

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

ENTERED
Office of Chief Counsel
January 9, 2026
Part of
Public Record

**CSX TRANSPORTATION, INC. AND GEORGETOWN AND HIGH LINE
RAILWAY COMPANY, LLC’S PETITION TO REOPEN THE PROCEEDING
AND VACATE THE REVOCATION DECISION**

In approximately two months, Board staff are scheduled to argue in the Court of Appeals to defend a decision that now-Chairman Fuchs called “a largely unannounced departure from the Board’s policy and precedent” and that now-Vice Chair Schultz similarly found to “depart[]” from precedent and to have ignored representations of ongoing negotiations among CSX Transportation, Inc. (“CSXT”), the Georgetown and High Line Railway Company LLC (“GHL”), and the City of St. Petersburg (“City”).¹ As set forth in the City’s request for a one-year extension of the Notice of Interim Trail Use (“NITU”) filed on December 30, 2025, those negotiations are now nearing a successful conclusion, with CSXT, GHL, and the City having reached an agreement in principle that the parties are bringing before

¹ *CSX Transp., Inc.—Abandonment Exemption—In Pinellas Cnty., Fla.*, Docket No. AB 55 (Sub-No. 794X), at 12–17 (STB served Nov. 14, 2023) (Fuchs, Bd. Member, dissenting; Schultz, Bd. Member, dissenting) (“Revocation Decision”).

the St. Petersburg City Council on January 22, 2026 and hope to finalize and close on in the coming months.

In light of these facts, there is no reason for the Board or the United States Department of Justice to expend resources to defend a decision that a current majority of the Board found to be wrongly decided. Indeed, the Board’s “brief [in the pending appeal] does not reflect the views of the dissenting members” who now make up that majority.² As now-Chairman Fuchs recognized, the Revocation Decision wrongly “leaves the impression that [the Board] now simply disfavors corporate affiliate placeholder trail sponsors, notwithstanding any conflict with prior precedent or agency regulations and any broader drawbacks for the preservation of railroad rights-of-way.”³ Now-Vice Chair Schultz similarly “disagree[d] with the continued direction in this case in which the Board has decided to expand its ministerial role under the Trails Act and attempt to police the use of a right-of-way” and further found that the Revocation Decision “create[s] an unnecessary barrier to the establishment of a trail” and that the “Board should not take this approach in future cases.”⁴

CSXT and GHL (collectively “Petitioners”) thus petition the Board to reopen the above-captioned proceeding on the basis of substantially changed circumstances

² STB Br. at 15 n.4, *CSX Transp., Inc. v. STB*, No. 23-13860 (filed June 13, 2025).

³ *CSX Transp., Inc.—Abandonment Exemption—In Pinellas Cnty., Fla.*, Docket No. AB 55 (Sub-No. 794X), at 5 (STB served Jan. 12, 2024) (Fuchs, Bd. Member, dissenting) (“NITU Extension Decision”).

⁴ *Id.* at 6 (Schultz, Bd. Member, dissenting).

and material error and vacate the Revocation Decision. CSXT is authorized to represent that the City of St. Petersburg (the “City”) and its partner, the Trust for Public Land (“TPL”), support the requested relief insofar as it will not affect the City’s NITU for which a one-year extension was sought on December 30, 2025. CSXT and GHL will move to dismiss the pending appeal of the Revocation Decision if the Board grants the requested relief.

BACKGROUND

In 2019, CSXT commenced this proceeding to seek Board authority to abandon an approximately 0.86-mile rail line on CSXT’s Clearwater Subdivision, between milepost ARE 897.57 and milepost ARE 898.43, in St. Petersburg, Pinellas County, Florida (the “Line”). The Board issued a NITU to GHL that same year and CSXT and GHL then negotiated an interim trail use agreement in June 2021. On November 14, 2023, a 3-2 majority of the Board issued a decision revoking the NITU issued to GHL on the basis that Petitioners were “not meeting the statutory requirements of the Trails Act” because the Line was not currently in use as a trail. Revocation Decision at 6–8.

Petitioners appealed the Board’s Revocation Decision on November 27, 2023. The Eleventh Circuit held the appeal in abeyance for one year to allow CSXT and the City to continue negotiating an interim trail use agreement. The abeyance period ended on February 3, 2025, briefing was completed on July 7, 2025, and oral argument is scheduled for the week of February 23, 2026. CSXT and the City have now reached an agreement in principle for the sale of the Line under the NITU issued to the City. A purchase price has been agreed upon and is set to go before

the St. Petersburg City Council on January 22, 2026. Negotiations over the terms of the purchase and sale agreement and due diligence activities are ongoing, and the parties are optimistic that they will be able to close the transaction in 2026. The City filed a timely request for a one-year extension of the NITU on December 30, 2025, and CSXT filed a letter agreeing to the City's request to extend the NITU and continue negotiating on December 31, 2025.

