

**Wisconsin Department of Transportation**

www.dot.wisconsin.gov

Tony Evers
GovernorCraig Thompson
Secretary**Office of General Counsel**
4822 Madison Yards Way., Rm. 922 South
P.O. Box 7910
Madison, WI 53707-7910Telephone: 608-266-8810
FAX: 608-267-6734
E-mail: ogc.exec@dot.wi.govENTERED
Office of Proceedings
February 13, 2020
Part of
Public Record

February 13, 2020

VIA E-FileCynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, D.C. 20423-0001Re: Union Pacific Railroad Company – Abandonment Exemption – In Sheboygan County,
Wisconsin; STB Docket No. AB-33 (Sub-No. 321X)

Dear Ms. Brown,

Please find as filed a revised Petition for Notice of Interim Trail Use by the Wisconsin Department of Transportation (WisDOT) in regards to the above referenced matter. WisDOT respectfully requests a waiver of any applicable filing fees in this instance pursuant to 49 C.F.R. § 1002.2(e)(1). Please feel free to contact me should there be any questions in relation to this filing. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "V. Bauer".

Vincent R. Bauer
Assistant General Counsel
Direct Line (608) 266-8807
Vincent.bauer@dot.wi.gov**FILING FEE WAIVED**

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-33 (SUB-No. 321X)

UNION PACIFIC RAILROAD COMPANY
- ABANDONMENT EXEMPTION -
IN SHEBOYGAN COUNTY, WISCONSIN

**CITY OF SHEBOYGAN, WISCONSIN
PETITION FOR NOTICE OF INTERIM TRAIL USE**

BACKGROUND

Union Pacific Railroad Company (“UP”) filed with the Surface Transportation Board (“Board”) a Verified Notice of Exemption under 49 C.F.R. § 1152 Subpart F – Exempt Abandonments to abandon a portion of its railroad line known as the Sheboygan Old Main Line, from milepost 148.2 to milepost 149.5, a distance of 1.3 miles, within the City of Sheboygan and Sheboygan County, Wisconsin. Notice of said exemption was served and published in the Federal Register on November 25th, 2019. Prior to that time, on November 14th, 2019, the Wisconsin Department of Transportation (“WisDOT”) filed a Petition for Notice of Interim Trail Use Request (NITU) which included a Statement of Willingness executed by Sheboygan County dated April 14th, 2014. On December 20th, 2019, the Board issued a decision in this matter that, among other things, denied WisDOT’s request for issuance of a NITU on behalf of Sheboygan County due to the Statement of Willingness having been executed more than five and a half years prior to the filing of the NITU herein. The Board, in its December 20th, 2019 decision, did provide that WisDOT could seek issuance of the NITU again provided a new

Statement of Willingness were to be executed.

Subsequent to the Board's December 20th, 2019 decision, WisDOT reached out to representatives of Sheboygan County to discuss the execution of a new Statement of Willingness and learned that the City of Sheboygan would instead step up as the party to assume financial responsibility of the right-of-way contemplated herein for a recreational trail. As such, on February 4th, 2020, the City of Sheboygan executed a Statement of Willingness to Accept Financial Responsibility for the railroad line portion, as described below, pursuant to 49 CFR § 1152.29. This statement is for the railroad line portion of UP's railroad line referenced in UP's Verified Notice, extending from milepost 148.2 near Union Avenue to milepost 149.5 near Pennsylvania Avenue, a distance of 1.3 miles, within the City of Sheboygan and Sheboygan County, Wisconsin.

Thus, pursuant to 49 C.F.R. § 1152.29(b)(3), WisDOT files this Petition for Notice of Interim Trail Use on behalf of the City of Sheboygan consistent with the decision of the Board issued in this matter on December 20th, 2019.

PURPOSE

WisDOT files this Petition for Interim Trail Use on behalf of the City of Sheboygan pursuant to 16 U.S.C. §1247(d) and 49 C.F.R. § 1152.29. WisDOT petitions to obtain a notice of interim trail use for interim highway, bicycle, pedestrian and other trail purposes and railbanking by the City of Sheboygan for the full right of way involved in this proceeding. The City of Sheboygan will use or preserve the land corridor and related real property for interim public transportation and recreational purposes (including highway, pedestrian and other trail), subject to restoration for railroad purposes. WisDOT supports the City of Sheboygan's efforts to acquire the right to

utilize the right of way for public purposes.

