

SERVICE DATE – JUNE 11, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1295X

CITY OF YELM—ABANDONMENT EXEMPTION—IN THURSTON AND PIERCE
COUNTIES, WASH.

Decided: June 10, 2020

On May 5, 2020, the City of Yelm (the City) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 4.57-mile railroad line that runs between milepost 20.99, near Roy, Wash., and milepost 25.56, in Yelm, Wash. (the Line).¹ Notice of the exemption was served and published in the Federal Register on June 10, 2020 (85 Fed. Reg. 35,493). The exemption will become effective on July 10, 2020.

Also on May 5, 2020, the City filed a request for issuance of a notice of interim trail use or abandonment (NITU) for the Line under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. The City’s request will be denied due to ambiguities in the record, including uncertainty regarding who the trail sponsor would be. The NITU request first states that the State of Washington Railway Authority (SWRA) is willing to assume financial and managerial responsibility for the right-of-way. The NITU request then states that the Washington State Department of Transportation (WSDOT)—not SWRA—“acknowledges that use of the right-of-way is subject to the sponsor’s continuing to meet its responsibilities described above,” but also states that “a copy of this statement is being served on WSDOT.” Further, although the City is the entity seeking authority to abandon the Line, the NITU request states that WSDOT owns the Line. Finally, the statement of willingness and acknowledgement is signed not by a purported trail sponsor, but by counsel for the City.

On May 21, 2020, despite the fact that the verified notice had not yet been published and the request for issuance of a NITU not yet granted, the City filed a notice that it has reached a trail use agreement with the City of Yelm Prairie Line (COYPL) “[i]n accordance with the requirements of 49 C.F.R. [§] 1152.29(h).” The notice of trail use agreement identifies the City as the trail sponsor—not WSDOT or SWRA—and seems to identify COYPL as the owner of the Line, rather than the City. The notice of agreement also includes as an exhibit an undated statement of willingness that differs from the one submitted as part of the City’s NITU request. COYPL is not mentioned in the underlying NITU request, nor is there any explanation in the record as to the relationship of these various entities to the Line.

¹ The City supplemented its verified notice on May 7, May 19, and May 21, 2020. The date of the final supplement is considered the filing date of the verified notice.

The City's request for issuance of a NITU will be denied due to the ambiguities described above. See Canonic Atlantic Co.—Aban. Exemption—Hallwood to Cape Charles, Va., AB 1266X et al. (STB served Nov. 1, 2019) (declining to issue NITU due to ambiguities in NITU request). Because no NITU has been issued, the purported agreement referenced in the May 21, 2020 “Joint Notice of Interim Trail Use/Rail Banking Agreement” does not qualify as an interim trail use/rail banking agreement under the Trails Act and the Board's regulations, and therefore the notice will be rejected.

It is ordered:

1. The City's request for issuance of a NITU is denied.
2. The May 21, 2020 notice of interim trail use agreement is rejected.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.