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September 12, 2013  
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Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC



STB Docket No. AB-290 (Sub-No. 358X)

NORFOLK SOUTHERN RAILWAY COMPANY  
– DISCONTINUANCE OF SERVICE EXEMPTION –  
IN CLAIBORNE COUNTY, TENNESSEE, AND BELL COUNTY, KENTUCKY

STB Docket No. AB-55 (Sub-No. 732X)

CSX TRANSPORTATION, INC.  
– DISCONTINUANCE OF SERVICE EXEMPTION –  
IN CLAIBORNE COUNTY, TENNESSEE, AND BELL COUNTY, KENTUCKY

JOINT VERIFIED NOTICE OF EXEMPT DISCONTINUANCE

FEE RECEIVED  
September 12, 2013  
Surface Transportation Board

FILED  
September 12, 2013  
Surface Transportation Board

Louis E. Gitomer  
LAW OFFICES OF LOUIS E. GITOMER  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
Tel: (410) 296-2250  
Email: Lou@lgraillaw.com

Robert A. Wimbish  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW, Suite 300  
Washington, DC 20037  
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Email: rwimbish@bakerandmiller.com

Attorney for CSX Transportation, Inc

Attorney for Norfolk Southern Railway Company

September 12, 2013

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

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**STB Docket No. AB-290 (Sub-No. 358X)**

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– DISCONTINUANCE OF SERVICE EXEMPTION –  
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**JOINT VERIFIED NOTICE OF EXEMPT DISCONTINUANCE**

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Norfolk Southern Railway Company (“NSR”) and CSX Transportation, Inc. (“CSXT”) hereby jointly submit a verified notice of exemption pursuant to 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances of Service and Trackage Rights) for – (A) NSR to discontinue service over roughly 5.0 miles of NSR-owned rail line (hereinafter, the “Line”) extending between milepost 80.0 C (north of Clairfield, in Claiborne County, Tennessee) and milepost 85.0 (at Fonde, Bell County, Kentucky); and (B) CSXT to discontinue trackage rights operations over the Line.

In accordance with the requirements of 49 C.F.R. §§ 1152.50(b) and (d), NSR and CSXT provide the following information in support of this joint notice of exempt discontinuance:

**Certification: 49 C.F.R. § 1152.50(b)**

NSR certifies that the Line satisfies the criteria for discontinuance under the exemption provisions at 49 C.F.R. part 1152, subpart F. See Certification of T.L. Reynolds, General Manager Western Region, Norfolk Southern Railway Company (attached hereto as part of Exhibit A). Similarly, CSXT certifies that the Line satisfies the criteria for its discontinuance of service under the class exemption procedures at 49 C.F.R. part 1152, subpart F. See Verification and Certification of William Scaggs (also attached hereto as part of Exhibit A).

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

The proposed discontinuances of service will be consummated no sooner than November 1, 2013.

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

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

Norfolk Southern Railway Company

CSX Transportation, Inc.

Whether applicants are common carriers by railroad (49 C.F.R. § 1152.22(a)(2)):

NSR and CSXT are common carriers 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)):

Pursuant to this joint notice of exemption, NSR seeks to discontinue rail service over approximately 5.0 miles of NSR-owned rail line (the Line) extending between milepost 80.0 C (north of Clairfield, in Claiborne County, Tennessee) and milepost 85.0 (at Fonde, Bell County, Kentucky); and CSXT seeks to discontinue trackage rights operations over the Line.

Map (49 C.F.R. § 1152.22(a)(4)):

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

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

The representative of NSR to whom correspondence regarding these proceedings should be sent is as follows:

Robert A. Wimbish  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW, Suite 300  
Washington, DC 20037  
Tel: (202) 663-7824  
Email: rwimbish@bakerandmiller.com

The representative of CSXT to whom correspondence regarding these proceedings should be sent is as follows:

Louis E. Gitomer  
LAW OFFICES OF LOUIS E. GITOMER  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
Tel: (410) 296-2250  
Email: Lou@lgrailaw.com

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

The Line traverses portions of the following United States Postal Zip Codes: 37715 and 40940.