While Petitioners believe that they are on a pathway to a reasonable resolution, the Revocation Decision creates precedents that will make it harder to foster future trail use development, and therefore Petitioners intend to continue with their appeal (which is not moot because the transaction has not yet closed). But if the Revocation Decision were to be vacated by the Board, Petitioners would withdraw their appeal, and would continue ongoing negotiations to conclude the purchase with the City and its partner, TPL.

ARGUMENT

The Board may reopen a proceeding and modify a decision based on material error, new evidence, or substantially changed circumstances. 49 U.S.C. § 1322(c)(1), (3); 49 C.F.R. § 1115.4. “The alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected in order for reopening to be granted.” *Townline Rail Terminal, LLC—Constr. & Operation Exemption—In Suffolk Cnty., N.Y.*, Docket No. FD 36575, at 3 (STB served Mar. 5, 2025). Petitioners must substantiate allegations of material error with specificity. *Id.* at 3 n.3. The Board has reopened proceedings where “the changed circumstance relates to a specifically identified and contested assumption in our prior decisions.”

Ariz. Pub. Serv. Co. & PacifiCorp v. Burlington N. & Santa Fe Ry., Docket No. NOR 41185, at 4 (served May 12, 2003). The Board should reopen this proceeding and vacate the Revocation Decision on the basis of substantially changed circumstances and material error.

I. The Board should reopen and vacate because of the changed circumstance that CSXT and the City have reached an agreement in principle for the sale of the Line.

Prior to the Board’s issuance of the Revocation Decision, Petitioners explained that GHL was acting as a “placeholder” trail sponsor—an arrangement the Board previously accepted in a June 19, 2020 decision—while negotiating with potential permanent sponsors. In a status report filed before the Revocation Decision, CSXT disclosed that it was “engaged in negotiations” with the City concerning the Line and that the City consented to the filing of the status report, thus confirming the existence of active negotiations. CSXT Status Report (filed June 15, 2023). Yet the Board rejected these explanations as “vague” and “not persuasive” in revoking GHL’s NITU. Revocation Decision at 8. As now-Chairman Fuchs explained, if the Board had questions regarding the status of negotiations with the City, “the Board could have easily received this elaboration by requesting information, rather than revoking the previous NITU in this proceeding.” NITU Extension Decision at 5 (Fuchs, Bd. Member, dissenting).

The Revocation Decision was wrong to not credit evidence of ongoing negotiations (as the dissents pointed out), but regardless circumstances have clearly changed. CSXT and the City have now reached an agreement in principle for the sale of the Line for purposes of interim trail use. The parties are finalizing a

purchase and sale agreement and expect to facilitate closing in 2026. This agreement in principle constitutes a substantially changed circumstance which would have materially impacted the Board’s decision to revoke GHL’s NITU. *Cf. Grafton & Upton R.R.—Petition for Declaratory Ord.*, Docket No. FD 36464, 2024 WL 5165789, at *4 (Dec. 18, 2024) (granting motion to reopen a proceeding where a settlement agreement was declared invalid by a court). Had the Board credited CSXT and the City’s representations that bona fide negotiations were ongoing (and ultimately proved fruitful), there would have been no reason to issue the Revocation Decision especially given the Board’s understanding that GHL was serving as a placeholder trail sponsor.

II. The Board should reopen and vacate because the Revocation Decision materially erred in revoking GHL’s NITU.

The Board’s Revocation Decision was unlawful for three reasons, each of which is sufficient to establish material error. These material errors have been thoroughly briefed in the pending appeal before the Eleventh Circuit in *CSX Transportation, Inc. v. Surface Transportation Board*, No. 23-13860-A, and are briefly summarized here.

First, the Revocation Decision impermissibly exceeded the Board’s “essentially ministerial” grant of jurisdiction over NITUs. *Goos v. ICC*, 911 F.2d 1283, 1295 (8th Cir. 1990). Under 16 U.S.C. § 1247(d), the Board may impose managerial, legal, and tax responsibility on a consenting NITU applicant as “terms and conditions . . . of any transfer or conveyance [of a railroad right-of-way] for interim use” as a trail. The statute imposes no requirements on the timeline for or

level of development of a trail once an interim trail use agreement has been reached. *See Wheeler—Pet. for Declaratory Ord.—Rail Line in Erie Cnty., Pa.*, Docket No. FD 35082, at 9–10 (STB served Aug. 27, 2008), *aff’d sub nom., Wheeler v. Material Recovery of Erie Inc.*, 398 F. App’x 786 (3d Cir. 2010); *Idaho N. & Pac. R.R.*, 3 S.T.B. 50, 59 (1998); *see also Jost v. STB*, 194 F.3d 79, 90 (D.C. Cir. 1999). The statute conveys no authority to the Board for the regulation of development of or activity over a trail, instead entrusting that task to other federal and state entities. *See* 16 U.S.C. § 1247(d). And the Board has no authority under the Trails Act to revoke a NITU for any reason at all. *See id.* Yet the Board unlawfully revoked GHL’s NITU on the basis that Petitioners had “not sufficiently advanced the ‘interim use’ of the Line as a trail.” Revocation Decision at 11.

Second, the Board failed to afford Petitioners the process required by the Administrative Procedure Act (“APA”) before revoking the NITU. When an agency seeks to revoke a license, it must provide both: “(1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements.” 5 U.S.C. § 558(c)(1)–(2); *see Gun S., Inc. v. Brady*, 877 F.2d 858, 865 (11th Cir. 1989). Because the NITU is a license under the APA, *see* 5 U.S.C. § 551(8), Petitioners were entitled to an opportunity to cure any deficiencies in their conduct, *see Ursack, Inc. v. Sierra Interagency Black Bear Grp.*, 639 F.3d 949, 961 (9th Cir. 2011). The Board materially erred by failing to provide Petitioners adequate written notice of

the potential revocation of the NITU or an opportunity to demonstrate or achieve compliance with the Board's expectations prior to revocation.

Third, the Board's revocation of the NITU was arbitrary and capricious. The Board revoked the NITU for Petitioners' purported failure to progress toward making the line available to the public despite the agency's longstanding precedent that neither the Trails Act nor Board regulations impose any requirements on a trail sponsor concerning the timeline or scope of development of a railbanked right-of-way as a trail. *See Wheeler*, Docket No. FD 35082, at 9–10. In faulting Petitioners for this lack of development, the Board failed to articulate a clear rule as to how quickly and to what degree a trail sponsor must open a rail line to the public as a trail. And the Board failed to apply the new, vague standard articulated in the Revocation Decision in a subsequent case involving CSXT and GHL. *See N.Y. Cent. Lines, LLC—Abandonment Exemption—In Middlesex Cnty., Mass.*, Docket No. AB 565 (Sub-No. 1X) (STB served Dec. 4, 2023). The arbitrary and capricious nature of the Board's Revocation Decision constitutes material error and thus merits reopening.

* * *

The Board should reopen this proceeding and vacate the November 14, 2023 Revocation Decision on the basis of these material errors. The Revocation Decision constitutes confusing and unlawful precedent that departs from the agency's longstanding, ministerial role under the Trails Act, violates Petitioners' procedural rights under the APA, and contravenes the APA's requirement of reasoned agency

decision making. Each of these material errors, if corrected, would demand a different outcome in this proceeding. As noted above, a majority of the current Board Members agree that the Revocation Decision was wrongly decided. *See* Revocation Decision at 12–15 (Fuchs, Bd. Member, dissenting), 16–17 (Schultz, Bd. Member, dissenting).

CONCLUSION

CSXT and GHL respectfully petition the Board to reopen this proceeding and vacate the Revocation Decision on the basis of material error and substantially changed circumstances. CSXT and GHL are prepared to dismiss the appeal before the Eleventh Circuit following vacatur of the Revocation Decision. Vacatur would resolve the legal infirmities in the Revocation Decision without undermining the Board’s concerns about interim trail use of the Line given the agreement in principle between the City and CSXT. The City and TPL support Petitioners’ requested relief of reopening the proceeding and vacating the Revocation Decision in reliance upon the assurances of Petitioners that such action shall not affect the City’s NITU, for which a one-year extension was sought on December 30, 2025, or the ongoing negotiations between the City and CSXT.

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Dated: January 9, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2026, a copy of the foregoing Petition to Reopen The Proceeding And Vacate The Revocation Decision was served by email upon all parties of record in this proceeding.

/s/ Stephen S. Laudone
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