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SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

STB Docket No. AB-55 (Sub-No. 794X)

CSX TRANSPORTATION INC.— ABANDONMENT EXEMPTION
IN PINELLAS COUNTY, FL

APPELLANT BRIEF OF THE CITY OF ST. PETERSBURG, FLORIDA, SEEKING BOARD
REVIEW OF THE JANUARY 13, 2020 DECISION OF THE DIRECTOR OF THE SURFACE
TRANSPORTATION BOARD’S OFFICE OF PROCEEDINGS

OFFICE OF THE CITY ATTORNEY
FOR THE CITY OF ST. PETERSBURG

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I. FACTUAL BACKGROUND

CSX Transportation, Inc. (“CSXT”)¹, is currently seeking an abandonment exemption from the Board for approximately .86 miles of track in the downtown core area of St. Petersburg Florida (“Segment Property”). The Segment Property is not in active use, nor are there actual rails for much of its length. The street crossings have been paved over, and for much of the Segment Property running over privately held lands, the rails and ties have either been paved over, removed or buried. CSXT has entered into multiple agreements for other uses above and across the areas that previously contained railroad tracks, including agreements with the City. The Segment Property resides in its entirety within St. Petersburg, Florida and the City is the local sovereign over same.

In combination with Pinellas County, the City maintains an adjacent bike and pedestrian trail that runs for approximately 53 miles through the dense, urban areas of the county (“Pinellas Trail”) via a railbanking agreement (STB Docket No. AB_55_646_X). On May 30, 2019, and in response to a recent email from the City concerning prior discussion of converting the Segment Property to trail use, the City received an email from CSXT indicating that CSXT had entered into a purchase and sale agreement with an undisclosed entity to transfer rights to the Segment Property. In response to a federal suit by the City concerning the referenced sale and this Board’s jurisdiction in the matter, CSXT stated the sale did not involve the Pinellas Trail and that the Board’s permission would be sought prior to consummating the sale, at which time the City dismissed the suit.

The City filed an action for adverse abandonment (STB Docket No. AB_1289), and in response CSXT sought an exemption to abandonment pursuant to 49 CFR § 1152.50. Due to the

¹ For purposes of this appeal, the City believes any legal distinction between CSX Corporation and CSX Transportation, Inc. is immaterial and for convenience will refer to both under the term CSXT.

filing by CSXT, the City's adverse abandonment action was dismissed without prejudice by the Board.

On August 29, 2019, the City filed a request for trail use with the Surface Transportation Board ("Board") in which the City sought a Notice of Interim Trail Use or Abandonment ("NITU") pursuant to 49 CFR § 1152.29. On the same day, a separate request for trail use was also filed by Georgetown and High Line Railway Company, LLC ("Georgetown") in which Georgetown also sought a NITU. On September 3, 2019, CSXT filed a notice with the Board, which stated that CSXT would agree to negotiate potential trail use with Georgetown but would not negotiate with the City.

As set forth in the City's Response to Petitioner CSXT Transportation Inc.'s Letter of Intent to Negotiate with Georgetown and High Line Railway Company, LLC., filed with the Board on September 9, 2019, Georgetown is made up of CSXT employees acting in their official capacity. Over the last decade, Georgetown has made 24 requests before the Board - 9 requests for notices of interim trail use or equivalent and 15 requests for extensions of negotiations². All such requests were limited to matters involving CSXT. The Board has issued 17 decisions regarding Georgetown – all extensions of trail use negotiations or transfers of negotiations. Based on a review of Board documents, Georgetown has never consummated a trail use agreement and a Certificate of Interim Trail Use or Abandonment ("CITU") has never been issued with Georgetown assuming responsibility for a trail.

The City's above referenced response detailed the facts set forth above and argued for the Board to deny a NITU to CSXT and Georgetown. On October 8, 2019, the Director of the Board's

² The figures contained in this paragraph are based on a diligent search of the Board's published records going back to 2008, maintained online at stb.gov. In the event there are unpublished records or other pertinent sources of information not available on stb.gov, the City respectfully requests the ability to revise this filing based on any new information.

