

BAKER & MILLER PLLC

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

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

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Office of Proceedings
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Public Record

CRYSTAL M. ZORBAUGH

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

February 19, 2021

VIA E-FILING

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 Dayton,
Montgomery County, Ohio, AB-290 (Sub-No. 390X)

Notice of Consummation of Discontinuance Authority

Dear Ms. Brown:

On March 15, 2017, Norfolk Southern Railway Company (“NSR”) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 6.5 miles of rail line: (a) between milepost ZX 12.1 and milepost ZX 15.4; and (b) between milepost ZQ 0.0 and milepost ZQ 3.2 in Dayton, Montgomery County, Ohio (the “Line”). Notice of the exemption was served and published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16,469). The exemption became effective on May 4, 2017. On March 31, 2017, the City of Dayton (“City”) filed a request for the issuance of a notice of interim trail use or abandonment (“NITU”) to negotiate with NSR for the acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. In a decision served May 3, 2017, the Board imposed a public use condition, issued a NITU, directed NSR to consult with the City prior to removing at-grade crossings over the Line, and imposed a salvage condition related to the discovery of any unanticipated archaeological remains. For nearly four years, NSR and the City were granted numerous extensions to negotiate a NITU for the Line.¹ Despite the ongoing negotiations, the parties were unable to come to terms on a NITU agreement. After determining that a NITU arrangement was unlikely, NSR decided it was no longer willing to continue negotiations and asked the Board to terminate the NITU, so it could consummate discontinuance authority for the Line.²

¹ Per a stamped decision by the Board served on March 27, 2020, the last NITU negotiation period was originally set to expire on April 6, 2021.

² See NSR’s January 22, 2021 letter seeking to terminate NITU negotiations and exercise discontinuance authority.

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In a decision served February 12, 2021, the Board vacated the NITU and stated that if NSR wished to consummate either abandonment authority or discontinuance authority, it would need to file a consummation notice to that effect by April 13, 2021.³

As previously indicated to the Board, NSR wishes to preserve the Line for future rail service. To accomplish this objective, NSR has decided it will exercise discontinuance authority for the Line, rather than abandonment authority. NSR desires to consummate discontinuance authority effective today, February 19, 2021.⁴ NSR fully understands that if it later decides to abandon the Line it will have to refile for abandonment authority. Should you have any questions concerning this notice of consummation, please contact the undersigned counsel for NSR.

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
An Attorney for Norfolk Southern Railway Company

cc: All Parties of Record
Hanna Chouest
Laura Hoag

³ The Board rejected NSR's original consummation notice filed January 22, 2021 because the NITU had not yet been vacated, and as such it was a barrier to consummation.

⁴ The Board has held that if a railroad wishes to discontinue service over a portion of a rail line that has been authorized for abandonment but before it has consummated the abandonment, it may do so and exercise the lesser included authorization of discontinuance authority rather than abandonment authority. See T&P Ry.--Abandonment--Shawnee, Jefferson, & Atchison Cty., KS, 2 S.T.B. 36, 40 (1997). See also The Ala. Great S. R.R. Co. – Discontinuance Exemption – In Saint Bernard Par., La., AB-290 (Sub-No. 323X) (STB served December 17, 2013) (explaining that carriers which seek abandonment authority can choose instead to exercise the lesser included discontinuance authority). See also Almono LP–Abandonment Exemption–In Allegheny Cty., PA, AB-842X (STB served Jan. 28, 2004) (explaining that when a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not).