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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36830

PIPE PROPERTIES, LLC
— PETITION FOR DECLARATORY ORDER —
CERTAIN TRACK IN CHATTANOOGA, HAMILTON COUNTY, TN.

PETITION FOR DECLARATORY ORDER OF PIPE PROPERTIES, LLC

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Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, Pipe Properties, LLC (“Pipe Properties”) hereby petitions the Surface Transportation Board (“Board”) for a declaratory order establishing that – (1) certain railroad track in Chattanooga, Hamilton County, Tennessee (the “Foundry Track” – as described below) is not a railroad line subject to the Board’s regulatory oversight; and (2) as such, the Foundry Track may be dismantled and disposed of without the need for prior Board abandonment authorization. The requested declaratory order would remove uncertainty about the legal status of the Foundry Track as bears upon important urban redevelopment plans discussed below.

BACKGROUND

History of the Property on which the Foundry Track is Located

Pipe Properties and its affiliate Perimeter Properties, LLC (“Perimeter” and collectively, with Pipe Properties, the “Landowners”) have owned approximately 141 acres of real property (the “Land”) immediately to the east of

Interstate 24 and adjacent to downtown Chattanooga. Prior to Landowners' Land acquisition, the Land was the site of the Wheland Foundry ("Wheland") and U.S. Pipe and Foundry ("US Pipe"). US Pipe and Wheland were, for more than a century, large and important industrial employers to thousands of Chattanoogaans but each ceased operation roughly 20 years ago.

The Land is a gateway to downtown Chattanooga, but has lain fallow since US Pipe and Wheland ended operations, a turn of events that has devastated the neighboring communities and the city and county at large. The now-vacant Land generates no tax revenue to support schools, roads, and other essential community services, and, accordingly, redevelopment is a top local priority. The Land's advantageous location – proximate to the heavily-trafficked I-24 corridor through Chattanooga – has prompted the City to place a heavy emphasis on local urban redevelopment that includes the Land.

Specifically, the City of Chattanooga (the "City") and Hamilton County, Tennessee (the "County") have targeted a portion of the Land to be dedicated to a new multi-use stadium venue (the "Stadium"), primarily serving as the new home of the Chattanooga Lookouts (the "Lookouts"), Chattanooga's professional baseball franchise. To facilitate Stadium development, Pipe Properties has donated approximately eight acres of the Land (the "Stadium Parcel"), as is more particularly described and depicted on Exhibit A, to The Sports Authority of the County of Hamilton and the City of Chattanooga (the "Authority"), a public

nonprofit corporation organized and existing under and by virtue of the laws of the State of Tennessee and a public instrumentality of the City and County.

The Authority will construct the Stadium on the Stadium Parcel (the “Project”) and, in turn, lease the Stadium to the Lookouts. Pursuant to Chapter 67 of Title 7 of Tennessee Code Annotated, as amended, the Authority has issued revenue bonds to provide funds to pay for the Project. The Landowners and Authority intend and desire the Project to catalyze further Land development. To that end, the Landowners have engaged a master developer (the “Developer”) to facilitate development of the Land surrounding the Stadium Parcel, and the Landowners have sold and conveyed to an affiliate of the Developer the approximately 3.5-acre site immediately adjacent to the Stadium Parcel and more particularly described and depicted on Exhibit B (the “Private Developer Site”).

The Landowners, the Authority, and the Developer are aware that there is track located on the Land (discussed in greater detail below), including on the Stadium Parcel and Private Developer Site, albeit track that has been isolated from the balance of the interstate rail network for some time. As discussed below, there is concern over whether such track would need to be legally abandoned before the land beneath it could be deployed to any non-rail/non-transportation purposes.

The Foundry Track

The railroad track located on the Stadium Parcel (the “Stadium Segment”) and traversing other portions of the Land (hereinafter, the “Foundry Track”) appears, originally, to have been roughly 3,600 feet in length when fully

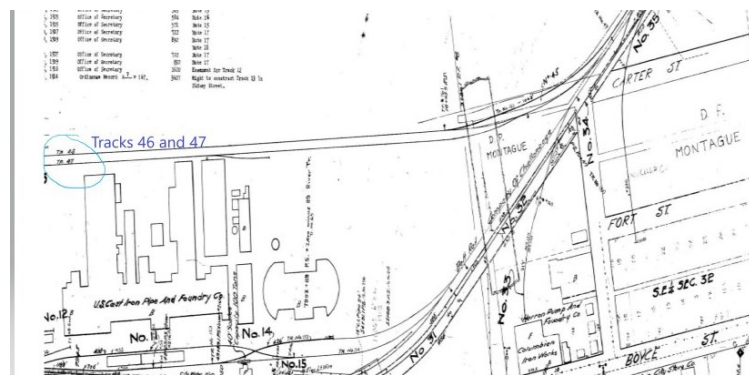
intact, consisting of two stub-ended, parallel-running track segments, of which a total of roughly 2,250 feet of track remains. See Exhibit C (aerial map of the location and approximate length of the Foundry Track). Despite concerted efforts, Pipe Properties, the Authority, other interested parties, and the undersigned have not been able to find much in the way of historical data useful to an assessment of the legal status, and past use of, the Foundry Track.

Pipe Properties offers here relevant data that it has uncovered as part of this collective effort. Pipe Properties' investigation indicates that the Foundry Track has been inactive since US Pipe and Wheland ceased operations decades ago (if not earlier than that). The Foundry Track is stub-ended, appears to consist of 85-pounds-per-yard rail (based upon on-site inspection) manufactured in 1914, and is isolated from the balance of the interstate rail network due to the removal of a turnout switch connection that appears in the past to have connected the Foundry Track to a parallel-running railroad line of the Norfolk Southern Railway Company ("NSR") system. All available evidence indicates that the Belt Railway of Chattanooga (the "Belt Railway", now a part of the NSR system) owned the Foundry Track. The Tennessee Riverwalk (a local recreational feature) separates the Foundry Track from its one potential connection to the interstate rail network.¹

¹ Portions of the Tennessee Riverwalk use portions of formal industrial and transportation corridors. Pipe Properties believes, based upon a review of historical maps, that the portion of the Tennessee Riverwalk adjacent to the Foundry Track is comprised of former railroad right of way.

The evidence – albeit not from the Foundry Track’s owner, the Belt Railway, but from another area railroad, the Nashville, Chattanooga, and St. Louis (“NC&StL”) – shows the Foundry Track was conveyed and built as an “industrial” spur accessing Wheland and US Pipe. The first piece of information to consider is a 1916 NC&StL valuation map. Moving from right to left (north to south) it shows two stub-ended Tracks 46 and 47² running off the Belt Railway and terminating on a single parcel “behind” (west) of the US Pipe facility. Tracks 46 and 47 connect at switch point connections in Carter Street and cross parcels that, as discussed below, were at one point all owned by one D.P. Montague.

