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April 22, 2016

240540

**BY HAND DELIVERY**

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

ENTERED  
Office of Proceedings  
April 22, 2016  
Part of  
Public Record

Re: Norfolk Southern Railway Company – Abandonment Exemption – In  
Hamilton County, Ohio, AB-290 (Sub -No. 381X)

Dear Ms. Brown:

Enclosed please find an original and eleven copies of a petition for exemption by Norfolk Southern Railway Company (“NSR”) to abandon a 4.10-mile line of railroad located in Hamilton County, Ohio extending from Milepost CT 3.7 to Milepost CT 7.8. Please date stamp the extra copy and return 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 two checks totaling \$6,700.00 to cover the filing fee. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7823 or by e-mail: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com).

Respectfully submitted,



William A. Mullins

Enclosures

Cc: Maquiling Parkerson  
Laura Hoag  
LaWada Poarch

FEE RECEIVED  
April 22, 2016  
SURFACE  
TRANSPORTATION BOARD

FILED  
April 22, 2016  
SURFACE  
TRANSPORTATION BOARD

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

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**AB-290 (Sub-No. 381X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
– ABANDONMENT EXEMPTION –  
IN HAMILTON COUNTY, OHIO**

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**PETITION FOR EXEMPTION**

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**Attorneys for Norfolk Southern  
Railway Company**

**April 22, 2016**

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

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**AB-290 (Sub-No. 381X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
– ABANDONMENT EXEMPTION –  
IN HAMILTON COUNTY, OHIO**

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**PETITION FOR EXEMPTION**

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**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 (the “Petition”) seeking an exemption from the provisions of 49 U.S.C. § 10903, et seq. to abandon approximately 4.10 miles of rail line extending from milepost CT 3.7 to Milepost CT 7.8 in Hamilton County, Ohio (the “Line”). Through the Petition, NSR is also seeking an exemption from Section 10904 to facilitate sale of the real estate underlying the Line to the City of Cincinnati (“City”) for public purposes. No traffic has moved over the Line in more than five years.<sup>1</sup> Given that the Line is needed for a valid public purpose and there is no current traffic on

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<sup>1</sup> Given that the Line is dormant and has not had any traffic for over five years, the Line qualifies for abandonment under the verified notice of exemption process set forth in 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances of Service and Trackage Rights). However, precedent is unclear as to whether a party can request an exemption from Section 10904 under that process. Therefore, to avoid any procedural questions and issues, NSR is utilizing the petition for exemption process for both its request for abandonment authorization and its request to be exempted from 49 U.S.C. § 10904.

the line, or even the potential for new traffic, an exemption from the Section 10904 Offer of Financial Assistance ("OFA") statute is appropriate.<sup>2</sup>

The Line traverses United States Postal Service ZIP Codes territories 45207, 45212, 45208, 45209, 45226 and 45227. 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 more than five years and the City has asked that NSR sell the Line to the City to be used to undertake a public redevelopment project. 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 is no traffic over the Line, regulation is not necessary to protect shippers from abuse of market power;
- The property underlying the Line is needed for public use and abandonment would facilitate the City's urban development plans and economic growth;
- Abandonment will not deprive any shipper of rail service;
- Abandonment allows NSR to avoid continuing to incur opportunity and other holding costs associated with ownership of an active rail line with no traffic.

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<sup>2</sup> 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). Here, there is clearly no public need for continued rail service.

## **MAPS AND EXHIBITS**

A map of the Line is attached as Exhibit A. A draft Federal Register notice is attached as Exhibit B, and the certifications of compliance with 49 C.F.R. §§ 1105.12 and 1152.60(d) are attached as Exhibit C. Attached as part of Exhibit D is a certificate of compliance with the advance notice requirements for an Environmental and Historic Report ("E&HR") as set forth at 49 C.F.R. § 1105.11. Also included as part of Exhibit D is 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.

## **FACTUAL BACKGROUND**

The Line consists of approximately 4.10 miles of rail line between Milepost CT 3.7 and Milepost CT 7.8 in Hamilton County, Ohio. The Line was originally part of the Cincinnati and Eastern Railway ("CER"). In 1880, the CER extended its track from Clare to Idlewild. In 1887, CER was acquired at foreclosure by the Ohio and North Western Railroad ("ONWR"). In 1891, ONWR was acquired by the Cincinnati, Portsmouth and Virginia Railroad ("CPVR "). In 1901, CPVR was purchased by the Norfolk and Western Railway Company, an NSR predecessor. The Line has been dormant for well over five years, since the closure of the Norwood Transload Bulk Terminal. Over the past five years, no shippers have sought rail service nor are there any prospects for new shippers. There is simply no traffic, or the potential for new traffic, on the Line.

Because there is no traffic or potential for traffic, NSR is currently in negotiations with the City concerning the underlying real estate. The City desires to acquire the right-of-way as part of it plans to redevelop the surrounding area so as to improve safety and mobility for the 83,000 people living in the eight adjacent Cincinnati neighborhoods (including the

communities of Norwood, Mariemont and Fairfax). The City is undertaking an urban redevelopment plan that would reduce/reroute vehicular traffic, create greenways, and provide alternative modal access to five major development sites, including sites at Xavier University and near Uptown. As part of the plan, the City will take ownership of, and assume responsibility for, the safety and maintenance of the 10 bridges on the Line, which will greatly improve safety for motorists travelling along the region's roads. The Line, which is near Interstates 71 and 75, is surrounded by medical facilities (including Queen City Hospital), shopping centers, apartments, public schools, a plaza, an airport, a public library, restaurants, and a farmers market. Thus, the City anticipates far reaching benefits post-completion of this important project. Because NSR's right-of-way is of critical significance to the City's redevelopment plans, acquisition of the Line under the OFA provisions would not serve the purpose of Section 10904 and would frustrate the City's efforts to revitalize the area and provide economic growth.

#### **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.

#### **PETITIONER'S REPRESENTATIVE**

NSR is represented by William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20037; telephone: (202) 663-7823; facsimile: (202) 663-7849; email: [wmullins@bakerandmiller.com](mailto:wmullins@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 NSR's 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 NSR's 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 them for use by others in further economic development for the community. See 49 U.S.C. §§ 10101(5) and (9).<sup>3</sup>

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. Indeed, absent the need to seek an exemption from 49 U.S.C. § 10904, the proposed abandonment would have qualified for

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<sup>3</sup> See, eg, 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).

processing under the verified notice of exemption procedures pursuant to 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances of Service and Trackage Rights).

Granting the petition for exemption promotes the public interest and is fully consistent with the RTP.

**B. The Proposed Abandonment Is of Limited Scope**

The proposed abandonment is of limited scope, involving approximately 4.1 miles of rail line that has been dormant for over five years. No shippers will be affected and no traffic will be rerouted upon consummation of the abandonment.<sup>4</sup>

**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 over five years. 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. Consummation of the subject abandonment will allow for development of an important City public project designed to facilitate growth, improve flow of traffic, and increase accessibility to businesses in the region. As such, the proposed

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<sup>4</sup> 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).

abandonment will benefit the surrounding community by preserving and expanding jobs as part of the City's redevelopment plans. 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 D. Since the E&HR was last circulated, NSR has received an additional comment, in the form of an email, from the Ohio Department of Transportation. A copy of this email is included as part of Exhibit D, Appendix C.

### **PUBLIC USE AND INTERIM TRAILS USE CONDITIONS**

As explained herein, NSR is actually undertaking this abandonment in order to sell the Line to the City to be dedicated to the broadest range of public uses. As such, alternative, non-railroad public use of the Line's right-of-way, including interim trails use/rail banking is inconsistent with the purpose behind the Petition. As such, NSR is unwilling to negotiate interim trails use.

### **EXEMPTION FROM SECTION 10904 IS ALSO WARRANTED**

The City approached NSR with an offer to purchase the Line in order to redevelop the underlying real estate as part of a public project to improve safety and mobility in eight adjacent Cincinnati neighborhoods (including the communities of Norwood, Mariemont and Fairfax). This redevelopment and revitalization project will reduce/reroute vehicular traffic, create

greenways, and provide alternative modal access to five major development sites, including sites at Xavier University and near Uptown. As part of the purchase agreement, the City will take ownership and assume responsibility for both control and maintenance of the 10 bridges on the Line. City ownership, control, and management will greatly improve safety for motorists traveling along the region's roads.

Given the multi-purpose redevelopment and revitalization plans and the complete lack of traffic, or even the potential for rail traffic, an exemption from the OFA process will serve the public interest.<sup>5</sup> The Board and its predecessor have granted an exemption from Sections 10904 when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail freight service.<sup>6</sup> As previously explained, there has been no traffic or requests for service on the Line in over five years. Reinstitution of rail freight service under Section 10904 would be incompatible with the City's intended use of the Line. The right-of-way is needed for public uses.

