

Kirkpatrick & Lockhart LLP

FILED

MAY 14 2004

210895

1800 Massachusetts Avenue, NW
Suite 200
Washington, DC 20036-1221
202.778.9000
www.kl.com

May 13, 2004 **SURFACE
TRANSPORTATION BOARD**

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW, Room 711
Washington, DC 20423

**ENTERED
Office of Proceedings**

MAY 14 2004

**Part of
Public Record**



Re: Norfolk Southern Railway Company – Abandonment Exemption
In Mecklenburg County, NC AB-290 (Sub-No. 247X)

Dear Secretary Williams:

This letter is filed on behalf of the City of Charlotte, North Carolina (hereinafter referred to as the "City"). For the reasons set forth below, the City respectfully requests that the Board issue a Notice of Interim Trail Use ("NITU") with respect to a portion of the line of railroad subject to the above-referenced abandonment proceeding so that the City and the Norfolk Southern Railway Company ("NSR") can finalize interim trail use and rail banking arrangements on that portion of the line. A check in the amount of \$200 to cover the filing fee associated with this NITU request is enclosed herewith.

NSR filed a petition for exemption to abandon a segment at the end of its line of railroad known as the "Old R Line", which extends between approximately milepost old R-3.00 and approximately milepost old R-4.95, a total distance of approximately 1.95 miles in Mecklenburg County, North Carolina (the "Subject Line"). The Board granted NSR's exemption by decision served on April 9, 2004. See Norfolk Southern Railway Company – Abandonment Exemption – In Mecklenburg County, NC AB-290 (Sub-No. 247X) (STB served April 9, 2004).

The City plans to construct a light rail transit system over portions of the right-of-way associated with the Subject Line and other contiguous property. In furtherance of those public purposes, NSR conveyed the right-of-way underlying the Subject Line to the City but retained an exclusive freight rail operating easement on the Subject Line. NSR intends to reclassify a portion of the Subject Line between approximately milepost old R-3.80 and approximately milepost old R-4.95 as industrial track and will continue to provide freight rail service to C&T Refinery over that portion of the Subject Line pursuant to its freight rail operating easement. The City and NSR have agreed to enter into an interim trail use and rail banking arrangement on the remaining portion of the Subject Line between approximately milepost old R-3.00 and approximately milepost old R-3.80 (the "Non-C&T Segment"). Upon consummation of the interim trail use and rail banking arrangement, NSR will quitclaim its exclusive freight rail operating easement on the Non-C&T Segment to the City. Pursuant to 49 C.F.R. § 1152.29(a)(2),

FEE RECEIVED

MAY 14 2004

DC-636119 v2 0306624-0102

**SURFACE
TRANSPORTATION BOARD**

Kirkpatrick & Lockhart LLP

the City hereby submits the attached Statement of Willingness to Assume Financial Responsibility on the Non-C&T Segment.

Although NSR's authority to abandon the Non-C&T Segment became effective as of April 24, 2004, NSR has not consummated the abandonment on the Non-C&T Segment and does not intend to do so. Therefore, the Board continues to have jurisdiction to grant this NITU request. The City believes that this NITU request is in the public interest because it will facilitate interim trail use and rail banking of the rail corridor for future public transportation purposes and because no party to this proceeding will be prejudiced by the acceptance of this NITU request. NSR concurs in this NITU request and has agreed to finalize such interim trail use and rail banking arrangements with the City once the Board issues the NITU.

For the foregoing reasons, the City requests that the Board issue a NITU applicable to the Non-C&T Segment so that the City and NSR can finalize interim trail use and rail banking arrangements on that rail corridor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward J. Fishman", with a stylized, flowing script.

Edward J. Fishman – Counsel for the City of Charlotte, North Carolina

cc: Mr. James R. Paschall, Norfolk Southern Railway Company (via facsimile)

Kirkpatrick & Lockhart LLP

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, the City of Charlotte is willing to assume 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 owned by the City of Charlotte over which Norfolk Southern Railway Company has common carrier rights pursuant to an exclusive freight railroad operating easement. The subject property, known as the "Old R Line", extends between approximately old milepost 3.00 and approximately old milepost 3.80, a total distance of approximately 0.80 miles in Mecklenburg County, North Carolina. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-290 (Sub-No. 247X).

A map of the property depicting the right-of-way is attached.

The City of Charlotte acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad on the same date it is being served on the Board.

Map of Right-of-Way

