

Wisconsin Department of Transportation

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Tony Evers
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January 25, 2024

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VIA E-FILE

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
January 25, 2024
Part of
Public Record

RE: Wisconsin & Southern Railroad LLC. – Notice of Modified Certificate of Public Convenience and Necessity – Rail Line between Mazomanie to Sauk City, WI
Docket No. FD 31340
Substitution of Interim Trail User

Dear Ms. Brown,

Pursuant to 49 C.F.R. § 1152.29(f)(1), the Wisconsin Department of Natural Resources (WDNR), existing trail user, and Dane County, new trail user, jointly request, through the Wisconsin Department of Transportation, for substitution of Dane County for WDNR as trail user for a segment of rail line extending approximately for a total of 3.24 miles from milepost 4.72 near the Town of Mazomanie, in Dane County, Wisconsin to milepost 7.96 near the Village of Sauk City, in Sauk County.

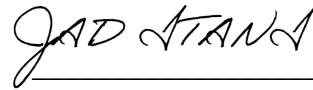
By decision served on April 12, 2017, the Surface Transportation Board (Board) granted WDNR's request for the issuance of a Notice of Interim Trail Use (NITU) for the rail line extending from milepost 7.96 near the Village of Sauk City and ending at milepost 13.07 near the City of Prairie du Sac, in Sauk County for a 5.11 mile segment of rail line. On April 24, 2023, the Board granted WDNR's request for the issuance of a NITU extending the previous rail line from milepost 7.96 in the Village of Sauk City to milepost 4.72 near the Town of Mazomanie, Wisconsin. On September 29, 2023, the Board extended the latter NITU until October 21, 2024.

As required by 49 C.F.R. § 1152.29(f), WDNR and Dane County hereby jointly submit to the Board the following:

- (1) Copies of the April 24, 2023, NITU decision and the October 2, 2023, extension decision are enclosed as Exhibit A;
- (2) A signed Statement of Willingness to Assume Financial Responsibility by Dane County is enclosed as Exhibit B;

- (3) Dane County acknowledges that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way of the Rail Line for rail services; and
- (4) WDNR and Dane County intend that the transfer of responsibility for the right-of-way of the Rail Line be effective as of the approval date of this request.

The Wisconsin Department of Transportation requests the filing fee for this Substitution of Interim Trail User be waived pursuant to 40 CFR § 1002.2(e)(1).

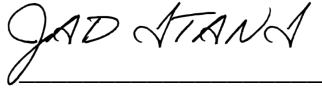


Jad Itani
Assistant General Counsel
Direct Line (608) 267-3149
Jad.itani@dot.wi.gov

CC: Service List in Docket FD 31340

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing filing to be served in regards to **FD31340** by electronic mail, or regular mail pursuant to 49 C.F.R. § 1104.12, this 25th day of January, 2024, on all parties of record on the service list.



Jad Itani
WI State Bar No. 1106703
Wisconsin Department of Transportation
Office of General Counsel

51649
DO

SERVICE DATE – APRIL 24, 2023

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. FD 31340

WISCONSIN AND CALUMET RAILROAD COMPANY, INC.—
MODIFIED RAIL CERTIFICATE

Decided: April 24, 2023

In a decision served on October 28, 1988, the Board's predecessor, the Interstate Commerce Commission (ICC), issued a modified certificate of public convenience and necessity (modified certificate) under 49 C.F.R. § 1150.23 to the Wisconsin and Calumet Railroad Company, Inc. (WICT), to operate a rail line owned by the State of Wisconsin¹ between milepost 0.07 at Mazomanie, Wis., and milepost 13.07 at Prairie du Sac, Wis., a distance of approximately 13 miles. The current operator, the Wisconsin and Southern Railroad, L.L.C. (WSOR), is a successor to WICT.²

On March 10, 2023, WSOR filed, under 49 C.F.R. § 1150.24, a 60-day notice of its intent to terminate service under the modified certificate on an approximately 3.24-mile segment, from milepost 7.96 in the Village of Sauk City, in Sauk County, Wis., to milepost 4.72, near the Town of Mazomanie, in Dane County, Wis. (the Line). According to WSOR, no traffic has moved over the Line for more than six months.