By all appearances, Tracks 46 and 47 are the Foundry Track. Most, but not all, of what had been Track 47 is still on site, while all but about 500 feet of Track 46 appears to have been removed well over a decade ago (based upon a review of satellite images going back to 2010).



Note that “North” is in the general direction of the track crossing Carter Street running to the upper right-hand corner of the map.

² Exhibit D, “Station Map — Nashville, Chattanooga & St. Louis Railway Chattanooga Terminals” (June 30, 1916).

The second record is a 1941 deed from US Pipe to NC&StL.³ The 1941 deed conveys a new easement to the NC&StL for it to have a new industrial track to the Foundry. But in describing the path of the new NC&StL track, the 1941 deed *identifies the “industrial” origin and use of Belt Railway-owned Tracks 46 and 47.* Specifically, the 1941 deed uses an initial reference point of a point north of Carter Street, at the south end of “Track 50.”⁴ The 1916 Valuation Map and its notes – selected portions of which are excerpted and supplied in the two graphic inserts immediately below – indicate that “Track 50” is located on Parcel 40 and is at the westernmost boundary of the railroads’⁵ right-of-way:

[Excerpted portion of the 1916 valuation map and notes are atop the page following]

³ Exhibit E, Deed from United States Pipe & Foundry to the Nashville, Chattanooga & St. Louis Railway (Nov. 24, 1941).

⁴ *Id.*

⁵ Notations on the 1916 valuation map suggest the NC&StL tracks ended in this area, and that an agreement with the Belt permitted NC&StL to operate on the Belt over to other industrial tracks it owned.

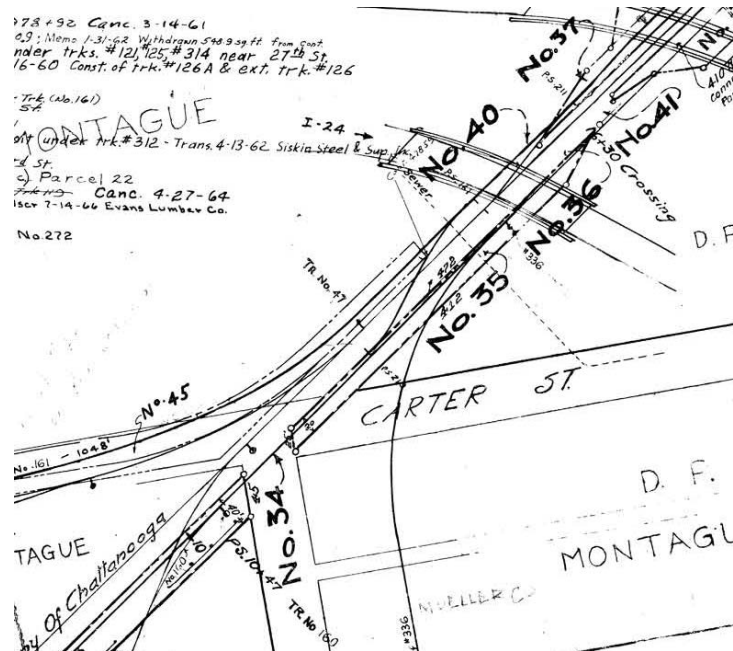


40	D.P. Montague	N.C. & St. L. Ry.	Contract	Aug. 16, 1916	Office of Secretary	1903	Easement for Trk. 111
41			None			1649	Easement for Trk. No. 50

Then, the deed explains the new NC&StL track will continue south from Parcel 40/Track 50 for a little more than 30 yards along the Belt’s River Track Right of Way until it will encounter its next parcel – the “north point of an easement . . . granted the Belt . . . by T.G. Montague . . . [in 1897]. . . for an *industrial* track serving the [Foundry]”.⁶ The 1941 deed’s cross reference to a 1897 industrial track easement—is consistent with the parcels occupied by the beginning of Track Nos. 45, 46⁷ and 47 (the Foundry Track):

⁶ *Id.* (“thence in a southerly direction along the right of way . . . for 190 feet . . . to the north point of an easement granted the said Belt Railway by T.G. Montague et al by deed dated December 9, 1897 for an *industrial track serving the property* . . .”) (emphasis supplied). *See also id.* (describing Montague as the predecessor-in-interest to the Foundry on the Foundry’s land).

⁷ Track 46 is not shown on this excerpt; per below it branches off of Track No. 47 further south.



Again moving "South" is moving from the upper right, diagonally, to the lower left.

Here is another excerpt of those lines and the relevant points above with key features highlighted from North to South (Parcel 40/Track 50; beginning of north boundary of industrial track easement (Track 47); and extension of Tracks 46/47 into Foundry):



In addition, Pipe Properties has located an undated aerial photograph, believed from observable data in the image (including the locomotives seen in the photograph) to be from about the mid to late 1950s – supplied as Exhibit F. This image shows the location of the Foundry Track relative to the US Pipe facility and much of the complex Chattanooga railroad terminal adjacent to US Pipe complex.

Collectively, the evidence suggests Montague gave the Belt Railway an easement in 1897 for an “industrial” track, *and* that the Foundry Track – identified as Track Nos. 46 and 47 – occupied that easement. Beyond that, there is no evidence that the Foundry Track was ever used as mainline; a review of the Interstate Commerce Commission’s digitized card catalog and *Federal Register* notices for CSX and its predecessors, the NC&StL; the Louisville and Nashville; the Seaboard System and for NSR, its subsidiary the Alabama Great Southern Railway Company (into which the Belt was merged) and the Southern Railway Company do not indicate that any of these railroads sought authority to operate the Foundry Track in common carrier service. Rather all evidence indicates that the Foundry Tracks has always been “industrial” in its purpose and use.

Furthermore, Pipe Properties has inquired of NSR about its continued interests in the Foundry Track, if any, and about NSR’s assessment of the legal status of that track. In response, NSR supplied a letter (attached as Exhibit G) disclaiming any interest in the Foundry Track, and offering its opinion that the track is non-jurisdictional, such that Pipe Properties could dispose of it however it

wished without the need for NSR (or anyone else) to seek authority to own it or to dispose of it for current urban redevelopment purposes.

