

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No.745X)

CSX TRANSPORTATION, INC—ABANDONMENT EXEMPTION—
IN FLOYD COUNTY, KY.

Decided: April 29, 2019

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 11.4 miles of railroad line between milepost COQ 0.0 near Prestonsburg and milepost COQ 10.1 near David, in Floyd County, Ky. (the Line). Notice of the exemption was served and published in the Federal Register on November 2, 2015 (80 Fed. Reg. 67,489). The exemption became effective on December 2, 2015.

On November 2, 2015, the City of Prestonsburg, Ky. (the City), filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to permit it to negotiate with CSXT for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d). Pursuant to 49 C.F.R. § 1152.29, the City also 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. In a response filed on November 2, 2015, as corrected on November 12, 2015, CSXT stated that it agreed to negotiate with the City for interim trail use.

Because the City's request complied with the requirements of 49 C.F.R. § 1152.29 and CSXT was willing to negotiate for trail use, a NITU was issued on December 1, 2015. The decision issuing the NITU also imposed a public use condition under 49 U.S.C. § 10905,¹ two salvage-related conditions, and an historic preservation condition under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 30618. By a series of Board decisions, the latest of which was served on July 3, 2017, the NITU negotiating period was extended to, and ultimately expired on, November 20, 2017.

On March 6, 2019, the City late-filed a request for reissuance of a NITU for the Line in order to negotiate with CSXT for acquisition of the right-of-way for trail use. The City again submitted a statement of willingness to assume financial responsibility. By letter filed on March 6, 2019, CSXT stated that it agrees to negotiate with the City for interim trail use. On April 19, 2019, the Board served a decision finding that the City's request did not include the

¹ The public use condition, which is limited by statute to 180 days, expired on May 30, 2016, and may not be renewed. See 49 U.S.C. § 10905; 49 C.F.R. § 1152.28(b).

acknowledgement required under § 1152.29(a)(3) and giving the City until May 3, 2019, to supplement its request accordingly. On the same day, the City submitted a new request that includes the required acknowledgement. By letter filed April 22, 2019, CSXT again stated that it agrees to negotiate with the City on interim trail use.

Interim trail use/rail banking 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). The Section 106 condition imposed on December 1, 2015, is a barrier to consummation of the abandonment. Because the Section 106 condition remains in place, the Board retains jurisdiction over the Line. See 49 C.F.R. § 1152.29(e)(2). Therefore, because CSXT is willing to negotiate for trail use with the City and the City's April 19, 2019 request complies with 49 C.F.R. § 1152.29, a NITU will be issued for a period of 180 days.

It is ordered:

1. This proceeding is reopened.
2. The City of Prestonsburg's late-filed request for interim trail use/rail banking is accepted and granted.
3. Upon reconsideration, the decision served November 2, 2015, 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 for a period of 180 days from the service date of this decision and notice, until October 27, 2019.
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 October 27, 2019, for the portion of the right-of-way subject to the NITU, 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 and notice is effective on its service date.

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