Given that there is no present or reasonably foreseeable future need for freight rail service on the Line, there is no overriding public need for continued rail freight service. Indeed, any potential OFA offer would be based upon pure speculation and conjecture. In such cases, the Board has rejected opposition to requests for exemption from 10904 when the OFA offeror cannot conclusively show that it has sufficient traffic to warrant continued operation of the Line.<sup>7</sup> Likewise, the Board has even exempted abandonments from the OFA provisions on its own

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<sup>5</sup> Previously, the Board has granted an exemption from the OFA process for multi-purpose improvements to a downtown area. See Norfolk and Western Railway Company – Abandonment Exemption – In Cincinnati, Hamilton County, OH (“N&WR”), AB-290 (Sub-No. 184X) slip op. at 9 (STB served May 13, 1998).

<sup>6</sup> See Pima County; see also Doniphan, Kensett and Searcy Railway – Abandonment Exemption – In Searcy, White County, AR, AB-558X (STB served May 6, 1999).

<sup>7</sup> See N&WR.

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.<sup>8</sup>

In this instance, the Board should grant the requested relief. The Line is needed for a valid public purpose, *i.e.* the revitalization and redevelopment of the corridor and the surrounding area to provide alternative modal access to five major development sites, which will connect eight adjacent Cincinnati neighborhoods, and, there is no overriding public need for continued rail freight service along the Line.<sup>9</sup>

Such an exemption from the statutory provisions of 49 U.S.C. § 10904 is fully consistent with the statutory exemption standards of 49 U.S.C. § 10502. Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C § 10101. Likewise, regulation is not needed to protect shippers from an abuse of market power because the Line has been dormant for over five years and there are no existing or even potential shippers on the Line. In fact, the Line offers no known freight rail growth opportunities. Furthermore, even if there were potential future shippers who would locate in the area, the use of rail is not needed to protect such shippers from the abuse of market power. This is because the area has access to two major highways. In fact, nearby Interstate 71, which extends between Columbus and Louisville, serves over approximately 130,000 cars a day near the location of the proposed abandonment. Likewise, Interstate 75, which extends from Dayton to Lexington, serves over 106,000 cars a day near the location of the proposed abandonment. Put simply, applying the OFA requirements, in this instance, is not necessary to carry out the RTP or protect shippers.

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<sup>8</sup> BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK, AB-6 (Sub-No. 430X), slip op. at 11 (STB served May 20, 2009). See also Central Michigan Railway Company – Abandonment Exemption – In Saginaw County, MI, AB-308 (Sub-No. 3X) (STB served October 31, 2003).

<sup>9</sup> In Pima County the Board granted an exemption from the OFA process for a similar project, which involved expansion of an interstate and creation of bike and pedestrian paths.

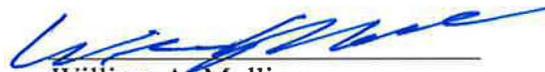
Selling the line to the City will allow the rail corridor to become publicly owned. It will allow the City to utilize the right-of-way in a manner that best accounts for the broadest range of possible public uses. Moreover, conversion of the underlying real estate will improve safety of mobility in the region, support creation of additional economic activity, and facilitate economic redevelopment and revitalization.

### CONCLUSION

NSR respectfully requests exemption from the provisions of 49 U.S.C. § 10903-10904 to abandon roughly 4.1 miles of railroad in Hamilton County, OH. Application of the regulatory requirements and procedures of 49 U.S.C. §§ 10903-10904 is 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 the Board to grant NSR an exemption for its proposed abandonment of service over the Line and an exemption from the OFA provisions of 49 U.S.C. § 10904 to facilitate sale of the real estate underlying the Line to the City.

Respectfully submitted,

Maquiling Parkerson, Esq.  
NORFOLK SOUTHERN CORPORATION  
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April 22, 2016

Attorneys for Norfolk Southern  
Railway Company

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

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**AB-290 (Sub-No. 381X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
– ABANDONMENT EXEMPTION –  
IN HAMILTON COUNTY, OHIO**

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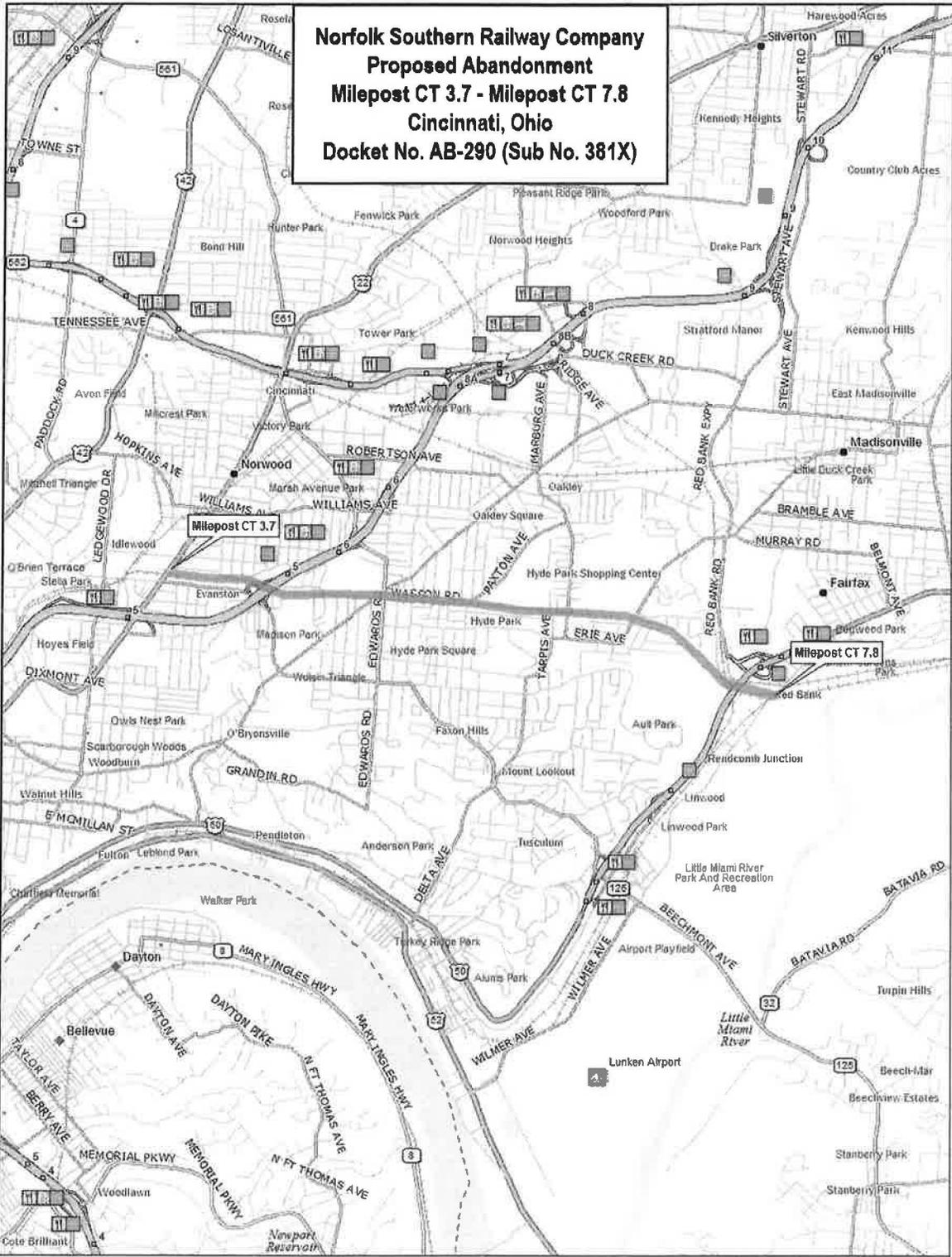
**PETITION FOR EXEMPTION**

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**EXHIBIT A**

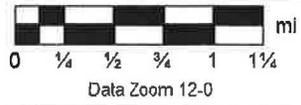
**MAP**

**Norfolk Southern Railway Company  
Proposed Abandonment  
Milepost CT 3.7 - Milepost CT 7.8  
Cincinnati, Ohio  
Docket No. AB-290 (Sub No. 381X)**



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

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**AB-290 (Sub-No. 381X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
– ABANDONMENT EXEMPTION –  
IN HAMILTON COUNTY, OHIO**

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**PETITION FOR EXEMPTION**

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**EXHIBIT B**

**DRAFT FEDERAL REGISTER NOTICE**

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 381X)]

Norfolk Southern Railway Company – Abandonment Exemption – In Hamilton County, Ohio

On April 22, 2016, 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. § 10903-10904 to abandon approximately 4.10-miles of rail line between Milepost CT 3.7 to Milepost CT 7.8 in Hamilton County, Ohio (the “Line”). The Line traverses through United States Postal Service ZIP Code territories 45207, 45212, 45208, 45209, 45226 and 45227. The Line has been dormant for over five years.