Also on March 10, 2023, WisDOT filed a petition on behalf of the Wisconsin Department of Natural Resources (WDNR) for a notice of interim trail use or abandonment (NITU) for the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. WDNR has submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way as required pursuant to 49 C.F.R. § 1152.29, and has acknowledged that the use of the right of way for trail purposes is subject to future reconstruction and reactivation for rail service. WisDOT, WDNR, and WSOR have agreed to work cooperatively for WDNR's use of the right of way. (WisDOT Notice 2.)

¹ The State of Wisconsin, through its Department of Transportation (WisDOT), acquired the line after the previous owner, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, became bankrupt and discontinued service and the line was authorized for abandonment. See Chi., Milwaukee, St. Paul & Pac. R.R.—Aban.—Middleton to Richland Ctr., Wis., AB 7 (Sub-No. 99) (ICC served May 6, 1982).

² In 1992, WICT was purchased by the Wisconsin & Southern Railroad Co., which is succeeded by WSOR.

The purchase of the Line by Wisconsin was made pursuant to Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions (Common Carrier Status of States), 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Under that precedent, where a state entity acquires a rail line approved for abandonment and the abandonment has not been consummated, the acquisition is exempt from Board regulation, as is the state entity after the acquisition has taken place. See City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137, slip op. at 2 (STB served May 31, 2018). The Board has found that lines of railroad acquired under Common Carrier Status of States can be subject to trail use under the Board's procedures as long as the owner of the line is willing to enter into negotiations for trail use on a that line. Id., slip op. at 6. Wisconsin, acting through WisDOT, has clearly indicated with its pleadings that it is willing to negotiate for trails use on the Line.

Inasmuch as abandonment has never been consummated, and because the WisDOT/WDNR request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued for the Line. The parties are free to negotiate an agreement during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within ten days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). Because WSOR has already filed its termination notice under 49 C.F.R. § 1150.24, if no interim trail use agreement is reached, the modified certificate shall be considered terminated as of the end of the NITU negotiating period. Use of the right-of-way for trail purposes is subject to future restoration for railroad purposes. See 49 C.F.R. § 1152.29(d)(2).

It is ordered:

1. The request for a notice of interim trail use under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is accepted. WisDOT may negotiate with WDNR for interim trail use for the Line for a period of 180 days from the service date of this decision and notice, until October 21, 2023.
2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
3. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the trail sponsor's continuing to meet the financial obligations for the right-of-way described in paragraph 2 above.
4. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
5. If an interim trail use agreement is reached by October 21, 2023 (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an

agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no interim trail use agreement is reached, the modified certificate shall be considered terminated as of the end of the NITU negotiating period.

6. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.



Wisconsin Department of Transportation

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Tony Evers
Governor

Craig Thompson
Secretary

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September 29, 2023

ENTERED
Office of Proceedings
September 29, 2023
Part of
Public Record

VIA E-FILE

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, D.C. 20423-0001

RE: Request for Extension of Time for the Wisconsin Department of Transportation; FD 31340; Wisconsin and Calumet Railroad Company, Inc. – Notice of Modified Certificate of Public Convenience and Necessity – Rail Line between Mazomanie to Prairie du Sac, WI

Dear Ms. Brown,

The Wisconsin Department of Transportation (WisDOT) filed a Petition for Interim Trail Use on behalf of the Wisconsin Department of Natural Resources (WDNR) for a segment of rail line extending approximately 3.24 miles, beginning near milepost 4.72, near the Town of Mazomanie in Dane County, Wisconsin, to milepost 7.96, near the Village of Sauk City in Sauk County, Wisconsin, through Zip Codes 53560 in Dane County and 53583 in Sauk County.

WisDOT has been negotiating with WDNR to establish an interim trail agreement, which continue in good faith. Since the Board's decision in March 2023, WDNR staff has been in continuing discussions regarding funding, development, and operating partners. All parties are optimistic that these negotiations will be resolved prior to the extension date requested.

On behalf of the WDNR, WisDOT, in conjunction with the Wisconsin & Southern Railroad, respectfully request a one-year extension until October 21, 2024. This request is the first extension request made by WisDOT. Further, WisDOT requests the filing fee for this extension be waived pursuant to 49 CFR § 1002.2(e)(1).

Decision ID NO.: 51900
DECIDED DATE: 10/2/2023
SERVED DATE: 10/2/2023
APPROVED: [Signature] Acting Director
Office of Proceedings
GRANTED
Extended to 10/21/24.

