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Public Record

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December 6, 2019

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Norfolk Southern Railway Company – Abandonment Exemption – In The City of Fort Wayne, Indiana, AB-290 (Sub-No. 406X)

Dear Ms. Brown:

Pursuant to 49 C.F.R. Part 1152, Subpart G – Special Rules Applicable to Petitions for Abandonments Filed Under the 49 U.S.C. 10502 Exemption Procedure, enclosed are an original and eleven copies of a petition for exemption by Norfolk Southern Railway Company ("NSR") to abandon rail service over an approximately 2.29 mile rail line segment extending between Milepost GI 0.0 and Milepost GI 2.29 in the City of Fort Wayne, IN ("Line").

Please date-stamp the extra copy and return it to the courier. Pursuant to 49 C.F.R. § 1152.60(c), this submission also includes an electronic copy of the entire petition and a separate electronic file of the draft Federal Register notice.

Finally, pursuant to 49 C.F.R. § 1002.2(f)(21)(iii), I have enclosed a check in the amount of \$7,800.00 to cover the filing fee. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com or William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

FILED
December 6, 2019
SURFACE
TRANSPORTATION BOARD

Sincerely,

Crystal M. Zorbaugh
Crystal M. Zorbaugh
Attorney for Norfolk Southern Railway Company

FEE RECEIVED
December 6, 2019
SURFACE
TRANSPORTATION BOARD

Enclosures

cc: Greg Summy, Garrett Urban, Laura Hoag, Scott Plum



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

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Railway Company**

December 6, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

INTRODUCTION

Pursuant to 49 U.S.C. § 10502 and rules applicable thereto at 49 C.F.R. parts 1121 and 1152, Norfolk Southern Railway Company (“NSR”), a Class I railroad common carrier, files this petition (“Petition”) seeking an exemption from the provisions of 49 U.S.C. § 10903, et seq. to abandon an approximately 2.29-mile rail line segment extending between Milepost GI 0.0 and Milepost GI 2.29 in the City of Fort Wayne, IN (the “Line”). As the Board is aware, in a decision served October 23, 2019 (“Oct. 23 Decision”), the Board rejected a verified notice of exemption (“Notice”) to abandon the Line filed on September 5, 2019 by NSR under 49 C.F.R. part 1152 subpart F—Exempt Abandonments,¹ on the basis that the notice raised factual and legal issues that required a more detailed examination than the expedited notice of exemption process was designed to provide.² The Oct. 23 Decision also stated that NSR did not fully explain what information it relied on in reaching its previous conclusions as to whether the track was § 10901 or § 10906 track,

¹ NSR filed its Notice on September 5, 2019.

² As explained in the Notice, included as Exhibit A, the Line proposed for abandonment has a complicated history, which may have unintentionally resulted in NSR failing to seek abandonment authority in a timely manner for certain segments of the Line. Accordingly, NSR sought abandonment authority for the entire Line out of an abundance of caution to clean up the regulatory record because NSR’s recent review of the Line’s history brought to light certain facts suggesting that the Line is § 10901 track.

failed to fully explain what recently prompted NSR to seek abandonment authority, and indicated that various segments of the Line proposed for abandonment have already been sold to other parties. Given the complicated history of the Line's classification, the Board found that notice class exemption procedure was not appropriate. However, the Oct. 23rd Decision provided NSR an avenue for resolving the uncertainty of the Line's complicated history and obtaining abandonment authority: Footnote 2 reads as follows:

If NSR believes there is substantial evidence indicating that the Line was railroad line governed by § 10901, NSR may seek abandonment authority through a petition for exemption or an abandonment application. In any such application or petition, NSR should clearly set forth all evidence that it believes supports the conclusion that the Line was railroad line governed by § 10901.

While much of NSR's evidence concerning the Line's classification was already included in the Notice and its accompanying Environmental & Historic Report ("E&HR"), NSR is now filing this Petition to clarify and expound upon information previously provided in the Notice based on information known to NSR and/or in NSR's possession on which NSR is relying to file this Petition. NSR respectfully requests that the Board grant the Petition on the basis of this additional information.³ In the alternative, should the Board determine that this information does not constitute "substantial evidence" that the Line is § 10901 track, NSR requests the Board confirm the Line is classified as § 10906 track.⁴

³ In the interest of avoiding repeating all the information provided in the Notice, NSR refers to information previously submitted in the Notice and asks that Exhibit A -Notice be incorporated into the record for this proceeding.

⁴ Please note when NSR originally filed the Notice, it planned to convert the portion of Line from Milepost GI 1.85 to Milepost GI 2.29 (where it connects to NSR's B-Line) from common carrier track to § 10906 track ("Converted 10906 Segment") to support current and future operation needs on NSR's nearby main line. Since filing the Notice, NSR has determined that it no longer wishes to convert the Converted 10906 Segment from 10901 to 10906 track and instead wishes to seek abandonment authority for the entire Line. NSR has notified all of the E&HR consulting parties of the change in scope for the proposed abandonment and the revised newspaper notice that was published also reflected the fact that NSR is petitioning for abandonment authority for the entire Line.

I. CONSIDERATIONS' SUGGESTING LINE IS § 10901, RATHER THAN § 10906, TRACK⁵

During the last few years, the City of Fort Wayne ("the City") was involved in discussions with NSR about the condemnation of a portion of the Line, which had not seen traffic in nearly two decades, for a public project. In 2017, NSR began to research the Line's history to determine the steps necessary to accomplish the sale, as well as explore selling other portions of the Line. NSR's review indicated that portions of the Line had previously been sold to adjoining landowners, presumably on the understanding that the Line was industrial track under § 10906, without seeking Board approval. As NSR began to search its internal records, it determined that it did not have files for its original acquisition, so through the assistance of its counsel, NSR requested the files for the Line's acquisition from the Board's Record Manager with the Office of Public Assistance, Governmental Affairs, and Compliance. Upon review of various regulatory submissions, NSR began to question whether the Line remained § 10901 track, and as such, whether NSR needed to seek abandonment authority from the Board to terminate operations over the Line.

As a starting point, since NSR's predecessor Norfolk and Western Railway Company ("N&W") acquired the Line in 1995, the Line has never connected to any trackage to the north, provided N&W or NSR with a through route, or otherwise been operated in a way that suggests it is main line track. However, as explained fully in the E&HR, the history of Line shows it was originally part of old Fort Wayne and Jackson and Saginaw Railroad Company mainline between Jackson, Michigan and Fort Wayne, Indiana. Accordingly, because a subsequent change in operations on its own cannot change the regulatory status of a line, the Line would remain subject to the Board's authority under § 10901 absent further regulatory authority. See The Atchison, Topeka

⁵ This section tracks the various considerations that collectively raised concerns that NSR may have unintentionally failed to seek abandonment authority in a timely manner for certain segments of the Line when it was required to do so.

and Santa Fe Railway Company – Abandonment Exemption – In Lyon County, KS, AB-52 (Sub-No. 71X) (ICC served June 11, 1991) (“ATSF-Lyon”) (“Because this track was clearly part of a rail line at one time, we find that it cannot be converted into an exempt spur and the Commission divested of jurisdiction over it solely through the railroad’s unilateral decision to change its use of the track segment over time. To find that this is a spur would be inconsistent with our well-established policy that where a carrier decides to reduce or cease service and/or remove track, the carrier’s common carrier obligation remains until appropriate abandonment authority is obtained.”). As demonstrated below, although NSR does not have full insight into the history of the Line before N&W’s acquisition, and some facts point towards § 10906 status, the balance of considerations suggest the Line remains § 10901 track.

Consideration 1 – Regulatory Approval of N&W Acquisition of the Line

As stated in the Oct. 23 Decision, NSR’s predecessor, N&W, sought regulatory approval to acquire from Consolidated Rail Corporation (“Conrail”) and operate three rail lines.⁶ Norfolk & W. Ry.—Purchase & Operation Exemption—Consol. Rail Corp. Line, Fort Wayne to Warsaw, Ind., FD

⁶ A copy of the acquisition exemption filed in FD 32736 is attached as Exhibit B – FD 32736 Application (referred to herein as “Application”).

Page 3 of the Application states Conrail proposes to sell to NW, and NW proposes to purchase and operate Conrail’s Fort Wayne (Milepost 319.2) to Warsaw (Milepost 363.0) line; GR&I industrial track between Milepost 93.3 and Milepost 97.8 in Fort Wayne; and the **Fourth Street industrial track between milepost -0.9 and Milepost 0.95** in Fort Wayne in Allen, Whitley and Kosciusko Counties, Indiana (collectively the “Line” or “Segment”). The 50.15 mile transaction is the third phase of NW’s purchase of Conrail’s 122.6 mile main line extending from Fort Wayne (MP 319.2) to Gary (also known as Tolleston), Indiana (MP 441.8). While the mileposts have changed as explained below, the Line proposed for abandonment was the Fourth Street Industrial track acquired by N&W acquired in FD 32736.

At the time that N&W acquired the Line in 1995 it was known to extend from milepost -0.9 to milepost 0.95. After the purchase of the two industrial tracks in FD 32736, N&W applied new mileposts for its operation. Former Milepost 0.95 is now synonymous with Milepost GI 0.0. Former Milepost -0.9 is now Milepost 2.29. The difference in the total length, 1.85 miles vs. 2.29 miles, is due to the fact that distances between the new mileposts are not exact statutory miles. In terms of total linear feet, the distance of the line being proposed for abandonment (the Fourth Street Industrial Track) remains the same.

32736 (ICC served Aug. 29, 1995) (“N&W Acquisition”), one of which was the “Fourth Street industrial track.”⁷ Although the acquisition of an industrial track generally is exempt from the Board’s licensing authority under § 10906, a detailed review of the record suggests that N&W did seek acquisition authority for the Line.

- N&W received regulatory authority to acquire and operate 50.15 miles of rail line in the Application. The fact that the mainline that N&W acquired from Fort Wayne (MP 319.2) to Gary (also known as Tolleston), Indiana (MP 441.8) only totaled 43.8 miles (see map from Application on Page 100) suggests that N&W intended for the entire 50.15 miles of rail line for which regulatory authority was sought in the filing (including the Fourth Street Industrial Track) to be jurisdictional § 10901 track. See Application at 3, 8.
- Moreover, the Application does not contain limiting language clarifying for the Board that despite acquiring 50.15 miles of track, N&W believed that Fourth Street Industrial Track portion of the rail line was spur or industry track (§ 10906 track);
- The Board’s decision granting authority for the N&W Acquisition did not differentiate among any of the 50.15 miles of the rail line. See Exhibit C.

However, it is possible that the parties intended for the Fourth Street Industrial Track portion of the rail line to be spur or industry track (§ 10906 track) and simply failed to designate it as such. As stated on page 3 of the Application, a year prior to the N&W Acquisition, Conrail granted overhead trackage rights to N&W between milepost 363.0 and milepost 319.2, a distance of approximately 43.8 miles in Allen, Kosciusko, and Whitley Counties, IN, to alleviate the congestion on N&W’s own route between Fort Wayne and Chicago, IL, by giving it an immediate, alternative routing. The trackage rights were temporary and were to be used in connection with a line between Tolleston, IL, and Warsaw that N&W previously purchased from Conrail. See Norfolk and

⁷ A copy of the FD 32736 decision is attached as Exhibit C.

Western Railway Company-Trackage Rights Exemption-Consolidated Rail Corporation, FD 32610 (ICC decided Nov. 18, 1994).⁸ The decision in FD 32610 stated the trackage rights were intended to be temporary and that N&W was in the process of purchasing the Warsaw-Fort Wayne line. Neither the Fourth Street Industrial Track nor the GR&I industrial track between Milepost 93.3 and Milepost 97.8 in Fort Wayne were included as part of the mainline that was being acquired to alleviate congestion. This fact, the physical composition of the tracks, and prior usage of the Line suggest it was likely being operated as § 10906 track. However, it is equally possible that one of the Line's prior owners simply changed their usage of track; in that case, the track would remain § 10901 track until abandonment authority is obtained. See ATSF-Lyon.

Consideration 2 – N&W Purchase and Sale Agreement

A search of NSR's internal records located a Purchase and Sale Agreement ("PSA") dated September 28, 1995, which suggests that N&W intended for all three lines purchased in the N&W Acquisition to be § 10901 regulated track. See Exhibit E – Excerpt from 1995 Purchase and Sale Agreement. The relevant provisions of the PSA read as follows:

WHEREAS, Conrail owns and operates certain rail lines located in Allen, Whitley, and Kosciusko Counties, State of Indiana, known as a portion of the Fort Wayne Line, the GR&I Industrial Track, and the *Fourth Street Industrial Track* and more fully described herein (collectively, the "Line"); and

WHEREAS, Purchaser has offered to purchase Conrail's interest in the said Line as herein described, and Conrail is willing to sell its interest in the said Line as and to the extent herein described, subject to the terms and conditions contained herein; and

WHEREAS, Purchaser is a *common carrier by railroad, intends to operate the said Line as a common carrier by railroad, and, except as expressly provided otherwise herein, will assume all common carrier obligations as to the property constituting the Line. (Emphasis added.)*

The two paragraphs from the PSA above suggest that the parties viewed the Line as § 10901 track.

The Line is defined to include the Fourth Street Industrial Track, and the PSA indicates the

⁸ The Interstate Commerce Commission's decision in FD 32610 is attached as Exhibit D.

Purchaser (N&W) intends to operate as a common carrier and assume all common carrier obligations for the Line. However, despite the PSA's language, the deed for N&W's purchase is unclear as to whether the Line was intended to be § 10901 track. Exhibit F -Fourth Street Industrial Track Deed defines the Fourth Street Industrial Track as follows:

a portion of *the strip of land* known as the Penn Central Waterloo Branch (a.k.a. 4th Street Industrial Track), and identified as Line Code 3136A (a.k.a. 3136) in the Recorder's Office of Allen County, Indiana in Document No. 80-04592 and Instrument M13,003, situate in the City of Fort Wayne, County of Allen and State of Indiana....

BEING a portion of the same premises which Fort Wayne and Jackson Railroad Company, by Conveyance Document No. FtW&J-CRC-RPI-1, issued pursuant to the Regional Rail Reorganization Act of 1973, as amended (P.L. 93-236, H.R. 9142), the Final System Plan of the United States Railway Association and Special Court (Washington, D.C.) Misc. Order No. 75-3, dated March 25, 1976 and March 31, 1976, in the Matter of Regional Rail Reorganization Proceedings, granted and conveyed certain property, easements, interest and rights unto Consolidated Rail Corporation and which Conveyance Document was recorded on February 29, 1980 in the Recorder's Office of Allen County, Indiana, as Document No. 80-04592 and Instrument M 13,003. (*Emphasis added.*)

The language of the deed suggests that the Line (described the Fourth Street Industrial Track as a strip of land) was disposed of pursuant to the Final System Plan ("FSP") as part of Misc. Order No. 75-3, and thus already abandoned. Counsel for NSR tried unsuccessfully to locate Misc. Order No. 75-2. Our review of the available portions of the FSP suggests⁹ that despite the language included in the deed, the Line was not included in Conrail's FSP, which was submitted to Congress on July 26, 1975, in accordance with Section 208(a) of the Regional Rail Reorganization Act of 1973 (PL 93-236).

Consideration 3 – Adjoining Conrail Abandonments

NSR's more recent research concerning the Line also identified that Conrail previously sought abandonment authority for other portions of the Fourth Street Industrial Track. In particular,

⁹ Portions of the FSP are available at <https://spaces.hightail.com/space/Tsvlz9QICQ>.

Conrail filed for abandonment authority in 1986 for the segment of the Fourth Street Industrial Branch immediately north of the Line. See Conrail Abandonment in Allen County, IN, AB-167 (Sub-No. 927N) (ICC served Jan 16, 1986). Subsequently, Conrail filed for abandonment authority in 1991 for the segment of the Fourth Street Industrial Branch immediately south of the Line. See Consolidated Rail Corporation--Abandonment--In Fort Wayne, Allen County, IN, AB-167 (Sub-No. 756N) (ICC served Jan 10, 1992).¹⁰ Although not conclusive, those filings suggest that the Fourth Street Industrial Branch was not part of the FSP in 1975.

Consideration 4 – NSR’s Subsequent Representations to Adjoining Landowners

As stated in the Notice, sometime in the late 1990s, NSR, as successor to N&W, began to look at N&W's various lines in the region in order to determine, which rail lines were still be utilized to serve shippers in the region, which ones were not and could be handled as normal track retirements (for § 10906 track), and to the extent NSR wished to terminate its common carrier obligations, which ones NSR would need to seek abandonment authority. It was unclear at that time based on the Line's prior use, location, and infrastructure as to whether the Line was § 10901 or § 10906 track. Complicating matters, NSR was in a dispute with CSX over various rail lines in the area, so NSR chose to delay taking action with respect to the Line. Around the same time, the City encouraged NSR to eliminate grade crossings over the Line and expressed an interest in using a portion of the inactive rail line for a flood control project.

Also, in 2000, OmniSource the only shipper on the Line, decided to cease rail operations over the Line because it had a second facility in Fort Wayne, which was also rail served. OmniSource expressed an interest in purchasing a portion of the Line adjacent to its facility and offered to give NSR a rail easement should the sale close prior to NSR acquiring abandonment

¹⁰ Note despite the abandonments to the immediate North and South of the Line, the Line has and continues to remain connected to the national rail system at Milepost GI 2.29.

authority. The parties even went so far as to document such an arrangement on the assumption NSR would seek abandonment authority.¹¹ The transaction, however, was ultimately put on hold.

Several years later, in 2004,¹² NSR decided to take another look at transactions involving the Line. Again, NSR planned internally as part of the process it would seek abandonment authority. However, according to NSR's internal Abandonment Project Status tracking system, which NSR uses to track proposed, ongoing, completed, and ordinary track retirements, NSR ultimately proceeded on the basis that the Line was an industrial track under the FSP, not a line of railroad. NSR's records do not contain an explanation of the change in approach.

What is clear is after making this determination, NSR retired the Line pursuant to NSR's normal track retirement policy (for § 10906 track) and NSR's real estate department proceeded to sell two additional segments of the Line without retaining a rail easement:¹³

- A portion of Milepost GI 1.73 - Milepost GI 1.85 was sold to Schenkel and Sons, Inc. in April 2008 and a portion was sold to Applied Metals & Machine Works Company, Inc. in June 2008 (each took 50' of the ROW from centerline between these two mileposts);

¹¹ In a July 11, 2000 letter agreement, OmniSource did provide NSR an easement to restore the Line at OmniSource's expense if NSR proceeded with closing the sale of the property prior to obtaining any necessary Board approval. NSR proceeded to sell a small segment of the right-of-way between Milepost GI 0.44 - Milepost GI 0.92 to RFI, LLC (aka OmniSource) in October 2001, in exchange for the easement and based on the expectation that the abandonment process was underway. Unfortunately the proposed easement was not reflected in the eventual sale, and as explained herein abandonment authority was never obtained.

¹² Since filing the Notice, NSR has discovered that the Notice inadvertently included a typo. The Notice stated "In 2001, NSR came to the determination that the "Fourth Street Industrial Track" was an industrial track under Conrail's Final System Plan ("FSP")." The year should have been 2004, not 2001.

¹³ Because NSR proceeded on the basis that the Line was § 10906 track, NSR also retired and salvaged certain portions of the Line. NSR confirms all tracks from Milepost GI 2.04 to Milepost GI 0.0 have been removed. NSR further confirms there were no structures located on that portion of the Line that NSR has already salvaged.

- A small segment of the right-of-way between Milepost GI 0.92 - Milepost GI 1.04 was sold to Calhoun Investments, LLC in October 2005.

Summary of Considerations Suggesting Line is § 10901 Track.

NSR suspects the 2004 determination was based on the conclusion that the regulatory record was inconclusive and a majority of the indicia suggested the Line was industry track.

Unfortunately, no documentation exists documenting the details of the decision. As explained herein, the complicated history of the Line demonstrates that good faith arguments can be made in support of § 10901 or § 10906 status.

However, after evaluating all of these considerations carefully, NSR believes, on balance, the facts suggest that the Line remains § 10901 track. The Line was originally main line track, and although its name and subsequent use point to § 10906 status, it is not clear that the Line was part of Conrail's FSP or ever subsequently abandoned. As such, NSR decided to seek abandonment authority for the Line out of an abundance of caution and to create regulatory certainty. Definitive resolution of the issue is necessary for NSR to proceed with pending transactions with the City and other parties for the segments of the Line that NSR retains, which are contingent on receiving abandonment authority (or confirmation of the Line's status as § 10906 track), as well as to correct, if necessary, the regulatory record with respect to NSR's past transactions involving the Line.

II. INFORMATION IN SUPPORT OF PETITION

The Line traverses United States Postal Zip Code territories 46805 and 46808. Based on information in NSR's possession, the Line does not contain federally granted rights-of-way. Any documentation in NSR's possession will be made available to those requesting it.

NSR is seeking an exemption to abandon the Line because the Line has been dormant for nearly two decades. Moreover, as explained herein, the Petition satisfies the statutory criteria for exemption and should be granted for numerous reasons.

- Abandonment is consistent with the provisions of 49 U.S.C. § 10502 because (a) application of the Board's formal abandonment process is not necessary to carry out the Rail Transportation Policy ("RTP") of 49 U.S.C. § 10101; (b) the proposed action is of limited scope; and (c) given that there has been no traffic over the Line for nearly two decades, regulation is not necessary to protect shippers from an abuse of market power;
- A portion of the Line is needed for the City to complete a project at the northern end of the abandonment, near Milepost GI 0.0, related to improvements to State Boulevard, which includes realignment of the roadway, paving, new sidewalks and drainage enhancements. Included within this project is the construction of a pedestrian bridge to carry a new segment of the City's Pufferbelly Trail over State Boulevard.
- Abandonment will not deprive any shipper of rail service; and
- Abandonment allows NSR to avoid continuing to incur opportunity and other holding costs associated with ownership of an active rail line with no traffic.

MAPS AND EXHIBITS

Maps of the Line are attached as Exhibit G. A draft Federal Register notice is attached as Exhibit H, and the certifications of compliance with 49 C.F.R. §§ 1105.12 and 1152.60(d) are attached as Exhibit I. Exhibit J includes a combined E&HR prepared in anticipation of the proposed abandonment, which conforms to the requirements of 49 C.F.R. §§ 1105.7 and 1105.8 and the certificate of compliance with the advance notice requirements for an E&HR as set forth at 49 C.F.R. § 1105.11.

ADDITIONAL INFORMATION CONCERNING LINE'S USAGE

As explained fully in the E&HR (Exhibit J), the Line prior to the N&W Acquisition was a small stub-end branch line that was part of the old Fort Wayne and Jackson and Saginaw Railroad Company mainline between Jackson, Michigan and Fort Wayne, Indiana. The Fort Wayne, Jackson and Saginaw was a consolidation of the Jackson, Fort Wayne and Cincinnati and the Fort Wayne, Jackson and Saginaw Railroads, formed April 6, 1869. The consolidated Fort Wayne, Jackson and Saginaw defaulted on its debts on January 1, 1874. It was subsequently sold under foreclosure on December 3, 1879.

The Fort Wayne & Jackson Railroad Company was incorporated under the laws of Michigan and Indiana on December 27, 1879, following the reorganization of the Fort Wayne, Jackson & Saginaw Railroad Company, which became effective on January 1, 1880. The line was leased in perpetuity to the Lake Shore & Michigan Railway Company, effective August 24, 1882. The lease was assumed by the New York Central Railroad Company in December 1914, and by the Penn Central Company, by virtue of the merger of the New York Central Railroad Company and Pennsylvania Railroad Company on February 1, 1968. The Line was operated as part of Penn Central's Waterloo Branch that continued to the south of Ft. Wayne. However, much of the Waterloo Branch was abandoned by not being transferred to Conrail as part of the Final System Plan. The Line was operated by Conrail after the consolidation of the bankrupt northeastern railroads by the USRA on April 1, 1976.

The Line last served shippers in 2000. No shippers have sought rail service in nearly two decades nor are there any prospects for new shippers. There is simply no traffic, or the potential for new traffic, on the Line. Portions of Line were previously removed at the request of the City to eliminate grade crossings over the Line, which travels through a largely residential area.¹⁴ Currently, The City needs a portion of the Line to complete improvements to State Boulevard, which include realignment of the roadway, paving, new sidewalks, drainage enhancements, and the construction of a pedestrian bridge to carry a new segment of the City's Pufferbelly Trail over State Boulevard, at the northern end of the abandonment, near Milepost GI 0.0. There is simply no valid purpose for the Line, if indeed it is regulated track, to remain part of the National Rail Network.

EXACT NAME OF PETITIONER

The petitioner is Norfolk Southern Railway Company. Petitioner is a common carrier by railroad subject to 49 U.S.C Subtitle IV, Chapter 105.

¹⁴ The City also previously expressed an interest in using a portion of the inactive rail line for a flood control project.

PETITIONER'S REPRESENTATIVES

NSR is represented by William A. Mullins and Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20037; telephone: (202) 663-7823 and (202) 663-7831; facsimile: (202) 663-7849; email: wmullins@bakerandmiller.com and czorbaugh@bakerandmiller.com.

THE EXEMPTION STANDARDS HAVE BEEN MET

Under 49 U.S.C. § 10903, a rail line cannot be abandoned without prior Board approval. However, under 49 U.S.C. § 10502, the Board must exempt a proposed rail line abandonment from section 10903's formal requirements when it finds that – (1) regulation of the transaction is not necessary to carry out the RTP of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not needed to protect shippers from market power abuse. This proposed abandonment actually meets all of the above statutory requirements of section 10502.

A. Regulation Is Not Necessary To Carry Out The Rail Transportation Policy

The RTP obviates the need for detailed Board scrutiny under 49 U.S.C. § 10903 in this instance. Granting the Petition – rather than requiring it to incur the substantial costs and potential delays involved in submitting a full-blown application – promotes a fair and expeditious regulatory decision-making process; ensures the development and continuation of a sound rail transportation system with effective competition among rail carriers and other modes to meet the needs of the public; reduces regulatory barriers to exit from the industry; and provides for the expeditious handling and resolution of proceedings required or permitted to be brought under this part. See 49 U.S.C. §§ 10101(2), (4), (7), and (15). Moreover, granting Petition will foster sound economic conditions, and will encourage efficient management in accordance with the RTP by allowing NSR to rationalize underutilized assets and transfer a portion of such assets for use by others in further

economic development to benefit the community. See 49 U.S.C. §§ 10101(5) and (9).¹⁵

Additionally, granting the Petition promotes the public interest and is fully consistent with the RTP.