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).

Please note, NSR has requested an exemption from the offer of financial assistance (“OFA”) provisions of 49 U.S.C. 10904 in order to sell the property to the City of Cincinnati for public use. If this request is denied, 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 \$1,600 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. As such any request for a public use condition under 49 C.F.R. § 1152.28 or for trail use/rail banking under 49 C.F.R. § 1152.29, which would be due no later than \_\_\_\_\_, 2016, would be contrary to

the purpose behind NSR's abandonment efforts. Accordingly, NSR is unwilling to negotiate interim trails use/rail banking.

All filings in response to this notice must refer to Docket No. AB 290 (Sub-No. 381X) and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037. Replies to the petition are due on or before \_\_\_\_\_, 2016.

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.

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

Decided: \_\_\_\_\_.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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

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**AB-290 (Sub-No. 381X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
– ABANDONMENT EXEMPTION –  
IN HAMILTON COUNTY, OHIO**

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**PETITION FOR EXEMPTION**

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**EXHIBIT C**

**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:

David Dorfman  
SDDC TEA  
Railroads for National Defense  
709 Ward Dr., Bldg. 1990  
Scott AFB, IL 62225

Matthew Dietrich, Executive Director  
Ohio Rail Development Commission  
The Ohio Department of Transportation  
1980 West Broad Street, Mail Stop #3140  
Columbus Ohio 43223

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

The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

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

April 22, 2016



William A. Mullins  
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 April 19, 2016, in The Cincinnati Herald, a newspaper of general circulation in Hamilton County, Ohio. Attached is an Affidavit of Publication and Tear Sheet from The Cincinnati Herald.

April 22, 2016

  
\_\_\_\_\_  
William A. Mullins  
Attorney for Norfolk Southern  
Railway Company

**Attachment 1 -**

Affidavit of Publication and Tear Sheet from The Cincinnati Herald



# NEWS

## NOTICE OF INTENT TO ABANDON RAIL SERVICE

### STB Docket No. AB-290 (Sub-No. 381X)

Norfolk Southern Railway Company ("NSR") gives notice that on or about April 15, 2016, it intends to file with the Surface Transportation Board, Washington, DC 20423, an individual petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, permitting NSR to abandon approximately 4.10 miles of rail line (the "Line") extending from milepost CT 3.7 to Milepost CT 7.8 in Hamilton County, Ohio. The Line traverses United States Postal Zip Code territories 45207, 45212, 45208, 45209, 45226 and 45227. The proceeding has been docketed as STB Docket No. AB-290 (Sub-No. 381X).

The proposed action entails the abandonment of, and discontinuance of rail service over, the Line. 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 abandonment petition for 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 to continue rail service can be filed with the Board. Please note, NSR has requested an exemption from the OFA provisions of 49 U.S.C. 10904 in order to sell the property to the City of Cincinnati for public use. 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 offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423 [See 49 C.F.R. §§ 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR § 1104.12(a)]. Questions regarding offers of financial assistance, 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 upon NSR's representative: William A. Mullins, BAKER & MILLER PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037; phone: 202-663-7823; fax 202-663-7849.

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

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**AB-290 (Sub-No. 381X)**

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**NORFOLK SOUTHERN RAILWAY COMPANY  
– ABANDONMENT EXEMPTION –  
IN HAMILTON COUNTY, OHIO**

---

**PETITION FOR EXEMPTION**

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**EXHIBIT D**

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

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. 381X) was mailed via first class mail on March 15, 2016 to the following parties:

Ms. Barb Clary, District Administrator  
Ohio EPA Southwest District  
401 East Fifth Street  
Dayton, OH 45402

Mr. Christian Sigman, County Administrator  
138 East Court Street  
Room 603  
Cincinnati, OH 45202

Ms. Susan Hedman, Regional Administrator  
US EPA Region 5  
Ralph Metcalfe Federal Building  
77 West Jackson Boulevard  
Chicago, IL 60604

Ms. Tammy K. Campbell, P.E., District Deputy Director  
Ohio Department of Transportation District 8  
505 South State Route 741  
Lebanon, OH 45036

Mr. Schudder D. Mackey, Ph.D., Chief  
Ohio Department of Natural Resources  
Office of Coastal Management  
105 West Shoreline Drive  
Sandusky, OH 44870

Ohio Historic Preservation Office  
Ohio History Center  
800 East 17<sup>th</sup> Avenue  
Columbus, OH 43211

Mr. Terry J. Cosby, State Conservationist  
USDA NRCS State Office  
200 North High Street, Room 522  
Columbus, OH 43215

Charlie Stockman  
National Park Service  
Rivers and Trails Conservation Program  
1201 Eye Street, NW 9<sup>th</sup> floor  
Washington D.C. 20005

U.S. Fish and Wildlife Service  
Midwest Region 5  
5600 American Boulevard West, Suite 990  
Bloomington, MN 55437

National Geodetic Survey  
Geodetic Service Division  
Room 9202 NGS/12  
1315 East-West Highway  
Silver Spring, MD 20910

U.S. Army Corps of Engineers  
Louisville District  
P.O. Box 59  
Louisville, KY 40201

USEPA  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Mail Code 1101-A  
Washington, D.C. 20460

Mayor John Cranley  
801 Plum Street, Suite 150  
Cincinnati, OH 45202

  
\_\_\_\_\_  
Laura Hoag  
March 15, 2016

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**AB-290 (Sub-No. 381X)  
NORFOLK SOUTHERN RAILWAY COMPANY  
PROPOSED ABANDONMENT  
BETWEEN MILEPOST CT 3.7 AND MILEPOST CT 7.8  
IN HAMILTON COUNTY, OHIO**

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**Combined Environmental and Historic Report**

Norfolk Southern Railway Company (“NSR”) submits this Combined Environmental and Historic Report (“EHR”) pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, in connection with its proposed abandonment of approximately 4.10 miles of rail line between Milepost CT 3.7 and Milepost CT 7.8 in Hamilton County, Ohio.

**March 15, 2016**

## **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 approximately 4.10 miles of rail line between Mileposts CT 3.7 and CT 7.8 in Hamilton County, Ohio (the “Line”) in order to sell the property to the City of Cincinnati for public use. There are no customers served on the Line to be abandoned.

Following abandonment, the Line’s rail and related track material will be salvaged. Salvage will consist of removing the rail and track material from the existing roadbed. The contour of the existing roadbed will remain as is, and existing drainage systems will remain intact. When the rail and track material are removed, the contractor will smooth the roadbed to a level surface. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. Accordingly, NSR believes that no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. All salvaged steel components will either be reused or sold as scrap. Crossties may be reused in other railroad operations, or they will be disposed of in accordance with applicable federal and state laws and regulations. There are ten bridges on the Line proposed for abandonment.

The alternative to abandonment is to not abandon the Line and retain the track in place. This alternative is not satisfactory. The railroad would continue to incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line to be retained.

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

#### **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 is no rail freight or passenger traffic originating or terminating on the Line proposed for abandonment. Additionally, no rail freight or passenger traffic has moved over the Line since 2000.

#### **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 Hamilton County and the City of Cincinnati, which were asked to comment on the consistency of the proposed abandonment with existing land use plans. The proposed

abandonment is consistent with existing land use plans based on our consultation with the County and the City.

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

RESPONSE: Consultation was requested from The United States Department of Agriculture Natural Resources Conservation Service ("USDA NRCS"). The USDA NRCS states there are no concern for prime farmland effects. A copy of the USDA NRCS response letter is attached as part of **Appendix C**.

*(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: Consultation was requested from the State Coastal Zone Management. NSR has no reason to believe that, the proposed abandonment would be inconsistent with the coastal zone management plan as the Line is not within a coastal zone. The Ohio Coastal Management Program ("OCMP") has confirmed that the proposed project location is not located within Ohio's designated coastal zone or the Lake Erie watershed and a Federal Consistency review under the Coastal Zone Management Act of 1972 is not required. A copy of OCMP's response letter is attached as part of **Appendix 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 railroad has mainly fee simple interest to the title for the right-of-way underlying the Line proposed for abandonment; thus, the right-of-way is suitable for alternative public use. Not only is the right-of-way underlying the Line suitable for alternative use, but in this case NSR is actually undertaking this abandonment to allow the City of Cincinnati to dedicate the Line to public use.

**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.

*(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 is no rail freight or passenger traffic originating or terminating on the Line proposed for abandonment.

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

RESPONSE: The proposed action will not result in any material impact in overall energy efficiency.

*(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: The diversion of traffic to motor carriers will not exceed the thresholds set forth at 49 CFR §1105.7(e)(4) as no diversions will occur. 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: The railroad has no knowledge of hazardous waste sites or sites where there have been known hazardous material spills on the right-of-way or in adjacent areas.

