

SERVICE DATE – NOVEMBER 14, 2023

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Digest:¹ The Board reopens the proceeding and revokes a notice of interim trail use or abandonment issued to CSX Transportation, Inc., and the Georgetown and High Line Railway Company for a rail line in Florida.

Decided: November 14, 2023

This case concerns a notice of interim trail use or abandonment (NITU) issued to CSX Transportation, Inc. (CSXT), and the Georgetown and High Line Railway Company (GHL) to pursue interim trail use/railbanking of an approximately 0.86-mile rail line, between milepost ARE 897.57 and milepost ARE 898.43, in St. Petersburg, Pinellas County, Fla. (the Line). For the reasons discussed below, the Board will reopen this proceeding and revoke the NITU.

BACKGROUND

On July 23, 2019, in City of St. Petersburg—Adverse Abandonment—CSX Transportation, Inc. in Pinellas County, Fla., Docket No. AB 1289, the City of St. Petersburg (City) initiated a proceeding seeking the third-party, or “adverse,” abandonment of the Line. The City indicated that it is the majority owner of properties abutting the Line and was interested in creating a public park and extension of the existing Pinellas Trail on those portions of the Line “made available” by the adverse abandonment. City Pet. for Waiver 2, City of St. Petersburg, AB 1289.

Subsequently, on August 20, 2019, in Docket No. AB 55 (Sub-No. 794X), CSXT filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon the Line. Notice of the exemption was served and published in the Federal Register on September 9, 2019 (84 Fed. Reg. 47,339), and the exemption became effective on October 9,

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

2019.² By decision served January 3, 2020, in Docket No. AB 1289, the Board dismissed the City's adverse abandonment proceeding without prejudice, noting that CSXT had been authorized to abandon the Line in Docket No. AB 55 (Sub-No. 794X). City of St. Petersburg, AB 1289, slip op. at 1 (STB served Jan. 3, 2020).

On August 29, 2019, in Docket No. AB 55 (Sub-No. 794X), the City filed a request for issuance of a public use condition under 49 U.S.C. § 10905 and (as supplemented on September 4, 2019) a request for a NITU under the interim trail use/railbanking provision of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). GHL also requested a NITU on August 29, 2019. In a response filed on September 3, 2019, CSXT notified the Board that it was willing to negotiate an agreement for interim trail use/railbanking with GHL but not with the City.

The City filed a response to CSXT on September 9, 2019, challenging whether GHL qualified as a trail sponsor, as it is a CSXT subsidiary, among other reasons. (City Reply 3-4, 7, Sept. 9, 2019.) In response, CSXT acknowledged that it had GHL file a request for a NITU as a placeholder for a third-party trail user but stated that "GHL will negotiate in the event that the third party backs out." (CSXT Reply 5, Sept. 30, 2019; see also GHL Reply 3-4, Oct. 18, 2019.) By decision and NITU served January 13, 2020, the Director of the Board's Office of Proceedings (Director) found that GHL qualified as a trail sponsor and that it was appropriate to issue a NITU under the Trails Act and existing Board precedent. CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55 (Sub-No. 794X) (STB served Jan. 13, 2020).

The City filed an administrative appeal of the Director's decision, which the Board denied on June 22, 2020. It did so, in significant part, based on GHL's representation that it viewed the Line as "valuable property for trail use, and is ready, willing, and able to negotiate trail use with CSXT." CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla. (Appeal Decision), AB 55 (Sub-No. 794X), slip op. at 2 (STB served June 22, 2020) (citing GHL Reply 3-4, Oct. 18, 2019). Nevertheless, the Board expressed concerns "about the intent of CSXT and GHL to actually engage in negotiations," and emphasized that, "implicit in the Trails Act, is an expectation that the parties intend to use the NITU negotiating period to actively pursue interim trail use/rail banking." Id. at 7. Accordingly, it required that GHL describe the efforts made to negotiate with CSXT and the progress of those efforts in any request to extend the NITU negotiating period. Id. at 8. After a decision was served granting a NITU extension request—which reiterated concerns about CSXT and GHL's intent to negotiate and required that GHL provide certain "specific details" about its negotiations in any subsequent extension request—CSXT and GHL jointly notified the Board on June 23, 2021, that they had entered into an interim trail use/railbanking agreement for the Line, pursuant to 49 C.F.R. § 1152.29(h). CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55 (Sub-No. 794X), slip op. at 2 (STB served Aug. 19, 2020); (CSXT Letter 1, June 23, 2021.)

² The exemption is subject to two salvage-related conditions. See CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55 (Sub-No. 794X), slip op. at 1-2 (STB served Oct. 8, 2019).

On December 14, 2022, the Board received from the United States Department of Justice, Environment and Natural Resources Division (DOJ), a letter (DOJ Letter) detailing certain information that DOJ ascertained in the course of litigating a consolidated Fifth Amendment takings case related to the Line before the United States Court of Federal Claims, Collective Edge, LLC v. United States, No. 20-34L (Fed. Cl. filed Jan. 13, 2020).³ DOJ asserts that neither CSXT nor GHL has constructed a trail on the Line, developed a plan to construct a trail, or has any present intention to develop a trail. (DOJ Letter 3.) According to DOJ, the quitclaim deed memorializing the transfer of the Line from CSXT to GHL reserved to CSXT an “Occupancy Easement,” under which CSXT retained certain interests in the Line, and which specifies that GHL “shall not disturb any existing facilities located within the Occupancy Easement . . . nor cause or permit any interference with the enjoyment or use of the rights, interests and privileges created under the Occupancy Easement.” (*Id.* at 2.) DOJ notes that CSXT has leased portions of the Line to Ferg’s Sports Bar and Grill (Ferg’s)—one of the plaintiffs in the Fifth Amendment takings case—since 1994 and continues to collect rent from Ferg’s, with the amount increasing considerably since 2017. (*Id.* at 3.)

By decision served January 27, 2023 (January Decision), the Board placed the DOJ Letter in the docket in this proceeding, directed CSXT and GHL to respond to the information presented in the letter, including by explaining, at a minimum, whether, and if so how, the Line is being used as a recreational or historic trail, and invited reply comments from other interested parties. Jan. Decision, AB 55 (Sub-No. 794X) (STB served Jan. 27, 2023).