For these reasons, the Board need not, and should not, require NSR to use the formal abandonment application procedures in order to carry out the RTP.

B. The Proposed Abandonment Is of Limited Scope

The proposed abandonment is of limited scope, involving approximately 2.29-miles of rail line that has been dormant for nearly two decades. No shippers will be affected and no traffic will be rerouted upon consummation of the abandonment.¹⁶

C. Regulation of the Abandonment Is Not Necessary to Protect Shippers from Market Power Abuse

Because the proposed abandonment is of limited scope, NSR need not show that regulation is unnecessary to protect shippers from market power abuse. But it is nevertheless clear that the use of the Board's formal abandonment procedures is not necessary to protect shippers from potential abuse of market power in this case because the Line has not had any active shippers in nearly two decades. Additionally, given that there is no traffic on the Line, the transaction will not affect rail-to-rail or multi-modal competition.

PUBLIC INTEREST FACTORS

NSR is unaware of any public interest factors that would militate against the Board granting the subject Petition. Moreover, consummation of the subject abandonment will help facilitate the completion of the City's road improvement project at the northern end of the abandonment, near

¹⁵ See, e.g., Minnesota Northern Railroad, Inc. Abandonment Exemption - In Red Lake and Polk Counties, MN, AB-497 (Sub-No. 1X) 1997 STB LEXIS 291, at *7, (STB served Nov. 14, 1997); see also Louisiana & Delta Railroad, Inc. - Abandonment Exemption In Lafourche and Assumption Parishes, LA, AB-318 (Sub-No 4X) 1997 STB LEXIS 205, at *3 (STB served Aug. 26, 1997).

¹⁶ The Board has stated that the proposed abandonment and discontinuance of service over short line railroads where traffic is marginal or nonexistent is of limited scope. Tulare Valley Railroad Company - Abandonment and Discontinuance Exemption - In Tulare And Fresno Counties, CA, AB-397 (Sub-No 3X) 1995 ICC LEXIS 12, at *10-11 (ICC served Feb 9, 1995).

Milepost GI 0.0. As such, NSR submits that the proposed abandonment is wholly in keeping with the public interest.

LABOR PROTECTIVE CONDITIONS

The interests of NSR employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

ENVIRONMENTAL AND HISTORIC IMPACTS REVIEW

NSR has prepared a combined E&HR in connection with the proposed abandonment. That E&HR is attached hereto as part of Exhibit J. As the Board is aware NSR also submitted an E&HR in connection with the Notice. Upon the Board, rejecting the Notice, NSR recirculated a new E&HR, which included and addressed comments received previously in response to the Notice.

PUBLIC USE AND INTERIM TRAILS USE CONDITIONS

As explained herein and in the Notice, the City is completing a road improvement project at the northern end of the abandonment, near Milepost GI 0.0. The City's road improvement project is a suitable, alternative public use of the right-of-way. However, the various portions of the Line that NSR has already sold would not be suitable for alternative public purposes. The Line does not contain any federally granted right-of-way. As appropriate, NSR is willing promptly to make available any information in its possession to anyone so requesting it. Because of unique considerations involved in this abandonment, NSR is unwilling to negotiate interim trails use.

Given that there is no present or reasonably foreseeable future need for freight rail service on the Line, there is simply no overriding public need for continued rail freight service. Likewise, any potential offer of financial assistance ("OFA") brought in this proceeding would be based upon pure speculation and conjecture. In the past, the Board has rejected OFAs when the offeror cannot conclusively show that it has sufficient traffic to warrant the continued operation of the Line.

Moreover, the Board has exempted abandonments from the OFA provisions on its own initiative when a proposed project serves a public purpose and there has been no traffic over a subject line for a considerable period of time.¹⁷

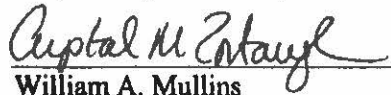
CONCLUSION

NSR respectfully requests an exemption from the provisions of 49 U.S.C. § 10903, if the Board finds based on the substantial evidence provided that the Line is § 10901 track, to abandon approximately 2.29-miles of railroad in the City of Fort Wayne, IN. Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 are not required to carry out the RTP set forth in 49 U.S.C. § 10101, as previously described in this Petition, nor is STB regulation required to protect shippers from an abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, NSR asks that the Board grant NSR an exemption for its proposed abandonment of service over the Line.

Garrett D. Urban
Assistant Deputy General Counsel
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, VA 23510
Tel: (757) 629-2761

December 6, 2019

Respectfully submitted,


William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7823
wmullins@bakerandmiller.com

Attorneys for Norfolk Southern
Railway Company

¹⁷ See Union Pacific Railroad Company – Abandonment Exemption – In Pima County, AZ (“Pima County”), AB-33 (Sub-No. 141X), slip op. at 3 (STB served Feb. 16, 2000) (stating that an exemption from 10904 has been granted provided the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service). See also Central Kansas Railway, L.L.C. – Abandonment Exemption – In Sedgwick County, KS (“Central Kansas”), AB-406 (Sub-No. 14X) (STB served April 10, 2001).

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT A

Notice Filed on September 5, 2019

248440

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

Crystal M. Zorbaugh

ENTERED
Office of Proceedings
September 5, 2019
Part of
Public Record

(202) 663-7831 (Direct Dial)
E-Mail: czorbaugh@bakerandmiller.com

September 5, 2019

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Norfolk Southern Railway Company – Proposed Abandonment – In The City
of Fort Wayne, Indiana, AB-290 (Sub-No. 403X)

Dear Ms. Brown:

Pursuant to 49 C.F.R. Part 1152, Subpart F – Exempt Abandonments and Discontinuances enclosed are an original and 11 copies of a verified notice of exemption for Norfolk Southern Railway Company ("NSR") to abandon rail service over an approximately 2.29 mile rail line segment extending between Milepost GI 0.0 and Milepost GI 2.29 in the City of Fort Wayne, IN ("Line").

Please acknowledge receipt and filing of this notice of exemption by date stamping the enclosed eleventh copy and returning it to the courier for return to me. This submission also includes an electronic copy of the entire filing and a separate electronic file of a draft Federal Register notice. A check in the amount of \$4,200.00 is enclosed to cover the applicable filing fee. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com or William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

FEE RECEIVED
September 5, 2019
SURFACE

Sincerely,


Crystal M. Zorbaugh

Attorney for Norfolk Southern Railway Company

FILED

TRANSPORTATION BOARD

Enclosures

cc: Greg Summy, Garrett Urban, Laura Hoag, Scott Plum

September 5, 2019
SURFACE

TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN THE CITY OF FORT WAYNE, INDIANA**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

**Greg E. Summy
General Solicitor
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, Virginia 23510
Tel: (757) 533-4939
Fax: (757) 533-4872**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

September 5, 2019

**Attorneys for Norfolk Southern Railway
Company**

***This filing contains color.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN THE CITY OF FORT WAYNE, INDIANA**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

INTRODUCTION AND BACKGROUND

Norfolk Southern Railway Company ("NSR") hereby submits a verified notice of exemption pursuant to 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances) for NSR to abandon rail service over an approximately 2.29 mile rail line segment extending between Milepost GI 0.0 and Milepost GI 2.29 in the City of Fort Wayne, IN ("Line").¹

On June 21, 1995, NSR's predecessor, Norfolk and Western Railway Company ("N&W") sought regulatory approval to acquire and operate the Line, a main line from Conrail's Milepost 319.2 (at Fort Wayne, IN) to Milepost 363.0 (at Warsaw, IN), and one other industrial track line segment from Consolidated Rail Corporation ("Conrail"). See Norfolk and Western Railway Company - Purchase and Operation Exemption - Consolidated Rail Corporation Line, Fort Wayne to Warsaw, Indiana - Petition for Exemption, FD 32736 (ICC served Aug. 29, 1995). N&W purchased the main line and two industrial tracks to give N&W an alternate route and expanded capacity between Fort Wayne, IN and Chicago, IL. The 1995 transaction was part of a series of transactions aimed at

¹ As explained herein, the Line being proposed for abandonment has a complicated history, which may have unintentionally resulted in NSR failing to seek abandonment authority in a timely manner for certain segments of the Line. Although no definitive conclusion has been reached as to whether the Line is §10901 or § 10906 track, NSR has decided to seek abandonment authority for the entire Line out of an abundance of caution to clean up the regulatory record to extent the Board believes abandonment authority should have been sought.

eliminating congestion on a main line that had reached "a saturation point." The Line being proposed for abandonment, which was referred to in FD 32736 as the "Fourth Street Industrial Track" used Conrail's milepost for the Line which at that time was Milepost -0.9 to Milepost 0.95. It is unclear from 1995 regulatory filings and decisions whether N&W intended the two industrial track segments to be 49 U.S.C. § 10901 or § 10906 track. Following the transaction, the Line did not connect to any trackage to the north or otherwise provide N&W with a through route. Adding to the confusion, in 1975, the Line was excluded from Conrail's Final System Plan ("FSP"), which was submitted to Congress on July 26, 1975, in accordance with Section 208(a) of the Regional Rail Reorganization Act of 1973 (PL 93-236). Prior to Conrail acquiring the Line, it was part of Penn Central's Waterloo Branch.

Sometime in the late 1990s, NSR, as successor to N&W, began to look at N&W's various lines in the region in order to determine, which rail lines were still be utilized to serve shippers in the region, which ones were not and could be handled as normal track retirements (for § 10906 track), and to the extent NSR wished to terminate its common carrier obligations, which ones NSR would need to seek abandonment authority. It was unclear at that time based on the Line's prior use, location, and infrastructure as to whether the Line (known as the Fourth Street Industrial Track) was § 10901 or § 10906 track. Complicating matters, NSR was in a dispute with CSX over another rail line in the area, so NSR chose to delay taking action with respect to the Line. Around the same time, the City of Fort Wayne encouraged NSR to eliminate grade crossings over the Line and expressed an interest in using a portion of the inactive rail line for a flood control project.

In 2000, OmniSource the only shipper on the Line, decided to cease rail operations over the Line because it had a second facility in Fort Wayne, which was also rail served. OmniSource expressed an interest in purchasing a portion of the Line adjacent to its facility and offered to give NSR a rail easement should the sale close prior to NSR acquiring abandonment authority. Because of the

uncertainty of the track's classification in its original acquisition, in 2000 NSR decided internally to seek abandonment authority out of an abundance of caution.

In 2001, NSR came to the determination that the "Fourth Street Industrial Track" was an industrial track under Conrail's Final System Plan ("FSP"). After making this determination, NSR retired the Line pursuant to NSR's normal track retirement policy (for § 10906 track) and NSR's real estate department proceeded to sell certain segments of the Line without retaining a rail easement:²

- A portion of Milepost GI 1.73 - Milepost GI 1.85 was sold to Schenkel and Sons, Inc. in April 2008 and a portion was sold to Applied Metals & Machine Works Company, Inc. in June 2008 (each took 50' of the ROW from centerline between these two mileposts);
- A small segment of the right-of-way between Milepost GI 0.92 - Milepost GI 1.04 was sold to Calhoun Investments, LLC in October 2005; and,
- A small segment of the right-of-way between Milepost GI 0.44 - Milepost GI 0.92 was sold to RFI, LLC (aka OmniSource) in October 2001.³

NSR was recently reviewing its records and ownership interests and in doing so discovered that NSR failed to seek abandonment authority for the Line when it appears it may have been required to do so. While no definitive conclusion has been reached as to whether the Line is §10901 or § 10906 track, NSR is seeking abandonment authority out of an abundance of caution to clean up the regulatory record to the extent the Board believes abandonment authority should have been sought. If abandonment authority indeed was required, NSR sincerely apologizes for the mistake and corresponding delay in seeking authority.

² Because NSR decided that the Line was § 10906 track, NSR retired and salvaged certain portions of the Line. NSR confirms all tracks from Milepost GI 2.04 to Milepost GI 0.0 have been removed. NSR further confirms there were no structures located on that portion of the Line that NSR has already salvaged.

³ In a July 11, 2000 letter agreement, OmniSource did provide NSR an easement to restore the Line at OmniSource's expense if NSR proceeded with closing the sale of the property prior to obtaining any necessary Board approval, although such an easement was not reflected in the eventual sale.

Lastly, while NSR is seeking to abandon the entire Line, NSR plans to convert the portion of Line from Milepost GI 1.85 to Milepost GI 2.29⁴ (where it connects to NSR's B -Line) from common carrier track to § 10906 track ("Converted 10906 Segment") to support current and future operation needs on NSR's nearby mainline. No shippers have been served by the Line for nearly two decades and the sole shipper located on the Line at that time supported the abandonment. As such, converting the Converted 10906 Segment from common carrier track to § 10906 track will not impact any shippers. The entirety of the Line is located in the City of Fort Wayne, Indiana.

In accordance with the requirements of 49 C.F.R. §§ 1152.50(b) and (d), NSR provides the following information in support of this notice of abandonment:

Certification: 49 C.F.R. § 1152.50(b)

NSR certifies that the Line satisfies the criteria for abandonment under the exemption provisions at 49 C.F.R. part 1152, subpart F. See Certification of Todd L. Reynolds, General Manager Operations – Central Region for Norfolk Southern Railway Company (Exhibit A). During the past two years, NSR has provided no local or overhead traffic over the Line; overhead traffic, if there were any, could be rerouted over other lines; and no formal complaint has been filed by a user of rail service on the Line or a state or local government entity acting on behalf of such user regarding cessation of service over the Line is either pending before the Surface Transportation Board or any U.S. District Court, or has been decided in favor of the complainant within the two-year period.

⁴ While no tracks remain in place from Milepost GI 1.85 to Milepost GI 2.04, NSR has determined to convert that portion of the Line to § 10906 to support rail operations on a nearby NSR rail line.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

The proposed abandonment will be consummated on or after October 25, 2019 (50 days after filing the notice of exemption).

Additional Information Required: 49 C.F.R. §§ 1152.22(a)(1)-(4), (7)-(8) and (e)(4)

Exact name of applicant (49 C.F.R. § 1152.22(a)(1)):

Norfolk Southern Railway Company

Whether applicant is a common carrier by railroad (49 C.F.R. § 1152.22(a)(2)):

Norfolk Southern Railway Company is a common carrier by railroad subject to the Board's jurisdiction under 49 U.S.C. Subtitle IV.

Relief sought (49 C.F.R. § 1152.22(a)(3)):

NSR hereby invokes the Board's two-year-out-of-service class exemption procedures to abandon rail service over an approximately 2.29-mile rail line segment extending between Milepost GI 0.0 and Milepost GI 2.29 in the City of Fort Wayne, IN. While NSR is seeking to abandon the entire Line, NSR plans to convert the portion of Line from Milepost GI 1.85 to Milepost GI 2.29⁵ (where it connects to NSR's B -Line) from common carrier track to § 10906 track ("Converted 10906 Segment") to support current and future operation needs on NSR's nearby mainline. No shippers have been served by the Line for nearly two decades and the sole shipper located on the Line at that time supported the abandonment. As such, converting the Converted 10906 Segment from common carrier track to § 10906 track will not impact any shippers. All of the Line is located in the City of Fort Wayne, Indiana. The Line traverses United States Postal Zip Code territories 46805 and 46808.

Map (49 C.F.R. § 1152.22(a)(4)):

A detailed map showing the location of the Line is attached hereto as Exhibit B.

⁵ While no tracks remain in place from Milepost GI 1.85 to Milepost GI 2.04, NSR has determined to convert that portion of the Line to 10906 to support rail operations on a nearby NSR rail line.

Applicant's representatives (49 C.F.R. § 1152.22(a)(7)):

NSR's representatives to whom correspondence should be sent is as follows:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

USPS ZIP codes (49 C.F.R. § 1152.22(a)(8)):

The Line is located in the following United States Postal Zip Code territories 46805 and 46808.

Suitability of the Line for Other Public Purposes (49 C.F.R. § 1152.22(c)(4)):

The City of Fort Wayne is completing a road improvement project at the northern end of the abandonment, near Milepost GI 0.0. The City's road improvement project is a suitable, alternative public use of the right-of-way. Additionally, given that NSR plans to convert the portion of Line from Milepost GI 1.85 to Milepost GI 2.29 (where it connects to NSR's B -Line) from common carrier track to § 10906 track that portion of the Line would not be suitable for alternative public purposes. Likewise, the various portions of the Line that NSR has already sold would not be suitable for alternative public purposes. The Line does not contain any federally granted right-of-way. As appropriate, NSR is willing promptly to make available any information in its possession to anyone so requesting it.

Labor Protection

Because the Line has been inactive for well over two years, no railroad employees will be adversely affected by exercise of abandonment authority. Nevertheless, the interests of NSR's employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions set forth in Oregon Short Line R. Co – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Certifications

Attached hereto as Exhibit C are Certificates of Service and Publication certifying compliance with the advance notice and newspaper publication requirements set forth at 49 C.F.R. § 1152.50(d)(1) and 49 C.F.R. § 1105.12, respectively. Attached as part of Exhibit D is a certificate of compliance with the advance notice requirements for Environmental and Historic Reports as set forth at 49 C.F.R. § 1105.11.

Environmental and Historic Report

As is reflected in the certificate of compliance with the provisions of 49 C.F.R. § 1105.11 (see Exhibit D), NSR has prepared a combined Environmental and Historic Report ("E&HR") in anticipation of the proposed abandonment portion of the proceeding, which conforms to the requirements of 49 C.F.R. §§ 1105.7 and 1105.8. A copy of the E&HR is attached hereto as Attachment 1 to Exhibit D (§ 1105.11 certification).

Greg E. Summy
General Solicitor
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, Virginia 23510
Tel: (757) 533-4939
Fax: (757) 533-4872

September 5, 2019

Respectfully submitted,



William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Attorneys for Norfolk Southern Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN THE CITY OF FORT WAYNE, INDIANA**

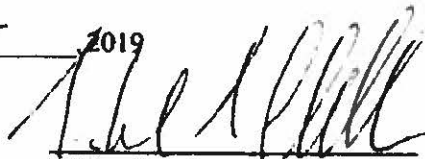
VERIFIED NOTICE OF EXEMPT ABANDONMENT

VERIFICATION

Verification

I, Michael McClellan, Vice President for Norfolk Southern Railway Company ("NSR") hereby verify under penalty of perjury that to the best of my knowledge, the foregoing abandonment notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR in connection with this proceeding before the Surface Transportation Board.

Executed this 29 day of August 2019

A handwritten signature in black ink, appearing to read 'Michael McClellan', written over a horizontal line.

Michael McClellan
Vice President
Norfolk Southern Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN THE CITY OF FORT WAYNE, INDIANA**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT A

CERTIFICATION

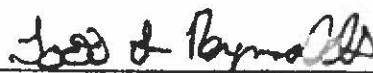
CERTIFICATION

STATE OF OHIO:

ss:

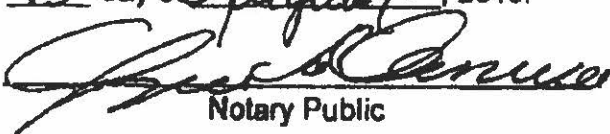
CITY OF CINCINNATI:

Todd L. Reynolds makes oath and says that he is General Manager Operations – Central Region for Norfolk Southern Railway Company (NSR); that the rail line between Milepost GI 0 and Milepost GI 2.29, over which service is to be discontinued, is subject to his supervision and direction; that no local traffic has moved over the line for at least two years, that no overhead traffic has moved over the line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; and that no formal complaint filed by a user of rail service on the line or a state or local government entity acting on behalf of such user regarding cessation of service over the line either is pending before the Surface Transportation Board or any U. S. District Court or has been decided in favor of the complainant within the two-year period.



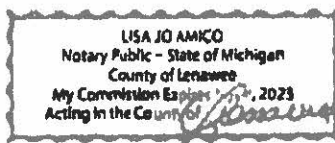
Todd L. Reynolds

Subscribed and sworn to before me this
15 day of August, 2019.


Notary Public

My commission expires:

11.4.2023



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN THE CITY OF FORT WAYNE, INDIANA**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT B

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN THE CITY OF FORT WAYNE, INDIANA**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT C

CERTIFICATES OF SERVICE/PUBLICATION

Certificate of Service of Advance Notice

49 C.F.R. § 1152.50(d)(1) – Notice

I certify that, on August 23, 2019, in keeping with 49 C.F.R. § 1152.50(d)(1), I caused the following parties to be served with the written notice of intent of Norfolk Southern Railway Company to invoke the Board's notice of exemption procedures to abandon rail service over an approximately 2.29 mile rail line segment extending between Milepost GI 0.0 and Milepost GI 2.29 in the City of Fort Wayne, IN ("Line"). I further certify that the Line does not contain any federally granted right of way.

Public Service Commission, et al

Indiana Utility Regulatory Commission
PNC Center
101 W. Washington Street, Suite 1500E
Indianapolis, IN 46204

Indiana Department of Transportation
Railroad Section
100 North Senate Ave., IGC-N, Room N901
Indianapolis, IN. 46204

Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program)

David Dorfman
Headquarters Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA
Railroads for National Defense Program
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

The National Park Service, Recreation Resources Assistance Division

Mr. Stephan Nofield
National Park Service
Rivers, Trails and Conservation Assistance Program
1849 C Street NW, Room 1344
Washington DC 20240

U.S. Department of Agriculture, Chief of the Forest Service

Vicki Christiansen, Chief
Forest Service
U.S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street SW
Washington, DC 20024

September 5, 2019


Crystal M. Zorbaugh
Attorney for Norfolk Southern Railway Company

Certificate of Newspaper Publication

49 C.F.R. § 1105.12 – Newspaper Notice

I certify that a "Notice of Intent to Abandon Rail Service" was published in the form prescribed by the Board for abandonment notices of exemption (49 C.F.R. § 1105.12). The notice was published one time on August 31, 2019, in Journal Gazette, a newspaper of general circulation in the City of Fort Wayne, Indiana.

September 5, 2019



Crystal M. Zorbaugh

Attorney for Norfolk Southern Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN THE CITY OF FORT WAYNE, INDIANA**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT D

**CERTIFICATE OF COMPLIANCE WITH
ENVIRONMENTAL AND HISTORIC REPORT
REQUIREMENTS**

**Environmental and Historic Report
Certificate of Service**

Pursuant to the requirements of 49 C.F.R. § 1105.7(b) and 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Combined Environmental and Historic Report in Docket No. AB-290 (Sub-No. 403X) was mailed via first class mail on August 6, 2019 to the following parties:

STATE HISTORIC PRESERVATION OFFICE

Ms. Beth McCord
Deputy State Historic Preservation Officer
Indiana Department of Natural Resources
402 W. Washington Street, W274
Indianapolis, IN 46204

STATE DOT

Ms. Venetta Keefe
Rail Programs Manager
Indiana Department of Transportation
100 North Senate Ave., IGCN 955
Indianapolis, IN. 46204

US ENVIRONMENTAL PROTECTION AGENCY

US EPA
William Jefferson Clinton (WJC) Building
1200 Pennsylvania Ave., NW
Mail Code 1101-A
Washington, DC 20460

REGIONAL/STATE EPA

Ms. Virginia Laszewski
NEPA Program Office
US EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Indiana Department of Environmental Management
Government Center North
100 North Senate Avenue
Indianapolis, IN 46204

CITY

Mayor Tom Henry
City of Fort Wayne
Office of the Mayor
200 East Berry Street
Fort Wayne, Indiana 46802

COUNTY

Mr. Chris Cloud
Chief of Staff, Allen County
Citizens Square
200 East Berry Street, Suite 410
Fort Wayne, Indiana 46802

US ARMY CORPS OF ENGINEERS

Mr. Aaron Damrill
US Army Corps of Engineers
Regulatory Michiana Branch
2422 Viridian Drive, Suite #200
South Bend, IN 46628-3561

STATE COASTAL ZONE MANAGEMENT

Ms. Kathryn Vallis
Coastal Resources Planner
Indiana Department of Natural Resources, Lake Michigan
Coastal Program
402 W. Washington St., Room W267
Indianapolis, IN 46204

FISH AND WILDLIFE SERVICE

Mr. Charles Wooley
Regional Director
United States Fish & Wildlife Service
Midwest Region 3
5600 American Boulevard West, Suite 990
Bloomington, MN 55437

NATIONAL PARK SERVICE

Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance Program
1849 C. Street NW, Room 1344
Washington, DC 20240

Mr. David Thomson
National Park Service, Midwest Regional Office
Rivers, Trails, and Conservation Assistance Program
601 Riverfront Dr.
Omaha, NE 68102

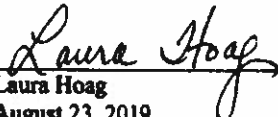
NATIONAL GEODETIC SURVEY

Communications and Outreach Branch, NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East West Highway
Silver Spring, MD 20910-3282

NATURAL RESOURCES CONSERVATION SERVICE

Mr. Salvador Salinas
Regional Conservationist - Central
USDA Natural Resources Conservation Service
1400 Independence Ave SW, #5204-S
Washington, DC 20250

Mr. Jerry Raynor
State Conservationist
USDA NRCS Indiana State Office
6013 Lakeside Drive
Indianapolis, IN 46278



Laura Hoag
August 23, 2019

ATTACHMENT 1

**ENVIRONMENTAL AND HISTORIC REPORT
INCLUDING SAMPLE TRANSMITTAL LETTER**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT –
IN THE CITY OF FORT WAYNE, INDIANA**

Combined Environmental and Historic Report

Norfolk Southern Railway Company (“NSR”) submits this Combined Environmental and Historic Report (“E&HR”) pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, in connection with NSR’s proposed abandonment of an approximately 2.29 miles of rail line from Milepost GI 0.0 to Milepost GI 2.29 (“Line”) in the City of Fort Wayne, Indiana.¹

August 6, 2019

¹ The Line being proposed for abandonment has a complicated history, which appears to have unintentionally resulted in NSR failing to seek abandonment authority in a timely manner for certain segments of the Line. On June 21, 1995, NSR’s predecessor, Norfolk and Western Railway Company (“N&W”) sought regulatory approval to acquire and operate the Line, a main line from Conrail’s Milepost 319.2 (at Fort Wayne, IN) to Milepost 363.0 (at Warsaw, IN), and one other industrial track line segment from Consolidated Rail Corporation (“Conrail”). See Norfolk and Western Railway Company – Purchase and Operation Exemption – Consolidated Rail Corporation Line, Fort Wayne to Warsaw, Indiana – Petition for Exemption, FD 32736 (ICC served Aug. 29, 1995). N&W purchased the main line and two industrial tracks to give N&W an alternate route and expanded capacity between Fort Wayne, IN and Chicago, IL. The 1995 transaction was part of a series of transactions aimed at eliminating congestion on a main line that had reached “a saturation point.” The Line being proposed for abandonment, which was referred to in FD 32736 as the “Fourth Street Industrial Track” used Conrail’s milepost for the Line which at that time was Milepost -0.9 to Milepost 0.95. It is unclear from 1995 regulatory filings and decisions whether N&W intended the two industrial track segments to be 49 U.S.C. § 10901 or § 10906 track. Following the transaction, the Line did not connect to any trackage to the north or otherwise provide N&W with a through route. Adding to the confusion, in 1975, the Line was excluded from Conrail’s Final System Plan (“FSP”), which was submitted to Congress on July 26, 1975, in accordance with Section 208(a) of the Regional Rail Reorganization Act of 1973 (PL 93-236). Prior to Conrail acquiring the Line, it was part of Penn Central’s Waterloo Branch.