#### **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: The railroad has requested input from the U.S. Fish and Wildlife Service ("USFWS") to ascertain any impacts to surrounding habitats and species. USFWS indicated there are no Federal wilderness areas, wildlife refuges or designated critical habitat within the vicinity of the project area. A copy of the USFWS response letter is attached as part of **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 proposed for abandonment does not appear to pass through state parks or forests, national parks or forests, or wildlife sanctuaries. No

adverse effects on wildlife sanctuaries, national parks or forests, or state parks or forests are anticipated.

**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: The railroad 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. 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 ten bridges on the Line. 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 Ohio Department of Environmental Protection Agency (“OEPA”) and from the regional Environmental Protection Agency office (“EPA Region 5”). A copy of the response letters received from the EPA Region 5 and the OEPA are attached as part of **Appendix C**.

*(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. Consultation was requested from the U.S. Army Corps of Engineers (“USACE”) and it states no

permit is required. A copy of the USACE response letter is attached as part of

### **Appendix C.**

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

RESPONSE: The railroad does not plan to remove or alter the roadbed underlying the Line to be abandoned, 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. The railroad anticipates that the abandonment will not affect water quality and that additional permitting under Section 402 will not be required. Nevertheless, NSR has requested input from the EPA Region 5 and OEPA. As stated previously in section above, a copy of the responses received from the EPA Region 5 and OEPA are attached as part of **Appendix C.**

### **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. Only minimal physical activity may occur as a result of the proposed abandonment, such as removal of rail, ties, and other railroad appurtenances. The railroad will undertake all reasonable mitigation associated with these activities as directed by the Board to assure the abandonment does not produce adverse environmental impacts.

## **HISTORIC REPORT**

### **49 CFR 1105.8(d)**

#### **PROPOSED ACTION AND ALTERNATIVES**

NSR proposes to abandon approximately 4.10 miles of rail line between Mileposts CT 3.7 and CT 7.8 in Hamilton County, Ohio (the “Line”) in order to sell the property to the City of Cincinnati for public use. There are no customers served on the Line to be abandoned.

Following abandonment, the rail and related track material will be salvaged. Salvage will consist of removing the rail and track material from the existing roadbed. The contour of the existing roadbed will remain as is and existing drainage systems will remain intact. When the rail and track material are removed, the contractor will smooth the roadbed to a level surface. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will be permitted. Accordingly, NSR believes that no storm water mitigation measures – including, but not limited to, a National Pollutant Discharge Elimination System permit – will be required. All salvaged steel components will either be reused or sold as scrap. Crossties may be reused in other railroad operations, or they will be disposed of in accordance with applicable federal and state laws and regulations. There are ten bridges on the Line proposed for abandonment.

The alternative to abandonment is to not abandon the Line and retain the track in place. This alternative is not satisfactory. The railroad would continue to incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line to be retained.

A map depicting the Line proposed for abandonment is attached as **Appendix A**.

### **ADDITIONAL INFORMATION**

- (1) **U.S.G.S. Topographic Map** - Map was furnished to the Ohio Historic Preservation Office (“OHPO”).
- (2) **Written Description of Right of Way** - The right-of-way width ranges from 50 feet to 100 feet 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 are ten bridges on the Line. Pictures were furnished to the Ohio Historic Preservation Office.
- (4) **Date of Construction of Structures** – A bridge list, which includes all known dates of construction, is attached as **Appendix D**.
- (5) **History of Operations and Changes Contemplated** – The Line that is the subject of this proposed abandonment consists of approximately 4.10 miles of rail line between Milepost CT 3.7 and Milepost CT 7.8 in Hamilton County, Ohio. The Line was originally part of the Cincinnati and Eastern Railway (“CER”). In 1880, CER extended its track from Clare to Idlewild. In 1887, the CER was acquired at foreclosure by the Ohio and North Western Railroad (“ONWR”). In 1891, ONWR was acquired by the Cincinnati, Portsmouth and Virginia Railroad (“CPVR”). In 1901, CPVR was purchased by the Norfolk and Western Railway.
- (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 ten structures 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.

**(7) Opinion Regarding Criteria For Listing In The National Register Of Historic**

**Places** – There are ten structures on the Line or within the APE for this undertaking.

The railroad has no reason to believe that there is any likelihood of finding archaeological resources or historic properties on the Line in the course of track salvage.

**(8) Subsurface Ground Conditions That Might Affect Archaeological Recovery**

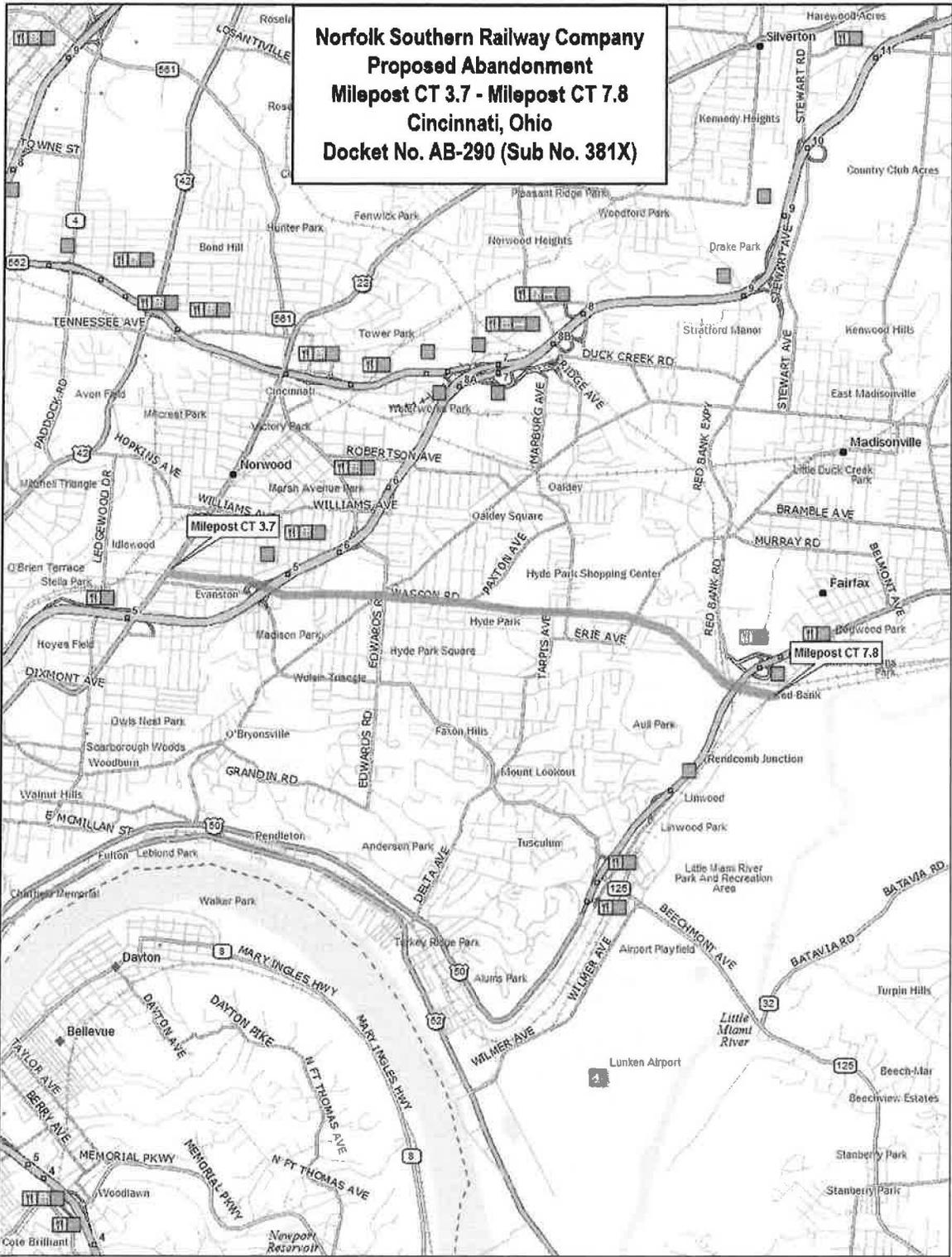
The railroad is not aware of any prior subsurface ground disturbances or environmental conditions that would affect archaeological recovery. Moreover, abandonment of the Line and salvage of material from its surface will not affect any potential archaeological resources. The subsurface of the right-of-way was initially disturbed in the construction of the railroad line by grading and filling. Abandonment and salvage of the Line will not result in activities below the surface, or below the level of initial disturbance.