Office of Proceedings (“Director”) issued a decision, which among other determinates, ordered Georgetown to respond to the allegation made by the City. On October 18, 2019, Georgetown filed the required response (“Response”). In the Response, Georgetown admits “[Georgetown] is a wholly owned subsidiary of CSXT”. (Response p.3). Georgetown also states that “[Georgetown] has filed the NITU as a placeholder for a third party that has agreed to purchase the Line as a trail after arms-length negotiations.” (Response p.6). Georgetown further insists it is ready and willing to negotiate with CSXT. (Response p.4).

On January 13, 2020, the Director issued a decision (“Decision”) granting Georgetown’s request for an NITU on that grounds that Georgetown “submitted the statement of Willingness and CSXT has confirmed its willingness to negotiate for trail use with [Georgetown]. Nothing more is required.” In response to the January 13, 2020 decision, the City filed a notice of appeal and request for extension, which was granted by the Director on January 27, 2020.

II. SUMMARY OF ARGUMENT

The Director erred by not making factual findings related to Georgetown’s qualifications as a trail sponsor, and the Director’s Decision was accordingly unsupported by the record. Board regulations apply a rebuttable presumption to the fitness of a trail sponsor and such a decision is accordingly not purely ministerial. The City challenged Georgetown’s fitness and Board regulations and relevant law require a finding and application of law to same. The Director misapplied the ministerial standard associated with granting a NITU upon request to the discretionary function of qualifying a sponsor, limited as it may be. Additionally, because of the novelty of the issues and lack of applicable precedent, the Board is best suited to resolve this matter.

By seeking a NITU, CSXT has implied a *bona fide* effort on their part to consider railbanking with Georgetown. But this is merely meant to mislead. Because negotiation of rail use agreements is permissive under 49 CFR § 1152.29, CSXT's offer of blatant self-dealing is illusory at best – and appears to be the latest in a continued pattern of similar filings before the Board. By seeking potentially years to “negotiate”, as evidenced by similar previous proceedings before the Board, CSXT is attempting to create a new category of rail line – one in which CSXT is utilizing the Board's authority to keep the line in limbo potentially indefinitely to the detriment of the public at large.

III. DISCUSSION

The City respectfully request the Board overturn the Decision and deny CSXT and Georgetown's request for the issuance of a NITU. The City believes the Decision merits reconsideration for three reasons: the implied finding of fact Georgetown is a qualified rail sponsor is erroneous and/or unsupported by the evidence of record, the decision is contrary to law and policy, and that the questions of CSXT's use of subsidiaries as trail sponsors is without governing precedent and Board determination is essential to weigh the relevant factors.

It is also important to note what the City is not challenging. It is axiomatic that the Board, as an administrative agency, is entitled to deference in interpreting of its own governing statutes. *Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984). There is also binding law and precedent setting forth much of the standards relevant to the trail use requests before the Board in this matter. *See Citizens Against Rails-To-Trails v. Surface Transp. Bd.*, 267 F.3d 1144 (D.C. Cir 2001); *Jost v. Surface Transp. Bd.*, 194 F.3d 79 (D.C. Cir 1999). For purposes of this appeal, the City is also not asking the Board to force CSXT to negotiate with the City, and also admits, for purposes of

this appeal, that the granting of a NITU is conditioned on the voluntary agreement by a railroad. The City's request for full Board consideration is limited to alleging the Director erred in considering specific Board regulations in its application of facts and that the novelty of the current issue demands special consideration. The City believes CSXT is using Board precedent to defeat the original intention of the governing law and such misuse deserves special consideration by the Board.

a. General Regulatory Authority

The Board, as successor to the Interstate Commerce Commission, is granted regulatory authority railroads which allows it to, among other powers, resolve disputes regarding rail lines. Pursuant to the Nation Trail System Act (16 U.S.C. 1241 *et seq.*)(“Trail Act”) “. . . the Board must “preserve established railroad rights-of-way for future reactivation of rail service” by prohibiting abandonment where a trail sponsor agrees to assume full managerial responsibility and tax and legal liability for the right-of-way for use in the interim as a trail.” (*Decision of Entire Board, Limiting Extensions of Trail Use Negotiation Periods*, Docket No. EP_749_1). Furthermore, the foundational policy of the Trail Act is that “trails should be established (i) primarily, near the urban areas of the Nation”. (Trail Act, §2(a)). Though the interim trail use program is voluntary, *see Rail Abans. – Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591, 598 (1986), the Board is still required to consider the application insofar as it is considered a rail transportation policy, *see* 49 CFR § 1152.50(c)(1). The process involved in Trail Act applications, as set forth succinctly in *Citizens*, 267 F.3d at 1149, is set by regulation by the Board.