Background

The Line has not served shippers since March 2000. Sometime in the late 1990s, NSR, as successor to N&W, began to look at N&W's various lines in the region in order to determine, which rail lines were still be utilized to serve shippers in the region, which ones were not and could be handled as normal track retirements (for § 10906 track), and to the extent NSR wished to terminate its common carrier obligations, which ones NSR would need to seek abandonment authority. It was unclear at that time based on the Line's prior use, location, and infrastructure as to whether the Line (known as the Fourth Street Industrial Track) was § 10901 or § 10906 track. Following N&W's acquisition in 1995, the Line did not connect to any trackage to the north or otherwise provide N&W with a through route. Complicating matters, NSR was in a dispute with CSX over another rail line in the area, so NSR chose to delay taking action with respect to the Line. Around the same time, the City of Fort Wayne was encouraging NSR to eliminate grade crossings over the Line. The City also wanted to use a portion of the inactive rail line for a flood control project.

In 2000, OmniSource the only shipper on the Line, decided to cease rail operations over the Line because it had a second facility in Fort Wayne, which was also rail served. OmniSource expressed an interest in purchasing a portion of the Line adjacent to its facility and offered to give NSR a rail easement should the sale close prior to NSR acquiring abandonment authority. Because of the uncertainty of the track's classification in its original acquisition, in 2000 NSR decided internally to seek abandonment authority out of an abundance of caution. Sometime in 2001, NSR came to the determination that the "Fourth Street Industrial Track" was an industrial track under the FSP. After making this determination, NSR retired the Line pursuant to NSR's normal track retirement policy (for § 10906 track). Shortly thereafter, NSR's real estate department proceeded

to sell certain segments of the Line without retaining a rail easement:

- A portion of Milepost GI 1.73 –Milepost GI 1.85 was sold to Schenkel and Sons, Inc. in April 2008 and a portion was sold to Applied Metals & Machine Works Company, Inc. in June 2008 (each took 50' of the ROW from centerline between these two mileposts);
- A small segment of the right-of-way between Milepost GI 0.92 –Milepost GI 1.04 was sold to Calhoun Investments, LLC in October 2005; and,
- A small segment of the right-of-way between Milepost GI 0.44 –Milepost GI 0.92 was sold to RFI, LLC (aka OmniSource) in October 2001.²

In addition to these sales of portions of the real estate underlying the Line, all tracks on the portion of the Line from Milepost GI 2.04 to Milepost GI 0.0 have been removed.³

NSR was recently reviewing its records and ownership interests and in doing so discovered that NSR failed to seek abandonment authority for the Line when it appears it may have been required to do so. While no definitive conclusion has been reached as to whether the Line is § 10901 or § 10906 track, NSR is seeking abandonment authority out of an abundance of caution and to clean up the regulatory record to extent the Board believes abandonment authority should have been sought. If abandonment authority indeed was required, NSR apologizes for the mistake and corresponding delay in seeking authority. Lastly, while NSR is seeking to abandon the entire Line, NSR plans to convert the portion of Line from Milepost GI 1.85 to Milepost GI 2.29 (where it connects to NSR's B-Line) from common carrier track to § 10906 track ("Converted 10906 Segment") to support current and future operation needs on NSR's nearby main line. To be clear,

² In a July 11, 2000 letter agreement, OmniSource did provide NSR an easement to restore the Line at OmniSource's expense if NSR proceeded with closing the sale of the property prior to obtaining any necessary Board approval, although such an easement was not reflected in the eventual sale.

³ There were no structures on the segment of the Line that was already salvaged.

no shippers have been served by the Line for well over a decade and the sole shipper located on the Line at that time supported the abandonment. As such, converting the Converted 10906 Segment from common carrier track to § 10906 track will not impact any shippers.

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ENVIRONMENTAL REPORT

49 CFR 1105.7(e)(1)

Proposed Action and Alternatives

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

RESPONSE: NSR proposes to abandon its common carrier obligation over approximately 2.29 miles of rail line from Milepost GI 0.0 to Milepost GI 2.29 ("Line") in the City of Fort Wayne, Indiana. There is one structure (bridge) located at Milepost GI 2.18, on the portion of the Line to be converted.

NSR serves no customers on the Line. No traffic has moved on or over the Line since March 2000, and section of the rail line between Milepost GI 2.04 to Milepost GI 0.0 has been removed and certain portions of the real estate underlying the Line discussed above were sold. The remainder of the Line from Milepost GI 2.29 to Milepost GI 1.85 (Converted 10906 Segment) is being reclassified from § 10901 track to § 10906 to the extent abandonment authority is required for the Line. Unlike a typical abandonment, NSR will not be conducting any further salvage activities. As such, NSR believes that no storm water mitigation measures including, but not limited to, a National Pollutant Discharge Elimination System permit will be required, because no further salvage activities will be conducted. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. There is one structure (a bridge) on the Line; it is located on the Converted 10906 Segment. However, NSR does not intend to remove or dismantle the bridge.

The alternative to abandonment is to not abandon the Line and force NSR maintain a common carrier obligation where no need for rail service exists, or has existed in nearly two

decades. The alternative is not satisfactory. NSR would incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line be retained.

A map depicting the Line is attached as **Appendix A**. An example of NSR's letter to federal, state and local government agencies along with a list of the consulting agencies that NSR has contacted is attached as **Appendix B**. Comments received as a result of NSR's written requests for feedback can be found in **Appendix C**. A bridge list is attached as **Appendix D**.

49 CFR 1105.7(e)(2) Transportation system.

Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

RESPONSE: Effects of the proposed action on regional or local transportation systems and patterns would be negligible. There has been no NSR rail freight or passenger traffic originating or terminating on the Line proposed for abandonment in nearly two decades.

49 CFR 1105.7(e)(3) Land use.

(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

RESPONSE: An outline of future land use plans has been requested from the City of Fort Wayne, Indiana, and Allen County, Indiana, both of which were asked to comment on the consistency of the proposed abandonment of the Line with existing land use plans.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

RESPONSE: NSR does not believe the abandonment will have any adverse impact on prime agricultural land because the Line to be abandoned is in the City of Fort Wayne. However, a copy of this E&HR has been mailed to The United States Department of Agriculture Natural

Resources Conservation Service ("USDA NRCS") for its information and to provide USDA NRCS an opportunity to comment.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by Sec. 1105.9.

RESPONSE: This Line is adjacent to the St. Mary's River. A copy of this E&HR has been mailed to the Indiana Department of Natural Resources (IDNR), Office of Coastal Management. NSR has no reason to believe that the proposed abandonment would be inconsistent with the coastal zone management plan because NSR will not be conducting any further salvage activities. In email correspondence dated August 15, 2019, the IDNR Office of Coastal Management informed NSR that the proposed abandonment was outside of the Lake Michigan Coastal Program's service boundaries of the Lake Michigan Watershed. The IDNR Office of Coastal Management suggested NSR contact IDNR Division of Fish and Wildlife for its input regarding potential environmental impacts resulting from the proposed abandonment. NSR provided a courtesy copy of the E&HR to the IDNR Division of Fish and Wildlife. In email correspondence dated August 22, 2019, the IDNR Division of Fish and Wildlife indicated a review was not warranted as no salvage activities will be performed. A copy of the correspondence can be found in Exhibit C.

(iv) If the proposed action is an abandonment state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

RESPONSE: The City of Fort Wayne is completing a road improvement project at the northern end of the abandonment, near Milepost GI 0.0. The City's road improvement project is a suitable, alternative public use of the right-of-way. Additionally, given that NSR plans to convert the portion of Line from Milepost GI 1.85 to Milepost GI 2.29 (where it connects to NSR's B-Line) from common carrier track to § 10906 track that portion of the Line would not be suitable

for alternative public purposes. Likewise, the various portions of the Line that NSR has already sold would not be suitable for alternative public purposes.

49 CFR 1105.7(e)(4) Energy.

(i) Describe the effect of the proposed action on transportation of energy resources.

RESPONSE: Development and transportation of energy resources will not be affected by the abandonment. There has been no freight or passenger traffic originating or terminating on the Line for nearly two decades.

(ii) Describe the effect of the proposed action on recyclable commodities.

RESPONSE: Movement or recovery of recyclable commodities will not be affected by the abandonment. There has been no freight or passenger traffic originating or terminating on the Line for nearly two decades.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

RESPONSE: The proposed action involves the abandonment and of a rail Line that has been inactive for nearly two decades, and as such will not result in an increase or decrease in overall energy. A portion of the Line has already been removed and salvaged.

*(iv) If the proposed action will cause diversions from rail to motor carriage of more than:
(A) 1,000 rail carloads a year; or
(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.*

RESPONSE: No traffic will be diverted from rail to motor carriage as a result of the proposed action, so the above thresholds will not be exceeded. Accordingly, there is no need to produce data on diverted traffic or to quantify the net change in energy consumption.

49 CFR 1105.7(e)(5) Air.

(i) If the proposed action will result in either:

- (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or*
- (B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or*
- (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.*

RESPONSE: The above thresholds will not be exceeded.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:

- (A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,*
- (B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or*
- (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan.*

RESPONSE: The above thresholds will not be exceeded.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and Freon®) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

RESPONSE: Not applicable.

49 CFR 1105.7(e)(6) Noise.

If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

- (i) An incremental increase in noise levels of three decibels Ldn or more; or*
- (ii) An increase to a noise level of 65 decibels Ldn or greater.*

If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

RESPONSE: The above thresholds will not be exceeded.

49 CFR 1105.7(e)(7) Safety.

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

RESPONSE: Abandonment of the Line will have no adverse impact on public health and safety.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

RESPONSE: Not applicable.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

RESPONSE: NSR has no knowledge of hazardous waste sites or sites where there have been known hazardous material spills on the right-of-way or in areas adjacent to the Line.

49 CFR 1105.7(e)(8) Biological Resources.

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

RESPONSE: NSR does not believe the abandonment will have any adverse impact on surrounding habitats and species because no further salvaging will occur. There is no NSR rail freight or passenger traffic originating or terminating on the Line. A copy of this E&HR has been mailed to the U.S. Fish and Wildlife Service to ascertain any impacts to surrounding habitats and species. In an August 7, 2019 email correspondence, the U.S. Fish and Wildlife Service responded that the proposed abandonment is not likely to affect endangered and threatened species. A copy of that correspondence can be found in Appendix C.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

RESPONSE: The Line does not pass through state parks or forests, national parks or forests, or wildlife sanctuaries. As such, no adverse effects on wildlife sanctuaries, national parks or forests, or state parks or forests are anticipated. Regardless, NSR requested input from the National Park Service. No comments have been received yet.

49 CFR 1105.7(e)(9) Water.

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

RESPONSE: NSR does not intend to remove or alter the contour of the roadbed underlying the Line to be abandoned by way of excavation or other ground-disturbance activity. No further salvaging is anticipated. Accordingly, no soils will be disturbed as a result of the proposed abandonment, and no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit will be required. There are no plans to undertake in-stream work, or dredge and/or use any fill materials in connection with the proposed abandonment, so, for this reason also, the proposed abandonment will not result in water quality impacts.

Consultation has been requested from the Indiana Department of Environmental Management and the United States Environment Protection Agency (USEPA). No comments have been received yet.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

RESPONSE: The geometry of the roadbed will not be altered and no in-stream work is contemplated. No discernible effects on either 100-year flood plains or adjacent wetlands are

expected in connection with the proposed abandonment. NSR will not be conducting any further salvage activities. Consequently, the railroad does not believe a Section 404 permit will be required in connection with the proposed abandonment. Consultation was requested from the U.S. Army Corps of Engineers Detroit District (USACE).

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.

RESPONSE: NSR does not plan to remove or alter the roadbed underlying the Line to be abandoned, or to undertake in-stream work or to dredge or use any fill materials. There will be no excavation or other ground-disturbance activity, and, because no soils will be disturbed, no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. NSR anticipates that the abandonment will not affect water quality and that additional permitting under Section 402 will not be required. NSR will not be conducting any further salvage activities. NSR has requested input from the U.S. Environmental Protection Agency (USEPA) and the Indiana Department of Environmental Management (as indicated in the preceding section). No comments have been received yet.

49 CFR 1105.7(e)(10) Proposed Mitigation.

Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

RESPONSE: Abandonment of the Line is not expected to produce adverse environmental impacts for the reasons set forth above.

HISTORIC REPORT

49 CFR 1105.8(d)

PROPOSED ACTION AND ALTERNATIVES

NSR proposes to abandon its common carrier obligation over approximately 2.29 miles of rail line from Milepost GI 0.0 to Milepost GI 2.29 ("Line") in the City of Fort Wayne, Indiana. NSR serves no customers on the Line. No traffic has moved on or over the Line since March 2000, and sections of the rail line between Milepost GI 2.04 to Milepost GI 0.0 have been removed and certain portions of the real estate underlying the Line discussed above were sold. The remainder of the Line from Milepost GI 2.29 to Milepost GI 1.85 (Converted 10906 Segment) is being reclassified from § 10901 track to § 10906 to the extent abandonment authority is required for the Line. Unlike a typical abandonment, NSR will not be conducting any further salvage activities. As such, NSR believes that no storm water mitigation measures including, but not limited to, a National Pollutant Discharge Elimination System permit will be required, because no further salvage activities will be conducted. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. There is one structure (a bridge) on the Line; it is located on the Converted 10906 Segment. NSR does not intend to remove or dismantle the bridge.

The alternative to abandonment is to not abandon the Line and force NSR maintain a common carrier obligation where no need for rail service exists, or has existed in nearly two decades. The alternative is not satisfactory. NSR would incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line be retained.

A map depicting the Line is attached as **Appendix A**.

ADDITIONAL INFORMATION

- (1) **U.S.G.S. Topographic Map** – Map was furnished to the State Historic Preservation Office within the Indiana Department of Natural Resources (“SHPO”).
- (2) **Written Description of Right of Way** – The right-of-way ranges from 20 feet to 100 feet in width along the main track centerline. Pursuant to Surface Transportation Board policy, the railroad’s right-of-way will constitute the Area of Potential Effect (“APE”) for this undertaking.
- (3) **Photographs** – There is one structure (a bridge) on the Line. It is located at Milepost GI 2.18, on the portion of the Line to be converted. A photograph of the bridge was furnished to the SHPO.
- (4) **Date of Construction of Structures** – Based on information in NSR’s possession, it is unable to determine when the sole structure on the Line (a bridge) was constructed. However, NSR does not intend to remove or dismantle the bridge. A bridge list is attached as Appendix D.
- (5) **History of Operations and Changes Contemplated** – The Line that is the subject of this abandonment consists of approximately 2.29 miles of rail line between Milepost GI 0 and Milepost GI 2.29 in the City of Fort Wayne, Indiana.

The Line is a small stub-end branch line that was part of the old Fort Wayne and Jackson and Saginaw Railroad Company main line between Jackson, Michigan and Fort Wayne, Indiana. The whole Fort Wayne and Jackson line consisting of approximately 97.83 miles of line between Jackson, MI and Ft. Wayne, IN was originally completed by the Fort Wayne, Jackson and Saginaw Railroad Company on December 25, 1870. The Fort Wayne, Jackson and Saginaw was a consolidation of the Jackson, Fort Wayne and Cincinnati and the Fort Wayne, Jackson and Saginaw Railroads, formed April 6, 1869. The consolidated Fort Wayne, Jackson and Saginaw

defaulted on its debts on January 1, 1874. It was subsequently sold under foreclosure on December 3, 1879.

The Fort Wayne & Jackson Railroad Company was incorporated under the laws of Michigan and Indiana on December 27, 1879, following the reorganization of the Fort Wayne, Jackson & Saginaw Railroad Company, which became effective on January 1, 1880. The line was leased in perpetuity to the Lake Shore & Michigan Railway Company, effective August 24, 1882. The lease was assumed by the New York Central Railroad Company in December 1914, and by the Penn Central Company, by virtue of the merger of the New York Central Railroad Company and Pennsylvania Railroad Company on February 1, 1968. The Line was operated as part of Penn Central's Waterloo Branch that continued to the south of Ft. Wayne. However, much of the Waterloo Branch was abandoned by not being transferred to Conrail as part of the Final System Plan. The Line was operated by Conrail after the consolidation of the bankrupt northeastern railroads by the USRA on April 1, 1976.

On June 1, 1982, N&W and Southern Railway Company consolidated as subsidiaries of Norfolk Southern Corporation, pursuant to authority granted by the Interstate Commerce Commission.

Effective December 31, 1990, Southern Railway Company changed its name to Norfolk Southern Railway Company. N&W became a wholly owned subsidiary of NSR rather than a subsidiary of Norfolk Southern Corporation.

Pursuant to an ICC decision in Finance Docket No. 32736, Norfolk and Western Railway Company – Purchase and Operation Exemption – Consolidated Rail Corporation Between Fort Wayne and Warsaw, IN, served August 29, 1995, NSR's predecessor, Norfolk & Western, purchased three line segments in Indiana, including this subject segment.

Pursuant to a notice of exemption filed in STB Finance Docket No. 33648, Norfolk Southern Railway Company – Merger Exemption – Norfolk and Western Railway Company, served August 31, 1998, Norfolk Southern Railway Company (NSR) merged Norfolk and Western Railway Company (NW) into NSR effective September 1, 1998.

In this proceeding, NSR is seeking to abandon the entire Line and convert the portion of Line from Milepost GI 1.85 to Milepost GI 2.29 (where it connects to NSR's B-Line) from common carrier track (§ 10901) to § 10906 track to support current and future operation needs on NSR's nearby main line.

(6) **Summary of Documents In Carrier's Possession That Might Be Useful for Documenting a Structure That Is Found To Be Historic** – While plans may be available for the sole structure on the Line, it is most likely that any such plans are standard plans used for the construction of similar structures on the dates of construction. Regardless, NSR does not intend to remove or dismantle the sole structure (a bridge).

(7) **Opinion Regarding Criteria For Listing In The National Register Of Historic Places** – There is one structure located within the APE for this project. NSR does not intend to remove or dismantle the bridge. Additionally, NSR does not believe that the structure nor the Line itself meets the criteria for listing in the *National Register of Historic Places*. There are no plans for salvage activity on the Line.

(8) **Subsurface Ground Conditions That Might Affect Archaeological Recovery** - The railroad is not aware of any prior subsurface ground disturbances or environmental conditions that would affect archaeological recovery. Moreover, abandonment of the Line and will not affect any potential archaeological resources. The subsurface of the right-of-way was initially disturbed in the construction of the Line by grading and filling. Abandonment of the Line will not result in

activities below the surface, or below the level of initial disturbance because no further salvage activities are anticipated.

(9) **Follow-Up Information** – Additional information will be provided as appropriate.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

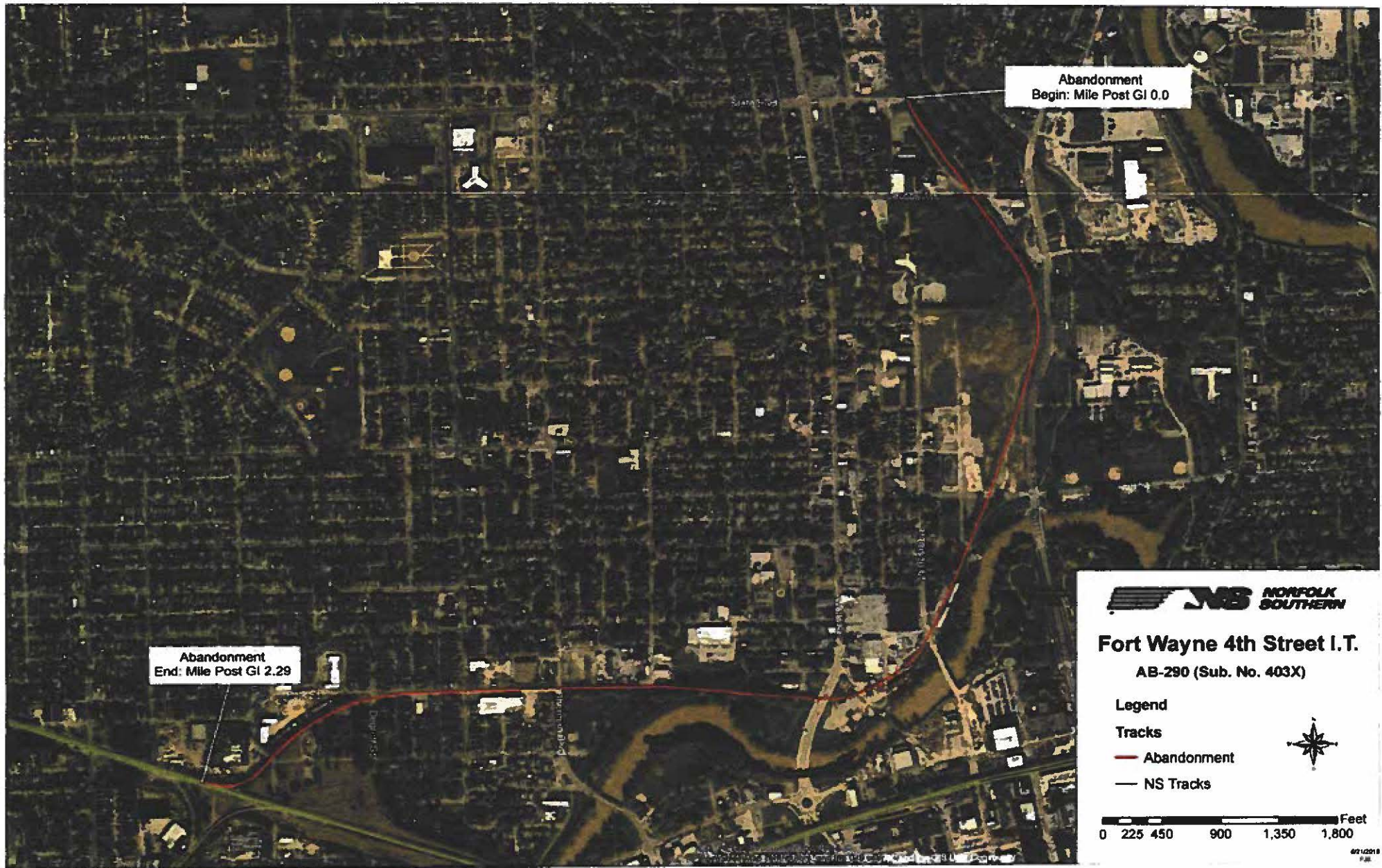
AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- PROPOSED ABANDONMENT -
IN THE CITY OF FORT WAYNE, INDIANA**

Combined Environmental and Historic Report

APPENDIX A

Map



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- PROPOSED ABANDONMENT -
IN THE CITY OF FORT WAYNE, INDIANA**

Combined Environmental and Historic Report

APPENDIX B

Sample Consultation Letter & Recipient List

[DATE]

[ENTITY]

RE: AB-290 (Sub-No. 403X), Norfolk Southern Railway Company Abandonment – in
Fort Wayne, IN

[GREETING]:

Norfolk Southern Railway Company (NSR) plans to request authority from the Surface Transportation Board (STB) to abandon the segment of rail line between Milepost GI 0.0 and Milepost GI 2.29, a distance of 2.29 miles in the City of Fort Wayne, IN ("Line").

Enclosed is a Combined Environmental and Historic Report (Report) which describes the proposed abandonment and other pertinent information. A map of the proposed track abandonment can be found in **Appendix A** of this report. **Appendix B** of this report lists the various agencies receiving it. **Appendix C** of this report lists the various agency responses. **Appendix D** of this report provides information regarding the bridge on the Line.

The railroad does not anticipate adverse environmental impacts; however, if you identify any adverse environmental effects, please describe the actions that would assist in alleviating them. Please provide us with a written response indicating any concerns or lack thereof, which will be included in the Report and sent to the Surface Transportation Board (STB).

This Report is being provided so that you may submit information that will form the basis for the STB's independent environmental analysis of the proceeding. If you believe any of the information is incorrect, if you think pertinent information is missing, or if you have any questions about the Board's Environmental Review process, please contact the Office of Environmental Analysis (OEA) by telephone at (202) 245-0245 or by mail to:

Surface Transportation Board
395 E Street, S.W., Room 1106
Washington DC 20423-0001

Please refer to the above Docket when contacting the STB. Applicable statutes and regulations impose stringent deadlines for processing this action. For this reason your written comments (with a copy to us) would be appreciated within three weeks.

Your comments will be considered by the Board in evaluating the environmental impacts of the contemplated action. In order for us to consider your input prior to filing with the STB, NSR must receive your comments within three weeks. Please provide information to Scott Plum by email or by mail at:

Scott Plum, Manager
Strategic Planning – 12th Floor
Norfolk Southern Corporation
3 Commercial Place
Norfolk, VA 23510
(757) 629-2884
scott.plum@nscorp.com

Best regards,

Laura E. Hoag

Attachment

RECIPIENT LIST
AB-290 (Sub-No 403X)

Proposed Rail Line Abandonment on Norfolk Southern Railway Company's rail line segment between GI 0.0 and GI 2.29 in Fort Wayne, Indiana, a distance of approximately 2.29 miles.