On February 27, 2023, CSXT and GHL filed their response to the January Decision, stating that the Line “is not currently being used as a recreational or historic trail but that they have received interest from other parties and hope to replace GHL with another trail sponsor.” (CSXT Comment 5, Feb. 27, 2023.) CSXT and GHL contend that the Board’s role under the Trails Act is limited and ministerial and argue that “nothing in the Trails Act requires sponsors to immediately construct trail facilities.” (*Id.* at 4, 6.) CSXT and GHL further argue that the Occupancy Easement is a “standard and unremarkable provision,” and that, “as the continued owner of the lease to Ferg’s,” CSXT can “be expected to honor the lease, modify the rental in light of the existing market and agreement with Ferg’s, and collect the rent as the landlord.” (*Id.* at 6, 7.) They contend that “there is nothing unusual about portions of a trail being leased to businesses.” (*Id.* at 7.)

³ Plaintiffs in Collective Edge allege that they own property adjacent to and underlying the Line, that invocation of the Trails Act burdened their property with an easement for trail purposes, that this was a taking of their property by the federal government requiring just compensation, and that the government’s liability was established upon issuance of the NITU in this proceeding. Compl. 3, 4, 7, Collective Edge, LLC v. United States, No. 20-34L (Fed. Cl. Jan. 13, 2020).

On March 8, 2023, the Board received comments from DOJ,⁴ the Rails-to-Trails Conservancy (RTC), and the City. DOJ argues that, although the Board has interpreted its role under the Trails Act as limited, the Board has both the authority and the discretion to take action when the Trails Act has not been properly invoked. (DOJ Reply 3, Mar. 8, 2023.) DOJ reiterates that “GHL did not intend to build a trail at the time of the NITU” and that it “still does not intend to build a trail.” (*Id.* at 4.) Although CSXT and GHL mention that other parties are interested in sponsoring a trail on the Line, DOJ argues that the only identified interested party is the City, with whom CSXT had refused to negotiate. (*Id.*) In response to CSXT and GHL’s assertion that the Occupancy Easement is a “standard and unremarkable provision,” DOJ argues that CSXT does not and could not possess any residual rights that allow for use of the Line for purposes other than trail use, and “cannot properly lease interests in the right-of-way it does not own.” (*Id.* at 4-5.) DOJ further contends that, even if CSXT did possess such residual rights, non-trail activity within the corridor can continue only if it does not interfere with trail use. (*Id.* at 5.)

RTC alleges that CSXT and GHL are using the Trails Act to thwart the City’s efforts to create a trail under state law. (RTC Comment 1-2, Mar. 8, 2023 (arguing that the City’s adverse abandonment application in Docket No. AB 1289, if granted, would have removed federal jurisdiction over the Line and permitted the City to use eminent domain powers to create a trail).) According to RTC, CSXT sought a NITU “not to enable a trail, but instead to enable continued unauthorized commercial use of the Line”: specifically, lease “of the full width of [the] rail corridor” to Ferg’s. (*Id.* at 2, 4.) RTC requests that the Board vacate the notice of exemption authorizing CSXT to abandon the Line in this proceeding and require CSXT to file either an application or a petition for exemption to abandon the Line. (*Id.* at 2, 5.) RTC further requests that the Board reinstate the City’s adverse abandonment proceeding in Docket No. AB 1289. (*Id.*)

The City argues in its comment that the new evidence presented in the DOJ Letter makes clear that CSXT and GHL are not using the Trails Act for its intended purpose, which is the creation of trails for the benefit of the public. (City Comment 3, Mar. 8, 2023.) The City contends that the NITU issued to CSXT and GHL prevents the City from constructing a trail on the right-of-way while ensuring that CSXT continues to receive rent payments from Ferg’s. (*Id.* at 5-6.) It argues that CSXT and GHL have acknowledged they have no plans to build a trail, only an agreement contemplating that a speculative third party may create a trail at an unforeseeable future time. (*Id.* at 6.) According to the City, GHL and CSXT’s “pretextual use of the Trails Act results in a situation that benefits only CSXT—not the public.” (*Id.*) The City argues that the Board has authority to determine whether the Trails Act was properly invoked and may take a variety of actions, including denying or revoking the NITU or abandonment authority, or terminating trails use. (*Id.* at 7 (citing *Goos v. ICC*, 911 F.2d 1283, 1295 (8th Cir. 1990)).) According to the City, however, the public interest is best served in this case by leaving the NITU in place and granting the City and other interested parties eight months to conduct

⁴ On March 10, 2023, DOJ filed an exhibit it inadvertently omitted from its March 8 comment.

discovery from CSXT and GHL regarding the Line and other lines owned by GHL, after which the City and other interested parties may file a petition for rulemaking with the Board or one or more motions in this proceeding. (Id. at 7-8.)

On March 28, 2023, CSXT and GHL filed a response to DOJ's, RTC's, and the City's March 8 comments.⁵ CSXT and GHL contend they properly invoked the Trails Act in this proceeding and have fulfilled the only two requirements of the Trails Act, which are GHL's willingness to assume legal and financial responsibility for management of the right-of-way and GHL's acknowledgement that its use of the right-of-way as a trail is subject to restoration and reconstruction for railroad purposes. (CSXT Resp. 3-5, Mar. 28, 2023.) CSXT and GHL reiterate that the Board's role under the Trails Act is limited, and they argue that Board precedent establishes that the Trails Act does not require the trail to be developed in any particular way and that the trail sponsor is under no deadline to construct a trail or find an alternative trail sponsor. (Id. at 4-8, 5 nn.3-5.) CSXT and GHL represent that GHL "continues to seek" to transfer its trail rights to a "third-party trail sponsor" and is also "considering hiring a third party to operate the trail" on its behalf. (Id. at 11-12.)