b. Georgetown/CSXT Request is Not as it Seems on its Face

As set forth above, Georgetown is made up entirely of CSXT employees admittedly acting in their official capacity with the company. Not only does each manager of Georgetown assuredly

have a fiduciary duty to CSXT, both groups are represented by the same attorneys before the Board – Louis E. Gitomer and his daughter Melanie B. Yasbin of the Law Offices of Louis E. Gittomer, LLC (see exhibits “B” and “D”). Georgetown also admits that it is a wholly owned subsidiary of CSXT. (Response, p. 3)

The City objected to granting the NITU requested by CSXT and Georgetown on the grounds that any negotiations would obviously not be an arms-length negotiation – it would simply allow CSXT to present a superficial appearance of good-faith compliance with the intent of important federal legislation while simultaneously attacking the very spirit of the same law. Specifically, the City believes CSXT is using Georgetown to relieve itself of maintenance obligations while it seeks a buyer for its \$15 million asking price. The NITU provides the necessary cover by preventing the reversionary interests in the Segment Property from being triggered. Based on in-depth title investigation, the City believes CSXT rights to the Segment Property are limited to railroad rights-of-way, the property only has value to CSXT so long as it can deny the holders of reversionary rights the ability to reclaim their property. In the Response, Georgetown makes clear that CSXT/Georgetown believe the Segment Property to be “valuable property for trail use”. (Response p.4). The City doesn’t allege CSXT should not be able to make money but does believe the Trail Act was not enacted to maximize railroad profits.

By evoking the Trails Act to allow CSXT more time to top dollar at the expense of a legitimate public interest, CSXT has asking to Board to use the crook to kill the sheep. While the City has made a legitimate and good faith offer to engage in negotiations with CSXT - which CSXT would be under no obligation to consummate - CSXT has instead sought Board’s authority to engage in what amounts into internal deliberations. CSXT’s request amounts to an unnecessary attack on the integrity of both the Trails Act and this Board.

As noted in its original response, CSXT – and by extension all railroads – would be able to create essentially a new category of rail line in a state of quasi-abandonment. If a railroad was allowed to “negotiate” with a wholly owned under the guise of a NITU request, it would be able to hold on to property so long as the Board allowed negotiation extensions - circumventing the timetables set forth in the Board’s governing legislation, including but not limited to 49 CFR § 1152.50. As noted above, this is precisely what CSXT has done in the past³. The quasi-abandoned line would be able to remain in limbo for years – even with the modified Board rules limiting extensions. *See Limiting Extensions of Trail Use Negotiating Periods*. EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019).

If a railroad was allowed to maintain control beyond the period set forth under federal law, the Trail Act would clearly have enumerated such a right. The distinction is not purely academic. As demonstrated in part by the Board’s dismissal of the City’s adverse abandonment claim, a third party has limited avenues to challenge a railroad while the Board maintains its preemptive authority. In addition, the railroad could continue to shield itself from obligations of every other property owner by virtue of maintaining the same preemptive authority. As set forth more below, this poses special problems for municipalities who would potentially remain without recourse for health, safety, and welfare concerns related to the property.

c. There are Specific Errors in the Decision

The City believes the Director erred by applying the incorrect standard to the Decision. The Decision correctly notes that there are no specific standards for trail sponsors but goes on to state that Georgetown’s submission of the appropriate form and CSXT’s agreement to negotiate same is the end of the inquiry. But Board regulations are not so limited. As noted in *Citizens* and

³ The City does not dispute CSXT/Georgetown’s contention that one of these instances did result in the creation of a trail.

Jost, Board regulations apply a rebuttable presumption standard to the fitness of trail sponsors. *Citizens*, 267 F.3d at 1150; *Jost* 194 F.3d at 89. Though the Board’s role in Trail Act application has been generally categorized as ministerial, *see Citizen*, 267 F.3d at 1147, by allowing for a presumption of sponsor fitness to be rebutted, the Board has left room for discretion in this regard. Specifically, while the Board’s discretion in granting a NITU or CITU is limited due to the mandatory language such as “will” and “shall”, *see Goos v. ICC*, 911 F.2d 1283 (8th Cir. 1990), the same is not true for qualifying the sponsor. Thus the Board has determined it has enough discretion to allow the presumption of qualification to be challenged.