STATE HISTORIC PRESERVATION OFFICE

Ms. Beth McCord
Deputy State Historic Preservation Officer
Indiana Department of Natural Resources
402 W. Washington Street, W274
Indianapolis, IN 46204

STATE DOT

Ms. Venetta Keefe
Rail Programs Manager
Indiana Department of Transportation
100 North Senate Ave., IGCN 955
Indianapolis, IN. 46204

US ENVIRONMENTAL PROTECTION AGENCY

US EPA
William Jefferson Clinton (WJC) Building
1200 Pennsylvania Ave., NW
Mail Code 1101-A
Washington, DC 20460

REGIONAL/STATE EPA

Ms. Virginia Laszewski
NEPA Program Office
US EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Indiana Department of Environmental Management
Government Center North
100 North Senate Avenue
Indianapolis, IN 46204

CITY

Mayor Tom Henry
City of Fort Wayne
Office of the Mayor
200 East Berry Street
Fort Wayne, Indiana 46802

COUNTY

Mr. Chris Cloud
Chief of Staff, Allen County
Citizens Square
200 East Berry Street, Suite 410
Fort Wayne, Indiana 46802

US ARMY CORPS OF ENGINEERS

Mr. Aaron Damrill
US Army Corps of Engineers
Regulatory Michiana Branch
2422 Viridian Drive, Suite #200
South Bend, IN 46628-3561

STATE COASTAL ZONE MANAGEMENT

Ms. Kathryn Vallis
Coastal Resources Planner
Indiana Department of Natural Resources, Lake Michigan
Coastal Program
402 W. Washington St., Room W267
Indianapolis, IN 46204

FISH AND WILDLIFE SERVICE

Mr. Charles Wooley
Regional Director
United States Fish & Wildlife Service
Midwest Region 3
5600 American Boulevard West, Suite 990
Bloomington, MN 55437

NATIONAL PARK SERVICE

Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance Program
1849 C. Street NW, Room 1344
Washington, DC 20240

Mr. David Thomson
National Park Service, Midwest Regional Office
Rivers, Trails, and Conservation Assistance Program
601 Riverfront Dr.
Omaha, NE 68102

NATIONAL GEODETIC SURVEY

Communications and Outreach Branch, NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East West Highway
Silver Spring, MD 20910-3282

NATURAL RESOURCES CONSERVATION SERVICE

Mr. Salvador Salinas
Regional Conservationist - Central
USDA Natural Resources Conservation Service
1400 Independence Ave SW, #5204-S
Washington, DC 20250

Mr. Jerry Raynor
State Conservationist
USDA NRCS Indiana State Office
6013 Lakeside Drive
Indianapolis, IN 46278

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- PROPOSED ABANDONMENT -
IN THE CITY OF FORT WAYNE, INDIANA**

Combined Environmental and Historic Report

APPENDIX C

Agency Comments/Responses

Plum, Scott D.

From: Vallis, Kathryn <KVallis@dnr.IN.gov>
Sent: Thursday, August 15, 2019 2:15 PM
To: Plum, Scott D.
Subject: [EXTERNAL] Review Request for AB-290 (Sub-No. 403X), Norfolk Southern Railroad Company Abandonment, Fort Wayne, IN Report
Attachments: LMCP Coastal Program Area.pdf

Dear Mr. Plum,

Thank you for Ms. Hoag's 06-August-2019 request to review your AB-290 (Sub-No. 403X), Norfolk Southern Railroad Company Abandonment-Fort Wayne, IN report. Fort Wayne, IN is located outside of the IDNR Lake Michigan Coastal Program's service boundaries of the Lake Michigan Watershed (please see attachment). As such, we will not be able to provide comments at this time.

I recommend contacting Christie Stanifer, Environmental Coordinator, IDNR Division of Fish and Wildlife, for input regarding potential environmental impacts resulting from the abandonment of the described segment of rail line ("between Milepost GI 0.0 and Milepost GI 2.29" in Fort Wayne, IN). Her contact information is provided below:

Christie Stanifer, Environmental Coordinator
Indiana Department of Natural Resources
Division of Fish and Wildlife
402 West Washington Street, Room W273
Indianapolis, IN 46204-2781
environmentalreview@dnr.IN.gov
317-232-9163

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

Sincerely,

Kathryn Vallis
Coastal Resources Planner
Indiana Department of Natural Resources
Division of Nature Preserves
Lake Michigan Coastal Program
Dunes State Park Annex
1600 North 25 East
Chesterton, IN 46304
kvallis@dnr.in.gov
219.926.9757
www.dnr.IN.gov

** Please let us know about the quality of our service by taking this brief customer survey.*

Plum, Scott D.

From: Plum, Scott D.
Sent: Thursday, August 22, 2019 9:34 AM
To: 'DNR Environmental Review'
Subject: RE: Norfolk Southern Railway Abandonment - Fort Wayne, IN AB-290 (Sub-No. 403X)

Christie,

There's no requirement for a letter. We simply wanted to provide you with a courtesy copy as suggested by Kathryn Vallis.

Scott

From: DNR Environmental Review [mailto:environmentalreview@dnr.IN.gov]
Sent: Thursday, August 22, 2019 9:07 AM
To: Plum, Scott D. <Scott.Plum@nscorp.com>
Subject: [EXTERNAL] RE: Norfolk Southern Railway Abandonment - Fort Wayne, IN AB-290 (Sub-No. 403X)

Good morning, Scott. If you need for us to review this and send a response letter back, then let me know. I recall you saying there was no actual work associated with it, so I don't think there's a reason for us to review it unless someone is requiring that you obtain a letter.

Sincerely,

Christie L. Stanifer
Environmental Coordinator
Indiana Department of Natural Resources
Division of Fish and Wildlife
402 West Washington St, Room W273
Indianapolis, IN 46204
Direct: (317) 232-8163
www.dnr.IN.gov

** Please let us know about the quality of our service by taking this [brief customer survey](#).*

From: Plum, Scott D. [mailto:Scott.Plum@nscorp.com]
Sent: Tuesday, August 20, 2019 11:11 AM
To: DNR Environmental Review <environmentalreview@dnr.IN.gov>
Subject: Norfolk Southern Railway Abandonment - Fort Wayne, IN AB-290 (Sub-No. 403X)

Ms. Christie Stanifer,

Kathryn Vallis recommended that we send you a copy of this E&HR which was originally sent out on August 6, 2019. We are required to serve various consulting agencies, and since it was suggested that you receive a copy, we are sending you a courtesy copy as well.

If you have any questions, please contact me.

Plum, Scott D.

From: Plum, Scott D.
Sent: Tuesday, August 20, 2019 11:11 AM
To: 'environmentalreview@dnr.IN.gov'
Subject: Norfolk Southern Railway Abandonment - Fort Wayne, IN AB-290 (Sub-No. 403X)
Attachments: Fort Wayne E&HR to IDNR-FWS.PDF

Ms. Christie Stanifer,

Kathryn Vallis recommended that we send you a copy of this E&HR which was originally sent out on August 6, 2019. We are required to serve various consulting agencies, and since it was suggested that you receive a copy, we are sending you a courtesy copy as well.

If you have any questions, please contact me.

Scott Plum

*Manager - NS Strategic Planning
3 Commercial Place /Norfolk, VA 23510
757 629 2884
scott.plum@nscorp.com*

From: Vallis, Kathryn [mailto:KVallis@dnr.IN.gov]
Sent: Thursday, August 15, 2019 2:15 PM
To: Plum, Scott D. <Scott.Plum@nscorp.com>
Subject: [EXTERNAL] Review Request for AB-290 (Sub-No. 403X), Norfolk Southern Railroad Company Abandonment, Fort Wayne, IN Report

Dear Mr. Plum,

Thank you for Ms. Hoag's 06-August-2019 request to review your AB-290 (Sub-No. 403X), Norfolk Southern Railroad Company Abandonment-Fort Wayne, IN report. Fort Wayne, IN is located outside of the IDNR Lake Michigan Coastal Program's service boundaries of the Lake Michigan Watershed (please see attachment). As such, we will not be able to provide comments at this time.

I recommend contacting [Christie Stanifer](#), Environmental Coordinator, IDNR Division of Fish and Wildlife, for input regarding potential environmental impacts resulting from the abandonment of the described segment of rail line ("between Milepost GI 0.0 and Milepost GI 2.29" in Fort Wayne, IN). Her contact information is provided below:

Christie Stanifer, Environmental Coordinator
Indiana Department of Natural Resources
Division of Fish and Wildlife
402 West Washington Street, Room W273
Indianapolis, IN 46204-2781
environmentalreview@dnr.IN.gov
317-232-9163

Plum, Scott D.

From: john.ellingson <ngs.infocenter@noaa.gov>
Sent: Thursday, August 22, 2019 2:55 PM
To: Plum, Scott D.
Subject: [EXTERNAL] [JIRA] (IMOV-5979) Re: STB Docket No. AB-290 (Sub-No. 403X)

A comment is added on your issue:

Re: Re: STB Docket No. AB-290 (Sub-No. 403X)

On August 22, I called Scott Plum and informed him that I had researched the area of their proposed abandonment and my research revealed that there were NO NGS monuments near their proposed section of rail corridor. I informed him that I would follow our call up with an email telling him that there are no conflicts. I did so shortly after the call with him. I copied Deborah Brooks in that email so that she was alerted that this issue can be closed. I plan to try to close this JIRA ticket as soon as I finish adding this explanation/update.

John Ellingson

National Geodetic Survey



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

August 26, 2019

Indiana Department of Environmental Management
Government Center North
100 North Senate Ave
Indianapolis, IN 46204

RE: AB-290 (Sub-No. 403X), Norfolk Southern Railway Company Abandonment – In fort Wayne IN.

Dear Scott Plum:

The Indiana Department of Environmental Management (IDEM) Office of Records Management (ORM) has received your request for information concerning:

Norfolk Southern Railway Company (NSR) plans to request authority form the Surface Transportation Board (STB) to abandon the segment of rail line between Milepost GI 0.0 and Milepost GI 2.29, a distance of 2.29 miles in the City of Fort Wayne, IN.

IDEM has searched for any documented environmental occurrences along this corridor. Below is a summary of the findings:

Under Ground Storage Tank Facilities – Tank Facility

FID #	Virtual Filing Cabinet URL
13367	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xFID+%3Ccontains%3E+%6013367%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc
6942	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xFID+%3Ccontains%3E+%606942%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc
5531	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xFID+%3Ccontains%3E+%605531%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc
14564	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xFID+%3Ccontains%3E+%6014564%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc

15676	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xFID+%3Ccontains%3E+%6015676%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc
20588	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xFID+%3Ccontains%3E+%6020588%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc
4074	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xFID+%3Ccontains%3E+%604074%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc
8324	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xFID+%3Ccontains%3E+%608324%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc
6785	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xFID+%3Ccontains%3E+%606785%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc

State Cleanup – Land Site ID

Land Site ID #	Virtual Filing Cabinet URL
199701111	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xProgram+%3Ccontains%3E+%60State+Cleanup%60+%3CAND%3E+xSiteNum+%3Ccontains%3E+%60199701111%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc

Hazardous Waste Site – Hazardous Waste Program ID

HW Site ID #	Virtual Filing Cabinet URL
IND132341678	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xProgram+%3Ccontains%3E+%60HW+Site%60+%3CAND%3E+xHWProgramID+%3Ccontains%3E+%60IND132341678%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&fx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc

IND981786924	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xProgram+%3Ccontains%3E+%60HW+Site%60+%3CAND%3E+xHWProgramID+%3Ccontains%3E+%60IND981786924%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&ftx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc
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Brownfields – ULCER ID

ULCERS ID #	Virtual Filing Cabinet URL
4180207	https://ecm.idem.in.gov/cs/idcplg?IdcService=GET_SEARCH_RESULTS&QueryText=xProgram+%3Ccontains%3E+%60Brownfields%60+%3CAND%3E+xULCERNum+%3Ccontains%3E+%604180207%60&searchFormType=queryBuilder&SearchQueryFormat=UNIVERSAL&ftx=&AdvSearch=True&ResultCount=20&SortField=xDocumentDate&SortOrder=Desc

Thank you,

IDEM - Office of Records Management
Indiana Government Center North, Room 1207
100 North Senate Avenue
Indianapolis, IN 46204
Phone: (317) 232-8667
Fax: (317) 233-6647
Email: IDEMFILEROOM@idem.in.gov

Plum, Scott D.

From: McCloskey, Elizabeth <elizabeth_mccloskey@fws.gov>
Sent: Wednesday, August 7, 2019 4:06 PM
To: Plum, Scott D.
Subject: [EXTERNAL] Docket AB-290 Sub No. 403X Fort Wayne, Indiana
Attachments: NSRR Track Abandonment Fort Wayne.pdf

Good afternoon, the USFWS letter is attached.

Elizabeth McCloskey
U.S. Fish and Wildlife Service
Northern Indiana Suboffice
Ecological Services
Chesterton, Indiana



United States Department of the Interior Fish and Wildlife Service



Indiana Field Office (ES)
620 South Walker Street
Bloomington, IN 47403-2121
Phone: (812) 334-4261 Fax: (812) 334-4273

August 7, 2019

Mr. Scott Plum
Manager
Strategic Planning – 12th Floor
Norfolk Southern Corporation
3 Commercial Place
Norfolk, Virginia 23510

Project No.: Docket No. AB-290 (Sub-No. 403X)
Project: Norfolk Southern Railway Company Line Abandonment
Location: Fort Wayne, Allen County, Indiana

Dear Mr. Plum:

This responds to Ms. Laura E. Hoag's letter dated July 25, 2019, requesting our comments on the aforementioned project.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et. seq.) and are consistent with the intent of the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the U. S. Fish and Wildlife Service's Mitigation Policy.

The proposed project consists of the abandonment of 2.29 miles of track between Mileposts GI 0.0 and GI 2.29 on the west side of downtown Fort Wayne within an area with a mix of residential, commercial, and industrial land uses. Bloomington City Park is adjacent to the right-of-way between Lincoln Highway and Ewing Street but the track has already been removed in this area. The St. Marys River flows along the south side of the park and River Greenways Trail traverses the park and continues east/northeast close to the railroad right-of-way; a portion of Spy Run Creek is also near the north end of the right-of-way. Lawton City Park is located east of the right-of-way and North Clinton Street/US 27 north of the river. We are not aware of any other parks, refuges, or forests in the vicinity.

ENDANGERED SPECIES

The proposed project is within the range of the Federally endangered Indiana bat (Myotis sodalis) and rayed bean mussel (Villosa fabalis) and the threatened northern long-eared bat (Myotis septentrionalis) and eastern massasauga rattlesnake (Sistrurus catenatus). However, there is no habitat for any of these species within the proposed project area, so we agree that the proposed project is not likely to adversely affect these endangered and threatened species.

This precludes the need for further consultation on this project as required under Section 7 of the Endangered Species Act of 1973, as amended. However, should new information arise pertaining to project plans or a revised species list be published, it will be necessary for the Federal agency to reinitiate consultation.

We appreciate the opportunity to comment on this proposed railroad abandonment. If you have any questions, please contact Elizabeth McCloskey at (219) 983-9753 or elizabeth_mccloskey@fws.gov.

Sincerely yours,

/s/ *Elizabeth S. McCloskey*

for Scott E. Pruitt
Supervisor

Sent via email August 7, 2019; no hard copy to follow.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub. No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- PROPOSED ABANDONMENT -
IN THE CITY OF FORT WAYNE, IN**

Combined Environmental and Historic Report

APPENDIX D

Bridge List

Milepost	Crossing	Bridge Type	Deck Construction	Length in Feet	Height in Feet	Date Constructed
GI 2.18	Osage Street	Steel Beam	Ballast Deck	58	16	Unknown

Photo of Bridge GI 2.18

View from Osage Street looking in an eastward direction



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 403X)

**NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN THE CITY OF FORT WAYNE, INDIANA**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

**DRAFT NOTICE OF EXEMPTION
[CAPTION SUMMARY]**

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[AB 290 (Sub-No. 403X)]

Norfolk Southern Railway Company – Abandonment Exemption – In the City of Fort Wayne,
Indiana

Norfolk Southern Railway Company has filed on September 5, 2019, a verified notice of exemption under 49 C.F.R. part 1152 subpart F–Exempt Abandonments to abandon rail service over an approximately 2.29 mile rail line segment extending between Milepost GI 0.0 and Milepost GI 2.29 in the City of Fort Wayne, IN (the “Line”).¹ While NSR is seeking to abandon the entire Line, NSR plans to convert the portion of Line from Milepost GI 1.85 to Milepost GI 2.29² (where it connects to NSR's B -Line) from common carrier track to § 10906 track (“Converted 10906 Segment”) to support current and future operation needs on NSR's nearby mainline. No shippers have been served by the Line for nearly two decades and the sole shipper located on the Line at that time supported the abandonment. As such, converting the Converted 10906 Segment from common carrier track to § 10906 track will not impact any shippers. All of the Line is located in the City of Fort Wayne, Indiana. The Line traverses United States Postal Zip Code territories 46805 and 46808. There are no customers served on the Line, which has been out of service for nearly two decades.

¹ The Line being proposed for abandonment has a complicated history, which may have unintentionally resulted in NSR failing to seek abandonment authority in a timely manner for certain segments of the Line. Although no definitive conclusion has been reached as to whether the Line is §10901 or § 10906 track, NSR has decided to seek abandonment authority out of an abundance of caution to clean up the regulatory record to extent the Board believes abandonment authority should have been sought.

² While no tracks remain in place from Milepost GI 1.85 to Milepost GI 2.04, NSR has determined to convert that portion of the Line to § 10906 to support rail operations on a nearby NSR rail line.

NSR has certified that: (1) no local NSR traffic has moved over the Line for at least two years; (2) that no overhead NSR traffic has moved over the Line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 C.F.R. § 1105.7(c) (environmental report), 49 C.F.R. § 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. § 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 25, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,³ formal expressions of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2),⁴ and trail use/rail banking requests under 49 C.F.R. § 1152.29 must be filed by _____, 2019. Petitions to reopen or requests for public

³ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Serv. Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

⁴ Each OFA must be accompanied by the filing fee, which is currently set at \$1,800. See 49 C.F.R. § 1002.2(f)(25).

use conditions under 49 C.F.R. § 1152.28 must be filed by _____, 2019, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to NSR's representative: Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by _____, 2019. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by _____, 2020, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: _____, 2019.

By the Board, _____, Acting Director, Office of Proceedings

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT B

FD 32736 Application

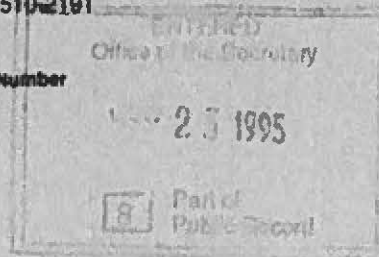


Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-2191

Robert J. Cooney
Senior General Attorney

Writer's Direct Dial Number

(804) 629-2839



June 21, 1995

Mr. Vernon A. Williams, Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Washington, D. C. 20423

Re: Finance Docket No. 32736, Norfolk and Western
Railway Company -- Acquisition and Operation
Consolidated Rail Corporation Line, Fort Wayne to
Warsaw, Indiana -- Petition for Exemption

RECEIVED
OFFICE OF THE
SECRETARY
JUN 22 3 22 PM '95
LICENSING BRANCH

Dear Mr. Williams:

Enclosed for filing with the Commission in the captioned proceeding are an original and ten copies of the Petition for Exemption. Also, enclosed is a check for \$3000 to cover the filing fee.

Please acknowledge receipt on the enclosed copy of this letter and return it to me in the self-addressed, stamped envelope.

Very truly yours,

Robert J. Cooney

RJC/sg
Enclosures

cc(w/enc.): Mr. Robert S. Naralini
Associate General Counsel
Consolidated Rail Corporation
Two Commerce Square-16A
2001 Market Street
Philadelphia, PA 19101-1416

FILED

JUN 22 1995

INTERSTATE
COMMERCE COMMISSION

0100666011

ORIGINAL

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32736

NORFOLK AND WESTERN RAILWAY COMPANY
-- ACQUISITION AND OPERATION --
CONSOLIDATED RAIL CORPORATION LINE,
FORT WAYNE TO WARSAW, INDIANA

ENTERED
Office of the Secretary
JUN 23 1995
PAID
Public Branch

PETITION FOR EXEMPTION

RECEIVED
OFFICE OF THE
SECRETARY
JUN 22 3 23 PM '95
LICENSING BRANCH

FILED

JUN 22 1995

INTERSTATE
COMMERCE COMMISSION

Robert S. Natalini
Associate General Counsel
Consolidated Rail Corporation
Two Commerce Square-16A
2001 Market Street
Philadelphia, PA 19101-1416
(215) 209-5009

Robert J. Cooney
Senior General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
(804) 629-2838

Dated: June 21, 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32736

NORFOLK AND WESTERN RAILWAY COMPANY
-- ACQUISITION AND OPERATION --
CONSOLIDATED RAIL CORPORATION LINE,
FORT WAYNE TO WARSAW, INDIANA

PETITION FOR EXEMPTION

Petitioners Norfolk and Western Railway Company (NW) and Consolidated Rail Corporation (Conrail), pursuant to the provision of 49 U.S.C. 10505(a), hereby petition for exemption from 49 U.S.C. 11341, *et seq.*, and the Commission's implementing regulations, 49 C.F.R. Part 1180, for authority to consummate the transaction herein described. Petitioners also request that the Commission give this petition expeditious consideration. In support hereof, petitioners state as follows:

I. DESCRIPTION OF THE PARTIES

A. Transferee

Purchaser NW, a Virginia corporation with an address at Three Commercial Place, Norfolk, Virginia 23510-2191, is a Class I railroad, and conducts rail operations in 13 states and in Canada. NW is a wholly-owned subsidiary of Norfolk Southern

Railway Company (NS). NS, with NW and other subsidiaries, operates a railroad system throughout the eastern United States.

B. Transferor

Seller Conrail, a Pennsylvania corporation with an address at Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania 19101-1400, is a Class I railroad, and conducts rail operations in 12 states, the District of Columbia and the Province of Quebec, Canada. Conrail is not a part of a larger rail system. Conrail is a wholly-owned subsidiary of Conrail Inc., a non-railroad holding company.

C. Petitioners' Representatives

Counsel for Conrail is:

Robert S. Natalini
Associate General Counsel
Consolidated Rail Corporation
Two Commerce Square-16A
2001 Market Street
Philadelphia, Pennsylvania 19101-1416
(215) 209-5009

Counsel for NW is:

Robert J. Cooney
Senior General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
(804) 629-2838

II. DESCRIPTION OF TRANSACTION

A. Transfer of Rail Line

Conrail proposes to sell to NW, and NW proposes to purchase and operate Conrail's Fort Wayne (Milepost 319.2) to Warsaw (Milepost 363.0) line; GR&I industrial track between Milepost 93.3 and Milepost 97.8 in Fort Wayne; and the Fourth Street industrial track between milepost -0.9 and Milepost 0.95 in Fort Wayne in Allen, Whitley and Kosciusko Counties, Indiana (collectively the "Line" or "Segment").

The 50.15 mile transaction is the third phase of NW's purchase of Conrail's 122.6 mile main line extending from Fort Wayne (MP 319.2) to Gary (also known as Tolleston), Indiana (MP 441.8). In 1993, NW purchased the Valparaiso (MP 424.0) to Gary (MP 441.8) segment in an Offer of Financial Assistance (OFA) proceeding in connection with Conrail's abandonment, Docket No. AB-167 (Sub-No. 1109X). In 1994, NW purchased the Warsaw (MP -363.0) to Valparaiso (MP 424.0) segment in another OFA proceeding, Docket No. AB-167 (Sub-No. 1125).

This purchase is the third link in providing the NS system with an alternate route and expanded capacity between Fort Wayne and Chicago. Currently, NW operates over the Fort Wayne-Warsaw line pursuant to a temporary trackage rights agreement exempted from regulation in Finance Docket No. 32610. The trackage rights, which were intended to be only temporary, will terminate upon completion of the proposed purchase.

NW is purchasing Conrail's interest in the Line except for trackage rights which will provide Conrail with overhead rights between Fort Wayne and Gary, along with access to Conrail's Marion branch at Warsaw and certain local service rights to present and future customers located between Mileposts 358.7 and 363.0 in Warsaw. Customers presently located in this area of Warsaw are R. R. Donnelly Company and BASF Corp. The overhead trackage rights between Milepost 363.0 in Warsaw and Milepost 441.8 at Gary, Indiana are not expected to be used in the immediate future but could be utilized to augment the capacity of Conrail's parallel lines.

B. Agreement

Pursuant to a memorandum of agreement and a final purchase and sale agreement that is near completion and that NW and Conrail expect to execute within the next several weeks, NW will purchase from Conrail the rail properties described in Paragraph A and shown on Exhibits 1 and 2.

C. Proposed Operation

Conrail presently provides local train service over the Line depending on customer needs. After the sale, Conrail will continue to provide service to the R. R. Donnelly Company and BASF at Warsaw, Indiana, (accessing the Fort Wayne-Warsaw line from its north-south line which crosses the Fort Wayne-Warsaw line at Warsaw). NW will operate and maintain the Fort Wayne-Warsaw segment as part of its Fort Wayne-Gary alternate main line. Currently, NW is limited to six trains per day because of

restrictions in the trackage rights agreement. NW expects to operate approximately 15-20 thru trains per day after consummation of this transaction. Shippers located on the Line will receive the same or greater frequency of service from NW as previously provided by Conrail.

D. Objectives

NW's acquisition and operation of the Fort Wayne-Warsaw segment will complete NW's purchase of Conrail's Fort Wayne Line between Fort Wayne and Gary (Tolleston). NW will essentially be adding a second main track to its Fort Wayne-Chicago route. NW's present single track route has reached a saturation point and cannot efficiently handle an increasing volume which frequently exceeds 30 to 35 trains per day. Thus, this transaction will provide NS with an alternate main line between Fort Wayne and Chicago and alleviate congestion on NW's own Fort Wayne-Chicago route. The sale will also complete Conrail's disposition of its Fort Wayne-Gary (Tolleston) line. Conrail has its own double-track Chicago mainline which essentially parallels this route. Finally, the sale will, of course, also provide compensation to Conrail.

