

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 691X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN WORCESTER COUNTY, MASS.

Decided: August 3, 2017

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 4.2-mile line of railroad between milepost QBU 0.0 (Fitchburg) and milepost QBU 4.2 (Leominster), in Worcester County, Mass (the Line). Notice of the exemption was served and published in the Federal Register on November 20, 2008 (73 Fed. Reg. 70,405-06) (2008 notice). The exemption became effective on December 20, 2008.

By decision and notice of interim trail use or abandonment (NITU) served on December 27, 2010, the proceeding was reopened and the Board authorized the Georgetown and High Line Railway Company, LLC (GHLR) to negotiate an interim trail use/rail banking agreement under the National Trails System Act, 16 U.S.C. § 1247(d), with CSXT for the Line.¹ By a series of decisions, the NITU negotiating period was extended until December 27, 2017.

On August 2, 2017, the City of Leominster and the City of Fitchburg (the Cities), and GHLR, filed a request that the Board reopen the proceeding, remove GHLR from the NITU, and issue a replacement NITU to the Cities for the Line. The Cities state that they have entered into a Purchase and Sale Agreement with CSXT for land along the rail corridor and intend to establish interim trail use and rail banking.

The Cities have submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29, and have acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. To the extent that CSXT's consent to the substitution of trail sponsors is required, it is evidenced by its having entered into the Purchase and Sale Agreement with the Cities.

¹ By decision served on December 17, 2008, the exemption was made subject to an environmental consultation condition that is not a barrier to CSXT's consummation of abandonment. This condition remains in effect.

The Cities' and GHLR's request complies with the requirements of 49 C.F.R. § 1152.29(f). Accordingly, this proceeding will be reopened, the NITU issued to GHLR will be vacated, and a replacement NITU will be issued to the Cities for the right-of-way between milepost QBU 0.0 and milepost QBU 4.2.

It is ordered:

1. This proceeding is reopened.
2. The NITU issued on December 27, 2010, is vacated.
3. A replacement NITU applicable to the Cities as interim trail sponsor is issued, effective on the service date of this decision and notice.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user 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 user 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/railbanking 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.
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).
7. If interim trail use is implemented, and subsequently the trail users intend to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, they must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.