CSXT and GHL also argue that railroads may reserve property interests in a railbanked line, such as the Occupancy Easement, as long as those property interests do not interfere with the use of the line as a trail or the railroad's ability to reinstate freight service. (Id. at 9-11.) They contend that no party has presented evidence that the Occupancy Easement conflicts with the ability of CSXT to reinstate rail service on the Line or conflicts with the ability of GHL (or another trail sponsor) to create a trail under the Trails Act. (Id. at 10.) While they acknowledge that Ferg's "partially encroach[es]" on the Line, they argue that CSXT's lease with Ferg's is not inconsistent with "future trail use and/or reactivation of rail service" because that agreement is terminable upon 30 days' notice by CSXT at will for any reason or no reason at all. (Id. at 9 n.6.) Finally, CSXT and GHL argue there is no legal basis for the Board to permit the City to conduct discovery as there is no indication that the requirements for railbanking have not been met. (Id. at 13.)

On April 6, 2023, RTC filed a motion requesting that the Board strike (1) CSXT and GHL's March 28 response as an impermissible reply to a reply under the Board's regulations; (2) CSXT and GHL's motion for protective order because it is in service of an impermissible reply to a reply and based on false pretenses (i.e., that the City made a confidential proposal to

⁵ CSXT and GHL acknowledge that the Board's rules generally prohibit filing a reply to a reply, but they argue that parties may respond to new requests for relief set forth in a reply filing. (CSXT Resp. 1 n.1, Mar. 28, 2023.) Concurrently with their response, CSXT and GHL filed a motion for protective order to preserve the confidential nature of an offer CSXT received from the City related to the Line, which the Board granted by decision served April 3, 2023. CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55 (Sub-No. 794X) (STB served April 3, 2023). CSXT and GHL informed the Board on April 3, 2023, that the letter containing the City's offer was available to the public under Florida law, and they therefore filed a revised public version of the March 28 response.

CSXT); and (3) the revised public version of the March 28 response, filed by CSXT and GHIL on April 3, 2023, because it is likewise impermissible. (RTC Mot. 3, Apr. 6, 2023.) CSXT filed a letter in opposition to RTC's motion on April 10, 2023. The City also filed, on April 10, 2023, a motion to strike CSXT and GHIL's March 28 response in its entirety, or alternatively, all of the March 28 response except the section that directly addresses the City's request for further discovery. (City Mot. 3, Apr. 10, 2023.)⁶

CSXT filed a status report on June 15, 2023, stating that it and GHIL were engaged in negotiations with the City concerning the Line. (CSXT Status Report 1, June 15, 2023.)

PRELIMINARY MATTERS

Under 49 C.F.R. § 1104.13(c), a reply to a reply is not permitted. However, in the interest of a more complete record, the Board will accept CSXT and GHIL's March 28 response, including the revised public version of that response filed on April 3, 2023. Therefore, the Board will deny RTC's and the City's request to strike the March 28 response and will deny as moot the City's alternative request to strike all of the March 28 response except the section that directly addresses the City's request for additional discovery.

The Board will also deny RTC's request to strike CSXT and GHIL's motion for protective order. The Board disagrees that the motion was filed on false pretenses. CSXT and GHIL filed the motion because they believed an offer they received from the City related to the Line, referenced in a single footnote in the March 28 response, was confidential. Upon being informed of their mistake, CSXT and GHIL promptly filed a corrected public version of the March 28 response. It is therefore unnecessary to strike the motion for protective order.

DISCUSSION AND CONCLUSIONS

The Board may, on its own motion or on petition by an interested party, reopen an abandonment proceeding based on material error, new evidence, or substantially changed circumstances. 49 U.S.C. § 1322(c)(1); 49 C.F.R. § 1152.25(e)(4). For purposes of reopening, "new evidence" means evidence that was not reasonably available to the parties before the agency's original decision. See, e.g., R.J. Corman R.R. Prop.—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 4, 6 (STB served May 3, 2021). For the reasons discussed below, based on new evidence submitted in response to the January Decision, which was not available when the NITU was issued or when the Board served the Appeal Decision, the Board will reopen this proceeding and revoke the NITU.

⁶ As another alternative request, if the Board allows CSXT and GHIL's March 28 response to remain in the record, the City requests leave to submit certain documents referred to in the March 28 response in their entirety with explanatory comments from the City. (City Mot. 3, Apr. 10, 2023.)

The Trails Act was enacted in 1968 to establish a nationwide network of recreation and scenic trails. National Trails System Act, Pub. L. No. 90-543, § 2(b), 82 Stat. 919 (1968) (codified as amended at 16 U.S.C. §§ 1241-1251). As originally enacted, it did not contain any special provisions for railroad rights-of-way. In 1983, however, Congress added a railbanking section, codified at 16 U.S.C. § 1247(d) and entitled “Interim Use of Railroad-Rights-of-Way,” to advance two declared policies: preserving unused railroad rights-of-way for possible future rail use and encouraging the development of additional trails. See Preseault v. ICC, 494 U.S. 1, 17-18 (1990) (citing H.R. Rep. No. 98–28, at 8 (1983); S. Rep. No. 98–1, at 9 (1983)). That provision, in relevant part, provides:

[I]n the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter [i.e., as a trail], if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.

16 U.S.C. § 1247(d) (emphasis added). Under 16 U.S.C. § 1247(d), it is the use of a railroad right-of-way as a trail that prevents the right-of-way’s abandonment and keeps the railbanked Line within the interstate rail network.

In adopting rules implementing the Trails Act, the agency has recognized an obligation to ensure that the right-of-way will in fact be used for a trail. See, e.g., Rail Abans.—Use of Rights-of-Way as Trails—Suppl. Trails Act Procs., 4 I.C.C.2d 152, 156 (1987) (delegating authority to the Director to determine whether the Trails Act is applicable and noting that referral to the entire agency would be appropriate if there were a serious claim that that the right-of-way would not in fact be used for a trail); Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 597 (1986) (“Congress intends that trail use occur and rights-of-way remain intact when they would otherwise be subject to reversionary interests.”). As discussed above, the Trails Act is intended to encourage the development of trails on railroad rights-of-way that may otherwise be abandoned, while preserving those rights-of-way for potential future rail use. See Preseault, 494 U.S. at 17-18 (noting that the Trails Act “assist[s] recreation[al] users by providing opportunities for trail use on an interim basis” (internal citation omitted)). It is therefore implicit in the Trails Act that a railbanked right-of-way must be made available to the public for use as a trail. See Rail Abans.—Use of Rights-of-Way as Trails—Suppl. Trails Act Procs., 4 I.C.C.2d at 156; see also CSX Transp.—Aban. Exemption—in Monroe & Owen Cntys., Ind., AB 55 (Sub-No. 514X), slip op. at 1, 2 (STB served Sept. 30, 1997) (reopening proceeding where evidence that negotiating party had “no intention to convert the right-of-way into a recreational trail” called into question the “continued application of the Trails Act”).