[Signature]
Jad Itani
Assistant General Counsel
Direct Line (608) 267-3149
Jad.itani@dot.wi.gov

CC: Service List in Docket FD 31340

1 It should be noted that undersigned counsel filed a substitution of counsel with the Surface Transportation Board regarding Docket Number FD 31340 on September 28, 2023.

FILING FEE WAIVED

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing filing to be served in regards to **FD31340** by electronic mail, or regular mail pursuant to 49 C.F.R. § 1104.12, this 29th day of September, 2023, on all parties of record on the service list.

A handwritten signature in black ink, appearing to read 'Jad Itani', is written over a horizontal line. The signature is fluid and cursive.

Jad Itani
WI State Bar No. 1106703
Wisconsin Department of Transportation
Office of General Counsel

2023 RES - 178

AUTHORIZING A STATEMENT OF WILLINGNESS AND INTERIM TRAIL USE / RAIL BANKING AGREEMENT FROM THE WISCONSIN DEPARTMENT OF TRANSPORTATION FOR THE GREAT SAUK AND WALKING IRON TRAILS

The 2018-23 Dane County Parks & Open Space Plan (POSP) identifies a shared-use bicycle/pedestrian trail that connects the Great Sauk Trail in Sauk City to Mazomanie. Public input gathered throughout the POSP planning process showed strong support for development of bicycle/pedestrian trails throughout the county.

Dane and Sauk County are collaboratively leading project planning for a recreational bridge over the Wisconsin River. Dane County is concurrently working on planning and design for a rail to trail conversion from the proposed bridge heading south for approximately three miles towards Mazomanie. The trail is known as the Great Sauk Trail in Sauk County and will likely be known as the Walking Iron Trail on the Dane County side.

The Wisconsin Department of Transportation (WisDOT) rail banked the corridor extending between a point at approximately railroad milepost 7.96 on the Wisconsin and Southern Railroad Company's ("WSOR") Sauk Subdivision in Sauk County and ending at railroad milepost 4.72 of the WSOR Sauk Subdivision (aka the DNR's Lower Wisconsin State Riverway parking lot on the west side of Hwy 78) in Dane County.

Dane County desires to obtain use of the corridor in order to establish a recreational trail. WisDOT has agreed to permit Dane County the temporary use of the Property until such time as WisDOT, or WisDOT's successors in interest, is able to commence restoration and reconstruction of the Property for railroad purposes.

NOW, THEREFORE, BE IT RESOLVED that the Dane County Board of Supervisors and the Dane County Executive hereby authorize a Statement of Willingness to Assume Financial Responsibility to the Surface Transportation Board and an Interim Trail Use / Rail Banking Agreement with the Wisconsin Department of Transportation for the construction of a public recreational trail; and

BE IT FINALLY RESOLVED that the County Executive is hereby authorized and directed to sign the documents on behalf of Dane County.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 31340

WISCONSIN & SOUTHERN RAILROAD LLC
-- MODIFIED RAIL CERTIFICATE --
DANE AND SAUK COUNTIES, WISCONSIN

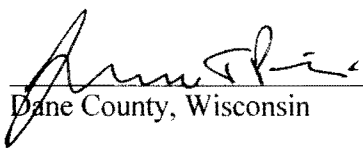
STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY BY
DANE COUNTY, WISCONSIN
PURSUANT TO 49 CFR 1152.29

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 with respect to the right-of-way owned by the Wisconsin Department of Transportation and operated by Wisconsin & Southern Railroad LLC (WSOR), Dane County is willing to assume full responsibility for: (1) Managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right of way.

The property, known as the Sauk Subdivision, extends from railroad milepost 4.72 in the Town of Mazomanie, Dane County, to railroad milepost 7.96, in the in the Village of Sauk City, Sauk County, a distance of 3.24 miles in Dane and Sauk Counties, Wisconsin. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB FD 31340.

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

Dane County 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, WSOR, on the same date it is being served on the Board.