The transaction, thus, has two objectives: first, to provide NW with a much needed alternate route to Chicago at a lower cost and without the environmental impact of building a new line; second, to allow Conrail to utilize its transportation resources elsewhere in its system.

E. Effect on Shippers

Technically, the transaction is a substitution of one Class I railroad for another. In reality, the transaction will preserve rail service to local shippers, as well as allow NW to offer better service for overhead traffic. Conrail currently operates the Line only to serve local customers. NW currently operates a limited number of through trains for overhead traffic. NW's through service will experience a significant service improvement as soon as restrictions and constraints in the present situation are removed. This is a continuous unitary route, and once NW assumes full ownership and control, it will be able to operate it as such.

III. ARGUMENT

A. THE PROPOSED TRANSACTION MEETS THE STANDARDS FOR AN EXEMPTION UNDER 49 U.S.C. § 10505

Under 49 U.S.C. § 10505(a), the Commission is directed to exempt a transaction relating to a rail carrier when it finds that application of a provision of the Interstate Commerce Act: (1) is not necessary to carry out the transportation policy of § 10101a; and (2) either (A) the transaction or service is of limited scope or (B) the application of such "provision ... is not needed to protect shippers from the abuse of market power." Congress intended that the Commission use its exemption authority under § 10505 to free appropriate transactions and services from the administrative and financial costs associated

with regulation. The exemption authority conferred on the Commission is not discretionary if the statutory criteria of § 10505 are met. The Commission "shall exempt" when the statutory criteria are found. 49 U.S.C. § 10505(a).

B. THE PROPOSED TRANSACTION FURTHERS THE NATIONAL TRANSPORTATION POLICY

In an exemption proceeding, the Commission's analysis of the Rail Transportation Policy "... considers only the criteria relating to the underlying statute from which exemption is sought". Wyoming and Colorado Railroad Company, Inc. - Abandonment Exemption - Jackson, CO, Docket No. AB-307 (Sub-No. 2X) served May 19, 1995. See also Village of Palestine v. ICC, 936 F.2d 1335 (D.C. Cir. 1991).

The statutory standard governing a minor rail transaction is competitive impact [49 U.S.C. 11344(d)]. The Commission must approve such a transaction unless there is "... substantial lessening of competition, creation of a monopoly, or restraint of trade" Even if there are anti-competitive effects, the transaction must be approved if "... public interest in meeting significant transportation needs" outweigh those anti-competitive effects.

There are no anti-competitive effects associated with this transaction. The worst case is that the service of one rail carrier is being substituted for another. The more realistic description is that rail service will actually be enhanced for local shippers while, at the same time, a major congestion

problem for overhead traffic will be alleviated. Thus, rail service and intermodal competition will be promoted by this transaction. Because of the pro-competitive effects of the line transfer, regulation is not necessary to carry out the Rail Transportation Policy (RTP).

Furthermore, other important aspects of RTP, e.g., expeditious regulatory making decision, development of a sound rail transportation system and reduction of regulatory barriers to entry into and exit from the rail industry, are also promoted by this transaction.

C. THE PROPOSED TRANSACTION IS LIMITED IN SCOPE

This transaction involves only 50.15 miles of rail line. The Commission has consistently found that transactions involving larger rail properties are limited in scope under § 10505. See Finance Docket No. 29869, Chicago, Madison & Northern Railway Company--Discontinuance Exemption--and Wisconsin Transportation Corporation d/b/a Central Wisconsin Railway--Operation Exemption, Served October 21, 1982 (substitution of operators of 138 miles of track); Finance Docket No. 31526, Laurinburg & Southern Railroad Company--Lease Exemption--Southern Railway Company--Lines Between Rural Hall and North Wilkesboro, NC, and Between Mt. Airy and Brook Cove, NC, decided November 1, 1989 (101.7 miles); and Finance Docket No. 31514, Indiana Hi-Rail Corporation--Lease Exemption--Norfolk and Western Railway Company--Line Between Liberty Center, OH and Woodburn, IN,

decided October 13, 1989 (51 miles). The fact that Conrail will continue to serve the largest shipper on the line and that the line being acquired is parallel to NW's existing main line, further demonstrates the limited scope of this transaction.

D. APPLICATION OF § 11343 IS NOT NECESSARY TO PROTECT SHIPPERS FROM ABUSE OF MARKET POWER

Because the transaction in question is of limited scope under §10505(a), it is not necessary to demonstrate that granting the proposed exemption would not expose shippers to an abuse of market power. In any event, abuse of market power is not an issue in this proceeding. The only competitive aspects of the proposed transaction are positive. Rail service will be preserved, enhanced and expanded. As a result of NW's ability to use this Line to relieve congestion on its parallel line, shippers will in all likelihood experience higher quality rail service to compete with motor carrier transportation. The transaction thus preserves, and even enhances, intermodal competition and protects shippers from the loss of such competition.

IV. LABOR PROTECTION

Conrail and NW recognize that, as provided in § 10505(g), the Commission may not exercise its exemption authority to relieve a carrier from its statutory obligation to protect the interests of affected employees. Inasmuch as transactions falling under § 11344 are subject to the mandatory

labor protection provisions pursuant to 49 U.S.C. § 11347, Conrail and NW do not object to imposition of the conditions normally imposed in such cases, as set forth in New York Dock Ry. - Control - Brooklyn Eastern District Terminal, 360 ICC 60 (1979), as clarified in Wilmington Term. RR. Inc. - Purchase and Lease - CSX Transp. Inc., 6 ICC' 799, as modified 7 ICC' 60 (1990), for the protection of any railroad personnel adversely affected by the subject transaction.

VI. ENVIRONMENTAL REPORT

This acquisition will not cause diversion of traffic from rail to motor carriage, will not increase traffic on rail lines or yards, and will not require any construction. Therefore, it is within the class of actions deemed to have insignificant environmental impact as provided by 49 CFR § 1105.6(c)(2)(I) and environmental documentation and notice pursuant to 49 CFR 1105.11 are not required. Similarly, the sale of a rail line is within the class of actions not requiring a Historic Report. See 49 C.F.R. § 1105.8(b)(1).

VII. REQUEST FOR EXPEDITED DECISION

There is a special urgency supporting NW's request for expedited Commission approval of this proposal: Because of a restriction in the temporary trackage rights agreement pertaining to this Segment, NW is limited to operation of a maximum of only six (6) trains per day not only over this segment, but also over

the trackage NW previously acquired from Conrail and already owns. After consummation of this transaction, NW plans to operate at significantly higher levels. Thus, currently, NW is prevented from achievement of the expansion of capacity which motivated the entire transaction.

Moreover, Conrail's continued ownership carries with it continued operational and physical control, including train dispatching. However, because the Line is utilized by Conrail for only local service, it has little incentive to enhance service for overhead operations. Once it acquires ownership, NW will implement a program to improve both its operation and the facilities on the Line, but this cannot be done until the Commission authorizes or exempts this transaction.

Because of increased volume on the NS system between points in the southeast, e.g., Atlanta and Chicago, and because of limited capacity in its Fort Wayne-Chicago line, service over a principal NS route is being adversely affected. Thus, it is crucial to NS that this matter receive expeditious handling by the Commission.

CONCLUSION

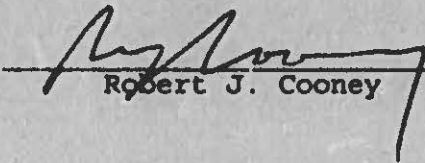
WHEREFORE, Consolidated Rail Corporation and Norfolk and Western Railway Company respectfully request the Interstate Commerce Commission to exempt from further regulation the

acquisition and operation by NW of Conrail's Fort Wayne-Warsaw,
Indiana line, as more particularly described herein.

Respectfully submitted,

CONSOLIDATED RAIL CORPORATION
NORFOLK AND WESTERN RAILWAY COMPANY

By:


Robert J. Cooney

Of counsel:

Robert S. Natalini
Associate General Counsel
Consolidated Rail Corporation
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2001 Market Street
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Robert J. Cooney
Senior General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
(804) 629-2838

VERIFICATION

COMMONWEALTH OF VIRGINIA)
) SS:
CITY OF NORFOLK)

J. W. McClellan, being duly sworn, deposes and says that he is Vice President-Strategic Planning of Norfolk and Western Railway Company; that he is authorized to sign, verify, and file with the Interstate Commerce Commission the foregoing Petition for Exemption in Finance Docket No. 32736 on behalf of Norfolk and Western Railway Company; that he has carefully examined all of the statements concerning Norfolk and Western Railway Company set forth herein; and that all such statements made and matters set forth are true and correct to the best of his knowledge, information and belief.

J. W. McClellan

Subscribed and sworn to before me,
a Notary Public in and for the
State and County aforesaid, this
21st day of June, 1995.

Sandra J. Gorbey
Notary Public

My commission expires:

MARCH 31, 1998

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :

: ss.

COUNTY OF PHILADELPHIA :

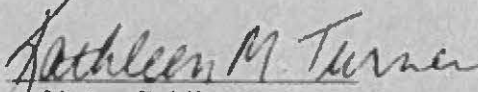
Charles N. Marshall, being duly sworn, makes oath and says that he is Senior Vice President, Development of Consolidated Rail Corporation; that he has been authorized by proper corporate action of Consolidated Rail Corporation to verify the foregoing Petition for Exemption; that he has general knowledge of the facts and matters relied upon in such Petition; and that the representations set forth therein are true and correct as stated.

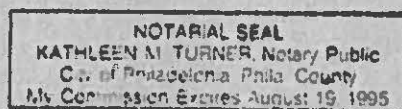

CHARLES N. MARSHALL

Sworn To And Subscribed

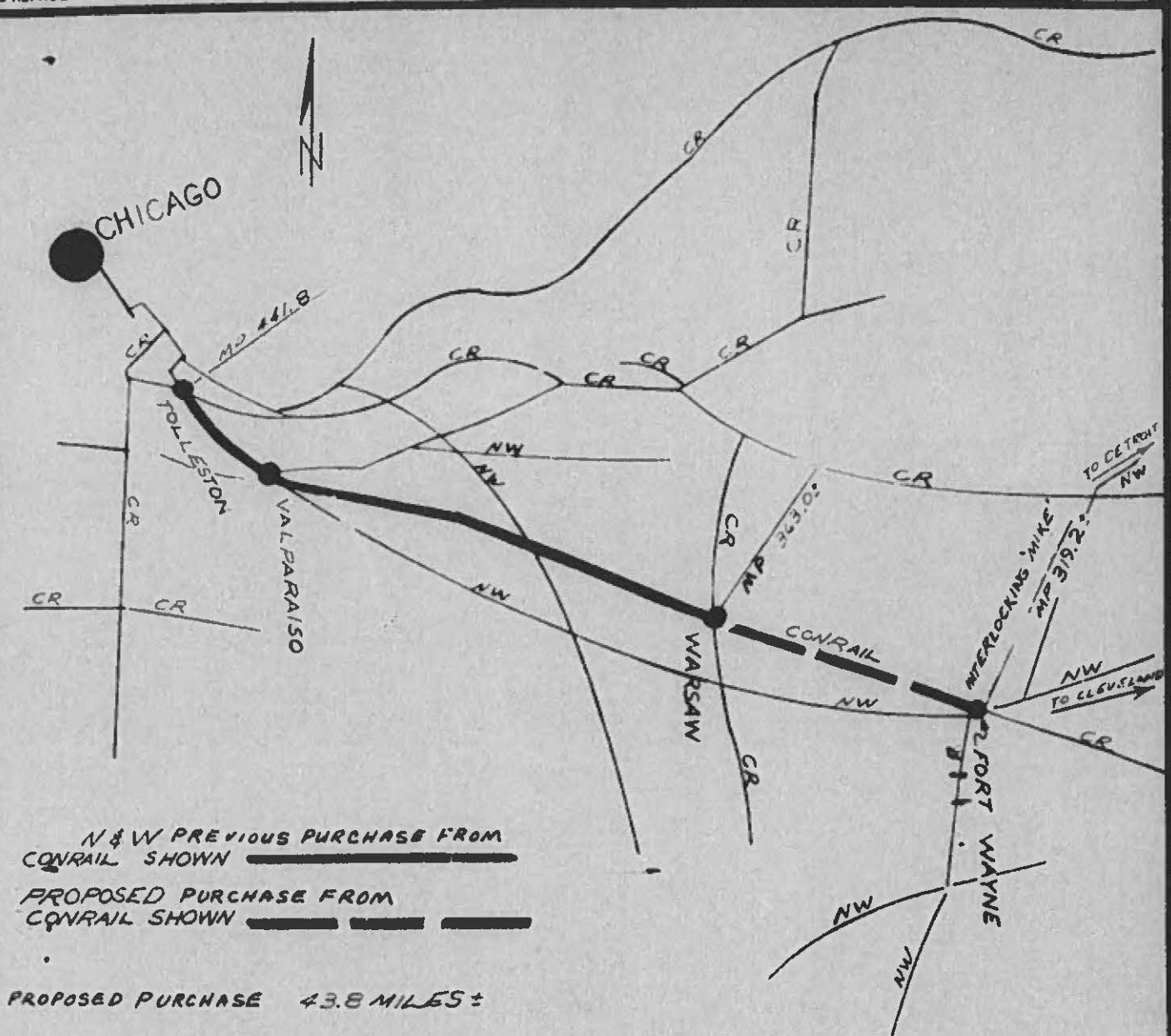
Before Me This 20th Day

Of June, 1995.


Kathleen M. Turner
Notary Public



ALLIED REPROGRAPHICS 330449



DO NOT SCALE THIS DRAWING FOR DIMENSIONS NOT GIVEN

NS NORFOLK SOUTHERN

NORFOLK & WESTERN R.W.Y.

ENGINE COMPANY

OFFICE OF CHIEF ENGINEER - DESIGN & CONSTRUCTION ATLANTA, GA.

REV	BY	DATE	DESCRIPTION
LOCATION FT. WAYNE, INDIANA			
TITLE PROPOSED NEW PURCHASE FROM FT. WAYNE TO WARSAW ON CONRAIL			
CON	VAL SEC	MAP	MILE POST 319.2
CON	FILE	107-1-5929	DRAWING NUMBER
CON	DATE	10-24-94	TA 94-0141

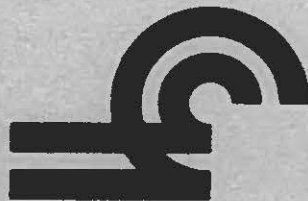
CADD FILE
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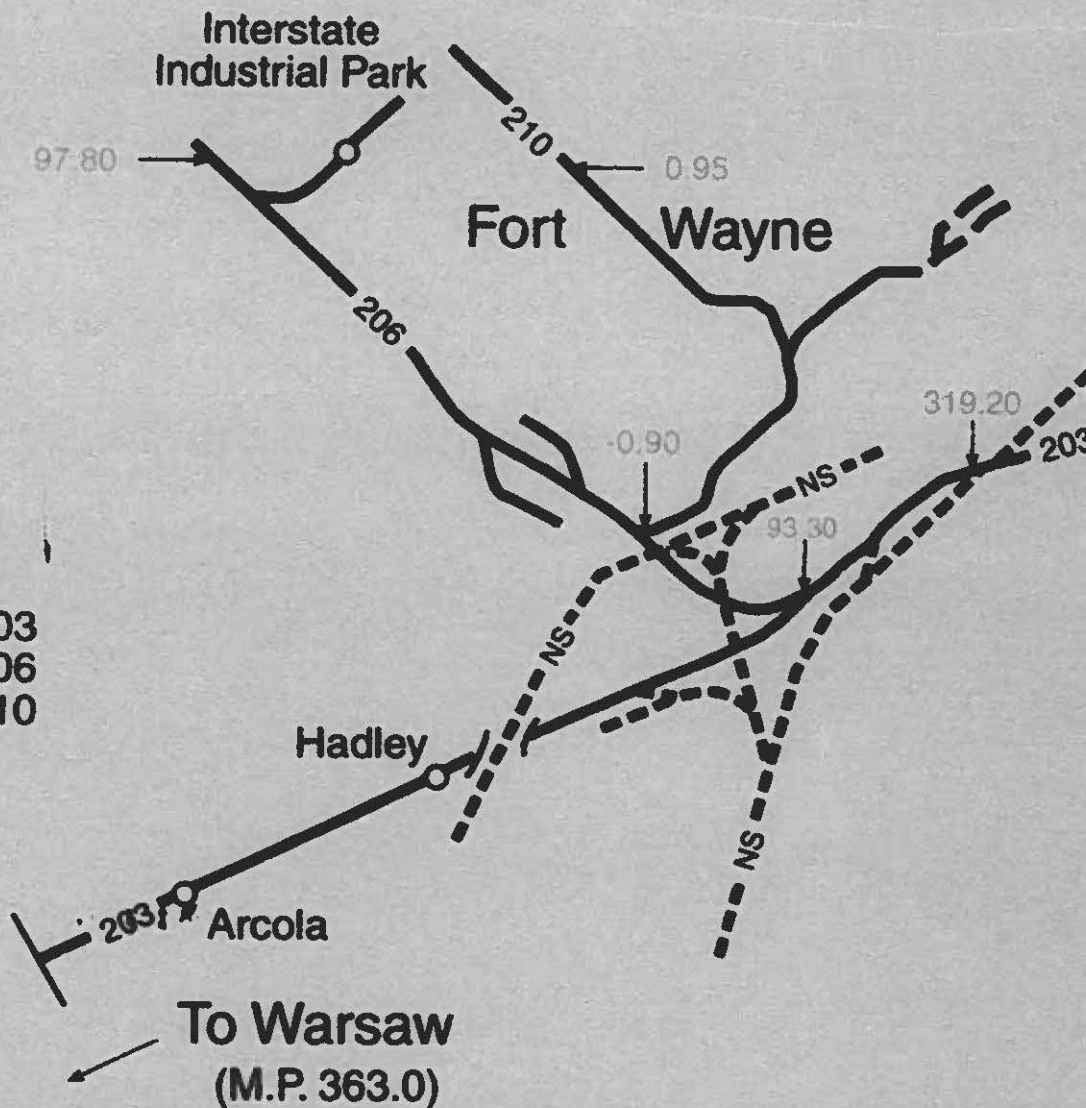
Exhibit 2

CONRAIL



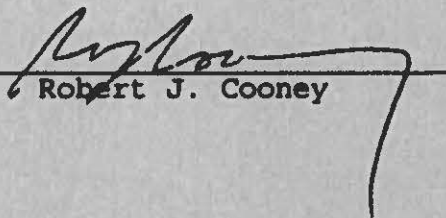
CR Track Segments & Nos.

Ft. Wayne Secondary	203
GR/I Industrial	206
Fourth St. Industrial	210
Mile Post Numbers	



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Exemption was served upon the Governor of Indiana; Indiana Public Utilities Commission; Indiana Department of Transportation; U. S. Department of Transportation; Attorney General of the United States, and the Federal Trade Commission by first class mail, postage prepaid, this 21st day of June, 1995.


Robert J. Cooney

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT C

FD 32736 Decision

SERVICE DATE

AUG 29 1995

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 32736

NORFOLK AND WESTERN RAILWAY COMPANY--PURCHASE AND
OPERATION EXEMPTION--CONSOLIDATED RAIL CORPORATION
BETWEEN FORT WAYNE AND WARSAW, IN

Decided: August 16, 1995

By petition filed June 22, 1995, Norfolk and Western Railway Company (N&W) and Consolidated Rail Corporation (Conrail) seek exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343-45 for N&W to purchase and operate three Conrail line segments totaling approximately 50.15 miles, in Allen, Whitley, and Kosciusko Counties, IN. The line segments consist of: (1) Conrail's main line track between milepost 319.2 at Fort Wayne, and milepost 363.0 at Warsaw; (2) the GR&I industrial track between milepost 95.3 and milepost 97.6 in Fort Wayne; and (3) the Fourth Street industrial track between milepost -0.9 and milepost 0.91 in Fort Wayne. The Railway Labor Executives' Association seeks the imposition of employee protective conditions. We will grant the exemption subject to standard labor protective conditions.

BACKGROUND

N&W, a wholly owned subsidiary of Norfolk Southern Railway Company, submits that it currently provides service between Fort Wayne and Chicago, IL, over a single track route. The route has reached a saturation point, frequently handling 30 to 35 trains per day. To relieve the congestion and provide an alternate route, N&W agreed to purchase Conrail's 133.6-mile main line extending between milepost 319.2 at Fort Wayne and milepost 441.8 at Gary (Tolleston), IN. This transaction assertedly is the last in the series that will complete the purchase. In 1993, N&W purchased the 17.8-mile segment between milepost 424.0 at Valparaiso, IN, and milepost 441.8 at Gary, under the offer of financial assistance (OFA) procedures of 49 U.S.C. 10905. In 1994, N&W also used the OFA procedures to purchase the 21-mile line segment between milepost 363.0 at Warsaw and milepost 424.0 at Valparaiso.

N&W states that it will operate and maintain the Fort Wayne-Warsaw segment as part of its Fort Wayne-Gary alternate main line and will use it to move 15-20 through trains per day. N&W currently operates over the line to be purchased here under a temporary trackage rights agreement that will terminate upon consummation of the instant transaction. Restrictions in the current trackage rights agreement limit N&W to six through trains per day.

See Consolidated Rail Corporation--Abandonment Exemption --Between Valparaiso and Gary, IN, Docket No. AB-167 (Sub-No. 1109X) (ICC served Jan. 20 and June 2, 1993).

See Consolidated Rail Corporation--Abandonment Between Warsaw and Valparaiso, in Kosciusko, Marshall, Starke, La Porte and Porter Counties, IN, Docket No. AB-167 (Sub-No. 1125) (ICC served Jan. 14, and Mar. 14, 1994).

See Norfolk and Western Railway Company--Trackage Rights Exemption--Consolidated Rail Corporation, Finance Docket No. 32610 (ICC served Nov. 28, 1994).

Petitioners submit that Conrail has its own double-track line that runs essentially parallel to N&W's Fort Wayne-Chicago route and that Conrail currently uses the line being purchased to perform local service as needed. As a part of the instant transaction, Conrail is to retain overhead trackage rights between Fort Wayne and Gary, access to its Marion branch at Warsaw, and certain rights to provide local service to present and future customers located between milepost 356.7 and milepost 361.0 at Warsaw. Assertedly, after the sale Conrail will continue to serve its two current shippers in the Warsaw area: R. R. Donnelly Company and BASF Corp.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11343(a)(2), our prior approval is required for a rail carrier to purchase and operate the property of another rail carrier. However, under 49 U.S.C. 10505, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 11343-45 of the proposed purchase is not necessary to carry out the rail transportation policy (RTP). By minimizing the administrative time and expense of considering the proposed transaction, an exemption will expedite regulatory decisions and reduce barriers to entry and exit (49 U.S.C. 10101a(2) and (7)), and foster sound economic conditions and encourage efficient management (49 U.S.C. 10101a(5) and (12)). Other aspects of the RTP will not be affected adversely. For example, approval of the transaction will preserve competition by ensuring that a sound rail system will continue to meet public needs (49 U.S.C. 10101a(4)) and unnecessary regulatory expense will be avoided.

The transaction appears to be of limited scope. Essentially, the transaction represents an upgrading of service because it will alleviate congestion on N&W's current single-track route between Fort Wayne and Chicago. In any event, regulation is not necessary to protect shippers from the abuse of market power. Indeed, N&W will be able to provide a more efficient, improved service while Conrail will retain authority to serve shippers in the Warsaw area. To ensure that the lines' shippers are informed of our action, however, we will require petitioners to serve a copy of this decision on each shipper within 3 days of its service date and certify to us that service has been effected.

Under 49 U.S.C. 10505(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect employee interests. Accordingly, as a condition to granting this exemption, we will impose the standard employee protective conditions in New York Dock Ry. -- Conrail -- Brooklyn Eastern Dist., 360 U.S.C. 60 (1979), as clarified in Wilmington Term. RE, Inc. -- Par. 6 Lease -- CSX Transp., Inc., 1 U.S.C.2d 799 (1990), modified by 1 U.S.C.2d 60 (1990), aff'd sub nom. Railway Labor Executives Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

Conrail does not plan to use the trackage rights between milepost 361.0 at Warsaw and milepost 441.6 at Gary immediately but will use them in the future to augment the capacity of its parallel lines when needed.

Because the transaction does not involve a significant change in carrier operations, petitioners have no plans to dispose of or alter historic properties, and our further approval is required to abandon any service, the transaction is exempt from both the environmental reporting requirements of 49 CFR 1105.6(c)(2)(i) and the historic reporting requirements under 49 CFR 1105.6.

N&W submits that its ability to operate the Fort Wayne-Chicago route is being adversely affected because it can move only six trains per day under the terms of the temporary trackage rights agreement with Conrail. Moreover, this restriction prohibits N&W from moving more than six trains per day over the connecting routes that it previously purchased from Conrail. Therefore, petitioners request expedited handling to permit N&W to implement full service on this alternate route as quickly as possible. The request is reasonable and will be granted. We will make the exemption effective 15 days after Federal Register publication, and we will require stay petitions to be filed within 7 days of publication.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10505, we exempt from the prior approval requirements of 49 U.S.C. 11343-45 the purchase and operation by N&W of the above described line segments, subject to the employee protective conditions in New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), as clarified in Wilmington Term. RP, Inc. -- Pur. & Lease -- CSX Transp., Inc., 4 I.C.C.2d 799 (1990), modified 7 I.C.C.2d 60 (1990), aff'd sub nom. Railway Labor Executives Ass'n v. ICC, 630 F.2d 511 (6th Cir. 1991).

2. Petitioners must serve a copy of this decision on each of the lines' shippers within 3 days of the service date of this decision and certify to us that service has been effected.

