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SERVICE DATE – JUNE 29, 2021

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 804)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN FREDERICK COUNTY, MD.

Decided: June 29, 2021

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 0.59-mile rail line between Val Sta. 1728+23 and Val Sta. 1759+25 on its Baltimore Division, Old Main Line Subdivision, in Frederick County, Md. (the Line). Notice of the exemption was served and published in the Federal Register on April 30, 2021 (86 Fed. Reg. 23,029). The exemption became effective on May 30, 2021.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment on May 7, 2021, solicited comments, and issued a Final Environmental Assessment on May 27, 2021. No environmental or historic preservation issues were raised by any party or identified by OEA. Accordingly, a finding of no significant impact under 49 C.F.R. § 1105.10(g) was issued pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

On May 26, 2021, the Town of Mount Airy, Md. (the Town), late-filed requests for a notice of interim trail use or abandonment (NITU) under the National Trails Systems Act, 16 U.S.C. § 1247(d), for the Line and for imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way.<sup>1</sup> On June 11, 2021, the Town filed an amendment to the statement of willingness in its NITU request. Also on June 11, 2021, CSXT notified the Board that it is willing to negotiate an agreement for interim trail use with the Town.

Interim Trail Use. The Town has submitted a statement of willingness as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service. As noted above, CSXT has notified the Board that it is willing to negotiate an agreement for interim trail use with the Town.

Because the Town's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the one-year period prescribed below. If an interim trail use agreement is

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<sup>1</sup> See Aban. & Discontinuance of Rail Lines & Transp. Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997).

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. 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.

Public Use. As noted above, the Town also requested imposition of a public use condition under 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28 prohibiting disposal of the corridor other than tracks, ties, and signal equipment, if applicable, and except as may be otherwise set forth in the purchase and sale agreement between CSXT and the Town for purchase of the Line, except for public use on reasonable terms. The Town states that the justification for the condition is that the Line would make an excellent recreational trail and conversion to a trail would be in accordance with local plans.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 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. 49 C.F.R. § 1152.28(a)(2). Here, the Town omitted requirements (iii) and (iv). The Town's request for a public use condition will therefore be denied.

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. Upon reconsideration, the notice served and published in the Federal Register on April 30, 2021, 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 Town to negotiate with CSXT for trail use for the Line, for a period of one year from the service date of this decision and notice, until June 29, 2022.
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 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).

6. 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.

7. If an agreement for interim trail use/rail banking is reached by June 29, 2022, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line, subject to any outstanding conditions.

8. The Town's request for a public use condition is denied.

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

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