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SERVICE DATE – DECEMBER 22, 2006

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, DC 20423

**ENVIRONMENTAL ASSESSMENT**

**STB Docket No. AB-290 (Sub-No. 286)**

**Norfolk Southern Railway Company – Adverse Abandonment –  
St. Joseph County, IN**

**BACKGROUND**

In this proceeding, City of South Bend, Indiana (the City), the Brothers of Holy Cross, Inc. (the Brothers), and the Sisters of the Holy Cross, Inc. (the Sisters) (collectively, applicants), jointly filed an Adverse Abandonment Application under 49 U.S.C. 10903, requesting that the Surface Transportation Board (Board) authorize the third-party or adverse abandonment of approximately 3.7 miles of railroad lines owned by Norfolk Southern Railway Company (NS) in St. Joseph County, Indiana. The lines are located between milepost UV 0.0 and milepost UV 2.8 and between milepost ZO 9.6 and milepost ZO 10.5, and include an industrial spur that extends from milepost ZO 9.6 to the University of Notre Dame (the University). A map depicting the lines in relationship to the area served is appended to this Environmental Assessment (EA).

**ENVIRONMENTAL REVIEW**

Applicants submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. Applicants served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Board's environmental rules [49 CFR 1105.7(b)]. The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

Applicants believe that the segment of track between milepost UV 0.0 and milepost UV 2.8 was completed in 1871 by the Michigan Air Line Railroad Company, and that the segment of track between milepost ZO 9.6 and milepost ZO 10.5 was constructed in the 1870s as part of the St. Joseph Railroad Company. Applicants also believe that the industrial spur extending to the University was constructed in late 1902 or early 1903 by the Michigan Air Line Railroad.

According to applicants, the right-of-way between milepost UV 0.0 and milepost UV 2.8 is 100 feet wide. The right-of-way between milepost ZO 9.6 and milepost ZO 10.5 consists of a railroad easement that is 60 feet wide. The right-of-way for the industrial spur, which also consists of a railroad easement, is 50 feet wide. Based on information in their possession, applicants state that the lines do not contain any Federally granted right-of-way. The topography

is generally flat. The lines are located in both industrial and residential areas. The lines traverse properties owned by the Brothers and the Sisters. The Brothers' property is the site of Holy Cross College and Holy Cross Village (a retirement community). The Sisters' property is the site of a motherhouse, the international headquarters of the Congregation of the Sisters of the Holy Cross, and the Inn at St. Mary's. The Sisters' property is adjacent to St. Mary's College, which the Sisters sponsor.

Applicants state that the line between milepost UV 0.0 and milepost UV 2.8 crosses 17 streets in the City, two of which carry significant vehicular traffic, creating a public nuisance and significant safety and environmental concerns. Applicants state that abandonment would permit removal of the unused rail, much of which is littered with trash and overgrown with weeds and small trees. Removal of the unused track would allow the City to repave all of the highways, streets and sidewalks over which the track crosses that have not already been repaved, which would improve the roadways and facilitate snow removal in the winter months. Applicants have indicated that they would work with NS to have the track and track materials removed and assist with related clean-up. Applicants would request that NS not remove any bridges or culverts on the lines. The City would like to acquire or condemn the portion of the right-of-way within its jurisdiction for public use in the form of a sewer system and a bike and pedestrian trail.

Additionally, applicants claim that a portion of that line and of the line between milepost ZO 9.6 and milepost ZO 10.5 are adversely affecting the Brothers' ability to plan for the future because they run through the heart of the Brothers' property. Should the track be removed, the Brothers would be able to avoid additional construction costs and the future inconvenience associated with having to reroute an on-campus road so as to avoid crossing the track. The Brothers and the Sisters also assert a claim under Indiana law to a reversionary interest in this section of the right-of-way.

The Chicago, Lake Shore & South Bend Railway Company (CLS&SB) previously filed a notice of exemption claiming that it intended to purchase the lines from NS and reinstate rail freight service so as to transport coal to the University. CLS&SB was granted an exemption in a decision served on July 6, 2006, to acquire the lines from NS and to operate them. CLS&SB wanted to replace the truck transload service that currently supplies coal to the power plant operated by the University with rail service and to develop other rail traffic. After the University gave notice that it would not utilize rail service for delivery of coal to its facilities, NS decided that it would not sell the lines. CLS&SB subsequently requested leave to withdraw the notice of exemption after NS informed the Board that it would not sell the lines to CLS&SB and suggested that the exemption be dismissed. CLS&SB's motion to dismiss was granted, and the exemption was vacated in a decision served on September 11, 2006. Applicants indicate that there was wide spread public opposition to any reinstatement of rail service over the lines. The opposition included not only the applicants, but also the residents of the communities through which the lines cross.

