

SAMUEL L. BOLINGER

Attorney at Law

803 S. Calhoun Street, Suite 300, Fort Wayne, Indiana 46802

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Email: mark@slbolingerlaw.com



September 8, 2017

244349

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W. Room 1034
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
September 14, 2017
Part of
Public Record

Re: Docket No. FD 36137
City of Fishers, City of Noblesville, and Hamilton County Indiana
Petition for Partial Revocation of Exemption
Notice of Pending Federal Litigation and Motion to File
Amicus Curiae Statement/Brief in Opposition to the Petition

Dear Ms. Brown:

I am legal counsel for the Indiana Transportation Museum (ITM), whom Petitioner's refer to as the "Opponents" to the proceeding before the Board. ITM is in fact opposed to the Petitioners request for rail banking and track removal. ITM nor its counsel have not been served with the petition by the local governmental entities. ITM only became aware of the petition on August 31, 2017. ITM has repeatedly asked to speak to those entities but have been ignored consistently.

The purpose of this Notice is to advise the full Board that there is currently pending litigation in the U.S. District Court, for the Southern District of Indiana, Indianapolis Division, before the Honorable Judge Jane Magnus-Stinson, case number #: 1:17-cv-02373-JMS-MPB that includes many of the issues now before the Board in the above captioned matter. I have attached the Amended Complaint, Answers, Motions, and Orders of the Court. There is also potential litigation against the all three Petitioners as having acted unlawfully in attempting to dispose of the public's asset by removing track, and otherwise making the track unusable, as well as denying ITM operation of the 2016 and 2017 "Fair Train" and "The Polar Bear Express," in 2016, causing damages in excess of \$750,000.00.

The pending cases in the U.S. District Court may resolve all or several of the issues before the Board. More importantly, the Plaintiffs/Opponents, Indiana Transportation Museum, et al, are seeking relief in the form of a Temporary, and a Permanent Restraining Order preventing the Petitioners from doing what they are claiming to have the lawful authority to do

before this Board. If the Plaintiff's are successful, the ownership of the rail line may be placed under receivership to conserve the public's assets.

In addition, Plaintiff/Opponents will be seeking a determination from the District Court as to whether the Petitioners have the legal authority under Indiana state law to remove track, and otherwise diminish the ability to operate the line both as passenger and freight. The planned actions of the Petitioners may be an act of unlawful destruction of a public asset. The Plaintiffs/*Opponents*, will be asking the U.S. District Court to rule on this specific matter, but in the alternative shall also seek relief before the Indiana State Courts.

Plaintiff/Opponent has good reason to believe that one or two potential freight customers will be requesting freight service in the immediate future. If this materializes, then the planned removal of the track will effectively bar the freight customers from receiving common carrier rail service, with a connection to the larger U.S. rail system.

Petitioners shall not suffer damages of any sort if the matter before the Board is held in abeyance as requested by the Plaintiffs/Opponents. In fact, a delay may allow the U.S. District Court case to proceed to conclusion thereby resolving the issues raised herein. And, a delay will provide time for the potential freight customers to come forward, or not, and answer the questions of whether there does exist a demand for freight rail service.

Plaintiff/Opponents request that the Board provide the following relief:

1. Hold in abeyance the Petitioners case, FD 36137, *City of Noblesville, et al*, until at least October 20, 2017, or until further Order of the Board, to allow Plaintiffs/Opponents, sufficient time to expedite the U.S. District Court matter of obtaining Restraining Orders.
2. Seek relief in the state courts for the destruction of a public asset; damages for non operation of its excursions; seek receivership over the assets (rail line). (*A receiver may well see the Petitioners case before the Board as unwarranted and ask for dismissal of the entire matter now pending before the Board*).
3. Allow sufficient time for the potential freight customers to file appropriate rail service demands, and or intervene in the current matter opposing the rail banking, and removal of track.

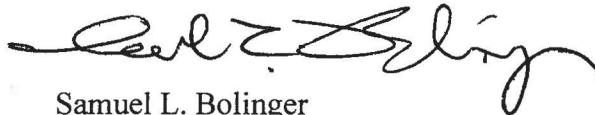
Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
September 8, 2017
Page 3

4. Conduct a "field hearing" to see and hear businesses, the public and others in the area in order to receive all information needed to make a decision.

Plaintiffs will keep the Board thoroughly advised of the progress of this matter in both the U.S. District Court and state court.

If you have any questions, or requests for further information, please feel free to contact me.

Respectfully Submitted,



Samuel L. Bolinger
Attorney at Law

SLB/mjs

CC: Robert A Wimbish, Esq., Fletcher & Sipple
Mayor, City of Noblesville
Mayor, City of Fishers
President, County Commissioners, Hamilton County

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36137



INDIANA TRANSPORTATION MUSEUM'S MOTION TO FILE AN AMICUS CURIAE
STATEMENT/BRIEF IN SAID CAUSE AND BELATED FILING

COMES NOW, Indiana Transportation Museum, by counsel, Samuel L. Bolinger, and files its Motion to File an Amicus Curiae Statement/Brief in Said Cause and Belated Filing and requests an extension of time to supplement same, deny the City of Fishers, City of Noblesville and Hamilton County Indiana's request and in the alternative intervene as a party of interest and states:

1. Indiana Transportation Museum, (hereinafter "ITM") just became aware of this cause on August 31, 2017. This filing is prompt and timely, even if belated. ITM was never served with this petition cause. Further, ITM's counsel has not been served in this matter, thus denying ITM's ability to respond and violating its rights Fourteenth and First Amendment rights and impacting the outcome of the Board's decision without critical and crucial input from ITM.
2. ITM has a pending Amended Temporary Restraining Order/Preliminary Injunction complaint before the United States District Court, Southern District of Indiana, Indianapolis Division, Indiana Transportation Museum, Inc. vs. Hoosier Heritage Port Authority, Cause No. 1:17-cv-02373-JMS-MPB, which a copy of the Docket is attached as Exhibit 3, as well as, the Amended Complaint and attached exhibits as attached as Exhibit 2.

3. That ITM has for over twenty (20) plus years operated its rolling stock on the rail line in question in this matter via historic, educational and entertainment excursions.
4. ITM opposes the City of Fishers, City of Noblesville and Hamilton County, Indiana's Petition for Partial Revocation of Exemption in that it has a profound impact on ITM's operations.
5. The City of Fishers, City of Noblesville and Hamilton County Indiana, do not have either federal and/or state statutory authority to remove the tracks and have denied numerous freight customers the opportunity to engage interstate commerce along this line. By removing the tracks the local governmental entities are diminishing and destroying public assets in violation of Indiana statutes. This asset (the line) was purchased using Federal TEA Funds for the express purpose of operating historic and recreational trains on the line. (Exhibit 4). The petitioners did not consult ITM when the Common Carriers notified them about taking out the connections to Norfolk and Southern on the North and CSX on the south, and have continued to disregard the importance of a connection to the general rail system.
6. ITM respectfully requests that the Board deny the petition of the local governments and officials in order to protect a privately run business, that receives no government subsidies, staffed with hundreds of volunteers that carries and operates passenger excursion trains for educational, historical and entertainment purposes. Prior to local governments' petition, they had no objection to said operations and even solicited other operators in 2017. These excursions over the past twenty (20) years total over thirty thousand passengers a year.

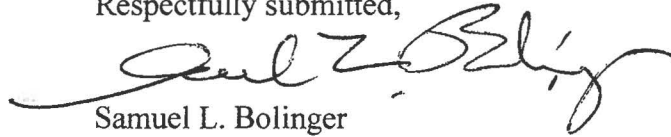
7. Further, ITM over the last two (2) years has repeatedly tried to interact with these local governmental entities and officials about putting a “trail” along the line, but on each occasion ITM’s request has been categorically denied. ITM’s position has been set forth in detail and addressed the safety concerns, but again with no avail.
8. ITM is in negotiations with business entities along the line as to adding freight and more excursion trains to the north of Noblesville on the rail lines to Logansport, Indiana, and to operate its intrastate trains over the line, as well as, continued strong support from the governmental entities in the City of Indianapolis, and Marion County, Indiana to operate passenger and freight service.
9. ITM has and continued to pay insurance on the line and perform maintenance on same until ITM returned those costs and duties back to the local governmental entities in January, 2017, in reliance of establishing services with them via a written agreement, which has been promised but never materialized. The Hoosier Heritage Port Authority (“HHPA”) even accepted applications in June and July of 2017 to operate excursion trains over the whole line.
10. ITM even paid all of these costs, as well, in light of being denied use of operating on the line since March 2016. Therefore, the line has not been fully abandoned.
11. ITM has been in contact with local businesses and is negotiating to who have previously shipped via rail along this line, and have requested resumption of. These requests have previously been denied by local officials.
12. ITM has been inspected by the Federal Rail Administration (hereinafter “FRA”), in 2016, and no violations were cited to operate safely on the line.

13. The Board should require the owners to retain the track for excursions and freight trains, in that the owners have failed to comply with and provide ITM with sufficient opportunity to keep the line in effect. See: Tort Claim Notice as Exhibit 1 and Exhibit 3 the Amended Complaint with Exhibits A-J of Indiana Transportation Museum, Inc. vs. Hoosier Heritage Port Authority. Part of ITM's federal claim is the owners did not provide ITM with their First Amendment Rights to address the HHPA in public meetings or receive due process under the Fourteenth Amendment as to this matter .
14. Further, ITM's attached exhibits to its amended complaint, which ITM strongly and respectfully requests the Board review all the attached exhibits, sets out the position that the local governmental entities and officials indicated that they had already decided their course of action (removal of the tracks) prior to these public meetings and before a required submission for the other excursion trains to operate on this line.
15. ITM requests a field hearing concerning the matter to show there is sufficient interest by businesses along the line in resuming interstate commerce freight.
16. ITM submits the article attached by Sally Knopp as Exhibit 5 indicating the "Collusion by the governmental entities to take down a private entity" ("ITM").
17. Going back to March 21, 1996, ITM and the Hoosier Heritage Port Authority (City of Noblesville and Town of Fishers) received \$1.25 million dollars to purchase the line which ITM operated on, which a copy of a letter of that date is attached as Exhibit 4. Now to undo this by granting the cities of Noblesville, Fishers and Hamilton County, Indiana, their petition would fall outside the scope of this letter agreement. Those local government entities have waived their rights after allowing operation by ITM for over

twenty (20) plus years on the line that carried only historic, educational and entertainment excursions.

WHEREFORE, Indiana Transportation Museum moves the Board to review and place in the record this amicus curiae statement/brief, delay it's decision on this matter until the United States District Court issues an order, allow ITM to supplement this Statement/Brief as needed, and in the alternative intervene as a party of interest and finally, request a "field hearing" as to receiving input as to freight customers, businesses and citizens along the line, and for all just and proper relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel L. Bolinger", written over the typed name.

Samuel L. Bolinger
Indiana Bar No.: 10786-98
803 S. Calhoun St., Ste. 300
Fort Wayne, IN 46802
Tel: 260.407.0040
Fax: 260.407.0039
Email: mark@slbolingerlaw.com
Attorney for Indiana Transportation Museum

Date: September 8, 2017

CERTIFICATE OF SERVICE

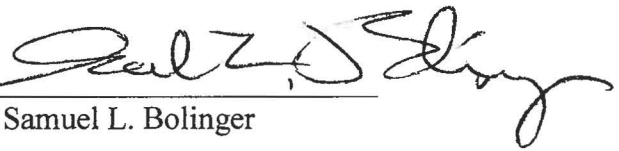
I hereby certify that a copy of this entry was served either by U.S. Mail, first class prepaid postage affix to the address of record, distributed personally upon the person (s), and /or via the E-Filing System.

Date of Notice: September 8, 2017

Robert A. Wimbish
Fletcher & Sippel LLC
29 N. Wacker Dr.
Suite 920
Chicago, IL 60606-2832

By: _____

Samuel L. Bolinger

A handwritten signature in black ink, appearing to read "Samuel L. Bolinger", is written over a horizontal line. The signature is fluid and cursive.

SAMUEL L. BOLINGER

Attorney at Law

803 S. Calhoun Street, Suite 300, Fort Wayne, Indiana 46802

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Email: mark@slbolingerlaw.com

June 12, 2017

**Mike Obergfell, President
Rhonda Klopfenstein, Executive Director
David George, Secretary
Glen Schwartz, Treasurer
John Doe #1, #2, #3, #4, #5, #6 and #7
Jane Doe #1, #2, #3, #4, #5, #6 and #7
Hoosier Heritage Port Authority
33 W Ninth St
Suite 215
Noblesville, IN 46060**

**City of Noblesville; and
Mayor John Ditslear
John Doe #1, #2, #3, #4, #5, #6 and #7
Jane Doe #1, #2, #3, #4, #5, #6 and #7
16 South 10th St
Noblesville, IN 46060**

**City of Noblesville; and
Deputy Mayor Steve Cooke
John Doe #1, #2, #3, #4, #5, #6 and #7
Jane Doe #1, #2, #3, #4, #5, #6 and #7
16 South 10th Street
Noblesville, IN 46060**

**City of Fishers; and
Mayor Scott Fadness
John Doe #1, #2, #3, #4, #5, #6 and #7
Jane Doe #1, #2, #3, #4, #5, #6 and #7
1 Municipal Drive
Fishers, IN 46038**

EXHIBIT 1

City of Fishers; and
Deputy Mayor Leah McGrath
John Doe #1, #2, #3, #4, #5, #6 and #7
Jane Doe #1, #2, #3, #4, #5, #6 and #7
1 Municipal Drive
Fishers, IN 46038

Christine Altman, President
Steve Dillinger
Mark Heirbrandt
John Doe #1, #2, #3, #4, #5, #6 and #7
Jane Doe #1, #2, #3, #4, #5, #6 and #7
Hamilton County Commissioners
1 Hamilton County Square
Suite 157
Noblesville, IN 46060

Hamilton County Tourism, Inc.
Ms. Brenda Myers
John Doe #1, #2, #3, #4, #5, #6 and #7
Jane Doe #1, #2, #3, #4, #5, #6 and #7
37 E. Main Street
Carmel, Indiana 46032

Eric Holcum
Governor of Indiana
Office of the Governor
State House
200 W. Washington St.
Indianapolis, IN 46204

Indiana Risk Management
PO Box 1717
Carmel, IN 46032

Curtis Hill
Indiana Attorney General
302 S. Washington St., 5th Fl
Indianapolis, IN 46204

Cathy S. Hale
1121 W. JPG Woodfill Rd.
Madison, IN 47250

Re: Indiana Transportation Museum

Dear Gentlepersons:

This office represents the interest of the Indiana Transportation Museum ("ITM"). Please direct all future correspondence to this office.

This correspondence shall serve to place the above named governmental entities and officials on notice of a tort claim for damages, pursuant to Indiana Code §34-13-3 through 25.

I. Date of incident

November 25, 2017 through December 26, 2016, and on going.

II. Location

Fishers, Indiana;
Noblesville, Indiana;
Indianapolis, Indiana

III. Persons Involved

All persons listed in subsection VIII Witnesses

IV. Circumstances

The City of Noblesville and Fishers, Indiana, and their mayors and deputy mayors, as well as the Hamilton County Commissioners who own the railroad tracks that ITM operates the "Polar Bear Express" from Noblesville, Fishers, Indiana prohibited and restricted the ITM from operation of the "Polar Bear Express" from November 25, 2016 through December 26, 2016, causing ITM to lose in excess of \$350,000.00 for the excursions to and from Noblesville Indiana to Indianapolis, Indiana.

ITM has an agreement with the City of Fishers under a stated Policy of Use with Hoosier Heritage Port Authority ("HHPA") as to the operation of the ITM's "Polar Bear Express". As part of that policy, ITM maintains the track, track bed, signals, gates and alike the entire distance, as well as, pays insurance for said service area at the cost of \$3,500 over

per mile. At the time of the loss, ITM was current on all terms and conditions. Further, HHPA prohibited and prevented ITM to operate the "Fair Train" just 3 days prior to the start date on August 5, 2016 through August 21, 2016. Said prohibition costs ITM over \$150,000.00 for the excursions on the same line as listed above.

The municipal political subdivisions, authorities and their employees and/or elected officials of same as set forth above, resulted in injurious acts to ITM's operations.

This tort claim notice is not applicable to a 42 U.S.C. 1983 claim, which has a two (2) year statute of limitations.

The above described municipal political subdivisions, authorities, employees, entities, joint ventures, and local governments are public instrumentally created by state law, have the right to sue and be sued.

Said conduct described above is a denial of ITM's Fourteenth Amendment constitutional rights of equal protection and due process under the United States Constitution. Fifth Amendment taking of property rights and interest under the United States Constitution and also caused ITM to be defamed, tortiously interfered with an established business, breach of agreement, failed to engage in fair dealing, failed to comply with Indiana Open Meetings and Records Act, engaged in abuse of process and malfeasance and misfeasance in office, by the above political subdivisions, lost revenue and future benefits, and other torts yet to be determined.

V. Cause of Incident

The cause of the incidents of August 2016 through December, 2016, as set forth above, were caused by the above named Tortfeasor's prohibition and restriction upon the use of the track and track beds to operate said excursions without Public Notice of Hearing

VI. Nature and Extent of Loss, Injury and Damage

The above listed tortfeasors engaged in said conduct without justification, consent, authorization, as well as without due process, equal protection, pursuant to the Fifth and Fourteenth Amendments of the United States Constitution. Further, their conduct was an abuse of process, tortiously interfered with an established business, denied ITM of constitutional protections, constitutes taking of a property right, and interest, under the Fifth Amendment, engaged in breach of agreement, was defamatory, engaged in bad faith dealing, failed to comply with Indiana Open Meetings and Records Acts, resulting in lost profits and revenue opportunities to ITM, other injuries and damages yet to be determined.

VII. Expenses

Once a determination is made this will section will be supplemented.

VIII. Witnesses

1. City of Fishers Mayor
2. City of Fishers Deputy Mayor
3. John Doe #1, #2, #3, #4, #5, #6 and #7
4. Jane Doe #1, #2, #3, #4, #5, #6 and #7
5. City of Noblesville Mayor
6. City of Noblesville Deputy Mayor
7. John Doe #1, #2, #3, #4, #5, #6 and #7
8. Jane Doe #1, #2, #3, #4, #5, #6 and #7
9. Hamilton County Commissioners
10. John Doe #1, #2, #3, #4, #5, #6 and #7
11. Jane Doe #1, #2, #3, #4, #5, #6 and #7
12. Hamilton County Visitors Board Members
13. John Doe #1, #2, #3, #4, #5, #6 and #7
14. Jane Doe #1, #2, #3, #4, #5, #6 and #7
15. Hoosier Heritage Port Authority Board Members
16. John Doe #1, #2, #3, #4, #5, #6 and #7
17. Jane Doe #1, #2, #3, #4, #5, #6 and #7
18. Indiana Department of Environmental Management - Director and Staff
19. John Doe #1, #2, #3, #4, #5, #6 and #7
20. Jane Doe #1, #2, #3, #4, #5, #6 and #7
21. For political subdivisions and entities lasted above
22. Indiana Transportation Museum's Board Member
23. John Doe #1, #2, #3, #4, #5, #6 and #7
24. Jane Doe #1, #2, #3, #4, #5, #6 and #7

All other witnesses currently unknown and will be supplemented upon formal discovery.

IX. Residence of Claimant at the Time of Loss

701 Cicero Road
Noblesville, Indiana

Museum
Forest Park
825 Park Dr.

Noblesville, IN 46060

Office

136 S. 9th St.

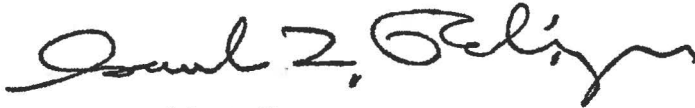
Noblesville, IN 46060

CAVEAT

This information in this Tort Claim Notice is complete as to the extent known by ITM/Claimant at the time of the notice.

Neither Claimant, nor counsel, has had the opportunity to conduct judicially enforced discovery.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel L. Bolinger", written in a cursive style.

Samuel L. Bolinger

ITM Board and Chairperson President

SLB.mjs

U.S. District Court
Southern District of Indiana (Indianapolis)
CIVIL DOCKET FOR CASE #: 1:17-cv-02373-JMS-MPB

INDIANA TRANSPORTATION MUSEUM, INC. v. HOOSIER HERITAGE
PORT AUTHORITY

Assigned to: Judge Jane Magnus-Stinson

Referred to: Magistrate Judge Matthew P. Brookman

Case in other court: Indiana Northern, 1:17-cv-00287

Cause: 42:1983 Civil Rights Act

Date Filed: 07/13/2017

Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Federal Question

Plaintiff

**INDIANA TRANSPORTATION MUSEUM,
INC.**

represented by **Samuel L. Bolinger**
803 South Calhoun Street
Suite 300
Ft Wayne, IN 46802
(260) 407-0040
Fax: (260) 407-0039
Email: mark@slbolingerlaw.com
ATTORNEY TO BE NOTICED

V.

