonment authority.

Interim Trail Use. The City of Indianapolis, Ind. (the City), filed a request for issuance of a notice of interim trail use or abandonment (NITU) NITU on December 2, 2024, to establish interim trail use/railbanking on the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d).¹ CSXT filed a letter on December 2, 2024, agreeing to negotiate with the City toward an interim trail use agreement for the Line.

On November 21, 2024, the Indiana Trails Fund, Inc. (ITF), also filed a request for issuance of a NITU and public use condition to establish interim trail use/railbanking on the Line. CSXT filed a letter on December 2, 2024, stating that it does not agree to negotiate with ITF toward an interim trail use agreement for the Line. The interim trail use program is voluntary and consensual between the railroad and the trail sponsor. See Rail Abans.—Use of Rts.-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Therefore, because CSXT does not agree to negotiate for interim trail use with ITF, ITF's request for issuance of a NITU will be denied.

The City's request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and CSXT states that it is willing to negotiate interim trail use with the City. Because CSXT agrees to the City's request for a NITU and the City's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. CSXT and the City may negotiate an agreement for interim trail use/railbanking of 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), (h). If no agreement is reached within one year, CSXT may fully abandon the

¹ The November 18, 2024 notice provided that requests for trail use/railbanking were due by November 29, 2024. However, in Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that the City's late-filed request will negatively affect CSXT, as CSXT has already agreed to negotiate with the City, the City's notice will be accepted. See Wheeling & Lake Erie Ry.—Aban. Exemption—in Starke Cnty., Ohio, AB 227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

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.

Public Use. Under 49 U.S.C. § 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. 49 C.F.R. § 1152.28(a)(2).

In its November 24, 2024 letter, ITF requests that the Board find that the Line is suitable for other public use, specifically trail use. ITF asks that CSXT be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, for a 180-day period from the effective date of the abandonment exemption. ITF states that the right-of-way will provide a bicycling and walking corridor for a transportation link within Marion County and the City of Indianapolis for commuting to and from businesses downtown, including the Lilly Technology Center, and will provide a recreation pathway for residents on the southwest side of Indianapolis. ITF also asks that CSXT be prohibited from removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels, for 180 days, because these structures have considerable value for recreational trail purposes. ITF states that a 180-day period for these conditions is needed to begin negotiations with CSXT.

ITF has satisfied the requirements of 49 C.F.R. § 1152.28(a)(2) and a public use condition will be imposed. CSXT will be required to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and refrain from disposing of the corridor, other than tracks, ties, and signal equipment, for a 180-day period commencing from December 18, 2024, the effective date of the exemption, to June 16, 2025. 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 may engage in negotiations with other interested persons.

This decision, and the proposed abandonment if implemented as conditioned, 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. The notice served and published in the Federal Register on November 18, 2024, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/railbanking as set forth below to permit the parties to negotiate for

trail use for the rail line, for a period of one year from the service date of this decision and notice, until December 17, 2025. The abandonment is also subject to the following conditions:²

(a) CSXT shall notify the NGS at least 90 days prior to beginning abandonment-related salvage activities; and

(b) CSXT shall 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 APE 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, 54 U.S.C. § 306108, has been completed. CSXT shall report back to OEA regarding any consultations with the SHPO 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. The City's request for issuance of a NITU is granted. If an interim trail use/railbanking 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/railbanking 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/railbanking agreement is reached (and thus, interim trail use/railbanking 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).

6. If interim trail use/railbanking 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/railbanking 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/railbanking is reached by December 17, 2025, for the right-of-way, interim trail use/railbanking may be implemented. If no agreement is reached, CSXT may fully abandon the Line, subject to any outstanding conditions.

8. ITF's request for issuance of a NITU is denied.

9. ITF's request for issuance of a public use condition is granted. Abandonment of the

² If City implements trail use on the Line (or a portion thereof), compliance with the conditions is not required with respect to any portion of the Line designated for trail use for the duration of such use.

Line described above is modified to the extent necessary to permit public use negotiations as set forth below for the Line for a period of 180 days commencing from the effective date of the abandonment exemption, until June 16, 2025.

10. Consistent with the public use condition imposed in this decision, CSXT shall keep intact the right-of-way (other than the tracks, ties, and signal equipment), including potential trail-related structures on the Line such as bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of the abandonment exemption, until June 16, 2025, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use.

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

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