This is precisely what the City sought to do – challenge Georgetown’s qualification as a sponsor. The primary grounds were that Georgetown, as merely an extension of a rail carrier as defined by law, was not qualified under the applicable rules, and that Georgetown has no intention of becoming the trail sponsor itself. The City presented substantial, competent evidence to support its position, as set forth in the City’s prior response. Though the Board assuredly has the authority to ultimately make a determination either way, the actual decision must be made and the reasoning given. *See Jost*, 194 F.3d at 87, *citing SEC v. Chenery Corp.*, 332 U.S. 194 (1947). The Administrative Procedure Act, 5. U.S.C. § 706, et al. (“APA”), would then allow such a decision to be challenge, albeit under a very deferential standard. The Decision appears not only to not make such determinations, but to suggest they are unnecessary.

The City’s argument regarding Georgetown as an extension of CSXT not being qualified is due to standard rules of construction. Under 49 CFR §1152.29(a), trail use may be sought by “. . .any state, political subdivision, or qualified private organization. . .” Though qualified private organization is not defined, “railroad”, “carrier”, and “applicant” are. Per the **tenets** of statutory interpretation, if a railroad, carrier, or applicant was entitled to submit for trail use, such would

have been specifically enumerated. This is further supported by the responsibilities outlined in the same regulation for a trail sponsor, which are inherently inconsistent with the railroad acting as the sponsor – even if done through a straw man (company). Accordingly, the City reasoned because CSXT is a defined entity under the applicable regulation and Georgetown is for all intents and purposes merely an instrument of CSXT, the Notice should be rejected as Georgetown is not qualified for a CITU. Per 49 CFR §1152.29(b)(1)(ii), if “the Trails Act is not applicable because of a failure to comply with § 1152.29(a) . . . a decision on the merits will be issued and no Certificate of Interim Trail Use of Abandonment (CITU) will be issued.”

The second argument was that under 49 CFR §1152.29(b)(1)(ii), if a “. . . carrier [] does not intend to negotiate an agreement . . .” the Board will not issue a CITU. The evidence before the Board is that Georgetown and CSXT has consistently entered into “negotiations” that have never resulted in a CITU with Georgetown. Though Georgetown’s negotiations may have ultimately resulted in a NITU, Georgetown was not the sponsor. The decision reasoned that because Georgetown was willing to negotiate with CSXT, that they have met the burden of 49 CFR §1152.29(d) and a NITU should be issued. But the City is challenging the qualifications of Georgetown, i.e., a precursor issue addressed in 49 CFR §1152.29(a).

This issue is addressed directly in *Jost*. “The Act is clear, however, that the Board “shall” impose a trail condition, and not permit abandonment of a line, whenever a railroad is prepared to convey the right-of-way to an organization that is “prepared to assume full responsibility” for management of the line, for liability, and for taxes owed. 42 U.S.C. § 1247(d) (Supp. III 1998)” *Jost*, 194 F.3d at 89. 49 CFR §1152.29(a) tracks the same idea, that the sponsor must be willing to acquire the line.

The City challenged the Decision based on the fact that Georgetown is not actually seeking to acquire the line. Georgetown repeatedly states it is willing to “negotiate” with CSXT, but tellingly never states it intends to acquire the Segment Property. It in fact, states the opposite. “[Georgetown] has filed the NITU as a placeholder for a third party that has agreed to purchase the Line and a trail after arms-length negotiations”. (Response p. 6) The City believes Georgetown did not submit the statement of willingness in good faith insofar as it has no intention of being a trail sponsor itself, as demonstrated by its record before the Board. It would therefore not qualify as a potential trail sponsor under 49 CFR §1152.29(a) and the Board would not even get to the mandatory provisions of 49 CFR §1152.29(d). The Decision therefore does not include essential findings, and misapplied Board regulations.

The City admits that the Board could reasonably make a determination that a third party acting as an intermediary could still further the intents of the Trail Act, and that allowing as much could be potentially defensible. *Cf. Jost*, 194 F.3d at 89. Notwithstanding the public policy arguments made below, the City would suggest the same could be accomplished with a legitimate trail sponsor, since there is no requirement for the railroad to consummate a CITU and is free to change negotiating partners, or negotiate with multiple partners at any time. But the third-party arrangement, as enumerated in the Trail Act, provides at least a minimal balancing of interests and control that is completely lacking in the system set up by CSXT in the instant matter.

d. Public Policy Favors Rulemaking

Fundamentally, the City believe this issue – a novel one facing the Board – has broader implications than should be handled by an agency through informal adjudication. The City believes public policy demands – if not the APA as well – that such a change be handled through the rulemaking process, and not by merely by precedent-setting adjudication in this circumstance.