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

The informational requirement of section 1152.22(e)(4) (alternative public uses of rail property) appears to be pertinent only where the railroad proposes to **abandon** rail property.<sup>1</sup>

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<sup>1</sup> See, e.g., Columbus and Greenville Railway Company – Discontinuance of Service Exemption – in Greenwood, MS, STB Docket No. AB-297 (Sub-No. 103X), slip op. at 2 n.2 (STB served July 3, 2007) (“CAGY-Greenwood”) (“Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate”); Norfolk Southern Railway Company—Discontinuance Exemption—in Mahoning County, OH, STB

Here NSR and CSX seek to *discontinue service* over the Line, and NSR has no current plans to abandon the Line. If NSR decides to abandon the Line at a future date, it will seek appropriate authority from the Board at that time and fully respond as to whether there are alternative public uses of rail property. For this reason NSR, as owner of the Line, has no opinion on whether or not the subject rail property might be appropriate for use for other public purposes. Although of questionable relevance here (because the proposed action does not entail abandonment of a rail line), NSR nevertheless states as follows: based upon the information in its possession, NSR is unaware of any condition that would affect the transfer of title to or the use of the railroad right-of-way for other than rail purposes.

### **Labor Protection**

The interests of any railroad employees who may be adversely affected by the proposed discontinuances of service will be adequately protected by the labor protective conditions 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. For reasons set forth in the “Environmental and Historic Report” section below, the certification of service requirement at 49 C.F.R. § 1105.11 (transmittal of Environmental and Historic Reports) is inapplicable here.

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Docket No. AB-290 (Sub-No. 292X), slip op. at 2 n.2 (“NS-Mahoning”) (STB served March 15, 2007) (same); Chillicothe-Brunswick Rail Maintenance Authority–Discontinuance Exemption–in Livingston, Linn, and Chariton Counties, MO, STB Docket No. AB-1001X, slip op at 2 n.3 (“CBRA-Livingston”) (STB served Feb 23, 2007) (same).

## **Environmental and Historic Report**

A notice of exemption to discontinue service over (rather than to abandon) a line of railroad that has been out of service for more than two years does not require the preparation or submission of an Environmental and/or Historic Report.<sup>2</sup>

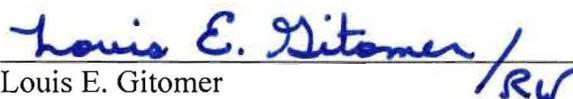
Respectfully submitted,



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Robert A. Wimbish  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., NW  
Suite 300  
Washington, DC 20037  
Tel: (202) 663-7824  
Email: rwimbish@bakerandmiller.com

Attorney for Norfolk Southern Railway Company



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Louis E. Gitomer  
LAW OFFICES OF LOUIS E. GITOMER  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
Tel: (410) 296-2250  
Email: Lou@lgraillaw.com

Attorney for CSX Transportation, Inc.

September 12, 2013

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<sup>2</sup> See, e.g., Everett Railroad Company – Discontinuance of Service Exemption – in Blair County, PA, STB Docket No. AB-721X slip op. at 2 n.2 (STB served Nov. 16, 2007) (“Because this is a discontinuance proceeding and not an abandonment, . . . no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively”); CAGY-Greenwood at 2 n.2 (same); NS-Mahoning at 2 n.2 (same); CBRA-Livingston at 2 n.3 (same).

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– DISCONTINUANCE OF SERVICE EXEMPTION –  
IN CLAIBORNE COUNTY, TENNESSEE, AND BELL COUNTY, KENTUCKY**

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**JOINT VERIFIED NOTICE OF EXEMPT DISCONTINUANCE**

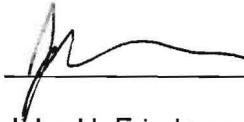
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**VERIFICATIONS**

Verification

I, John Friedmann, Vice President for Norfolk Southern Railway Company ("NSR"), hereby verify under penalty of perjury that to the best of my knowledge the foregoing discontinuance of service 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 23<sup>rd</sup> day of July 2013

A handwritten signature in black ink, appearing to read 'John H. Friedmann', is written over a horizontal line.

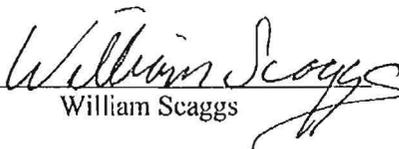
John H. Friedmann  
Vice President

**VERIFICATION AND CERTIFICATION THAT RAIL LINE MEETS  
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

STATE OF FLORIDA                    )  
  )     ss.  
COUNTY OF DUVAL                 )

I, William Scaggs, being duly sworn, depose and state that I am Manager of Cost and Economic Analysis for CSX Transportation, Inc. ("CSXT"); that I am authorized to make this verification; and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information, and belief.

I hereby certify that CSXT has moved no local traffic has moved over the line of railroad owned by the Norfolk Southern Railway Company, that CSXT operated over pursuant to trackage rights, between milepost 80.0 C (north of Clairfield, in Claiborne County, Tennessee) and milepost 85.0 (at Fonde, Bell County, Kentucky), for at least two years prior to the date hereof, and that any overhead traffic on the line can be rerouted over other lines. Further, 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 with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period. The foregoing certification is made on behalf of CSXT by the undersigned after due and careful investigation of the matters herein certified and based on the best of the knowledge, information, and belief of the undersigned.