The record in this case, in its totality, demonstrates that CSXT and GHL are not meeting the statutory requirements of the Trails Act. In response to the January Decision, CSXT and GHL stated—without explanation—that the Line is “not currently being used as a recreational or historic trail.” (CSXT Comment 5, Feb. 27, 2023.) This is despite over two years having

elapsed since CSXT and GHL entered into an interim trail use/railbanking agreement and repeated admonitions by the Board about the need for CSXT and GHL “to actively pursue interim trail use/railbanking.”⁷ CSXT and GHL’s inactivity is particularly troubling in light of concerns raised by the Board in 2020 about CSXT’s and GHL’s intentions regarding the Line given the combination of unusual circumstances of this case. Those circumstances included the corporate affiliation between CSXT and GHL, the City’s interest in converting the Line to a trail either after removing it from federal jurisdiction through adverse abandonment or as the trail sponsor in this proceeding under the Trails Act, CSXT’s 2019 refusal to negotiate with the City for interim trail use/railbanking, and GHL’s claim that it saw its “initial role as a placeholder” for another party to acquire the Line. (CSXT Reply 5, Sept. 30, 2020.)⁸ CSXT and GHL’s present vague assertions that “GHL continues to seek trail users” to whom it can transfer the property, (CSXT Resp. 12, Mar. 28, 2023), including a general statement that it is “engaged in negotiations” with the City,⁹ and that GHL is also “considering” hiring a third party to operate the trail, (*id.*), are not persuasive given the circumstances and history of this proceeding. Indeed, the Board specifically asked CSXT and GHL in the January Decision to explain whether, and if so, how the Line is being used as a trail. CSXT and GHL’s aspirations one day to transfer the Line to a trail user or hire an operator do not change the fact that the Line is not currently being used as a trail, that no tangible progress appears to have been made to make the Line available to the public for that purpose, and that CSXT and GHL have offered no explanation for this inactivity.

CSXT and GHL’s response to the allegations concerning Ferg’s further indicates non-compliance with the Trails Act. To be sure, dual use of a right-of-way for trail and non-trail

⁷ It makes no difference that the Board issued these warnings during the NITU negotiating period, to encourage active negotiation of an interim trail use/railbanking agreement. It would not be reasonable for CSXT and GHL to think that, despite the Board’s unequivocal expectation that they would actively negotiate for interim trail use/railbanking, the Board would not expect CSXT and GHL to actually establish a trail once they entered into such an agreement.

⁸ CSXT and GHL suggest that, by having GHL serve as a placeholder for a third-party trail sponsor, while doing nothing themselves to establish trail use, they are doing “exactly what they told the Board they would do.” (CSXT Resp. 9, Mar. 8, 2023.) That is not true. While GHL told the Board that it may be a placeholder for another trail sponsor, it also represented that even if “there were no other potential sponsor,” it nonetheless viewed the Line as a “valuable property for trail use, and [was] ready, willing, and able to negotiate trail use with CSXT.” (GHL Reply 3-4, Oct. 18, 2019; see also CSXT Reply 5, Sept. 30, 2019.) At no point did GHL indicate that it would make no effort to establish trail use itself after entering into an agreement for interim trail use/railbanking. Had it, the Board would not have issued the NITU.

⁹ Following today’s decision revoking the NITU and reauthorizing the Line for abandonment, the City may submit a renewed request for a NITU authorizing interim trail use/rail banking negotiations between it and CSXT. If CSXT agrees to negotiate, and the Board grants the City’s request, such a decision will allow for continuation of the negotiations referenced in CSXT’s June 15 status report. See also *infra* note 13.

activities is permissible under the Trails Act, so long as the non-trail activities are “not incompatible with either trail use or the restoration of rail service.”¹⁰ Balt. & Ohio R.R.—Aban. & Discontinuance—in Montgomery Cnty., Md., AB 19 (Sub-No. 12), slip op. at 2 (ICC served Feb. 22, 1990); see also CSX Transp., AB 55 (Sub-No. 514X), slip op. at 2 n.5; Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d at 608. But here, where there is no trail use of any kind, and in the face of allegations that CSXT and GHL pursued railbanking as a “pretext” to preserve CSXT’s lease with Ferg’s, nowhere do CSXT and GHL argue that dual use is possible or describe how Ferg’s may otherwise “share the right-of-way” with a trail.¹¹ Balt. & Ohio R.R., AB 19 (Sub-No. 12), slip op. at 2. Rather, they contend only that the lease is not inconsistent with “future trail use” because it can be terminated by CSXT at will at a subsequent date.¹² (CSXT Resp. 10 n.6 (emphasis added).) However, now that CSXT and GHL have entered into an interim trail use agreement and railbanked the Line, what matters is whether the property is currently being used “in a manner consistent with interim trail use,” CSXT Transp., AB 55 (Sub-No. 514X), slip op. at 2, not whether it could be used in that manner in the future. Per CSXT and GHL’s argument, any manner of trail-conflicting use on a railbanked line would be permissible so long as the trail sponsor has the right, at some point, to stop that usage and establish a trail. That is not consistent with the Trails Act.¹³

Contrary to any suggestion by CSXT and GHL otherwise, revocation of the NITU does not require an overhaul of the Board’s Trails Act precedent. The Board’s role in administering the Trails Act remains limited and “essentially ministerial.” See Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001); Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990). When a request for a NITU is filed, the Board is responsible for confirming that the trail sponsor agrees to assume full legal and financial responsibility for management of the right-of-way during the interim trail use and to keep the right-of-way available for reactivation of rail

¹⁰ DOJ’s argument that CSXT does not and cannot retain rights in the Line sufficient to support its lease to Ferg’s raises state property law issues that are more appropriate for a court to decide. See, e.g., Allegheny Valley R.R.—Pet. for Declaratory Order—William Fiore, FD 35388, slip op. at 4 (STB served Apr. 25, 2011).

