

TIMOTHY E. PETERSON  
ATTORNEY AT LAW

225212

5126 South Harlan Street, Indianapolis, IN 46227 (317) 409-9925

June 4, 2009

Anne K. Quinlan, Acting Secretary  
Surface Transportation Board  
Mercury Building  
395 E Street, S. W.  
Washington, DC 20423-0001



RE: Petition to Transfer Holder of Notice of Interim Trail Use/Trail Manager/Responsible Party Status for the Nickel Plate Trail (the Former Norfolk Southern Railway/Norfolk & Western Railway); Status Granted in STB Docket No. AB-290 (Sub-No. 168X), Norfolk and Western Railway Company - Abandonment Exemption - Between Kokomo and Rochester in Howard, Miami, and Fulton Counties, Indiana

Dear Ms. Quinlan:

Enclosed please find the following pleading: An original and ten copies of a "Joint Motion of the Indiana Trails Fund, Inc. and the Nickel Plate Trail, Inc. for Substitution of New Holder of Interim Trail Use/Trail Manager/Responsible Party," along with a Statement of Willingness to Assume Financial Responsibility filed on behalf of the Nickel Plate Trail, Inc. A check from the Nickel Plate Trail, Inc. for the \$250 filing fee is enclosed.

Also, please consider this letter to be my initial appearance in the above captioned proceeding, as an attorney in good standing with the Indiana Supreme Court, Attorney number 14927-49, on behalf of both the Indiana Trails Fund, Inc. and the Nickel Plate Trail, Inc. The addresses of these parties are as follows:

Mr. Richard C. Vonnegut, President  
Indiana Trails Fund, Inc.  
P. O. Box 402  
Indianapolis, IN 46206-0402

Mr. Michael Kuepper, President  
Nickel Plate Trail, Inc.  
206 North Cass Street  
P. O. Box 875  
Peru, IN 46970

ENTERED  
Office of Proceedings

JUN 5 - 2009

Part of  
Public Record

Thank you for your consideration of this joint petition. The parties ask that processing of this request be expedited so as to enable the Nickel Plate Trail, Inc. to apply for grant funding in a few weeks. Please call me if you have any questions at 317-409-9925.

Sincerely,

Timothy E. Peterson  
Attorney for the Petitioners

TEP:lw

Enclosures

cc: Richard C. Vonnegut  
Michael. Kuepper  
All Parties of Record  
Files

Before the Surface Transportation Board



Norfolk and Western Railway Company – )  
Abandonment Exemption – Between Kokomo )  
and Rochester in Howard, Miami, and Fulton )  
Counties, Indiana )  
\_\_\_\_\_ )

AB-290 (Sub-No. 169X)

**Joint Petition of the Indiana Trails Fund, Incorporated**  
**and the Nickle Plate Trail, Incorporated**  
**for Substitution of New Holder of Interim Trail Use / Trail Manager / Responsible Party**

Pursuant to 49 C.F.R. § 1152.29(f), the Indiana Trails Fund, Incorporated (“ITF”) and the Nickel Plate Trail, Incorporated (“NPT”) submit this joint petition to the Surface Transportation Board (“STB”) requesting that the above captioned proceedings be reopened so that the NPT be substituted as the Holder of Interim Trail Use/Trail Manager/Responsible Party for the rail line in the above-captioned proceeding. In support of said petition the ITF and NPT jointly set forth the following, to wit:

1. By decision and notice of interim trail use or abandonment (“NITU-1”), served on May 14, 1996, the Surface Transportation Board, under U.S.C. §10502, exempted from the prior approval requirements of former 49 U.S.C. 10903-04, the abandonment by Norfolk and Western Railway Company (“N&W”) and Central Railroad Company of Indianapolis (“CERA”) between milepost I-57.2 at or near Kokomo and milepost 95.6 at or near Rochester, in Howard, Miami and Fulton Counties, Indiana, and for CERA to discontinue service over approximately 51.4 miles of rail line between milepost I-57.2 and milepost I-108.6 at or near Argos, in Howard,

Miami, Fulton and Marshall Counties, Indiana. The May 14, 1996 STB decision authorized the issuance of NITU-1 to the Hoosier Rails to Trails Council, Incorporated and the ITF (referenced hereinafter jointly as the ITF) for that portion of the Norfolk and Western Railway Company (merged into the Norfolk Southern Railway Company) ("NSR") line segment between Milepost I-57.2 at or near Kokomo and Milepost I-74.2 at Peru. A true copy of said NITU-1 is attached hereto as Exhibit A.

2. By decision and notice issued on March 10, 2004 ("NITU-2"), the STB reopened this proceeding and authorized the modification of the original NITU-1 by granting the ITF's request for interim trail use of the NSR line segment extending north from Milepost I-75.5 to Milepost I-95.6, a true copy of which is attached hereto as Exhibit B.

3. The ITF purchased the 34.2 miles of the corridor from NSR in three deeds executed January 21, 1999: (1) Milepost 58.5 to Milepost 59.4 in Howard County, (2) Milepost 59.4 to Milepost 72.7 and Milepost 75.5 to Milepost 92.1 in Miami County, and (3) Milepost 92.1 to Milepost 95.6 in Fulton County. Copies of these three deeds are attached as Exhibits C, D and E respectively.

4. Subsequently, the ITF collaborated with trail advocates in Peru, Indiana and elsewhere along the rail banked right-of-way to form a local group to ultimately acquire, develop and manage the right-of-way, which had once been operated and known as the Nickel Plate Railroad. This organization has been incorporated as the NPT.

5. The substitution of the NPT as the Holder of Interim Trail Use/Trail

Manager/Responsible Party will not have any adverse effect upon the NSR involved in this proceeding, because the NPT has agreed to comply with all provisions of rail banking under 16 U.S.C. § 1247(d), and the ITF, NPT and NSR have jointly signed an "Agreement and Consent to Assignment of Interest in Trail and of Trail Management" (attached hereto as Exhibit F).

6. The NPT is a duly incorporated Indiana corporation with a corporate address of:

Nickel Plate Trail, Inc.  
P.O. Box 875  
206 North Cass Street  
Peru, Indiana 46970

Michael Kuepper, President  
Telephone: (765) 473-5586 x 224

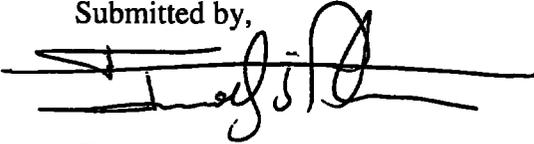
7. Attached hereto as Exhibit G is the NPT's statement of willingness to assume financial responsibility and request for the transfer and two maps of the corridor.

8. Attached hereto as Exhibit H is the ITF's letter of support for the transfer.

9. The date for the transition of total responsibility as the new Holder of Interim Trail Use/Trail Manager/Responsible Party to the NPT is June 15, 2009.

WHEREFORE the ITF and NPT respectfully request that the Surface Transportation Board reopen the above captioned cause, vacate the existing NITU issued to the ITF, and issue an appropriate NITU to the NPT as the new holder of interim trail use/trail manager/responsible party.

Submitted by,

A handwritten signature in black ink, appearing to read 'Timothy E. Peterson', is written over a horizontal line. The signature is stylized and cursive.

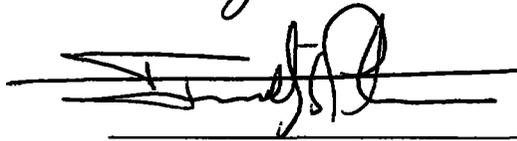
Timothy E. Peterson  
Attorney at Law  
5126 South Harlan Street  
Indianapolis, Indiana 46227  
(317) 409-9925  
timothy@timericpete.com

**Surface Transportation Board Docket No. AB-290 (Sub-No. 168X)**  
**Case Title: NORFOLK AND WESTERN RAILWAY COMPANY - ABANDONMENT**  
**EXEMPTION - BETWEEN KOKOMO AND ROCHESTER IN HOWARD, MIAMI AND**  
**FULTON COUNTIES, IN**

**Certificate of Service**

The undersigned hereby certifies that a copy of the of Joint Petition of the Indiana Trails Fund, Incorporated and the Nickel Plate Trail, Incorporated for Substitution of New Holder of Interim Trail Use/Trail Manager/Responsible Party in Surface Transportation Board Docket No. AB-290 (Sub-No. 168X) was

mailed via first class mail on the 4<sup>th</sup> day of June, 2009 to the following list of recipients.



\_\_\_\_\_  
Timothy E. Peterson, Attorney at Law

6/4/2008  
\_\_\_\_\_  
Date

Party of Record	Filed by:	Nels Ackerson Ackerson Kauffman Fex PC 1250 H Street, NW Suite 850 Washington, DC 20005
	Filed for:	William C. Friend, Steven Furnivall and Linda Schanlaub
Party of Record	Filed by:	Eric Bolton Ackerson Kauffman Fex, PC 1250 H Street, NW, Suite 850 Washington, DC 20005
Party of Record	Filed by:	Howard P. Cohen 17 Rollins Rd. Warwick, RI 02886
Party of Record	Filed by:	Howard R. Cohen Locke Reynolds 1000 Capital Center South 201 North Illinois Street Indianapolis, IN 46204
	Filed for:	Indiana Trails Fund, Inc.
Party of Record	Filed by:	Daniel R. Elliott III United Transportation Union 14600 Detroit Avenue Cleveland, OH 44107-4250
Party of Record	Filed by:	Cecilia Fex Ackerson Kauffman Fex 1250 H Street NW Suite 850 Washington, DC 20005
	Filed for:	William C. Friend
Party of Record	Filed by:	Thomas F. McFarland Thomas F. Mcfarland, P.C. 208 South Lasalle St., Suite 1890 Chicago, IL 60604

