

SERVICE DATE – JANUARY 27, 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 places a letter received from the United States Department of Justice in the docket in this proceeding and orders CSX Transportation, Inc., and the Georgetown and High Line Railway Company LLC to file comments in response to the letter.

Decided: January 26, 2023

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments for CSXT to abandon an approximately 0.86-mile rail line on its Clearwater Subdivision, between milepost ARE 897.57 and milepost ARE 898.43, in St. Petersburg, Pinellas County, Fla. (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, 2019.

On August 29, 2019, the City of St. Petersburg (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 issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). The Georgetown and High Line Railway Company LLC (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/rail banking 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.) The Director of the Board's Office of Proceedings (Director) issued a decision on January 13, 2020, finding 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. The Board denied the City's appeal on June 22, 2020. CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55

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 Policy Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

(Sub-No. 794X) (STB served June 22, 2020). After the Board granted one NITU extension request, GHIL and CSXT jointly notified the Board on June 23, 2021, that they had entered into an interim trail use/rail banking agreement for the Line, pursuant to 49 C.F.R. § 1152.29(h). (CSXT Letter 1, June 23, 2021.)

On December 14, 2022, the Board received a letter from the United States Department of Justice (DOJ Letter) concerning the rail banked status of the Line. The DOJ Letter details certain information that the Department obtained during the course of discovery in a Fifth Amendment takings case related to the Line being litigated before United States Court of Federal Claims, Collective Edge, LLC v. United States, No. 20-34L (Fed. Cl. filed July 16, 2020).

The Board will place the DOJ Letter in the docket of this proceeding. The Board hereby orders GHIL and CSXT to respond to the information presented in the DOJ Letter by filing comments in this docket by February 27, 2023. The responses from GHIL and CSXT must, at a minimum, explain whether, and if so how, the Line is being used as a recreational or historic trail. Reply comments from any interested person may be filed by March 8, 2023.

It is ordered:

1. GHIL and CSXT must respond to the information presented in the DOJ Letter by filing comments, as explained above, in this docket by February 27, 2023.
2. Reply comments from any interested person may be filed by March 8, 2023.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.