¹¹ RTC alleges that Ferg’s occupies the “full width of the right-of-way,” (RTC Comment 4, Mar. 8, 2023), while CSXT and GHL describe the leased premises as “partially encroaching” on the Line, (CSXT Resp. 10 n.6). Even if the Board were to accept that Ferg’s occupies something less than the full width of the right-of-way, CSXT and GHL do not contend that the encroachment allows for concurrent trails use, just that the lease can be terminated by CSXT at will with 30 days’ notice should CSXT/GHL wish to establish or allow for trail use.

¹² As noted, in an earlier filing responding to the January Decision, CSXT and GHL represented that CSXT “should be expected to honor the lease with Ferg’s, modify the rental in light of the existing market and agreement with Ferg’s, and collect the rent as the landlord.” (CSXT Comment 7, Feb. 27, 2023.)

¹³ Accordingly, if another trail sponsor requests issuance of a NITU in this proceeding, CSXT must explain in detail in any reply agreeing to negotiate, why Ferg’s continued occupation of the Line’s right-of-way would not interfere with trail use or future rail use.

service. 16 U.S.C. § 1247(d); 49 C.F.R. § 1152.29(a)(2)-(3). These continue to be the “only requirements” for qualifying as a trail sponsor and “invoking section 1247(d).” T & P Railway—Aban. Exemption—in Shawnee, Jefferson, & Atchison Counties., Kan. (T & P), 2 S.T.B. 36, 45 (1997), pet. for review granted sub nom., Becker v. STB, 132 F.3d 60 (D.C. Cir. 1997) (concluding that the Board did not have jurisdiction to issue a NITU in T & P because the abandonment had been consummated). Thus, a trail sponsor may be qualified regardless of its affiliation with the railroad and, indeed, the railroad itself may serve as the trail sponsor. See, e.g., Great Redwood Trail Agency—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. at 6 (STB served Oct. 25, 2023). Moreover, the Board does not decide whether interim trail use is desirable for a particular line, Suppl. Trails Act Procs., 4 I.C.C.2d at 156, nor is there a requirement under the Trails Act that a railbanked line be developed in a certain way for recreational use, CSX Transp., AB 55 (Sub-No. 514X), slip op. at 2. Accordingly, the Board will not become “involved in determining the type or level of trail use for a particular right-of-way,” and there is also no “time limit for how quickly a trail must be developed to its intended level of use.” CSX Transp., AB 55 (Sub-No. 514X), slip op. at 2 (citing Mo. Pac. R.R., AB 3 (Sub-No. 63)). Moreover, the fact that the trail sponsor may not be the one to “fully develop the right-of-way as a trail,” or otherwise make it “available for recreational trail use,” is indeed “not dispositive.” T & P, 2 S.T.B. at 46, 47.

But none of this is to say that a trail sponsor is under no obligation to make a right-of-way available to the public for some kind of trail use after it has been railbanked.¹⁴ As explained above, a trail use requirement is implicit in the Trails Act. And while the Board understands that converting rail rights-of-way into trails can be complicated and time consuming, a railbanked right-of-way can be suitable for a “variety of recreational uses,” such as walking, hiking, bird watching, and viewing wildlife, none of which requires that the corridor be developed in a particular way or to a certain degree. See Mo. Pac. R.R., AB 3 (Sub-No. 63), slip op. at 2-4 (declining to revoke a certificate of interim trail use or abandonment (CITU) based in part on trail sponsor’s representation that “the corridor is currently suitable, in its present condition,” for such purposes and despite evidence that the sponsor lacked funds to “develop the trail” for bicycling or other “advanced recreational uses”). As noted above, CSXT and GHL have given no explanation as to why no progress has been made to make the Line available to the public for some sort of basic recreational trail purpose.¹⁵ The facts of this case, taken in their entirety,

¹⁴ The Board’s statement in T & P that it will not “involuntarily revoke a NITU on grounds other than a failure to continue to meet the financial and liability conditions of the statute,” 2 S.T.B. at 42, to the extent it suggests that trail use is not a requirement of railbanking, no longer reflects the position of the Board, and is inconsistent with other agency precedent and the Trails Act, as discussed above.

¹⁵ For example, it could be that the trail sponsor is in negotiations to transfer the trail to a new sponsor or hire a third party to operate the trail, and for reasons particular to those discussions—perhaps because the new sponsor or operator has plans to develop the trail in a specific way—the current sponsor has delayed establishing or allowing trail use pending completion of the negotiations. No such facts, or anything remotely resembling them, have been offered in this case.

demonstrate that CSXT and GHL have not sufficiently advanced the “interim use” of the Line as a trail as required for continued railbanking. This warrants revocation of the NITU.

In this case, CSXT and GHL have had ample opportunity to properly railbank the Line under the Trails Act. The totality of the circumstances here—CSXT and GHL’s unexplained failure to make the Line available to the public as a trail in any way and their unpersuasive response to the allegations concerning Ferg’s, set against the backdrop of repeated warnings that CSXT and GHL need to actively pursue interim trail use/railbanking and reservations about their intentions regarding the Line—demonstrate that the Trails Act is not being properly utilized. For the foregoing reasons, the Board will revoke the NITU issued to CSXT and GHL on January 13, 2020, and CSXT’s authority to abandon the Line will be reinstated, subject to the previously imposed salvage-related conditions. CSXT will have 60 days from the service date of this decision, or until January 16, 2024, to file a notice of consummation with the Board signifying that it has exercised the authority granted and fully abandoned the Line. See 49 C.F.R. § 1152.29(e)(2). If CSXT does not file a notice of consummation by January 16, 2024, the authority to abandon the Line will automatically expire.