Party of Record	Filed by:	Charles H. Montange 426 NW 162nd Street Seattle, WA 98177
	Filed for:	Nickel Plate Trail, Inc.
Party of Record	Filed by:	Norfolk & Western Railway Co. Three Commercial Place Norfolk, VA 23510-2191
Party of Record	Filed by:	James R. Paschall Norfolk Southern Railway Company Three Commercial Place Norfolk, VA 23510-9241
	Filed for:	Norfolk Southern Railway Company
Party of Record	Filed by:	Donald J. Tribbett Starr Austen Tribbett Myers & Miller 201 S. Third Street Logansport, IN 46947
Party of Record	Filed by:	Richard C. Vonnegut P. O. Box 402 Indianapolis, IN 46206-0402
Non-Party	Filed by:	Governor of Indiana State Capitol Indianapolis, IN 46204
Non-Party	Filed by:	Governor of Texas State Capitol Building Austin, TX 78711
Non-Party	Filed by:	Kyle J. Hupfer Indiana Division of Historic Preservation 402 W. Washington Street, W274 Indianapolis, IN 46204-2748

Non-Party	Filed by:	Indiana Department of Environmental Management Indiana Government Center- North 100 North Senate Avenue Indianapolis, IN 46204
Non-Party	Filed by:	Indiana Department of Natural Resources Division of Water 402 West Washington Street Indianapolis, IN 46204
Non-Party	Filed by:	Indiana Department of Transportation Railroad Section 100 N Senate Ave., 1GC-N, Room N901 Indianapolis, IN 46204
Non-Party	Filed by:	Natural Resources Conservation Service U.S. Department of Agriculture Poage Federal Building 101 South Main Street Temple, TX 76501-7685
Non-Party	Filed by:	Natural Resources Conservation Service U.S. Department of Agriculture 6013 Lakeside Blvd. Indianapolis, IN 46278
Non-Party	Filed by:	Texas Commission on Environmental Quality P.O. Box 13087 Austin, TX 78711-3087
Non-Party	Filed by:	Texas Office of Budget, Planning, and Policy P.O. Box 12428 Austin, TX 78711-2428
Non-Party	Filed by:	Texas Public Utility Commission P. O. Box 13326 Austin, TX 78711-3326

Non-Party	Filed by:	Texas Railroad Commission P.O. Box 12967 Austin, TX 78711-2967
Non-Party	Filed by:	U.S. Army Corps of Engineers Galveston District P.O. Box 1229 Galveston, TX 77553-1229
Non-Party	Filed by:	U.S. Fish and Wildlife Service Ecological Services Field Office Stadium Centre Bldg. 711 Stadium Drive E, Suite 252 Arlington, TX 76011-6247
Non-Party	Filed by:	U.S. Fish and Wildlife Service 620 S. Walker Street Bloomington, IN 47403-2101
Addition to STB Service List		James R. Walker, Mayor City of Peru 35 South Broadway Peru, IN 46970
Addition to STB Service List		Michael R. Fitch, P.E. LPA Review Engineer Consultant Services Section Fort Wayne District Indiana Department of Transportation 5333 Hatfield Road Fort Wayne, IN 46808
Addition to STB Service List		Bob Bronson, Chief Grants Section Division of Outdoor Recreation Indiana Department of Natural Resources 402 West Washington Street, Room W271 Indianapolis, IN 46204

MAY 14 1996

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-289 (Sub-No. 3X)

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS--DISCONTINUANCE  
OF SERVICE EXEMPTION--BETWEEN KOKOMO AND ARGOS IN HOWARD,  
MIAMI, FULTON, AND MARSHALL COUNTIES, IN

Docket No. AB-290 (Sub-No. 168X)

NORFOLK AND WESTERN RAILWAY COMPANY--ABANDONMENT  
EXEMPTION--BETWEEN KOKOMO AND ROCHESTER IN HOWARD,  
MIAMI, AND FULTON COUNTIES, IN

Decided: April 26, 1996

By joint petition filed March 21, 1995, the Central Railroad Company of Indianapolis (CERA)<sup>2</sup> and Norfolk and Western Railway Company (N&W)<sup>3</sup> (collectively, petitioners) seek exemptions under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to permit: (a) N&W to abandon 38.4 miles of rail line between milepost I-57.2 at or near Kokomo and milepost I-95.6 at or near Rochester, in Howard, Miami, and Fulton Counties, IN;<sup>4</sup>

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This decision relates to proceedings that were pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction under 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the Act, and citations are to former sections of the statute.

<sup>2</sup> CERA is a Class III rail carrier controlled by Central Properties, Inc., which also controls The Central Railroad Company of Indiana.

<sup>3</sup> N&W is a Class I rail carrier and a wholly owned subsidiary of Norfolk Southern Railway Company.

<sup>4</sup> Indiana Hi-Rail Corporation (IHRC) has trackage rights over the 21.4-mile segment of this line between Peru (milepost I-74.2) and Rochester. See Indiana Hi-Rail Corporation--Trackage Rights Exemption--Central Railroad Company of Indianapolis, Finance Docket No. 31541 (ICC served Nov. 17, 1989). The abandonment of this segment of line, therefore, may not be consummated until IHRC obtains approval to discontinue those trackage rights. See Missouri Pac. R. Co.--Aban.--Osage, Lyon & Morris Count., KS, 9 I.C.C.2d 1228 (1993). Petitioners state that the segment of the line over which IHRC has trackage rights would not be salvaged until IHRC receives authority from the U.S. Bankruptcy Court to discontinue those rights. IHRC has filed a bankruptcy petition in the United States Bankruptcy Court for the Southern District of Indiana, No. 94-09169-RLB11. Under the Bankruptcy Code, 11 U.S.C. 1170, the court has jurisdiction over the abandonment of bankrupt railroads, and we advise the court

(continued...)

and (b) CERA to discontinue service over approximately 51.4 miles of rail line between milepost I-57.2 and milepost I-108.6 at or near Argos, in Howard, Miami, Fulton, and Marshall Counties, IN.<sup>5</sup>

The Hoosier Rails-To-Trails Council, Inc. (HRTTC), and Indiana Trails Fund, Inc. (ITF), request that we find the right-of-way to be abandoned suitable for other public use, specifically trail use, and issue a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d), and a public use condition under 49 U.S.C. 10906. N&W is willing to negotiate with HRTTC and ITF. The United Transportation Union (UTU) and the Railway Labor Executives' Association (RLEA) filed comments seeking the imposition of employee protective conditions. We will grant the exemptions, to the extent described below, subject to standard employee protective conditions and, as applicable, environmental, interim trail use/rail banking, and public use conditions.

#### DISCUSSION AND CONCLUSIONS

**Exemption.** Under 49 U.S.C. 10903-04, a rail line may not be abandoned and operations may not be discontinued without prior Board approval. Under 49 U.S.C. 10505, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power. We will exempt the entire transaction from regulation, which will permit the abandonment and discontinuance. Because IHRC still has trackage rights over the 21.4-mile segment between Peru and Rochester, N&W may not complete the abandonment process as to that portion of the line until IHRC has been authorized to discontinue service.

Detailed scrutiny of the proposed abandonment and discontinuance of service under 49 U.S.C. 10903-04 is not necessary to carry out the rail transportation policy. By allowing petitioners to avoid the expense of operating and maintaining a line that results in significant losses, and by minimizing the administrative expense of abandoning and discontinuing service over this line, the requested exemptions will expedite regulatory decisions and reduce barriers to exit [49 U.S.C. 10101a(2) and (7)], and foster sound economic conditions and encourage efficient management [49 U.S.C. 10101a(3), (5), and (10)]. Competition and the continuation of a sound rail transportation system will be preserved by ensuring that a sound rail system continues to meet the public's needs and that unnecessary regulatory expenses are avoided. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the transactions is not necessary to protect shippers from an abuse of market power. There are only two active shippers on the line. Crop Maker Soil Service, Inc. (Crop Maker), which has a facility located at Miami, IN, on the segment to be abandoned, would lose service. Crop Maker received 27 carloads of fertilizer materials in 1993, and only 7 carloads in 1994. Crop Maker has other facilities in the area that will

---

<sup>4</sup>(...continued)

whether the abandonment or discontinuance is in the public interest.

<sup>5</sup> Pursuant to lease from N&W, IHRC would continue to operate over the 13-mile segment of the line between Rochester and Argos.

and rail banking, and request the issuance of a NITU under the Trails Act for the 38.4-mile line segment to be abandoned by N&W. HRTTC and ITF each submitted a statement of willingness to assume financial responsibility for the trail in compliance with 49 CFR 1152.29(b)(2). They also request that the Board prohibit N&W from disposing of the corridor, and from removing or destroying structures such as bridges, culverts, and tunnels, other than removal of the tracks, ties and signal equipment. N&W has indicated its willingness to negotiate trail use.

While a request for interim trail use need not be filed until 10 days after the date notice of the exemptions is published in the Federal Register, the Trails Act is applicable, and the criteria for imposing interim trail use/rail banking set forth at 49 CFR 1152.29(a) have been met. Accordingly, we will grant HRTTC's and ITF's trail use requests and issue a NITU covering that portion of the line between milepost I-57.2 at or near Kokomo and milepost I-74.2 at Peru. Because the abandonment process as to the segment of the line between milepost I-74.2 at Peru, and milepost I-95.6, at or near Rochester, may not be completed until IHRC's discontinuance has been authorized, it would not be appropriate for us to issue a NITU for this segment of the line until the trackage rights have been terminated. To facilitate our action on the request for trail use, N&W must inform the trail user if and when IHRC's trackage rights are discontinued. We reserve jurisdiction to impose a trail use condition if an appropriate request is made following IHRC's discontinuance. If no trail use condition is sought within 10 days after N&W notifies the trail user of IHRC's discontinuance, then N&W may complete the abandonment process as to that portion of the line.

As to the other portion of the segment being abandoned by N&W, the parties may negotiate an agreement for the segment between milepost I-57.2 and milepost I-74.2 at Peru during the 180-day period prescribed below. If the parties reach a mutually acceptable trail use agreement, further Board approval is not necessary. If no agreement is reached within 180 days, N&W may fully abandon that segment of the line, subject to the conditions imposed here. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes, and to use of the line for continued rail service under 49 U.S.C. 10905.