  
William Scaggs

SUBSCRIBED AND SWORN TO before me this 10<sup>th</sup> day of September, 2013.

My Commission Expires: 4/7/2017

  
\_\_\_\_\_  
Notary Public



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**JOINT VERIFIED NOTICE OF EXEMPT DISCONTINUANCE**

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**EXHIBIT A**

**NSR AND CSXT CERTIFICATIONS**

**CERTIFICATION**

STATE OF GEORGIA:

SS:

CITY OF ATLANTA:

T.L. Reynolds makes oath and says that he is General Manager Western Region for Norfolk Southern Railway Company; that the rail line between Milepost 80.0 C and Milepost 85.0 C, over which service is to be abandoned, 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.

  
\_\_\_\_\_  
T. L. Reynolds

Subscribed and sworn to before me  
this 15 day of July, 2013.

  
\_\_\_\_\_  
Notary Public

My commission expires:

4/20/15

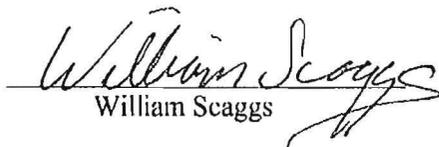
**SANDRA Y. GAMBRELL  
NOTARY PUBLIC  
COBB COUNTY, GEORGIA  
MY COMMISSION EXPIRES APRIL 20, 2015**

**VERIFICATION AND CERTIFICATION THAT RAIL LINE MEETS  
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

STATE OF FLORIDA                    )  
  )  
COUNTY OF DUVAL                 )        ss.

I, William Scaggs, being duly sworn, depose and state that I am Manager of Cost and Economic Analysis for CSX Transportation, Inc. ("CSXT"); that I am authorized to make this verification; and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information, and belief.

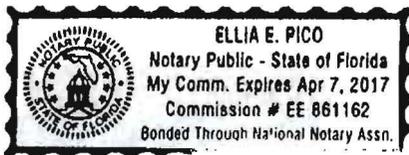
I hereby certify that CSXT has moved no local traffic has moved over the line of railroad owned by the Norfolk Southern Railway Company, that CSXT operated over pursuant to trackage rights, between milepost 80.0 C (north of Clairfield, in Claiborne County, Tennessee) and milepost 85.0 (at Fonde, Bell County, Kentucky), for at least two years prior to the date hereof, and that any overhead traffic on the line can be rerouted over other lines. Further, 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 with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period. The foregoing certification is made on behalf of CSXT by the undersigned after due and careful investigation of the matters herein certified and based on the best of the knowledge, information, and belief of the undersigned.

  
William Scaggs

SUBSCRIBED AND SWORN TO before me this 0<sup>th</sup> day of September, 2013.