Defendant

HOOSIER HERITAGE PORT AUTHORITY

represented by **Anne Hensley Poindexter**
ALTMAN, POINDEXTER & WYATT LLC
90 Executive Drive
Suite G
Carmel, IN 46032
(317) 350-1000
Fax: 844-840-3416
Email: apoindexter@apwlawyer.com
ATTORNEY TO BE NOTICED

Scott P. Wyatt
ALTMAN, POINDEXTER & WYATT LLC
90 Executive Drive
Suite G
Carmel, IN 46032
317-350-1000
Fax: 844-840-3461
Email: swyatt@apwlawyer.com
ATTORNEY TO BE NOTICED

Defendant

CITY OF FISHERS, INDIANA

represented by **CITY OF FISHERS, INDIANA** **EXHIBIT 2**
PRO SE

Defendant**CITY OF NOBLESVILLE, INDIANA**represented by **CITY OF NOBLESVILLE, INDIANA**
PRO SE

Date Filed	#	Docket Text
07/10/2017	<u>1</u>	COMPLAINT OF TEMPORARY RESTRAINING ORDER against Hoosier Heritage Port Authority(Filing fee \$ 400 receipt number 0755-3297249.), filed by Indiana Transportation Museum, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit I, # <u>9</u> Civil Cover Sheet, # <u>10</u> Proposed Summons)(Bolinger, Samuel) [Transferred from Indiana Northern on 7/13/2017.] (Entered: 07/10/2017)
07/10/2017	<u>2</u>	CERTIFICATE Attorney/ Notice Pursuant to F.R.C.P 65 (B). (Bolinger, Samuel) [Transferred from Indiana Northern on 7/13/2017.] (Entered: 07/10/2017)
07/10/2017	<u>3</u>	MOTION for Temporary Restraining Order by Plaintiff Indiana Transportation Museum, Inc.. (Bolinger, Samuel) [Transferred from Indiana Northern on 7/13/2017.] Modified on 7/13/2017 (APD). Modified on 7/13/2017 (APD). (Entered: 07/10/2017)
07/10/2017	<u>4</u>	BRIEF in Support of <u>3</u> MOTION for Preliminary Injunction Temporary Restraining Order filed by Indiana Transportation Museum, Inc.. (Bolinger, Samuel) [Transferred from Indiana Northern on 7/13/2017.] (Entered: 07/10/2017)
07/10/2017	<u>5</u>	MOTION for Bond <i>Not Being Posted</i> by Plaintiff Indiana Transportation Museum, Inc.. (Bolinger, Samuel) [Transferred from Indiana Northern on 7/13/2017.] Modified on 7/13/2017 (APD). (Entered: 07/10/2017)
07/10/2017	<u>6</u>	Proposed MOTION for Temporary Restraining Order by Plaintiff Indiana Transportation Museum, Inc.. (Bolinger, Samuel) [Transferred from Indiana Northern on 7/13/2017.] Modified on 7/13/2017 (APD). (Entered: 07/10/2017)
07/10/2017	<u>7</u>	MOTION to Expedite <i>Discovery</i> by Plaintiff Indiana Transportation Museum, Inc.. (Attachments: # <u>1</u> Exhibit A)(Bolinger, Samuel) [Transferred from Indiana Northern on 7/13/2017.] Modified on 7/13/2017 (APD). (Entered: 07/10/2017)
07/10/2017	<u>8</u>	Corporate Disclosure Statement by Indiana Transportation Museum, Inc.. (Bolinger, Samuel) [Transferred from Indiana Northern on 7/13/2017.] (Entered: 07/10/2017)
07/11/2017		Chief Judge Theresa L Springmann and Magistrate Judge Susan L Collins added. "NEW CASE; MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION PENDING". (cer) [Transferred from Indiana Northern on 7/13/2017.] (Entered: 07/11/2017)
07/11/2017	<u>9</u>	MOTION to Transfer Case by Plaintiff Indiana Transportation Museum, Inc.. (Bolinger, Samuel) [Transferred from Indiana Northern on 7/13/2017.] (Entered: 07/11/2017)
07/12/2017	<u>10</u>	ORDER GRANTING <u>9</u> MOTION to Transfer Case by Plaintiff Indiana Transportation Museum, Inc. This case is TRANSFERRED to the United States District Court for the Southern District of Indiana. Signed by Chief Judge Theresa L Springmann on 7/12/17. (cer) [Transferred from Indiana Northern on 7/13/2017.] (Entered: 07/12/2017)
07/13/2017	<u>11</u>	Case transferred in from District of Indiana Northern; Case Number 1:17-cv-00287. Original file copy of transfer order and docket sheet received. (Entered: 07/13/2017)
07/13/2017	<u>12</u>	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (APD) (Entered: 07/13/2017)

- 07/13/2017 13 ORDER denying 3 Plaintiff's Motion for Temporary Restraining Order. Finally, the Court notes that ITM refers to its Petition for Temporary Restraining Order in its brief as its "Verified Petition for a Temporary Restraining Order and Preliminary Injunction Hearing." [Filing No. 4 at 1.] To the extent that ITM requests a preliminary injunction hearing in its Petition for a Temporary Restraining Order, the Court DENIES that request because ITM has not filed a Motion for Preliminary Injunction. The Petition for a Temporary Restraining Order does not request a preliminary injunction. And while the Complaint discusses and requests a preliminary injunction, ITM cannot move for a preliminary injunction within its Complaint, and must file a separate motion and supporting brief. Should ITM do so, the Court will request that the Magistrate Judge confer with the parties - if and when that time comes - to set an appropriate briefing schedule. In sum, the Court DENIES ITM's Petition for Temporary Restraining Order, [Filing No. 3], because ITM has not complied with Rule 65(b)'s requirements for ex parte issuance of a temporary restraining order, and because ITM has not made an adequate showing under applicable law that a temporary restraining order is warranted. (SEE ORDER FOR MORE DETAILS.) Signed by Judge Jane Magnus-Stinson on 7/13/2017. (MRI) (Entered: 07/13/2017)
- 07/14/2017 14 PROCEDURES AND PRACTICES before Judge Jane Magnus-Stinson. (APD) (Entered: 07/14/2017)
- 07/14/2017 15 NOTICE of Appearance by Anne Hensley Poindexter on behalf of Defendant HOOSIER HERITAGE PORT AUTHORITY. (Poindexter, Anne) (Entered: 07/14/2017)
- 07/14/2017 16 MARGINAL ENTRY - DENIED as moot, dkt 5 due to the Court's ruling in docket entry 13 . Signed by Judge Jane Magnus-Stinson on 7/14/2017.(APD) (Entered: 07/14/2017)
- 07/14/2017 17 NOTICE of Appearance by Scott P. Wyatt on behalf of Defendant HOOSIER HERITAGE PORT AUTHORITY. (Wyatt, Scott) (Entered: 07/14/2017)
- 07/14/2017 18 ANSWER to 1 Complaint *and Affirmative Defenses*, filed by HOOSIER HERITAGE PORT AUTHORITY. (Poindexter, Anne) (Entered: 07/14/2017)
- 07/14/2017 19 MOTION to Dismiss , filed by Defendant HOOSIER HERITAGE PORT AUTHORITY. (Poindexter, Anne) (Entered: 07/14/2017)
- 07/14/2017 20 BRIEF/MEMORANDUM in Support re 19 MOTION to Dismiss , filed by Defendant HOOSIER HERITAGE PORT AUTHORITY. (Poindexter, Anne) (Entered: 07/14/2017)
- 07/17/2017 21 NOTICE of Change of Attorney Information. Consistent with Local Rule 5-3, Scott P. Wyatt hereby notifies the Clerk of the court of changed contact information. (Wyatt, Scott) (Entered: 07/17/2017)
- 07/28/2017 22 MOTION for Extension of Time to File Response to 08/07/2017 re 19 MOTION to Dismiss , filed by Plaintiff INDIANA TRANSPORTATION MUSEUM, INC.. (Attachments: # 1 Text of Proposed Order)(Bolinger, Samuel) (Entered: 07/28/2017)
- 07/31/2017 23 ORDER - Granting 22 Motion for Extension of Time. Plaintiff has until and including August 7, 2017 to file its Response to Defendant's Motion to Dismiss. Signed by Judge Jane Magnus-Stinson on 7/31/2017. (APD) (Entered: 07/31/2017)
- 08/07/2017 24 RESPONSE in Opposition re 19 MOTION to Dismiss , filed by Plaintiff INDIANA TRANSPORTATION MUSEUM, INC.. (Bolinger, Samuel) (Entered: 08/07/2017)
- 08/07/2017 25 AMENDED COMPLAINT of *Temporary Restraining Order* against HOOSIER HERITAGE PORT AUTHORITY, filed by INDIANA TRANSPORTATION MUSEUM, INC.. (Attachments: # 1 Exhibit A-HHPA and ITM Original Agreement, # 2 Exhibit B-FRA Inspection, # 3 Exhibit C-ITM Economic Impact Study, # 4 Exhibit D-Ordinance Number 090794B, # 5 Exhibit E-Acquisition Time Line, # 6 Exhibit F-HHPA Non Compliance Letter, # 7 Exhibit G-ITMS Response Letter of 4/24/17, # 8 Exhibit H-ITM's Letter of 04/24/17, # 9 Exhibit I-Emails, # 10 Exhibit I-Emails)(Bolinger, Samuel) (Entered: 08/07/2017)

- 08/07/2017 26 MOTION for Preliminary Injunction *Hearing*, filed by Plaintiff INDIANA TRANSPORTATION MUSEUM, INC.. (Attachments: # 1 Text of Proposed Order For Preliminary Injunction Hearing)(Bolinger, Samuel) (Entered: 08/07/2017)
- 08/07/2017 27 MOTION for Discovery *With Shortened Time Table*, filed by Plaintiff INDIANA TRANSPORTATION MUSEUM, INC.. (Attachments: # 1 Text of Proposed Order To Conduct Discovery with Shortened Time Table)(Bolinger, Samuel) (Entered: 08/07/2017)
- 08/08/2017 28 NOTICE *Certificate of Service*, filed by Plaintiff INDIANA TRANSPORTATION MUSEUM, INC., re 25 Amended Complaint. (Bolinger, Samuel) (Entered: 08/08/2017)
- 08/10/2017 29 ORDER - On July 10, 2017, Plaintiff Indiana Transportation Museum, Inc. ("ITM") initiated this action against Defendant Hoosier Heritage Port Authority ("Hoosier Heritage") by filing a Complaint, [Filing No. 1], and a Petition for Temporary Restraining Order, [Filing No. 3]. Shortly thereafter, Hoosier Heritage filed a Motion to Dismiss, arguing that the Court does not have subject matter jurisdiction over this matter and that ITM has failed to state a claim upon which relief can be granted. [Filing No. 19 .] Because ITM has filed an Amended Complaint, which is now the operative complaint in this case, the Court DENIES AS MOOT Hoosier Heritage's Motion to Dismiss, [Filing No. 19]. ITM has also filed a Motion for Preliminary Injunction, [Filing No. 26], and a Motion to Conduct Discovery With Shortened Time Table, [Filing No. 27]. The Motion to Conduct Discovery With Shortened Time Table appears to be duplicative of an earlier Motion for Expedited Discovery, [Filing No. 7], filed by ITM in connection with its Petition for Temporary Restraining Order. Accordingly, the Court DENIES AS MOOT ITM's Motion for Expedited Discovery, [Filing No. 7]. The Court notes the concerns regarding ITM's Amended Complaint and Motion for Preliminary Injunction that are stated in this Order. The Court ORDERS ITM to SHOW CAUSE by August 25, 2017 why this matter should not be dismissed for lack of subject matter jurisdiction. (See Order). Signed by Judge Jane Magnus-Stinson on 8/10/2017. (APD) (Entered: 08/10/2017)
- 08/17/2017 30 MOTION for Extension of Time to 09/20/2017 in which to 25 Amended Complaint *Respond*, filed by Defendant HOOSIER HERITAGE PORT AUTHORITY. (Attachments: # 1 Text of Proposed Order) (Poindexter, Anne) (Entered: 08/17/2017)
- 08/17/2017 31 Corporate Disclosure Statement by INDIANA TRANSPORTATION MUSEUM, INC.. (Bolinger, Samuel) (Entered: 08/17/2017)
- 08/18/2017 32 NOTICE of Change of Attorney Information. Consistent with Local Rule 5-3, Samuel L. Bolinger hereby notifies the Clerk of the court of changed contact information. (Bolinger, Samuel) (Entered: 08/18/2017)
- 08/25/2017 33 Jurisdictional Statement *In Response to Show Cause*, re 29 Order on Motion to Dismiss by INDIANA TRANSPORTATION MUSEUM, INC.. (Bolinger, Samuel) (Entered: 08/25/2017)
- 08/28/2017 34 ANSWER to 25 Amended Complaint , filed by HOOSIER HERITAGE PORT AUTHORITY.(Poindexter, Anne) (Entered: 08/28/2017)
- 08/28/2017 35 Second MOTION to Dismiss , filed by Defendant HOOSIER HERITAGE PORT AUTHORITY. (Poindexter, Anne) (Entered: 08/28/2017)
- 08/28/2017 36 BRIEF/MEMORANDUM in Support re 35 Second MOTION to Dismiss , filed by Defendant HOOSIER HERITAGE PORT AUTHORITY. (Poindexter, Anne) (Entered: 08/28/2017)

Case #: 1:17-cv-02373-JMS-MPB

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA TRANSPORTATION
MUSEUM, INC.,

Plaintiff,

vs.

HOOSIER HERITAGE PORT
AUTHORITY, CITY OF FISHERS,
INDIANA, and CITY OF NOBLESVILLE
INDIANA,

Defendants.

CASE NO.: 1:17-cv-02373-JMS-MPB

AMENDED VERIFIED COMPLAINT OF TEMPORARY RESTRAINING ORDER

COMES NOW. Plaintiff, Indiana Transportation Museum, Inc., by counsel, Samuel L. Bolinger, and files its Amended Verified Complaint of Temporary Restraining Order against Defendants. Hoosier Heritage Port Authority, City of Fishers, Indiana, and City of Noblesville, Indiana, and alleges as follows:

A. PARTIES

1. Indiana Transportation Museum, Inc., is a Indiana corporation located in Noblesville and owns and operates a tourist and educational rail system, including engines, passenger cars and alike, on excursions on the rail line owed by Defendant Hoosier Heritage Port Authority. ITM is a non-profit enterprise, and uses all volunteers, and receives no governmental monies to operate.
2. Indiana Transportation Museum, Inc., (hereinafter as "ITM") is regulated by the Federal

EX 3-1

railroad Administration and is subject to all of the Federal statutes, CFRs and regulations, and Indiana Department of Transportation, (hereinafter "INDOT").

3. Defendant, Hoosier Heritage Port Authority, (hereinafter as "HHPA"), is an governmental entity located at Noblesville, Indiana, and is the owner of the railroad tracks from 10th Street, Downtown Indianapolis, Indiana to Tipton, Indiana, along with Defendants, City of Fishers, Indiana, and City of Noblesville, Indiana. HHPA also selects and authorizes what enterprises can operate on its railroad line. It sets all the terms and conditions for the operation of the line and operator and from 1996 to 2006 and had a contract with ITM for use and operation of the railroad line.
4. Defendant, City of Fishers, Indiana, is a governmental entity authorized to operate by the State of Indiana, and its chief executive officer is the Mayor and does so at Fishers, Indiana.
5. Defendant, City of Noblesville, Indiana, is a governmental entity authorized to operate by the State of Indiana, and its chief executive officer is the Mayor and does so at Noblesville, Indiana.
6. HHPA board consists of four (4) members from the Mayor's office of Fishers, Indiana and Noblesville, Indiana and two (2) members from Hamilton County. There are three (3) members of each City and an Executive Director.
7. HHPA is responsible for overseeing operations of the railroad and issuing license to utilize crossing and occupying the Right-of-Way ("ROW") agreement.
8. HHPA conducts regular business meetings once a month and is subject to the Indiana Open Meetings Act and the Indiana Access to the Public Records Act, pursuant to Indiana

Code.

B. JURISDICTION

9. This court has jurisdiction over this case, pursuant to the First and Fourteen Amendments to the United States Constitution, 42 U.S.C. 1983; 49 U.S.C. 103; 49 C.F.R. 1.89, diversity of citizen and amount in excess of \$100,000.00.

C. VENUE

10. Venue in said case is appropriate in that all the parties are located in Hamilton County, Indiana and the railroad track is from State Fair Grounds, 38th Street in Indianapolis, Indiana to Tipton, Indiana and is present in multiple counties of Marion, Hamilton and Tipton.

D. FACTS

11. ITM had a written contract with HHPA from 1996 to 2006 which expired. The original agreement HHPA was responsible for track maintenance. Under that contract ITM was authorized to operate excursions from Tipton, Indiana to 38th Street, in Indianapolis, Indiana. ITM operated numerous excursions since 1996 to August, 2016, when HHPA informed ITM, that its operations were unsafe that in spite of the April, 2016 inspection by the Federal Railroad Administration (hereinafter "FRA") which indicated "No violations" with regard to safety. There has been no operating agreement since 2006, but a policy of use was not put in place since January, 2012.
12. The line runs from 10th Street, in Indianapolis, Indiana to Tipton, Indiana. It was the former Nickel Plate Railroad Line and is approximately 37.5 miles. The line connects to the State of Indiana State Fair grounds, Coner Prairie, Historic Noblesville, Richie

Woods, Nature Park and other significant attractions. The line since 1994 has been used primarily to operate historic, education, entertainment and recreational excursions.

13. The FRA regulates the safety and use of all rail lines nationally. This includes signals, corridor crossings, railroad beds and tie construction, health of the train operators, equipment safety and standards. It also regulates the safety and use of the HHPA's track. FRA operates pursuant to 49 C.F.R. 1.89 and 49 U.S.C. 103.
14. ITM's is not directly subject to FRA jurisdiction, however, choose to have their approval after inspection of equipment, the line and operators to conduct business.
15. ITM is also subject to INDOT statutes, rules and regulations.
16. Over the last twenty-one years, ITM has been authorized to operate its excursions after undergoing inspections and approvals by FRA and INDOT. More specifically, ITM operates the Fair Train during the Indiana State Fair, in August, and the Polar Bear Express during the Christmas Holiday, in late November and December, as well as historic, educational and entertainment excursions.
17. HHPA and ITM's original Agreement is attached and incorporated hereinafter and made a part hereof and marked at Exhibit A.
18. Under the Agreement, the paragraph that stated that ITM may renew the Agreement for one (1) year additional ten (10) year term with HHPA agreement was crossed out by the original signatures.
19. In 2016, the FRA inspected the ITM and railroad passed it. A copy of that inspection is attached and incorporated hereinafter and made a part hereof and marked as Exhibit B.
20. ITM is a non-profit and its operations are conducted by hundreds of qualified volunteers.

ITM is not currently connected to the general railroad population on either end of the line.

21. Generally, ITM operates in March to January for the tourist season. Excursions are on the weekends, but special tours may be scheduled during the week for school trips, etc.
22. ITM's operations contributes to the local Economic Development of Hamilton, Tipton and Marion counties it operates through. See ITM's Economic Impact Study which is attached and incorporated hereinafter and made a part hereof and marked as Exhibit C.
23. The majority of ITM's equipment is currently housed at "Forest Park" in Noblesville and cannot be operated because HHPA has suspended ITM operations which prohibits ITM from operating its equipment on the HHPA Railroad. While the equipment sits, it cannot be maintained or used. Further, it is constantly depreciates in value and deteriorating in condition, which will require a great amount of work, money and effort to bring them back to their original operating condition. ITM has been prohibited from moving assets along the line from multiple storage locations.
24. HHPA was established by Ordinance Number 090794B, which a copy is attached and incorporated hereinafter and made a part hereof and marked as Exhibit D, and other ordinances, resolutions and quite claim deeds as set forth in HHPA Row Acquisition Time line, which a copy is attached and incorporated hereinafter and made a part hereof and marked as Exhibit E.
25. In June, 2016, HHPA requested certain information and data from ITM. HHPA issued requirements in addition to the conditional policy of use, (hereinafter "CPOU") issued June 25, 2012.
26. In August, 2016, just three days before the commencement of the Indiana State Fair, ITM

was prohibited from operating it's State Fair Train even though the FRA and INDOT had approved the operation of the equipment, crew and railroad line. Said prohibition was pursuant to HHPA's action. As a result, ITM lost approximately \$150,000.00 for not operating the State Fair Train along with good will, future business opportunities.

27. ITM has successfully complied with the all original requirement under the CPOU and/or supplied the required information except for the 8 items of medical physical/health requirements for the ITM crew certifications which are HIPPA protected.
28. On October 26, 2016 HHPA issued a letter indicating ITM had not complied A copy is attached and incorporated hereinafter and made a part hereof and marked as Exhibit F.
29. HHPA then issued a Request for Proposals (hereinafter "RFP") for a new operator for the railroad line.
30. Additionally, in November/December, 2016, HHPA prohibited ITM from operation of the Polar Bear Express train, resulting in another \$350,000.00 in missed revenue, along with good will, future business opportunities. All the volunteer base continued to dwindle, and the equipment continued to devalue and deteriorate and be vandalized. The lack of the ability/opportunity to operate the State Fair Train and Polar Bear Express in 2017. Results in substantial risk of lost future profits and business opportunities, removal of the rail line from Noblesville to the Indiana State Fair that is set for removal, loss of volunteer base, deterioration and devaluation of the rolling stock, good will in the community, loss of historical, educational, entertainment and recreational excursions to numerous stops along the line, lost generation of business opportunities in the form of economic development, expansion of services on the southern end of the rail line, from

moving equipment via rail, ITM's rolling stock currently located at Forest Park in Noblesville, Indiana to another location will be cost prohibitive if it has to do so by tractor trailer and to operate the 2017 State Fair train and Polar Bear Express.

31. ITM is currently prohibited from operating the State Fair Train in August, 2017 or any other excursion by HHPA.
32. ITM responded to HHPA request for proposal on April 24, 2017 by way of correspondence and indicated HHPA's RFP did not address or score critical attributes of any FRA for operating railroad, which ITM complies with. A copy is attached and incorporated hereinafter and made a part hereof and marked as Exhibit G. HHPA's response was to deny any recommended changes.
33. ITM has proven experience, available equipment (22 pieces of rolling stock) an established relationship with the FRA, INDOT and a verifiable safety record.
34. HHPA's RFP scoring criteria are highly subjective and biased against any local or established operator, such as ITM.
35. ITM even suggested modification to the RFP by placing in empirical categories for scoring. in it's correspondence dated April 24, 2017, which a copy is attached and incorporated hereinafter and made a part hereof and marked as Exhibit H.
36. ITM has in the past, as well as the current, had Established Operating Liability Insurance limits and a history of projected number of passenger miles per year and financial reports what have been reviewed and approved by experienced persons/firms in analysis of that data.
37. More importantly, ITM can provide a number of days from award to commitment of

initial operation as it is ready to operate the State Fair Train by August 4, 2017 and other excursions.

38. In 1996, HHPA authorized ITM to operate until August 1, 2006. On April 10, 2015 the ITM appealed to the Hamilton County Commissioners that HHPA had failed to negotiate an operating agreement for 11 years. ITM urged the Commissioners to get HHPA to the table to negotiate. On April 24, 2017, (Ex. G), ITM responded to HHPA's presentation to the Hamilton County Commissioners meeting of April 10, 2017.
39. That the HHPA did not consider or allow to be considered on their meeting agendas the representation of ITM as a capable operator or make its case as to why it should be allowed to operate the line for several years as evidence by their agendas and meeting minutes.
40. HHPA refused to allow ITM to address the board in public meetings to implement an Operating Agreement since its expiration in 2006, in violation of its First Amendment Rights.
41. The HHPA ignored ITM's pleas to assist in getting an operating agreement in place in 2013. The Policy of Use (POU) was not put in place until 2012. The POU was not negotiated or approved by ITM, but was a unilateral condition of continued operation and thus livelihood of the Not-For-Profit ITM entity with NO TERMINATION CLAUSE or Period of resolution established.
42. Thus, unnecessarily burdening ITM to fund all repairs and improvement through retained earnings due to insufficient operating term to garner corporate or financial support of outside organization.