Our approval of trail use and imposition of a public use condition (see infra) do not preclude other parties from filing interim trail use requests, nor preclude N&W from negotiating with other parties in addition to HRTTC and ITF during the NITU negotiation period. Under 49 CFR 1152.29(b)(2), a statement of willingness to assume financial responsibility for interim trail use must be filed within 10 days after notice of the exemptions is published in the Federal Register. If, within this period, additional trail use requests are filed, N&W must respond to them within 10 days. 49 CFR 1152.29(b)(5).

Public use. SEA indicates in its EA that the right-of-way may be suitable for other public use under 49 U.S.C. 10906 after its abandonment and the salvage of the rail line. HRTTC and ITF also seek a public use condition.<sup>7</sup> As noted above, the abandonment process as to the segment of the line between

---

<sup>7</sup> We have determined that persons who file under the Trails Act may also file for public use. When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails).

milepost I-74.2 at Peru, and milepost I-95.6, at or near Rochester; may not be completed until IHRC's discontinuance has been authorized. Therefore, we cannot impose a public use condition on this segment of the line until the trackage rights have been terminated. We will require, however, that N&W advise HRTTC and ITF when the trackage rights are about to be discontinued. HRTTC and ITF have satisfied the public use criteria for the segment of the line between mileposts I-57.2, at or near Kokomo, and I-74.2, at Peru, by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the desired duration of the condition; and (4) justification for the time sought. 49 CFR 1152.28(a)(2). A 180-day condition will be imposed on this segment of the line, commencing with the effective date of these exemptions if a new request is made after IHRC's trackage rights have been terminated. The public use negotiating period cannot extend for more than 180 days. If a trail use agreement is reached on a portion of the right-of-way before expiration of the public use condition, N&W must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. We note also that a public use condition is not imposed for the benefit of any one potential user, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. N&W need not deal exclusively with HRTTC or ITF. We will provide a period of 20 days after Federal Register publication for interested persons to request an additional or broader public use condition.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10905. Here, because we are approving the abandonment and discontinuance over the entire track segment from milepost I-57.2 to milepost I-108.6, the entire stretch of track will be subject to the section 10905 provisions. As stated in Trails, an OFA to acquire the rail line for continued rail service or to subsidize rail operations takes priority over interim trail use/rail banking and public use. Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this decision and notice will be postponed for an additional 10 days. In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail and public use may proceed.

As conditioned, the proposed abandonment and discontinuance of service will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The requests for interim trail use/rail banking under 16 U.S.C. 1247(d) are accepted.
2. Under 49 U.S.C. 10505, we exempt from the prior approval requirements of 49 U.S.C. 10903-04: (a) N&W's abandonment of that portion of the line between milepost I-57.2, at or near Kokomo, and milepost I-74.2 at Peru; (b) N&W's discontinuance of service over the segment of the line between milepost I-74.2, at Peru, and milepost I-95.6, at or near Rochester, and abandonment of this line segment, provided that the abandonment process as to this segment may not be completed until IHRC's discontinuance of its trackage rights has been authorized; and (c) CERA's discontinuance of service over 51.4 miles of rail line between milepost I-57.2, at or near Kokomo, and milepost I-108.6, at or

near Argos, in Howard, Miami, Fulton, and Marshall Counties, IN, subject to, in (a), (b), and (c), the employee protective measures in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979). Further, the abandonment exemption granted in (a) and (b) above is subject to the following additional conditions: (1) that N&W leave intact the right-of-way underlying the track, including bridges, culverts, tunnels, and similar structures for a period of 180 days from the effective date of this exemption to enable HRTTC, ITF, and any other interested persons to negotiate the acquisition of the right-of-way for public use; (2) that N&W comply with the terms and conditions for implementing trail use/rail banking, set forth below; (3) that N&W consult with USFWS' Bloomfield Office on its salvage plans prior to engaging in any salvage activities and report to SEA on the results of this consultation; (4) that N&W avoid placing any material or allowing any contaminants within wetlands or streams, or placing any material in a manner that will allow it eventually to fall or erode into wetlands or streams; and (5) that, between April 15 and September 15, N&W not remove any trees during its salvage operations in order to avoid the reproductive season of the Indiana bat and the bald eagle. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period noted above, the public use condition will expire to the extent the trail use agreement covers the same line segment.

3. Subject to the conditions set forth above, N&W and CERA, respectively, may abandon and discontinue service over the line described above, and cancel tariffs for the line, if any, on not less than 10 days' notice to the Board. N&W may salvage track and track materials on the abandoned segments after the effective date of this decision and notice, provided that the abandonment process as to the line segment described in (b) above may not be completed until IHRC's discontinuance of its trackage rights has been authorized. Tariff cancellations must refer to this decision by date and docket numbers.

4. If an interim trail use/rail banking agreement is reached for the line segment described in (a) above, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad from any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If an agreement for interim trail use/rail banking for the line segment described in (a) above is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, N&W may fully abandon that line segment, provided the conditions imposed in this proceeding are met.

6. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. N&W must inform the HRTTC and ITF if and when IHRC's trackage rights over the line segment described in paragraph 2(b) above are discontinued. If and when we are so notified, and another request for a public use condition or NITU is made, we will impose a public use condition and/or issue a NITU for that line segment if the requirements of 49 CFR 1152.28 and 1152.29 are met.

8. CERA and N&W are directed to serve a copy of this decision and notice on Crop Maker within 5 days of this decision's service date and certify to the Board that they have done so.

9. Notice will be published in the Federal Register on May 14, 1996.

10. This exemption will be effective on June 13, 1996, unless stayed or a formal expression of intent to file an OFA is filed.

11. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)<sup>6</sup> and requests for a NITU/rail banking under 49 CFR 1152.29 must be filed by May 24, 1996. Petitions to stay must be filed by May 29, 1996. Requests for a public use condition must be filed by June 3, 1996. Petitions for reopening must be filed by June 10, 1996.

12. If a formal expression of intent to file an OFA has been timely filed, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10905 and 49 CFR 1152.27(c)(2).

13. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope : "Office of Proceedings, AB-OFA."

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams  
Secretary

---

<sup>6</sup> See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

## EXHIBIT B

34485  
DO

SERVICE DATE - MARCH 10, 2004

### SURFACE TRANSPORTATION BOARD

#### DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-290 (Sub-No. 168X)

#### NORFOLK AND WESTERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—BETWEEN KOKOMO AND ROCHESTER IN HOWARD, MIAMI, AND FULTON COUNTIES, IN

Decided: March 8, 2004

By decision and notice of interim trail use or abandonment (NITU) served on May 14, 1996,<sup>1</sup> the Board granted Norfolk and Western Railway Company (N&W) and Central Railroad Company of Indianapolis (CERA) an exemption under former 49 U.S.C. 10505 from the prior approval requirements of former 49 U.S.C. 10903-04 for Norfolk Southern Railway Company (NSR)<sup>2</sup> to abandon 38.4 miles of rail line between milepost I-57.2 at or near Kokomo and milepost I-95.6 at or near Rochester, in Howard, Miami, and Fulton Counties, IN,<sup>3</sup> and for CERA to discontinue service over approximately 51.4 miles of rail line between milepost I-57.2 and milepost I-108.6 at or near Argos, in Howard, Miami, Fulton, and Marshall Counties, IN. In the May 14 decision and notice, the Hoosier Rails-To-Trails Council, Inc.'s and Indiana Trails Fund, Inc.'s (ITF) request for the issuance of a NITU for 38.4 miles of the line segment to be abandoned was authorized only for the line segment between milepost I-57.2 at or near Kokomo and milepost I-74.2 at Peru. The Board stated that, because the abandonment process as to the segment of the line between milepost I-74.2 and milepost I-95.6 could not be completed until IHRC's discontinuance of its trackage rights was authorized, it would not be appropriate for the Board to issue a NITU for that portion of the line. The Board further stated that, to facilitate its action on the request for trail use, NSR must inform the trail user if and when IHRC's trackage

---

<sup>1</sup> The May 14 decision and notice also embraced Docket No. AB-289 (Sub-No. 3X), Central Railroad Company of Indianapolis—Discontinuance of Service Exemption—Between Kokomo and Argos in Howard, Miami, Fulton, and Marshall Counties, IN.

<sup>2</sup> Effective September 1, 1998, NSR, through merger, became the successor to N&W. See Norfolk Southern Railway Company—Merger Exemption—Norfolk and Western Railway Company, STB Finance Docket No. 33648 (STB served Aug. 31, 1998).

<sup>3</sup> Indiana Hi-Rail Corporation (IHRC) had trackage rights over a 21.4-mile segment of the line between Peru (milepost I-74.2) and Rochester. IHRC had been operating as a Chapter 11 debtor under the jurisdiction of the United States Bankruptcy Court for the Southern District of Indiana. IHRC filed its bankruptcy petition in In Re: Sagamore National Corporation and Indiana Hi-Rail Corporation, Case No. IP94-08502-RLB-11.

rights were discontinued. The Board reserved jurisdiction to impose a trail use condition if an appropriate request were made following IHRC's discontinuance.

On February 17, 2004, ITF filed a request for a NITU under 16 U.S.C. 1247(d) and 49 CFR 1152.29 for the portion of the line between milepost I-75.5 near Peru and milepost I-95.6 at or near Rochester. ITF submitted a statement indicating its willingness to assume full responsibility for management of, for any legal liability arising out of the transfer of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. By letter filed on February 20, 2004, NSR indicates its support for a NITU for the line segment.

