

SERVICE DATE – AUGUST 20, 2019

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 718X)

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

Decided: August 19, 2019

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service to abandon approximately 11.62 miles of rail line on CSXT's Southern Region, Jacksonville Division, West Coast Subdivision, between milepost AR 716.88, at High Springs, and milepost AR 726.69, at Newberry, and milepost ARB 717.11, at High Springs, and milepost ARB 718.92, at High Springs, in Alachua County, Fla. (the Line).¹ Notice of the exemption was served and published in the Federal Register on December 10, 2013 (78 Fed. Reg. 74,227), and, after the imposition of three environmental conditions on April 25, 2014, the exemption ultimately became effective on April 28, 2014.

On March 10, 2015, the Board issued a notice of interim trail use or abandonment (NITU) following a request from Alachua County (the County), a political subdivision of the State of Florida, pursuant to the National Trails System Act (Trails Act) and 49 C.F.R. § 1152.29. The NITU allowed the County and CSXT to negotiate until September 8, 2015, for acquisition of the right-of-way for use as a recreational trail and for rail banking. By request of the County and agreement of CSXT, that NITU was extended several times, most recently to allow negotiations until August 18, 2019.

On July 11, 2019, the County filed its most recent request for an extension of time to negotiate interim trail use with CSXT. CSXT, however, replied on July 19, 2019, that it does not agree to the County's requested extension.

The Board's authority to impose trail use conditions is limited because the Board's role under the Trails Act is largely ministerial, see Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001), and 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,

¹ In the same jointly filed notice, Florida Northern Railroad Company, Inc. (FNOR) sought to discontinue service over a portion of the Line. Fla. N. R.R.—Discontinuance of Service Exemption—in Alachua Cty., Fla., Docket No. AB 507 (Sub-No. 1X).

2 I.C.C.2d 591, 598 (1986). Therefore, because CSXT does not agree to an extension to negotiate with the County for interim trail use, an extension will not be issued.

On July 19, 2019, Georgetown and High Line Railway Company, LLC (GHL) filed a request for a NITU for the Line.² GHL supplemented its request on July 24, 2019 by filing a map of the Line. Pursuant to § 1152.29, GHL has 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. In a letter filed on July 19, 2019, CSXT indicates its willingness to negotiate with GHL for interim trail use.

Because GHL'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 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. 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. 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.

It is ordered:

1. This proceeding is reopened.
2. The County's request to extend its NITU negotiating period is denied.
3. A NITU applicable to GHL as interim trail sponsor is issued, effective on the service date of this decision and notice, to permit GHL to negotiate with CSXT for trail use for the Line, for a period of 180 days from the service date of this decision, until February 16, 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 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 ordering paragraph 4 above.

² A NITU was previously issued on July 15, 2014, allowing GHL to negotiate with CSXT for interim trail use, but that NITU negotiating period expired on January 12, 2015.

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. 49 C.F.R. § 1152.29(d)(2) and (h).

8. 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.

9. If an agreement for interim trail use/rail banking is reached by February 16, 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.

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

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