

39344
DO

SERVICE DATE – SEPTEMBER 9, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 687X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN FULTON AND
CLAYTON COUNTIES, GA

Decided: September 8, 2008

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.67-mile line of railroad on its Southern Region, Atlanta Division, Atlanta Terminal Subdivision in College Park, between Valuation Station 0+00 and the end of the line, Valuation Station 88+00, in Fulton and Clayton Counties, GA. Notice of the exemption was served on August 14, 2008, and published in the Federal Register on August 15, 2008 (73 FR 48010). The exemption is scheduled to become effective on September 13, 2008.

On August 25, 2008, the City of College Park, GA (City), filed a request for the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, as well as a request for the issuance of a 180-day public use condition under 49 U.S.C. 10905. The City has 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 (unless the user is immune from liability, in which case it need only indemnify the railroad against potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way owned and operated by CSXT. In a response filed on September 3, 2008, CSXT states that it is willing to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 CFR 1152.29, and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As noted above, the City also requested a 180-day public use condition. The City requests that CSXT be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that CSXT be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment exemption. The

City states that the time period is needed to assemble and review title information and environmental information and to commence negotiations with the carrier.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Rail Abandonments–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the September 13, 2008 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

As conditioned, this action 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. Upon reconsideration, the notice served on August 14, 2008, and published in the Federal Register on August 15, 2008, exempting the abandonment of the line described above, is modified to the extent necessary: (1) to permit public use negotiations as set forth below, for a period of 180 days commencing from the September 13, 2008 effective date of the exemption (until March 12, 2009); and (2) to implement interim trail use/ rail banking as set forth below to permit CSXT to negotiate with the City for trail use on the subject line, for a period of 180 days (until March 12, 2009).
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, CSXT may discontinue service and salvage track and related materials. CSXT shall keep intact the right-of-way, including bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement

is executed before March 12, 2009, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

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 management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for 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 the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it 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 March 12, 2009, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary