

244029

August 2, 2017

Ms. Cynthia T. Brown
Chief of Section Administration
Office of Proceedings
Surface transportation Board
395 E Street S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
August 2, 2017
Part of
Public Record

Re: STB Docket No. AB-55 (Sub-No. 691X), *CSX Transportation, Inc. - Abandonment Exemption—In Worcester County, Mass.*

EXPEDITED HANDLING REQUESTED

Dear Ms. Brown:

This office serves as legal counsel to the City of Leominster, Massachusetts and the City of Fitchburg, Massachusetts (the “Cities”). This request is filed on behalf of both cities and the Georgetown and High Line Railway Company, LLC (“GHLR”), the existing trail user.

Pursuant to 49 CFR 1152.29(f)(1), GHLR notifies the Surface Transportation Board that it intends to terminate negotiations for trail use and the Cities intend to become trail users by assuming financial responsibility for the right-of-way. GHLR and the Cities request that the Surface Transportation Board (the “Board”) reopen the abandonment exemption, vacate the existing Notice of Interim Trail Use issues to GHLR, and issue an appropriate replacement NITU to the Cities for the railroad line between Milepost QBU 0.0 (Fitchburg) and QBU 4.20 (Leominster), both within Worcester County, as is shown on the attached “Exhibit A”.

As required by 49 CFR 1152.29(f)(1)(i), a copy of the Decision and Notice of Interim Trail Use or Abandonment in *CSX Transportation, Inc.—Abandonment Exemption—In Worcester County, Mass.*, Docket No. AB-55 (Sub-No. 691X) (served December 27, 2010), as extended until December 27, 2017, is attached as “Exhibit B”.

As required by 49 CFR 1152.29(f)(1)(ii), the Cities provide the following Statement of Willingness to Assume Financial Responsibility. In order to establish interim trail use and rail banking under 16 U.S.C. §1247(d) and 49 CFR §1152.29, City of Leominster, Massachusetts and the City of Fitchburg, Massachusetts are willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of

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any and all taxes that may be levied or assessed against the right-of-way owned and operated by CSX Transportation, Inc., as successor by merger to New York Central Lines, LLC ("CSXT").

The property extends from milepost QBU 0.0 (Fitchburg) and milepost QBU 4.2 (Leominster), in Worcester County, MA. The right-of-way is the line of railroad proposed for abandonment in STB Docket No. AB-55 (Sub-No. 691X).

As required by 49 CFR 1152.29(f)(1)(iii), the Cities acknowledge that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The parties intend that the date on which responsibility for the right-of-way to transfer from GHRL to the Cities is August 4, 2017.

The City of Leominster and the City of Fitchburg have entered into a Purchase and Sale Agreement dated June 14, 2017, with CSX Transportation, Inc. for the purchase and sale of approximately 33.84 acres of land along an approximately 4.20 miles rail corridor. The closing on the sale is scheduled for August 4, 2017. Therefore, the Cities respectfully request that the Board expeditiously grant this request so that closing may take place as scheduled.

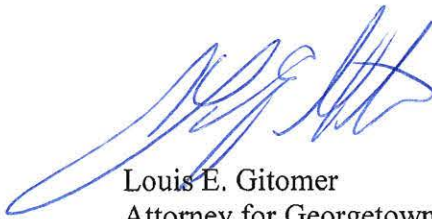
As political subdivisions of the Commonwealth of Massachusetts, the City of Leominster and the City of Fitchburg request a waiver of the Board's filing fees in accordance with 49 CFR 1002.2(e)(1).

Thank you for your consideration of this matter.