3. Notice will be published in the Federal Register on August 30, 1995.

4. This exemption is effective on September 14, 1995.

5. Petitions to stay must be filed by September 6, 1995, and petitions to reopen must be filed by September 19, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams
Secretary

(SEAL)

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT D

**Interstate Commerce Commission's Decision
in FD 32610**

59 FR 60829

VOL. 59, No. 227, Monday, November 28, 1994

Notices

Reporter
59 FR 60829

***Federal Register > 1994 > November > Monday, November 28, 1994 > Notices > INTERSTATE
COMMERCE COMMISSION (ICC)***

Title: Norfolk and Western Railway Company-Trackage Rights Exemption-Consolidated Rail Corporation

Agency

INTERSTATE COMMERCE COMMISSION (ICC)

Identifier: [Finance Docket No. 32610]

Text

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to Norfolk and Western Railway Company (N&W) between milepost 363.0 at Warsaw and milepost 319.2 at Fort Wayne, a distance of approximately 43.8 miles in Allen, Kosciusko, and Whitley Counties, IN. The transaction was to have been consummated on November 23, 1994.

The transaction is intended to alleviate the congestion on N&W's own route between Fort Wayne and Chicago, IL, by giving it an immediate, alternative routing. The trackage rights are temporary and are to be used in connection with a line between Tolleston, IL, and Warsaw that N&W previously purchased from Conrail. N&W will purchase the Warsaw-Fort Wayne line from Conrail on or before January 10, 1996.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.-Trackage Rights-BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.-Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32610, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of each pleading must be served on Robert J. Cooney, 3 Commercial Place, Norfolk, VA 23510-2191.

Decided: November 18, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

[FR Doc. 94-29202 Filed 11-25-94; 8:45 am]

BILLING CODE 7035-01-P

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT E

**Excerpt from 1995 Purchase and Sale
Agreement**

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, entered into as of this 28th day of September, 1995, by and between NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation ("Purchaser"), and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation ("Conrail").

WHEREAS, Conrail owns and operates certain rail lines located in Allen, Whitley, and Kosciusko Counties, State of Indiana, known as a portion of the Fort Wayne Line, the GR&I Industrial Track, and the Fourth Street Industrial Track and more fully described herein (collectively, the "Line"); and

WHEREAS, Purchaser has offered to purchase Conrail's interest in the said Line as herein described, and Conrail is willing to sell its interest in the said Line as and to the extent herein described, subject to the terms and conditions contained herein; and

WHEREAS, Purchaser is a common carrier by railroad, intends to operate the said Line as a common carrier by railroad, and, except as expressly provided otherwise herein, will assume all common carrier obligations as to the property constituting the Line; and

WHEREAS, the parties have reached agreement concerning the terms and conditions of purchase and sale of said Line.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION I PURCHASE AND SALE OF LINE

A. Agreement and Description. Subject to the terms of this Agreement, Purchaser agrees to purchase from Conrail, and Conrail agrees to sell to Purchaser, all the right, title, and interest of Conrail in and to (i) the real estate which constitutes (a) a

portion of its Fort Wayne Line, consisting of that portion of the Line between "Mike" interlocking in Fort Wayne, Indiana (approximately M.P. 319.2±) and a point west of Warsaw, Indiana (approximately M.P. 363.0±), (b) its GR&I Industrial Track between milepost 93.3± and milepost 97.8±, and (c) its Fourth Street Industrial Track between milepost -0.9± and milepost 0.95±, containing a total of 50.15 route miles of railroad line, as more particularly described in the form of deed attached hereto as Appendix A, together with all buildings, improvements and appurtenances thereunto belonging (except as may be specifically reserved herein or in said Deed); (ii) all fixtures and articles of personal property attached to or located on the said real estate as of the date of Closing, including but not limited to rail and other track materials, ties, wires, pipes, conduits, electrical or mechanical signal devices, and all other appurtenant devices which constitute personal property under the laws of Indiana, as more particularly described in the form of Bill of Sale attached hereto as Appendix B (except as may be specifically reserved herein or in said Bill of Sale); and (iii) all interests of Conrail in and to any leases, easements, licenses, permits, agreements, sidetrack agreements, and privileges pertaining to the said real estate, as more particularly described in the form of Assignment and Assumption, attached hereto as Appendix C.

B. Definition of "Property". Except where the usage and context hereof requires otherwise, all the real and personal property, appurtenances, rights and interests to be conveyed as aforesaid are hereinafter referred to as the "Property."

C. Consideration. As consideration for the Property, Purchaser shall pay to Conrail or its nominee the sum of \$4,150,000.00 ("Purchase Price") and comply with all of the terms of this Agreement. The Purchase Price shall be paid in full at Closing (as hereinafter defined) by wire transfer of immediately available funds to a qualified intermediary, as hereinafter provided.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT F

Fourth Street Industrial Track Deed

71159

DEED

CONSOLIDATED RAIL CORPORATION

-to-

NORFOLK AND WESTERN RAILWAY COMPANY

Land known as the Fort Wayne Line, Phase
III, and situate in the Counties of Allen,
Whitley and Kosciusko and State of Indiana.

Prep:	Descp:
Chkd:	Compd:
Apvd:	

CASE NO. 71159

DEED TO

NORFOLK & WESTERN RAILWAY COMPANY

EXHIBIT "A"

Allen County, Indiana

4th Street Industrial Track, Line Code 3136A

ALL THAT CERTAIN property of the Grantor, being a portion of the strip of land known as the Penn Central Waterloo Branch (a.k.a. 4th Street Industrial Track), and identified as Line Code 3136A (a.k.a. 3136) in the Recorder's Office of Allen County, Indiana in Document No. 80-04592 and Instrument M13,003, situate in the City of Fort Wayne, County of Allen and State of Indiana, being further described as follows:

BEGINNING at Railroad Station 131+58, being at approximately Railroad Mile Post -0.9, on the northeasterly ROW line of the Norfolk and Western Railway Company (N/F) in the Southeast Quarter of Section 3, Township 30 North, Range 12 East, as indicated on sheet 50 of 51 of Exhibit "B"; thence extending in a general easterly, then northerly direction running on, over and across the Northeast Quarter Section 3 and the North Half Section 2, Township 30 North, Range 12 East, and the Southeast Quarter Section 35, Township 31 North, Range 12 East to approximately Railroad Mile Post 1.0 on the northerly line of State Boulevard, the place of ENDING, as indicated on sheet 51 of 51 of Exhibit "B".

BEING a portion of the same premises which Fort Wayne and Jackson Railroad Company, by Conveyance Document No. FtW&J-CRC-RPI-1, issued pursuant to the Regional Rail Reorganization Act of 1973, as amended (P.L. 93-236, H.R. 9142), the Final System Plan of the United States Railway Association and Special Court (Washington, D.C.) Misc. Order No. 75-3, dated March 25, 1976 and March 31, 1976, in the Matter of Regional Rail Reorganization Proceedings, granted and conveyed certain property, easements, interest and rights unto Consolidated Rail Corporation and which Conveyance Document was recorded on February 29, 1980 in the Recorder's Office of Allen County, Indiana, as Document No. 80-04592 and Instrument M 13,003.

THIS EXHIBIT "A" CONTAINS 8 PAGES, OF WHICH THIS IS
PAGE 8 OF 8.

CASE NO. 71159

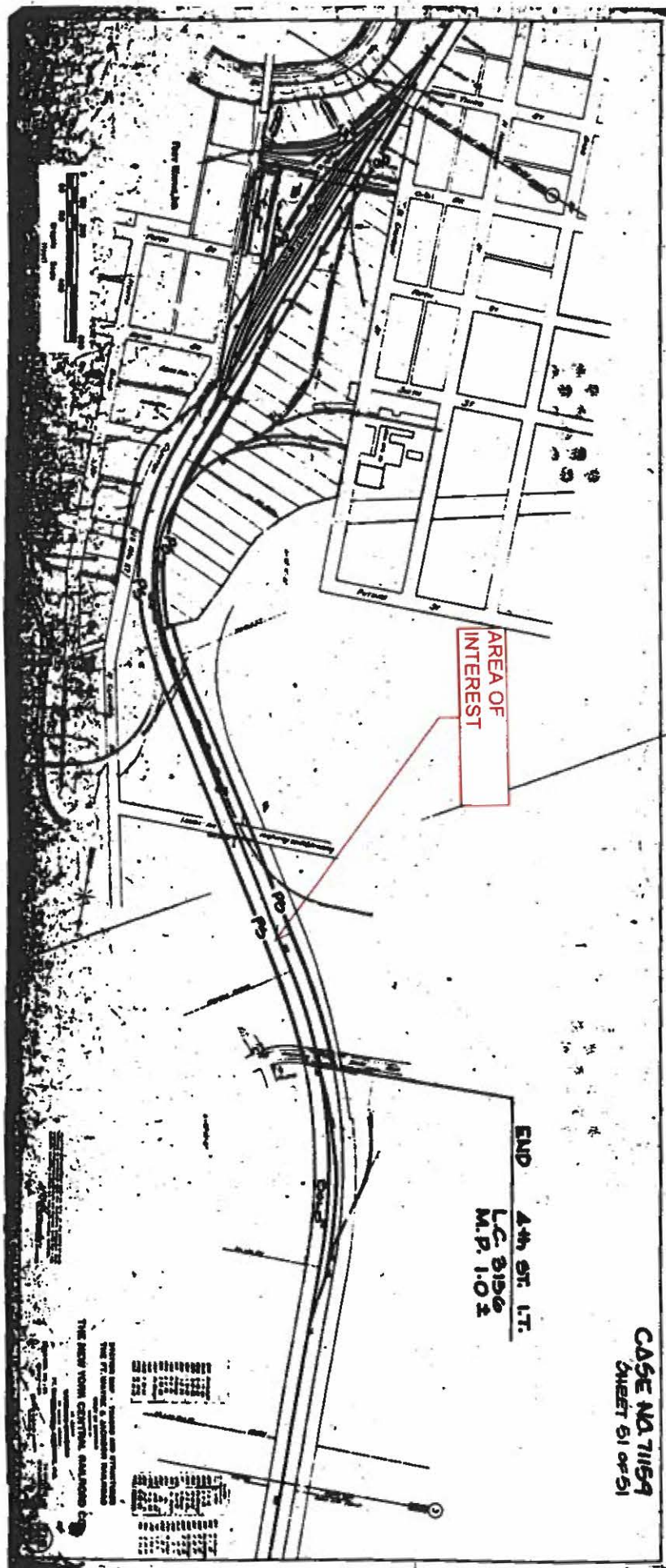
DEED TO

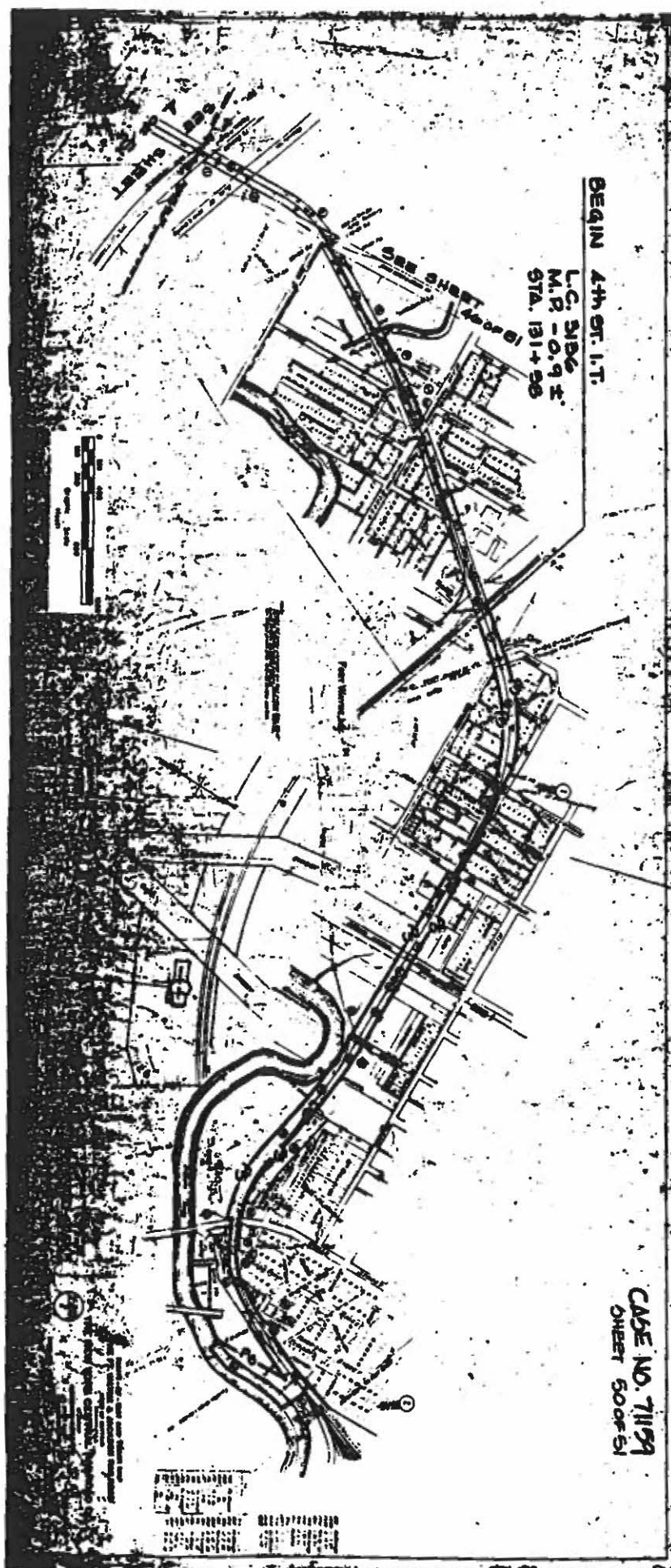
NORFOLK & WESTERN RAILWAY COMPANY

EXHIBIT B

MAP ADDENDUM

THIS EXHIBIT "B" CONTAINS 53 MAPS.





**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

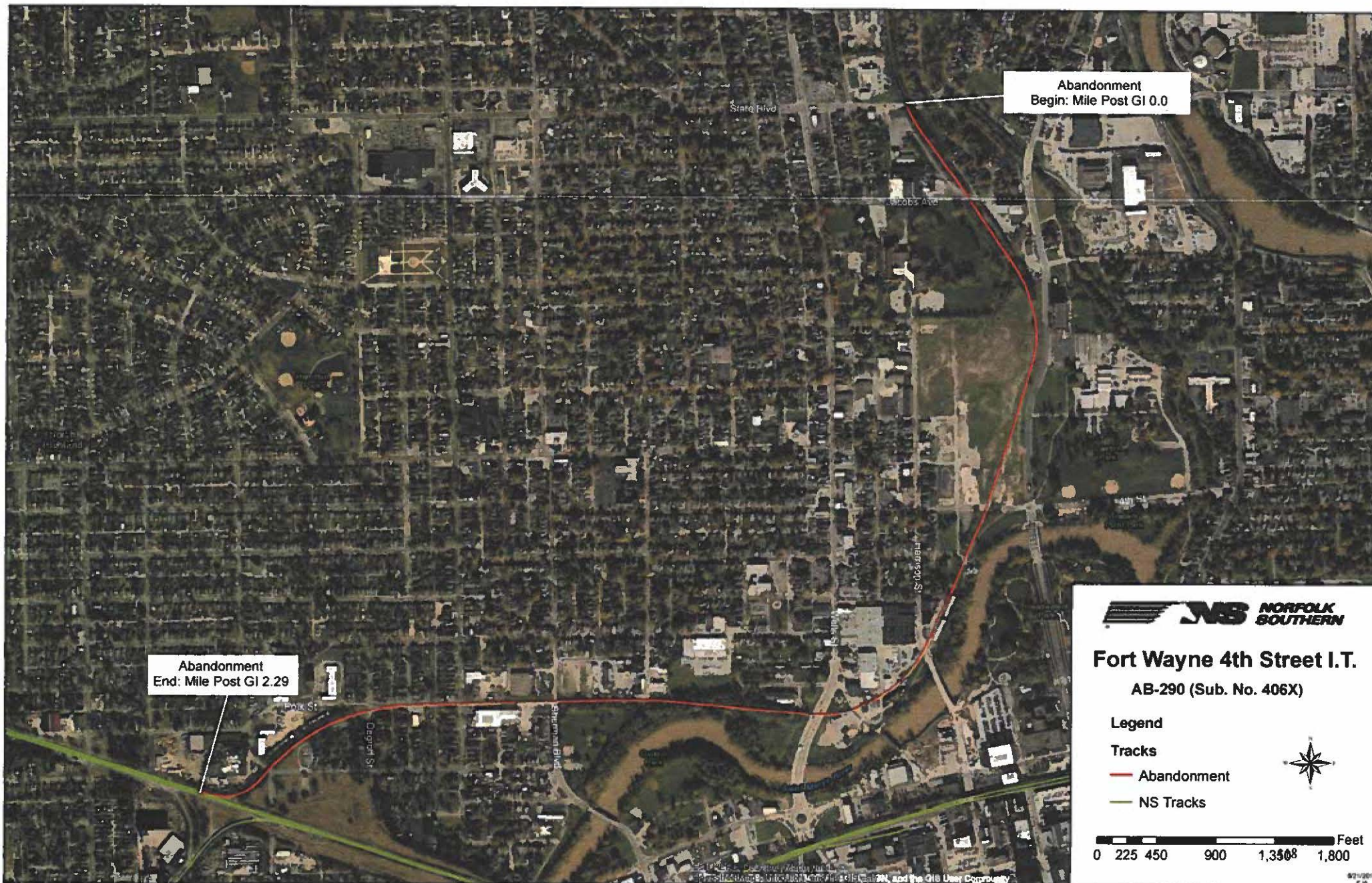
AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT G

Maps



Abandonment
Begin: Mile Post GI 0.0

Abandonment
End: Mile Post GI 2.29



Fort Wayne 4th Street I.T.

AB-290 (Sub. No. 406X)

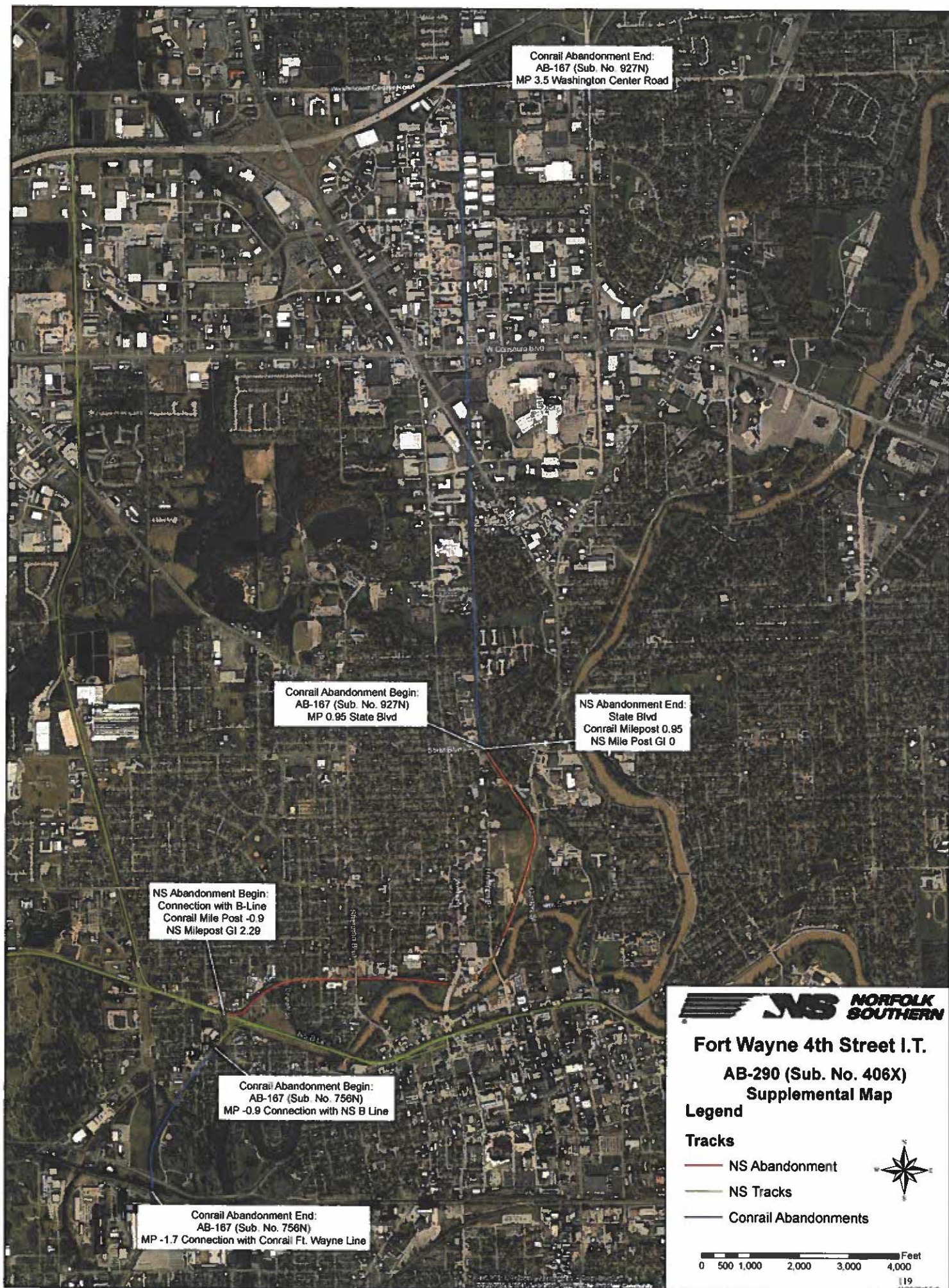
Legend

Tracks

- Abandonment
- NS Tracks



8/2/2014
F.O.



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT H

Draft Federal Register Notice

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[AB 290 (Sub-No. 406X)]

Norfolk Southern Railway Company – Abandonment Exemption – In The City of Fort Wayne, Indiana

On December 6, 2019, Norfolk Southern Railway Company (“NSR”) filed a petition under 49 U.S.C. § 10502 for an individual exemption from the provisions of 49 U.S.C. § 10903 to abandon rail service over an approximately 2.29-mile-rail line, extending from Milepost GI 0.0 to Milepost GI 2.29 in the City of Fort Wayne, IN (“Line”) previously known as the Fourth Street Industrial Track. The Line traverses United States Postal Zip Code territories 46805 and 46808. The Line proposed for abandonment has been dormant for nearly two decades, but previously included one station, Fourth Street.

The Line does not contain federally-granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Any OFA under 49 C.F.R. § 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,900 filing fee. See 49 C.F.R. § 1002.2(f)(25).

All interested persons should be aware that following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

NSR has indicated the City of Fort Wayne, Indiana is completing a road improvement project at the northern end of the abandonment, near Milepost GI 0.0, an alternative public use of the right-of-way.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full abandonment or abandonment regulations at 49 C.F.R. pt. 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

An environmental assessment ("EA") (or environmental impact statement ("EIS"), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

All filings in response to this notice must refer to Docket No. AB 290 (Sub-No. 406X) and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) William A. Mullins and Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037. Replies to the petition are due on or before _____, 2020.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: _____.

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

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT I

Certifications of Service/ Publication

Certificate of Service

49 C.F.R. § 1152.60(d) – Notice

I certify that, in keeping with 49 C.F.R. § 1152.60(d), I caused the following parties to be served with a copy of Norfolk Southern Railway Company's foregoing abandonment petition for exemption:

Indiana Utility Regulatory Commission
PNC Center
101 W. Washington Street
Suite 1500E
Indianapolis, IN 46204

Indiana Department of Transportation
Railroad Section
100 N. Senate Avenue 1GC-N, Room N901
Indianapolis, IN 46204

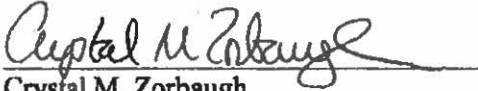
David Dorfman
Headquarters Military Surface Deployment
and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA
Railroads for National Defense Program
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

Mr. Stephan Nofield
National Park Service
Rivers, Trails and Conservation Assistance
Program
1849 C Street NW, Room 1344
Washington DC 20240

Vicki Christiansen, Chief
Forest Service
U.S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street SW
Washington, DC 20024

Based on information in NSR's possession, the Line does not contain federally granted rights-of-way.

December 6, 2019

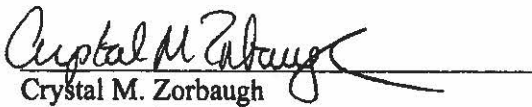

Crystal M. Zorbaugh
Attorney for Norfolk Southern
Railway Company

Certificate of Newspaper Publication

49 C.F.R. § 1105.12 – Newspaper Notice

I hereby certify that a "Notice of Intent to Abandon Rail Service" was published in the form prescribed by the Board for a Petition for Exemption (49 C.F.R. § 1105.12). The notice was published one-time on November 30, 2019, in the Journal Gazette, a newspaper of general circulation in the City of Fort Wayne, Indiana. Attached is an Affidavit of Publication and Tear Sheet from the Journal Gazette.

December 6, 2019


Crystal M. Zorbaugh
Attorney for Norfolk Southern
Railway Company

Attachment 1 -

Affidavit of Publication and Tear Sheet from the Journal Gazette.