Because the Board is revoking the NITU and reinstating CSXT’s abandonment authority, the Board will deny RTC’s outstanding requests to vacate CSXT’s abandonment authority and to reinstate the City’s adverse abandonment proceeding. The Board will also deny as unnecessary the City’s outstanding requests to conduct discovery of CSXT and GHL and to submit documents referred to in CSXT and GHL’s March 28 response.

It is ordered:

1. The NITU served on January 13, 2020, is revoked, and CSXT’s authority to abandon the Line is reinstated, subject to the previously imposed salvage-related conditions.
2. CSXT may file a notice of consummation with the Board signifying it has exercised the authority granted and fully abandoned the Line by January 16, 2024, after which the authority to abandon the Line will automatically expire if no consummation notice has been filed.
3. RTC’s and the City’s motions to strike are denied.
4. RTC’s requests to vacate CSXT’s abandonment authority and reinstate the City’s adverse abandonment proceeding are denied.
5. The City’s requests to conduct discovery of CSXT and GHL and to submit additional documents referred to in CSXT and GHL’s March 28 response are denied.
6. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz. Board Members Fuchs and Schultz dissented with separate expressions.

BOARD MEMBER FUCHS dissenting:

I respectfully dissent from today's decision (Decision) because the Board fails to consider all the circumstances and policy implications pertinent to this case and provides an insufficient process in departing from its established precedent and clear regulations. In previous decisions in this docket, the Board affirmed GHIL as a qualified trail sponsor, cited some of GHIL's extensive history in serving as a placeholder for another qualified trail sponsor, and pointed to no law requiring GHIL to engage in specific trail development activities within a certain timeframe after an interim trail use/railbanking agreement is reached. Now, in the middle of on-going negotiations between CSXT, GHIL, and the City, and against the backdrop of a takings case concerning the right-of-way at issue in this proceeding, the Decision sets new development and deadline requirements and revokes the NITU previously issued to CSXT and GHIL. Though I appreciate the pressures and sensitivities of the takings case, and I recognize that the corporate affiliate as trail sponsor dynamic seen in this case has both benefits and drawbacks, the Board should do more to promote important values—especially transparency and public participation—while advancing all relevant statutory policies, including the objective to preserve established railroad rights-of-way for future reactivation of rail service. Rather than take the drastic step of revocation with little notice and opportunity for comment, the Board ought to have requested additional briefing on both specific factual matters and broader policy effects.

The Decision is a largely unannounced departure from the Board's regulations and precedent. The Board has established that there are "only" two requirements for qualifying as a trail sponsor¹ (i.e., assuming legal and financial responsibility and keeping the right-of-way available for rail service reactivation), which the Decision acknowledges GHIL satisfies. However, at least for corporate affiliate trail sponsors, the Decision seems to add requirements not found in precedent or regulation. First, even though Board has stated that "the Trails Act does not require a trail to be 'developed' in any particular way,"² the Decision requires GHIL to

¹ Decision 5, 9-10; see also T & P Ry.—Aban. Exemption—in Shawnee, Jefferson, & Atchison Cntys., Kan., 2 S.T.B. 36, 42 (1997), pet. for review granted sub nom., Becker v. Surface Transportation Board, 132 F.3d 60 (D.C. Cir. 1997) ("RTC has sought to create the impression that the ICC, and now the STB, would involuntarily revoke a NITU on grounds other than a failure to continue to meet the financial and liability conditions of the statute. But that simply is not the case.").

² See Jost v. Surface Transportation Board, 194 F.3d 79, 90 (D.C. Cir. 1999) (citing Central Kansas Ry.—Aban. Exemption—in Marion & McPherson Cntys., Kan., AB 406 (Sub-No. 6X), slip op. at 5 (STB served Dec. 18, 1998)); see also Mo. Pac. R.R.—Abandonment in Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka, & Bryan Cntys., Okla., AB 3 (Sub-No. 63), slip op. at 2-4 (ICC served Jan. 4, 1991); Wheeler—Pet. for Declaratory Ord.—

do more to develop the property into a trail, though the Decision does not clearly state what level of development would satisfy its new standard. Second, even though the Board has previously set “no time limit for how quickly a trail must be developed to its intended level of use,”³ the Decision sets a development activity deadline of about two and half years from the time of interim trail use/railbanking agreement.^{4 5} While the Board previously stated its expectation that CSXT and GHL “operate diligently and in good faith in *concluding* their interim trail use/rail banking negotiations,” CSX Transp. Inc.—Aban. Exemption—Pinellas Cnty., Fla., AB 55 (Sub-No. 794X), slip op. at 8 (STB served June 22, 2020) (emphasis added), the Board has said little since the parties concluded their negotiations in 2021, only placing a letter from DOJ in the docket and ordering a response with essentially no explanation of the Board’s contemplated action and associated reasoning. See generally CSX Transp. Inc.—Aban. Exemption—Pinellas Cnty., Fla., AB 55 (Sub-No. 794X) (STB served Jan. 27, 2023). The parties—relying on precedent and regulation and having little notice of the Board’s new, more-than-ministerial approach to 49 U.S.C. § 1247(d)—have good reason to expect their actions are lawful.

The Decision justifies its departure from precedent and regulations by pointing to the “totality of the circumstances,” but it fails to consider the broad history of CSXT and GHL conduct in similar situations where GHL has acted as a placeholder trail sponsor. In CSX Transportation, Inc.—Abandonment Exemption—in Logan County, W. Va. (Hatfield), AB 55 (Sub-No. 763X) (STB served Oct. 7, 2022), CSXT and GHL entered negotiations over interim trail use/railbanking in 2016, and—in the face of opposition to conclude the process more

Rail Line in Erie Cnty, Pa., FD 35082, slip op. at 8 (STB served Aug. 27, 2008); Idaho N. & Pac. R.R.—Aban. & Discontinuance Exemption—in Wash. & Adams Cntys., Idaho, 3 S.T.B. 50, 59 (1998); CSX Transp., Inc.—Aban. Exemption—in Monroe & Owen Cntys., Ind., AB 55 (Sub-No. 514X) slip op. 2 (STB served Sept. 30, 1997).

