

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 793X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN ALLEGHENY
COUNTY, PA.

Decided: August 9, 2019

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments for CSXT to abandon an approximately 0.85-mile rail line on the River Branch, Baltimore Division, P&W Subdivision between Val. Sta. 40+75 and the end of the line at Val. Sta. 85+76, in Pittsburgh, Allegheny County, Pa. (the Line).¹ Notice of the exemption was served and published in the Federal Register on July 11, 2019 (84 Fed. Reg. 33,115). The exemption is scheduled to become effective on August 10, 2019.

The Board's Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) on July 16, 2019, solicited public comments, and issued a Final EA on August 5, 2019. No environmental or historic preservation issues have been raised by any party or identified by OEA. Accordingly, a finding of no significant impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

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 July 18, 2019, the City of Pittsburgh (the City) filed a request for issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and for a public use condition under 49 U.S.C. § 10905. In a response filed on August 1, 2019, CSXT notified the Board that it is willing to negotiate an agreement for interim trail use with the City.

With respect to its request for issuance of a NITU, pursuant to 49 C.F.R. § 1152.29, the City submitted a statement of willingness to assume legal and tax liability and managerial 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. Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for interim trail use, a NITU will be issued. The parties may negotiate an interim trail use/rail banking 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

¹ In the same jointly filed notice, Allegheny Valley Railroad Company seeks to discontinue service over the Line. Allegheny Valley R.R.—Discontinuance of Serv. Exemption—in Allegheny Cty., Pa., AB 1233 (Sub-No. 1X).

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. 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.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). 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. 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 excellent recreational trail and that conversion to a trail would be consistent with local plans. 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 because it has not had an opportunity to commence negotiations with CSXT.

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). Because the City has satisfied these requirements, 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 to refrain from disposing of the corridor, other than tracks, ties, and signal equipment, for a 180-day period commencing from August 10, 2019, the effective date of the exemption.

When proper requests for interim trail use/rail banking and public use conditions are made, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on February 6, 2020, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until February 5, 2020. If a trail use agreement is reached for a portion of the right-of-way prior to February 5, 2020, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, 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 is not required to deal exclusively with the City but may engage in negotiations with other interested persons.

It is ordered:

1. This proceeding is reopened.
2. Abandonment of the Line will have no significant effect on the quality of the human environment and conservation of energy resources or on historic resources.
3. Upon reconsideration, the notice served and published in the Federal Register on July 11, 2019, 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 180 days from the service date of this decision and notice, until February 5, 2020, and 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 February 6, 2020.
4. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, CSXT may discontinue service. CSXT shall keep intact the right-of-way, including potential trail-related structures on the Line such as bridges, trestles, culverts, and tunnels, other than the tracks, ties, and signal equipment, for a period of 180 days from the effective date of the exemption, until February 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. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.
5. 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.
6. 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 5 above.
7. 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).
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 5, 2020, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line.

10. This decision is effective on its service date.

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