NSR states that it notified the trail user of the discontinuance of the trackage rights, did not consummate the abandonment, except for a short segment of the line between I-74.2 and I-75.5, and negotiated a trail use agreement with ITF. NSR conveyed 34.2 miles of the line to ITF by three deeds dated January 21, 1999. NSR states that, although the parties otherwise proceeded in accordance with the terms of the Board's May 14 decision and notice, and the Board was advised of the United States Bankruptcy Court's approval of the IHRC Amended Plan of Reorganization providing for the discontinuance of IHRC's trackage rights, no formal request to issue a NITU for the line segment between milepost I-75.5 and milepost I-95.6 was made in this proceeding. ITF, supported by NSR, now requests that this technical defect in the proceeding be remedied. NSR asserts that, because it negotiated an interim trail use agreement with ITF soon after the bankruptcy reorganization plan and the discontinuance of IHRC's trackage rights had been implemented and confirmed, there was no break in the continuity of the trail use negotiations or period of time where NSR acted with an intent to abandon the subject segment of the line.

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way<sup>4</sup> and the carrier is willing to enter into negotiations. Inasmuch as NSR has not consummated the abandonment of the subject portion of the line and is willing to negotiate for trail use, a NITU will be issued under 49 CFR 1152.29 for the portion of the right-of-way between milepost I-75.5 near Peru and milepost I-95.6 at or near Rochester. The parties may, during the 180-day period described below, negotiate an agreement or confirm an agreement previously reached. If the parties reach a mutually acceptable final agreement, further Board

---

<sup>4</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company—Exemption—Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri—Kansas—Texas Railroad Company—Abandonment—In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

approval will not be necessary. If no agreement is reached within 180 days, NSR may fully abandon the line segment. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. ITF's late-filed request for a NITU under 16 U.S.C. 1247(d) is accepted.
3. Upon reconsideration, the decision and notice served on May 14, 1996, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for the portion of the line extending between milepost I-75.5 near Peru and milepost I-95.6 at or near Rochester, for a period of 180 days from the service date of this decision and notice (until September 6, 2004).
4. If an interim trail use/rail banking agreement is reached as to that portion of the right-of-way between milepost I-75.5 near Peru and milepost I-95.6, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. If an agreement for interim trail use/rail banking is reached by September 6, 2004, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon that portion of the line. See 49 CFR 1152.29(d)(1).

Docket No. AB-290 (Sub-No. 168X)

8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

9934005433

HOWARD COUNTY RECORDER

99 MAR 22 AM 8:10

EXHIBIT C

**QUITCLAIM DEED OF  
BARGAIN SALE AND DONATION**

THIS INDENTURE WITNESSETH, that the Grantor/Donor, NORFOLK SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, having its principal office in Norfolk, Virginia, for and in consideration of the public good and to promote the welfare of the citizens of the State of Indiana, and other valuable considerations, in hand paid, and pursuant to authority given by the Board of Directors of said corporation, DONATES and QUITCLAIMS, without warranty of title, and pursuant to Section 8(d) of the National Trails System Act, 16. U.S.C. § 1247(d) and orders of the Interstate Commerce Commission and the Surface Transportation Board pursuant thereto in the proceeding whose docket number is AB-290 (Sub-No. 168X), unto INDIANA TRAILS FUND, INC., a nonprofit corporation organized and existing under the laws of the State of Indiana, whose tax mailing address is 47 So. Pennsylvania St #403/P.O. Box 402  
INDIANAPOLIS IN 46206-0402 its successors and assigns, Grantee/Donee, all of its interest in the following described Real

Estate situated in the County of Howard, State of Indiana, to-wit:

All that strip, piece or parcel of land situate, lying and being in the West Half of Section 6, Township 24 North, Range 4 East, Howard County, Indiana, being a portion of the former Norfolk and Western Railway Company's right of way for its main track (now abandoned) as it ran between Indianapolis and Michigan City, Indiana, being bounded on the north by the common line between Howard County and Miami County, Indiana, and being bounded on the south by a line normal to the original centerline of said main track at Railroad Valuation Station 3088+80, and being more particularly described as follows:

Beginning at a point, said point being the intersection of said original centerline of main track and said common line between Howard County and Miami County, Indiana, said point being located at Railroad Valuation Station 3137+90.4 (approximate Milepost 59.4), more or less, and also being the TRUE POINT OF BEGINNING for the herein described strip of land; thence, in a general

DULY ENTERED FOR TAXATION

MAR 19 1999

*Martha J. Lake*  
ATTORNEY GENERAL OF IN

southwardly direction with a strip of land of varying width a distance of 4,910 feet, more or less, to aforesaid point located at Railway Valuation Station 3088+80 (Milepost 58.5), said point being the POINT OF ENDING for the herein described strip of land. Said strip contains 8.0 acres of land, more or less, and is located substantially as shown on sheet 1 of 21 sheets of Drawing Number RD-1998-32, dated March 20, 1998, revised December 10, 1998, attached hereto and made a part hereof.

RESERVING unto Grantor/Donor the right to utilize so much of the above-described premises as is presently occupied by railroad tracks owned by Grantor/Donor. Grantor/Donor further reserves to itself, its successors and assigns, all right, title and interest in said railroad tracks and to rails, ties, ballast and appurtenances thereto located upon the above-described premises, together with the right of ingress to and egress from said above-described land for the purpose of removing said railroad tracks, rails, ties, ballast and appurtenances thereto.

SUBJECT, however, to any conditions, restrictions, reservations, licenses or leases as may appear of record or be apparent by an inspection of the premises.

IN WITNESS WHEREOF, NORFOLK SOUTHERN RAILWAY COMPANY has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed this 21<sup>st</sup> day of January, 19 99.

ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY



*[Signature]*  
Assistant Secretary

*[Signature]*  
By P.V. Baker  
Real Estate Manager

STATE OF GEORGIA )  
 ) SS:  
COUNTY OF FULTON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named C.V. Baker and Mary Ann Breazeale known to me to be the Real Estate Manager and Assistant Secretary, respectively, of Norfolk Southern Railway Company, a corporation, and acknowledged the execution of the foregoing deed for and in the name of and on behalf of said corporation as their free and voluntary act and deed and as the voluntary act and deed of said corporation.

WITNESS my hand and seal, this 21<sup>st</sup> day of January, 19 99.

My commission expires Notary Public, Fayette County, Georgia  
My Commission Expires May 21, 2002.

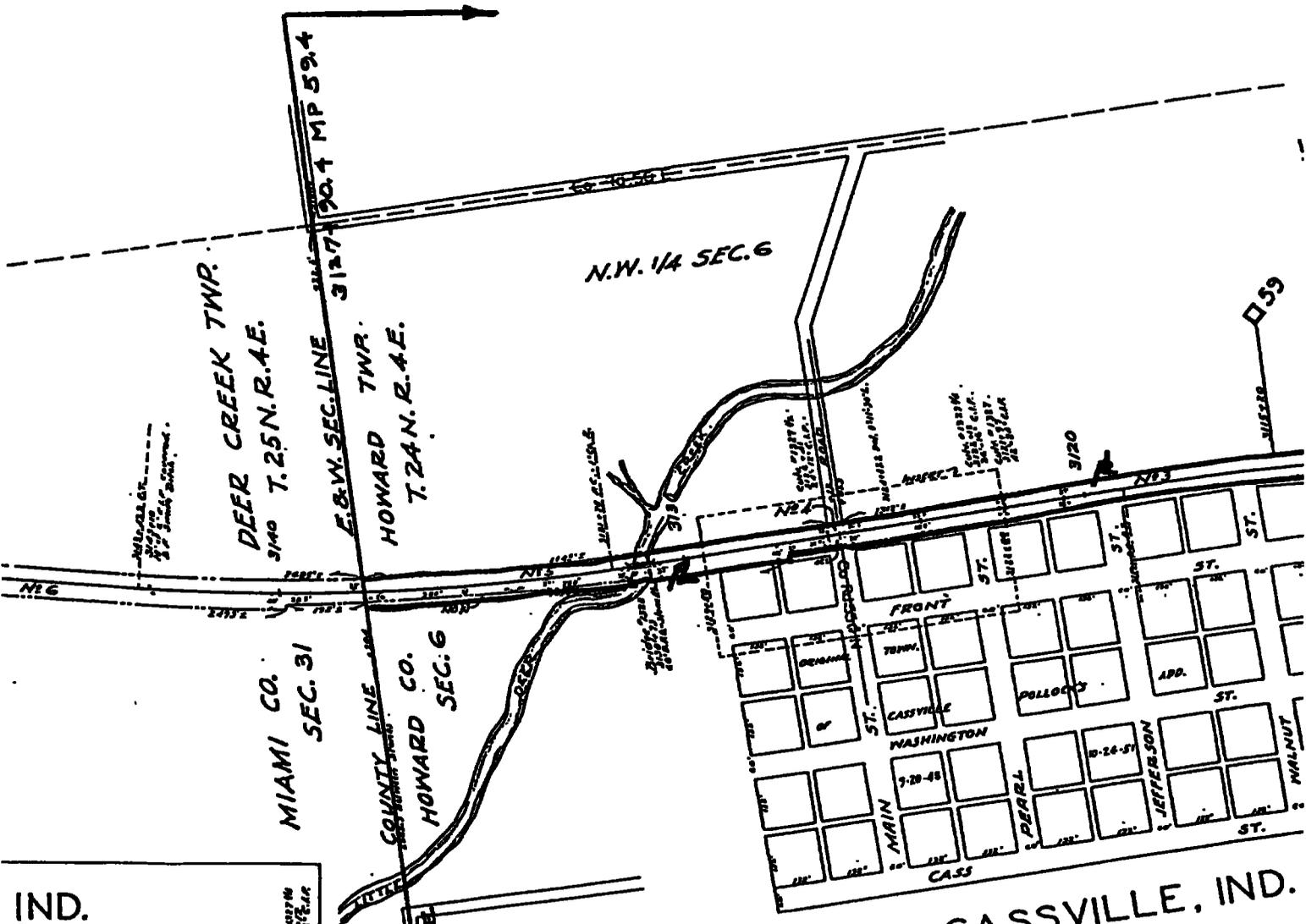
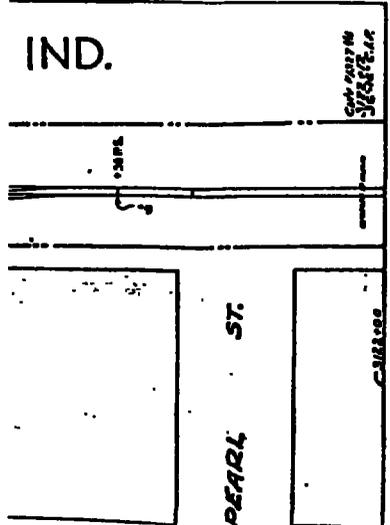
Sheron W. Mull  
Notary Public