43. Additionally, HHPA did not allow the subject of the rail operator to be an agenda item on their public meetings for several years. Nor did it allow the ITM Officials or Representatives to address the HHPA in an official or public meeting.
44. The HHPA and Owners of the Rail line ignored and denied requests to meet to discuss the continued operation of the line and their erroneous claims of funding required and right of way necessary to adequately implement a mixed corridor of Rails with Trails. See: attached email Exhibits I-1 through I-13, and I-14 through I-25.
45. HHPA and its owners denied ITM the hearing to modify their poorly written Request for Proposals and add empirical standards for review and scoring.
46. The owners did not allow public input or comment to their plan to “rip up the rails” and put in a trail that is redundant to other trails currently funded. The proponents of the trails have not been open or allowed dialogue regarding certain “facts” are either not consistent with industry and community standards.
47. The taking out of the rails, in the middle of the 39 mile railroad, causes ITM to be trapped in Noblesville without economical means to move, sell or restore historic equipment and artifacts. Thus, causing ITM irreparable harm due to the magnitude of assets stored within the current location in Noblesville.
48. Defendant, The City of Noblesville has attempted to defame ITM by claiming an “toxic spills” within the ITM leased property, having been rebutted by the Indiana Department of Environmental Management (IDEM) after their initial investigation in a statement that said that “there is no eminent hazard to public health.” Defendant’s misrepresentation of the situation of the environmental conditions in the park can be lined back to Defendant’s

statements to “bankrupt” the organization in order to take over their rolling stock and assets for use by another operator of Defendant’s choosing.

49. The evidence of the wide range of scoring of the proposals received by the HHPA and their lack of establishing a standard by which these proposals should be compared coupled with an irresponsible use of subjective criteria coupled with unqualified reviewers of the proposal bear witness to the unjust and arbitrary rating of the proposals received. Furthermore, the address for the submission of the proposals in the RFP document approved by the HHPA board had an invalid address, and therefore allowed a proposal to be accepted after the deadline due to HHPA.
50. HHPA has denied ITM the right for public expression of its point of view. FRA overturned by Defendant local governments, as to the safety of the rail line..
51. The attached email Exhibits I-1 through I-13, and I-14 through I-25, which indicates HHPA’s, the Hamilton County Commissioners, Deputy Mayor Cook’s efforts from July 2016 to the present to prevent ITM from operating, as well as, new plans to remove the railroad from 8th Street to 96th Street in order to put in a trail even though to repair the railroad line would be cheaper and was supported more by the citizens of the area.
52. Said conduct set forth above in the verified complaint, pursuant to F.R.C.P. 65(b)(1) indicates that irreparable harm or injury will occur. In the event the 2017 Fair Train will not operate, the tracks are removed and ITM is not selected as the HHPA’s carrier and/or a trail installed, where the tracks are located, the damages will be of a nature as are difficult to calculate. This includes lost further business and profits, lost business reputation, loss of volunteer base, removal of the tracks, deterioration of the rolling stock,

and line, inability to generate monies to repair, maintain equipment and track, and attract new business and other damages, harms and injuries to be determined.

E. REQUEST FOR PRELIMINARY INJUNCTIONS

If Defendants are not enjoined while this suit is pending and ITM operates the ITM Fairtrain from August 4, 2017 through August 20, 2017, as well as other excursions and permitted usage of the railroad tracks located at MP 5.1 through MP 391.

1. To operating August 4, 2017 to August 20, 2017, the state Fair train and other excursions be selected as ITM and prevent the Defendants from removing the railroad.
2. To ITM to operate the ITM's Polar Bear Express excursions in November, 2017 through December 24, 2017.
3. Plaintiff, ITM will suffer irreparable injury in the form of:
 - a. Removal of operational tracks from Noblesville to Indianapolis will trap ITM and its equipment in its current location;
 - b. Loss of future profits and business opportunities;
 - c. Loss of its volunteer base, which operates, repairs and maintains its rolling stock and excursions;
 - d. Deterioration and devaluation of its rolling stock;
 - e. Good will in the community;
 - f. Loss of historical, educational, entertainment and recreational excursions;
 - g. Loss of generation of other business opportunities in the form of economic development and expansion of services on the southern end of the rail line. ITM will not be allowed to operate along the complete 37 mile railroad;

- h. From moving via rail, ITM's rolling stock currently located at Forest Park in Noblesville, Indiana. To transport it from there to an other location will be cost prohibitive if it has to do so by crane and tractor trailer; and
- i. To prevent the Defendants from prohibiting, limiting and/or restricting Plaintiff, ITM from operating the Fairtrain and Polar Bear Express and other historical, educational and entertainment proposals, and line including any and/or rail trips and maintenance, repair and upkeep of the rail line, as well as, selecting an operator and removal of the rails.

F. NO ADEQUATE REMEDY AT LAW

The injury is imminent and irreparable in that ITM operates two (2) major excursions on the rail line between August through September and November through December each year. Those excursions generate ITM in excess of \$600,000 per year (approximately 90 % of its annual operating budget in 2015).

ITM is not permitted to operate the Fairtrain and Polar Bear Express on the line to generate business, ITM will be irreparable harmed as ITM has no other excursions on the line throughout the remainder of the year 2017 and into the future, ultimately resulting in its demise. Plaintiff, ITM will suffer irreparable injury in the form of:

- a. Loss of future profits and business opportunities;
- b. Loss of its volunteer base, which operates, repairs and maintains its rolling stock and excursions;
- c. Deterioration and devaluation of its rolling stock;
- d. Good will in the community;

- e. Loss of historical, educational, entertainment and recreational excursions;
- f. Loss of generation of other business opportunities in the form of economic development and expansion of services on the western end of the rail line. ITM will not be allowed to operate along the complete 37 mile railroad;
- g. From moving via rail, ITM's rolling stock currently located at Forest Park in Noblesville, Indiana. To transport it from there to an other location will be cost prohibitive if it has to do so by tractor trailer

G. SUBSTANTIAL LIKELIHOOD OF SUCCESS

There is no adequate remedy at law for several reasons those being:

- 1. That a legal remedy has been pursued for 11 years by ITM with no negotiation or compromise by HHPA;
- 2. That a legal remedy cannot be obtained without filing multiple lawsuits.

Additionally, there is a substantial likelihood that ITM will prevail on the merits because it shall present overwhelming evidence of financial loss, and other factors listed above in F a-g above, if not permitted to operate the 2017 Fairtrain, Polar Bear Express and other historical, educational, entertainment and recreational excursions The railroad line is safe, well maintained all permits and regulations by the Federal Railroad Administration and Indiana Department of Transportation that govern ITM are in order to operate the ITM rolling stock for these excursions.

The harm faced by ITM outweighs the harm that would be sustained by the Defendants if the TRO/Preliminary Injunctions are granted.

H. THE COURTS BALANCE OF HARSHIPS

Balance of the hardships of the parties results in:

1. Defendants will not have any financial loss, lost profits, lost earning capacity, loss any monies, loss of volunteers or good will or deterioration of rolling stock, or lost economic development for not being able to use all 37 miles of the railroad.
2. ITM will lose at least approximately another \$600,000 being able to operate the Fairtrain, Polar Bear Express and other historic, education, entertainment and recreational excursions.
3. ITM , will still be required to repair, maintain the line at a cost of approximately \$5,000.00 mile per year.
4. ITM will incur insurance for coverage of the railroad at a cost of approximately \$41,000.00 per year.
5. ITM is required to repair and maintain the line by supplying staff to service the line to meet all safety standards required to operate the rolling stock by the Federal Rail Administration for all its excursions.
6. Defendants' said conduct will drive ITM out of business if the railroad is removed and/or ITM cannot operate to generate income and utilize its volunteer base.

I. NOT ADVERSELY AFFECT THE PUBLIC INTEREST

Issuance of a temporary restraining order and preliminary injunction would not adversely effect the public interest, in that Defendants' goal is to convert the line into a public path that has yet to be, finalized and financed and approved as to the removal of the railroad by the appropriate authorities. There is no cost to the public except the loss of historic, educational, entertainment and recreational excursions.

J. POSTING OF A BOND

ITM is willing to post a bond in the amount the court deems appropriate and continue said bond set by the court for the temporary restraining order, and preliminary injunction, pursuant to F.R.C.P. 65(d)(2) and 65(c), but respectfully move the court not to require a bond/security by ITM.

L. PRELIMINARY INJUNCTION HEARING

ITM moves the court to set its application for a temporary restraining order and after the hearing to request to issue a preliminary injunction against Defendant.

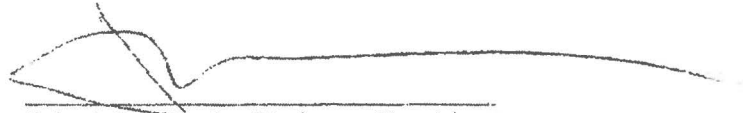
PRAYER FOR RELIEF

For the reasons, set forth, Plaintiff, ITM asks that this court do the following:

- a. Rescind the original HHPA suspension and allow the ITM to operate under the original CPOU and FRA guidelines.
- b. Not impair, prohibit, restraining or limit the use of the rail line so ITM can move its rolling stock;
- c. Prohibit the award of an operator under the HHPA RFP;
- d. Prohibit the HHPA from removing the tracks between 96th Street and Forest Park;
- e. Prohibit Noblesville from evicting ITM from the Forest Park property and continue its lease in perpetuity;
- f. Prevent Defendants from restricting, limiting, or prohibiting ITM from operating; and
- g. Grant any other relief it deems appropriate.

I, the undersigned, John McNichols, Chairman/President, of Indiana Transportation Museum, Inc., do hereby swear and affirm under the pains and penalties of perjury that the above is true and accurate.

Date: 08/07/17



John McNichols, Chairman/President

Respectfully submitted,

s/ Samuel L. Bolinger

Samuel L. Bolinger, #10786-98

803 S. Calhoun St., Ste. 300

Fort Wayne, IN 46802

Tel: 260.407.0040

Fax: 260.407.0039

Email: mark@slbolingerlaw.com

THIS AGREEMENT, entered into as of the 15th day of ^{March} February, 1996, by and between Indiana Transportation Museum, Inc. ("Museum") and the Historic Railroad Multi-jurisdictional Port Authority ("Authority").

WITNESSETH:

WHEREAS, Authority owns, a line of railroad in central Indiana; and

WHEREAS, Authority has expressed support for historic locomotive tours in that area; and

WHEREAS, the Authority is a statutory body of the State of Indiana, City of Noblesville and Town of Fishers; and

WHEREAS, Museum owns or had available for its use historic locomotives and passenger cars, and owns or has available for its use other resources and arrangements which are necessary or convenient in the operation of historic locomotive tour trains ("Historic Tour Trains"); and

WHEREAS, Authority has access to a community building, which occupies a site convenient to Authority's line of railroad at Fishers, Indiana; and

WHEREAS, Museum and Authority desire to cooperate in the operation of such Historic Tour Trains.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions herein made, and intending to be legally bound, the parties hereto agree as follows:

EXA

SECTION 1. GRANT OF TRACKAGE RIGHTS; COOPERATION IN OPERATION
OF EXCURSIONS

Subject to the terms and conditions herein provided, Authority hereby grants to Museum the right to operate Historic Tour Trains ("Trackage Rights") over the Authority's line of railroad shown on the drawing attached hereto, made a part hereof and marked Exhibit "A" ("Joint Trackage"). Museum hereby agrees to perform or otherwise be responsible for necessary switching movements in the operation of Historic Tour Trains at such times and upon such terms and conditions with third parties as Museum may determine; provided, however, that such operation of Historic Tour Trains shall not conflict with other operations of Authority.

SECTION 2. USE OF JOINT TRACKAGE

(a) Museum's use of the Joint Trackage shall be in common with Authority and any other user of the Joint Trackage, and Authority's right to use the Joint Trackage shall not be diminished by this Agreement. Authority shall retain the right to grant to other person rights of any nature in the Joint Trackage.

(b) Museum shall not use any part of the Joint Trackage for the purpose of moving freight or the making or breaking up of freight trains; however, this provision shall not prohibit the Museum from using auxiliary tracks as may be necessary for switching and storage of Museum cars and rolling stock upon reasonable notification to the Authority.

(c) Authority shall have exclusive control of the management and operation of the Joint Trackage, unless otherwise delegated in writing.

SECTION 3. MAINTENANCE OF JOINT TRackage

Authority shall maintain, repair and renew the Joint Trackage at its own expense and with its own supervision and labor, or, it may delegate such duty to others under such conditions and circumstances as the Authority deems reasonable. Authority shall use its best efforts to keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but does not guarantee the condition of the Joint Trackage or that operations thereover will not be interrupted from time to time or indefinitely. In the event that the Joint Trackage cannot be maintained in a condition suitable for movement of Museum's rolling stock, the Museum hereby waives any claim which it might otherwise have against the Authority by reason of its inability to use the Joint Trackage. The Museum specifically agrees that it shall not acquire any claim for damages as a result of its inability to use the Joint Trackage from time to time.

SECTION 4. MANAGEMENT AND OPERATION

(a) Museum shall comply with the provisions of the Federal Boiler Inspection Act and the Federal Safety Appliance Act, as amended, and any other applicable federal, state and local laws, regulations, rules and other requirements, respecting the operation, condition, inspection and safety of its locomotives,

cars, and equipment which such locomotives, cars and equipment are being operated over the Joint Trackage. Museum shall indemnify, protect, defend, and save harmless Authority and its officers, agents, and employees from and against all fines, penalties and liabilities imposed on Authority or its officers, agents, and employees under such laws, rules, regulations and requirements by any public authority or court having jurisdiction in the premises, when attributable to the failure of Museum to comply with its obligations in this regard.

(b) Museum shall provide the locomotives, cars and equipment for the operation of its Historic Tour Trains and shall make all necessary arrangements for the handling of passengers, ticket sales, parking, and all supplies and provisions as it may require at its sole cost and expense. Museum shall make all repairs to, and perform all maintenance and service of, its locomotives, cars and equipment. Authority, however, assumes no obligation or responsibility whatsoever for Museum's locomotives, cars and equipment.

(c) In the event that the Authority delegates supervision of the operation of the Joint Trackage to others, the Museum shall be bound by the reasonable rules and regulations established by the operator for use of the Joint Trackage. The locomotives, cars and equipment of Museum, of Authority and of any other present or future user of the Joint Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the

most economical and efficient manner of movement of all traffic. Parties acknowledge the timetable sensitive nature of passenger operations, and commit to best efforts to accommodate.

(d) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a locomotive or car of Museum becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Authority on the Joint Trackage, or if in emergencies crippled or otherwise defective locomotives or cars are set out of Museum's Historic Tour Trains on the Joint Trackage, Authority or Authority's designated agent shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such locomotives or cars, or to properly move the disabled equipment off the Joint Trackage, and Museum shall reimburse Authority for the cost of rendering any such assistance.

(e) Authority reserves the right to impose restrictions required to insure safe movement over the Joint Trackage and shall have the right, but not the duty, to inspect Museum's locomotives, cars and equipment to insure that they are in good mechanical condition and safe for operation on the Joint Trackage. Authority, in its sole reasonable discretion, may refuse to permit the operation of an Historic Tour Train over Joint Trackage if Museum's locomotives, cars or equipment, or conditions of the Joint Trackage, do not meet safety or regulatory requirements. In that event, Authority shall promptly notify Museum advising requirements necessary to remedy such

defects or deficiencies in Authority's locomotives, cars or equipment. In the event of a defect or deficiency in the Joint Trackage, Authority will make reasonable efforts to remedy such defect or deficiency, but shall not be required to incur any material cost or expense to remedy such defect or deficiency.

SECTION 5. NOTICE

Prior to any operation of an Historic Tour Train on Joint Trackage, upon request, Museum shall give Authority or Authority's designated agent written notice in advance of such operation. Any notice required or permitted to be given by one party to the other under this Agreement shall be by personal delivery, certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

(a) If to Authority:

Executive Director
11601 Municipal Drive
Fishers, IN 46038

(b) If to Museum:

Executive Director
P.O. Box 83
Noblesville, IN 46060-0083

(c) Either party may provide changes in the above addresses to the other party by personal delivery or certified mail.

SECTION 6. REIMBURSEMENT FOR COSTS

The parties hereby acknowledge the special relationship that exists between the Museum, the Joint Trackage, and the Authority, and provide that Museum's use of Joint Trackage shall be at

either no cost, or at the most economical terms consistent with generally accepted public policy. In the event other operations of the Authority are expressed on a cost per car per day or cost per move basis, Museum shall be granted license to operate at the same rate, but measured on a daily basis regardless of the number of moves or trips within the day. Any costs imposed by Section 4(d) shall be paid by Museum to Authority within 45 days of invoice.

SECTION 7. LIABILITY

Museum shall and does hereby assume responsibility for and agrees to indemnify and hold harmless Authority, its successors and assigns, from and against all loss, costs and expenses, including attorney's fees, claims, suits, and judgments whatsoever in connection with injury to or death to any person or persons whomsoever (including employees and agents of the parties hereto) or loss of or damage to any property whatsoever caused by or in any way connected with the operation of an Historic Tour Train, and whether such injury, death, loss or damage results from negligence of Authority, its agents, employees or otherwise. It is understood and agreed, however, that the liability assumed by the Museum in this Agreement shall be limited to the insurance coverage stipulated in Section 8 below.

SECTION 8. INSURANCE

Museum, at its sole cost and expense, shall procure and shall maintain during the continuance of this Agreement, liability insurance covering liability assumed by Museum under

this Agreement with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000) combined single limit for personal injury and property damage per occurrence. Museum shall furnish certificates of insurance evidencing the above coverage and the form of the policy (or policies) to Authority upon request. The insurance carrier shall have a Best's Rating of A+, or shall be subject to the prior approval of Authority. Such insurance shall contain a contractual liability endorsement which will cover the obligations assumed by Museum under this Agreement. In addition, such insurance shall contain notification provisions whereby the insurance company agrees to give thirty (30) days written notice to Authority and Museum of any change or cancellation of the policy. All of these endorsements and notice provisions shall be stated on the certificate of insurance which is to be provided to Authority.

SECTION 9. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of Museum to perform its obligations under this Agreement and its continuance in such default for a period of thirty (30) days after written notice thereof by certified mail from Authority, Authority shall have the right at its option after first giving ten (10) days written notice thereof by certified mail, and notwithstanding any waiver by Authority of any prior breach thereof, to terminate the Trackage Rights and Museums's use of the Joint Trackage. The exercise of such right by Authority shall not impair either party's rights under this Agreement or

any cause or causes of action either party may have for the recovery of damages.

SECTION 10. TERM

(a) This Agreement shall continue in full force and effect for a period of ten (10) years from the date this Agreement is entered into between the parties hereto; provided, however, that Museum shall have the right to terminate this Agreement upon giving ten (10) days written notice to Authority. Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to such termination.

~~(b) Museum may renew this Agreement for one (1) additional ten (10) year term upon approval by the Authority, such approval not to be unreasonably withheld, and further, subject to Museum's above stated right to terminate. The Museum shall give written notice to the Authority of its desire to renew not less than 60 days prior to the expiration of the initial term of this Agreement, and the Authority shall respond thereto with its approval or denial within 30 days of the receipt of the written notice requesting renewal.~~

SECTION 11. JOINT VENTURE

This Agreement is not intended to constitute, create, give effect to or otherwise recognize a joint venture, partnership or other form of business entity of any kind, and the rights and obligations of the parties hereto shall be limited to those expressly set forth herein and neither party shall hold itself

out, directly or implied as the agent of the other for any matter whatsoever.

SECTION 12. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachment annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties hereto.

(d) No term or provision of this Agreement may be changed, waived, discharges, or terminated except by an instrument in writing signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the locomotives, cars or equipment of Museum, such expression means the locomotives, cars and equipment in the possession of or operated by Museum and includes such locomotives, cars, and equipment which are owned by, in the control of or leased to Museum.

(f) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

SECTION 13. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, including, without limitation, the successors and assigns of Authority's interest in the Joint Trackage or any portion thereof. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

INDIANA TRANSPORTATION MUSEUM, INC.

John W. Davis

NAME: *John W. Davis*

TITLE: *Chairman*

WITNESS:

John W. Davis

HISTORIC RAILROAD
MULTI-JURISDICTIONAL PORT AUTHORITY

Dennis R. Blind

NAME: DENNIS R. BLIND

TITLE: PRESIDENT

WITNESS:

Mary H. H. H.

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

OMB Approval No.: 2130-0509

Inspector's Name Walsh, Patrick S.			Inspector's Signature Patrick S. Walsh Digitally signed by Patrick S. Walsh DN: cn=Patrick S. Walsh, o=FRA, ou=DOT, email=patrick.walsh@dot.gov, c=US Date: 2016.04.21 09:27:33 -0400			Inspector's ID No. 92921		Report No. 53		Date yy mm dd 2016 04 18		
Railroad/Company Name & Address INDIANA TRANSPORTATION MUSEUM Noblesville IN					R/C R	Division	RR/Co. Representative (Receipt Acknowledged) Name Bruce Jarrett Title CMO Email Signature _____					
From: City NOBLESVILLE		Codes 3590	Destination City & County				Codes	From Latitude				
State IN		18	City					From Longitude				
County HAMILTON		C057	County					To Latitude				
Mile Post: From To			Inspection Point NOBLESVILLE					To Longitude				
Activity Code:	215										CARS	
Units:	3										3	
Sub Units:	0										0	

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
1	MO	81528	C	215	0203	A1			YARD	N	N	1	215
Description OPERATING RESTRICTED CAR, EXCEPT UNDER FRA APPROVED CONDITIONS. CAR IS OVER 50 YEARS OLD FROM DATE OF ORIGINAL CONSTRUCTION.													
Seal Applied			Seal Removed			Hazard Class			UN/NA ID				
Violation Recommended ☐ Yes ☒ No						Latitude:			Longitude:				
Written Notification to FRA of Remedial Action is: ☐ Required ☒ Optional						Railroad Action Code		Date(mm/dd/yyyy):		Comments on back?			

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
2	CI	66	F	215	0203	A1			YARD	N	N	1	215
Description OPERATING RESTRICTED CAR, EXCEPT UNDER FRA APPROVED CONDITIONS. CAR IS MORE THAN 50 YEARS OLD FROM DATE OF ORIGINAL CONSTRUCTION.													
Seal Applied			Seal Removed			Hazard Class			UN/NA ID				
Violation Recommended ☐ Yes ☒ No						Latitude:			Longitude:				
Written Notification to FRA of Remedial Action is: ☐ Required ☒ Optional						Railroad Action Code		Date(mm/dd/yyyy):		Comments on back?			