FWN Order Confirmation

12/4/2019 10:57 am
Page 1 of 1

<u>Ad Order Number</u> 0001374498	<u>Customer</u> Baker & Miller PLLC	<u>Payor Customer</u> Baker & Miller PLLC	<u>PO Number</u>
<u>Sales Rep.</u> BrothertonLG	<u>Customer Account</u> 1068058	<u>Payor Account</u> 1068058	<u>Ordered By</u> Anna C
<u>Order Taker</u> BrothertonLG	<u>Customer Address</u> 2401 Pennsylvania Ave NW Sui Washington DC 20037 USA	<u>Payor Address</u> 2401 Pennsylvania Ave NW Sui Washington DC 20037 USA	<u>Customer Fax</u>
<u>Order Source</u>	<u>Customer Phone</u> 2026637820	<u>Payor Phone</u> 2026637820	<u>Customer EMail</u>
			<u>Special Pricing</u>

<u>Tear Sheets</u> 0	<u>Proofs</u> 0	<u>Affidavits</u> 0	<u>Blind Box</u>	<u>Promo Type</u> No Promo	<u>Materials</u>
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Invoice Text
Abandon Rail Service

Ad Order Notes

<u>Net Amount</u> \$232.54	<u>Tax Amount</u> \$0.00	<u>Total Amount</u> \$232.54	<u>Payment Method</u> Credit Card	<u>Payment Amount</u> \$232.54	<u>Amount Due</u> \$0.00
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<u>Ad Number</u> 0001374498-01	<u>Ad Type</u> LL Legal Liner	<u>Production Method</u> Line	<u>Production Notes</u>
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<u>External Ad Number</u>	<u>Ad Attributes</u>	<u>Ad Released</u> No	<u>Pick Up</u>
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<u>Ad Size</u> 1 X 76 li	<u>Color</u>
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<u>Run Date</u>	<u>Product</u>	<u>Placement</u>	<u>Rate</u>	<u>Sched Cst</u>	<u>Disc/Prem</u>	<u>Color</u>	<u>Pickup</u>	<u>Tax</u>	<u>Subtotal</u>
11/30/2019	Journal Gazette	9999	\$34.88 per Inch	\$232.54	\$0.00	\$0.00	\$0.00	\$0.00	\$232.54
11/30/2019	Online	9999	\$0.00 per Inch	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

The Journal Gazette

Account # 1068058 - 1374498

Allen County, Indiana

Baker & Miller PLLC**PUBLISHER'S CLAIM****LINE COUNT**

Display Master (Must not exceed two actual lines, neither of which shall
total more than four solid lines of the type in which the body of the
advertisement is set) -- number of equivalent lines

Head -- number of lines

Body -- number of lines

Tail -- number of lines

Total number of lines in notice

77**COMPUTATION OF CHARGES**77 lines, 1 column(s) wide equals77 equivalent lines at \$ 3.020 cents per line

\$ 232.54

Additional charges for notices containing rule or tabular work
(50 per cent of above amount)

-

Charge for extra proofs of publication

(\$2.00 for each proof in excess of two)

-

TOTAL AMOUNT OF CLAIM\$ 232.54**DATA FOR COMPUTING COST**

Width of single column in picas 9.8 Size of type 7point.

Number of Insertions 1

Pursuant to the provisions and penalties of IC 5-11-10-1, I hereby certify that the foregoing
account is just and correct, that the amount claimed is legally due, after allowing all just credits,
and that no part of the same has been paid.

I also certify that the printed matter attached hereto is a true copy, of the same column width
and type size, which was duly published in said paper 1 times.

The dates of publication being as follows:

11/30/2019

-

-

-

-

-

-

-

Additionally, Newspaper has a Web site and this public notice was posted on the same day as it
was published in The Journal Gazette.

Donna M. Brotherton

Donna M. Brotherton
Legal Clerk

Date: November 30, 2019

ATTACH COPY OF ADVERTISEMENT HERE

**NOTICE OF INTENT TO ABANDON
RAIL SERVICE
AB-290 (Sub-No. 406X)**

Norfolk Southern Railway Company ("NSR") gives notice that on or about December 6, 2019, it intends to file with the Surface Transportation Board ("Board"), Washington, DC 20423, a petition for exemption pursuant to 49 C.F.R. Part 1152 Subpart G and 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, permitting NSR to abandon rail service over an approximately 2.29-mile rail line, extending from Milepost 61 0.0 to Milepost 61 2.29 in the City of Fort Wayne, IN ("Line"). The Line traverses United States Postal Zip Code territories 46805 and 46808. There are no customers served on the Line, which has been out of service for nearly two decades. The proceeding has been docketed as AB-290 (Sub-No. 406X).

The proposed action entails the abandonment of rail service over the Line. For abandonments, the Board's Office of Environmental Analysis ("OEA") generally will prepare an Environmental Assessment ("EA"), which normally will be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public. Such comments will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, 395 E Street, SW, Washington, D.C. 20423, or by calling that office at (202) 245-0295.

Appropriate offers of financial assistance ("OFA") to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails public use, and OFA) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423 (See 49 CFR, §§ 1104.1(a) and 1104.3(a)), and one copy must be served on applicants' representative (See 49 CFR § 1104.12(a)). Questions regarding OFAs, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0230. Copies of any comments or requests for specific Board action should be served on the applicant's representative: Crystal M. Zorbaugh, BAKER & MILLER PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037; phone: 202-663-7820; fax 202-663-7849. 11--30 1374498 hspaxip

The Journal Gazette

Account # 1068058 - 1374498

Baker & Miller PLLC

Allen County, Indiana

PUBLISHER'S CLAIM

LINE COUNT

Display Master (Must not exceed two actual lines, neither of which shall
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Total number of lines in notice

77

COMPUTATION OF CHARGES

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-

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TOTAL AMOUNT OF CLAIM

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DATA FOR COMPUTING COST

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I also certify that the printed matter attached hereto is a true copy, of the same column width
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The dates of publication being as follows:

11/30/2019

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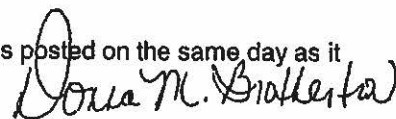
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Additionally, Newspaper has a Web site and this public notice was posted on the same day as it
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Donna M. Brotherton
Legal Clerk

Date: November 30, 2019

**NOTICE OF INTENT TO ABANDON
RAIL SERVICE
AB-290 (Sub-No. 406X)**

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

PETITION FOR EXEMPTION

EXHIBIT J

**E&HR AND CERTIFICATION OF
COMPLIANCE WITH 49 C.F.R. § 1105.11**

Environmental and Historic Report
Certificate of Service

Pursuant to the requirements of 49 C.F.R. § 1105.7(b) and 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Combined Environmental and Historic Report in Docket No. AB-290 (Sub-No. 406X) was mailed via first class mail on November 15, 2019 to the following parties:

STATE HISTORIC PRESERVATION OFFICE

Ms. Beth McCord
Deputy State Historic Preservation Officer
Indiana Department of Natural Resources
402 W. Washington Street, W274
Indianapolis, IN 46204

STATE DOT

Ms. Venetta Keefe
Rail Programs Manager
Indiana Department of Transportation
100 North Senate Ave., IGCN 955
Indianapolis, IN. 46204

US ENVIRONMENTAL PROTECTION AGENCY

US EPA
William Jefferson Clinton (WJC) Building
1200 Pennsylvania Ave., NW
Mail Code 1101-A
Washington, DC 20460

REGIONAL/STATE EPA

Ms. Virginia Laszewski
NEPA Program Office
US EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Indiana Department of Environmental Management
Government Center North
100 North Senate Avenue
Indianapolis, IN 46204

CITY

Mayor Tom Henry
City of Fort Wayne
Office of the Mayor
200 East Berry Street
Fort Wayne, Indiana 46802

COUNTY

Mr. Chris Cloud
Chief of Staff, Allen County
Citizens Square
200 East Berry Street, Suite 410
Fort Wayne, Indiana 46802

US ARMY CORPS OF ENGINEERS

Mr. Aaron Damrill
US Army Corps of Engineers
Regulatory Michiana Branch
2422 Viridian Drive, Suite #200
South Bend, IN 46628-3561

STATE COASTAL ZONE MANAGEMENT

Ms. Kathryn Vallis
Coastal Resources Planner
Indiana Department of Natural Resources,
Lake Michigan Coastal Program
402 W. Washington St., Room W267
Indianapolis, IN 46204

FISH AND WILDLIFE SERVICE

Mr. Charles Wooley
Regional Director
United States Fish & Wildlife Service
Midwest Region 3
5600 American Boulevard West, Suite 990
Bloomington, MN 55437

Ms. Christie Stanifer
Indiana Department of Natural Resources
Division of Fish and Wildlife
402 W. Washington St., Room W273
Indianapolis, IN 46204

NATIONAL PARK SERVICE

Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance Program
1849 C. Street NW, Room 1344
Washington, DC 20240

Mr. David Thomson
National Park Service, Midwest Regional Office
Rivers, Trails, and Conservation Assistance Program
601 Riverfront Dr.
Omaha, NE 68102

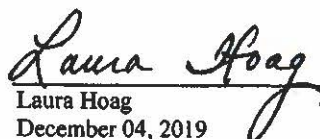
NATIONAL GEODETIC SURVEY

Communications and Outreach Branch, NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East West Highway
Silver Spring, MD 20910-3282

NATURAL RESOURCES CONSERVATION SERVICE

Mr. Salvador Salinas
Regional Conservationist - Central
USDA Natural Resources Conservation Service
1400 Independence Ave SW, #5204-S
Washington, DC 20250

Mr. Jerry Raynor
State Conservationist
USDA NRCS Indiana State Office
6013 Lakeside Drive
Indianapolis, IN 46278


Laura Hoag
December 04, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT –
IN THE CITY OF FORT WAYNE, INDIANA**

Combined Environmental and Historic Report

Norfolk Southern Railway Company (“NSR”) submits this Combined Revised Environmental and Historic Report (“E&HR”) pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, in connection with NSR’s proposed abandonment of approximately 2.29 miles of rail line from Milepost GI 0.0 to Milepost GI 2.29 (“Line”)¹ in the City of Fort Wayne, Indiana.²

December 04, 2019

¹ As further explained in footnote 7, although the milepost distance is approximately 2.29 miles, the linear length of the Line is approximately 1.85 miles.

² This is the second E&HR that NSR has prepared for this proposed abandonment in the past six months. The first E&HR was circulated on August 6, 2019 (“First E&HR”), prior to NSR filing a Notice of Exemption (“Notice”) to abandon the Line with the Surface Transportation Board (“STB”) on September 5, 2019. On October 23, 2019, the STB denied the Notice and suggested that if NSR were to seek authority for abandonment again, NSR should do so under the Petition for Exemption (“Petition”) or application process. The STB’s suggested this course because the line proposed for abandonment has a complicated history and the Notice raised factual and legal issues concerning whether Board authority is needed to abandon the Line that requires a more detailed examination than the expedited notice of exemption process is designed to provide. NSR plans to file a Petition to abandon the Line on December 6, 2019. As such, NSR is circulating the E&HR in support of its upcoming Petition.

Background

The Line has not served shippers since March 2000. Sometime in the late 1990s, NSR, as successor to Norfolk and Western Railway Company ("N&W"), began to look at N&W's various lines in the region in order to determine, which rail lines were still be utilized to serve shippers in the region, which ones were not and could be handled as normal track retirements (for § 10906 track), and to the extent NSR wished to terminate its common carrier obligations, which ones NSR would need to seek abandonment authority. It was unclear at that time based on the Line's prior use, location, and infrastructure as to whether the Line (known as the Fourth Street Industrial Track) was § 10901 or § 10906 track. Following N&W's acquisition in 1995, the Line did not connect to any trackage to the north or otherwise provide N&W with a through route. Complicating matters, NSR was in a dispute with CSX over another rail line in the area, so NSR chose to delay taking action with respect to the Line. Around the same time, the City of Fort Wayne was encouraging NSR to eliminate grade crossings over the Line. The City also wanted to use a portion of the inactive rail line for a flood control project.

In 2000, OmniSource the only shipper on the Line, decided to cease rail operations over the Line because it had a second facility in Fort Wayne, which was also rail served. OmniSource expressed an interest in purchasing a portion of the Line adjacent to its facility and offered to give NSR a rail easement should the sale close prior to NSR acquiring abandonment authority. Because of the uncertainty of the track's classification in its original acquisition, in 2000 NSR decided internally to seek abandonment authority out of an abundance of caution. Sometime in 2004, NSR came to the determination that the "Fourth Street Industrial Track" was an industrial track. After making this determination, NSR retired the Line pursuant to NSR's normal track retirement policy (for § 10906 track). Shortly thereafter, NSR's real estate department

proceeded to sell certain segments of the Line without retaining a rail easement:

- A portion of Milepost GI 1.73 –Milepost GI 1.85 was sold to Schenkel and Sons, Inc. in April 2008 and a portion was sold to Applied Metals & Machine Works Company, Inc. in June 2008 (each took 50' of the ROW from centerline between these two mileposts);
- A small segment of the right-of-way between Milepost GI 0.92 –Milepost GI 1.04 was sold to Calhoun Investments, LLC in October 2005; and,
- A small segment of the right-of-way between Milepost GI 0.44 –Milepost GI 0.92 was sold to RFI, LLC (aka OmniSource) in October 2001.³

In addition to these sales of portions of the real estate underlying the Line, all tracks on the portion of the Line from Milepost GI 2.04 to Milepost GI 0.0 have been removed.⁴

NSR was recently reviewing its records and ownership interests and in doing so discovered that NSR failed to seek abandonment authority for the Line when it appears it may have been required to do so. NSR is seeking abandonment authority out of an abundance of caution and to clean up the regulatory record to the extent the Board believes abandonment authority should have been sought.

As stated previously, NSR originally filed a Notice to abandon the Line, which the Board denied on October 23, 2019. As directed by the Board, NSR plans to file a Petition for abandonment in December, and is recirculating this E&HR in support of filing its upcoming Petition.

³ In a July 11, 2000 letter agreement, OmniSource did provide NSR an easement to restore the Line at OmniSource's expense if NSR proceeded with closing the sale of the property prior to obtaining any necessary Board approval, although such an easement was not reflected in the eventual sale.

⁴ There were no structures on the segment of the Line that was already salvaged.

ENVIRONMENTAL REPORT

49 CFR 1105.7(e)(1)

Proposed Action and Alternatives

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

RESPONSE: NSR proposes to abandon its common carrier obligation over approximately 2.29 miles of rail line from Milepost GI 0.0 to Milepost GI 2.29 in the City of Fort Wayne, Indiana. There is one structure (bridge) located at Milepost GI 2.18.

NSR serves no customers on the Line. No traffic has moved on or over the Line since March 2000, and the rail between Milepost GI 2.04 to Milepost GI 0.0 has been removed and certain portions of the real estate underlying the Line discussed above were sold. Unlike a typical abandonment, NSR will not be conducting any further salvage activities. As such, NSR believes that no storm water mitigation measures including, but not limited to, a National Pollutant Discharge Elimination System permit will be required, because no further salvage activities will be conducted. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. There is one structure (a bridge) on the Line. NSR does not intend to remove or dismantle the bridge.

The alternative to abandonment is to not abandon the Line and force NSR maintain a common carrier obligation where no need for rail service exists, or has existed in nearly two decades. The alternative is not satisfactory. NSR would incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line be retained.

A map depicting the Line is attached as **Appendix A**. An example of NSR's letter to federal, state and local government agencies along with a list of the consulting agencies that NSR

has contacted is attached as **Appendix B**. Comments received as a result of NSR's written requests for feedback, including those from the First E&HR, can be found in **Appendix C**. A bridge list is attached as **Appendix D**.

In its initial draft of the E&HR, which was sent to the consulting agencies on November 15, 2019, NSR referenced converting a segment of the Line from § 10901 to § 10906 track. NSR subsequently decided to not pursue this conversion, and at the direction of the Surface Transportation Board's Office of Environmental Analysis, NSR notified the consulting agencies of the change in scope of the abandonment. A copy of the letter sent to consulting agencies is attached as **Appendix E**.

49 CFR 1105.7(e)(2) Transportation system.

Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

RESPONSE: Effects of the proposed action on regional or local transportation systems and patterns would be negligible. There has been no NSR rail freight or passenger traffic originating or terminating on the Line proposed for abandonment in nearly two decades.

49 CFR 1105.7(e)(3) Land use.

(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

RESPONSE: An outline of future land use plans has been requested from the City of Fort Wayne, Indiana, and Allen County, Indiana, both of which were asked to comment on the consistency of the proposed abandonment of the Line with existing land use plans.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

RESPONSE: NSR does not believe the abandonment will have any adverse impact on prime agricultural land because the Line to be abandoned is in the City of Fort Wayne. On August 6, 2019, NSR provided the United States Department of Agriculture Natural Resources Conservation Service (“USDA NRCS”) with a copy of the First E&HR for its comment. USDA NRCS responded to and stated the proposed abandonment would not cause a conversion of prime farmland. As a result of the denial of the Notice and NSR’s decision to file a Petition, a copy of this E&HR has been mailed to USDA NRCS for its information and to provide USDA NRCS with another opportunity to comment.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by Sec. 1105.9.

RESPONSE: Although this Line is adjacent to the St. Mary’s River, NSR has no reason to believe that the proposed abandonment would be inconsistent with the coastal zone management plan because NSR will not be conducting any further salvage activities. On August 6, 2019, NSR provided the Indiana Department of Natural Resources (“IDNR”), Office of Coastal Management with a copy of the First E&HR for its comment. IDNR Office of Coastal Management responded in an email correspondence dated August 15, 2019, informing NSR that the proposed abandonment was outside of the Lake Michigan Coastal Program’s service boundaries of the Lake Michigan Watershed. The IDNR Office of Coastal Management suggested NSR contact IDNR Division of Fish and Wildlife for its input regarding potential environmental impacts resulting from the proposed abandonment. NSR provided a courtesy copy of the E&HR to the IDNR Division of Fish and Wildlife. In an email correspondence dated August 22, 2019, the IDNR Division of Fish and Wildlife indicated a review was not warranted, as no salvage activities will be performed. A copy of the correspondence can be found in Exhibit C.

As a result of the denial of the Notice and NSR's decision to file a Petition, a copy of this E&HR has been mailed to both the Office of Coastal Management and the IDNR Division of Fish and Wildlife for its information and to provide both the Office of Coastal Management and the IDNR Division of Fish and Wildlife with another opportunity to comment. In email correspondence dated November 22, 2019, the IDNR Office of Coastal Management reaffirmed that the proposed abandonment is outside of the designated Coastal Program area.

(iv) If the proposed action is an abandonment state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

RESPONSE: The City of Fort Wayne is completing a road improvement project at the northern end of the abandonment, near Milepost GI 0.0. The City's road improvement project is a suitable, alternative public use of the right-of-way. Likewise, the various portions of the Line that NSR has already sold would not be suitable for alternative public purposes.

49 CFR 1105.7(e)(4) Energy.

(i) Describe the effect of the proposed action on transportation of energy resources.

RESPONSE: Development and transportation of energy resources will not be affected by the abandonment. There has been no freight or passenger traffic originating or terminating on the Line for nearly two decades.

(ii) Describe the effect of the proposed action on recyclable commodities.

RESPONSE: Movement or recovery of recyclable commodities will not be affected by the abandonment. There has been no freight or passenger traffic originating or terminating on the Line for nearly two decades.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

RESPONSE: The proposed action involves the abandonment and of a rail Line that has been inactive for nearly two decades, and as such will not result in an increase or decrease in overall energy. A portion of the Line has already been removed and salvaged.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:
(A) 1,000 rail carloads a year; or
(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

RESPONSE: No traffic will be diverted from rail to motor carriage as a result of the proposed action, so the above thresholds will not be exceeded. Accordingly, there is no need to produce data on diverted traffic or to quantify the net change in energy consumption.

49 CFR 1105.7(e)(5) Air.

(i) If the proposed action will result in either:
(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or
(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or
(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

RESPONSE: The above thresholds will not be exceeded.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:
(A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,
(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or
(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan.

RESPONSE: The above thresholds will not be exceeded.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and Freon®) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

RESPONSE: Not applicable.

49 CFR 1105.7(e)(6) Noise.

If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

- (i) An incremental increase in noise levels of three decibels Ldn or more; or*
- (ii) An increase to a noise level of 65 decibels Ldn or greater.*

If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

RESPONSE: The above thresholds will not be exceeded.

49 CFR 1105.7(e)(7) Safety.

- (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).*

RESPONSE: Abandonment of the Line will have no adverse impact on public health and safety.

- (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.*

RESPONSE: Not applicable.

- (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.*

RESPONSE: NSR has no knowledge of hazardous waste sites or sites where there have been known hazardous material spills on the right-of-way or in areas adjacent to the Line.

49 CFR 1105.7(e)(8) Biological Resources.

- (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a*

critical habitat, and if so, describe the effects.

RESPONSE: NSR does not believe the abandonment will have any adverse impact on surrounding habitats and species because no further salvaging will occur. There is no NSR rail freight or passenger traffic originating or terminating on the Line. On August 6, 2019, NSR provided the U.S. Fish and Wildlife Service (“USFWS”) with a copy of the First E&HR for its comment. USFWS responded in an August 7, 2019 email correspondence, opining that the proposed abandonment was not likely to affect endangered and threatened species. A copy of that correspondence can be found in Appendix C.

As a result of the denial of the Notice and NSR’s decision to file a Petition, a copy of this E&HR has been mailed to USFWS for its information and to provide USFWS with another opportunity to comment.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

RESPONSE: The Line does not pass through state parks or forests, national parks or forests, or wildlife sanctuaries. As such, no adverse effects on wildlife sanctuaries, national parks or forests, or state parks or forests are anticipated. Regardless, NSR requested input from the National Park Service. No comments have been received yet.

49 CFR 1105.7(e)(9) Water.

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

RESPONSE: NSR does not plan to remove or alter the contour of the roadbed underlying the Line to be abandoned by way of excavation or other ground-disturbance activity. No further salvaging is anticipated. Accordingly, no soils will be disturbed as a result of the proposed abandonment, and no storm water mitigation measures – including, but not limited to, a National

Pollutant Discharge Elimination System permit will be required. There are no plans to undertake in-stream work, or dredge and/or use any fill materials in connection with the proposed abandonment, so, for this reason also, the proposed abandonment will not result in water quality impacts.

Consultation has been requested from the Indiana Department of Environmental Management and the United States Environment Protection Agency ("USEPA"). No comments have been received yet.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

RESPONSE: The geometry of the roadbed will not be altered and no in-stream work is contemplated. No discernible effects on either 100-year flood plains or adjacent wetlands are expected in connection with the proposed abandonment. NSR will not be conducting any further salvage activities. Consequently, the railroad does not believe a Section 404 permit will be required in connection with the proposed abandonment. Consultation was requested from the U.S. Army Corps of Engineers Detroit District ("USACE").

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.

RESPONSE: NSR does not plan to remove or alter the roadbed underlying the Line to be abandoned, or to undertake in-stream work or to dredge or use any fill materials. There will be no excavation or other ground-disturbance activity, and, because no soils will be disturbed, no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. NSR anticipates that the abandonment will not affect water quality and that additional permitting under Section 402 will not be required. NSR will not be conducting any further salvage activities. NSR has requested input from the U.S.

Environmental Protection Agency ("USEPA") and the Indiana Department of Environmental Management (as indicated in the preceding section). No comments have been received yet.

49 CFR 1105.7(e)(10) Proposed Mitigation.

Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

RESPONSE: Abandonment of the Line is not expected to produce adverse environmental impacts for the reasons set forth above.

HISTORIC REPORT

49 CFR 1105.8(d)

PROPOSED ACTION AND ALTERNATIVES

NSR proposes to abandon its common carrier obligation over approximately 2.29 miles of rail line from Milepost GI 0.0 to Milepost GI 2.29⁵ in the City of Fort Wayne, Indiana. NSR serves no customers on the Line. No traffic has moved on or over the Line since March 2000, and sections of the rail line between Milepost GI 2.04 to Milepost GI 0.0 have been removed and certain portions of the real estate underlying the Line discussed above were sold. Unlike a typical abandonment, NSR will not be conducting any further salvage activities. As such, NSR believes that no storm water mitigation measures including, but not limited to, a National Pollutant Discharge Elimination System permit will be required, because no further salvage activities will be conducted. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. There is one structure (a bridge) on the Line; however, NSR does not intend to remove or dismantle the bridge.

The alternative to abandonment is to not abandon the Line and force NSR maintain a common carrier obligation where no need for rail service exists, or has existed in nearly two decades. The alternative is not satisfactory. NSR would incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line be retained.

A map depicting the Line is attached as **Appendix A**.

⁵ As further explained in footnote 7, although the milepost distance is approximately 2.29 miles, the linear length of the Line is approximately 1.85 miles.

ADDITIONAL INFORMATION

- (1) **U.S.G.S. Topographic Map** – Map was furnished to the State Historic Preservation Office within the Indiana Department of Natural Resources (“SHPO”).⁶
- (2) **Written Description of Right of Way** – The right-of-way ranges from 20 feet to 100 feet in width along the main track centerline. Pursuant to Surface Transportation Board policy, the railroad’s right-of-way will constitute the Area of Potential Effect (“APE”) for this undertaking.
- (3) **Photographs** – There is one structure (a bridge) on the Line. It is located at Milepost GI 2.18. A photograph of the bridge was furnished to the SHPO.
- (4) **Date of Construction of Structures** – Based on information in NSR’s possession, it is unable to determine when the sole structure on the Line (a bridge) was constructed. However, NSR does not intend to remove or dismantle the bridge. A bridge list is attached as Appendix D.
- (5) **History of Operations and Changes Contemplated** – The Line that is the subject of this abandonment consists of approximately 2.29 miles of rail line between Milepost GI 0 and Milepost GI 2.29 in the City of Fort Wayne, Indiana.

The Line is a small stub-end branch line that was part of the old Fort Wayne and Jackson and Saginaw Railroad Company main line between Jackson, Michigan and Fort Wayne, Indiana. The whole Fort Wayne and Jackson line consisting of approximately 97.83 miles of line between Jackson, MI and Ft. Wayne, IN was originally completed by the Fort Wayne, Jackson and Saginaw Railroad Company on December 25, 1870. The Fort Wayne, Jackson and Saginaw was a consolidation of the Jackson, Fort Wayne and Cincinnati and the Fort Wayne, Jackson and Saginaw Railroads, formed April 6, 1869. The consolidated Fort Wayne, Jackson and Saginaw

⁶ The SHPO’s formal name is the Indiana Department of Natural Resources Division of Historic Preservation & Archeology.

defaulted on its debts on January 1, 1874. It was subsequently sold under foreclosure on December 3, 1879.

The Fort Wayne & Jackson Railroad Company was incorporated under the laws of Michigan and Indiana on December 27, 1879, following the reorganization of the Fort Wayne, Jackson & Saginaw Railroad Company, which became effective on January 1, 1880. The line was leased in perpetuity to the Lake Shore & Michigan Railway Company, effective August 24, 1882. The lease was assumed by the New York Central Railroad Company in December 1914, and by the Penn Central Company, by virtue of the merger of the New York Central Railroad Company and Pennsylvania Railroad Company on February 1, 1968. The Line was operated as part of Penn Central's Waterloo Branch that continued to the south of Ft. Wayne. However, much of the Waterloo Branch was abandoned by not being transferred to Conrail as part of the Final System Plan. The Line was operated by Conrail after the consolidation of the bankrupt northeastern railroads by the USRA on April 1, 1976.