³ T & P, 2 S.T.B. at 46. But see Decision 10.

⁴ Notably, the Decision does not acknowledge its new deadline requirement is shorter than the time the Board’s regulations allow parties to negotiate for an interim trails use/railbanking agreement without any development activity at all.

⁵ In addition, the Board has previously stated that its chief concern is that “nothing occur that would preclude a railroad’s right to reassert control over the right-of-way at some future time to revive active service.” Wheeler—Pet. for Declaratory Ord—Rail Line in Erie Cnty., Pa., FD 35082, slip op. at 9-10 (STB served Aug. 27, 2008); see also T&P, 2 S.T.B. at 43. In addressing CSXT’s lease with Ferg’s, a bar located in the right-of-way, the Decision states that CSXT and GHL do not argue that dual use is possible or describe how Ferg’s may otherwise share the right-of-way with a trail. Decision 8-9. However, CSXT claims that the lease is terminable upon 30 days’ notice by CSXT and is not inconsistent with future trail use or reactivation of rail service. Considering CSXT apparently retains power to keep itself from being precluded from reasserting control, and factoring in the time since abandonment authority was first sought, which is a shorter period than some other GHL cases noted below, the Board’s implicitly requiring additional evidence and argument from CSXT and GHL earlier is an expansion of precedent.

quickly—the parties continued their negotiations until Hatfield McCoy Regional Recreation Authority eventually took over as the potential qualifying trail sponsor and, in October 2022, reached agreement with CSXT for interim trail use/railbanking of a 3.18 miles rail line. In CSX Transportation, Inc.—Abandonment Exemption—in Alachua County, Fla. (Alachua County), Docket No. AB 55 (Sub-No. 718X), after more than seven years of negotiations, where Alachua County and GHL exchanged places as qualified trail sponsor multiple times, CSXT and GHL entered into the same type of interim trails use/railbanking agreement (i.e., a corporate affiliate transaction) at nearly the same time as this case. Not only has the Board failed to raise any concern in that case, the CSXT-GHL agreement has apparently coincided with further trail-related discussions in the area.⁶ As a general matter, the Board has routinely allowed GHL to serve as trail sponsor with apparently little to no development activity for an extended time. See e.g., CSX Transp., Inc.—Aban. Exemption—in Worcester Cnty., Mass., AB 55 (Sub-No. 691X) (STB served Aug. 3, 2017) (permitting GHL and CSXT to engage in negotiations in 2010 and allowing, seven years later, City of Leominster and the City of Fitchburg to replace GHL); New York Cent. Lines, LLC—Aban. Exemption—in Dutchess Cnty., N.Y., AB 565 (Sub-No. 17X) (STB served Oct. 23, 2019) (issuing, approximately 15 years after an initial NITU, and 7 years after a NITU permitting GHL to negotiate with respect to a 3.2-mile segment, a request for a new NITU permitting Dutchess County to negotiate for a portion of the 3.2-mile segment).⁷ In this case, CSXT and GHL are engaged in negotiations with the City, and they submitted a status report just five months ago. Given the Board’s experience with GHL-related substitutions at both the negotiation phase (as in Hatfield) and the interim trail use/railbanking phase (as in Alachua County), and its frequent allowance of GHL to serve as placeholder trail sponsor, CSXT and GHL have reason to conclude not only that their actions are lawful but that the Board would see that these actions proactively further the development of trails.

Considering the precedent, regulations, and history, I view a better course would have been to request additional briefing on the status of CSXT and GHL’s negotiations with the City, specific factual issues raised in the Decision, and the broader policy effects from potential actions in this case. (City Reply 7, March 8, 2023.) This course would have provided the parties greater notice of the Board’s new views and a fuller opportunity to offer any necessary evidence

⁶ See e.g., High Springs Officials Resurrect Idea to Transform Railway to New Recreational Trail, WUFT, Apr. 9, 2021, <https://www.wuft.org/news/2021/04/09/high-springs-officials-resurrect-idea-to-transform-railway-to-new-recreational-trail/>.

⁷ See also CSX Transp., Inc.—Aban. Exemption—in Allegheny Cnty., Penn., AB 55 (Sub-No. 793X) (STB served March 10, 2022) (allowing GHL to replace the City of Pittsburgh after nearly three years of negotiation between that city and CSXT); Ala. & Fla. Ry.—Aban. Exemption—in Geneva, Coffee, & Covington Cntys. Ala., AB 1073 (Sub-No. 1X) (STB served March 24, 2022) (granting the NITU between CSXT and GHL and denying the NITU with the City of Andalusia).

and argument, and it would have provided the Board an opportunity to secure additional facts.⁸ It also would have allowed the Board to further benefit from the broader views of entities affected by the Decision, including other carriers and communities not directly involved in this proceeding. The Decision emphasizes the purpose of § 1247(d) as encouraging the development of additional trails, but it does not mention the “national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use.” 16 U.S.C. § 1247(d). In the face of competing views as to whether the conduct of CSXT and GHF promotes the development of additional trails,⁹ the Decision seems to constrain the use of the § 1247(d) process, and the public likely has views on the impact of today’s action on the preservation of railroad rights-of-way for future reactivation of service.¹⁰ The Board has typically provided notice and solicited comment on trails-related policies such as deadlines¹¹ and trail sponsor requirements, 49 C.F.R. § 1152.29,¹² and such a process promotes transparency and public participation. The Board need not have departed from established precedent and clear regulation without further searching for ways to advance those important values.¹³ I respectfully dissent.

⁸ For example, the Board seems to speculate as to the negotiations with a new sponsor or operator, but the Board has little need for such speculation when it has the option to request additional facts. See Decision 10 n.15.

⁹ In revoking the NITU, without any guarantee that CSXT will pursue the § 1247(d) process with the City, the Board raises the prospect of the City’s seeking adverse abandonment authority, as it sought earlier in this matter, but it is not clear such action would result in trail use. I note that some have questioned whether the Board even has adverse abandonment authority. See, e.g., City of South Bend v. Surface Transportation Board, 566 F.3d 1166, 1171-72 (D.C. Cir. 2009) (J. Kavanaugh concurring).

