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August 25, 2023

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

RE: **STB Docket AB-565 (Sub-No. 1X), New York Central Lines, LLC—
*Abandonment Exemption—in Middlesex County, Mass.***

Dear Ms. Brown:

Enclosed is a Response by CSXT Transportation, Inc. ("CSXT") and Georgetown and High Line Railway, LLC ("GHL") to the letter filed in this proceeding by the National Association of Reversionary Property Owners on August 9, 2023.

The filing of this letter has been authorized by CSXT and GHL. This letter is being efiled. Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,

/s/ *Louis E. Gitomer*

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Attachment

DOCKET NO. AB-565 (Sub-No. 1X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—IN
MIDDLESEX COUNTY, MA

**RESPONSE OF CSX TRANSPORTATION INC. AND GEORGETOWN AND HIGH LINE
RAILWAY, LLC**

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Dated: August 25, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-565 (Sub-No. 1X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—IN MIDDLESEX
COUNTY, MA

**RESPONSE OF CSX TRANSPORTATION INC. AND GEORGETOWN AND HIGH LINE
RAILWAY, LLC**

CSX Transportation, Inc. (“CSXT”) and the Georgetown and High Line Railway, LLC (“GHL” and with CSXT “Respondents”) respond to the letter filed by the National Association of Reversionary Property Owners (“NARPO”) on August 9, 2023 (the “NARPO Letter”).

NARPO erroneously claims that the Notice of Interim Trail Use (the “NITU”) granted to GHL for the 3.40-mile segment between milepost QBS 0.0 and milepost QBS 3.40 (the “Framingham Line”) by the Surface Transportation Board (the “Board”) on December 1, 2020 somehow expired. Based on that fallacy and a letter that the City of Framingham (“Framingham”) filed with the Board on August 8, 2023 (the “Framingham Letter”), NARPO asks the Board to declare that the Framingham Line has been abandoned, that it cannot be transferred to Framingham as a trail, and that the underlying property interests revert to the landowners that NARPO purportedly represents, thereby precluding railbanking and future potential rail re-activation.

NARPO is wrong on the “facts” that are included in the NARPO Letter and on the law it relies upon. The following brief factual background demonstrates that NARPO has embellished its story, and that CSXT, GHL, and Framingham have at all relevant times acted fully consistent with the National Trails System Act, and its policy of facilitating recreational trails while

preserving corridors for potential future rail reactivation, and with the requirements of 49 CFR 1152.29.

On June 25, 2001, New York Central Lines, LLC (“NYC”), and CSXT, jointly filed with the Board a petition for exemption under 49 U.S.C. §10502 from the provisions of 49 U.S.C. §10903 (the “Petition”) for NYC to abandon and CSXT to discontinue service over a 4.80-mile portion of a line of railroad known as the Albany Division, Fitchburg Subdivision, extending from milepost QBS 0.00 at Framingham to milepost QBS 4.80 at South Sudbury, in Middlesex County, MA (the “Line”). In a Decision and Notice of Interim Trail Use or Abandonment¹ the Board granted the exemption for NYC to abandon the Line and for CSXT to discontinue service over the Line.² The Board also granted a Notice of Interim Trail Use (“NITU”) to the Town of Sudbury over the 1.4-mile segment of the Line between milepost QBS 3.40, at the city line of Framingham, and milepost QBS 4.80 (the “Sudbury Trail”).³

Over the years, CSXT negotiated with both Framingham and GHF for acquisition of the Framingham Line. Critically, and what has been omitted by NARPO, on February 22, 2021, pursuant to the requirements of 49 C.F.R. 1152.29(h), CSXT and GHF notified the Board that they had entered a Purchase Sale Agreement pursuant to the NITU for the Framingham Line.⁴

¹ STB Docket No. AB-565 (Sub-No. 1X), *New York Central Lines, LLC-Abandonment Exemption-Middlesex County, MA* (served October 12, 2001).

² The “Supplemental Transaction” of the consolidation of the business, assets, and operations of NYC into CSXT was authorized in STB Finance Docket No. 33388 (Sub-No. 94), *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company— Control and Operating Leases/Agreements —Conrail Inc. and Consolidated Rail Corporation*, [Petition for Supplemental Order], Decision No. 2, served November 7, 2003. NYC was merged into CSXT on August 27, 2003.