EXB

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

(Continuation)

OMB Approval No.: 2130-0509

Inspector's ID No. 92921	Report No. 53	Report Date 4/18/2016
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
3	NP	7570	C	215	0203	A1			YARD	N	N	1	215

Description

OPERATING RESTRICTED CAR, EXCEPT UNDER FRA APPROVED CONDITIONS. CAR IS MORE THAN 50 YEARS OLD FROM DATE OF CONSTRUCTION.

Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	☐ Yes ☒ No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	☐ Required ☒ Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
4										N	N	0	

Description - [** Comment to Railroad/Company **]

NO EXCEPTION TAKEN TO INSPECTION OF FIVE PASSENGER CARS UNDER USC 20303.

Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	☐ Yes ☒ No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	☐ Required ☒ Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
5										N	N	0	

Description - [** Comment to Railroad/Company **]

NO EXCEPTION TAKEN TO THREE LOCOMOTIVES UNDER USC 20303.

Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	☐ Yes ☒ No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	☐ Required ☒ Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

OMB Approval No.: 2130-0509

Inspector's Name Blaydes, Fred E.		Inspector's Signature		Inspector's ID No. 11291		Report No. 84		Date yy mm dd 2016 04 28					
Railroad/Company Name & Address INDIANA TRANSPORTATION MUSEUM P. O. BOX 83 NOBLESVILLE IN 46061-0083				R/C R	Division SYSTEM	RR/Co. Representative (Receipt Acknowledged) Name PETE MCCORMACK Title TRACK SUPERVISOR Email jetmel4two@live.com Signature _____							
From: City INDIANAPOLIS	Codes 2210	Destination City & County				Codes	From Latitude						
State IN	18	City CICERO				0850	From Longitude						
County MARION	C097	County HAMILTON				C057	To Latitude						
Mile Post: From 0005.20 To 0028.00		Inspection Point MAIN TRACK				To Longitude							
Activity Code:	MTH	MTW	TOM	RWP	RMM	MSB	DER	TOY	YTW	TREC			
Units:	22	1	2	1	1	6	2	6	1	1			
Sub Units:	0	0	0	1	0	0	0	0	0	1			
Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/ USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
1										N	N	0	MTH
Description - [** Comment to Railroad/Company **] PERFORMED A COURTESY INSPECTION OF THE INDIANA TRANSPORTATION MUSEUM RAILROAD (ITMZ) FROM MILE 5.2 (INDIANAPOLIS, INDIANA) TO MILE 28.0 (CICERO, INDIANA). THIS RAILROAD RUNS FROM MILE 3.0 IN INDIANAPOLIS TO MILE 39.2 (TIPTON, INDIANA). THIS RAILROAD IS A NON-PROFIT TOURIST RAILROAD. IT IS OPERATED SOLELY BY VOLUNTEERS OF THE ITMZ. IT IS NOT CONNECTED TO THE GENERAL RAILROAD POPULATION ON EITHER END. THE TRACK IS NOT OPERATED ON SOUTH OF MILE 5.1 (38TH STREET). IT IS OPERATED ON FROM MILE 5.1 TO MILE 16.3 FOR 17 DAYS IN AUGUST EVERY YEAR AND MAY BE OPERATED ON FOR INDIVIDUAL SCHEDULED TOURS. THE ITMZ STARTS OPERATING IN APRIL AND CONTINUES OPERATING TO THE END OF THE YEAR FOR ITS TOURIST SEASON. THE NORMAL DAYS OF OPERATIONS ARE ON THE WEEKENDS. SPECIAL TOURS MAY BE SCHEDULED DURING THE WEEK SUCH AS FOR SCHOOL TRIPS. THE TRACK FROM MILE 16.3 TO 39.2 IS THE SECTION NORMALLY USED FOR TOURS. ITMZ IS THE OPERATOR ON THIS TRACK. THE OWNER IS THE HOOSIER HERITAGE PORT AUTHORITY.													
Seal Applied		Seal Removed		Hazard Class		UN/NA ID							
Violation Recommended ☐ Yes ☒ No				Latitude:				Longitude:					
Written Notification to FRA of Remedial Action is: ☐ Required ☒ Optional				Railroad Action Code		Date(mm/dd/yyyy):				Comments on back?			

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT
(Continuation)

OMB Approval No.: 2130-0509

Inspector's ID No. 11291	Report No. 84	Report Date 4/28/2016
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
2										N	N	0	YTW

Description - [** Comment to Railroad/Company **]

THE INSPECTION STARTED WITH WALKING THE YARD IN NOBLESVILLE. THE YARD TRACKS ARE NOT OPERATED ON WITH PASSENGERS. THEY ARE USED FOR STORAGE OF CARS AND MAINTENANCE EQUIPMENT. THE TRACKS DO HAVE SOME MAINTENANCE ISSUES. TIE CONDITION IS WEAK THROUGHOUT. TIE DISTRIBUTION AND JOINT TIE CONDITION COULD BE IMPROVED. HEAD BLOCK TIES COULD STAND TO BE REPLACED. ONE GAGE MEASUREMENT OF 58 1/4-INCHES WAS MEASURED. GAGE BETWEEN 57 1/2 TO 58-INCHES WAS MEASURED IN A FEW LOCATIONS. SWITCH POINT FIT COULD BE IMPROVED. SOME RAIL BRACES WERE LOOSE AND OFF. ONE STRIPPED JOINT WAS OBSERVED. TRACK SURFACING COULD ALSO HELP ESPECIALLY IN THE SWITCHES. NO OPERATIONS OCCUR AT MORE THAN 10 MILES PER HOUR, AND MOSTLY LESS THAN THAT.

Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	☐ Yes ☒ No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	☐ Required ☒ Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
3										N	N	0	MTH

Description - [** Comment to Railroad/Company **]

THE CONCERN ON THE MAIN TRACK IS TIE CONDITION WHICH IS WEAK THROUGHOUT. VARIOUS LOCATIONS THROUGHOUT THERE ARE AREAS WITH SEVERAL CONSECUTIVE DEFECTIVE TIES, AS WELL AS JOINTS WITH POOR TIE CONDITIONS. ONE SWITCH ON THE TURNOUT SIDE AND PART OF THE SIDING HAS BEEN REMOVED FROM SERVICE DUE TO TIE CONDITION. SEVERAL AREAS ON THE MAIN TRACK HAVE 10 MILE PER HOUR SPEED RESTRICTIONS DUE TO TIE CONDITION. THE NORMAL TIMETABLE SPEED IS 20 OR 25 MILES PER HOUR. THERE ARE NEW TIES ALONG THE RIGHT OF WAY AND STOCKPILED IN THE YARD. THEY WERE INTENDED TO BE INSTALLED BUT THE WORK HAD BEEN STOPPED. THERE ARE SOME SURFACE ISSUES THAT ALSO NEED MAINTENANCE AT ROAD CROSSINGS, BRIDGE APPROACHES, AND IN WEAK TIE AREAS. THERE ARE A FEW LOOSE JOINTS WITH GAGE MISMATCHES. ONE JOINT WITH LOOSE BOLTS HAD A GAGE MEASUREMENT OF 57 7/8-INCHES. OVERALL TRACK CONDITIONS ON THE MAIN TRACK ARE FAIR BUT MAINTENANCE IS NEEDED TO KEEP THEM FROM DETERIORATING TO POOR. 10 MPH SPEED IS ON MANY WEAK AREAS.

Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	☐ Yes ☒ No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	☐ Required ☒ Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

(Continuation)

OMB Approval No.: 2130-0509

Inspector's ID No. 11291	Report No. 84	Report Date 4/28/2016
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
4										N	N	0	TREC

Description - [** Comment to Railroad/Company **]

TRACK INSPECTION RECORDS WERE NOT AVAILABLE FOR REVIEW. I WAS TOLD THAT THE TRACK INSPECTION NOTES WERE RECORDED ON THE DISPATCHER LOGS. ITMZ DOES HAVE A TRACK INSPECTION FORM THAT WAS NOT BEING USED. I INSTRUCTED THE ITMZ VOLUNTEER EMPLOYEES THAT THE TRACK INSPECTION FORM SHOULD BE COMPLETED, DATED, AND SIGNED FOR EACH DAY OF INSPECTION. THERE WAS ALSO NO RECORDS OF HI-RAIL INSPECTIONS PRODUCED. I WAS TOLD THE TWO HI-RAIL VEHICLES ITMZ HAVE ARE CURRENTLY OUT OF SERVICE. THE HI-RAIL VEHICLE USED FOR TODAY'S INSPECTION WAS PRIVATELY OWNED BY ONE OF THE VOLUNTEER EMPLOYEES. NO RWP TRAINING RECORDS WERE MADE AVAILABLE FOR REVIEW. THE TRACK SUPERVISOR HAS APPROXIMATELY 16 YEARS IN TRACK MAINTENANCE. HE STATED THE HE HAD ATTENDED A PART 213 TRAINING SEMINAR IN CHICAGO IN 2011.

Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	☐ Yes ☒ No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	☐ Required ☒ Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
5										N	N	0	RMM

Description - [** Comment to Railroad/Company **]

ITMZ HAS SEVERAL PIECES OF ON-TRACK EQUIPMENT. NONE ARE EQUIPPED WITH OPERABLE RADIOS. NOT ALL ARE EQUIPPED WITH FIRE EXTINGUISHERS. NOT ALL HAD AN OPERATORS MANUAL ON THEM. FIRST AID KITS WERE ALSO LACKING ON THE EQUIPMENT. I DID NOT OBSERVE ANY OF THE EQUIPMENT IN OPERATION AND DO NOT KNOW HOW MANY ARE OPERABLE OR TO WHAT REPAIRS MAY BE NEEDED TO MAKE THEM SAFE FOR ON-TRACK USE. THE ON-TRACK EQUIPMENT IS OLD, USED EQUIPMENT, FROM OTHER RAILROADS, AND WILL NEED SOME UPDATING TO BE CURRENT.

Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	☐ Yes ☒ No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	☐ Required ☒ Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
6										N	N	0	MTH

Description - [** Comment to Railroad/Company **]

A RE-INSPECTION WILL BE CONDUCTED TO ASSESS THE TRACK THAT WAS NOT TRAVERSED, AS WELL AS REVIEWING MORE PART 213 AND PART 214 ISSUES WITH THE ITMZ. THE RAILROAD IS CURRENTLY SHUT DOWN FROM OPERATIONS BY THE OWNER OF THE PROPERTY, THE HOOSIER HERITAGE PORT AUTHORITY. I DO NOT SEE ANY IMPROVEMENTS BEING MADE AS LONG AS THE RAILROAD IS NOT ALLOWED TO OPERATE. THE PROPERTY OWNER HAS HAD INSTALLED, BY AN OUTSIDE CONTRACTOR, SWITCH POINT CLAMPS AT THE TWO ENTRANCES TO THE YARD. ALL ITMZ EQUIPMENT IS LOCKED IN THE YARD.

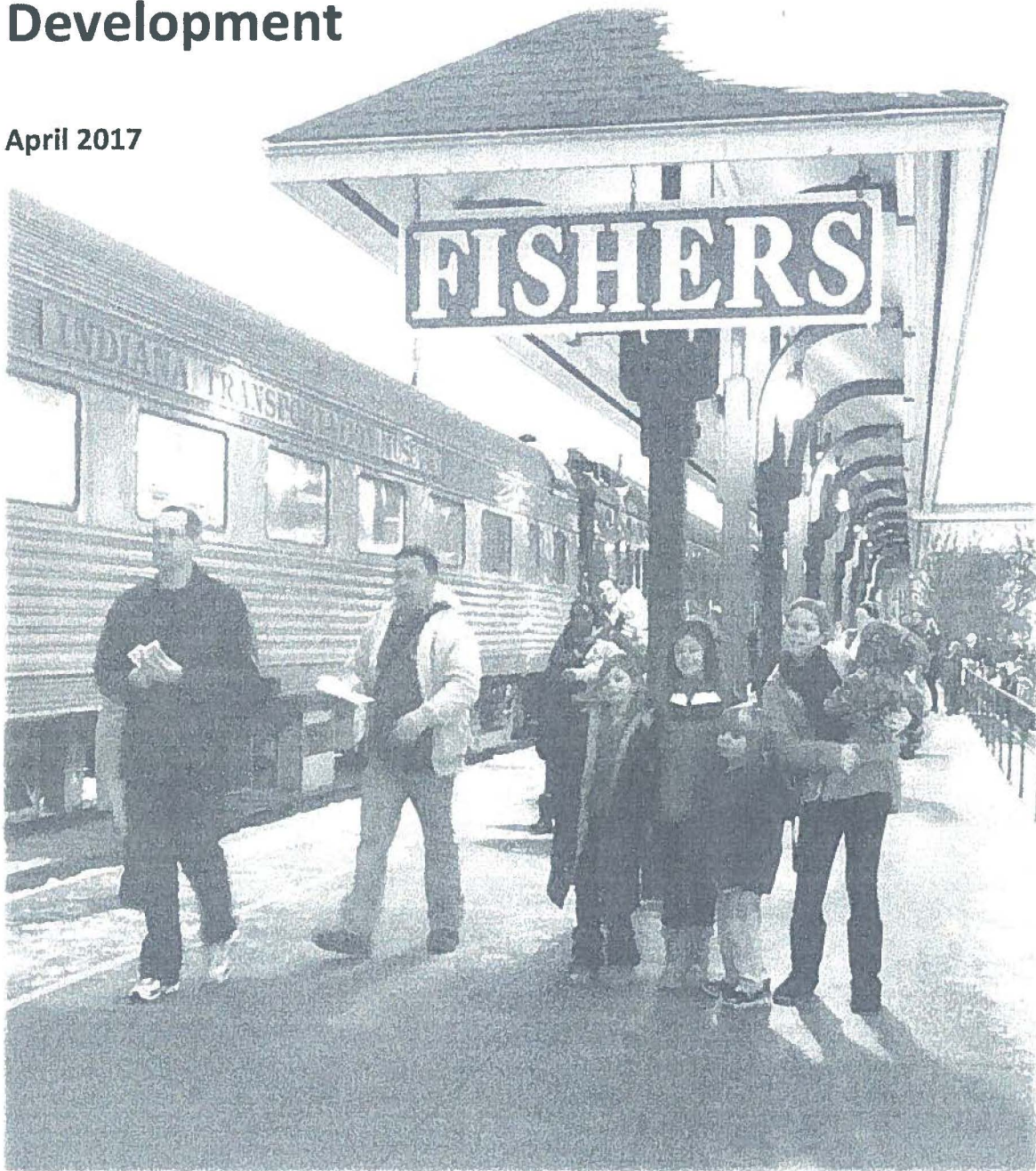
Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	☐ Yes ☒ No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	☐ Required ☒ Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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The Indiana Transportation Museum's Nickel Plate Heritage Railroad Operation: Its Contribution to Local Economic Development

April 2017



EXC

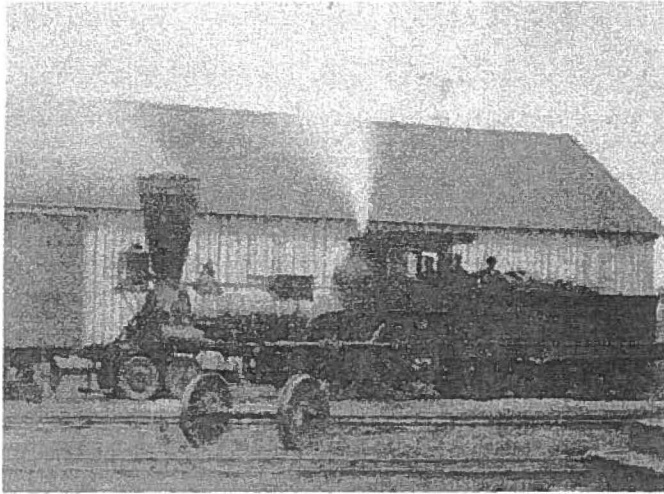
About the information in this report

Information provided in this report about the Museum's heritage railroad operation is drawn from two sources: visitor information drawn from ticket purchase transaction histories and results of a questionnaire sent via Survey Monkey to 9,000 visitor households. There were 766 individual responses making the response rate a statistically significant 8.6%. The margin of error is +/- 5% at a 95% confidence level.

The survey tested opinions on a variety of factors to gauge public support for the museum in general and its offerings or products specifically. It was programmed using skip logic to prevent respondents from answering questions about certain topics or products unless they had personal knowledge of them.

In the interest of brevity, this report focuses on the museum railroad's effects on the local economy. It omits information collected about specific products such as the FairTrain or about visitors' (customers) opinions concerning educational and entertainment activities.

Why our railroad heritage is important



The advent of the railroad in the 19th century was an unparalleled achievement. In a world that had known only wind, water and animal power, the appearance of self-propelled machines tirelessly moving people and goods across the landscape at mile a minute speeds was revolutionary.

America and the Railroads grew up together. They were the country's first major industry and for over a century, its principal form of transportation beside to the horse.

Alone, for a century they filled a role occupied now by highways, airlines, and the railroads. So central were they to society and the economy that they shaped geographic growth and development and drove advances in law, finance and science. Their deep influence remains evident in the arts and folklore.

But the most enduring mark they left on America was shaping a distinctive national character. The builders' triumphs over nature and trains' seeming ability to compress space and time excited the public's imagination and



quickened its pulse. Nothing seemed impossible. Optimism and a can-do spirit became defining features of what it meant to be American.

Indiana is one of America's great railroad hubs, crisscrossed by busy main lines and home to manufacturers and facilities serving the industry. Railroads remain a vibrant force in the state's economy.

Understanding who we are as a people and where we are going as a nation depends in part on understanding the role have railroads played.

The Museum's Mission



The story of the railroad and its meaning to Indiana and the nation is the story the museum seeks to tell. Its purpose: to inspire future generations with the daring, the ingenuity, and dedication of the people in an industry who helped open a continent and bind it together.

The story of the railroad is first and foremost the story of people. Railroads exist to serve human needs. They are dynamic enterprises whose life and meaning is drawn from the relationships among those who make them work and those they serve.

Interpreting how the railroad functioned, how it was part of community life and a link to the rest of the world is why the Museum's working railroad is central to its mission. It offers visitors of all ages an authentic, immersive encounter with a part of Indiana life once common decades ago. By weaving the railroad experience into visitors' lives they become participants, not just spectators. The railroad becomes a part of their own personal history. It is an experience of sight, sound and sensation that can light up imaginations, provoke questions and open doors to discovery and learning.

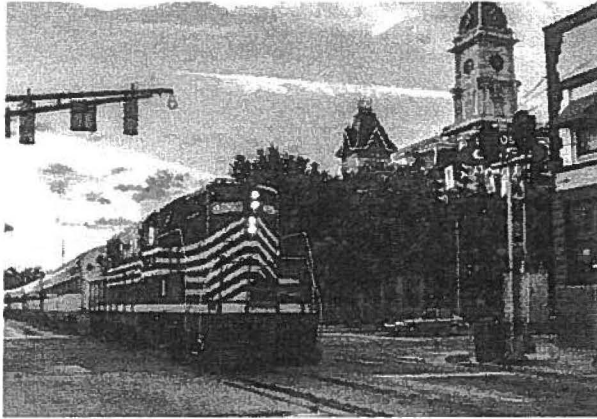
But its value to the community goes beyond serving as a resource for discovery and learning. The Museum's heritage railroad operation has substantial economic value as a driver of tourism and as a functional mode of transportation. The links it forges among cities, towns, neighborhoods, events and cultural amenities throughout its 35-mile corridor make it a valuable tool for developing the region's tourism industry, an industry that figures prominently in local and state economies, ranking third in Hamilton County¹, and sixth overall in Indiana².

The railroad is a popular destination for tourists and ranks among Hamilton County's top attractions. Last year it welcomed 32,700 visitors, 81% of whom reported spending money at local establishments on food, lodging, fuel, and retail items³ before and after their trips.

¹ Hamilton County Convention and Visitors Bureau.

² Indiana Office of Tourism Development.

³ ITM market research study sent to 10,000 visitors. N=770.



The Museum's Heritage Railroad operation is an economic and cultural asset for Noblesville, Fishers and Hamilton County

Noblesville's civic leaders in the 1840's valued the railroad so highly as an asset for economic development that they insisted its builders route the track through the center of town.

The history of Fishers (once known as Fishers Station), is also closely tied to the railroad. The town took root as a rail access point for area farmers shortly after the line opened the surrounding wilderness to development.

Today the Museum's Nickel Plate Heritage Railroad operation builds on that history of value creation. For over 20 years it has offered a unique working landmark that draws visitors, stimulates economic activity, and adds value to the region. It does this all with earned income and without any taxpayer operating support.

The private sector nonprofit museum railroad is a remarkable treasure, that distinguishes Indianapolis and the hearts of Noblesville, Fishers and other communities along the route from neighboring cities and towns across central Indiana.



Museum's Nickel Plate Heritage Railroad operation

The Museum's audience is regional and growing

Like many other metropolitan area museums, eighty percent of its visitors come from within the Indianapolis Metropolitan Statistical Area (MSA), a U.S. Census Bureau designated 10 county region in the heart of Indiana.

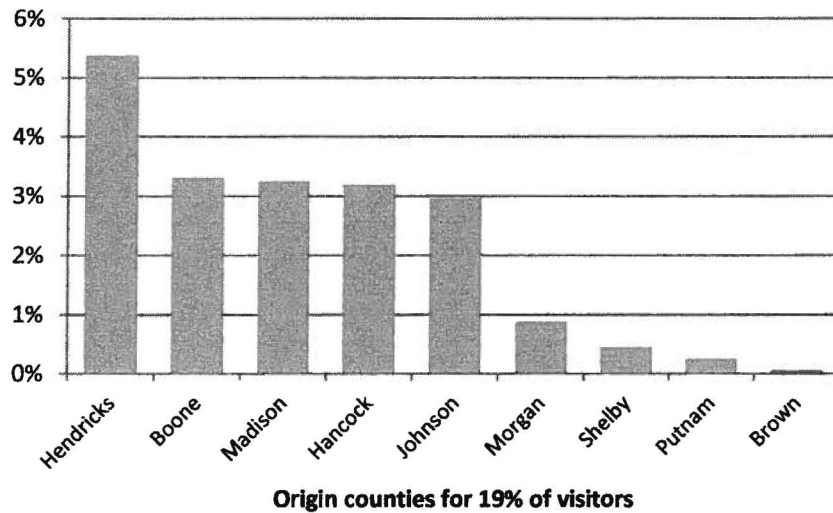
In 2015, the Museum railroad welcomed nearly 31,700⁴ visitors, an increase of 7% over 2013. Revenues reached \$600,000 for the first time. It scheduled 264 trains out of Fishers alone.