This instrument prepared by:

Kimber M. Culpepper  
Attorney at Law  
Norfolk Southern Corporation  
One Georgia Center - Suite 1702  
600 West Peachtree Street, NW  
Atlanta, Georgia 30308-3603

KMC:yp  
1006321.bsd  
INQCD.W61  
12/15/98



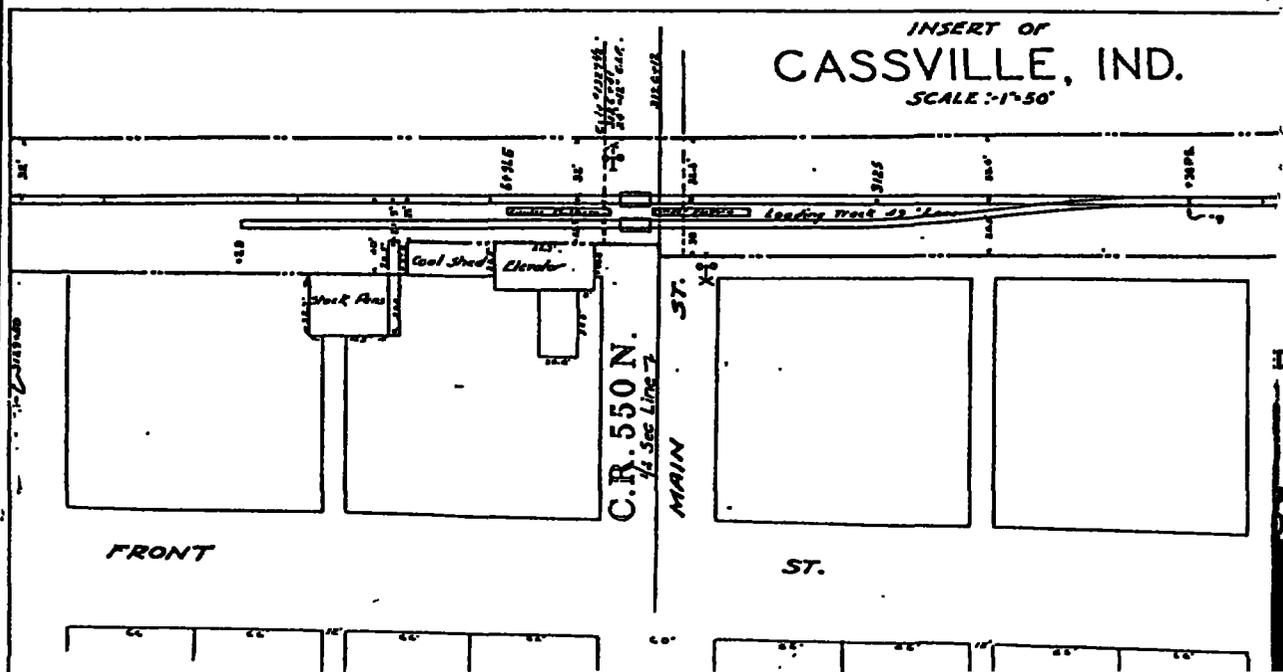
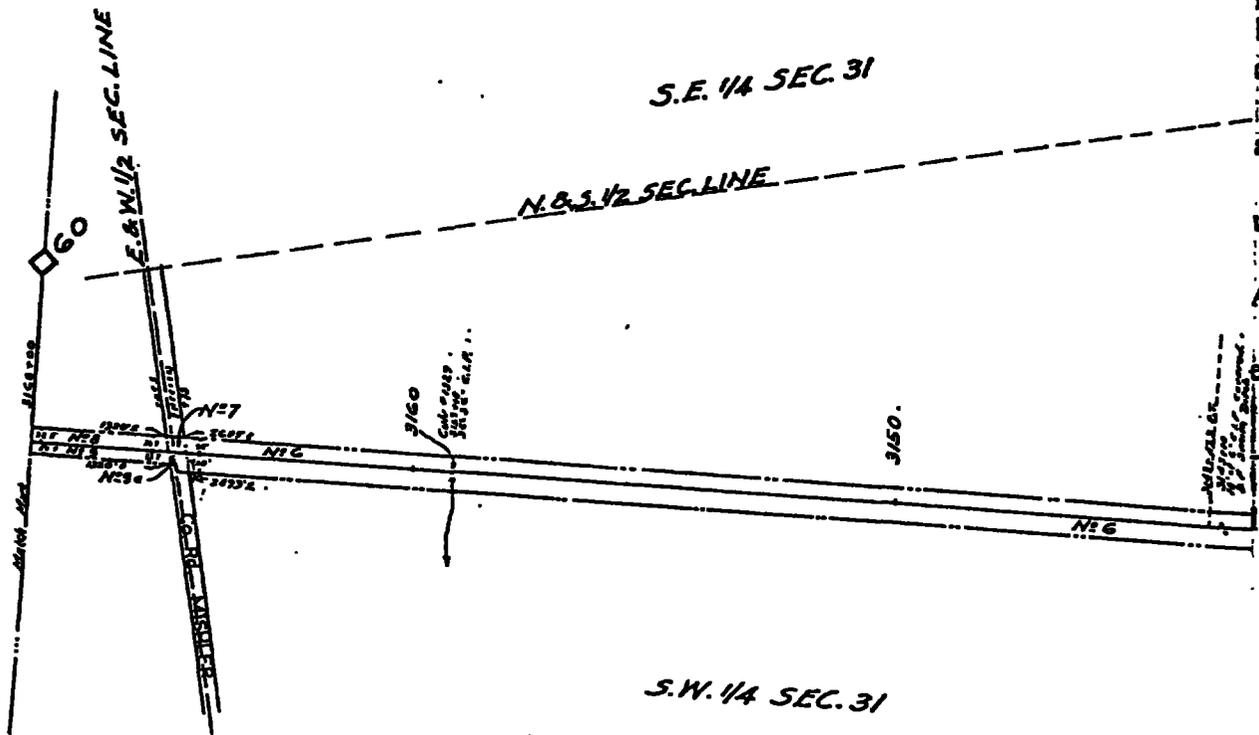


ERN

y the  
of  
and  
uant  
A

e State

Box 40  
06-04



D FOR TAXATIC

9 1999

J. Lake  
WARD CO. IN

DULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

EXHIBIT D

Mo Mar Day 19, 1999

Auditor Miami Co

QUITCLAIM DEED OF  
BARGAIN SALE AND DONATION

*Karen Jange Mym*  
015-10000-00  
012-10000-00

019-10000-00 001-10000-00  
019-36813-00

THIS INDENTURE WITNESSETH, that the Grantor/Donor, NORFOLK SOUTHERN

RAILWAY COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, having its principal office in Norfolk, Virginia, for and in consideration of the public good and to promote the welfare of the citizens of the State of Indiana, and other valuable considerations, in hand paid, and pursuant to authority given by the Board of Directors of said corporation, DONATES and QUITCLAIMS, without warranty of title, and pursuant to Section 8(d) of the National Trails System Act, 16. U.S.C. § 1247(d) and orders of the Interstate Commerce Commission and the Surface Transportation Board pursuant thereto in the proceeding whose docket number is AB-290 (Sub-No. 168X), unto INDIANA

TRAILS FUND, INC., a nonprofit corporation organized and existing under the laws of the State of Indiana, whose tax mailing address is *47 So. Pennsylv/venia St #403 / PO Box 402*

*INDIANAPOLIS IN 46206-0402*  
its successors and assigns, Grantee/Donee, all of its interest in the following described Real

Estate situated in the County of Miami, State of Indiana, to-wit:

PARCEL 1

All that strip, piece or parcel of land situate, lying and being in the West Half and the Northeast Quarter of Section 31, the East Half of Section 30, the East Half of Section 19, the Southeast Quarter of Section 18, the West Half of Section 17, the West Half of Section 8, the West Half and the Northeast Quarter of Section 5, Township 25 North, Range 4 East; also, all of Section 32, all of Section 29, the West Half and the Southeast Quarter of Section 20, the West Half of Section 17, the South Half and the Northeast Quarter of Section 8, and the East Half of Section 5, Township 26 North, Range 4 East, Godfrey Reserve, and a portion of Richardsville Reserve, Township 27 North, Range 4 East; being a portion of the former Norfolk and Western Railway Company's right of way for its main track (now abandoned) as it ran between Indianapolis and Michigan City, Indiana,

INDEXED

MIAMI COUNTY RECORDER  
BRENDA DEEVER  
VALIDATION:  
SRP Reg. Date 03/19/99 Time 14:50  
I 73783 D 196/ 980

being bounded on the south by the common line between Howard County and Miami County, Indiana, and being bounded on the north by the now or former west corporation line of the City of Peru, crossing the original centerline of said main track at Railroad Valuation Station 3836+20, more or less, and being more particularly described as follows:

Beginning at a point, said point being the intersection of said original centerline of main track and said common line between Howard County and Miami County, Indiana, being located at Railroad Valuation Station 3137+90.4 (approximate Milepost 59.4), more or less, and also being the TRUE POINT OF BEGINNING for the herein described strip of land; thence, in a general northwardly direction with a strip of land of varying width a distance of 69,829.6 feet, more or less, to a point on aforesaid west corporation line at Railroad Valuation Station 3836+20 (approximate Milepost 72.7), more or less, said point being THE POINT OF ENDING for the herein described strip of land.

