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January 22, 2021

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VIA E-FILING

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
January 22, 2021
Part of
Public Record

Re: Norfolk Southern Railway Company – Abandonment Exemption – In Dayton,
Montgomery County, Ohio, AB-290 (Sub-No. 390X)

Dear Ms. Brown:

On March 15, 2017, Norfolk Southern Railway Company (“NSR”) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 6.5 miles of rail line: (a) between milepost ZX 12.1 and milepost ZX 15.4; and (b) between milepost ZQ 0.0 and milepost ZQ 3.2 in Dayton, Montgomery County, Ohio (the “Line”). Notice of the exemption was served and published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16,469). The exemption became effective on May 4, 2017. On March 31, 2017, the City of Dayton (“City”) filed a request for the issuance of a notice of interim trail use or abandonment (“NITU”) to negotiate with NSR for the acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. In a decision served May 3, 2017, the Board imposed a public use condition, issued a NITU, directed NSR to consult with the City prior to removing at-grade crossings over the Line, and imposed a salvage condition related to the discovery of any unanticipated archaeological remains.

For nearly four years, NSR and the City have been granted numerous extensions to negotiate a NITU for the Line.¹ Despite the ongoing negotiations, the parties have been unable to come to terms on a NITU agreement. After determining that a NITU is unlikely, NSR has decided it is no longer willing to continue negotiations and wishes to terminate NITU negotiations effective today.² Although

¹ Per a stamped decision by the Board served on March 27, 2020, the current NITU negotiation period expires on April 6, 2021.

² Under the Board’s rules at 49 C.F.R. § 1152.29(e)(2) and per the Consummation Decision, NSR has 60 days (until March 23, 2021) from the termination of the NITU negotiation period to consummate the abandonment. See Consummation of Rail Line Abandonments that are Subject to Historic Preservation and Other Env’tl. Conditions, EP 678 (STB served April 23, 2008) (“Consummation Decision”).

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NSR no longer desires to negotiate trail use, NSR has determined that it desires to preserve the Line for future rail service. To accomplish this objective, NSR has decided it will exercise discontinuance authority for the Line, rather than abandonment authority. NSR desires to make its discontinuance effective January 23, 2021.³ NSR fully understands that if it later decides to abandon the Line it will have to refile for abandonment authority. Should you have any questions concerning this notice of consummation, please contact the undersigned counsel for NSR.

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
An Attorney for Norfolk Southern Railway Company

cc: All Parties of Record
Hanna Chouest
Laura Hoag

³ The Board has held that if a railroad wishes to discontinue service over a portion of a rail line that has been authorized for abandonment but before it has consummated the abandonment, it may do so and exercise the lesser included authorization of discontinuance authority rather than abandonment authority. See T&P Ry.--Aban.--Shawnee, Jefferson, & Atchison Count., KS, 2 S.T.B. 36, 40 (1997). See also The Alabama Great S. R.R. Co. – Discontinuance Exemption – In Saint Bernard Parish, LA, AB-290 (Sub-No. 323X) (STB served December 17, 2013) (explaining that carriers which seek abandonment authority can choose instead to exercise the lesser included discontinuance authority). See also Almono LP–Abandonment Exemption–In Allegheny County, PA, AB-842X (STB served Jan. 28, 2004) (explaining that when a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not).