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

# **APPENDIX A**

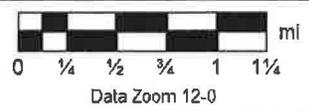
## **Site Map**

**Norfolk Southern Railway Company  
Proposed Abandonment  
Milepost CT 3.7 - Milepost CT 7.8  
Cincinnati, Ohio  
Docket No. AB-290 (Sub No. 381X)**



**DELORME**

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www.delorme.com



# **APPENDIX B**

## **Agency Letters**



Norfolk Southern Corporation  
3 Commercial Place  
Norfolk, VA 23510-9207

Strategic Planning Department  
Three Commercial Place  
Norfolk, VA 23510-9207

March 15, 2016

RE: Docket No. AB-290 (Sub-No. 381X), Norfolk Southern Railway Company  
Abandonment – in Hamilton County, Ohio

Dear Sir/Madam:

Norfolk Southern Railway Company (NSR) plans to request authority from the Surface Transportation Board (STB) to abandon the segment of rail line between Milepost CT 3.7 and Milepost CT 7.8, a distance of 4.10 miles located in Hamilton County.

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.

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:

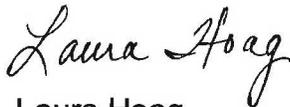
Surface Transportation Board  
395 E Street, S.W., Room 1106  
Washington DC 20423-0001

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 LaWada Poarch by email at [LaWada.Poarch@nscorp.com](mailto:LaWada.Poarch@nscorp.com) or by mail to:

LaWada Poarch  
Abandonments Coordinator  
Norfolk Southern Corporation  
Strategic Planning Department  
Three Commercial Place  
Norfolk, VA 23510  
(757) 629-2803

Sincerely,



Laura Hoag  
Director Strategic Planning  
Norfolk Southern Railway Company

Attachment

## RECIPIENT LIST

### Proposed Rail Line Abandonment from Milepost CT 3.7 to Milepost CT 7.8 in Hamilton County, Ohio.

#### STATE ENVIRONMENTAL PROTECTION AGENCY

Ms. Barb Clary, District Administrator  
Ohio EPA Southwest District  
401 East Fifth Street  
Dayton, OH 45402

#### REGIONAL ENVIRONMENTAL PROTECTION AGENCY

Ms. Susan Hedman, Regional Administrator  
US EPA Region 5  
Ralph Metcalfe Federal Building  
77 West Jackson Boulevard  
Chicago, IL 60604

#### STATE COASTAL ZONE MANAGEMENT

Mr. Schudder D. Mackey, Ph.D., Chief  
Ohio Department of Natural Resources  
Office of Coastal Management  
105 West Shoreline Drive  
Sandusky, OH 44870

#### NATURAL RESOURCES CONSERVATION SERVICE

Mr. Terry J. Cosby, State Conservationist  
USDA NRCS State Office  
200 North High Street, Room 522  
Columbus, OH 43215

#### FISH AND WILDLIFE SERVICES

U.S. Fish and Wildlife Service  
Midwest Region 5  
5600 American Boulevard West, Suite 990  
Bloomington, MN 55437

#### US ARMY CORPS OF ENGINEERS

U.S. Army Corps of Engineers  
Louisville District  
P.O. Box 59  
Louisville, KY 40201

#### CITY OF CINCINNATI

Mayor John Cranley  
801 Plum Street, Suite 150  
Cincinnati, OH 45202

#### COUNTY OF HAMILTON

Mr. Christian Sigman, County Administrator  
138 East Court Street  
Room 603  
Cincinnati, OH 45202

#### STATE CLEARINGHOUSE (DOT)

Ms. Tammy K. Campbell, P.E., District Deputy Director  
Ohio Department of Transportation District 8  
505 South State Route 741  
Lebanon, OH 45036

#### STATE HISTORIC PRESERVATION OFFICE

Ohio Historic Preservation Office  
Ohio History Center  
800 East 17<sup>th</sup> Avenue  
Columbus, OH 43211

#### NATIONAL PARK SERVICE

Charlie Stockman  
National Park Service  
Rivers and Trails Conservation Program  
1201 Eye Street, NW 9<sup>th</sup> floor  
Washington D.C. 20005

#### NATIONAL GEODETIC SURVEY

National Geodetic Survey  
Geodetic Service Division  
Room 9202 NGS/12  
1315 East-West Highway  
Silver Spring, MD 20910

#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

USEPA  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Mail Code 1101-A  
Washington, D.C. 20460

# **APPENDIX C**

## **Agency Responses**

**Poarch, Lawada G.**

---

**From:** Baker, Steven - NRCS, Columbus, OH <Steven.Baker@oh.usda.gov>  
**Sent:** Thursday, November 05, 2015 9:51 AM  
**To:** Poarch, Lawada G.  
**Subject:** [EXTERNAL] Prime Farmland Effects for Docket No AB-290 (Sub # 381x) NS Railway Abandonment Hamilton Co.

Good Morning LaWada,

I have reviewed the document you mailed and see no concern for prime farmland effects.

Thanks,

**Steve Baker**

USDA-NRCS  
State Soil Scientist

614.255.2483 Work  
614.940.8227 Mobile  
steven.baker@oh.usda.gov  
200 North High St.  
Columbus, OH 43215

## Poarch, Lawada G.

---

**From:** Steve.Holland@dnr.state.oh.us  
**Sent:** Thursday, October 08, 2015 12:58 PM  
**To:** Poarch, Lawada G.  
**Subject:** [EXTERNAL] Docket No. AB-290 (Sub-No. 38X)

Hello LaWada,

This email is in response to the letter received by the Ohio Department of Natural Resources Office of Coastal Management on October 5, 2015 regarding the above-referenced rail line abandonment project in Hamilton County, Ohio. The proposed project location is not located within Ohio's designated coastal zone or the Lake Erie watershed. Therefore, unless it has been determined by Norfolk Southern Corporation or the Surface Transportation Board that the project will have reasonably foreseeable effects on any use or resource of Ohio's coastal zone, a Federal Consistency review under the Coastal Zone Management Act of 1972 is not required.

No further coordination regarding Federal Consistency for this project is required. Feel free to contact me if you have any questions.

Steve Holland, MPA  
*Federal Consistency Administrator*  
Ohio Coastal Management Program  
ODNR Office of Coastal Management  
105 West Shoreline Drive  
Sandusky, Ohio 44870  
(419) 609-4104  
Website: <http://coastal.ohiodnr.gov>  
Grants Viewer: <https://gis.ohiodnr.gov/website/ocm/grants>

Notice: Ohio has a very broad public records law. Most written communications to or from Office of Coastal Management employees regarding Office of Coastal Management business are public records available to the public and media. Your e-mail communication may be subject to public disclosure.

## Poarch, Lawada G.

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**From:** susan\_zimmermann@fws.gov on behalf of Ohio, FW3 <ohio@fws.gov>  
**Sent:** Friday, October 30, 2015 2:38 PM  
**To:** Poarch, Lawada G.  
**Subject:** [EXTERNAL] Docket AB-290 (Sub-No. 381X) Norfolk Southern Railway Co. Abandonment, Hamilton Co.



UNITED STATES DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service  
Ecological Services Office  
4625 Morse Road, Suite 104  
Columbus, Ohio 43230  
(614) 416-8993 / Fax (614) 416-8994



TAILS# 03E15000-2016-TA-0101

Dear Ms. Poarch,

We have received your recent correspondence requesting information about the subject proposal. There are no Federal wilderness areas, wildlife refuges or designated critical habitat within the vicinity of the project area.

**FEDERALLY LISTED, PROPOSED, AND CANDIDATE SPECIES COMMENTS:** Due to the project, type, size, and location, we do not anticipate adverse effects to federally endangered, threatened, proposed, or candidate species. Should the project design change, or during the term of this action, additional information on listed or proposed species or their critical habitat become available, or if new information reveals effects of the action that were not previously considered, consultation with the Service should be initiated to assess any potential impacts.

If you have questions, or if we can be of further assistance in this matter, please contact our office at (614) 416-8993 or [ohio@fws.gov](mailto:ohio@fws.gov).

Sincerely,

Dan Everson

Field Office Supervisor



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**SEP 24 2015**

REPLY TO THE ATTENTION OF:

WN-16J

LaWanda Poarch, Abandonments Coordinator  
Strategic Planning  
Norfolk Southern Corporation  
3 Commercial Place  
Norfolk, VA 23510

RE: Docket No. AB-290 (Sub-No. 381X), Norfolk Southern Railway Company – Abandonment  
– Hamilton County, Ohio

Dear Ms. Poarch:

The United States Environmental Protection Agency Region 5 (EPA Region 5) has reviewed your letter regarding the above referenced abandonment project. Your letter describes a potential abandonment of 4.1 miles of rail line in Hamilton County, Ohio.

The Ohio Environmental Protection Agency (OEPA) is the National Pollutant Discharge Elimination System permit-issuing authority in the State of Ohio. We recommend that you contact Mr. Michael Joseph of the OEPA at (614) 752-0782 or by email at [Michael.Joseph@epa.ohio.gov](mailto:Michael.Joseph@epa.ohio.gov) regarding the water quality aspects of this matter.

Sincerely,

A handwritten signature in black ink that reads "Brian Bell".