Said strip contains 96 acres of land, more or less, and is located substantially as shown on sheets 2 through 10 of 21 sheets of Drawing Number RD-1998-32, revised December 10, 1998, attached hereto and made a part hereof.

PARCEL 2

All that strip, piece or parcel of land situate, lying and being in the Northwest Quarter of Section 22, the Southwest Quarter of Section 15, the East Half of Section 16, the East Half of Section 9, the Southeast Quarter of Section 4 and the West Half of Section 3, Township 27 North, Range 4 East; also, the South Half and the Northeast Quarter of Section 34, the West Half and the Southeast Quarter of Section 27, the Southwest Quarter of Section 22, the East Half of Section 21, the South Half and the Northwest Quarter of Section 16, the West Half of Section 9, the East Half of Section 8 and the East Half of Section 5, Township 28 North, Range 4 East; also, the East Half of Section 32, the West Half and the Southeast Quarter of Section 29, the Southwest Quarter of Section 20, the East Half of Section 19, the West Half and the Southeast Quarter of Section 18, Township 29 North, Range 4 East; also, the Northeast Quarter of Section 13, the East Half and the Northwest Quarter of Section 12, the West Half of Section 1 and the East Half of Section 2, Township 29 North, Range 3 East, being a portion of the former Norfolk and Western Railway Company's right of way for its main track (now abandoned) as it ran between Indianapolis and Michigan City, Indiana, being bounded on the north by the common line between Fulton County and Miami County, Indiana, and being bounded on the south by the centerline of Lovers Lane, and being more particularly described as follows:

Beginning at a point, said point being the intersection of the original centerline of said main track and said common line between Fulton County and Miami County, Indiana, located at Railroad Valuation Station 4859+16.8 (approximate Milepost 92.1), more or less, and also being the TRUE POINT OF BEGINNING for the herein described strip of land; thence, in a general southwardly direction with a strip of land of varying width a distance of 87,262 feet, more or less, to aforesaid point on the centerline of Lovers Lane, said point being located at Railroad Valuation Station 3986+55 (approximate Milepost 75.5), more or less, and being the POINT OF ENDING for the herein described strip of land.

Said strip contains 177 acres of land, more or less, and is located substantially as shown on sheets 11 through 19 of 21 sheets of Drawing Number RD-1998-32, revised December 10, 1998, attached hereto and made a part hereof.

RESERVING unto Grantor/Donor the right to utilize so much of the above-described premises as is presently occupied by railroad tracks owned by Grantor/Donor. Grantor/Donor further reserves to itself, its successors and assigns, all right, title and interest in said railroad tracks and to rails, ties, ballast and appurtenances thereto located upon the above-described premises, together with the right of ingress to and egress from said above-described land for the purpose of removing said railroad tracks, rails, ties, ballast and appurtenances thereto.

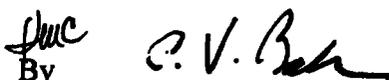
SUBJECT, however, to any conditions, restrictions, reservations, licenses or leases as may appear of record or be apparent by an inspection of the premises.

IN WITNESS WHEREOF, NORFOLK SOUTHERN RAILWAY COMPANY has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed this 21<sup>st</sup> day of January, 1999.

ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY

  
Assistant Secretary

  
By \_\_\_\_\_  
Real Estate Manager



STATE OF GEORGIA )  
 ) SS:  
COUNTY OF FULTON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named C.V. Baker and Mary Ann Breazeale known to me to be the Real Estate Manager and Assistant Secretary, respectively, of Norfolk Southern Railway Company, a corporation, and acknowledged the execution of the foregoing deed for and in the name of and on behalf of said corporation as their free and voluntary act and deed and as the voluntary act and deed of said corporation.

WITNESS my hand and seal, this 21<sup>st</sup> day of January, 1999.

My commission expires, Notary Public, Fayette County, Georgia  
My Commission Expires May 21, 2002

Sheron W. M. [Signature]  
Notary Public



This instrument prepared by:

Kimber M. Culpepper  
Attorney at Law  
Norfolk Southern Corporation  
One Georgia Center - Suite 1702  
600 West Peachtree Street, NW  
Atlanta, Georgia 30308-3603

KMC:yp  
1006321a.bsd  
INQCD.W61  
12/15/98;Rev. 12/22/98

COPIES ENTERED FOR TAXATION SUBJECT  
TO FINAL ACCEPTANCE FOR TRANSFER

MAR 19 1999

*Judith A. Reed*  
AUDITOR FULTON COUNTY, INDIANA

**EXHIBIT E**

SUSAN CARR 03/19/99  
FULTON COUNTY RECORDER 12:28  
CCG Fee: 14.00  
I 9901280 Page 1 of 3

**QUITCLAIM DEED OF  
BARGAIN SALE AND DONATION**

THIS INDENTURE WITNESSETH, that the Grantor/Donor, NORFOLK SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, having its principal office in Norfolk, Virginia, for and in consideration of the public good and to promote the welfare of the citizens of the State of Indiana, and other valuable considerations, in hand paid, and pursuant to authority given by the Board of Directors of said corporation, DONATES and QUITCLAIMS, without warranty of title, and pursuant to Section 8(d) of the National Trails System Act, 16. U.S.C. § 1247(d) and orders of the Interstate Commerce Commission and the Surface Transportation Board pursuant thereto in the proceeding whose docket number is AB-290 (Sub-No. 168X), unto INDIANA TRAILS FUND, INC., a nonprofit corporation organized and existing under the laws of the State of Indiana, whose tax mailing address is 47 So. Pennsylvania St #403 / PO Box 402  
INDIANAPOLIS IND / 46206-0402  
its successors and assigns, Grantee/Donee, all of its interest in the following described Real

Estate situated in the County of Fulton, State of Indiana, to-wit:

All that strip, piece or parcel of land situate, lying and being in the South Half and Northwest Quarter of Section 35, the Southwest Quarter of Section 26, the East Half and the Northwest Quarter of Section 27, the West Half of Section 22 and the Northeast Quarter of Section 21, Township 30 North, Range 3 East, being a portion of the right of way for former Norfolk and Western Railway Company's main track (now abandoned) as it ran between Indianapolis and Michigan City, Indiana, being bounded on the south by the common line between Miami County and Fulton County, Indiana, and being bounded on the north by the southerly line of Section 16 in Township 30 North, Range 3 East located at Railroad Valuation Station 5044+92.8 (approximate Milepost 95.6), more or less, and being more particularly described as follows:

Beginning at a point, said point being the intersection of the original centerline of main track and said common line between Fulton County and Miami County,

Indiana, located at Railroad Valuation Station 4859+16.8 (approximate Milepost 92.1), more or less, and also being the TRUE POINT OF BEGINNING for the herein described strip of land; thence, in a general northwardly direction, with a strip of land of varying width a distance of 18,576 feet, more or less, to a point on aforesaid southerly line of Section 16 located at Railroad Valuation Station 5044+92.8 (approximate Milepost 95.6), more or less, and being the POINT OF ENDING for the herein described strip of land.

Said strip contains 28 acres of land, more or less, and is located substantially as shown on sheets 20 and 21 of 21 sheets of Drawing Number RD-1998-32, revised December 10, 1998, attached hereto and made a part hereof.

RESERVING unto Grantor/Donor the right to utilize so much of the above-described premises as is presently occupied by railroad tracks owned by Grantor/Donor. Grantor/Donor further reserves to itself, its successors and assigns, all right, title and interest in said railroad tracks and to rails, ties, ballast and appurtenances thereto located upon the above-described premises, together with the right of ingress to and egress from said above-described land for the purpose of removing said railroad tracks, rails, ties, ballast and appurtenances thereto.

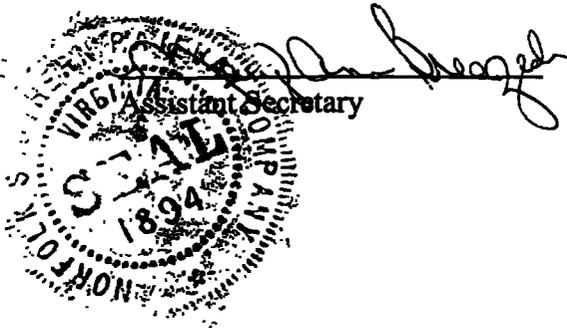
SUBJECT, however, to any conditions, restrictions, reservations, licenses or leases as may appear of record or be apparent by an inspection of the premises.

IN WITNESS WHEREOF, NORFOLK SOUTHERN RAILWAY COMPANY has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed

this 25<sup>th</sup> day of January, 1999.

ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY



By C.V. [Signature]  
Real Estate Manager

STATE OF GEORGIA )  
COUNTY OF FULTON )

SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named C.V. Baker and MaryAnn Breazeale known to me to be the Real Estate Manager and Assistant Secretary, respectively, of Norfolk Southern Railway Company, a corporation, and acknowledged the execution of the foregoing deed for and in the name of and on behalf of said corporation as their free and voluntary act and deed and as the voluntary act and deed of said corporation.

WITNESS my hand and seal, this 21<sup>st</sup> day of January, 1999.

My commission expires Notary Public, Fayette County, Georgia  
My Commission Expires May 21, 2002

Sheron W. Mills  
Notary Public



This instrument prepared by:

Kimber M. Culpepper  
Attorney at Law  
Norfolk Southern Corporation  
One Georgia Center - Suite 1702  
600 West Peachtree Street, NW  
Atlanta, Georgia 30308-3603

KMC:yp  
1006321b.bsd  
INQCD.W61  
12/15/98

## **EXHIBIT F**

### **AGREEMENT AND CONSENT TO ASSIGNMENT OF INTEREST IN TRAIL AND OF TRAIL MANAGEMENT**

This Agreement and Consent ("Agreement") is by and among Norfolk Southern Railway Company ("NSR"), a Virginia corporation, Indiana Trails Fund, Inc. ("ITF"), an Indiana corporation and Nickel Plate Trail, Inc. ("NPT"), an Indiana corporation, effective on the latest date shown below the signatures at the end of this Agreement.