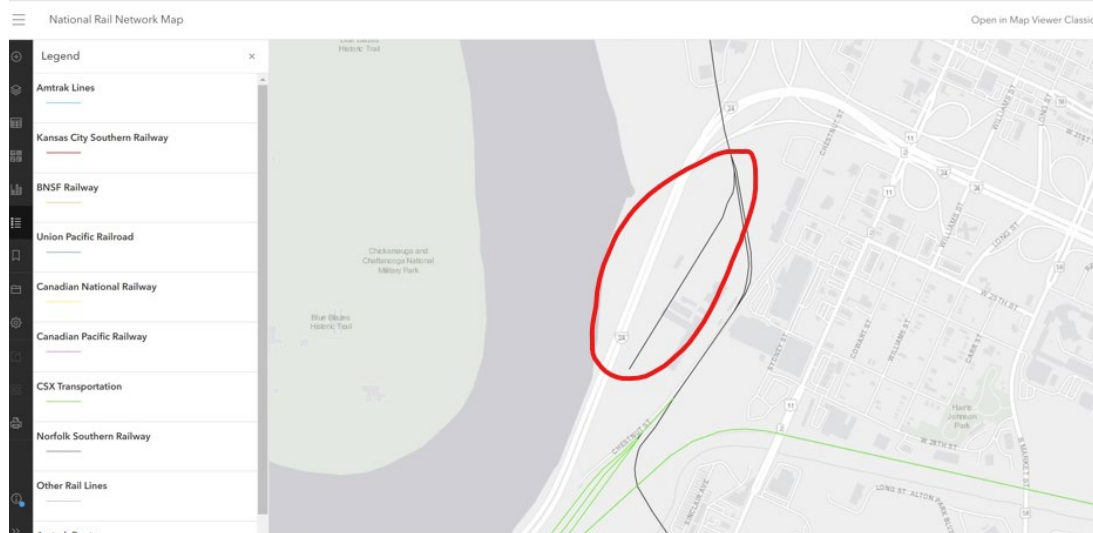
The Current Uncertainty Concerning the Legal Status of the Foundry Track as Impetus for the Subject Petition for Declaratory Order

First American Title Insurance Company (“Title Company”) is providing title insurance to the Authority as an element of the Authority’s acquisition and development of the Stadium Parcel. A related survey of the Stadium Parcel (enclosed) noted the presence of railroad track (a portion of the Foundry Track) on the Stadium Parcel, prompting the Title Company to consult what records it could think of to ascertain the legal status of that track, naturally concerned (as the Landowners understand it) that the Foundry Track might be a Board-regulated railroad line that could only be disposed of in accordance with the Board’s abandonment processes. Specifically, the Title Company resorted to the Board-curated National Rail Network Map (the “Map”), available on the Board’s website at <https://stb.maps.arcgis.com/home/index.html>.

Indeed, the Map shows the Foundry Track (circled in red in the image below) roughly in its context to the surrounding interstate railroad network, and, specifically, appears to depict the Foundry Track as physically connected to the balance of the interstate rail network (specifically as connected to a parallel-running NSR line). More importantly for the purposes of the present Petition, the Title Company has concluded that the presence of a portion of the Foundry Track on the Map is evidence that the Board deems the Foundry Track to be a federally-

regulated line of railroad for which abandonment would be an essential precursor to Stadium development.

Image of the Foundry Track (circled) in relation to other, nearby track in Chattanooga as shown on the STB-curated National Rail Network Map



Pipe Properties has endeavored to persuade Title Company that the Map – although a helpful resource – nevertheless is in no way definitive as to the legal status of any given track segment included on the map in the way that Title Company originally had assumed. Additionally, Pipe Properties has attempted to show Title Company’s its assumption that the Board has any definitive database of regulated railroad lines is mistaken, pointing Title Company to recent Board member remarks in *R.J. Corman Railroad Property, LLC – Abandonment Exemption – in Scott, Campbell and Anderson Counties, Tenn.*, AB-1296X (STB served Nov. 17, 2022) slip op at 8, where Members Fuchs and Schultz, in a concurrence, stated as follows:

[A]s a long-term objective that might have helped prevent the problems identified late in this proceeding, the [STB] should consider the practicality of

creating an accessible rail network map that delineates the lines in its jurisdiction, the regulatory status of each line . . . , and relevant license information (e.g., owner, operator). The costs of such an undertaking should certainly be weighed against any benefits, and the creation of the map would necessarily involve a robust process for public input. However, more comprehensive and accessible rail line information could enable parties, particularly small entities, to engage in licensing proceedings without the need for time-consuming archival research.”).

The undersigned also endeavored to offer evidence and legal analysis to satisfy Title Company that the Foundry Track is (or was) either spur track or private track or a combination of the two, but, in any case, that it is ***not*** a federally-regulated line of railroad for which anyone would need to seek abandonment authorization from the Board as a prerequisite to Stadium (and other) local development. Title Company was receptive but nevertheless advised that – based upon a notorious experience with title insurance claims involving parcels on which railroad track was located⁸ – it would not offer the title insurance that the Authority desires for the Stadium Parcel *unless or until the Board were to express its written concurrence in Pipe’s assessment that the Foundry Track is not a federally-regulated line of railroad*. To permit for the Stadium development in keeping with the Authority’s desire for title insurance, Pipe Properties has agreed to file this Petition. Pipe Properties seeks hereby to secure a definitive statement that ***all*** the Foundry Track – including the portion of it traversing the Stadium

⁸ *212 Marin Blvd. v. Chi. Title Ins.*, Docket No. A-0774-17T2 (App. Div. January 23, 2019), 2019 WL 287215 – a matter related to, and indirectly stemming from, *City of Jersey City, et al. – Petition for Declaratory Order*, FD 34818 (STB served Aug. 9, 2007).

Parcel⁹ – is indeed not subject to the Board’s railroad line abandonment processes, thematically in keeping with the Board’s recent declaration in *Liberty Harbor Holding LLC – Petition for Declaratory Order*, FD 36772 (STB served Oct. 3, 2024) (“*Liberty Harbor*”).

ARGUMENT

The Declaratory Order Standard and Application to the Circumstances Here

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate controversy or remove uncertainty. *See Liberty Harbor*, slip op. at 2 (citing *Bos. & Me. Corp. v. Town of Ayer*, 330 F.3d 12, 14 n.2 (1st Cir. 2003); *Delegation of Auth. – Declaratory Ord. Proc.*, 5 I.C.C.2d 675 (1989)). Here, as was the situation in the very recent *Liberty Harbor* case, the requested Board order will assist the parties to the present real estate transaction by removing perceived uncertainty over the legal status of the Foundry Track, facilitating development of the Stadium Parcel and adjacent land in keeping with the plans of the City and County.

⁹ The Land has been subdivided into various parcels to facilitate Landowner's transfer of the Stadium Parcel and the Private Development Parcel. Although the sought-after title insurance for the Stadium Parcel was the genesis of this request, a favorable Board decision concerning the legal status of the entirety of the Foundry Track (as we request with this Petition) would bear upon the future development of all parcels upon which any portion of the Foundry Track is or has been located.