Brian Bell  
Storm Water Coordinator

## Poarch, Lawada G.

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**From:** Mike.Joseph2@epa.ohio.gov  
**Sent:** Friday, October 02, 2015 3:46 PM  
**To:** Poarch, Lawada G.  
**Cc:** Christopher.Cotton@epa.ohio.gov  
**Subject:** [EXTERNAL] RE: Wasson Way (Cincinnati, OH)

Good afternoon LaWada,

If the total land disturbance associated with the described 4.1-mile long rail abandonment project will be less than 1-acre, then an NPDES construction storm water discharge permit will not be required. If this is the case, then water quality best management practices will not be required since Ohio EPA's NPDES construction storm water general permit, which requires such practices, is not needed. Your letter to U.S. EPA Region 5 did state that once the rail lines are removed, "the contractor will smooth the roadbed to a level surface." If the roadbed smoothing involves grading of erodible soil, then the grading activities are considered land disturbance activities.

If the 4.1-mile rail abandonment project will include the placement of any fill material into jurisdictional surface waters, please contact the Huntington, West Virginia Branch of the U.S. Army Corps of Engineers at (304) 399-5210 to determine if any permits are required. If you wish to know information about Hamilton County's ordinance on sediment and erosion controls, I recommend that you contact Mr. Todd Long of the Hamilton County Engineer's Office at (513) 946-4254 or at [Todd.Long@hamilton-co.org](mailto:Todd.Long@hamilton-co.org)

Please let me know if you have any NPDES storm water permitting questions. Have a great weekend!

Mike Joseph  
Ohio EPA – DSW  
Storm Water Unit  
(614) 752-0782

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**From:** Poarch, Lawada G. [<mailto:Lawada.Poarch@NSCORP.COM>]  
**Sent:** Friday, October 02, 2015 2:11 PM  
**To:** Joseph, Mike  
**Subject:** Wasson Way (Cincinnati, OH)

Mr. Joseph,

The attached response letter was received by me from Mr. Brian Bell, Storm Water Coordinator in the regional Environmental Protection Agency (EPA) office. As the letter recommends, please review the attached information regarding the proposed abandonment project in Hamilton County, and provide comments regarding water quality. Norfolk Southern has sent the same project information to the state of Ohio EPA Southwest District office, as well as, the Ohio Department of Natural Resources, Office of Coastal Management for their comments.

Thank you,  
LaWada Poarch  
Abandonments Coordinator  
(757) 629-2803



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

NOV 24 2015

Regulatory Division  
North Branch  
LRH-2015-879-OHR-Unnamed Tributary Ohio River

NO PERMIT REQUIRED

LaWada Poarch, Abandonments Coordinator  
Strategic Planning  
Norfolk Southern Corporation  
3 Commercial Place  
Norfolk, VA 23510

Dear Ms. Poarch:

I refer to the information received in this office on October 13, 2015 concerning the Norfolk Southern Railway Company Abandonment project. According to the submitted information, the removal of approximately 4.1 miles of rail line will take place between Milepost CT 3.7 and 7.8 in the City of Cincinnati, Hamilton County, Ohio. You have requested the United States Army Corps of Engineers (Corps) review your proposal for possible Department of the Army (DA) permit requirements. Your request has been assigned the following file number: LRH-2015-879-OHR-Unnamed Tributary Ohio River. Please reference this file number on all future correspondence related to this subject project.

The Corps' authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act requires a DA permit be obtained prior to discharging dredged or fill material into waters of the United States, including wetlands. Navigable waters, their tributaries and adjacent wetlands are waters of the United States subject to the provisions of Section 404 of the Clean Water Act. Section 10 of the Rivers and Harbors Act of 1899 requires a DA permit be obtained in advance of any work in, on, over or under a navigable water of the United States.

Based on a review of the information provided, we have determined your proposal will neither result in a discharge of dredged or fill material into waters of the United States nor involve work in, on, over or under a navigable water of the United States. Therefore, no DA permit is required from this office for the proposed activity.

We appreciate your concern for our nation's aquatic resources. If you have any questions concerning the above, please contact Crystal Chambers at (304) 399-5210, by mail at the above address or by email at [crystal.d.chambers@usace.army.mil](mailto:crystal.d.chambers@usace.army.mil).

Sincerely,

Teresa D. Spagna  
Chief, North Branch



# OHIO DEPARTMENT OF TRANSPORTATION

DISTRICT 8 • 505 S. STATE ROUTE 741 • LEBANON, OHIO 45036 • (513) 932-3030  
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR • TAMMY K. CAMPBELL, P.E., DISTRICT DEPUTY DIRECTOR

April 4, 2016

LaWada Poarch  
Abandonments Coordinator  
Norfolk Southern Corporation  
Strategic Planning Department  
Three Commercial Place  
Norfolk, VA 23510

RE: Docket No. AB-290 (Sub-No. 381X), Norfolk Southern Railway Company  
Abandonment – in Hamilton County

Dear Ms. Poarch,

This letter is in response to the subject packet of information dated March 15, 2016, Docket No. AB-290 (Sub-No. 381X), regarding the Norfolk Southern Railway Company (NSR) plans to request authority from the Surface Transportation Board (STB) to abandon the segment of rail line between Milepost CT 3.7 and Milepost CT 7.8, a distance of 4.10 miles located in Hamilton County.

We have completed our review of the Combined Environmental and Historic Report (Report) which describes the proposed abandonment and other pertinent information and offer the following comment(s):

- The following bridges are located over an Interstate Route (IR) and or/a United States Route (US):
  - The bridge located at Milepost CT 4.39 crosses over an IR 71 off-ramp to Dana Avenue.
  - The bridge located at Milepost CT4.40 crosses over IR 71, both the mainline and the on-ramp from Dana Avenue.
  - The bridge located at CT 7.53 crosses over the US 50 mainline.

Our primary concern/comment is who will be the responsible party to prevent unauthorized use of the facilities/bridges and to secure them from undesirable activity (vandalism, bridge railing theft, thrown objects, etc.) that may impact the motorists traveling on Interstate Route 71 and US 50? Will it be the Norfolk Southern Railway Company or the City of Cincinnati and will these bridges be secured immediately upon abandonment? The second concern/comment is in regards to these specific bridges and the current agreements detailing the ownership and the maintenance responsibilities and the need for the agreements to be revised to again detail the ownership, the maintenance responsibilities for and/or removal of these specific bridges once the abandonment occurs.

We want to express our appreciation for the opportunity to review and comment on the subject abandonment.

If you have any questions or need additional information, please feel free to contact me at (513) 933-6597.

Sincerely,

  
Andrew J. Fluegemann, P.E.  
District 8 Planning Engineer

C: Campbell, Spinosa, Collett, Michael Moore (City of Cincinnati), Jennifer Kaminer (Village of Fairfax), file

## Poarch, Lawada G.

---

**To:** WMullins@bakerandmiller.com; CZorbaugh@bakerandmiller.com  
**Subject:** FW: Wasson Way - Bridge Concerns/Questions

**From:** Parkerson, Maquiling  
**Sent:** Wednesday, April 06, 2016 5:05 PM  
**To:** Ambler, Thomas W.; Jackson, Solomon; Carroll, Patti G.; Roop, Malcolm G.; McFadden, Howard D.  
**Cc:** Corletto, Jackie Decker; Poarch, Lawada G.  
**Subject:** RE: Wasson Way - Bridge Concerns/Questions

I think we've gotten what we need to respond to the OH DOT.  
Thanks for the quick and thorough responses.

---

**From:** Ambler, Thomas W.  
**Sent:** Wednesday, April 06, 2016 5:03 PM  
**To:** Jackson, Solomon; Parkerson, Maquiling; Carroll, Patti G.; Roop, Malcolm G.; McFadden, Howard D.  
**Cc:** Corletto, Jackie Decker; Poarch, Lawada G.  
**Subject:** RE: Wasson Way - Bridge Concerns/Questions

Maqui – What more do you need for your issues? Tom

Solomon – Thanks for the quick work. Sounds like a good outcome. FYI, the Mayor was briefly at the recent annual meeting of the Trustees of the Cincinnati Southern Railway and high officers of CNOTP/NS, and his comments made it clear that the Wasson Way project is quite important to the city. Tom

---

**From:** Jackson, Solomon  
**Sent:** Wednesday, April 06, 2016 5:00 PM  
**To:** Ambler, Thomas W.; Parkerson, Maquiling; Carroll, Patti G.; Roop, Malcolm G.; McFadden, Howard D.  
**Cc:** Corletto, Jackie Decker; Poarch, Lawada G.  
**Subject:** RE: Wasson Way - Bridge Concerns/Questions

Tom:

I don't believe that the city was given copies of the bridge agreements. However, I spoke with the city today and they indicated that they have no objections to the inclusion of the bridge agreements being assigned to them. In fact, the city plans to send NS a letter stipulating that upon assignment of the bridge agreements, the city will secure, maintain and own all railroad bridges that are a part of the sales area. Finally, I will send the city the copies of the bridge agreements as soon as possible.