Sincerely,



Lee S. Smith, Esq.
Attorney for City of Leominster
and City of Fitchburg

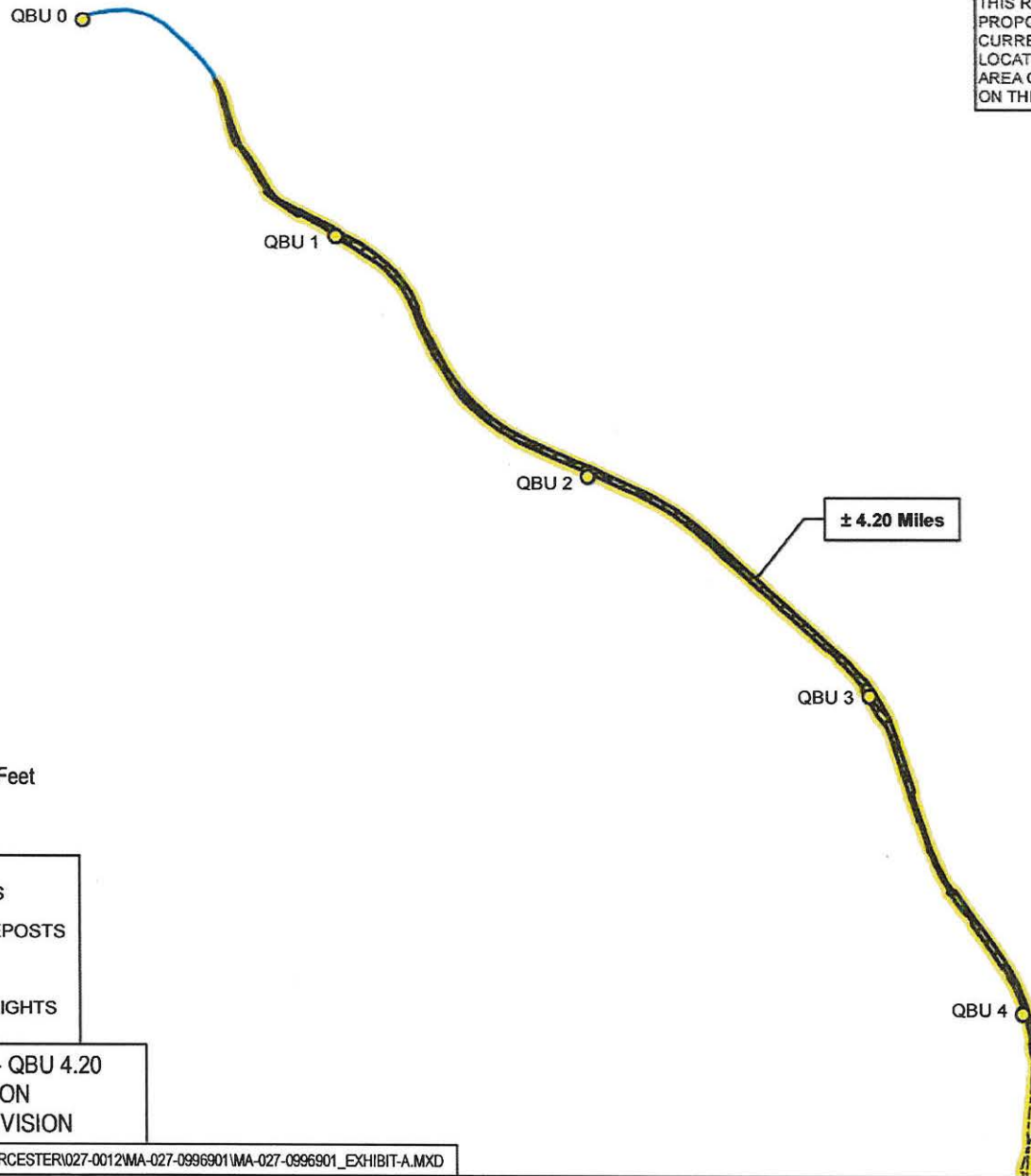


Louis E. Gitomer
Attorney for Georgetown and High Line Railway
Company, LLC

Attachments

EXHIBIT "A"

THIS RAILROAD MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE APPROXIMATE.



- SITE, 33.84 ± ACRES
- ENGINEERING MILEPOSTS
- CSX TRACK
- CSX OWNERSHIP/RIGHTS

MILE POST QBU 0.00 - QBU 4.20
ALBANY DIVISION
FITCHBURG SUBDIVISION

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CSX TRANSPORTATION, INC. SITE: MA-027-0996901 FITCHBURG TO LEOMINSTER, MA WORCESTER COUNTY - LEOMINSTER, MA	STATE: MA	1" = 2,500'	DRAWN BY: 07525	INTEL #	GIS #	PIN #:
	COUNTY: WORCESTER			V7.25/11	55542	25027 0030
	CITY: LEOMINSTER			V7.25/12	55543	25027 0031
	DATE: 8/5/2015	REVISED: 8/7/2015		V7.25/13	55544	25027 0032
				V7.25/14	55545	25027 0109
				V7.25/10	55541	

41266
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SERVICE DATE – LATE RELEASE DECEMBER 27, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 691X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN WORCESTER COUNTY, MASS.

Decided: December 23, 2010

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments for CSXT to abandon a 4.2-mile line of railroad between milepost QBU 0.0 (Fitchburg) and milepost QBU 4.2 (Leominster), in Worcester County, Mass. Notice of the exemption was served and published in the Federal Register on November 20, 2008 (73 Fed. Reg. 70,405-06) (2008 notice). The exemption became effective on December 20, 2008.

The 2008 notice provided that, if consummation was not affected by CSXT's filing of a notice of consummation by November 20, 2009, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire on that date.¹ On November 19, 2009, CSXT filed a request under 49 C.F.R. § 1152.29(e)(2) to extend, until November 20, 2010, the time to file its notice of consummation. In a decision served on November 19, 2009, the Board extended the consummation date until November 20, 2010.

On November 19, 2010, the Georgetown and High Line Railway Company, LLC (GHLR), filed a request for issuance of a notice of interim trail use (NITU) under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 for the line. GHLR has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may levied or assessed against, the right-of-way, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In its request, GHLR asks that the NITU be issued for a one-year period because of difficulties associated with obtaining funding during the economic downturn.² CSXT responds that it is willing to negotiate with GHLR for interim trail use on the line and that it agrees to the one-year negotiating period.

¹ By decision served on December 17, 2008, the exemption was made subject to an environmental consultation condition that is not a barrier to CSXT's consummation of the abandonment.

² Although the request exceeds the customary request of 180 days (here, December 27, 2011), the Board has granted such requests in the past. See, e.g., S. Pac. Transp. Co.—Aban.
(continued . . .)

Because GHLR's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued for the right-of-way between milepost QBU 0.0 and milepost QBU 4.2. The parties may negotiate an agreement during the one-year period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within one year, CSXT may fully abandon the line subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. 49 C.F.R. § 1152.29(d)(2).

As conditioned, this decision and notice will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The exemption is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit GHLR to negotiate with CSXT for trail use for the portion of the right-of-way between milepost QBU 0.0 and milepost QBU 4.2, for a period of one year from the service date of this decision and notice of interim trail use or abandonment until December 27, 2011.
3. 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 management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. 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.

(. . . continued)

Exemption—in Wendel-Alturas Line in Modoc & Lassen Counties, Cal., AB 12 (Sub-No. 184X)
(STB served Sept. 1, 2005).

6. If an agreement for interim trail use/rail banking for the portion of the right-of-way between milepost QBU 0.0 and milepost QBU 4.2 is reached by December 27, 2011, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon that portion provided the other conditions imposed in this proceeding are met. 49 C.F.R. § 1152.29(d)(1).

7. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.