¹⁰ To be sure, I recognize the concern that negotiations between corporate affiliates for interim trail use/rail banking raise drawbacks under the § 1247(d) process. For example, it is not clear whether and how, prior to this type of decision, the Board could stop a rail carrier from engaging in negotiations with a corporate affiliate solely for the purpose of mollifying concerned adjacent landowners with government-provided compensation, only for that carrier to take back control of the right-of-way and invalidate the agreement soon thereafter. However, even in this hypothetical example, development and deadline requirements, and immediate revocation, may not be the best approach, and the Board’s briefing request could ask about any possible other approaches or protections in this type of scenario.

¹¹ See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) (STB served Dec. 4, 2019).

¹² See Rails-to-Trails Conservancy, Pet., March 22, 2019, Rails-to-Trails Conservancy—Pet. for Rulemaking, EP 753.

¹³ The Board may ultimately conclude that the change in policies articulated by the Decision is better suited for notice-and-comment rulemaking.

BOARD MEMBER SCHULTZ dissenting:

I respectfully dissent from the Board's decision (Decision) to revoke the notice of interim trail use or abandonment (NITU) issued to CSX Transportation, Inc. (CSXT), and the Georgetown and High Line Railway Company (GHL).

As the Decision itself acknowledges, this agency's role under the Trails Act is limited and essentially ministerial. Decision 9. The Board must only decide that the Trails Act has been properly invoked and that its requirements will be met. To make this determination, the Board's responsibility is limited to confirming that a trail sponsor agrees to assume full liability for the property during the interim trail use and that it will keep the property available for reactivation of rail service. 16 U.S.C. 1247(d).¹ Beyond that, the Board has no involvement in determining the type, level, or condition of the trail for a particular right-of-way, and there is no requirement under the Trails Act that the trail be "developed" in any particular way for recreational use.² Nor is there any time limit for how quickly a trail must be developed to its intended level of use.³

While acknowledging these limitations, the Decision departs from them by requiring CSXT and GHL to "actively pursue" trail use and make "tangible progress" in developing the right of way. Board precedent clearly recognizes that the development of a trail may take time and establishes that "there is no time limit for how quickly a trail must be developed to its intended level of use." CSX Transp.—Aban. Exemption—in Monroe & Owen Cntys., Ind., AB 55 (Sub-No. 514X), slip op. at 2 (STB served Sept. 30, 1997) (citing Mo. Pac. R.R., AB 3 (Sub-No. 63)); Wheeler, FD 35082, slip op at 9; see Kan. E. R.R.—Aban. Exemption—in Butler & Greenwood Cntys., Kan., AB 563 (Sub-No. 1) (STB served June 2, 2006); see Decision 10. Nevertheless, the Decision faults CSXT and GHL for not acting fast enough. The Decision's concern that the Line is not currently being used as a trail seems misplaced, particularly given CSXT's and GHL's representations regarding efforts to develop the right of way. CSXT and GHL note the following: 1) they have received "multiple serious offers" to acquire the Line for trail use; 2) they continue to seek trail users; and 3) they are considering hiring a third party to operate the Line as a trail "in light of significant use the trail may receive if the Tampa Bay Rays build their new baseball stadium in the vicinity of the trail." (CSXT Reply 11-12, Mar. 28,

¹ See Wheeler—Pet. for Declaratory Ord.—Rail Line in Erie Cnty., Pa., FD 35082, slip op. at 9 (STB served Aug. 27, 2008); Chelsea Prop. Owners—Aban.—Portion of the Consol. Rail Corp.'s W. 30th St. Secondary Track in N.Y., N.Y., AB 167 (Sub-No. 1094A), slip op. at 6 (STB served June 13, 2005).

² Wheeler, FD 35082, slip op at 9; Idaho N. & Pac. R.R.—Aban. & Discontinuance Exemption—in Washington & Adams Cntys., Idaho, 3 S.T.B. 50, 59 (1998); CSX Transp., Inc.—Aban. Exemption—in Monroe & Owen Cntys., Ind., AB 55 (Sub-No. 514X), slip op. at 2 (STB served Sept. 30, 1997).

³ Wheeler, FD 35082, slip op at 9; Chelsea Prop. Owners, AB 167 (Sub-No. 1094A), slip op. at 6; Idaho N. & Pac. R.R., 3 S.T.B. at 59; Mo. Pac. R.R.—Aban. in Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka, & Bryan Cntys., Okla., AB 3 (Sub-No. 63), slip op. at 4 (ICC served Jan. 4, 1991).

2023.) Most recently, CSXT and GHL, with the consent of the City of St. Petersburg (City), notified the Board that they are in negotiations with the City concerning the Line. (CSXT Status Report 1, June 15, 2023.) Significantly, despite its allegation that CSXT and GHL are not using the Trails Act for its intended purpose, the City has stated that “the public interest is best served by leaving the NITU in place for the time being.” (City Comment 7, Mar. 8, 2023.) Notwithstanding these representations, the Decision revokes the NITU that would otherwise permit these discussions and plans to develop further, effectively imposing a time limit for how quickly the Line must be developed for interim trail use.

I do not agree with the Decision’s finding that CSXT and GHL are not meeting the statutory requirements of the Trails Act.⁴ By revoking the NITU, the Decision cuts against the Board’s duty to “carry out its mandate in ways that further, rather than unnecessarily hinder” the goals set forth under the Trails Act. Jost v. STB, 194 F.3d 79, 89 (D.C. Cir. 1999). For these reasons, I dissent.

⁴ In finding that CSXT’s lease with Ferg’s is not consistent with the Trails Act, the Decision dismisses CSXT’s and GHL’s argument that the lease is permissible because it can be stopped to allow for future trail use. The Board, however, has found that dual uses of trails are not inconsistent when the use is only temporary and will cease when trail use is developed or all or part of the property is needed for active rail service. Kan. E. R.R., AB 563 (Sub-No. 1), slip op. at 3 (finding that leasing segments of a railbanked corridor to adjacent landowners on an interim basis is not inconsistent with the Trails Act).