Thanks, Solomon

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**From:** Ambler, Thomas W.  
**Sent:** Wednesday, April 06, 2016 8:31 AM  
**To:** Jackson, Solomon; Parkerson, Maquiling; Carroll, Patti G.; Roop, Malcolm G.; McFadden, Howard D.  
**Cc:** Corletto, Jackie Decker; Poarch, Lawada G.  
**Subject:** RE: Wasson Way - Bridge Concerns/Questions

Solomon/Howard – I see that within 30 days of the Effective date (which appears to be a date long past), we were to provide Cincinnati with a copy of all agreements to be assigned. Were the bridge agreements mentioned in the ODOT

letter among those given to the city, and did the city object to their inclusion in being assigned? My guess is that the answer to my first question is yes and the answer to my second question is no, but please advise. Tom

---

**From:** Parkerson, Maquiling  
**Sent:** Tuesday, April 05, 2016 12:49 PM  
**To:** Carroll, Patti G.; Roop, Malcolm G.; Jackson, Solomon; Ambler, Thomas W.  
**Cc:** Corletto, Jackie Decker; Poarch, Lawada G.  
**Subject:** FW: Wasson Way - Bridge Concerns/Questions

Patti et al.,

See the attached letter that NS received from the OH DOT in response to notices related to the environmental and historical report. OH DOT appears to be concerned with who will be responsible for bridge maintenance post-abandonment. Seems like if we're selling the property to the City, the City would take on this responsibility, but wondered if you guys had discussed this with the City in your discussions regarding the sale of the property. Also, note that the letter mentions existing agreements relating to the ownership and maintenance of the identified bridges. Tom, have you looked at these agreements and considered what would happen to these agreements as part of the sale?

Maqui

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**From:** Poarch, Lawada G.  
**Sent:** Monday, April 04, 2016 4:19 PM  
**To:** Parkerson, Maquiling  
**Subject:** Wasson Way - Bridge Concerns/Questions

Maqui,

Please review and advise on the highlighted section of the attached letter from the OH DOT regarding their questions about three of the bridges involved with this project. There are a total of ten bridges within project scope.

Thanks,  
LaWada

# APPENDIX D

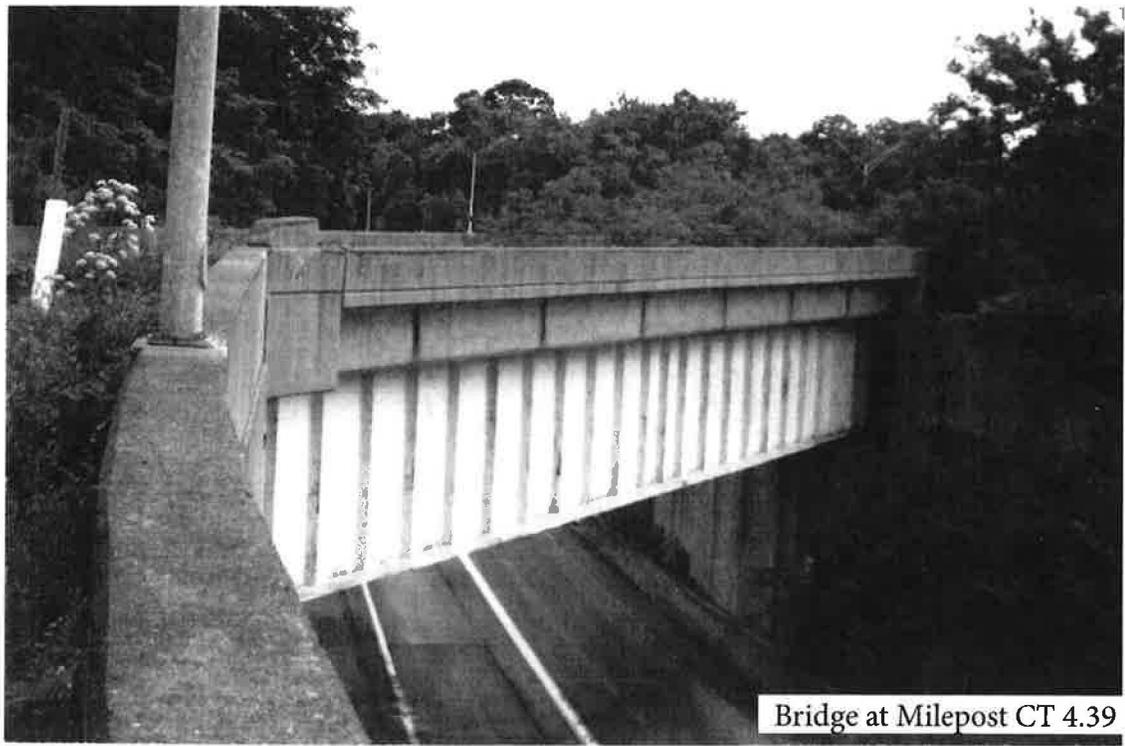
## Norfolk Southern Railway Company Abandonment in Hamilton County, OH

### Bridge List

Milepost	Crossing	Bridge Type	Deck construction	Length in Feet	Height in Feet	Date Constructed
CT 4.39	I-71 Ramp	Steel	Ballast	103.0	28.0	1971-1972
CT 4.40	I-71	Steel	Ballast	265.5	30.0	1971-1972
CT 4.82	Grovedale Avenue	Concrete	Ballast	35.7	19.0	1928-1930
CT 6.32	Marburg Avenue	Concrete	Highway Bridge	41.0	19.0	1931
CT 6.72	Erie Avenue	Concrete	Highway Bridge	26.3	19.0	Unknown
CT 7.21	Private Road	Deck Plate Girder	Open	225.0	47.0	1924-1925
CT 7.39	Red Bank Avenue	Deck Plate Girder	Open	432.9	70.0	1924-1925
CT 7.53	Columbia Pky-US 50	Thru Plate Girder	Ballast	130.7	23.0	1960-1961
CT 7.76	Waterway	Ballast	Ballast	11.0	11.0	Unknown
CT 7.78	Wooster Pike-US 50	Thru Plate Girder	Open	75.0	17.0	1924-1925

**Attachment -**

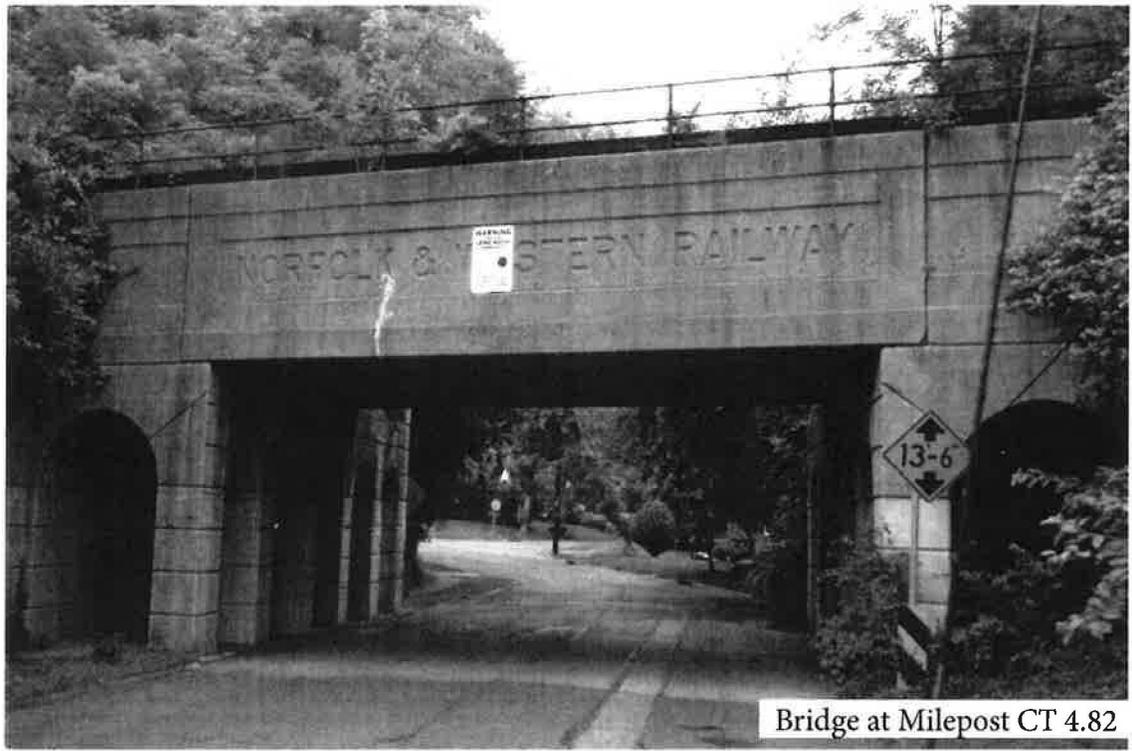
Photographs were furnished to the Ohio Historic Preservation Office