The Three Legal Classifications of Railroad Track

Agency jurisprudence has long established that there are, as a general matter, three categories of railroad track that are connected to and are part of the interstate railroad network. Those track categories are as follows:

- “Private track” (sometimes also referred to as a “private line”¹⁰). “Private track” is categorically beyond the STB’s jurisdiction. “Private track” is most commonly owned by a railroad-served industry like USPF, over which track the industry does not offer carriage to the public.¹¹ Common carrier railroads may access, and operate over, “private track,” but such access typically is governed by an industry track agreement (also known as a side track agreement) between the track owner and the rail carrier.¹² Indeed, as a matter of railroad practice, the existence of an industry track agreement would indicate a given track’s “private track” status.
- Spur (or “ancillary”) track. This sort of track – typically leased or owned by a railroad common carrier – (a) falls within the STB’s jurisdiction; but (b) is expressly removed from the scope of the agency’s construction, acquisition, operation, abandonment, or discontinuance regulatory authority.¹³ That category of track is in practice referred to under the generic terms “spur track” or “ancillary track,” and, by statute, consists of “spur, industrial, team,

¹⁰ *Hanson Natural Resources Company – Non-Common Carrier Status – Petition for Declaratory Order*, FD. 32248 at 20-21 (ICC served Dec. 5, 1994).

¹¹ *B. Willis – Pet. for Declaratory Order*, 6 S.T.B. 280, 281 (2002), *aff’d sub nom. B. Willis v. STB*, 51 Fed. Appx. 321 (D.C. Cir. 2002), “There is a category of rail operations that falls outside the Board’s statutory jurisdiction. It consists of private tracks, typically built and maintained by a shipper (or for a shipper at the shipper’s expense) and operated by the shipper (or its contractor) to serve only that shipper, moving the shipper’s own goods, so that there is no ‘holding out’ to serve other shippers for compensation. Private tracks constitute a narrow, limited category of rail operations. But as long as rail track is constructed and operated in a manner that does not constitute common carriage, rail track can be built and operated in private status not subject to the Board’s jurisdiction.”

¹² For example, see *ABE Fairmont, LLC – Abandonment Exemption – in Fillmore County, Neb.*, AB-1106X, *et al.* (STB served Aug. 17, 2017).

¹³ See, e.g., *Tri-City R.R.—Pet. for Declaratory Ord.*, FD 36037, slip op. at 4 (STB served June 1, 2017) (“*Tri-City*”).

switching, or side tracks.”¹⁴ “The [STB] does not have authority . . . over construction, acquisition, operation, abandonment, or discontinuance of [ancillary] tracks.”¹⁵

- Regulated (or “main”) railroad lines. Such track – typically described interchangeably in legal terms as either a “line of railroad” or a “railroad line” (and sometimes as a “main line”) – is subject to STB jurisdiction pursuant to 49 U.S.C. § 10501. It is also, among other things, within the scope of the STB’s construction, transfer, and (as pertinent here) abandonment regulatory oversight under 49 U.S.C. §§ 10901 and 10903, respectively. Any railroad track owned or operated over by a federally-regulated railroad common carrier that does not fall under the previous two categories of “private track” or “spur track” would be a federally-regulated “railroad line.” The federal statutes that the STB administers do not define “line of railroad” or “railroad line,” leaving the delineation to case-by-case analysis and “common sense.”¹⁶

Pipe Properties submits that the information that it has obtained shows that the Foundry Track is, and was deployed primarily (if not entirely) as, unregulated Section 10906 “spur track.” But it is possible that the Foundry Track may consist, at least in part, of “private track” falling entirely outside of the Board’s jurisdiction. Regardless, a Board declaration that the Foundry Track is not a regulated railroad line – whether as spur track, private track, or a combination of the two – would clarify that all this long-inactive track may be disposed of, and the

¹⁴ 49 U.S.C. § 10906.

¹⁵ *Id.*; and see, e.g., *Decision and Notice of Interim Trails Use or Abandonment, R.J. Corman Railroad Property, LLC – Abandonment Exemption – In Scott, Campbell, and Anderson Counties, Tenn.*, AB 1296X, et al. (STB served Oct. 11, 2023) slip op. at 4, n. 7 (where a railroad’s track is excepted from regulation under § 10906, no federal abandonment authorization would be needed for that track).

¹⁶ See, e.g., *Jerry K. Nicholson, et al. v. Missouri Pacific Railroad Company*, 366 I.C.C. 69, 72 (1982).

underlying property used for non-railroad transportation purposes without the need for Board abandonment authorization.

The evidence supports the conclusion that the Foundry Track is “spur track.”

The first step in determining whether a section of track is a Board-regulated railroad line is to ascertain whether any agency records could help resolve the inquiry one way or the other. Pipe Properties understands that the Map discussed above is in no way definitive on the issue, observing the concurrence in *R.J. Corman* reflecting that no database of Board-regulated railroad lines exists. Nevertheless, as explained in the Background section of this Petition, Pipe Properties has undertaken a very thorough investigation of available agency materials and databases which might shed light on the legal status of the Foundry Track. And as discussed above, that effort turned up nothing of use either way. Pipe Properties posits that the paucity of any useful agency data supports the proposition that the Foundry Track is not a “railroad line.”

The Board has most recently articulated the multi-factor standards for distinguishing § 10906 “spur track” from a “railroad line” subject to the agency’s regulatory oversight (including the agency’s abandonment procedures) as follows:

In determining whether a particular track is rail line subject to the Board’s licensing authority or excepted track under § 10906, the Board has adopted a case-by-case approach that examines factors such as the track’s intended use, physical characteristics, relationship to the rail system, and history. *See, e.g., Oakland Glob. Rail Enter.—Pet. for Declaratory Ord.*, FD 36168, slip op. at 8 (STB Served Mar. 15, 2019), *pet. for recon. denied* (STB served June 20, 2019); *TriCity . . .*, FD 36037, slip op. at 4. With respect to “intended use,” the Board has considered whether the track will be used for certain ancillary operations (e.g., switching, loading, and unloading); whether it serves more

than one shipper; whether the shipper is located at the end of the track; whether there are stations on the track; whether there is regularly scheduled service; who owns and maintains the track; and the volume of traffic moving over the track. *See Oakland Glob. Rail Enter.*, FD 36168, slip op. at 8. . . .¹⁷

In the discussion following, Pipe Properties will apply longstanding agency precedent setting forth the indicia for § 10906 “spur track” set forth in cases such as *Battaglia Distrib. Co. v. Burlington N. R.R.*, FD 32058 (STB served June 27, 1997). Pipe Properties notes that, the Board’s analysis is strictly case-by-case, considering the various indicia based upon the available evidence and circumstances,¹⁸ such that evidence addressing certain indicia may be sufficient for the Board to determine the legal status of a given track segment even in the absence of evidence permitting analysis of all indicia.¹⁹

Applying the Board’s multi-factor test to the available evidence militates consistently – indeed, decisively – in favor of a finding of § 10906 “spur track.” Moreover, investigation into available Board records failed to disclose a single case or proceeding that dealt in any fashion with the Foundry Track – further lending support to the proposition that the Foundry Track is not a railroad line.