On June 1, 1982, N&W and Southern Railway Company consolidated as subsidiaries of Norfolk Southern Corporation, pursuant to authority granted by the Interstate Commerce Commission.

Effective December 31, 1990, Southern Railway Company changed its name to Norfolk Southern Railway Company. N&W became a wholly owned subsidiary of NSR rather than a subsidiary of Norfolk Southern Corporation.

Pursuant to an ICC decision in Finance Docket No. 32736, Norfolk and Western Railway Company – Purchase and Operation Exemption – Consolidated Rail Corporation Between Fort

Wayne and Warsaw, IN, served August 29, 1995, NSR's predecessor, N&W, purchased three line segments in Indiana, including this subject segment.⁷

Pursuant to a notice of exemption filed in STB Finance Docket No. 33648, Norfolk Southern Railway Company – Merger Exemption – Norfolk and Western Railway Company, served August 31, 1998, NSR merged Norfolk and Western Railway Company into NSR effective September 1, 1998.

(6) **Summary of Documents In Carrier's Possession That Might Be Useful for Documenting a Structure That Is Found To Be Historic** – While plans may be available for the sole structure on the Line, it is most likely that any such plans are standard plans used for the construction of similar structures on the dates of construction. Regardless, NSR does not intend to remove or dismantle the sole structure (a bridge).

(7) **Opinion Regarding Criteria For Listing In The National Register Of Historic Places**
There is one structure located within the APE for this project. NSR does not intend to remove or dismantle the bridge. Additionally, NSR does not believe that the structure nor the Line itself meets the criteria for listing in the National Register of Historic Places. There are no plans for salvage activity on the Line.

On August 6, 2019, NSR provided the SHPO with a photo of the structure and a copy of the First E&HR for comment. The SHPO responded and stated that surrounding properties listed

⁷ N&W purchased the main line and two industrial tracks to give N&W an alternate route and expanded capacity between Fort Wayne, IN and Chicago, IL. The 1995 transaction was part of a series of transactions aimed at eliminating congestion on a main line that had reached "a saturation point." The Line being proposed for abandonment was referred to in FD 32736 as the "Fourth Street Industrial Track" used Conrail's milepost for the Line which at that time was Milepost -0.9 to Milepost 0.95. After the purchase of these lines, N&W applied new mileposts for its operation. Former Milepost 0.95 is now synonymous with Milepost GI 0.0. Former Milepost -0.9 is now Milepost 2.29. The difference in the total length, 1.85 miles vs. 2.29 miles, is due to the fact that distances between the new mileposts are not exact statutory miles. In terms of total linear feet, the distance of the Line being proposed for abandonment (the Fourth Street Industrial Track) remains the same.

in the National Register of Historic Places will not be diminished by this project. As a result of the denial of the Notice and NSR's decision to file a Petition, a copy of this E&HR has been mailed to the SHPO for its information and to provide the SHPO another opportunity to comment.

(8) **Subsurface Ground Conditions That Might Affect Archaeological Recovery** - The railroad is not aware of any prior subsurface ground disturbances or environmental conditions that would affect archaeological recovery. Moreover, abandonment of the Line and will not affect any potential archaeological resources. The subsurface of the right-of-way was initially disturbed in the construction of the Line by grading and filling. Abandonment of the Line will not result in activities below the surface, or below the level of initial disturbance because no further salvage activities are anticipated.

(9) **Follow-Up Information** – Additional information will be provided as appropriate.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

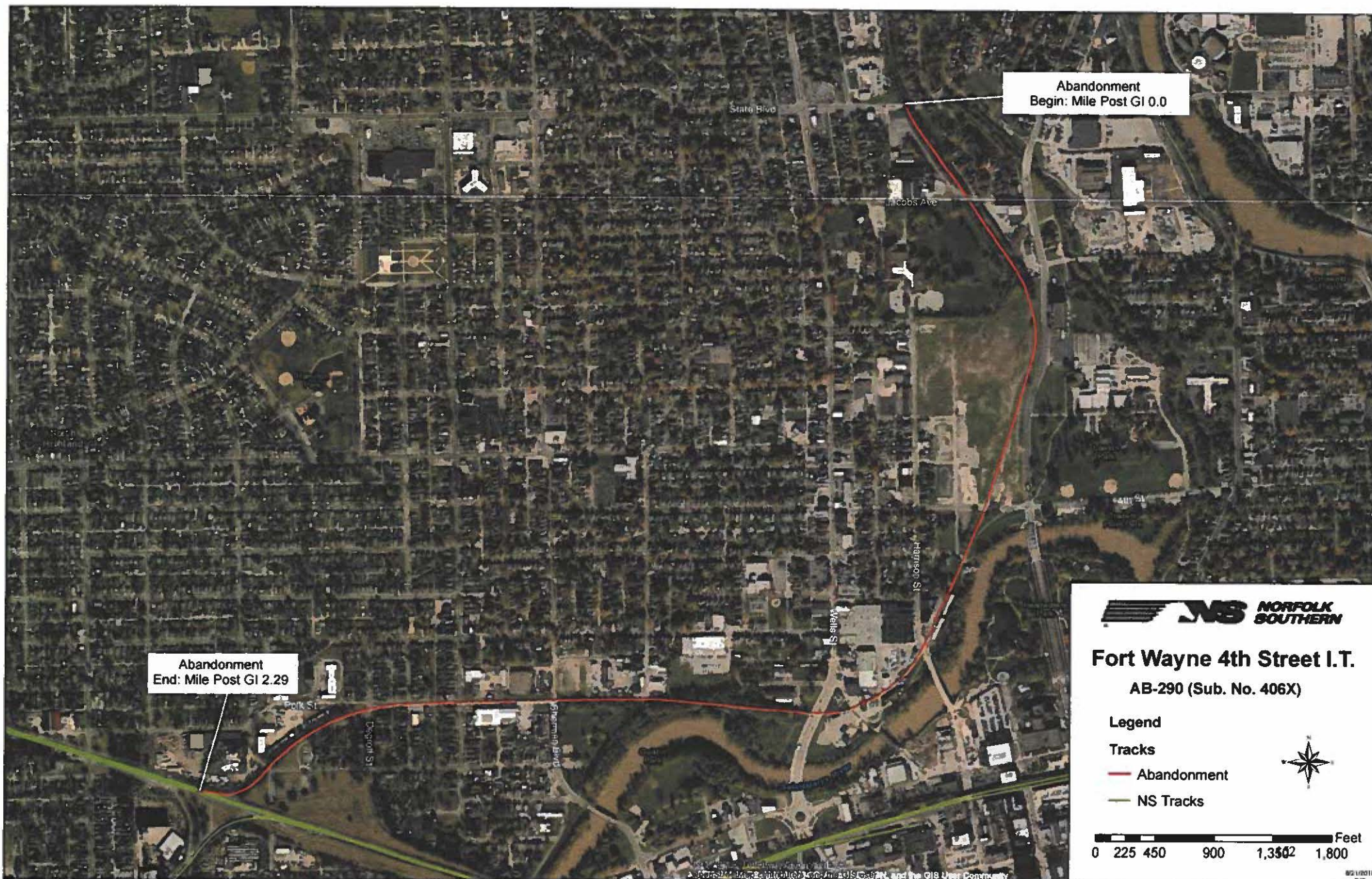
AB-290 (Sub-No. 406X)

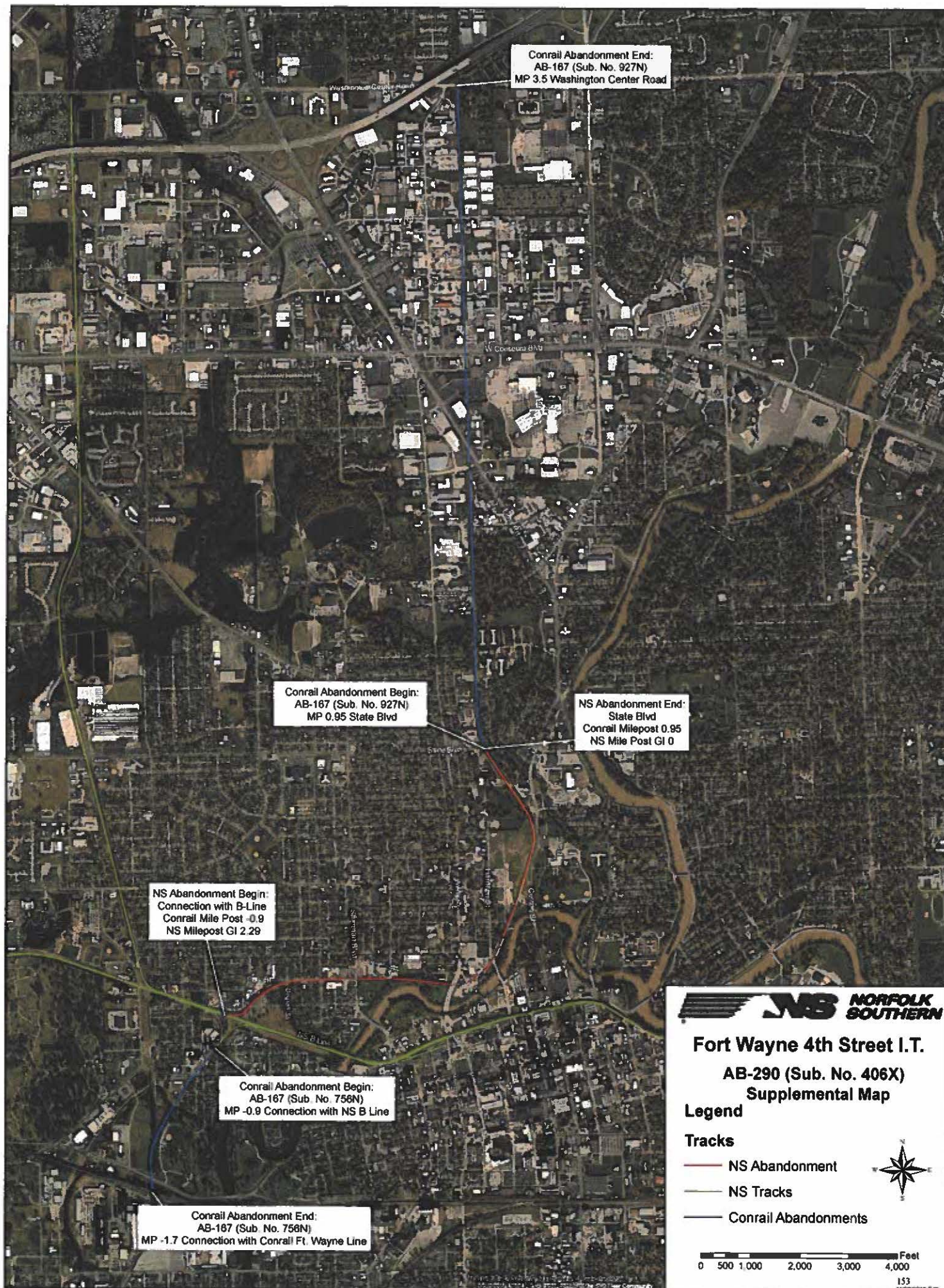
**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT –
IN THE CITY OF FORT WAYNE, INDIANA**

Combined Environmental and Historic Report

APPENDIX A

Map





**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT –
IN THE CITY OF FORT WAYNE, INDIANA**

Combined Environmental and Historic Report

APPENDIX B

Sample Consultation Letter & Recipient List

[DATE]

[ENTITY]

RE: AB-290 (Sub-No. 406X), Norfolk Southern Railway Company Abandonment – in
Fort Wayne, IN

[GREETING]:

In correspondence¹ to your office on August 6, 2019, Norfolk Southern Railway Company (“NSR”) notified you of its plans to request authority from the Surface Transportation Board (“STB”) to abandon the segment of rail line between Milepost GI 0.0 and Milepost GI 2.29, a distance of 2.29 miles in the City of Fort Wayne, IN (“Line”) utilizing a Notice of Exemption (“Notice”). In a decision dated October 23, 2019, the STB denied the Notice and directed NSR to file under a different method to secure abandonment authority.

The purpose of this letter is to provide notice that NSR plans to file a Petition for Exemption (“Petition”) to abandon the Line on December 6, 2019. As such, NSR is circulating a revised Combined Environmental and Historic Report (“Report”) in support of its upcoming Petition.

Attached is NSR’s Report which describes the proposed abandonment and other pertinent information and incorporates comments received from the First Report. A map of the proposed track abandonment can be found in **Appendix A** of this report. **Appendix B** of this report lists the various agencies receiving it. **Appendix C** of this report lists the various agency responses NSR received from its First Report. **Appendix D** of this report provides information regarding the bridge on the Line.

We are providing this report so that you may review the information that will form the basis for the STB’s independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board’s environmental review process, please contact the Office of Environmental Analysis (OEA), Surface Transportation Board, Washington, DC, by telephone at (202) 245-0245 or by mail at:

Surface Transportation Board
395 E Street, S.W., Room 1106
Washington DC 20423-0001

and refer to AB-290 (Sub-No. 406X).

Please note, no salvage activities will be performed in connection with this proposed abandonment, thus, the railroad does not anticipate adverse environmental impacts; however, if you identify any adverse environmental effects, please describe the actions that would assist in alleviating them.

¹ The correspondence included an initial Combined Environmental and Historic Report (“First Report”) for the proposed abandonment.

Your comments will be considered by the STB & NSR in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is Scott Plum who may be contacted using the information below:

Scott Plum, Manager
Strategic Planning – 12th Floor
Norfolk Southern Corporation
3 Commercial Place
Norfolk, VA 23510
(757) 629-2884
scott.plum@nscorp.com

Applicable statutes and regulations impose stringent deadlines for processing this action. For this reason your written comments (with a copy to us) would be appreciated within three weeks.

Best regards,

Laura E. Hoag

Attachment

RECIPIENT LIST
AB-290 (Sub-No 406X)

Proposed Rail Line Abandonment on Norfolk Southern Railway Company's rail line segment between GI 0.0 and GI 2.29 in Fort Wayne, Indiana, a distance of approximately 2.29 miles.

STATE HISTORIC PRESERVATION OFFICE

Ms. Beth McCord
Deputy State Historic Preservation Officer
Indiana Department of Natural Resources
402 W. Washington Street, W274
Indianapolis, IN 46204

STATE DOT

Ms. Venetta Keefe
Rail Programs Manager
Indiana Department of Transportation
100 North Senate Ave., IGCN 955
Indianapolis, IN. 46204

US ENVIRONMENTAL PROTECTION AGENCY

US EPA
William Jefferson Clinton (WJC) Building
1200 Pennsylvania Ave., NW
Mail Code 1101-A
Washington, DC 20460

REGIONAL/STATE EPA

Ms. Virginia Laszewski
NEPA Program Office
US EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Indiana Department of Environmental Management
Government Center North
100 North Senate Avenue
Indianapolis, IN 46204

CITY

Mayor Tom Henry
City of Fort Wayne
Office of the Mayor
200 East Berry Street
Fort Wayne, Indiana 46802

COUNTY

Mr. Chris Cloud
Chief of Staff, Allen County
Citizens Square
200 East Berry Street, Suite 410
Fort Wayne, Indiana 46802

US ARMY CORPS OF ENGINEERS

Mr. Aaron Damrill
US Army Corps of Engineers
Regulatory Michiana Branch
2422 Viridian Drive, Suite #200
South Bend, IN 46628-3561

STATE COASTAL ZONE MANAGEMENT

Ms. Kathryn Vallis
Coastal Resources Planner
Indiana Department of Natural Resources,
Lake Michigan Coastal Program
402 W. Washington St., Room W267
Indianapolis, IN 46204

FISH AND WILDLIFE SERVICE

Mr. Charles Wooley
Regional Director
United States Fish & Wildlife Service
Midwest Region 3
5600 American Boulevard West, Suite 990
Bloomington, MN 55437

Ms. Christie Stanifer
Indiana Department of Natural Resources
Division of Fish and Wildlife
402 W. Washington St., Room W273
Indianapolis, IN 46204

NATIONAL PARK SERVICE

Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance Program
1849 C. Street NW, Room 1344
Washington, DC 20240

Mr. David Thomson
National Park Service, Midwest Regional Office
Rivers, Trails, and Conservation Assistance Program
601 Riverfront Dr.
Omaha, NE 68102

NATIONAL GEODETIC SURVEY

Communications and Outreach Branch, NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East West Highway
Silver Spring, MD 20910-3282

NATURAL RESOURCES CONSERVATION SERVICE

Mr. Salvador Salinas
Regional Conservationist - Central
USDA Natural Resources Conservation Service
1400 Independence Ave SW, #5204-S
Washington, DC 20250

Mr. Jerry Raynor
State Conservationist
USDA NRCS Indiana State Office
6013 Lakeside Drive
Indianapolis, IN 46278

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT –
IN THE CITY OF FORT WAYNE, INDIANA**

Combined Environmental and Historic Report

APPENDIX C

Agency Comments/Responses

Plum, Scott D.

From: Vallis, Kathryn <KVallis@dnr.IN.gov>
Sent: Friday, November 22, 2019 3:49 PM
To: Plum, Scott D.
Subject: [EXTERNAL] Re: AB-290 (Sub-No. 406X), Norfolk Southern Railway Company Abandonment - in the City of Fort Wayne, IN, Revised Report
Attachments: LMCP Coastal Program Area.pdf

Dear Mr. Plum,

Thank you for sharing Ms. Hoag's 15-NOV-2019 request to review your revised AB-290 (Sub-No. 406X), Norfolk Southern Railway Company Abandonment – in the City of Fort Wayne, IN report. As stated in previous correspondence, the project site of Fort Wayne, IN is located outside of the Indiana Department of Natural Resources: Lake Michigan Coastal Program's designated Coastal Program Area (please see attachment).

For input or guidance regarding any potential environmental impacts of this project, please contact the Indiana Department of Natural Resources: Division of Fish and Wildlife and/or the Indiana Department of Environmental Management.

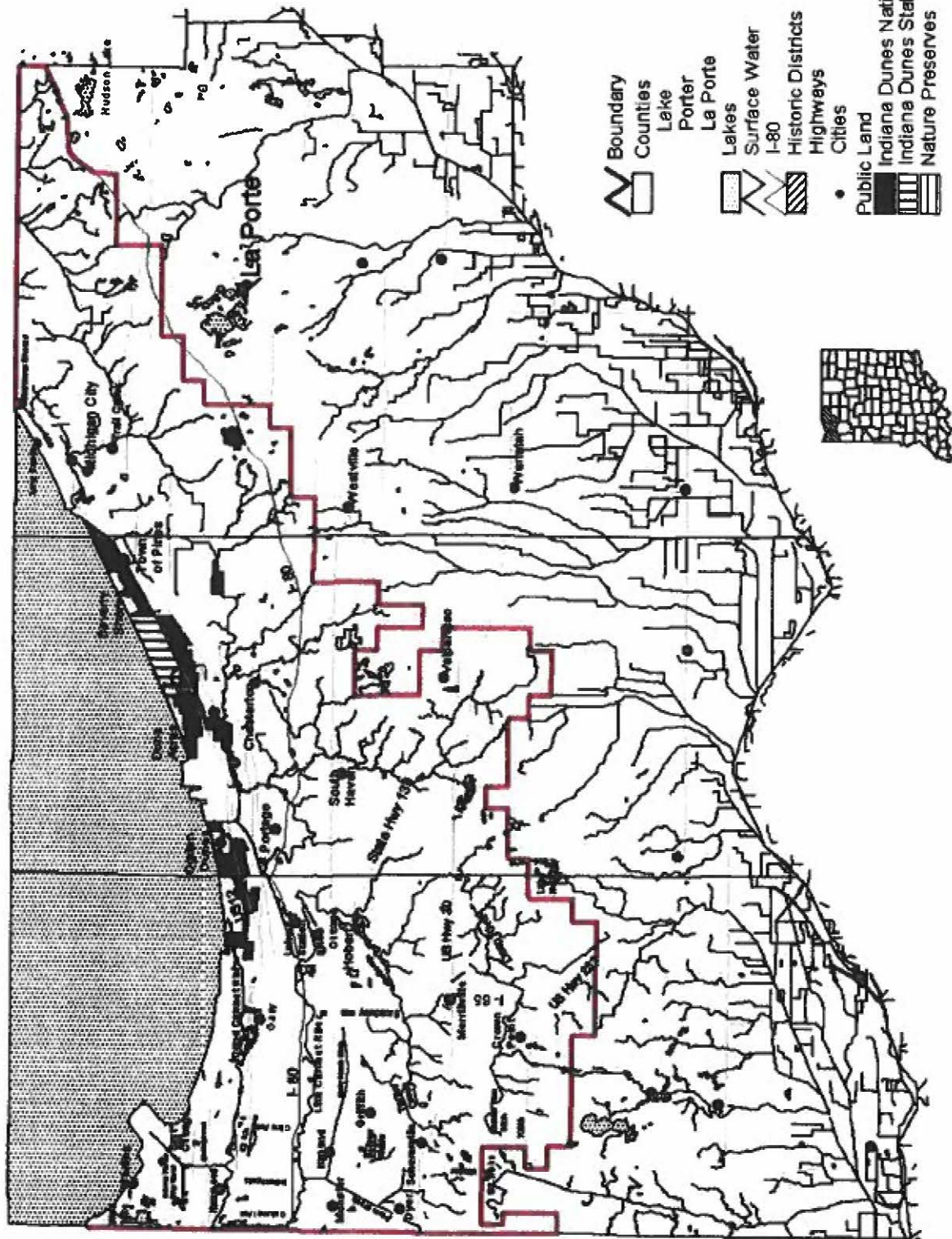
Please let me know if you have any questions or if I can be of further assistance.

Sincerely,

Kathryn Vallis
Coastal Resources Planner
Indiana Department of Natural Resources
Division of Nature Preserves
Lake Michigan Coastal Program
Dunes State Park Annex
1600 North 25 East
Chesterton, IN 46304
kvallis@dnr.in.gov
219.926.9757
www.dnr.IN.gov

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Lake Michigan Coastal Program Area



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub. No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT –
IN THE CITY OF FORT WAYNE, IN**

Combined Environmental and Historic Report

APPENDIX D

Bridge List

Milepost	Crossing	Bridge Type	Deck Construction	Length in Feet	Height in Feet	Date Constructed
GI 2.18	Osage Street	Steel Beam	Ballast Deck	58	16	Unknown

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub. No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT –
IN THE CITY OF FORT WAYNE, IN**

Combined Environmental and Historic Report

APPENDIX E

Letter Sent to Consulting Parties Providing Notice of Change in Scope of Abandonment

Laura E. Hoag
Director
Strategic Planning
(757) 823-5267

November 25, 2019

Ms. Beth McCord
Deputy State Historic Preservation Officer
Indiana Department of Natural Resources
402 W. Washington Street, W274
Indianapolis, IN 46204

RE: AB 290 (Sub -No. 406X), Norfolk Southern Railway Company
Abandonment - In the City of Fort Wayne, IN

Dear Beth McCord:

On November 15, 2019, Norfolk Southern Railway Company ("NSR") notified you of its plans to request authority from the Surface Transportation Board ("STB") to abandon a segment of rail line between Milepost GI 0.0 and Milepost GI 2.29, a distance of 2.29 miles in the City of Fort Wayne, IN ("Line") utilizing a Petition for Exemption ("Petition"). At that time, NSR provided a revised Combined Environmental and Historic Report ("Report") in support of its upcoming Petition.

NSR is writing to provide notice that one aspect of its proposed abandonment has changed. In the Report, NSR noted that while NSR is seeking to abandon the entire Line, NSR planned to convert the portion of Line from Milepost GI 1.85 to Milepost GI 2.29 (where it connects to NSR's B-Line) from common carrier track to §10906 track ("Converted 10906 Segment") to support current and future operation needs on NSR's nearby main line; and, that there was one structure (a bridge) on the portion of the Line to be converted.

Since transmitting the Report, NSR has come to the determination that it no longer wishes to convert a portion of the track from §10901 to §10906 track. As such, NSR is writing to ensure that you have a clear understanding of the proposed abandonment in order to prepare any comments you may wish to offer to the STB:

- NSR plans to seek abandonment authority for the entire Line;
- NSR's decision to change course for the originally proposed Converted 10906 Segment, does not change the environmental and historic analysis provided in the Report;
- NSR statement that NSR will not be conducting any further salvage activities for the Line remains accurate; and,
- NSR has no plans to perform any salvage on the sole structure (a bridge) located on the Line, which as explained in the Report is located at Milepost GI 2.18.

Ms. Beth McCord
November 25, 2019
Page 2

As explained in the Report, your comments on the Report as clarified by this letter will be considered by the STB¹ and NSR in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning the abandonment, please contact our representative directly. Our representative in this matter is Scott Plum who may be contacted using the information below:

Scott Plum, Manager
Strategic Planning -12th Floor
Norfolk Southern Corporation
3 Commercial Place
Norfolk, VA 23510
Tel: (757) 629-2884
E-mail: scott.plum@nscorp.com

Applicable statutes and regulations impose stringent deadlines for processing this action. For this reason your written comments (with a copy to us) would be appreciated within three weeks.

Best regards,

Laura E. Hoag

¹ Comments may be sent to the STB at the following address: Surface Transportation Board, 395 E Street, S.W., Room 1106 Washington DC 20423-0001.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 406X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF FORT WAYNE, INDIANA**

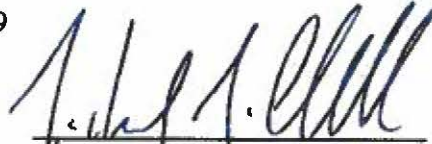
PETITION FOR EXEMPTION

Verification

Verification

I, Michael McClellan, Vice President for Norfolk Southern Railway Company ("NSR") hereby verify under penalty of perjury that to the best of my knowledge, the foregoing abandonment petition for exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR in connection with this proceeding before the Surface Transportation Board.

Executed this 4th day of December, 2019

A handwritten signature in blue ink, appearing to read 'Michael McClellan', is written over a horizontal line.

Michael McClellan

Vice President

Norfolk Southern Railway Company