Applicants have reviewed the maps maintained by the St. Joseph County Area Plan Commission, which indicate that there are no designated wetlands or 100-year flood plains that would be impacted by the proposed abandonment. Applicants are not aware of any prior subsurface ground disturbance or environmental conditions that might affect the archeological recovery of resources.

Applicants anticipate that the track and track materials currently remaining in place would be removed and salvaged by NS. There is no intent to remove the steel girder bridge over the St. Joseph River, which has been designated as a local historic landmark. If the abandonment is approved, the bridge would be converted to a footbridge for pedestrians, preserving the bridge's essential character. Applicants are not aware of any culturally significant locations, archaeological sites, or unique land forms that would be affected by the proposed abandonment.

The National Geodetic Survey (NGS) has advised SEA that one geodetic station marker has been identified that may be affected by the proposed abandonment. The United States Department of Agriculture, Natural Resources Conservation Service in Indianapolis, Indiana, has indicated that the proposed abandonment would not cause a conversion of prime farmland. The United States Fish and Wildlife Service (USFWS) in Fort Snelling, Minnesota, has determined that USFWS does not own any lands or interests in land in the vicinity of the proposed abandonment. USFWS does not have any concerns regarding real estate matters related to the proposed abandonment.

Applicants state that there has been no rail service over the lines for at least ten years, and that sections of track have been paved over and removed. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities, transportation of ozone-depleting materials, or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. SEA believes that any air emissions associated with abandonment activities would be temporary and would not have a significant impact on air quality. Noise associated with abandonment activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment. Based on all information available to date, SEA does not believe that abandonment activities would cause significant environmental impacts.

## **HISTORIC REVIEW**

Applicants served the historic report on the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (SHPO), pursuant to 49 CFR 1105.8(c). SEA has delegated to applicants the authority to consult with the SHPO on this adverse abandonment proceeding pursuant to the regulations implementing the National Historic Preservation Act, and has notified the SHPO that applicants are authorized to initiate consultation with the SHPO and act on STB's behalf. The SHPO has requested additional information to facilitate the identification and analysis of historic properties in the project area. Applicants have provided

the additional information to the SHPO as requested. The SHPO has not yet completed its review of the proposed abandonment. Accordingly, we will recommend a condition requiring the applicant to complete the Section 106 process of the National Historic Preservation Act prior to working with NS to remove the track and tie material on the line.

The South Bend and St. Joseph County Historic Preservation Commission (SBHC) has reviewed and inspected the right-of-way corridor outlined in the report and find that, other than the landmarked bridge, there are no historic sites or structures within the area of potential effects. SBHC has determined that the removal of the tracks from the landmarked (Ordinance No. 9234-01) steel girder railroad bridge crossing the St. Joseph River near Angela Boulevard would not have an adverse effect on that structure.

SEA conducted a search of the Native American Consultation Database at [www.cast.uark.edu/other/nps/nacd/](http://www.cast.uark.edu/other/nps/nacd/) to identify Federally recognized tribes that may have ancestral connections to the project area. The database indicated that the Citizen Potawatomi Nation, Forest County Potawatomi Community, Hannahville Indian Community, Pokagon Band of Potawatomi Indians, and the Prairie Band of Potawatomi Nation may have an interest in the proposed abandonment. Accordingly, SEA is sending a copy of this EA to these tribes for their review and comment.

## **CONDITIONS**

We recommend that the following condition be imposed on any decision granting abandonment authority:

Applicant shall, prior to assisting Norfolk Southern Railway Company with any salvage activities, complete the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. Applicant shall report back to the Section of Environmental Analysis regarding any consultations with the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (SHPO) and any other Section 106 consulting parties.

## **CONCLUSIONS**

Based on the information provided from all sources to date, SEA concludes that, if the recommended condition is imposed, abandonment of the lines will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

## **PUBLIC USE**

Because this is an adverse abandonment proceeding, offers of financial assistance and public use requests are not appropriate and will not be entertained.

## **TRAILS USE**

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by January 5, 2007, and should address that issue.

## **PUBLIC ASSISTANCE**

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

## **COMMENTS**

If you wish to file comments regarding this EA, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Kenneth Blodgett, the environmental contact for this case. Environmental comments may also be filed electronically on the Board's web site, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the "E-FILING" link. **Please refer to Docket No. AB-290 (Sub-No. 286) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this EA, please contact Kenneth Blodgett by phone at (202) 565-1554, fax at (202) 565-9000, or e-mail at [blodgettk@stb.dot.gov](mailto:blodgettk@stb.dot.gov).

Date made available to the public: December 22, 2006.

**Comment due date: January 22, 2007.**

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams  
Secretary

Attachment