¹⁷ *Liberty Harbor*, 2-3.

¹⁸ *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, FD 32760, slip op. at 12 (STB served Jan. 31, 2018); *cf. Norfolk S. Ry.—Pet. for Exemption—in Balt. City & Balt. Cnty., Md.*, AB 290 (Sub-No. 311X) slip op. at 10 (STB served Jan. 27, 2012)

¹⁹ *See Oakland Glob. Rail Enter.*, FD 36168, slip op. at 8.

- *The length of the track:* The Foundry Track appears to have been be roughly two-thirds of a mile in length (between two parallel-running track segments) when fully extant, consistent with many spur tracks.
- *Whether the track serves more than one shipper:* Available data indicates that the Foundry Track was used to support Wheland and US Pipe (adjacent, kindred industries) – consistent with “spur track.” Pipe Properties has found no evidence that the Foundry Track was used to serve other customers, as there are no records indicating that any other rail shipper aside from Wheland and US Pipe could have received rail service via the Foundry Track.
- *Whether the track is stub ended:* The Foundry Track is stub-ended as supplied photographic and mapping evidence shows, consistent with a “spur track” designation. Also consistent with “spur track” status, this stub-ended track runs adjacent to, and parallel with, an NSR main line that appears to have been the railroad line to which the Foundry Track last connected.
- *Whether the track was built to “invade the territory” of another railroad:* Pipe Properties has found no evidence to suggest any such invasive design, and the Foundry Track’s modest length and configuration (running parallel to an NSR “main line”) indicates no such invasion. Rather, the evidence indicates that the Foundry Track was most likely constructed to allow the adjacent serving railroad to access a customer very clearly already in the railroad’s service territory, again militating in favor of “spur track.”

- *Whether the shipper is located at the end of the track:* All data Pipe Properties has been able to unearth indicates that the Foundry Track was located within the boundaries of the Wheland/US Pipe facilities, and that the Foundry Track supported exclusively their shipping needs until each ceased operation. The shippers were not merely at the end of the Foundry Track, they were located along the entire length of that track.
- *Whether there is (was) regularly-scheduled service:* Pipe Properties has no data on the frequency or scheduling of rail service over the Foundry Track.
- *The volume of traffic moving over the track:* Pipe Properties has no data on historic traffic volumes over the Foundry Track, but the data indicates that Wheland and US Pipe were the only shippers served via the Foundry Track.
- *Who owns and maintains the track:* The Landowners submit that they have owned the entirety of the Foundry Track beginning in 2006 until the recent transfers of the Stadium Parcel and Private Development Parcel. (NSR has disclaimed any continuing interest in the Foundry Track per Exhibit G.) For many years, no one has maintained the track.
- *Whether the track was constructed with light weight rail:* A sampling of the Foundry Track rail indicates that most, if not all, consists of 85-pounds-per-yard rail; a lighter weight rail common to spur and industrial track.
- *The condition of the track:* The long-inactive Foundry Track remnants are in severely-deteriorated condition, as the aerial image supplied as Exhibit H shows. In fact, the recent images of the Foundry Track speak for themselves.

- *What the track is used for (e.g., loading, unloading, switching):* Pipe Properties has no records of how, precisely, the Foundry Track may have been used. But, in all likelihood, the Foundry Track was used for the placement, loading and unloading of shipments destined from and to Wheland and US Pipe, all in keeping with a “spur track” designation.
- *Whether there are stations on the track:* Pipe Properties has no evidence that the Foundry Track was itself, or that it ever served, a discrete or separate railroad station. The modest length of the Foundry Track (and available records) again suggest that the Foundry Track hosted no station.

If the Foundry Track is not, or is no longer, or is not entirely “spur track,” then the Foundry Track (or the portion not qualifying as “spur track”) would be private track.

The data Pipe Properties has accumulated and has presented indicates that the Foundry Track is not Board-regulated main line, but it is also not entirely clear from that same data into which of the other two railroad track categories (“spur track” and “private track”) the Foundry Track could plausibly be placed. The evidence tends, in Pipe Properties’ view, to support a conclusion that the Foundry Track existed during US Pipe’s tenure as § 10906 “spur track.” And yet NSR, the only railroad to which the Foundry Track could currently connect (assuming the reinstallation of a long-missing turnout switch) has disclaimed any interest in the Foundry Track, as discussed above. Indeed, it is possible, if not likely, that the

Foundry Track, if indeed it was once “spur track,” may have been “abandoned” in a sense²⁰ and relinquished to the owner of the Land (US Pipe or Pipe Properties).

Such technical distinctions are irrelevant, however, since Pipe Properties need only to secure a declaration from the Board, that, whatever the Foundry Track may have been or may now be (whether “spur track” or “private track”), it is not a “railroad line” subject to the Board’s regulatory oversight, including the Board’s abandonment procedures.

CONCLUSION

To proceed with the proposed Land development that includes the Project (discussed above), the Authority must be able to secure title insurance linked to its land acquisition and planned development. The Title Company, influenced by the track’s depiction in the National Rail Network Map, is concerned that it cannot yet rule out the possibility that the Foundry Track may be a Board-regulated railroad line that may not be salvaged (and the underlying land converted to non-railroad uses) absent Board abandonment authorization. That possibility, if proven to be the case here following the completion of planned urban redevelopment, would subject the Title Company to substantial (and, evidently, unacceptable) prospective liability. And for this reason, the Title Company will not provide the title insurance upon which the urban redevelopment of the property depends unless and until the Board grants this Petition, finding in the process that

²⁰ See, e.g., *Pinelawn Cemetery – Petition for Declaratory Order*, FD 35468 (STB served Apr. 21, 2015), slip op. at 10-11.

the entire Foundry Track is not a Board-regulated railroad line. Such a finding will facilitate the redevelopment of all of the Land upon which the Foundry Track is situated.

Pipe Properties respectfully submits that the evidence it has garnered and presented – the product of a collective investigation among Pipe Properties, its legal counsel, and others – militates strongly in support of the requested declaration. Accordingly, Pipe Properties requests that the Board act favorably upon this Petition in keeping with the analysis and decisional time frame of the recent *Liberty Harbor* proceeding.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Bradon J. Smith

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

rwimbish@fletcher-sippel.com

Kirby W. Yost

Chambliss, Bahner & Stophel, P.C.

