

SERVICE DATE – NOVEMBER 5, 2019

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 784X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN COBB COUNTY, GA.

Decided: November 5, 2019

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 2.3-mile rail line on its Atlanta Terminal Subdivision, Atlanta Division, between milepost SG 579.29 near Plant Atkinson Road and milepost SG 581.61 just west of East-West Connector, in Cobb County, Ga. (the Line). Notice of the exemption was served and published in the Federal Register on November 2, 2018 (83 Fed. Reg. 55,232). The exemption became effective on December 2, 2018.

On September 27, 2019, the Georgia Department of Transportation (GDOT), an agency of the State of Georgia, late-filed a request for the issuance of a notice of interim trail use or abandonment (NITU) under the National Trails Systems Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29(d).¹ GDOT submitted a statement of willingness to assume financial responsibility for the right-of-way and 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. CSXT responded on the same day that it is willing to negotiate an interim trail use agreement with GDOT.

Because GDOT's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an interim trail use agreement for the right-of-way during the 180-day 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. 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.

¹ Interim trail use/railbanking requests may be accepted as long as the Board retains jurisdiction over the right-of-way and the carrier is willing to enter into negotiations. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

It is ordered:

1. This proceeding is reopened.
2. GDOT's late-filed request for a NITU is accepted and granted.
3. Upon reconsideration, the notice served and published in the Federal Register on November 2, 2018, 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 GDOT 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 May 3, 2020.
 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 by May 3, 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.
9. This decision is effective on its service date.

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