WHEREAS, NSR and ITF agreed upon NSR's conveyance of 14.2 miles of railroad right-of-way between mileposts I-58.5 at Kokomo, IN and I-72.7 at Peru, IN (southern segment) and of 20.1 miles of railroad right-of-way between mileposts I-75.5 at Peru, IN and I-95.6 at Rochester, IN (northern segment) to ITF on August 31, 1998, and ITF acquired those portions of right-of-way from NSR in January 1999 for interim trail use, pursuant to the provisions of the National Trail Systems Act, 16 U.S.C. 1247(d) and the Surface Transportation Board's ("STB") regulations at 49 CFR 1152.29, in accordance with Notices of Interim Trail Use served by the STB in STB Docket No. AB-290 (Sub-No. 168X), Norfolk and Western Railway Company - Abandonment Exemption - Between Kokomo and Rochester in Howard, Miami and Fulton Counties, IN;

WHEREAS, ITF desires to convey the rights-of-way to NPT for continued interim trail use under the provisions of the National Trail Systems Act and to transfer its rights, duties and responsibilities as trail manager to NPT;

WHEREAS, NPT wishes to acquire the rights-of-way for interim trail use subject to the covenants in the deeds and the requirements of the National Trail Systems Act and to be substituted for ITF as the trail sponsor and manager;

WHEREAS, NSR is willing to consent to the changes in the responsibility for and management of the interim trail and to support ITF's and NPT's request to the STB for approval of NPT's substitution for ITF as the trail sponsor and manager upon NPT's acknowledgment and agreement that after transfer of the rights-of-way and trail management responsibilities, NPT shall be bound by all the covenants in NSR's deeds to ITF and to all the responsibilities required of interim trail sponsors and managers under the National Trail Systems Act;

NOW THEREFORE, premises considered, for good and valuable considerations acknowledged by each of the parties to this Agreement and in consideration of the promises and conditions contained herein, the parties hereby agree and undertake as follows:

1. NPT acknowledges and agrees that upon transfer of the rights-of-way from ITF to NPT, NPT shall be bound by all the covenants in NSR's deeds of the rights-of-way to ITF and by all the requirements and responsibilities of interim trail sponsors and managers under the National Trail Systems Act and any other applicable federal, state,

county or local statutes, laws, ordinances, regulations, orders or decisions, if any.

2. NPT acknowledges and agrees that all the covenants in NSR's deeds to ITF are covenants that run with the land and are not personal covenants.

3. NPT agrees that if in the future NPT desires to convey the rights-of-way or any parts of them to a third party or to have a third party substituted for NPT as trail sponsor or trail manager or both for the interim trail on all or any parts of the rights-of-way, NPT shall notify NSR and the parties shall enter into an agreement and consent with like terms and conditions to this Agreement before the parties request that the STB approve the substitution of the third party for NPT as trail sponsor or trail manager.

4. NSR consents to and will support the request by ITF and NPT to the STB for approval to substitute NPT for ITF as interim trail sponsor and trail manager under the National Trail Systems Act for the subject rights-of-way, pursuant to applicable STB regulations.

5. The parties to this Agreement are independent contractors and are not agents, contractors, partners, joint venturers or employees of each other or any one party of any other party. None of the parties assumes or admits any duty, responsibility or liability not specifically stated herein by entering into this Agreement.

6. This Agreement shall be binding on and inure to the benefit of the parties hereto, their successors in interest and assigns, but this Agreement is for the sole benefit of the parties to this Agreement and is not intended to create a benefit in favor of any individual, corporation, business entity, limited liability company, partnership, joint venture, organization, association, governmental entity, body or authority or of any other person or party that is not a party to this Agreement.

7. Each of the parties to this Agreement represents and warrants that its representative is authorized to execute this Agreement and to bind that party hereto.

8. This Agreement represents and contains the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement. This Agreement and the promises, obligations, provisions, terms and conditions hereof may not be amended, modified or waived except by a written agreement signed by an authorized representative of the Parties or by a writing signed by the Party against whom enforcement of any modification, amendment or waiver is sought or may be sought to be enforced.

9. No omission or delay by any party in enforcing any right or remedy or in requiring performance of any of the terms of this Agreement shall constitute or be deemed to constitute a waiver of any such right or remedy, nor shall it in any way affect the right of either party to enforce or to seek enforcement of such provisions thereafter unless such right or remedy is specifically waived in writing. No single or partial

exercise of any right or remedy hereunder shall preclude any other or further exercise of any right or remedy. Any waiver made by any party shall apply only to the specific instance described by the writing constituting the waiver.

10. In entering into this Agreement, the Parties each acknowledge and represent that they have sought and obtained the legal advice of their attorneys, who are the attorneys of their own choice. They further represent that the terms of this Agreement have been completely read by them, and that those terms are fully understood and voluntarily accepted by them.

11. This Agreement shall be effective upon the date written below by the party which last executes the Agreement.

12. Except to the extent this Agreement is governed by the provisions of any federal law, this Agreement shall be governed by the laws of the State of Indiana.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

In Witness Whereof, the Parties have executed this Agreement through their authorized representatives on the dates shown below.

Witness: [Signature] NORFOLK SOUTHERN RAILWAY COMPANY

By: [Signature]  
Print Name: James R Paschal  
Title: Senior General Attorney  
Date: May 22, 2009

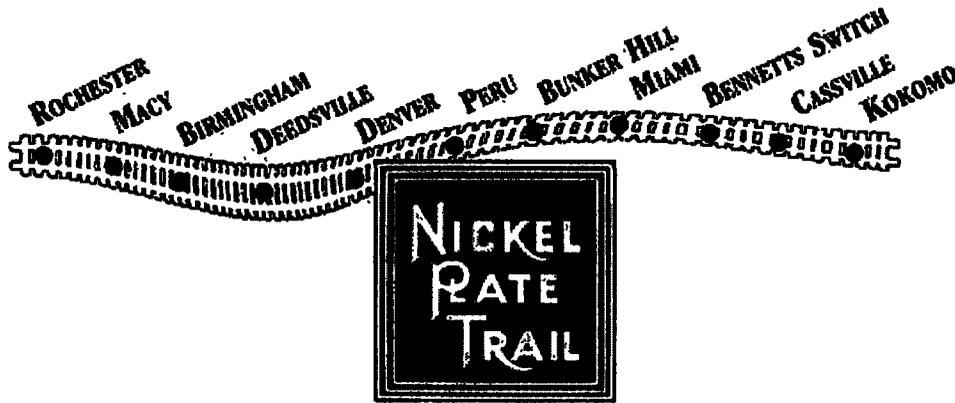
Witness: [Signature] NICKEL PLATE TRAIL, INC.

By: [Signature]  
Print Name: Michael Kuepper  
Title: President NPT  
Date: May 27 2009

Witness: [Signature] INDIANA TRAILS FUND, INC.

By: [Signature]  
Print Name: Richard Volneggut  
Title: President  
Date: 1 June 2009

EXHIBIT G



**NICKEL PLATE TRAIL, INC.**

**P. O. BOX 875, 206 NORTH CASS STREET, PERU, INDIANA 46970  
(765) 473-5586 x 224, FAX (765) 472-7247, MIKE@KFAVOR.COM**

June 4, 2009

Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
Mercury Building  
395 E Street, S. W.  
Washington, DC 20423-0001

**RE: Petition to Transfer Holder of Notice of Interim Trail Use/Trail Manager/Responsible Party Status for the Nickel Plate Trail (the Former Norfolk Southern Railway/Norfolk & Western Railway); Status Granted in STB Docket No. AB-290 (Sub-No. 168X), Norfolk and Western Railway Company - Abandonment Exemption - Between Kokomo and Rochester in Howard, Miami, and Fulton Counties, Indiana**

Dear Ms. Quinlan:

This letter is filed on behalf of the Nickel Plate Trail, Incorporated (hereinafter "proponent or NPT"), which is an Indiana not-for-profit corporation interested in developing the former right-of-way of the Norfolk and Western Railway Company (N&W) (which was once known as the Nickel Plate Railroad) to promote walking, bicycling, and other outdoor activities. Said right-of-way in Docket No. AB-290 (Sub-No. 168X) was by decision and notice of interim trail use or abandonment ("NITU") granted to the Indiana Trails Fund, Incorporated ("ITF") preserved for rail banking/interim trail use, and for public use subject to environmental and employee protective conditions, and conditions requested by the ITF under the National Trails System Act, 16 U.S.C. § 1247(d). Said exemption under former 49 U.S.C. § 10505 from the prior approval requirements of former 49 U.S.C. § 10903-04 related to the petition for abandonment of the corridor Nickel Plate Railroad owned by the Norfolk and Western Railway Company (now Norfolk Southern Railway Company) for 38.4 miles of rail line between Milepost I-57.2 at or

near Kokomo in Howard County and Milepost I-95.6 at or near Rochester in Fulton County and discontinuance of service by the Central Railroad Company of Indianapolis (CERA) over 51.4 miles between Milepost I-57.2 in Howard County and Milepost I-108.6 in Marshall County (embraced STB Docket No. AB-289 (Sub-No. 3X) regarding CERA's discontinuance of service). The NITU was issued for the right-of-way between Milepost I-57.2 at or near Kokomo in Howard County and Milepost I-74.2 at Peru, in Miami County, Indiana, a distance of 17 miles, and Milepost 75.5 at Peru, in Miami County, Indiana, and Milepost I-95.6 at or near Rochester, in Fulton County, Indiana, a distance of 20.1 miles, for a combined total distance of 37.1 miles.

Proponent requests that the two Notices of Interim Trail Use ("NITU-1" and as modified by "NITU-2") issued to the ITF, service dates May 14, 1996 and March 10, 2004, respectively, for the right-of-way subject to the above docketed proceeding be transferred to the proponent as the new Holder of Interim Trail Use/Trail Manager/Responsible Party for management of the right-of-way rail banked pursuant to the National Trails System Act by the ITF.