STATE RESPONSIBILITIES

WisDOT is the designated state agency in rail matters in the State of Wisconsin. 49 CFR §1152.2(g), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats. WisDOT is responsible for all state and federally-aided highway construction and all state and federally-aided airport construction in Wisconsin. Secs. 84.01(2) and 114.32(1) and (5), Wis. Stats. WisDOT has the statutory first right to acquire for present or future transportation, recreational or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin. Sec. 85.09(2), Wis. Stats. WisDOT has statutory authority to incorporate trails into the highway right-of-way through § 84.06(11), Wis. Stats. Pursuant to their respective duties and powers, WisDOT and the City of Sheboygan are working collaboratively to use the corridor for recreational trail use.

NOTICE OF INTERIM TRAIL USE

WisDOT respectfully requests that the Board provide the City of Sheboygan a notice of interim bicycle, pedestrian and other trail use and rail banking condition to accomplish the above public purposes. WisDOT is interested in having the City of Sheboygan acquire the right to use the right of way of the rail line being abandoned for interim bicycle, pedestrian or other trail use and rail banking.

Included in this petition is a Statement of Willingness to Assume Financial Responsibility, executed by the City of Sheboygan, and, attached thereto as Exhibit 1, a map of the location of all needed property in the City of Sheboygan for this proposed recreational trail.

The City of Sheboygan's use of the corridor for present and future transportation purposes as stated above is consistent with all Congressional purposes and neither abandonment nor discontinuance permitted by the Board conditioned as requested by the City of Sheboygan would be inconsistent with or disruptive of potential future rail use.

CONCLUSION

WisDOT respectfully requests the Board to accept this Petition and issue a Notice of Interim Trail Use for the land corridor and related real property referenced in this proceeding, specifically for the segment of UP railroad line from milepost 148.2 near Union Avenue to milepost 149.5 near Pennsylvania Avenue, a distance of 1.3 miles, within the City of Sheboygan and Sheboygan County, Wisconsin. This project will allow all forms of transportation to be developed and utilized in a unified, interconnected, economically efficient and environmentally sound manner.

Respectfully Submitted,



Vincent R. Bauer, J.D.

WI State Bar No. 1084702

Wisconsin Department of Transportation

4822 Madison Yards Way, Room 922 S

P.O. Box 7910

Madison, WI 53707

(608) 266-8807

February 13th, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Petition to be served in regards to **AB-33 321X**, by electronic mail, or regular mail pursuant to 49 C.F.R. §1104.12, this 13th day of February, 2020, on all parties of record on the service list.



Vincent R. Bauer, J.D.
WI State Bar No. 1084702
Wisconsin Department of Transportation
Office of General Counsel

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-33(SUB-NO. 321X)

WISCONSIN CENTRAL LTD -- ABANDONMENT EXEMPTION --
IN (SHEBOYGAN), SHEBOYGAN COUNTY, WISCONSIN

**STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY BY
(Trail User) WISCONSIN
PURSUANT TO 49 CFR 1152.29**

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, the City of Sheboygan is willing to assume 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 owned by the Union Pacific and operated by Union Pacific. The property, known as Sheboygan Old Main Line, extends from railroad milepost 148.2, near Union Avenue, to railroad milepost 149.5, near Pennsylvania Avenue, a distance of 1.3 miles in the City of Sheboygan and the County of Sheboygan, Wisconsin. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-33 (Sub-No. 321X).

A map depicting the property depicting the right-of-way is attached as **Exhibit 1**.

The City of Sheboygan acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad, Union Pacific, on the same date it is being served on the Board.

CITY OF SHEBOYGAN

(Name of Trail User/Organization)

2-4-2020
Date

By:

Michael S. Vandersteen
Michael S. Vandersteen, Mayor

ATTEST:

Meredith DeBruin
Meredith DeBruin, City Clerk

Exhibit 1