One in 5 museum railroad visitors came from outside the MSA. Four percent of those came from out of state.

Tippecanoe, Howard, Delaware Allen and Grant counties contributed the greatest number of visitors from outside the MSA.

Ohio at 22 percent and Illinois at 19 percent were the largest contributors of the four percent of visitors coming from out of state.

Visitor Household Distribution - For Balance of Indianapolis MSA



With its proximity to Interstates 69 and 465, and to Marion County, and Carmel, Fishers is a natural

boarding point. Of the 31,700 visitors, the heritage railroad welcomed in 2015, fully 80% or 25,000 were drawn to downtown Fishers by the Museum's events. Visitors traveling to the Indiana State Fair accounted for approximately half the boardings. The remainder of those boarding at Fishers were transported to Noblesville. Approximately 7,000 boardings took place in Noblesville and town festivals north of Noblesville.



Crowds leaving the State Fairgrounds prepare to board the train for Fishers.

Heritage railroads are drivers of local economic activity

Heritage railroads are destination attractions that generate significant tourist traffic from sightseers and those attending railroad themed special events.

Visitors report spending money both before and after their trip in the community where they board the train and may spend additional money during their trip as well depending on the destination.

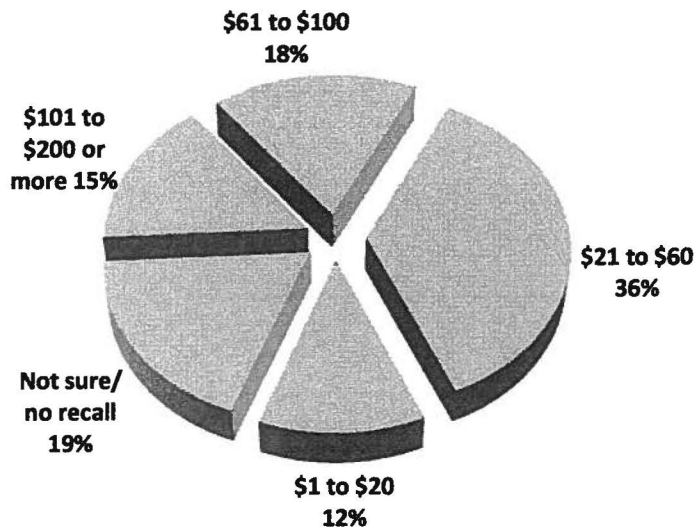
The amounts visitors reported spending and the percentage of visitors engaging in this activity are shown on the adjacent chart. More than 3 in 10 spent over \$60 and nearly 1 in 10 spent \$101 to \$200 or more.

Specific expenditures, as shown in the bar chart went for meals, fuel, retail items and lodging.

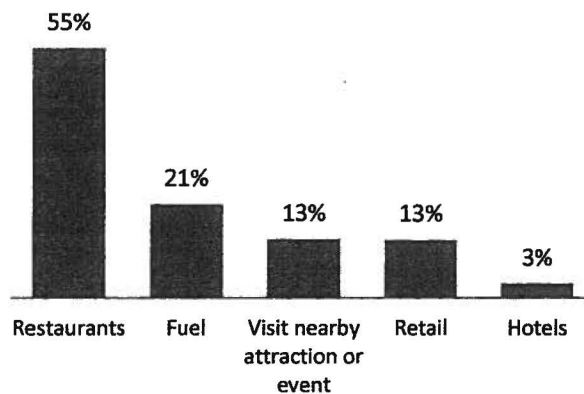
The numbers cited are for direct spending only and do not include multiplier effects as these dollars worked their way through the local economy. In addition to visitor spending, the railroad itself returns over \$500,000 annually to the community in purchases of materials, services and wages.

The economic impact of heritage railroads on their communities has been studied in a number of instances. The economic impact of some selected railroads is shown by the studies in the table below.

Railroad Visitor Households Spent Over \$678,000 on Purchases in the Community Before and After Their Trips



Where Visitor Households Spent Money in the Community Before and After Their Trips



Economic Impact of Selected Heritage Railroads

Economic impact shown is direct and indirect only. Does not include induced effects

State	Railroad	Annual Impact Millions	Economic Model Used	Report Prepared By
North Carolina	Great Smoky Mountain	\$53.6	IMPLAN	1
Colorado & New Mexico	Cumbres & Toltec Scenic	14.8	IMPLAN	2
New York	Adirondack	9.2	RIMS II	3
Maryland	Western Maryland Scenic	5.4	RIMS II	3
Nevada	Virginia & Truckee	9.5	RIMS II	4
Connecticut	Valley Railroad	4.5	RIMS II	5
Ohio	Lebanon, Mason & Monroe	4.7	RIMS II	3
Pennsylvania	Coalbrookdale	17.2	RIMS II	3

Notes

- 1 Western Carolina University
- 2 BBC Research & Consulting
- 3 Stone Engineering & Consulting
- 4 Nevada Commission for Reconstruction of the V&T
- 5 HDR Engineering
- 6 RIMS II model created / used by U.S. Dept. of Commerce

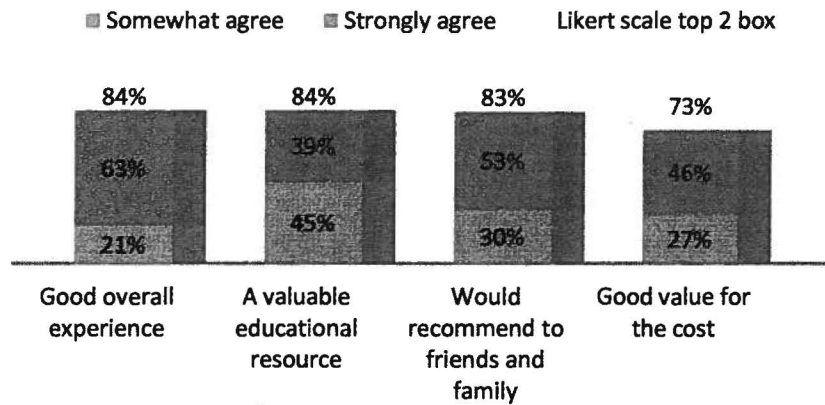
Museum Visitors Report

Satisfaction with their Experience

Eight out of 10 Museum railroad visitors felt that it was a good overall experience. The cost of tickets diminished visitors' positive feelings toward the overall

experience. Eight out of 10 also felt the railroad was a valuable educational resource and responded they would recommend it to family and friends. Seven out of 10 felt the experience represented good value for the cost. Again, the cost of tickets was cited as an important factor in deciding whether to visit. However, nearly 6 in 10 respondents were unaware or only slightly aware the museum railroad is supported by ticket revenues and receives no taxpayer operating support.

Visitors' Perception of Their Railroad Experience

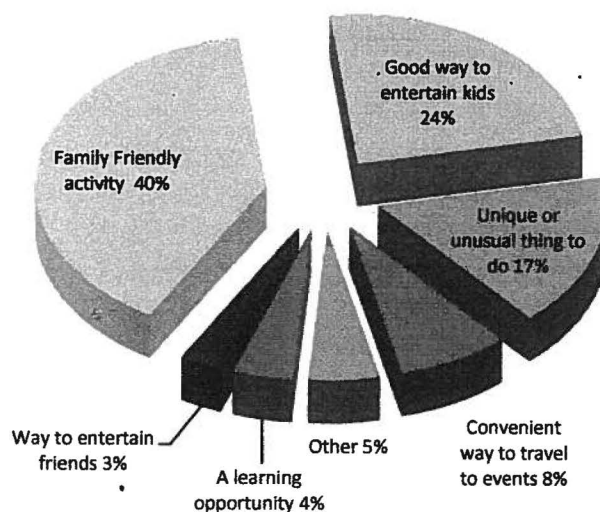


How Visitors Defined Their Experience

The principal reason given for visiting the museum was family recreation and the uniqueness of the offerings.

However, leisure activity alone was not the sole determinant of a positive rating. In a separate question, 7 out of 10 responded that an historically authentic experience was somewhat or very important in influencing their decision.

How Visitors Defined Their Experience



What Motivates Households to Visit the Museum Railroad?

Special events and activities are the number one draw for many types of museums and the museum railroad's visitors were no exception.

Eight out of 10 railroad visitors ranked special events and activities such as the Polar Bear Express, Harvest Train and the FairTrain as principal reasons for their visits. Eight out of 10 also indicated they took ticket price into consideration when deciding whether to visit.



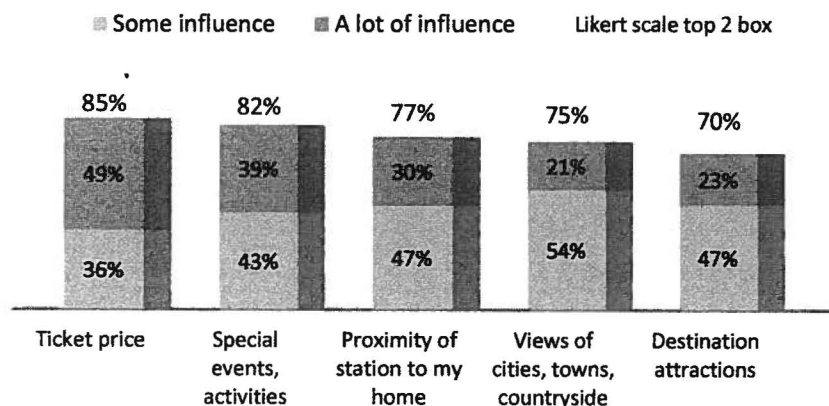
Special events and activities are the number one draw for museum railroad visitors

Ease of access – the proximity of the station or boarding area to the household's residence—was also identified by nearly 8 out of 10 households as a significant factor in their decision making process . Responses to subsequent questions on this topic suggest that driving time, fuel cost, and the degree of traffic congestion are all influences behind this factor.

Seven out of 10 households considered scenery, the passing view outside the window, to be important. In a follow up question, however, over 6 out of 10 replied they were indifferent between rural and urban views.

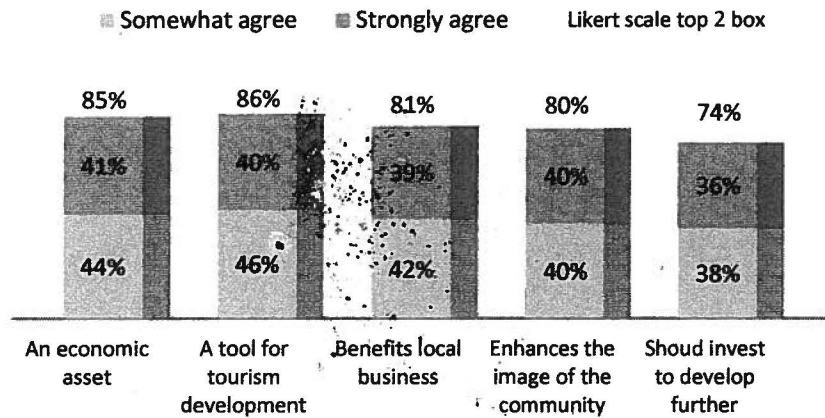
Attractions and events at the train's destination including festivals, the State Fair, museums, galleries, restaurants and shopping ranked fourth as a significant factor for inducing visits.

Top 5 Factors Influencing Decisions to Visit the Heritage Railroad



Visitors See Value for the Community in the Museum Railroad

How Visitors See the Value of the Museum Railroad to the Community



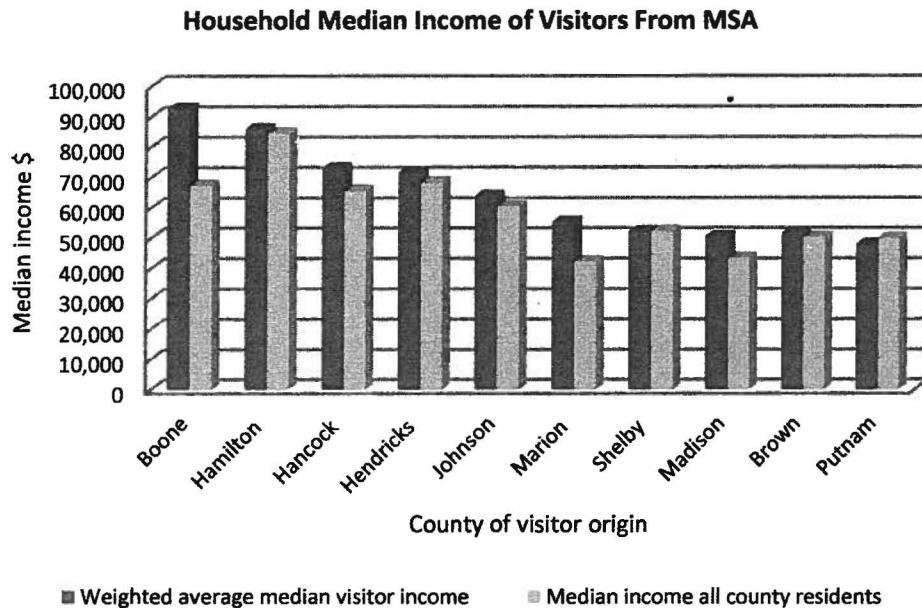
Visitor impressions of the Museum Railroad as an asset to the community were significantly positive. Nearly nine out of ten visitors saw the railroad as a tool for tourism development. A similar number saw the railroad as an economic asset to the region. Eight out of ten visitors thought the presence of the railroad benefitted local businesses and a similar number said they felt it enhanced the image of the communities it serves.

Seven out of ten visitors felt the community, speaking broadly, should invest in improving the visitor experience. The number of positive responses might have been greater but some qualified their answer by expressing the opinion that tax dollars should not be used. This may be because 6 out of 10 responded they were not familiar or only slightly familiar with the fact that the Museum is an independent, private sector entity and that it does not receive operating support through tax dollars.

Who Are the Museum Railroad's Visitors?

The following section offers brief insights on visitor demographics and their implications.

Median household income of visitors is higher than that of the general population

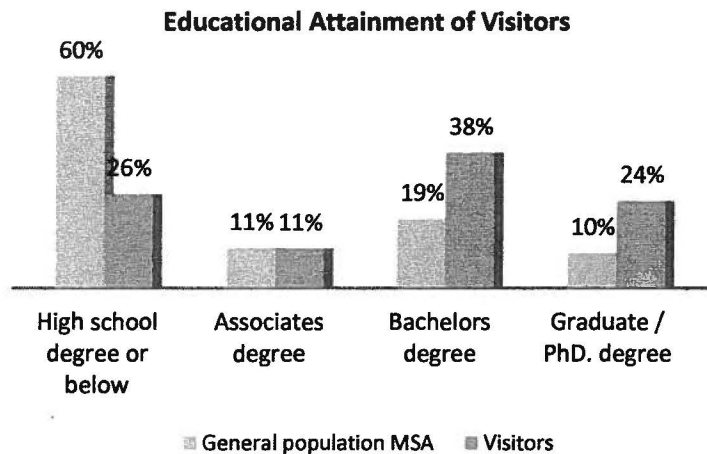


Museum visitor households from the MSA, which account for eighty percent of the Museum's total visitors, have median incomes as much as 37 percent higher than the median household income for their county of residence.

The weighted average median household income for all museum visitors from the MSA taken as a whole is \$72,980. In contrast, the median income for all MSA residents is \$52,434 and \$49,446 for state according to 2014 U.S. Census estimates.

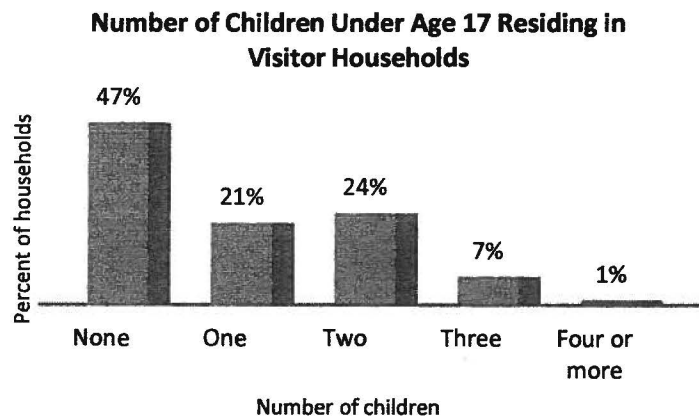
This \$20,000 to \$23,000 difference suggests visitors enjoy higher levels of disposable income that are available to take advantage of more leisure activities.

Visitor education levels tend to be higher than those of the MSA population in general



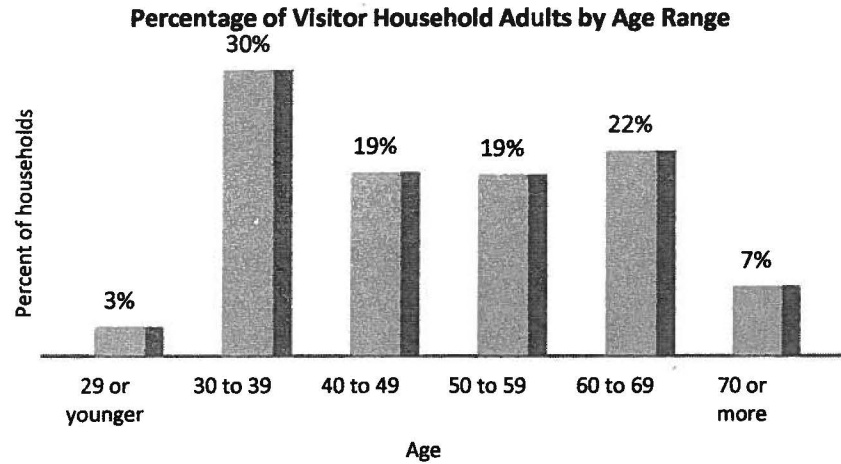
Museum railroad visitors report higher levels of education than the population as a whole. The effect of this is reflected in higher household median incomes. More education typically means greater interest in cultural or educational opportunities. It also means more independent, savvy consumers with greater ability to evaluate product or service claims and decide for themselves which represent the best values for them or their children.

Five out of 10 visitor households have at least one child under age 17



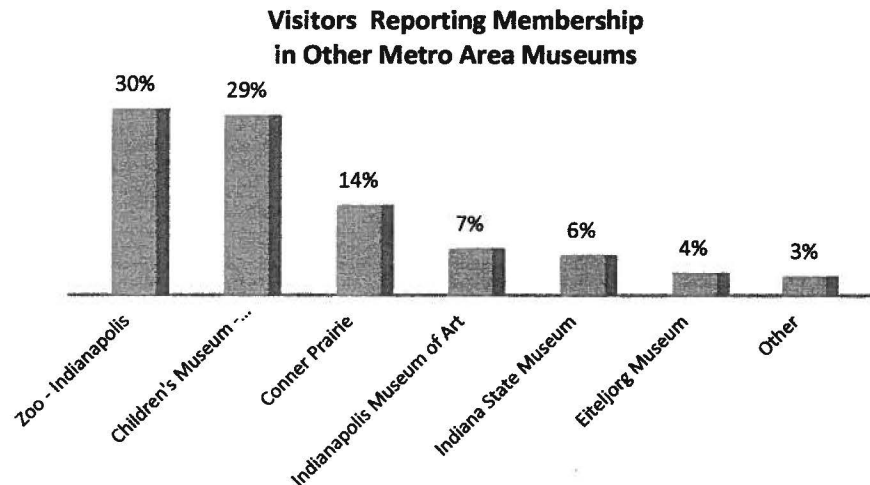
Parents with children report a constant search for things to do and especially for things to do together as a family. A trip on the railroad or attendance at a railroad themed event offers an opportunity family members to share an experience and for children to translate that experience into knowledge that will later supplement their academic efforts.

Over half the museum railroad visitors are under age 50



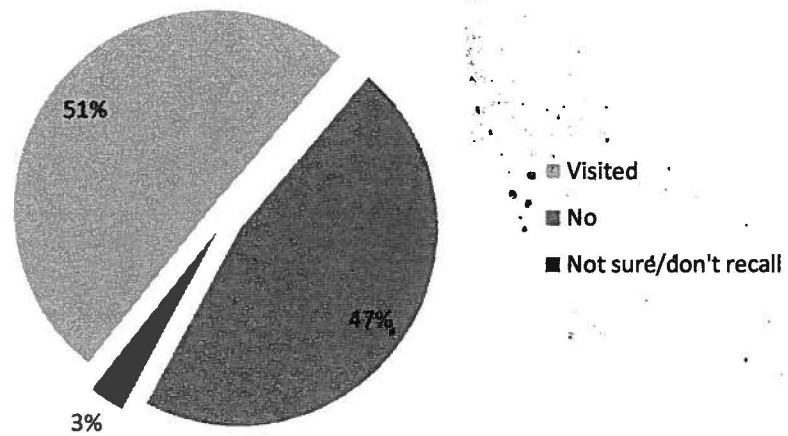
The significant number of households with children is reflected in the age distribution of visitors as well. More than 5 in 10 are in their peak child rearing years and 6 in 10 are in their prime earning years. Visitors skew higher in age than the general population for the MSA whose median age is 36 years. The low number of visitors under age 30 relative to the general population represents an opportunity for developing products that appeal to this segment of the market.

Many visitors belong to at least one other metro area museum



Visitors support other civic institutions that offer family friendly activities. These relationships with nationally recognized institutions likely influence visitor expectations for the museum railroad's offerings.

Museum railroad visitors have visited at least one other heritage railroad or railroad museum



Over half of the visitors to the Museum railroad have visited one or more other heritage railroads or railroad museums. That experience establishes a benchmark against which visitors can assess the ITM experience.

ORDINANCE NO. 090724B
AN ORDINANCE ESTABLISHING THE
HISTORIC RAILROAD
MULTI-JURISDICTIONAL PORT AUTHORITY

WHEREAS, the City of Noblesville and the Town of Fishers have concluded the acquisition of the real property constituting the right-of-way in fee title of what is commonly known as the "Old Nickel Plate" line, more particularly described in Exhibit A attached hereto and made a part hereof, together with all improvements and appurtenances located thereon and subject to leases and rights of tenants thereunder; and,

WHEREAS, Indiana Law provides for the establishment of a multi-jurisdictional port authority for the purpose of two or more Indiana municipal corporations owning real property and operating facilities thereon for the purposes set forth in the Act; and,

WHEREAS, the legislative body of each municipal corporation must adopt an ordinance which, in substantially the same form, sets forth the powers, purposes and authority to be exercised by the multi-jurisdictional port authority, together with the appropriate terms and conditions for the governance of the authority and such other rules, regulations, conditions or limitations which are necessary and appropriate for the conduct of the affairs of the authority; and,

WHEREAS, the City of Noblesville and the Town of Fishers, upon the adoption of this ordinance, shall have satisfied the statutory requirements for the establishment of a multi-jurisdictional port authority with all the powers and authority set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Fishers, Hamilton County, Indiana, meeting in regular session as follows:

Section 1. Establishment. Upon the mutual adoption by the Town of Fishers and the City of Noblesville of this Ordinance, there is hereby established the Historic Railroad Multi-Jurisdictional Port Authority subject to all of the powers and authority granted and conferred by the Indiana Code.