Liberty Tower

605 Chestnut Street, Suite 1700

Chattanooga, TN 37450

(423) 757-0254

kyost@chamblisslaw.com

ATTORNEYS FOR PIPE PROPERTIES, LLC

Dated: January 22, 2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36830

**PIPE PROPERTIES, LLC
— PETITION FOR DECLARATORY ORDER —
CERTAIN TRACK IN CHATTANOOGA, HAMILTON COUNTY, TN.**

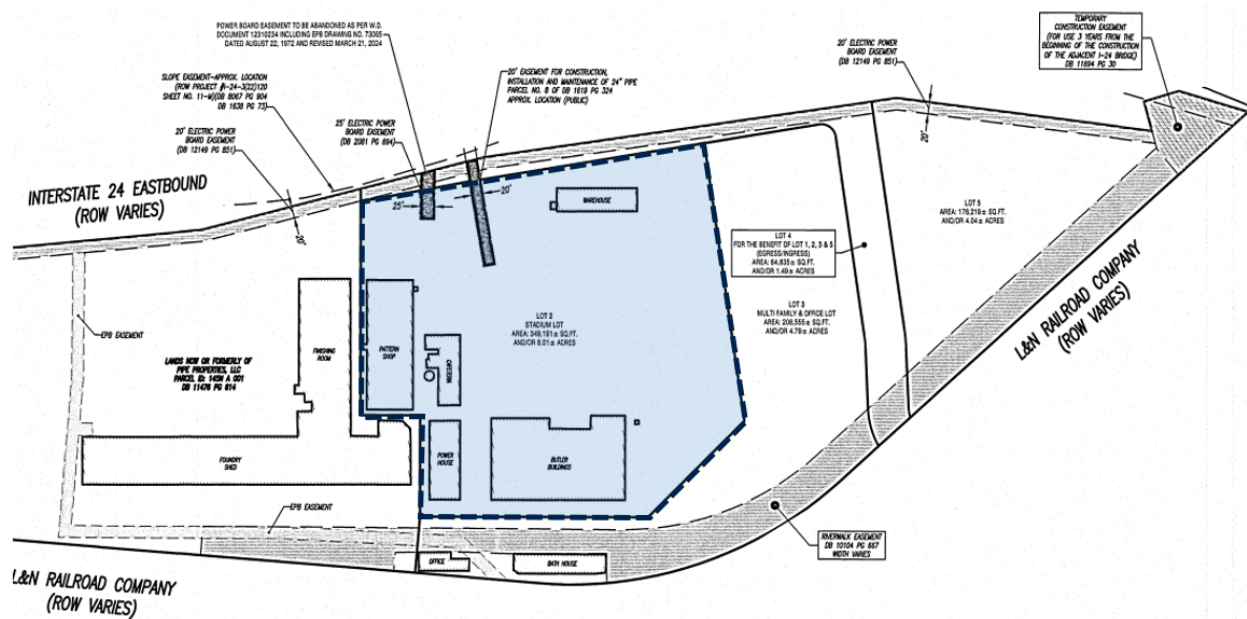
EXHIBIT A

STADIUM PARCEL

Legal Description for Stadium Parcel:

Lot 2 as shown on Subdivision Plat of 2701 Chestnut Street Subdivision, recorded in the Register's Office for Hamilton County, Tennessee at Book 130, Page 100.

Visual Snapshot of Above-Referenced Plat:



 - Stadium Parcel

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36830

**PIPE PROPERTIES, LLC
— PETITION FOR DECLARATORY ORDER —
CERTAIN TRACK IN CHATTANOOGA, HAMILTON COUNTY, TN.**

EXHIBIT B

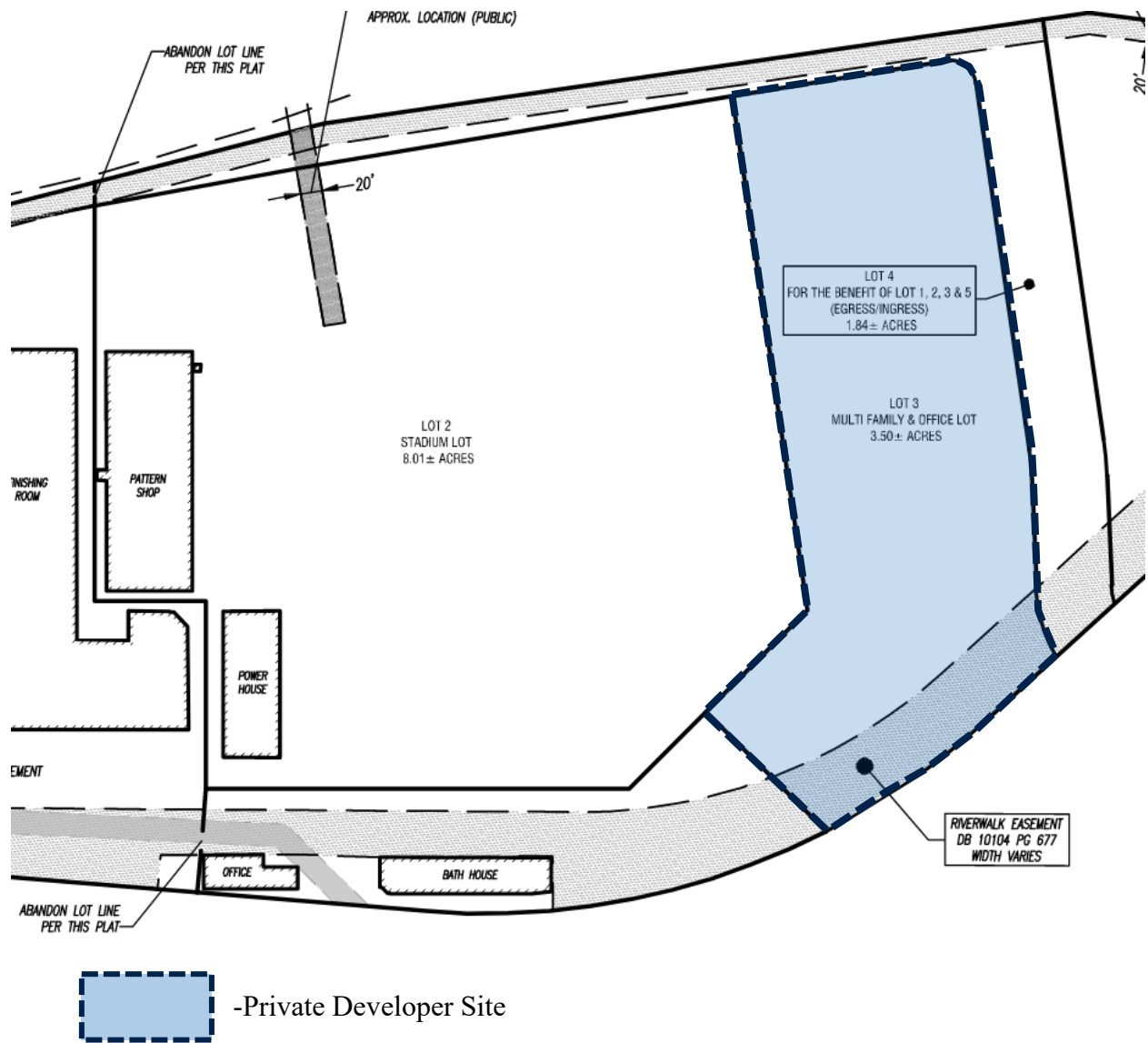
PRIVATE DEVELOPER SITE

Legal Description of Private Developer Site:

