

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 794X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN PINELLAS
COUNTY, FLA.

Decided: October 8, 2019

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments for CSXT to abandon an approximately 0.86-mile rail line on its Clearwater Subdivision, between milepost ARE 897.57 and milepost ARE 898.43, in St. Petersburg, Pinellas County, Fla. (the Line). Notice of the exemption was served and published in the Federal Register on September 9, 2019 (84 Fed. Reg. 47,339), and the exemption is scheduled to become effective on October 9, 2019.

The Board's Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) on September 13, 2019, recommending that one condition be imposed on any decision granting abandonment authority. In the EA, OEA noted that CSXT submitted a combined Environmental and Historic Report as required by 49 C.F.R. §§ 1105.7 and 1105.8 and provided copies to all the appropriate federal, state, and local agencies, including the Florida Division of Historic Resources (i.e., the State Historic Preservation Officer, or SHPO). The SHPO, however, had not responded to CSXT's historic report at the time the EA was issued, so OEA was not able to consider the SHPO's opinion before determining whether the Line may be eligible for listing on the National Register of Historic Places. Therefore, to give the SHPO time to comment, OEA recommended a condition barring CSXT from consummating the proposed abandonment until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed and the Board has removed the condition. Based on the information available, OEA also concluded in the EA that the proposed abandonment would not result in any significant environmental impacts.

OEA issued its Final EA on October 4, 2019, indicating that OEA received four comments during the comment period. The City of St. Petersburg (the City) submitted a filing on September 18, 2019, stating that a portion of the Line is adjacent to Booker Creek, a naturally flowing waterway connecting Booker Lake to Tampa Bay. OEA confirmed that a portion of the right-of-way is adjacent to a below-grade drainage feature that forms part of Booker Creek. Accordingly, in the final EA, OEA recommends a condition requiring CSXT to consult with the City regarding potential abandonment-related impacts to that waterway and to follow the City's reasonable recommendations for mitigating possible impacts to Booker Creek that could result from the removal of tracks, ties, and other rail materials from the rail right-of-way during abandonment-related salvage activities.

OEA received from CSXT the results of a search OEA had requested identifying historic properties that could be affected by the proposed abandonment. The search identified two potentially historic properties in the vicinity of the Line. The first of these properties is a building located at 1235 Central Ave., which OEA notes is well outside of the Area of Potential Effect of the proposed abandonment. The search also indicated that the Line crosses the EDGE District, which is identified in the Florida Master Site File as a Historical District. Because salvage activities would be limited to the removal of rail, ties, and related materials from the rail right-of-way, OEA states that it believes that the proposed abandonment would not affect the historic integrity of the EDGE District or any other historic properties.

The SHPO submitted comments stating that the proposed abandonment would be unlikely to affect historic properties listed on or eligible for listing on the National Register of Historic Places. OEA reviewed the record and the information provided by the SHPO, concurs with the SHPO's comments, and therefore notes that it no longer recommends the Section 106 mitigation measure originally recommended in the EA. The SHPO does suggest, however, that a condition be imposed requiring CSXT to cease work and report to the SHPO and OEA in the event that unanticipated archaeological sites, artifacts, or remains are discovered. OEA concurs with this recommendation.

OEA also received a comment from the U.S. Army Corps of Engineers (Corps), but does not recommend any modifications to the EA in response to the Corps' comment.

Based on OEA's analysis and recommendation, the Section 106 condition recommended in the draft EA will not be imposed, and the two conditions recommended in the final EA will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following the abandonment and salvage of the Line. On August 29, 2019, the City filed a request for issuance of a public use condition under 49§ U.S.C. § 10905 and (as supplemented on September 4, 2019) a notice of interim trail use or abandonment (NITU) under the National Trails System Act, 16§ U.S.C. § 1247(d). The Georgetown High Line Railway Company LLC (GHL) also requested a NITU on August 29, 2019. In a response filed on September 3, 2019, CSXT notified the Board that it is willing to negotiate an agreement for interim trail use with GHL only.

Public Use. Under § 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). Here, the City 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. The City states that the right-of-way would make an ideal public trail, as it directly connects to the Pinellas Trail, and also raises the possibility that the Line could be converted to light rail, as contemplated in local planning documents. The City also asks that CSXT be prohibited from removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels, because these structures have considerable value for recreational trail purposes. The City states that a 180-day period is needed to permit it to assemble and review title documents, prepare trail plans, and negotiate with CSXT.

Because the City has satisfied the requirements of § 1152.28(a)(2), a public use condition will be imposed, requiring CSXT 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 October 9, 2019, the effective date of the exemption, to April 6, 2020. 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.

Interim trail use/rail banking. As noted, NITU requests have been filed by GHL and the City. On September 3, 2019, CSXT submitted a filing indicating its willingness to negotiate for trail use with GHL, but not with the City.

The City filed a response to CSXT on September 9, 2019. The City claims that GHL is not a qualified trail sponsor. According to the City, GHL is comprised entirely of CSXT employees, which, the City asserts, is evidence that CSXT does not intend to actually negotiate for interim trail use with GHL but instead seeks to circumvent Board regulations and “keep the Line in limbo potentially indefinitely.” (City Reply 3-4, Sept. 9, 2019 (filing ID 248450).)

CSXT replied on September 30, 2019, acknowledging that GHL is a CSXT subsidiary but otherwise contesting the City’s allegations. (CSXT Reply 6, Sept. 30, 2019.) CSXT states that GHL is a “placeholder” for a third-party trail sponsor who is not prepared to close on the purchase. (*Id.* at 5.) CSXT also states that “GHL will negotiate in the event that the third party backs out.” (*Id.*)

GHL itself, however, has not replied to the City’s September 9, 2019 filing. Accordingly, the Board will direct GHL to file a reply by October 18, 2019. The NITU requests filed by GHL and the City will be addressed in a separate decision.

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. Upon reconsideration, the notice served and published in the Federal Register on September 9, 2019, exempting the abandonment of the Line described above is subject to the following conditions. (1) Prior to beginning salvage activities, CSXT shall consult with the City regarding potential impacts of abandonment-related salvage activities on Booker Creek. CSXT shall implement the City's reasonable recommendations for mitigating potential impacts to Booker Creek that could occur as a result of the removal of track, ties, and other rail materials as part of abandonment-related salvage activities. (2) In the event that any unanticipated archaeological sites or associated artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement, are encountered during salvage activities, CSXT shall immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, CSXT, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary. In the event that unmarked human remains are encountered during salvage activities, CSXT shall stop work immediately and notify OEA, the SHPO, and other appropriate state authorities.
3. The notice is also 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 April 6, 2020.
4. Consistent with the public use condition imposed in this decision and notice, CSXT may discontinue service. 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 exemption, until April 6, 2020, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use.
5. GHL's reply to the City's September 9, 2019 filing is due by October 18, 2019.
6. This decision is effective on its service date.

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