³ By letter filed on December 4, 2020, CSXT and Sudbury notified the Board that they had entered a Purchase Sale Agreement for the 1.4-mile Sudbury Trail.

⁴ The NITU for the Framingham Line was extended to December 21, 2021. STB Docket No. AB-565 (Sub-No. 1X), *New York Central Lines, LLC-Abandonment Exemption-Middlesex County, MA* (served December 1, 2020) at 3.

Indeed, the Board ordered “9. If an agreement for interim trail use/rail banking is reached by December 1, 2021, for the Framingham Segment, interim trail use may be implemented.”⁵ In addition, CSXT has not filed a notice of consummation of abandonment of the Framingham Line as required by 49 CFR 1152.29(e)(2). Therefore, the Framingham Line has not been abandoned as alleged by NARPO.

NARPO further bases its position on an inaccurate leap of faith, when NARPO argues “Since 1/12/2020, there have been no requests for a NITU extension from either GHL or CSX or the City so the NITU has expired and the 4 years maximum allowed by 49 CFR 1152.29 has expired.” NARPO seems to be making the unique unprecedented argument that once the Board is notified that a trail use agreement has been reached, the Board must continue to grant an extension of the NITU on an annual basis, and can only do so for four years. NARPO cites no statutory, regulatory, or logical basis for its argument. Instead, NARPO relies on misstatements of fact, and ignored the compliance with Board regulations by CSXT and GHL, and the proposed compliance with Board rules by Framingham.

GHL filed a request for a NITU with the Board on November 20, 2020. On that same date, CSXT agreed to negotiate with GHL. The Board granted a NITU to GHL.⁶ CSXT and GHL reached a trail use agreement and notified the Board on February 22, 2021, as required by 49 CFR 1152.29(h). Neither 16 U.S.C. §1247 nor the Board’s rules require an annual extension of the NITU once the Board has been notified of an agreement between the railroad and the trail

⁵ *Id.* at 4.

⁶ STB Docket No. AB-565 (Sub-No. 1X), *New York Central Lines, LLC-Abandonment Exemption-Middlesex County, MA* (served December 1, 2020) at 2-3 “GHL’s NITU request complies with the requirements of 49 C.F.R. § 1152.29, and CSXT is willing to negotiate with GHL for interim trail use. Accordingly, a NITU will be issued, and GHL and CSXT may negotiate an agreement for interim trail use/rail banking of the Framingham Segment during the one-year period prescribed below.”

user. Based on the facts, NARPO's argument that the Framingham Line has been abandoned and therefore a NITU cannot be granted must fail. There is no factual or legal basis for that argument once the railroad and trail user have complied with the Board's rules, as CSXT and GHL have done.

Turning to the Framingham Letter, it is clear that Framingham intends to comply with the Board's regulations for the transfer of the NITU. The Framingham Letter provides the Board with the background of Framingham's efforts to acquire the Framingham Line so that it can extend the existing Bruce Freeman Rail Trail and the successful negotiations between CSXT and Framingham that have led to an agreement. Importantly, Framingham specifically states that it will comply with the requirements of 49 CFR 1152.29(f), the Board's rules governing the transfer of a NITU from one party to another. Here that transfer will occur from GHL to Framingham after compliance with the Board's rules and the issuance of a NITU to Framingham.

Finally, NARPO seems to contend that the Framingham Line does not connect to the national rail system. NARPO relies on only general statements and no specific facts. Indeed, there are no facts that support NARPO's fabricated claim. The Framingham Line will connect to Sudbury Trail, maintaining connectivity to the national rail system. Moreover, the Framingham Line will cross/connect a line owned by the Massachusetts Department of Transportation and operated over by both the Massachusetts Bay Transportation Authority and CSXT.

CSXT and GHL respectfully request that the Board expeditiously deny all relief requested by NARPO.

Respectfully submitted,

/s/ *Melanie B. Yasbin*

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High Line Railway, LLC

Dated: August 25, 2023

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CERTIFICATE OF SERVICE

I certify that this Response has been served on all parties of record in this proceeding by email.

/s/ *Louis E. Gitomer*
Louis E. Gitomer

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