The Board of course has broad discretion in deciding when to pursue rulemaking and when to set rules by informal adjudication. See *SEC v. Chenery Corporation*, 332 U.S. 194 (1947). But the Supreme Court has stated that there is a limit to this discretion and offered some guidance on what that line may look like. See *NLRD v. Bell Aerospace Co.*, 416 U.S. 267 (1974). In *Bell Aerospace*, Justice Powell notes that adverse consequence or liability based on detrimental reliance is a relevant inquiry for determining when rulemaking would be necessary, as is issues involving damages or fines. *Id.* at 295.

The other essential law to note is that since the promulgation of the relevant rules, federal courts have determined application of the Trail Act can result in a government taking under the Fifth Amendment. See *Preseault v. ICC*, 494 U.S. 1 (1990); and *Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996). A claim is colorable from when the NITU is issued. See *Barclay v. United States*, 443 F.3d 1368, 1374 (Fed. Cir. 2006) (“The barrier to reversion is the NITU, not physical ouster from possession.”). Since then, landowners regularly bring takings claims, paid through the United States Court of Federal Claims, as has already been filed in response to the Decision. Accordingly, the instant matter does involve significant damages to landowners, checking the box outlined by *Bell Aerospace*. The City does not take issue with any of the above cited law, but only how CSXT is seeking to utilize it through Georgetown.

Ordinarily when a NITU is issued, the Board is facilitating discussions by the and between a railroad and a potential trail sponsor. The public is served by preventing the reversions from triggering and allowing time for complicated negotiations to proceed to with the intent of creating a public trail. Based on the application of takings law, the Board is quite literally buying time for the express purposes set forth in the Trail Act. The railroad is served by being able to salvage

tracks and reduce maintenance costs. Everyone involved gains something, even if there are costs to the landowners.

In the instant matter, CSXT has sought an NITU with wholly owned subsidiary with the intent appearing to be to allow time to maximize the sale price for the property. If CSXT had a third-party purchaser lined up as a trail sponsor, why not negotiate directly with them as intended by the Trail Act? CSXT could cancel negotiations at any time without penalty. Or CSXT could have just had the NITU issued in the name of the City, while simultaneously negotiating with other parties. The problem with issuing a NITU between CSXT and Georgetown, a group under its control, is that CSXT alone retains control of the process and timing thereof, while the taxpayers pay takings claims for CSXT's time to shop the property around. Under such an arrangement, CSXT gains something, while the public could only theoretically benefit.

There is a fundamental difference between the public subsidizing activity motivated by a desire to increase public access to trails and subsidizing activity motivated to increase corporate profits for a single rail carrier. Aside from the obvious aura of deception around forming a wholly owned subsidiary to "negotiate" with, the primary issue is one of intent and control. If a railroad was authorized to maintain sole control of a property post-abandonment, the Trail Act could have easily allowed for same. It did not. The Legislature sought to balance the public benefit of trails, the needs of the railroads, and the rights of private property owners to devise a carefully crafted procedure. CSXT's actions are not facially authorized under same, and the City believes such an arrangement was never intended under the Act.

The City admits there is a potentially valid argument that the arrangement CSXT seeks could theoretically further the intent of the Trail Act. But the important questions to be answered by the Board are one of degree and responsibility; Should the public pay for what amounts to

internal deliberations of CSXT or should CSXT be bound by the rules as written? What is the public gaining by subsidizing CSXT in this regard? The Board must ascertain the intent of the law and rule accordingly.

