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August 17, 2018

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VIA E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
August 17, 2018
Part of
Public Record

**Re: Docket No. AB-290 (Sub-No. 117X)
Norfolk and Western Railway Company – Abandonment Exemption –
Between Indianapolis and Tipton in Marion, Hamilton, and Tipton Counties, Ind.**

***Request of City of Indianapolis, Indiana, for Interim Trails Use/Rail Banking
and Statement of Willingness to Assume Financial Responsibility***

EXPEDITED CONSIDERATION REQUESTED

Dear Ms. Brown:

This letter filing is tendered in the above-referenced proceeding on behalf of the City of Indianapolis, Indiana (“Indianapolis”), the City of Fishers, Indiana (“Fishers”), the City of Noblesville, Indiana (“Noblesville”), and Hamilton County, Indiana (“Hamilton County”). As suggested in City of Fishers, City of Noblesville, & Hamilton County, Ind. – Petition for Partial Revocation of Exemption, Docket No. FD 36137 (STB served May 31, 2018) (“Fishers Petition”), Indianapolis believes that the appropriate docket to which to link its present trails use request is the proceeding pursuant to which the Interstate Commerce Commission authorized the abandonment of the subject rail line segment,¹ and following which Fishers, Noblesville, and Hamilton County (collectively, the “Owners”) acquired that rail line from Norfolk and Western Railroad Company.²

¹ If, however, the Board were to determine that the appropriate docket for purposes of Indianapolis’ trails use request is FD 36137, then Indianapolis respectfully requests that the Board issue the requested NITU in that proceeding instead.

² Although the original docket is in the name of Norfolk and Western Railway Company (“N&W”), N&W’s interest in the Line was extinguished via sale of the rail assets in 1995. See

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Indianapolis hereby petitions for prompt Surface Transportation Board (“Board”) issuance of a Notice of Interim Trail Use (“NITU”) applicable to a portion of the 37.56-mile Nickel Plate Line running from milepost I-2.13 at Indianapolis, Indiana, to milepost I-39.69 at Tipton, Indiana (the “Line”) which was recently the subject of Fishers Petition, and, before that, the AB-290 (Sub-No. 117X) proceeding. Specifically, Indianapolis wishes to serve as trail sponsor for a portion of the Line within its corporate jurisdiction (hereinafter, the “Indianapolis Segment”) extending from milepost I-2.13 (proximate to the intersection of E. 13th Street and Lewis Street) to approximately milepost I-14 (to the north of the Line’s crossing of E. 96th Street)³, a total distance of approximately 11.87 route miles. A map of the Indianapolis Segment is attached.

Under the requirements of 49 C.F.R. § 1152.29 – and in order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) – Indianapolis hereby states that it is willing to assume full responsibility for: (1) managing the subject right-of-way; (2) any legal liability arising out of the transfer or use of the right-of-way (or, to the extent that Indianapolis is immune from liability, then Indianapolis will indemnify the Line’s owners against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right-of-way.

Indianapolis acknowledges that its proposed use of the right-of-way is subject to the continuing obligation to meet its responsibilities described above, and is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The Owners join in this filing to indicate that they are willing to negotiate with Indianapolis for an interim trails use agreement, and to advise that they do not object to Indianapolis’ request for a Board-issued NITU.

Fishers Petition, slip op. at 6 (“Here, the Line was authorized for abandonment in 1991 and sold to the cities of Fishers and Noblesville in 1995 with the trackage intact”).

³ At its northern endpoint (milepost I-14), the Indianapolis Segment connects with the Fishers Segment for which Fishers has requested an NITU. See Fishers NITU Petition, June 8, 2018. The Fishers Segment, in turn, connects to the Noblesville Segment – a portion of the rail corridor for which Noblesville seeks to become trails sponsor pursuant to its own NITU petition filed on August 3, 2018. If trails arrangements are successfully completed for each of the three segments, the result will be a contiguous rail trail extending from milepsot I-2.13 to the northern boundary of Noblesville at approximately milepost I-23, a total distance of roughly 21 miles, representing well more than half the length of the Line. Although Fishers Petition provided that the rail line owners could pursue interim trails use arrangements straightaway and without the need to invoke anything other than the NITU procedures of 49 C.F.R. § 1152.29, the Fishers and Noblesville NITU Petitions remains pending.

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Indianapolis understands that, as a consequence of being a public municipal subdivision of the State of Indiana, the otherwise-applicable filing fee associated with a request for issuance of a trails use condition will be waived automatically.

Finally, Indianapolis is mindful of pending Board action in connection with the aforementioned Fishers and Noblesville NITU Petitions. Indianapolis respectfully reminds the Board that local plans for trails use for portions of the Line have existed for over a year now. Although the Board had indicated that it would be facilitative of trails use arrangements in its May 31, 2018 Fishers Petition decision, trails use plans remain suspended pending additional Board action. It is important to local planning and trails use efforts that NITU requests such as Indianapolis' – and others that have been filed before and that may be filed hereafter – be acted upon promptly. Therefore, Indianapolis urges expedited action on this NITU Petition.

Respectfully submitted,



Robert A. Wimbish

Counsel for City of Indianapolis, Indiana; City of Fishers, Indiana; City of Noblesville, Indiana; and Hamilton County, Indiana

Enclosure (map)

cc: All parties of record

Indianapolis Segment

