

SERVICE DATE – JULY 24, 2020

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 799X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN DICKENSON
COUNTY, VA.

Decided: July 24, 2020

CSX Transportation, Inc. (CSXT), filed a verified note of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 13.65-mile rail line on its Florence Division, Kingsport Subdivision, Fremont Branch extending between milepost ZF 0.0 and milepost ZF 13.65, in Dickenson County, Va. (the Line). Notice of the exemption was served and published in the Federal Register on May 15, 2020 (85 Fed. Reg. 29,501). The exemption became effective on June 14, 2020.

On June 5, 2020, the Dickenson County Board of Supervisors (the County) late-filed a request for a public use condition under 49 U.S.C. § 10905 and a notice of interim trail use or abandonment (NITU) to negotiate with CSXT to establish interim trail use and railbanking on the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. By decision served on June 12, 2020, the Board imposed three environmental conditions recommended by the Board's Office of Environmental Analysis and the public use condition requested by the County.¹ The June 12 decision, however, denied the County's NITU request because the County's statement of willingness did not properly accept responsibility for indemnification of the railroad or the payment of all taxes assessed against the right-of-way as required under 49 C.F.R. §§ 1152.29(a)(2)(ii) and (a)(2)(iii), respectively.

On July 15, 2020, the County submitted a revised NITU request.² The revised request conforms to the requirements of § 1152.29.³ In a response filed on July 16, 2020, CSXT states that it is willing to negotiate interim trail use with the County. Because CSXT agrees to the County's request for a NITU and the County's request complies with the requirements of

¹ The public use condition remains in effect until December 11, 2020.

² In Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that the County's late-filed request will prejudice any party, it will be accepted.

³ The revised request submitted on July 15, 2020, did not include a map as required by 49 C.F.R. § 1152.29(a)(1). However, on July 17, 2020, the County resubmitted its revised request with a map attached.

49 C.F.R. § 1152.29, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the one-year 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), (h). If no agreement is reached within one year, 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.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The County's late-filed request for a NITU is granted.
3. Upon reconsideration, the notice served and published in the Federal Register on May 15, 2020, 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 trail use for the rail line, for a period of one year from the service date of this decision and notice, until July 24, 2021.
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), (h).
7. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition imposed in the June 12 decision will expire to the extent the interim trail use/rail banking agreement covers the same portion of the right-of-way.

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 July 24, 2021, 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 is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.