The original purpose of the Indiana Trails Fund being named as holder of the Notice of Interim Trail Use for Docket AB-290 (Sub-No. 168X) was both to secure the corridor land for a future rail function, and to preserve it for a trail in the interim. The intent was for a local group to develop and build a trail on the rail banked corridor, thus the role of ITF was meant to be temporary until a local trail group emerged. The Nickel Plate Trail, Inc. has now secured funds and grown into this function, such that it will be able to provide permanent long term stewardship and management to what we call the Nickel Plate Trail.

In support of such request, the proponent sets forth the following statement:

**STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY:**

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) and 49 CFR § 1152.29, the Nickel Plate Trail, Incorporated is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by the Indiana Trails Fund, Inc. and formerly owned and operated by the Norfolk Western / Norfolk Southern Railway.

The property, known as the Norfolk Western / Norfolk Southern Railway, extends from railroad milepost I-57.2 near Kokomo in Howard County to railroad milepost I-74.2 near Peru in Miami County, Indiana, and from railroad milepost I-75.5 near Peru, in Miami County to railroad milepost I-95.6 near Rochester in Fulton County, Indiana. These two segments, 17.0 and 20.1 miles, respectively, are part of a line of railroad proposed for abandonment but now under

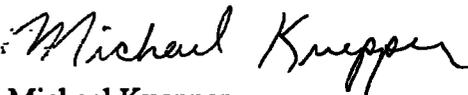
Anne K. Quinlan  
Transfer of Trail Manager for the Nickel Plate Trail  
Page 3 of 3

decision of interim trail use in STB Docket No. AB-290 (Sub-No. 168X). Two maps of the property depicting the right-of-way are attached.

The Nickel Plate Trail, Incorporated acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

A copy of this statement is being served on the railroad on the same date it is being served on the Board. By my signature below, I certify service upon (1) Mr. James Paschall, Senior Counsel, Norfolk Southern Railway Company, 3 Commerce Place, Norfolk, Virginia 23510, and (2) Mr. Timothy E. Peterson, Attorney at Law, Indiana Trails Fund, Inc., 5126 South Harlan Street, Indianapolis, Indiana 46227, by U.S. Mail, postage pre-paid, first class or Federal Express, on the date of this letter. In addition to ten duplicates for the STB, I am enclosing one more, for which I request time and date stamp, to be returned in the enclosed envelope. In accord with 49 CFR 1002.2, enclosed please find a check from the Nickel Plate Trail, Inc. to "Secretary, Surface Transportation Board" in the amount of two hundred fifty U.S. dollars (\$250.00) required as the filing fee. I understand this fee is not refundable.

Respectfully submitted,



Michael Kuepper  
President  
Nickel Plate Trail, Incorporated

Enc: 2 Maps: 1 of corridor, 1 of Indiana area  
10 duplicates for STB  
1 duplicate with envelope to be date stamped and returned  
Joint Petition from the ITF and NPT for Substitution of New Holder of Interim Trail Use  
\$250 check for filing fee

cc: James Paschall, Senior Counsel, Norfolk Southern Railway Company  
Timothy E. Peterson, Attorney, Indiana Trails Fund, Inc.

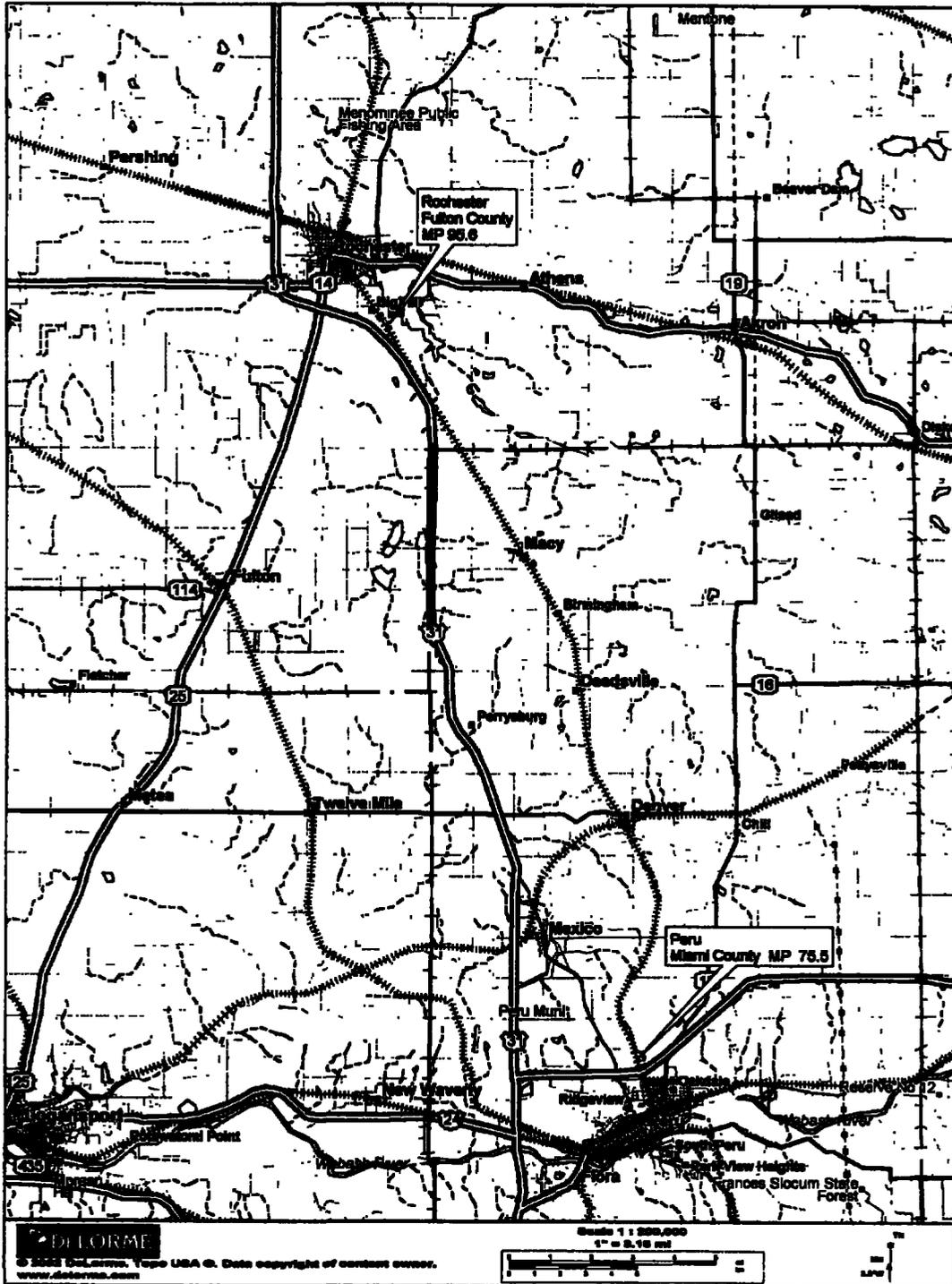
EXHIBIT G



EXHIBIT G Map of Area

37.1 miles rail banked for the Nickel Plate Trail on the former Norfolk & Western Railway and its successor Norfolk Southern Railway in 2 segments: one from Cassville in Howard County to Peru in Miami County, and the other from Peru to Rochester in Marshall County, Indiana in Surface Transportation Board Docket No. AB-290 (Sub-No. 168X) Norfolk and Western Railway Company - Abandonment Exemption - Between Kokomo and Rochester in Howard, Miami, and Fulton Counties, Indiana. This map submitted with the June 2009 petition to transfer the Holder of Interim Trail Use/Trail Manager/Responsible Party from the Indiana Trails Fund, Inc. to the Nickel Plate Trail, Inc.

## EXHIBIT G



**EXHIBIT G Map of Northern Part of Corridor - Peru to Rochester**

20.1 miles rail banked for the Nickel Plate Trail on the former Norfolk & Western Railway and its successor Norfolk Southern Railway from Milepost 75.5 in Peru in Miami County to Milepost 95.6 in Rochester in Fulton County, Indiana in Surface Transportation Board Docket No. AB-290 (Sub-No. 168X) Norfolk and Western Railway Company - Abandonment Exemption - Between Kokomo and Rochester in Howard, Miami, and Fulton Counties, Indiana. This map submitted with the June 2009 petition to transfer the Holder of Interim Trail Use/Trail Manager/Responsible Party from the Indiana Trails Fund, Inc. to the Nickel Plate Trail, Inc.



**EXHIBIT H**

**ITF**

Protection  
Preservation  
Enhancement

**Indiana Trails Fund, Inc.**

**P. O. Box 402, Indianapolis, Indiana 46206-0402 317-237-9348**

May 20, 2009

Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S. W.  
Washington D.C. 20423-0001

Re: Norfolk and Western Railway Company (now the Norfolk Southern Railway Company)  
Interim Trail Use, STB Docket No. AB-290 (Sub-No. 168X), Norfolk and Western  
Railway Company - Abandonment Exemption - Between Kokomo and Rochester in  
Howard, Miami, and Fulton Counties, Indiana

Dear Ms. Quinlan:

The Indiana Trails Fund, Inc. understands that the Nickel Plate Trail, Incorporated is formally requesting that the Surface Transportation Board transfer the Interim Trail Use ("ITU") in the above referenced caption from the Indiana Trails Fund to the Nickel Plate Trail, Inc.

We concur with this request for transferring the "ITU." The Indiana Trails Fund supports this action and is pleased to join in a petition to the Surface Transportation Board with the Nickel Plate Trail, Inc. to transfer our "ITU" to them.

We have taken actions to secure and preserve the corridor during our tenure in holding the "ITU." We now feel the time is right for this local not-for-profit organization to receive the "ITU" and develop the corridor into the Nickel Plate Trail for public trail use.

Sincerely,



Richard C. Vonnegut, Jr.  
President