My Commission Expires: 4/7/2017

  
\_\_\_\_\_  
Notary Public



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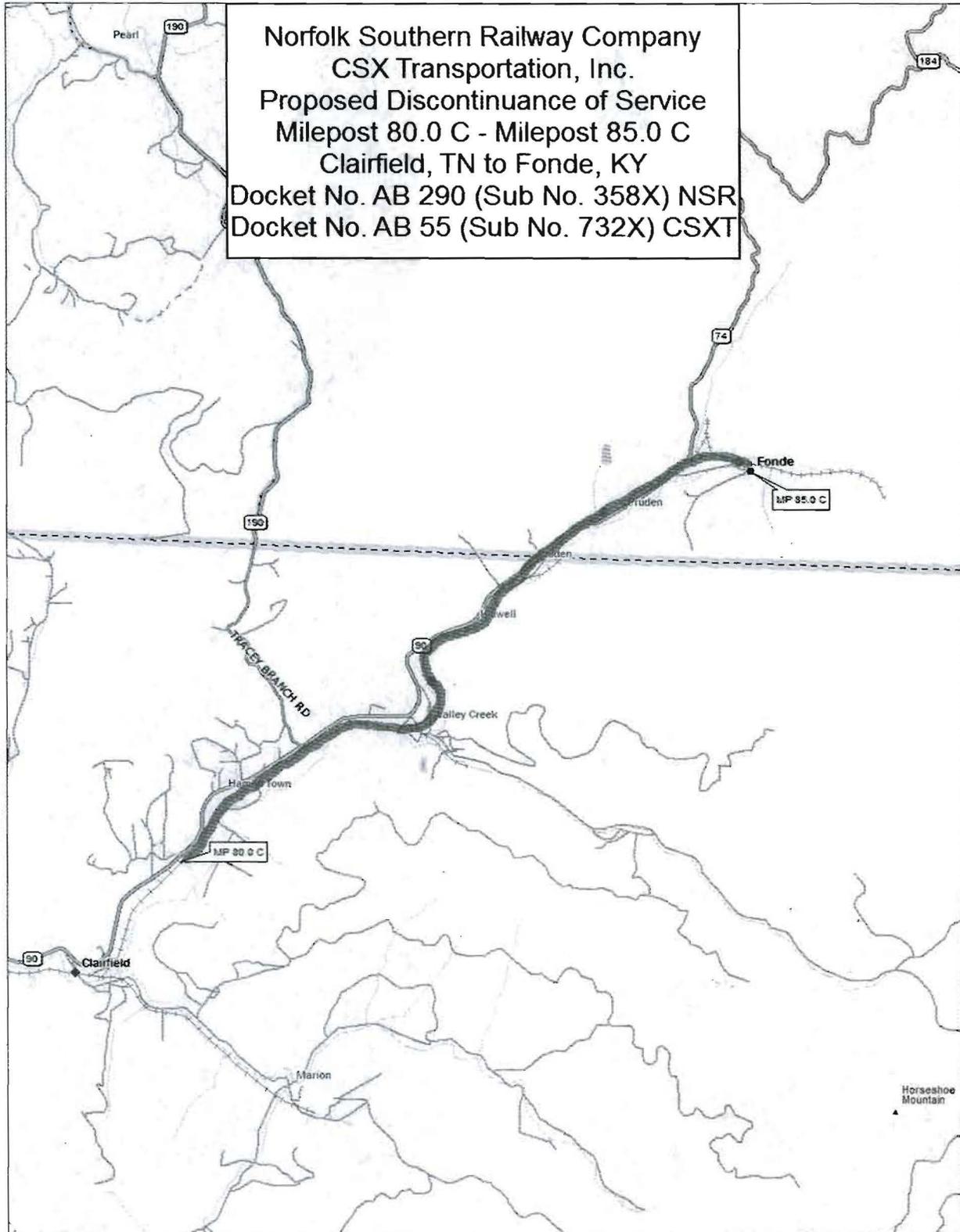
**JOINT VERIFIED NOTICE OF EXEMPT DISCONTINUANCE**

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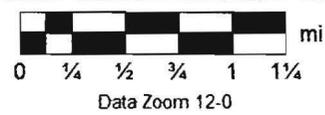
**EXHIBIT B**

**MAP**

Norfolk Southern Railway Company  
 CSX Transportation, Inc.  
 Proposed Discontinuance of Service  
 Milepost 80.0 C - Milepost 85.0 C  
 Clairfield, TN to Fonde, KY  
 Docket No. AB 290 (Sub No. 358X) NSR  
 Docket No. AB 55 (Sub No. 732X) CSXT



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**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 26, 2013, 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 (“NSR”) and CSX Transportation, Inc. (“CSXT”) to invoke the Board’s notice of exemption procedures for NSR and CSXT to discontinue common carrier operations over approximately 5.0 miles of rail line located in Claiborne County, Tennessee, and Bell County, Kentucky:

**Public Service Commission(s)**

David L. Armstrong, Chairman  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

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

David Dorfman  
SDDC TEA  
Railroads for National Defense  
709 Ward Dr., Bldg. 1990  
Scott AFB, IL 62225  
(618) 220-5741

**The National Park Service, Recreation Resources Assistance Division**

Charlie Stockman  
National Park Service  
Rivers & Trails Conservation Program  
1201 Eye Street, NW, 9th Floor (Org. Code 2220)  
Washington, D.C. 20005  
(202) 354-6900

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

Thomas L. Tidwell, Chief  
Forest Service  
U.S. Department of Agriculture  
Sidney R. Yates Federal Building  
201 14th Street SW  
Washington, DC 20024  
(202) 205-8439  
S/W Sandy Berg, Office Manager

September 12, 2013



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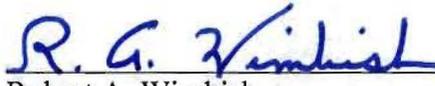
Robert A. Wimbish  
Attorney for Norfolk Southern  
Railway Company

**Certificate of Newspaper Publication**

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

I certify that a “Joint Notice of Intent to Discontinue Rail Service” was published in the form prescribed by the Board for discontinuance notices of exemption (49 C.F.R. § 1105.12). The notice was published one time on August 30, 2013, in the *Middlesboro Daily News*, a newspaper of general circulation in Claiborne County, Tennessee, and Bell County, Kentucky.

September 12, 2013



Robert A. Wimbish  
Attorney for Norfolk Southern  
Railway Company