In addition to the establishment of the Historic Railroad Multi-Jurisdictional Port Authority by the City of Noblesville and the Town of Fishers, the Historic Railroad Multi-Jurisdictional Port Authority may be expanded to include other municipal corporations in the following manner:

- (a) The municipal corporation seeking to join the multi-jurisdictional port authority shall make application in a form prescribed by the Board of Trustees seeking admission thereof;
- (b) The Board of Trustees and the applicant shall define the appropriate consideration for such admission;

EX 13

EX 13

(c) The Board of Trustees must vote unanimously in favor of accepting the application;

(d) Upon unanimous acceptance of the application by the Board of Trustees, the applicant must adopt an ordinance which is in substantially the same form as this ordinance subject only to the following amendments which shall be incorporated by amendment to this ordinance by the legislative bodies of the municipal corporations participating in the multi-jurisdictional port authority:

(i) That the membership of the Board of Trustees shall be expanded to include at least One (1) but not more than Three (3) additional members for each municipal corporation added hereafter, such members to serve for terms of Three (3) years to be appointed by the Executive Officer of the municipal corporation joining the Port Authority.

Section 2. Term. The term of existence of the Historic Railroad Multi-Jurisdictional Port Authority shall be in perpetuity.

Section 3. Powers. The Historic Railroad Multi-Jurisdictional Port Authority shall have all the powers permitted under the laws of the State of Indiana as from time to time amended, limited only by the provisions of this Ordinance.

Section 4. Purpose. The purpose of the Historic Railroad Multi-Jurisdictional Port Authority shall be to protect and preserve the existence of the real property described in Exhibit A as a single parcel of real estate in perpetuity for such uses as may benefit the citizens of Noblesville and Fishers including, but not necessarily limited to, recreational, transportation and tourism purposes.

Section 5. Organization.

A. **Members.** The business and affairs of the Historic Railroad Multi-Jurisdictional Port Authority shall be conducted by a Board of Trustees consisting of Six (6) members, Three (3) of whom shall be appointed by the Town Council of Fishers, so long as it is organized as a Town, and if ever changed to a City, by the Mayor of said City thereafter, and Three (3) of whom shall be appointed by the Mayor of Noblesville.

B. **Terms.** Members of the Board of Trustees shall be appointed for a term of Three (3) years; however, the initial board shall be appointed for staggered terms. One of the initial appointees from each municipal corporation shall serve for a One (1) year term, one each for a Two (2) year term, one each for a Three (3) year term. Thereafter, as each initial term expires, the successor shall serve for a full Three (3) year term. The appointing executive shall deliver a certificate of appointment to such trustee designating the term of his or her office.

C. There shall be no limit on the number of successive terms a trustee may serve.

D. A trustee may be removed at any time without cause by the appointing authority of such trustee. A replacement appointment shall serve the unexpired term of the trustee so removed.

E. Each trustee upon appointment shall take an oath of office in the appropriate form.

F. Officers. From the membership of the Board shall be elected the following offices for a term of One (1) year:

President

Vice-President

Secretary

Treasurer

Officers may serve successive terms if elected.

Section 6. Fiscal Affairs. All funds of the Historic Railroad Multi-Jurisdictional Port Authority shall be deposited in a special account known as the Historic Railroad Multi-Jurisdictional Port Authority Fund which shall be maintained under the supervision of the Treasurer and subject to annual audit. Monies received shall be deposited in accordance with sound fiscal practice; and shall be paid out only upon claims approved by the Board.

No claims shall be approved for any expenditure not consistent with the purposes set forth herein. No contract or undertaking shall be approved with any third party which shall cause the Historic Railroad Multi-Jurisdictional Port Authority to become liable for the expenditure of funds which is not consistent with the purposes set forth herein.

H. By-Laws. The Board of Trustees shall adopt by-laws for the conduct of the affairs of the Historic Railroad Multi-Jurisdictional Port Authority as needed and not inconsistent with the provisions of this Ordinance or State law.

Section 7. Effective Date. This Ordinance shall be effective on and upon its adoption all in accordance with the law.

PASSED AND APPROVED by the Town Council of the Town of Fishers,
Hamilton County, Indiana, this 7 day of DECEMBER, 1994.

Walter F. Kelly
Walter F. Kelly

Roy G. Holland
Roy G. Holland

James P. Roederer
James P. Roederer

David C. Gingham
David C. Gingham

Deborah H. Heckart
Deborah H. Heckart

Town Council of the Town of Fishers,
Hamilton County, Indiana

ATTEST:

Linda Gaye Cordell
Linda Gaye Cordell,
Clerk-Treasurer

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Final draft

HHPA ROW Acquisition Timeline

CAMPBELL KYLE PROFFITT LLP
One Penn Mark, Suite 701
11595 North Meridian Street
Carmel, Indiana 46032
Telephone: (317) 846-6514

EXC

HHPA Line/ROW Acquisition Timeline

	Date	Document	Description	Document in Possession	Missing Documents
1	4/11/1923	K. Culpepper Affidavit	Lake Erie/Western Railroad Company <u>consolidated</u> with other railroads <u>to form</u> The New York/Chicago/St. Louis Railroad Company	Yes	
2	10/16/1964	K. Culpepper Affidavit	The New York/Chicago/St. Louis Railroad Company <u>merged into</u> and <u>became</u> Norfolk and Western Railway Company	Yes	
3	11/9/1994	Quitclaim Deed*	Norfolk/Western <u>conveyed</u> to Fishers/Noblesville the railroad line from Section 18, Twp. 16 to Section 14, Twp. 17 in Marion County**	Yes	
4	11/9/1994	Quitclaim Deed*	Norfolk/Western <u>conveyed</u> to Fishers/Noblesville the railroad line from Section 11, Twp. 17 to Section 1, Twp. 20 in Hamilton County**	Yes	
5	11/9/1994	Quitclaim Deed*	Norfolk/Western <u>conveyed</u> to Fishers/Noblesville the railroad line from Section 36, Twp. 21 to Section 11, Twp. 21 in Tipton County**	Yes	
6	11/28/1994	Ordinance 35-9-94	Noblesville <u>creates</u> Historic Railroad Multi-Jurisdictional <u>Port Authority</u>	Yes; No Exhibit A (property description)	Exhibit A
7	12/7/1994	Ordinance 090794B	Fishers <u>creates</u> Historic Railroad Multi-Jurisdictional <u>Port Authority</u>	Yes; No Exhibit A (property description)	Exhibit A
8	6/9/1995	Closing Statement	Purchase of Railroad Line	Yes	

	Date	Document	Description	Document in Possession	Missing Documents
9	4/15/1998	Ordinance 041598	Fishers re-establishes HRMJPA as HHPA	Yes	
10	4/27/1998	Ordinance 21-4-98	Noblesville re-establishes HRMJPA as HHPA	Yes	
11	6/3/1998	Ordinance 5-6-98-A	Hamilton County re-establishes HRMJPA as HHPA; <u>Hamilton County to be added as member of HHPA</u>	Yes	
12	2/13/2006	Resolution 2-13-06-1	Hamilton County resolves to complete process of adding Hamilton County to HHPA; 1/3 interest not previously conveyed to Hamilton County	Yes	
13		Quitclaim Deeds	Fishers/Noblesville to convey 1/3 interest in ROW to Hamilton County	No	Quitclaims Deed
14	5/8/2006	Ordinance 05-80-06-B	Hamilton County establishes/joins Port Authority - to be effecutated by Fishers and Noblesville conveying 1/6 interest each in ROW along the Line	Yes	
15		Quitclaim Deed	<u>Fishers conveyance of 1/6 interest in ROW to Hamilton County</u>	No	Quitclaim Deed
16		Quitclaim Deed	<u>Noblesville conveyance of 1/6 interest in ROW to Hamilton County</u>	No	Quitclaim Deed

* Norfolk and Western Railway's conveyance included all its "right, title and interest in the road bed, main track, sidings, industrial tracks, depots, yards, storage and parking areas, culverts, bridges, tunnels, buildings, structures, communication and signal facilities, fixtures, and all other railroad appurtenances located upon or extending from and appurtenant to the" property.

** The width of the ROW varies along the Line from approximately 20' to upwards of 40'

HOOSIER HERITAGE PORT AUTHORITY

33 North 9th Street, Suite 215 Noblesville, IN 46060 Phone (317)776-8268

October 26, 2016

Mr. Jeffrey Kehler
Chair, Indiana Transportation Museum
P.O. Box 83
Noblesville, IN 46061

RE: HHPA Requirements under Conditional Policy of Use

Dear Mr. Kehler:

After reviewing emails, FRA reports, documents provided by ITM, and related information with our Executive Director and Counsel, I wanted to take this opportunity to follow up with you concerning the outstanding items still due from ITM and certain inaccurate ITM statements. First with regard to the outstanding items ITM is to provide in compliance with the 7-11-16 Conditional Policy of Use Resolution (POU) passed unanimously by the Hoosier Heritage Port Authority (HHPA) Board of Directors, the following items remain outstanding after more than 90 days have now passed:

1. Current ITM's Program for Certification of Railroad Conductors, per 49 CFR 242, as approved by the FRA has not yet been provided. We did receive a copy of ITM's Program for Certification of Engineers, 49 CFR 240, and noted it was dated October 2004. You have stated that ITM's training and certification programs for Engineers continue to follow this 2004 program, yet you had to request a copy from the FRA, as you apparently were unable to locate your own original. In addition, our limited review of the 2004 program provided appears to show you have not updated it in any manner not even to properly reflect the current volunteers in charge. This program must be updated and approved by ITM's Board and its contents implemented prior to acceptance by HHPA, in addition to receiving an up-to-date Conductor certification program, as required by POU 12d.
2. Per our Consultants review of current crew personnel's certification files on July 25, 2016 at ITM's facility in Forest Park, the following items still need to be provided per POU Item 12d; required written tests for all Engineers and Conductors; National Driving Record; Hearing and Vision Test Records; Medical Physical Tests Results; and Drug and Alcohol Tests, all of which have not been provided and were not included in ITM's Crew Certification files.
3. With regard to the current Timetable provided, dated August 4, 2016, it contains the names of two volunteers with no certification file that could be located or provided to HHPA on July 25, 2016 at ITM's facility in Forest Park. Thus, the current timetable is not acceptable and is still an outstanding item.
4. In regards to having a qualified D.S.L.E., no Certification file or training program for individuals listed in current Timetable as being ITM's D.S.L.E. have been provided to HHPA.
5. Copies of the current FRA Railroad Injury and Illness Summary, the monthly and yearend report are to be provided. The last report received is from July 2016.
6. Documentation that all track equipment has been maintained and/or repaired as needed per FRA Standards, has not been provided. If ITM needs a list of these items, please contact our Railroad Consultant.
7. A complete copy of ITM's most recent annual budget and grant report has not been provided per Item 12c. A full financial audit by a registered CPA would suffice as well. The audit summary provided is insufficient and does not give the HHPA Board a clear understanding of where ITM stands financially.

EX F

8. Many additional items under the POU Item 12 have either not been received or updates have not been received.

Due to the length of time that has expired since the HHPA's issuance of the POU and today, I would like for ITM to provide all of the items listed in our POU at one time, and reference each document to the corresponding item in the POU. Once received, HHPA will review accordingly and let you know where we feel you are deficient or need additional documentation.

Lastly, it has come to my attention that you have made numerous written statements to your membership indicating in some fashion or another that essentially all documentation required by HHPA has been provided by ITM. While I do appreciate that ITM has provided some limited information, the fact is that ITM is not substantially in compliance with the conditions of the July 11th resolution nor has the documentation needed been provided. Any statements otherwise need to be immediately corrected and no further inaccurate statements should be made if our organizations are going to work out the current situation.

As I stated earlier, it has now been more than ninety (90) days since the date of the July HHPA resolution. The HHPA has taken steps on its own to secure information on the condition of the line, which should be an ITM function. However, our contracted inspector has completed the inspection and should have an inspection report available shortly, that HHPA will utilize to develop a 5 Year Maintenance Plan that we expect our Operator to participate in, in lieu of paying trip or use fees, once reinstated to utilize the facilities. In the event ITM has not provided the required POU information to the HHPA Board to determine if ITM is in substantial compliance by November 11, 2016, I intend to advise the Board that compliance at any future date is unlikely and recommend that the HHPA should consider moving forward with any and all options to preserve and protect the line, which could include issuing a Request for Proposals for a new operator on our owners facilities.

Sincerely,



Michael J. Obergfell, PE
President, HHPA

Email Copied:

HHPA Board of Directors
Hamilton County Board of Commissioners
Hamilton County Council
Honorable Mayor John Ditslear
Honorable Mayor Scott Fadness
Anne Poindexter, HHPA Board Counsel
Rhonda Klopfenstein, HHPA Executive Director



April 24, 2017

Ms. Christine Altman, President
Hamilton County Commissioners
1 Hamilton County Square, Suite 157
Noblesville, IN 46060

Dear President Altman,

The Indiana Transportation Museum (ITM) appreciates your desire to be fully informed regarding the Hoosier Heritage Port Authority (HHPA) and its relationship with ITM. You cannot be fully informed without direct input from ITM. Please accept this letter as ITM's written response to the HHPA's presentation to the County Commissioners meeting on April 10, 2017.

It is unfortunate, and a disservice to the citizens of Hamilton County, that the HHPA leadership has chosen to attach credibility to the self-serving and malicious opinions of certain individuals and to demonstrate so little interest in understanding the reality of the situation within ITM. The HHPA's actions also show disrespect for the independent evaluation of the Federal Railroad Administration (FRA). The opportunity still exists for the HHPA leadership to receive and consider input from the official representatives of our organization and to take comfort in and be guided by the investigations of and conclusions reached by (and the lack of proscriptive action by) the FRA and the Office of the Attorney General of Indiana (OAG). The HHPA should conclude that ITM is a credible, viable organization, capable of responsibly conducting heritage rail operations.

Since early 2016, the atmosphere surrounding ITM has been so warped by misstatements that this letter is necessary to set the record straight. We offer for your consideration to clarify issues and to refute specific unfortunate statements and actions by the HHPA. In addition, we offer specific irrefutable facts. We believe that once fully informed, the Commissioners should take action to alter the course on which the HHPA seems set.

1. The letter of March 7, 2016, read by Mr. Obergfell, president of the HHPA, was *not* from the ITM Railroad Operations board acting in its official capacity but from a few disgruntled individuals who went outside the established organizational structure to make unfounded complaints against the ITM board and the organization in an attempt at a hostile takeover of the organization. Prior to sending the letter to the ITM board, these disgruntled individuals discussed the letter's development with members of the HHPA board, Hamilton County Tourism, and the OAG. They thought that with the help of these organizations, sending the letter would force the ITM board to resign. However, their inappropriate and outrageous demands were rejected out of hand, and they were removed from the ITM organization according to well-established processes and procedures. These procedures included, most importantly, those contained in the ITM Volunteer Handbook, which can be made available upon request. The reason for their removal was their repeated refusal to comply with ITM's

EX-6

organizational structure, accountability standards, budgets and accounting practices, and other written policies and procedures. Their dismissal was important to the continuing integrity of ITM's operations because their behavior could have affected the safety of our passengers and crews.

2. It was irresponsible of Mr. Oberfell to take that letter, without any investigation into its accuracy or verification of the claims asserted in it, and read it into the official record of the proceedings of the Hamilton County Commissioners. Doing so creates the impression that the accusations are valid. In fact, they are not, and yet the HHPA has continually referred to this letter as the reason for its numerous adverse actions against ITM, beginning March 23, 2016, when the HHPA suspended ITM's rail operations. In May 2016, ITM received from the OAG numerous official interrogatories and a detailed request for production of documents. ITM fully responded in June 2016. Since then, the only additional items requested by the OAG (all of which were provided in a timely manner) were bank statements and other financial documents unavailable at the time of ITM's initial response (e.g., bank account information for June through December 2016 and ITM's 2015 Form 990 federal income tax return). ITM has nothing to hide and has fully cooperated with the OAG. The OAG's inaction (that is, the non-assertion of any claims against ITM throughout 2016 and to date in 2017) indicates that the OAG, having been informed as much as possible by ITM, has found no basis in the facts to support the disgruntled individuals' claims of impropriety and mismanagement. These same disgruntled individuals, in early 2016, had engaged in conversations with the OAG, making claims about the ITM board overlapping with the never-supported claims which ended up in their infamous letter of March 7, 2016. Many of the claims in the letter asserted to be shortcomings of the ITM board were actually the responsibility of the signers of the letter.
3. In 2016 and 2017, the HHPA and its consultant, Ms. Cathy Hale, created a new, non-standard "regulatory" environment for ITM, in which it is no longer sufficient to operate in compliance with FRA regulations and industry standards for heritage rail operations. The HHPA has criticized ITM for non-compliance with "requirements" that exceed the requirements of the FRA. The HHPA has thus applied misplaced standards and reached inappropriate conclusions about the overall safety of the equipment, the rails, and our operating crews. Since its inception, the HHPA has never had a board member with any railroad management, railroad real estate, or railroad operating knowledge or experience. This is at odds with the task assigned to it by the owners of the rail line.
4. ITM has worked very closely and successfully with the FRA since our first FairTrain operation in 1983. For more than three decades, ITM and its patrons have benefitted from FRA oversight of ITM's operations. The FRA brings independence, expertise, perspective, and professionalism to the task of overseeing ITM's operations. It is a source of pride to ITM that the FRA has consistently given ITM "safe" designations.
5. ITM's current operating standards were defined, organized, and implemented in 1995 by Mr. Thomas Kirk, who at that time had recently retired as the head of operations of CSX Transportation. Updates to these standards have been implemented as required by the FRA in more recent years. ITM is at a loss to understand the heightening of the HHPA's "safety requirements" beyond what is required by the federal authorities. It is similar to requiring Metro Airport to operate under locally mandated flight regulations that are more stringent than those required by the FAA.

The best examples of the HHPA's regulatory overreach are with respect to crew records and training programs.

Crew Records. HHPA board members and consultant Cathy Hale have reviewed our operating and crew records (except for medical files) and have stated that crew medical records were and are incomplete. In fact, ITM crew medical records are complete and meet FRA standards. We have told the HHPA that further disclosure would violate our crews' rights of privacy and the Health Insurance Portability and Accountability Act (HIPAA). We have offered to have the FRA inspector verify to the HHPA that the medical files are in order, but Ms. Hale rejected this idea, even though some members of the HHPA board have stated privately that they don't want to see the medical records; they just want to know they are there in the file and that they are in order and up to date. The HHPA has used these additional, heightened "requirements" as justification for continuing ITM's suspension and declaring ITM's operation "unsafe," without regard to the FRA's findings.

Training Programs. The HHPA and Ms. Hale have also stated that our training programs are inadequate and that therefore our crews are not really certified. This is false. ITM's training programs comply with FRA regulations. It was further implied that if our operating crews were not really certified, our liability insurance coverage may have been acquired through some sort of deception. This allegation is outrageous and has no basis in fact. FRA inspectors and staff members have routinely participated in our training classes and reviewed our training materials. It is ridiculous to think that ITM could have operated trains for 34 years, under the observation of the FRA, without following FRA regulations. We have no idea what prompted Ms. Hale to state that ITM historically has taken the position that because the railway is not connected at either end to the general system of railways, ITM need not and will not comply with FRA regulations. This is false. From its first operation in 1983, ITM has always complied with FRA regulations as if the line were connected to the general system. This has been our policy from the first day and has been reaffirmed in resolutions by our operating boards on numerous occasions.

6. You can trust ITM and the FRA as the best resources on the subject of whether ITM's rail operations have been as they should be. The views of HHPA's consultant regarding ITM's performance from a safety perspective would deserve more weight if she had considerable experience with a heritage rail operation like ITM's. She does not. The HHPA's comment that the railroad Ms. Hale represents is "just like the Nickel Plate" does not stand up to scrutiny. The Madison Railroad is an all-freight railroad that carries no passengers, has fewer than five qualified crew members, and has comparatively little equipment. The majority of its revenues come from storing empty freight cars.
7. HHPA claims to have negotiated in good faith with ITM for an operating agreement. However, HHPA's own records, in the form of official agendas, minutes, and emails, indicate less than a credible effort. The prior agreement was executed in 1996 and expired in 2006. Since then, and over the course of four different HHPA administrations, we have attempted in good faith to execute a renewal of the old agreement or come to terms and execute a new agreement. ITM was told numerous times up until January 2015 that an operating agreement could and would be established. However, year after year, an operating agreement was never placed on the HHPA agenda, nor was it the topic of discussion in public meetings.

8. Our last attempt to get an agreement in place was in April 2014, when we presented our latest draft for the HHPA board to review. In July 2014, we were told by Mr. Obergfell that he and the HHPA attorney had comments to provide to us and that he would set up a meeting to review them with us. This did not happen. In January 2015, he stated again that they had comments to review with us and that he would set up a review meeting. That meeting never happened. That was the last time we heard anything about the operating agreement from the HHPA. ITM has never refused a meeting or refused to negotiate for an operating agreement.
9. Under the circumstances, we are bewildered by the HHPA's claim that our requests regarding an operating agreement have been "unreasonable." In fact, ITM has been forthcoming and responsive whenever the HHPA has shown interest in establishing an operating agreement. There is not and cannot be anything inherently "unreasonable" in ITM's need for a long-term agreement that defines the parties' respective responsibilities for maintenance, safe operations, and other responsibilities (from which liability can arise), with reasonable accommodation for termination if circumstances change and there is a higher and better use for the corridor, incompatible with continued heritage rail operation. It serves neither the HHPA's purposes nor ITM's purposes for ITM to operate under what is essentially an "at-will" arrangement.
10. To attempt to operate a 40-mile railroad under short-term agreements, without the ability to plan large-scale investments in equipment and physical plant, greatly constrains our efforts to provide improved and higher-quality service to the public. For the HHPA, by its intransigence, to keep ITM in a thin-ice operating mode is a disservice to the owners and the ultimate beneficiaries of the rail line: the residents of Fishers, Noblesville, and Hamilton County. To maintain our high standards for the public we serve, ITM has continued to operate the rail line essentially under the terms of the agreement that expired in 2006. However, the potential termination of our operating privileges at any time by the HHPA has made it extremely difficult to plan for the long-term future of our organization. The stability provided by a multi-year agreement is essential to attracting investment capital from sources interested in financially supporting our offerings to the public and to receiving contributions to ITM as a 501c(3) organization. ITM receives no subsidies or financial support from any government entity. The income that supports everything we do is earned primarily through ticket sales and contributions. Both revenue streams were arbitrarily and capriciously cut off by HHPA's 2016 actions. Had ITM been allowed to operate the same schedule in 2016 as it did in 2015, our gross revenue would have topped \$700,000.
11. After HHPA's receipt of the track inspection report that it commissioned, Mr. Obergfell told ITM leadership in November 2016 that it would take "\$4.5 million to resume running." Although he may not have stated that publicly, it was stated to key entities who made decisions based on that overstated estimate. After receiving a copy of the track inspection report in early December 2016, ITM recognized that \$650,000 to \$850,000 of the total of \$4.5 million in costs identified in this report was to reconnect the line in Tipton, which has nothing to do with safe operations. The report also states that the balance of the investment was over a five- to seven-year period. It was also *not* ITM that stated that it could take "as little as \$55,000 to get the railroad running again," but one of the HHPA's board members.

