

October 2, 2020

**Lee S. Smith**  
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Mr. Henry Hayes  
Town Manager  
Flynn Building  
278 Old Sudbury Road  
Sudbury, MA 01776

Re: CSX Right of Way / State Right of First Refusal

Dear Mr. Hayes:

G.L. 161C s. 7(a) states in relevant part, “To the extent not inconsistent with federal law, no railroad company which conducts or has conducted operations within the commonwealth shall sell, transfer or otherwise dispose of railroad rights-of-way or related facilities without first offering such rights-of-way or facilities for sale, transfer or disposition to either the executive office, acting on behalf of the commonwealth, or such other department, authority, agency, or political subdivision of the commonwealth as may be designated by the executive office for the purpose of any such sale, transfer or disposition”. (Emphasis added.)

I spoke with an attorney with the Surface Transportation Board (STB) to discuss this matter. He confirmed that because the CSX right of way transaction with the Town is being pursued pursuant to the Notice of Interim Trail Use (NITU) process, the right of way remains under federal jurisdiction. As such, the NITU process under federal law preempts state law, and thus, c. 161C does not apply to the CSX right of way.

In the event that the Town does not acquire the right of way from CSX, CSX could then seek to formally abandon the right of way through the STB. At the time that the right of way is deemed abandoned by the STB, federal law would no longer apply and then CSX would be required to offer the right of way to the state as is set forth in c. 161C.

I have further discussed this issue with CSX and MassDOT. CSX concurs that c. 161C does not apply because of the NITU. MassDOT informed me that they are not interested in acquiring additional railroad rights of way at this time.

Please let me know if you have any questions or if I can be of further assistance.

Very truly yours,



Lee S. Smith

LSS/aem