

BEFORE THE
SURFACE TRANSPORTATION BOARD
AB-33 (SUB-NO. 268X)
UNION PACIFIC RAILROAD. --
NOTICE OF EXEMPTION FOR ABANDONMENT--
IN MILWAUKEE COUNTY, WISCONSIN

235997

ENTERED
Office of Proceedings
May 5, 2014
Part of
Public Record

**COUNTY OF MILWAUKEE, WISCONSIN
MOTION TO EXTEND TIME TO
NEGOTIATE A NOTICE OF INTERIM TRAIL USE**

BACKGROUND

On service date June 11, 2009, the Surface Transportation Board (the Board) served notice that the Union Pacific Railroad Company (UP) filed with the Surface Transportation Board a Notice of Exemption pursuant to 49 U.S.C. § 10502 and the Board's regulations at 49 C.F.R. 1152 Subpart F – Exempt Abandonments to abandon a 3.08-mile line of railroad known as the Capitol Industrial Lead, from milepost 92.21, the Shoreline connection, to the end of the line at milepost 89.13, south of Hampton Avenue in the northeast area of Milwaukee, in Milwaukee County, WI. This portion of the line traverses United State Postal Service Zip Codes 53209, 53211, 53212 and 53217.

On May 11, 2009, the County of Milwaukee (CMW) signed a Statement of Willingness to Accept Financial Responsibility pursuant to 49 C.F.R. § 1152.29 for the segment of UP railroad from milepost 92.21 to milepost 89.13, a total of approximately 3.08 miles.

The Board granted an NITU under 16 U.S.C. 1247(d), which was served on June 12, 2009, allowing CMW until December 9, 2009, to negotiate a rail banking agreement with UP.

The Milwaukee County Board of Supervisors expressed its commitment to the acquisition of the subject corridor in 2009 through its authorization to submit a Federal Transportation Program

FILING FEE WAIVED

grant application that seeks funding assistance for the acquisition of rights to the subject corridor and for development of a multiple-use trail therein.

The funding request submitted by the CMW to the Congestion Mitigation and Air Quality Improvement Program, administered by the Federal Highway Administration and WisDOT, was granted and the award is sufficient for consummation of this project.

Land acquisition through the CMAQ Program is a lengthy and complex process. The first step is the completion of an Environmental Report and a Design Study Report. These reports, which must be submitted before formal negotiations with the UP Railroad can commence, ensure that potential issues/problems (environmental, structural, historical) that might necessitate modifications to the preliminary trail alignment are identified before an agreement for transfer of ownership of the land is reached.

In April 2012, WisDOT issued a work authorization allowing CMW to execute contracts with consultants to undertake activities associated with completion of the Environmental Report and the Design Study Report.

On November 12, 2012, CMW filed a request to extend the time period to negotiate an interim trail use/rail banking agreement for 180 days. On service date November 21, 2012, the Board did grant the request, and extended the negotiation time period to May 15, 2013.

CMW has been following a strict WisDOT process for implementation of the federal CMAQ grant awarded for the acquisition of the corridor. CMW has provided WisDOT with information pertaining to preliminary engineering including environmental assessment, preliminary trail alignment, and preliminary bridge design for converting the bridges to trail use, all of which was combined into a required Design Study Report.

In April 2013, CMW began its preparation of acquisition plat, and hired a title company to help clarify ownership of the corridor. CMW filed a request with the Board to extend the negotiation period on May 2, 2013. On service date May 13, 2013, the Board granted the request and extended the negotiation period to November 11, 2013.

The Environmental Document and Design Study Report were under review by WisDOT and FHWA during September and October of 2013, with approval for final corrections expected November 2013. The draft Right-of-Way ("ROW") plat was near completion pending approval of the Environmental Document and Design Study Report.

On November 12, 2013, CMW filed a petition with the Board to extend the negotiation period another 180 days to continue the approvals and acquisition process. On service date November 21, 2013, the Board granted the request, and extended the negotiation period to May 12, 2014.

The preliminary engineering phase of the project has been completed. WisDOT has approved the Environmental Documentation and the Design Study Report. Approval of the Design Study Report has triggered WisDOT process to authorize expenditure of federal funds for the real estate acquisition.

CMW has completed the Real Estate Consultant Contract, and it is and being circulated for execution. The real estate consultant will perform an appraisal and negotiate with WCL on behalf of CMW. A Notice to Proceed ("NTE") for the consultant will be issued when WisDOT authorizes expending federal funding on the real estate phase of the project. Authorization is expected to be issued in the next few weeks. Final authorization is expected by WisDOT in May 2014.

This transaction is making good progress toward completion, and all parties are negotiating in good faith.

MOTION

Therefore, CMW respectfully moves that the period prescribed to negotiate an interim trail use/rail banking agreement be extended for 180 days for the rail corridor between milepost 92.21 to milepost 89.13, a total of approximately 3.08 miles in the City of Milwaukee, in Milwaukee County, Wisconsin.

Respectfully submitted,



Kathleen Chung, State Bar No. 1032802
Wisconsin Department of Transportation
4802 Sheboygan Avenue, P.O. Box 7910
Madison, WI 53707-7910
(608) 266-8810

May 5, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing cover letter in regards to **AB33** **(Sub-No. 268X)**, by electronic mail or regular mail, pursuant to 49 C.F.R. §1104.12, this 5th day of May, 2014, on all parties of record on the service list.

A handwritten signature in cursive script, reading "Kathleen Chung", is written over a horizontal line.

Kathleen Chung, Attorney
State Bar no. 1032802
Wisconsin Department of Transportation
Office of General Counsel