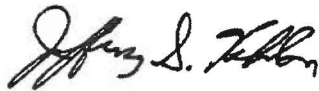
In summary, the facts show that the HHPA has failed to negotiate in good faith with ITM for the last 11 years to establish an operating agreement. This has been the case over several different HHPA administrations, not just the current administration. While it should have placed its trust in three-plus

decades of safe operation by ITM and regulatory oversight by the FRA, the HHPA has chosen to believe and act on unsupported claims made by disgruntled individuals, thereby denying ITM due process and disrespecting the FRA as well as ITM.

Looking forward, ITM has reason to believe that the recently released RFP and the selection process for a new operator on the line are inappropriately biased against ITM. Fifty percent of the weighted criteria are based on subjective assessments of a respondent's ability to meet goals, organizational structure, and individuals' abilities. No weighting is given to what equipment the respondent possesses, how quickly it could be mobilized, what types of operations would be conducted, or how quickly the respondent could be in operation. We ask for your assistance in ensuring that the RFP process is modified to account for these oversights and that the RFP process, in other design and implementation respects, is fair and reasonable.

The future of one of our communities' major tourist attractions, which has generated more than \$4 million in tourism dollars in the last several years, is at stake. ITM was noted as one of the best destinations for a summer family vacation. Therefore, we ask for your assistance in reorganizing and refocusing the HHPA as a government-appointed body that is true to its charter, true to directives from its constituent bodies, and committed to meeting the needs of the communities it serves.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffery S. Kehler".

Jeff Kehler,
Chairperson, Indiana Transportation Museum



May 16, 2017

Ms. Rhonda Klopfenstein, Executive Director
Hoosier Heritage Port Authority
1 Hamilton County Square, Suite 157
Noblesville, IN 46060

Dear Director Klopfenstein,

In reviewing the Hoosier Heritage Port Authority Request for Proposal for an operator of the Nickel Plate Line, the Indiana Transportation Museum, as the incumbent operator, would like to express our gratitude as well as some concerns.

We appreciate that the RFP promotes the pursuit of "maximizing public benefit to the Owners and the Communities it serves" and a future relationship that includes "working with the Operator." We share these goals and hope that the outcome of this RFP process will indeed meet these objectives.

We are concerned, however, that the RFP does not address or score critical attributes of any FRA certified operating Railroad. We hope to protect the community from this process yielding an operator without proven experience, available equipment, an established relationship with the FRA, and a verifiable safety record. Several of the scoring criteria contained in the released RFP are highly subjective and biased against any local or established operator with the aforementioned characteristics.

Therefore, we request the following modifications to this RFP as quickly as possible. Specifically, we recommend that these empirical categories be added to the scoring system with appropriate weighting:

1. Add scoring for 'number of passenger cars and/or passenger count owned, or available through a documented lease'
2. Add scoring for 'number of FRA-certified locomotives owned or available through documented lease.'
3. Add numerical scoring for 'Years of established FRA-certified operations' Or, perhaps 'type and approximate number of reports and plans the proposing organization has submitted to FRA in the last 10 years.'
4. Include proposed 'Established Operating Liability insurance limits' as scored numerical criteria.
5. Include 'projected number of passenger miles per year' as scored numerical criteria for section 3 to add objective scoring to this section.
6. Add 'number of years of historical financial reports' on current operations in scoring section 4 and require submission of said reports with RFP response. NOTE: The review of financial data

- should be performed by persons/firms experienced in the analysis of financial data; the failure to use qualified financial experts can constitute malfeasance with resulting liability.
7. Add numerical scoring for 'number of days from award to commencement of initial operations' with sooner being rated higher than later.
 8. Add 'anticipated amount of government investment or tax dollars needed in preparing or implementing the proposal' with 'zero' being rated the highest, and government investment/tax dollars negatively affecting the scoring of the response.

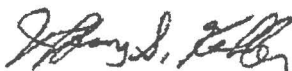
For the benefit of the citizens of Hamilton County, ITM requests that these criteria be added to a modified RFP and that the modified RFP be released promptly.

In 2016, the Port Authority judged ITM's performance and suitability using several of the criteria urged in this letter. If such criteria were important in 2016, they are important in 2017 and beyond.

As stated in previous public correspondence of which you have received copies, it is ITM's position that the HHPA acted inappropriately, arbitrarily and capriciously when, notwithstanding determinations by the FRA that ITM could operate safely, HHPA barred ITM from operations in the HHPA's corridor in 2016 and to date in 2017. The unwarranted ill treatment of ITM should not continue in the form of the HHPA's RFP as initially designed.

We request that you respond to this letter within one week of its date.

Respectfully submitted,



Jeff Kehler, Chairman
Indiana Transportation Museum

Copy To:

Mayor Scott Fadness, Fishers
Fishers City Council
Mayor John Distlear, Noblesville
Noblesville City Council
Hamilton County Commissioners
Hamilton County Council
Local Media outlets

From: Josh Spencer <josh@stonespectrum.com>

Date: 8/31/2017 8:42 AM

To: mark@slbolingerlaw.com

— IMG_2406.PNG —

6

From: "Robert Herrington" <rherrington@noelartificial.us>
Sent: Wednesday, March 22, 2017, 8:47 AM
To: Steve Coats, John Berry
Subject: RE: meeting

Do you each have 5-15 minutes after dinner to talk?

----- Original message -----

From: Alexandra Pollock <alex@thetimes24-7.com>
Sent: 3/22/17 9:14 AM
To: Robert Herrington <rherrington@noelartificial.us>
Subject: RE: meeting

Robert,

The meeting last night consisted of two ideas about the railway. The first was Hamilton County tourism is placing a bid to be the operator of the railway. Their plan is to create a themed train that would bring in tourists. They were focused more on the Cicero/Arcadia/Adena area and did not mention much about the rail. However they did mention trying to carry freight along the railway as well.

The second idea was Glen's presentation. He proposed that it would only take \$55,000 to get the train running again. The trains would just have to go slower, about 10 mph. He proposed that fixing the train for that amount of money plus the annual upkeep would be cheaper than building a new one.

So if you could comment on Glen's proposal, and maybe again just mention what you see as the benefit of the rail over the trucks. Then if you could respond to Hamilton County Tourism's ideas, if that would have any impact on the city's plans if they were to win the bidding. Hopefully that clears things up a little!

Thank you!

Alex

----- Original Message -----

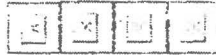
From: "Robert Herrington" <rherrington@noelartificial.us>
Sent: 3/22/2017 8:47:42 AM
To: "Alexandra Pollock" <alex@thetimes24-7.com>
Subject: RE: meeting

Good morning Alex,

I was at the Historic Listening Session yesterday morning, but I never appeared in Glen's last night. I'm a little confused by the email what you are looking for and what I'm supposed to do. I'm a little confused by the email - so could you provide me with a little clarity? Thanks!

Robert Herrington

EXHIBIT 11



From: Alexandra Pollock [mailto:alex@thetimes24-7.com]

Sent: Tuesday, March 21, 2017 12:11 PM

To: Robert Herrington <rherrington@noblesville.in.us>

Subject: meeting

Hi Robert,

I was advised to let you know about some developments we've heard about with the trail/railway situation. I'm not sure if you've heard, but there is a meeting being held tonight at 7pm at the Cicero town hall. We had a gentleman come into the office a couple days ago. his name is Glen Schwartz. He is the treasurer of the port authority. He said that any attempt by the museum to do anything about saving the tracks is very implausible and unreliable, yet he also made it very clear that he is in favor of saving the railroads in the community. He was a bit unclear about which side he supports. Anyway, I will be covering his meeting tonight and will most likely need a city response sometime early tomorrow afternoon.

I just wanted to make you aware so you would have time to gather thoughts and make a statement. If you have any questions or need anything from me, please do not hesitate to call or email me.

Thank you!

Alex

EXHIBIT *12*

From: Steve Cooke <scooke@noble.org>
Sent: Monday, March 20, 2017 1:05 PM
To: Laci Gibbons
Subject: Update from City of Noblesville - GOP Breakfast, Nickel Plate Trail and Third Phase

Hi, Laci:

Hope you are going well for you! I wanted to see if you had any updates about Transformations to share. Are things progressing with the temporary home over on SR38? How about any progress on Third Phase?

Below are some updates I wanted to share with you:

Hamilton County GOP Breakfast

House Speaker Brian Bosma attended at this event last week and updated community leaders on what's happening at the Statehouse this session, and to answer questions. I'd say that 25% of the discussion was focused on fighting heroin abuse in Hamilton County and helping people overcome addiction. So this topic is very much on people's minds.

Nickel Plate Trail

You may have seen the announcement back in February about the Nickel Plate Trail that Noblesville and Fishers have proposed to connect our communities with a multipurpose trail from 96th Street to Pleasant Street where it would meet up with the future Midland Trace Trail and then Riverwalk.

Since you are looking at Third Phase as a potential home someday, I thought you might be interested in this given the train tracks run right behind this property. I actually walked this section of the train tracks a few weekends ago to see what it was like. I imagine having trail access for Third Phase would provide a great recreational opportunity for your residents in treatment. And we plan to add a new NPD bike patrol to help maintain safe trail use.

Obviously, this proposal has not been without its detractors. The City of Noblesville only began to consider the trail after the Hoosier Heritage Port Authority (HHFA) shut down ITM's rail operations in 2016 due to safety and management concerns. We evaluated our options and determined a trail would benefit our growing community of 60,000 in several key areas:

- Improve safe walkability and connectivity with neighborhoods and business districts
- Provide daily, year-round recreational amenity that supports good health
- Spur development and re-development for residential and commercial opportunities
- Increase surrounding property values
- Create new opportunities for art, history and culture that celebrate what is unique about Noblesville
- Contribute to the City's comprehensive plan and alternative transportation plan

In addition, one major concern of ours for the rail option is that increasing the number of trains running north and south through Noblesville would contribute to our traffic congestion – not only for today, but also for the future growth of our historic downtown area. Trail users are much easier to manage at intersections than passing trains. And if the trail extends across 146th Street, we would look at installing a bridge or tunnel. There's simply no way we can have trail users running across this busy corridor, just as we cannot have trains halting east-west traffic as well.

We also determined that the option of safely combining rail and trail together (which requires 125-foot widths) is not feasible given the added costs and disruptions from right-of-way and property acquisition.

EXHIBIT 13

But there is a light at the end of this tunnel for rail enthusiasts.

At this time, we've not made any plans for the trail north of the Riverwalk near the Pocket Park. So it's very possible a historic excursion train could still run from Forest Park, and head north through the County. It's up to the communities of Cicero, Arcadia and Atlanta if they wish to go with rail or trail, and for the HHPA to select a new operator if they choose to – as long as the safety of our residents and visitors is priority number one.

The City will host an *Open House Listening Session* at Noblesville City Hall on Thursday, March 23 from 6-8 p.m. where I will give a brief presentation and then attendees can speak with City staff one-on-one to ask questions or offer feedback.

If you'd like to attend and hear more, feel free to join us! I would welcome your attendance and that of others who want to see more opportunities for recreational activities that are possible on a trail like we're proposing.

More information can be found here: <http://www.thefairfieldarcadia.com>.

Let me know if you have any questions about this.

Take care!

Sincerely,



Steve Cooke, Deputy Mayor
Mayor's Office O: 317-776-8324
City of Noblesville F: 317-776-8363
15310 Street
Noblesville, IN 46060
www.cityofnoblesville.org

From: Steve Cooke <scooke@noblesvillein.us>
Sent: Monday, March 10, 2017 11:10 AM
To: Michael Obergfell
Subject: Follow-up from Friday's call - for Nickel Plate
Attachments: HHPA and ITM Conditional Policy of Use Checklist.docx

Hi, Mike:

Thanks for your call last week, and for this information. I've had time to think through this over the weekend, and I don't plan to do any further PR engagement about ITM other than our public meetings on Tuesday and Thursday.

When I speak with any reporters, I may ask them if they've seen the July 2016 letter from HHPA to ITM - I'm assuming that's public record. I think it would be helpful to break out what ITM has committed with vs. what they did not - in something that's easier to read. See the attached document. Can you take a look, make any changes so it's accurate, and send back to me by Thursday?

And has the ITM ever provided its "Qualification and Certification" as required by the FRA?

Just so you are aware, my message at Thursday's meeting is it's still possible to have an excursion train, but only going north:

- Noblesville's plans are to convert the Nickel Plate to a trail from 146th up to Pleasant, and then remove the tracks north of Pleasant to 8th Street just north of Logan - but that's it.
- Train tracks would still be present either near Golden's and the Pocket Park, including the rail bridge going north, or perhaps just at Forest Park going north. Basically - where should the train stop in Noblesville? I'm not sure what safety feature would be needed to stop the train - whatever that is, might not be best to have it in our downtown.
- Our future planning will depend on what the communities north of Noblesville want to do. If they want rail, then there's no point in us building a trail up to Cicero. If they want trail, then that's a further discussion.

My additional questions for you are:

- Does the current RFP from HHPA account for train operations north of our downtown? If not - can it include that when the RFP goes out in April?
- Do you agree with Noblesville and Fishers that doing rail and trail side by side is not feasible? We're opposed to that because it would require about 125 feet of right of way. Plus - we would still have trains affecting traffic from downtown heading south.

Thanks,

EXHIBIT 14



Mayor
City of Mobile
364-778-4168
www.cityofmobile.org

From: Steve Cooke <scooke@noblesville.in.us>
Sent: Thursday, March 16, 2017 2:52 PM
To: Bob DuBois
Subject: RE: Nickel Plate Trail Follow Up

Remember to send your formal letter with your signature and stamp to the address below if you can.

From: Steve Cooke
Sent: Thursday, March 16, 2017 10:50 AM
To: Bob DuBois <bbob@noblesvillechamber.com>
Subject: FW: Nickel Plate Trail Follow Up

Bob - Some very good progress has been made with the trail. I have been able to get the nickelplaterail.com website. Is this something the Noblesville Chamber will be able to handle? I would like to get it in a more formal, professional format. I'd be happy to provide the content.

Thanks,

Steve Cooke

From: McGrath, Leah [<mailto:leahmcgrath@fishers.in.us>]
Sent: Thursday, March 16, 2017 10:30 AM
To: Heirbrandt, Mark <mheirbrandt@amerascos.com>; Christine Altman <christine.altman@hamiltoncounty.in.gov>; Steve Dillinger <steve.dillinger@hamiltoncounty.in.gov>; John Ditslear <jditslear@noblesville.in.us>; Steve Cooke <scooke@noblesville.in.us>
Cc: Fadness, Scott <scottfadness@fishers.in.us>; Greisi, Chris <cgreisi@fishers.in.us>; Elrod, Ashley <elroda@fishers.in.us>
Subject: Nickel Plate Trail Follow Up

Dear Commissioners and Mayors,

It was great to see the Commissioners at Fishers State of the City yesterday. Thank you for your support! Following up, I wanted to share with you more about the response we've had since the Nickel Plate Trail announcement. As I mentioned yesterday, we are encouraged by the overall positive support so far.

Overall, we have heard more support than not from the members of our community. Several organizations and community leaders have expressed their support of the Nickel Plate Trail including HSE School Superintendent Dr. Allan Beunif & Asst. Superintendent Dr. Michael Benasford, Greater Prairie President, Norman Burns, Fishers YMCA, OneZone Chamber, Businesses in the Nickel Plate District and many residents. We have also heard from the north Indianapolis area group known as Binford Redevelopment Area Group (BRAG) that is very supportive of the proposal and will be present at the listening sessions.

We are aware of the change.org petition. In our monitoring, we have found that of the ~3500 signatures, only 200 are from Fishers and 500 are from Noblesville. Given we mailed almost 2,000 letters between our communities and have been extremely engaged on this topic - 500 individuals signing a petition out of 150,000 residents is acceptable. We also project that some of the residents who signed the petition did so thinking a side by side rail and trail is feasible. To answer this question - we had our staff look into a side by side rail/trail scenario. We learned that best practices would require a minimum of 125 feet of right of way for a rail by trail project to be completed safely. For the majority of the Nickel Plate Line, there is only approximately 50 feet of right of way, making a rail by trail scenario not possible.

EXHIBIT 25

Another sentiment we have heard is around the desire to have a piece of the rail, whether through an art project or other artifacts. As we get into design, finding ways to honor history is very possible and we look forward to working with our arts councils and schools in that effort.

Our team is excited for the listening session on Tuesday. We will be updating the FAQs in preparation for the meeting, and I will be sure to share that with you prior to the meeting.

As an FYI, since I know sometimes we hear from the most vocal opposed, below is a sampling of some of the positive emails we've received. In the meantime, please let me know if you have any questions.

Thank you & kind regards,
Lenn

As a former member of the HHPA, I believe in the preservation of the NPT as a transportation corridor. Rail-banking provides the most flexibility. The multi-use trail should use the Cheney Creek Trail to avoid redundancy, but not at the expense of losing the integrity of the corridor. The 14-foot wide path is a vast improvement over our current paths which, in most cases, are only wide enough for one-way travel. Hours should allow commuter use, and the ability for residents to enjoy Fishers After Dark and other events at the municipal complex. The corridor is so straight and level that I don't have concerns about public safety.

*-Arden Pletzer
128 Winding Creek Ct
Fishers IN 46038-1075*

Dear Fishers (and Noblesville),

My wife and I live near the rail line being discussed for the development of the Nickel Plate Trail, and this is the best news we have heard regarding development in my 30 years as a resident of Fishers. We had been considering moving to either Carmel or Westfield to take advantage of similar infrastructure, and this new development will certainly make us rethink our long term plans (we live near 146th and Allisonville Rd).

Please move forward with this project as quickly as possible, and we really appreciate the cooperation that appears to be taking place between Fishers and Noblesville.

*Sincerely,
Don Kirk (and Chris Kirk)
14267 Delaney Drive
Fishers, IN 46038*

I soooo support the trail please please please do it!!! It is going to change downtown in a such a positive way!!!! SO MANY PEOPLE LOVE AND SUPPORT THE IDEA!!!!

I'm 100% in support of the plan to transform the Nickel Plate rails into a trail system! There are so many sidewalks and trails that don't connect or areas with no sidewalks whatsoever that it makes running and biking treacherous! Love this idea and wholly support it!

*Regards,
Pamela Hollick
9725 Fortune Drive
Fishers IN 46037*

From: Steve Cooke <scooke@noblesville.in.us>
Sent: Thursday, March 16, 2017 8:47 AM
To: Wiley, Wade
Subject: RE: HCLA Project

Who is the person who posts it to -BT

From: Wiley, Wade [mailto:wiley@backshybrids.com]
Sent: Thursday, March 16, 2017 6:36 AM
To: Steve Cooke <scooke@noblesville.in.us>
Cc: Jill Doyle <jdoyle@hcla.net>; Jonathan Haggerty <jhaggarty@meyer-majem.com>; Judah Holland <judah.holland@gmail.com>; Adam Peat <apeat@stratospherequality.com>; Bonnie M. Riley <bonnieriley@nbofi.com>; Greg Schrage <gschrage@cchalaw.com>; Corby Thompson <corbyt@yahoo.com>; Mark LaBarr <mark.labarr@duke-energy.com>; Jody Walker Dedon <jdedon@leadershipindianapolis.com>
Subject: Re: HCLA Project

This is the post with the email from Mark Heibrandt.

Here is the email response I received from Hamilton County Commissioner Mark E. Heibrandt. It is thoughtful yet unhelpful, but does let us know that apparently this idea of destroying our historical railway corridor came from STUDENTS at the Hamilton County Leadership Academy - why are we listening to STUDENTS when it comes to our historical and cultural sense of place?

IMPORTANT UPDATE: The email below says "students at the Hamilton County Leadership Academy" ~ but the "students" are not "children", which just makes the whole thing even worse! Shame on these adults! Shame on me for not knowing that the Hamilton County Leadership Academy was not for, you know, teenaged children . . . well, safe to say I will never have the \$1600 for "tuition", nor is it likely I'd be very welcome there, after this update.

Here are the people RESPONSIBLE for this awful and destructive idea, per the Hamilton County Leadership Academy website:

"Rail or Trail? A Study of the Nickel Plate Railroad"

Team Members: Steve Cooke, Jonathan Haggarty, Judah Holland, Adam Peat, Bonnie Riley, Greg Schrage, Wade Wiley

(note: the actual "project" proposal is NOT available to the public on that website.)

#SaveTheTrain #SaveTheNickelPlate . Please go to one of the meetings listed in the email (both at 6pm), and maybe comment, question or request a meeting with staff at NPT@fishers.in.us or NPT@noblesville.in.us

"Thank you Alys for your email and comments.

There are public meetings that will be held on March 21st in Fishers at City Hall and at Fishers at City Hall on Thursday, March 23rd in Noblesville at City Hall (2nd Floor). Both are scheduled for a 6 pm start time and I would encourage your participation.

Additional comments, questions or a request for a meeting with staff can be requested at NPT@fishers.in.us or NPT@noblesville.in.us

I too have fond memories of riding the train with my children to the State Fair and Polar Bear Express. The County is a 1/3 owner with the City of Fishers and City of Noblesville. It is my understanding **EXHIBIT 16** the idea

and concept came from the students at the Hamilton County Leadership Academy and was presented to the Mayors when the train was cancelled last year due to significant safety concerns.

Hamilton County has not offered any financial assistance to assist with a trail project. Although, we are exploring options that could provide benefits to our communities and always welcome public input and suggestions.