Lot 3 as shown on Subdivision Plat of 2701 Chestnut Street Subdivision, recorded in the Register's Office for Hamilton County, Tennessee at Book 130, Page 100, less and except that portion of Lot 3 shown as a part of Lot 1 on the snapshot below, which shows a subdivision plat, not yet recorded in the land records for Hamilton County, Tennessee, which area has the following metes and bounds description:

TO FIND THE POINT OF BEGINNING COMMENCE FROM THE INTERSECTION OF WEST 26TH STREET AND CHESTNUT STREET APPROXIMATELY 994 FEET IN A SOUTHWESTERLY DIRECTION ALONG CSX RAILROAD COMPANY PROPERTY TO A SET 1/2" REBAR WITH CAP LOCATED ON THE WESTERN RIGHT OF WAY OF CSX RAILROAD AND COMMON CORNER WITH PIPE PROPERTIES, LLC DEED BOOK 11476 PAGE 614, BEING LOT 1 AS SHOWN ON PLAT BOOK 130 PAGE 100; THENCE LEAVING CSX RAILROAD COMPANY AND ALONG THE COMMON LINE OF PIPE PROPERTIES, LLC, LOT 1 N 53°37'50" W 96.55 FEET TO A SET 1/2" REBAR WITH CAP AND COMMON CORNER WITH SPORTS AUTHORITY OF THE COUNTY OF HAMILTON AND CITY OF CHATTANOOGA, DEED BOOK 13749 PAGE 932 BEING LOT 2; THENCE LEAVING PIPE PROPERTIES LLC, LOT 1 AND ALONG SPORTS AUTHORITY, LOT 2, THE FOLLOWING TWO CALLS: N 31°43'46" E 393.89 FEET TO A SET 1/2" REBAR WITH CAP; N 13°16'14" W 101.39 FEET TO A SET 1/2" REBAR WITH CAP MARKING THE SEVERANCE LINE OF LOT 3; THENCE LEAVING THE LINE OF SPORTS AUTHORITY, LOT 2 AND ALONG THE SEVERANCE LINE OF LOT 3, N 76°26'32" E 157.47 FEET TO A SET 1/2" REBAR WITH CAP LOCATED ON THE WESTERN RIGHT OF WAY OF CSX RAILROAD; THENCE ALONG THE WESTERN RIGHT OF WAY OF CSX RAILROAD COMPANY THE FOLLOWING TWO CALLS: FOLLOWING A CURVE TO THE RIGHT HAVING A RADIUS OF 692.42 FEET, ARC LENGTH OF 384.99 FEET, CHORD BEARING OF S 20°26'31" W AND CHORD LENGTH OF 380.05 FEET TO A SET 1/2" REBAR WITH CAP; S 36°22'10" W 213.30 FEET TO THE POINT OF BEGINNING HAVING AN AREA OF 1.41 +/- ACRES.

Depiction of Private Developer Site:



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36830

**PIPE PROPERTIES, LLC
— PETITION FOR DECLARATORY ORDER —
CERTAIN TRACK IN CHATTANOOGA, HAMILTON COUNTY, TN.**

EXHIBIT C

FOUNDRY TRACK AERIAL MAP

National Rail Network Map



This map shows the extent and ownership of rail lines in the United States, including passenger and freight lines.

600ft

Maxar

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36830

**PIPE PROPERTIES, LLC
— PETITION FOR DECLARATORY ORDER —
CERTAIN TRACK IN CHATTANOOGA, HAMILTON COUNTY, TN.**

EXHIBIT D

NC&StL STATION MAP

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36830

**PIPE PROPERTIES, LLC
— PETITION FOR DECLARATORY ORDER —
CERTAIN TRACK IN CHATTANOOGA, HAMILTON COUNTY, TN.**

EXHIBIT E

DEED: US PIPE TO NC&StL

xxxxxxxxxxxxxxxxxxxxxxxx

Margaret G. Webster, Notary Public x Margaret G. Webster
Hamilton Co. Tenn. x Notary Public

xxxxxxxxxxxxxxxxxxxxxxxx My Commission expires April 4, 1944.

State of Tennessee

Hamilton County The above Instrument and certificate were filed Nov. 24, 1941 at 2:39 P.M. entered in Note Book No. 37, Page 324 and recorded in Book 828, Page 137.

Witness my hand at office in Chattanooga, Tenn.

WILKES T. THRASHER Register
W. Thrasher Dep. Reg.

xx

Tax 10c Fee 15c Total 25c Paid Nov. 24, 1941. Jack Hixson County Court Clerk
FOR AND IN CONSIDERATION of the sum of One (\$1.00) Dollar, cash in hand paid, the receipt of which is hereby acknowledged, United States Pipe & Foundry Company, a New Jersey corporation with its principal office in Burlington, New Jersey, hereby sells, transfers and conveys to The Nashville, Chattanooga & St. Louis Railway, a corporation duly chartered, organized and doing business under the laws of the State of Tennessee, with its principal office at Nashville, Tennessee, its successors and assigns, a permanent easement and right of way for an industrial tract across part of its property in the vicinity of Carter and West Twenty-fifth Streets, Chattanooga, Hamilton County, Tennessee, more particularly described as follows:

Beginning at a point in the west right of way line of the Belt Railway Company of Chattanooga's track extending from Lewis Street to the Tennessee River, said point being 235 feet, more or less, north of the north margin of Carter Street, said beginning point being also in the south margin of an easement for industrial track #50 granted to the Grantee herein by D. P. Montague by deed dated August 16, 1916; thence in a southerly direction along the right of way for said Belt Railway's river track 190 feet, more or less, to the north point of an easement granted the said Belt Railway by T.G. Montague et al by deed dated December 9, 1897 for an industrial track serving the property now owned by the Grantor herein; thence in a southerly and southwesterly direction along the west boundary line of said easement granted by T. G. Montague, 483 feet, more or less to the south boundary line of said easement; thence in a southwesterly direction parallel to and distant $7\frac{1}{2}$ feet from the center line of said new industrial track 56 feet, more or less to a point opposite the south end of said new industrial track, thence in a westerly direction perpendicular to said new industrial track $17\frac{1}{2}$ feet, more or less, to a point 10 feet west of the center line of said new industrial track built by the Grantee herein if measured at right angles thereto; thence in a northeasterly and northerly direction following a line west of, parallel to and distant at all points 10 feet from the center line of said new industrial track 723 feet, more or less, to the southwest corner of an easement granted to the Grantee herein by D. P. Montague set out above; thence in an easterly direction with the south line of the said D.P. Montague Grant $17\frac{1}{2}$ feet to the point of beginning.

