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SERVICE DATE – MAY 26, 2023

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 811X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN BRONX  
COUNTY, N.Y.

Decided: May 25, 2023

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 0.77-mile rail line between milepost Q## 3.79 and milepost Q## 4.50 on its Albany Division, New York Terminal, Putnam Branch, in Bronx County, N.Y. (the Line). Notice of the exemption was served and published in the Federal Register on May 1, 2023 (88 Fed. Reg. 26,639). The exemption is scheduled to become effective on May 31, 2023.

On May 10, 2023, the City of New York (the City) requested issuance of a notice of interim trail use or abandonment (NITU) to negotiate with CSXT to establish interim trail use and rail banking on the Line under the National Trails System Act, 16 U.S.C. § 1247(d). On May 16, 2023, CSXT filed a letter agreeing to negotiate with the City toward a possible interim trail use/rail banking arrangement for the Line.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on May 8, 2023, recommending that one condition be imposed on any decision granting abandonment authority. OEA stated that CSXT served the historic report required by the Board's environmental regulations on the Parks, Recreation and Historic Preservation Office, New York Division for Historic Preservation (the State Historic Preservation Office, or SHPO), pursuant to 49 C.F.R. § 1105.8(c). The Draft EA noted that the SHPO had not yet provided comments on the proposed abandonment and that OEA therefore had not been able to consider the SHPO's opinion before determining if structures associated with the Line may be eligible for listing on the National Register of Historic Places (National Register). Accordingly, OEA recommended a condition requiring that CSXT retain its interest in and take no steps to alter the historic integrity of all historic properties within the project right-of-way that are potentially eligible for listing or listed in the National Register 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.

OEA issued its Final Environmental Assessment (Final EA) on May 26, 2023, indicating that one new comment was received. The Final EA states that on May 9, 2023, the SHPO submitted a letter stating that no historic properties would be affected by the proposed abandonment, and that OEA concurs with the SHPO's conclusion. The Final EA therefore finds

that the Section 106 process has been completed and concludes that the Section 106 condition previously recommended in the Draft EA is not necessary. Therefore, OEA is not recommending that any conditions be imposed. Based on OEA's recommendation, 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).

Interim Trail Use. The City's request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and CSXT has notified the Board that it is willing to negotiate toward an agreement for interim trail use with the City. Therefore, a NITU will be issued. The parties may negotiate an agreement during the one-year period prescribed below. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking 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) & (h). If no agreement is reached within one year, 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.

It is ordered:

1. 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.
2. The notice served and published in the Federal Register on May 1, 2023, 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 parties to negotiate for interim trail use for the Line, for a period of one year from the service date of this decision and notice, until May 26, 2024.
3. 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.
4. 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 3 above.
5. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking 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) & (h).
6. If interim trail use/rail banking 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/rail banking agreement, the trail sponsor must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by May 26, 2024, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line, subject to any outstanding conditions.

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

By the Board, Mai T. Dinh, Director, Office of Proceedings.