Bridge at Milepost CT 4.39



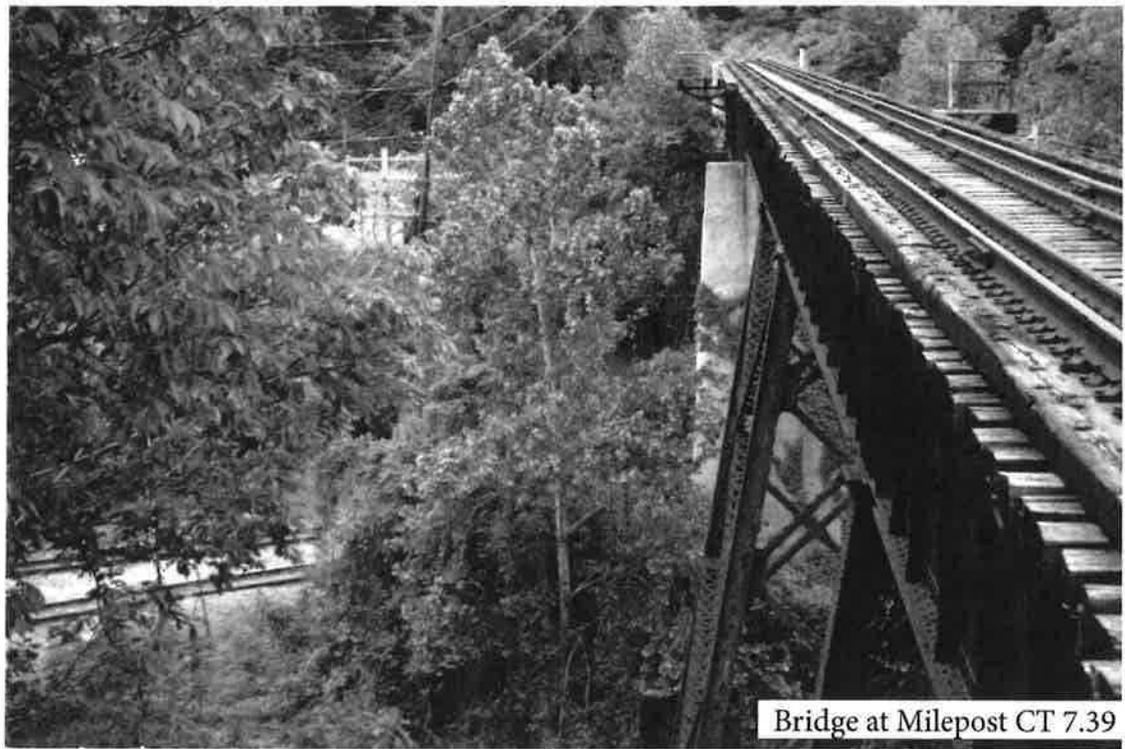
Bridge at Milepost CT 4.40



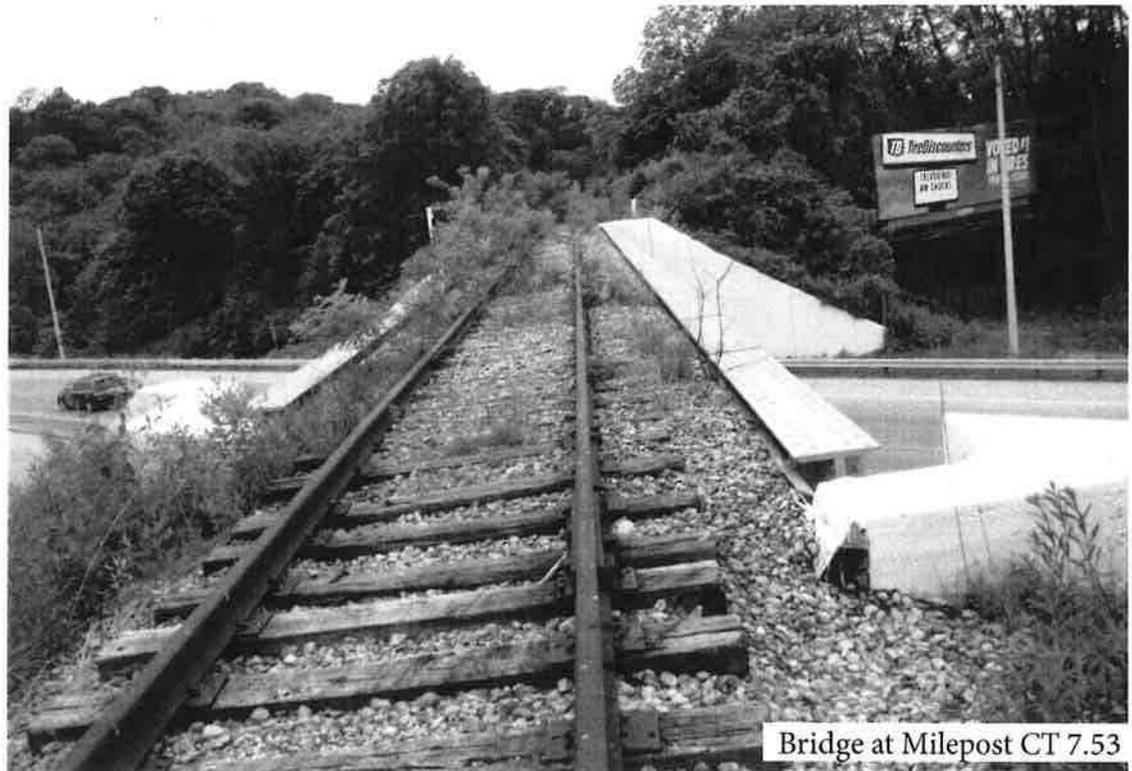
Bridge at Milepost CT 4.82



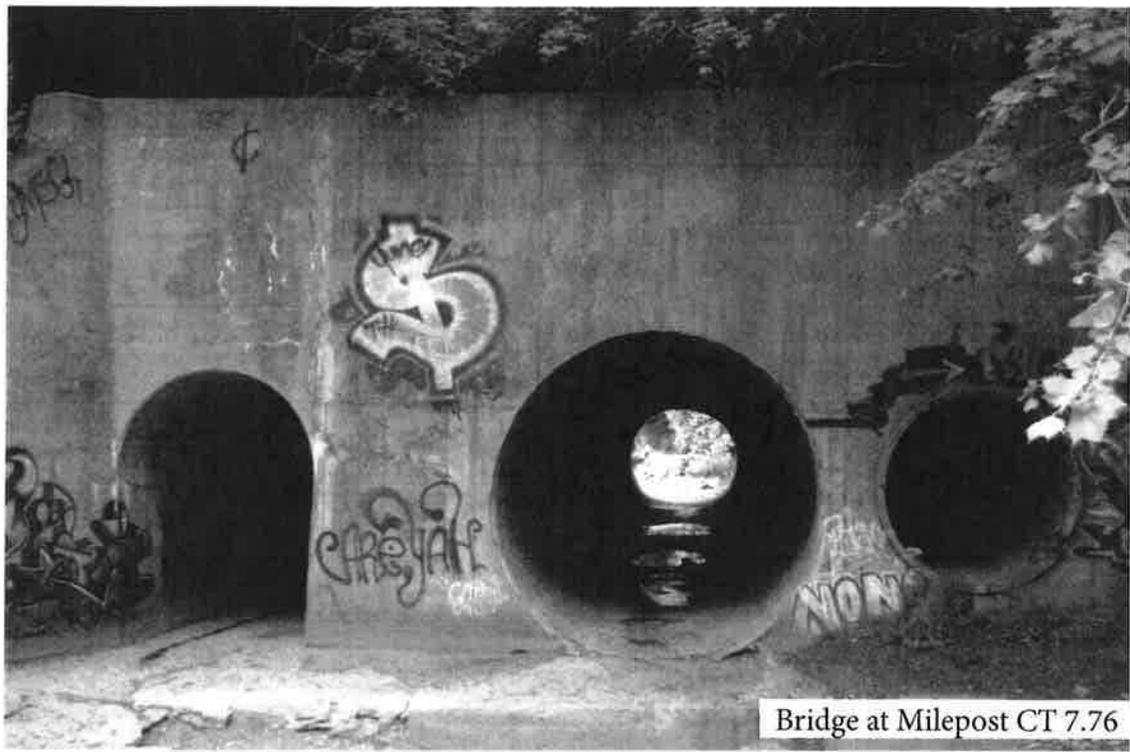
Bridge at Milepost CT 7.21



Bridge at Milepost CT 7.39



Bridge at Milepost CT 7.53



Bridge at Milepost CT 7.76