TO HAVE AND TO HOLD the said easement and right of way to the Nashville, Chattanooga & St. Louis Railway, its successors and assigns forever.

And the United States Pipe & Foundry Company does covenant with the said The Nashville, Chattanooga & St. Louis Railway that it is lawfully seized and possessed of said property, has a good and lawful right to convey the same, that the same is free of all encumbrances and that it will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the United States Pipe & Foundry Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 18th day of November, 1941.

x
 United States Pipe and Foundry Company x
 Incorporated x
 New Jersey x
 x
 State of New Jersey

UNITED STATES PIPE & FOUNDRY COMPANY

By N. F. S. Russell,
 President

Attest: D. H. Tyson,
 Secretary & Treasurer

County of Burlington Before me, J. A. Monahan, a Notary Public, in and for the State
 and County aforesaid personally appeared N. F. S. Russell and D. H. Tyson, with whom I
 am personally acquainted and who, upon oath, acknowledged themselves to be the President
 and Secretary & Treasurer of the United States Pipe & Foundry Company, the within named
 bargainor, a corporation and N. F. S. Russell as such President, being authorized so to
 do, acknowledged that he executed the foregoing instrument for the purposes therein con-
 tained by signing the name of the corporation by himself as President and the said D. H.
 Tyson acknowledged that under the power vested in him by the bargainor, as Secretary &
 Treasurer, he attested the foregoing instrument and affixed the corporate seal thereto.
 Witness my hand and official seal at office at Burlington, New Jersey, this 18th day of
 November, 1941.

x
 J. A. Monahan, Notary Public x
 New Jersey x
 x

J. A. Monahan
 Notary Public, Burlington County,
 New Jersey
 Notary Public
 My Commission Expires Mar 11, 1945

State of Tennessee

Hamilton County The above Instrument and certificate were filed Nov. 24, 1941 at 3:02
 P.M. entered in Note Book No. 37, Page 324 and recorded in Book 828, Page 139.

Witness my hand at office in Chattanooga, Tenn.

WILKES T. THRASHER

Register

Dep. Reg.

x
 Tax 10c Fee 15c Total 25c Paid Nov. 24, 1941. Jack Hixson County Court Clerk

IN CONSIDERATION of the sum of \$25.00 Twenty Five Dollars to us in hand paid the receipt
 of which is hereby acknowledged, we have this day bargained and sold and do hereby con-
 vey unto Jesse P. Shipley, J. A. Thomas, W. L. Hutcheson, School directors for the
 Eleventh Civil District of Hamilton County, Tennessee and to their Successors forever, a
 certain lot of land lying and being in the Eleventh Civil District of Hamilton County,
 Tennessee, to-wit:

Beginning on a Black Oak then a southward direction with Doughty's Ferry Road 14 poles to
 Black Jack Bush thence a Northward direction with Green Lawsons line 11 poles to a sour-
 wood Bush then a westward course 15 poles to a Post Oak thence a strait line to
 the Beginning containing by estimation One Hundred and fifty six square Rods Square Rods
 to have and to hold the same to the said directors and their Successors forever I here-
 by covenant with the aforesaid Directors and their successors that we are lawfully
 Seized of the Said land, have a good right to convey the same and that the same is unin-
 cumbered we further covenant with the aforesaid Directors, to wit Jesse P. Shipley, J. A.
 Thomas, W. L. Hutcheson and their Successors forever, and bind Ourselves Our Heirs and
 assigns to warrant and forever defend the title and Every Part thereof to the Said Direc-
 tors and their Successors forever against the lawful claims of all Persons both in Law
 and Equity given under Our hand this 28th day of Feb. 1896.

H. C. Francisco (Seal)

her
 Matilda X. Francisco (Seal)
 mark

State of Tennessee

County of Hamilton Before me Peter Bolton a Notary Public duly appointed, commissioned

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36830

**PIPE PROPERTIES, LLC
— PETITION FOR DECLARATORY ORDER —
CERTAIN TRACK IN CHATTANOOGA, HAMILTON COUNTY, TN.**

EXHIBIT F

FOUNDRY TRACK – 1950s ERA AERIAL



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36830

**PIPE PROPERTIES, LLC
— PETITION FOR DECLARATORY ORDER —
CERTAIN TRACK IN CHATTANOOGA, HAMILTON COUNTY, TN.**

EXHIBIT G

**NORFOLK SOUTHERN RAILWAY COMPANY
LETTER REGARDING FOUNDRY TRACK**



Norfolk Southern Corporation
650 W Peachtree St, NW
Atlanta, GA 30308

Scott Plum
Director – Strategic Planning
(470) 463 6627
scott.plum@nscorp.com

September 3, 2024

Pipe Properties
PO Box 6308
Chattanooga, TN 37401

City of Chattanooga
10 East 11th Street
Chattanooga TN, 37402

Sports Authority of The County of Hamilton and the City of Chattanooga, TN
10 East 11th Street
Chattanooga, TN 37402

RE: Former Foundry Property in Chattanooga, TN

Concerned Parties,

At the request of the Norfolk Southern Railway Company's Real Estate department, I have reviewed the materials provided by Mr. Kirby Yost as well as other documentation related to the property. Of particular interest is a track ("Subject Track") located entirely on the property of a former foundry that is no longer connected to nearby rail infrastructure. Based on the available records, I am comfortable opining that the Subject Track located inside the boundary of the provided survey is not subject to the jurisdiction of the U.S. Surface Transportation Board ("STB"). Thus, an abandonment filing, typically submitted as a Notice of Exemption to the STB, to remove any underlying common carrier obligation is not required.

Accordingly, since the Subject Track is non-jurisdictional and is not under the purview of the STB, the Subject Track is not subject to the Rails to Trails Act.

I hope the above adequately resolves any regulatory risk regarding the Subject Track that Pipe Properties, the City of Chattanooga, or the Sports Authority of the County of Hamilton and the City of Chattanooga, TN may have.

Any additional questions can be directed to me by phone, email, or regular mail:

Scott Plum, Director
Strategic Planning – Box 7
Norfolk Southern Corporation
650 W Peachtree St NW
Atlanta, GA 30308
(470) 463-6627
scott.plum@nscorp.com

Best regards,

A handwritten signature in dark ink, appearing to be 'S. Plum', with a long horizontal flourish extending to the right.

Scott Plum

Attachment

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36830

**PIPE PROPERTIES, LLC
— PETITION FOR DECLARATORY ORDER —
CERTAIN TRACK IN CHATTANOOGA, HAMILTON COUNTY, TN.**

EXHIBIT H

**CONTEMPORARY FOUNDRY TRACK
AERIAL IMAGE INDICATIVE OF EXTANT
TRACKAGE AND CONDITION**

National Rail Network Map



This map shows the extent and ownership of rail lines in the United States, including passenger and freight lines.

600ft

Maxar