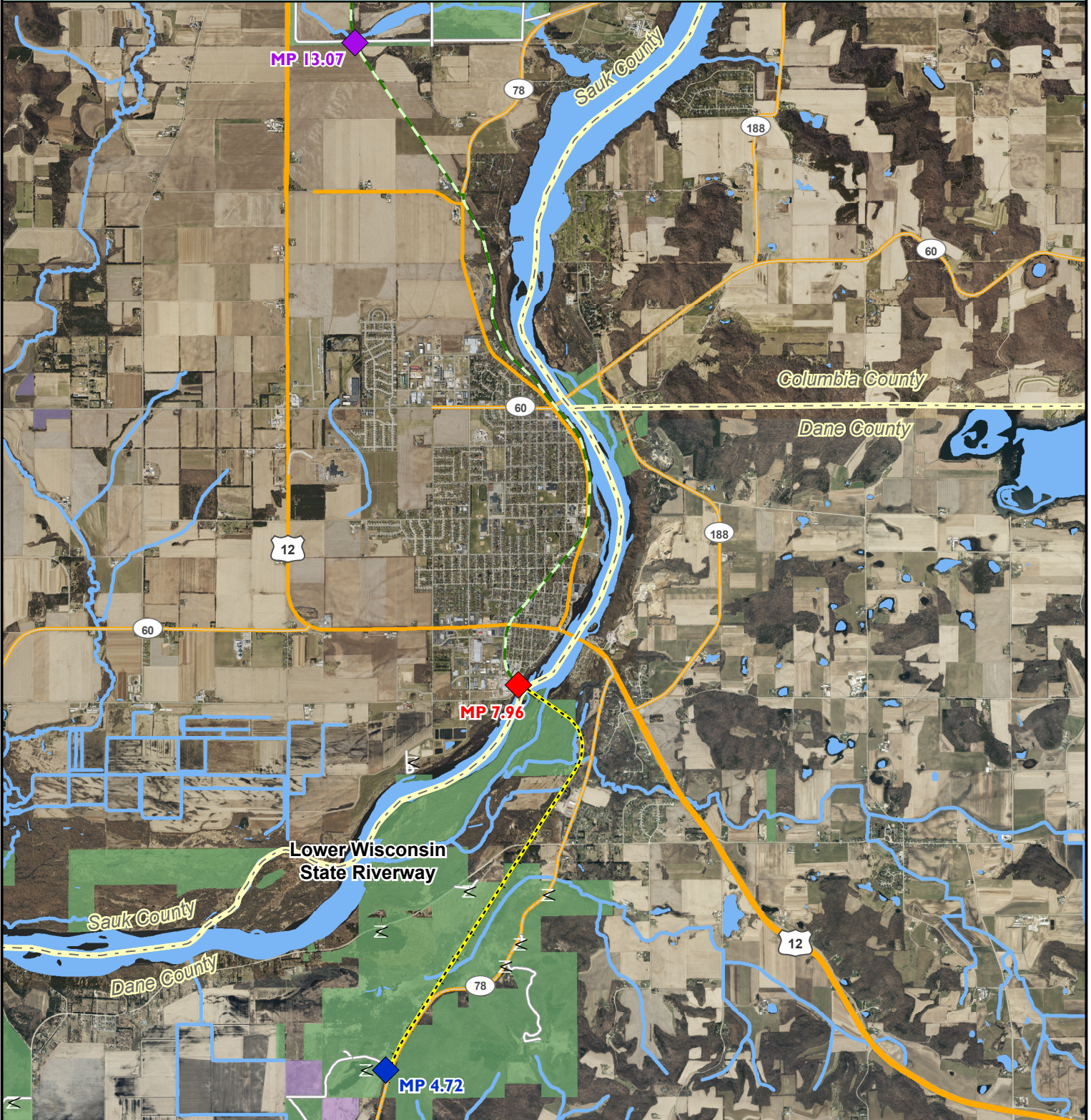

Dane County, Wisconsin

11-6-23
Date

By: Joe Parisi, Dane County Executive

ATTACHMENT A

DRAFT



Milepost 13.07

Further described as 89.749613 W lat., 43.329551 N long., or southern gate of the former Badger Army Ammunition Plant.

Milepost 7.96


Further described as 89.727558 W lat., 43.265416 N long., or the eastern extent of Water Street.

Milepost 4.72

Further described as 89.745469 W lat., 43.227135 N long., or railroad crossing 392015V (Public).

 DNR Fee Title

 DNR Easement

 Walking Iron Trail (proposed)

 Great Sauk State Trail

0 0.25 0.5 1 Miles

WISCONSIN DEPARTMENT OF NATURAL RESOURCES



Bureau of Parks and Recreation
Jun 29, 2023

Attachment A - Sauk/Dane Counties - jcw