

SERVICE DATE – AUGUST 28, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

Decided: August 27, 2019

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. § 1152 subpart F—Exempt Abandonments to abandon an approximately 62.3-mile rail line on its Northern Region, Louisville Division, Hoosier Subdivision between milepost 00Q 251.7, near Bedford, and milepost 00Q 314.0, near New Albany, in Clark, Floyd, Lawrence, Orange, and Washington Counties, Ind. (the Line). Notice of the exemption was served and published in the Federal Register on January 8, 2018 (83 Fed. Reg. 936). By decision served February 28, 2018, a notice of interim trail use or abandonment (NITU) was issued, permitting the Indiana Trails Fund and the City of New Albany, Ind., each to negotiate with CSXT for interim trail use/rail banking of the Line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29. The exemption became effective on March 12, 2018.

The negotiating period under the NITU has been extended twice, and by requests filed on August 7, 2019 and August 15, 2019, respectively, the City of New Albany and the Indiana Trails Fund seek to extend the negotiating period for an additional 180 days. CSXT filed replies agreeing to the extension requests on August 7, 2019 and August 20, 2019, respectively.

Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); see also Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, because these requirements have been met, the NITU negotiating period will be extended for an additional 180 days, to February 18, 2020.¹

¹ On August 12, 2019, Noah Emerson Chappell submitted a letter to the Board asking that the City of New Albany “make available the cost to rail-bank & the cost to build the trail.” (Chappell Ltr. 1.) The Board’s Trails Act regulations, however, do not require potential trail sponsors to provide that information to the Board or the public and the Board’s role is otherwise limited under the Trails Act. See Union Pac. R.R.—Aban.—in Carver & Scott Ctys., Minn., AB 33 (Sub-No. 255), slip op. at 3 (STB served June 26, 2019). Mr. Chappell is invited to contact the Board’s Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 with any further questions.

It is ordered:

1. The City of New Albany's and Indiana Trails Fund's requests for extension of the NITU negotiating period are granted; the NITU negotiating period is extended until February 18, 2020.
2. This decision is effective on its service date.

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