The City believes such a fundamental change would be more appropriate under the umbrella of informal rulemaking. This would allow stakeholders to present evidence directly related to cost associated with NITU-related takings. A taking is based on what is lost by the landowner, not what is gained by the government. *See Boston Chamber of Commerce v. City of Boston*, 217 U.S. 189, 195 (1910). Accordingly, proportionality is likely to be lacking. For example, if savings to a railroad is in the thousands of dollars but claims paid by the government are in the millions of dollars, it would suggest a wasteful – and unnecessary – subsidy. An even more cynical analysis may show sales profit to a railroad resulting from such a delay is grossly overshadowed by the cost to taxpayers, resulting in a huge net loss to all but the railroad. It is likely inefficient if not openly wasteful – but all could likely be revealed by receiving and reviewing statistical and financial data. The information could provide the Board the ability to make a more reasoned and factually supported decision. Though the City believes that the outcome of such rulemaking would show public policy is not in favor of such an arrangement, it would willingly be a participant in a dialogue to make a fair and reasoned determination either way.

e. The Goals of the City Align with the Trail Act

To note, the City understands that seeking a denial of a NITU seems counterintuitive for the City, whose goal is ultimately to have a trail over the Segment Property and to preserve the line's integrity for future rail-related uses including potentially light rail. The reasoning merits some discussion.

The City is the majority abutting landowner and is believed to have reversionary interests along much of the Segment Property. This includes both fee simple ownership, and more frequently, overlapping right-of-way interests. CSXT's interests appear to be limited to rights-of-way, control of which in some circumstances was expressly conditioned upon railroad use via agreements with the City.

The City wants to establish a trail and preserve the integrity of the line, as evidenced by the NITU request made by the City in this matter. The City's real concern is best demonstrated by *Jost*, 194 F.3d at 89, and the associated decision by the Board, *Central Kansas Ry., LLC—Abandonment Exemption in Marion & McPherson Counties, KS* (Docket No. AB-406)(Sub. No. 6X (Dec 10, 1998)). As outlined in the slip opinion and cited by United States Court of Appeals for the District of Columbia Circuit, “ “the Trails Act does not require a trail to be ‘developed in any particular way’ and ‘there is no absolute time limit for how quickly a trail must be developed to its intended level of use.’ ” *Id.* at 89. Due to the federal preemption under the ICC Termination Act of 1995, and the relative uncertainty of *Hayfield N. R. Co. v. Chi. & N. W. Transp. Co.*, 467 U.S. 622 (1984) in relation to same, the City is left with a difficult decision between essentially loosing authority over the development (or non-development) of an important piece of property in its downtown core area or risking potentially millions of tax-payer dollars pursuing an uncertain - and sure to be challenged - action for eminent domain to accomplish the same thing that is plainly set forth in the Trails Act. Other rules and regulations severely limit the City's ability to police property under Board authority due to the pervasive preemption, even when there is a danger to inhabitants of the City. The City believes the uncertainty warrants special consideration that is particularly acute in highly developed, downtown areas such as this.

The City further believes it cannot justify a public purpose under Florida law to pay CSXT for rights CSXT does not inherently possess – i.e., the right to do anything but operate a railroad over the Segment Property – particularly in the amount sought by CSXT (\$15 million). CSXT is also unwilling to engage in negotiations with the City, as noted in the Decision. Because the City believes, based on title to the Segment Property, that upon abandonment much of the property interests held by CSXT could be quieted in the City’s favor, the City has requested the NITU to be denied. The City would therefor be able to accomplish the same process set forth in the Trails Act, only without Board involvement. The City of course prefers to follow the process set forth in the Trail Act, but would need a railroad willing to cooperate. Without such, the City is left to seek unorthodox means to the same ends.

As outlined above, the City also believes this implicates an important public policy consideration that impacts municipalities across the county, notwithstanding taxpayers in general. Accordingly, the City believes the Board’s decision should be based on an accurate representation of the situation before it and asks the Board to consider the ramifications of its decision in relation to both established statutory interpretation, and actual, real-life implications.

IV. CONCLUSION

As noted previously, CSXT has other legitimate offers to pursue the goals of rail-banking and the Board does not need to issue the requested NITU to protect any party’s interests or advance the goals of the Trail Act. The benefit to interstate commerce, CSXT’s solvency as a railroad, and the efficiency of the Board can be protected without granting CSXT/Georgetown’s request. Accordingly, the City respectfully requests the Board overturn the Decision and reject CSXT and Georgetown’s request to enter into negotiations pursuant to 49 CFR §1152.29.

ORAL ARGUEMENTS

The City is not requesting oral arguments before the Board, but will make itself available for same if requested.

Respectfully submitted this 3rd day of February 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail service or U.S. Postal Service, first class, to all parties in the instant action.