Appreciate your comments and look forward to meeting you at one of the meetings. My cellular number is: (317) 590-3460 if you would like to talk or if I can provide any additional questions.

Mark E. Heirbrandt

Hamilton County Commissioner, District 3

Hamilton County Courthouse

Noblesville, IN 46060

Office Phone: (317) 776-8498

Cell: (317) 590-3460

Email: mark.heirbrandt@hamiltoncounty.in.gov

--

Sent from my iPhone

On Mar 15, 2017, at 11:11 PM, Steve Cooke <steve@hcnoblesville.in.us> wrote:

Is this still on the FB page? I'd be curious who posted it. I didn't see it or any of the other comments. And I don't know the context of what they've seen or how they know of our HCLA project. While I'm sorry that someone outside HCLA is trying to smear the organization's good name, the person obviously didn't consider the nature of our project studying rail AND trail. This is a legitimate county-wide discussion, and given the timeliness, points to HCLA's relevance.

From: Jill Doye <jdoye@hcla.net>

Sent: Wednesday, March 15, 2017 6:09 PM

To: Steve Cooke; Jonathan Haggarty; Judah Holland; Adam Peat; Bonnie M. Riley; Greg Schrage; Wade Wiley

Cc: Corby Thompson; Mark LaBarr; Jody Walker Dedon

Subject: HCLA Project

Hi All -

I wanted to make you aware of a post that was posted on Facebook today. I do not know this person and do not know exactly where it was posted. I was given a heads up by two alumni. This person is obviously making some assumptions and admits she doesn't know much about our organization. I have private messaged her and offered to have a call or meet her for coffee. I am happy to share with her what your team's project is about as well as share more about HCLA with her.

Unfortunately sometimes things like this happen related to our projects. I am sorry that she named all of you publicly.

I will let you know if I have the opportunity to meet with her. Please do not reach out to her

directly. If you have any feedback for HCLA, please provide that directly to me.

Corby, Mark and Jody - I wanted you to be aware of this as well.

Facebook Post

Here are the people responsible for the idea of destroying our historic railway corridor and replacing it with a trail, per the Hamilton County Leadership Academy website:

"Rail or Trail? A Study of the Nickel Plate Railroad"

Team Members: Steve Cooke, Jonathan Haggarty, Judah Holland, Adam Peat, Bonnie Riley, Greg Schrage, Wade Wiley

(note: the actual "project" proposal is NOT available to the public on that website.)

#SaveTheTrain<https://www.facebook.com/hashing.savethetrain/?source=feed_text&story_id=1288732364495647>

#SaveTheNickelPlate<https://www.facebook.com/hashing.savethenickelplate/?source=feed_text&story_id=1288732364495647>

I think it is important for the public to see through smoke-and-mirrors: the issue of the tracks' safety (or lack thereof) has been grossly overstated and is not the ONLY reason the train stopped running (TEMPORARILY) ~ but "safety" is being used as the reason to destroy a wonderful part of our history and culture. Please go to one of the meetings that will be held on March 21st at Fishers City Hall and on Thursday, March 23rd at Noblesville City Hall (2nd Floor). Both are scheduled for a 6 pm start time. You can also comment, question, or request a meeting with staff at NPT@fishers.in.us<<mailto:NPT@fishers.in.us>> or NPT@noblesville.in.us<<mailto:NPT@noblesville.in.us>>

For the record, I do not have any experience with anyone involved in the Hamilton County Leadership Academy (and after this post, I doubt they'll ever want me to, not that I'd ever have the required \$1600 for "tuition"

[<https://www.facebook.com/images/emoji.php?v=157116/1609.png>];), nor do I know for what exactly it grooms its "students". Public office, perhaps? Behind-the-scenes appointed city government jobs? Councils of some sort? I admit: I have no clue, and, I do not know if it is a "good" organization or a "bad" organization. Honestly, I do not care. My issue is with the proposal that they allowed to 1) be created "in" their Academy, and 2) presented to the Mayors/Mayoral Departments of Fishers and Noblesville. Also, I do not personally know any of the persons listed above, who came up with this destructive proposal. I don't know if they are "good" people or "bad" people (and honestly, I don't care). My issue is with their proposal, which I think is just awful.

Thank you!
Jill Doyle
Executive Director
317-606-0324 - office
317-379-1879 - cell

h<<http://hclanet.org>>clanet<<http://hclanet.org>>

From: Steve Cooke <scooke@indiana.gov>
Sent: Wednesday, March 15, 2017 1:45 PM
To: gdelgrec@purdue.edu
Subject: Connecting with City of Noblesville

Hi, Gloria:

It was good meeting you this morning at the Hamilton County Republican breakfast. I'd like to learn more about the work of Purdue Extension – especially here in Hamilton County.

The senior apartments I was talking about (known as Stony Creek Apartments by Real America) would be located just south of Pleasant Street, on the west side of 16th Street – so that's just south of the Street Department property. They were trying to get federal funding, but they were put on a waiting list, which may delay their construction until later this year. If it happens, given the proximity to your location, ~~maybe~~ I can connect you with them? The City would plan to build a sidewalk going north on 16th up to Pleasant, so they would have a walkable connection to you.

The other area development coming soon in a roundabout the City plans to build on Pleasant Street at 19th (next to the Post Office). This should help a great deal with traffic flow on Pleasant.

You also mentioned you are the wellness coordinator, which brings me back to our conversation this morning about multipurpose trails.

Is the Nickel Plate Trail something you think that you could support, and could help connect us with others who are interested in trails? I could really use some grassroots help.

Right now – the Nickel Plate Trail is just an idea we've proposed doing to connect with Fishers. It's a long way off from happening – and nothing is guaranteed. The trail would run from 36th Street up to Pleasant Street where it will connect with the future Midland Trace Trail that will run through Noblesville east-west.

However, there is a small but very vocal group of pro-train people who want to keep the train tracks – even though they need to raise \$5 million to repair the tracks and much more to start up a new operator. The City has concerns that (a) the train operation would not be sustainable financially – and then we'd miss this opportunity to build the trail; (b) the trails would get used year-round on a daily basis by more people; (c) lead to greater redevelopment in Noblesville that could certainly use it; and (d) increased trains running north-south through Noblesville will create traffic problems for our growing city including at Logan Street, Conner Street, all the intersections up and down 8th Street – and then 146th Street in particular.

We're hosting an Open House Listening Session at Noblesville City Hall on March 23 from 6 p.m. to 8 p.m. I'm assuming someone who specializes in wellness would also favor more trails for greater walkability. And if that's the case, I'd welcome your support!

More information can be found here: <http://www.noblesvilleindiana.gov/development>

Let me know if you have any questions about this project. Or if you'd like to attend the Open House Listening Session on March 23 to learn more. Please bring your wellness friends!

Thanks,

EXHIBIT 17



Subject: RE: HOUSHER HERITAGE PORT AUTHORITY DRAFT OPERATOR RFP - FOR REVIEW & COMMENT

Date: Thursday, August 10, 2017 at 11:02:10 PM Eastern Daylight Time

From: Rick McSherry

To: Michael Allen, Kelly Clayton, Andrew May, John O'Shea, Steve C. Lanning, John A. Weinbaum,

Christopher Johnson, Eric S. Rutledge, David J. Rogers, David J. Patten, John S. Scharf, Tom Breen, Tom

M. Schwab, Geraldine, Amy MacCallum, Amy MacCallum, David J. Patten, David J. Patten, David J. Patten,

David J. Patten, David J. Patten, David J. Patten, David J. Patten, David J. Patten, David J. Patten, David J. Patten,

David J. Patten,

which you will see. I filed response from the County Council regarding the RFP because we have a lot of
about scheduling a special meeting to discuss it. It would have been helpful if we had discussed the RFP with
responded to our invitation to meet March 1 and discuss the future of the RFP.

My take, from reviewing the draft RFP, is that the Review Committee appears to be skewed and perhaps
would be more balanced if it included a choice from the County Council.

EXHIBIT 18



Mobilesville, Mississippi
is a small town in the heart of the state.
It is known for its beautiful scenery and
friendly people. The town is located
just north of the Gulf of Mexico and
is a great place to visit.

From: Steve Cooke <scooke@noblesville.in.us>
Sent: Tuesday, March 14, 2017 2:11 PM
To: Robert Herrington
Subject: RE: Times - ITM story

I like it as long as it is not too far from the city. I think it is a good idea. I think you probably covered it.

From: Robert Herrington
Sent: Tuesday, March 14, 2017 2:36 PM
To: Steve Cooke <scooke@noblesville.in.us>
Subject: RE: Times - ITM story

"Without seeing the details the City cannot comment on potential plans or projected figures. Any work on the railroad tracks would have to be approved by the Hoosier Heritage Port Authority, which currently does not have a train operator since the Indiana Transportation Service was sold out of the state in 2015."



Robert Herrington

Public Works Manager

Phone: 317.471.1111
Fax: 317.471.1111

From: Steve Cooke
Sent: Tuesday, March 14, 2017 2:28 PM
To: Robert Herrington <rherrington@noblesville.in.us>
Subject: RE: Times - ITM story

Looks good - I will send the memo.

From: Robert Herrington
Sent: Tuesday, March 14, 2017 1:45 PM
To: Steve Cooke <scooke@noblesville.in.us>
Subject: Times - ITM story

The Times just called asking for a statement or quote from the mayor's office about the ITM's plans to extend the tracks from the State Fair to 10th Street or about their idea of rail & trail. (They want to see our side on the Monday Indy Star story)

"Without seeing the details the City cannot comment on potential plans or projected figures. Any work on the railroad tracks would have to be approved by the Hoosier Heritage Port Authority, which currently does not have a train operator."

EXHIBIT 19

"A rail and trail option would cost significantly more with additional land acquisition and constructing a trail while renovating the rail line. That option also increases safety concerns as we want to ensure those walking dogs or have young children on bikes are not in any danger with a train passing by."



Robert Herrington

Public Affairs Manager
Mayor's Office
City of Noblesville

rob.herrington@noblesville.org



From: Steve Cooke <scooke@noblesville.in.us>
Sent: Wednesday, January 4, 2017 6:58 AM
To: McGrath, Leah
Subject: Re: Follow-up on Nickel Plate Trail

Sounds good - See you then.

Steve Cooke
City of Noblesville

Sent from my iPhone

> On Jan 3, 2017, at 5:37 PM, McGrath, Leah <leah.mcgrath@cityofnoblesville.in.us> wrote:

>

> Perfect!

>

> How about Flamme Burger? See you then.

>

> Leah

>

> Sent from my iPhone

>

>> On Jan 3, 2017, at 5:22 PM, Steve Cooke <scooke@noblesville.in.us> wrote:

>>

>> Yes! Let's do lunch in Fishers on Friday 1/6 at 11:30. I'm heading to indy after that. Just name the place!

>>

>> Steve Cooke

>> City of Noblesville

>>

>> Sent from my iPhone

>>

>> On Jan 3, 2017, at 4:51 PM, McGrath, Leah <leah.mcgrath@cityofnoblesville.in.us> wrote:

>>

>> Hi Steve,

>>

>> Thanks for your email! We are awaiting some final legal research.

>>

>> Would you be available for lunch to catch up on this?

>>

>> Here are some dates I could do:

>> Friday, Jan. 6 at 11:30

>> Tuesday, Jan. 10

>> Friday, Jan. 13

>>

>> Thanks & looking forward to this!

>> Leah

>>

>>

>>

EXHIBIT 10

>> Sent from my iPhone

>>

>> On Jan 3, 2017, at 9:04 AM, Steve Cooke <steve@fishers.in.us> wrote:

>>

>> Happy New Year! Hope you enjoyed the holidays. I'm back at it today and wanted to check in to see if there's any update on this project - i.e., timeframe for the announcement, when we might hear from United Consulting about the Noblesville portion, etc.

>>

>> I have a meeting with my HCLA team today at 3 p.m. so any update I can give them, or help you think they can provide, let me know. We're actually meeting at Meyer Najem where one of our team members works. A few of us may head to FDR around 5 p.m. if you'd like to join us!

>>

>> Otherwise, my only other update is that I had a call with Brenda Myers on 12/23, and let her know that Noblesville doesn't want to be part of the RFP for the new excursion train plan so we can "keep our options open for a potential trail." They are adjusting their RFP to be without Fishers or Noblesville.

>>

>> Thanks!

>>

>> Steve Cooke

>>

>> From: Steve Cooke

>> Sent: Monday, December 12, 2016 9:04 AM

>> To: mayorfadness@fishers.in.us<<mailto:mayorfadness@fishers.in.us>>; McGrath, Leah
<mcgrathl@fishers.in.us><<mailto:mcgrathl@fishers.in.us>>

>> Cc: 'JOHN DITSLEAR' <jditslear@noblesville.in.us><<mailto:jditslear@noblesville.in.us>>; Chris Jensen - contact
<ctjensen1@gmail.com><<mailto:ctjensen1@gmail.com>>>

>> Subject: Use of HCLA Team for Nickel Plate Trail

>>

>> Good morning -

>>

>> Based on our conversations last week, and with your approval, Mayor Fadness, I spoke with my HCLA team that has been working on the "Rail or Trail" project.

>>

>> I stressed the need for absolute confidentiality on this matter for now and asked them how they saw our project changing based on (1) likely January announcement of Fishers and Noblesville announcing plans to build Nickel Plate Trail, and (2) Hamilton County Tourism and Hoosier Heritage Port Authority seeking new railroad operator and funds to repair tracks for renewed excursion/history train - and possibly even freight trains.

>>

>> Our entire team was unanimous in wanting to support the trail effort.

>>

>> Here is where we see our project going and a question for you:

>>

>>

>> 1. Prep for Announcement: How can my HCLA team best support Fishers and Noblesville's upcoming announcement? We're looking for suggestions. This is what we're doing right now:

>>

>>

>>

>> a. Pro-trail research on the Monon Trail and trails in general as far as improved economic development, health of community, housing, etc. where trails pop up.

>>

>> b. Developing list of stakeholder individuals and groups to help enlist their support for Fishers and Noblesville.

EXHIBIT 11

>>

>>

>>

>> 2. Post-Announcement: Depending on when the announcement happens, we see the rest of our project focusing on building support for Nickel Plate Trail in the northern communities - Cicero, Arcadia and Atlanta. We had already been in talks with some key stakeholders in Cicero, and have heard of possible support from others - both elected officials and business owners.

>>

>> Again - My group understands why this has to remain confidential for now, so I think they can be useful to our effort. The members of my team include: Jonathan Haggarty (Meyer-Najem), Judah Holland (Navient), Adam Peat (Stratosphere Quality), Bonnie Riley (National Bank of Indianapolis), Greg Schrage (Church Church Hittle + Antrim) and Wade Wiley (Becks Hybrids).

>>

>> As far as the City of Noblesville is concerned, we're looking forward to talking with United to begin budgeting for the trail construction. If there are any planning meetings in Fishers that should include us, just let me know.

>>

>> Thanks,

>> <image001.jpg>

>>

From: Steve Cooke - Jacobs Engineering
Sent: Wednesday, February 22, 2017 7:54 PM
To: John Ditslear
Subject: Email for Directors -- Nickel Plate Trail
Attachments: Nickel Plate_Council Presentation_02-23-2017.pdf

Mayor – I think we should let our Directors know about the Nickel Plate project before the 2/28 announcement. We then will need their help with a community meeting in late March.

Would you like me to send this message below or would you like this to come from you?

Thanks,

Steve

Directors:

Attached is a presentation we gave to Council tonight during an exec session for an exciting project we are proposing. On February 28, Noblesville and Fishers will jointly announce converting the Nickel Plate Railroad line to a multipurpose trail.

We understand that given the heritage of Noblesville's Nickel Plate Rail, there may be some push back from a vocal minority. However, trails are also a big part of what makes Noblesville so special. And this trail – if funded and approved – could bring several benefits:

- Improve walkability for residents living near the trail
- Create opportunities to connect with Fishers
- Spur development for new residential and commercial opportunities
- Help bring greater connectivity for the Pleasant Street project
- Allow for future opportunities to connect with other cities to north and Indianapolis to the south where the Nickel Plate connects with Monon Trail

We wanted you to be aware of this project before it is announced. Feel free to read through the presentation and let me know if you have any questions. In addition to the 2/28 announcement, Robert is working with Fishers on a joint news release and website with an FAQ to better inform the public, as well as letters that would go out to nearby residents.

Within the City we'd like to work together across several departments to host a community "listening session" on the evening of Thursday, March 23 here at City Hall so residents can learn more about the project and ask questions of department directors from Economic Development, Engineering, Parks/Rec, Planning and Police and Fire.

I'll follow up with more information soon and a meeting invitation to discuss the project to prepare for the 3/23 event if you feel your department should be involved.

Thanks,

SIGNATURE

EXHIBIT 12

From: Steve Cooke <scooke@noblesille.ca.us>
Sent: Sunday, February 26, 2017 1:01 PM
To: Elrod; Ashley; McGrath; Leah
Cc: Robert Harrington
Subject: RE: DRAFT: NPT Media Materials
Attachments: FAQ - 2017 - Nickel Plate Trail_cooke edits.doc; PR - 2017 - Nickel Plate Trail_cooke edits.doc

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains.

Attached are my revisions to the response, including a letter to the Mayor, which I believe, you will find, is more from Mayor Dittus and possibly other things, in more than one place. I have also included a letter to the Mayor, which I believe, you will find, is more from Mayor Dittus and possibly other things, in more than one place.

Basically – We needed to re-use an old tax rate for the Pleasant Plate area, but adjusted, because we're up to \$632. But since we're turning the Pleasant Plate back into Pleasant, there's a lot of Pleasant Plate – so we're what we need to say where the AP ends, you'll see what we're doing. But that's very early. However, we're not revising the budget estimate yet to account for this change. But superlatively regarding it, it's a continuation to say a credit at Pleasant (for now, hopefully).

We'll certainly be excited to pull up the trucks from 5' Street and over SR32/38 – but no need to confuse the public with this specificity.

In the FAQ, I also added paragraphs about Rail Inquiries and Wales Transit. Feel free to revise accordingly or take out that question altogether. We could certainly get nattering points that would sway people away from both - but I think it's best to remain somewhat neutral so give some credit to our partners.

Let me know if you have any ideas.

1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 26

Steve

From: Elrod, Ashley [mailto:elroda@fishers.in.us]
Sent: Saturday, February 25, 2017 1:09 PM
To: McGrath, Leah <m McGrathl@fishers.in.us>; Steve Cooke <stcooke@noblesville.in.us>; Robert Herrington <rherrington@noblesville.in.us>
Subject: DRAFT: NPT Media Materials

Good afternoon —

Attached are the materials we'll plan to distribute for the announcement Tuesday. Please take a few minutes to review and let me know your changes. Our engineering and 'legal' depts. are reviewing all materials also, so there may be some minor adjustments.

FYI -- I did not address the alternative options to the trail in the release. I thought that could be something we take care of during media interviews if they ask. If you feel like we should include, I'm happy to discuss.

EXHIBIT I 13

1. Press Release
 - a. We'll need approvals for Mayor Ditslear and Commissioner Altman quotes
 - b. Please confirm all facts/statements throughout
 - c. I need Noblesville's boilerplate to add at the bottom.
2. Run of Show
 - a. Details the order of the press conference
3. FAQ Sheet
 - a. We've added several FAQs here since the meeting, so please review for accuracy.
 - b. There are few details I do not have the information for. Those are highlighted in yellow.
4. Renderings
 - a. Noblesville and Fishers renderings are included here.
 - b. *Noblesville – have you sent your renderings to be printed as presentation boards? We also plan to have our trails master plan map printed if you would like to do the same.
5. Website
 - a. URL secured (nickelplatetrail.com)
 - b. Content is under development and will feature basic information for these areas:
 - i. About the Nickel Plate Trail – general overview + “why a trail” supporting documentation from SC
 - ii. City of Fishers – detailed info and updates
 - iii. City of Noblesville – detailed info and updates
 - iv. FAQs – general FAQs
 - v. Contact Us – links to city emails

Robert - can you share the media advisory once you've completed? We'll plan to send this first thing Monday morning.

As for the event:

- Weather: it's looking a little better for Tuesday with it now just showing a 50% chance of rain. Plan B: we'll relocate all components of the announcement to the 4th floor of The Switch.
- We will have power (probably via quiet generators), a mult box, and speaker/mic system. Our IT services will be on-site in the event there are any issues.
- DPW is hanging the usual signage found at the platform. We'll also have event-specific signage of renderings
- Photography and social media support: let's confirm who is taking photography via cell or high-resolution camera. We'll plan to periscope the event, so any additional social media support we can get during the event will be helpful.

Thanks everyone for your help pulling together the information – it made my job easy!

Enjoy your weekend.

Ashley

Ashley Elrod

Director, Public Relations

P 317.595.3132 C 317.650.9827



www.fishers.in.us



Install the New Nickel Plate App for your smart device:

For Apple [click here](#)

For Android [click here](#)

From: Steve Cooke <scooke@noblesville.in.us>
Sent: Monday, February 27, 2017 3:16 PM
To: John Dislear; John Seery; Robert Herring; Dr. Michelle Shindler
Subject: Fwd: Fishers/Noblesville Press Conference

County Council knows and Indy Star has their story without us but were fine according to Christine and Leah.

Steve Cooke
City of Noblesville

Sent from my iPhone

Begin forwarded message:

From: Christine Altman <altman@noblesville.in.us>
Date: February 27, 2017 at 8:19:19 PM EST
To: Steve Cooke <scooke@noblesville.in.us>
Subject: Re: Fishers/Noblesville Press Conference

Council was notified tonight. I think we are fine.

Christine Altman, Mobile Account

On Feb 27, 2017, at 8:08 PM, Steve Cooke <scooke@noblesville.in.us> wrote:

Commissioner -

FYI - I'm not sure when you are notifying the County Council but the HHPA president I invited to the trail announcement (Mike) just notified their entire board.

As you know HHPA isn't really a problem but depending on who they tell it may get out to your Council.

Sorry - I made it clear to the few contacts I told today that we are keeping it confidential.

Steve Cooke
City of Noblesville

Sent from my iPhone

EXHIBIT 14

Begin forwarded message:

----- Original message -----

From: Michael Obergfell

<obergfelli@usiconsultants.com><<mailto:obergfell@usiconsultants.com>>>

Date: 2/27/17 4:59 PM (GMT-05:00)

To: John Beery <JBeery@noblesville.in.us><<mailto:JBeery@noblesville.in.us>>>, "Eric B. Pethtel" <pethtele@fishers.in.us><<mailto:pethtele@fishers.in.us>>>, David George <david.c.george@outlook.com><<mailto:david.c.george@outlook.com>>>, Glen Schwartz <glen@schwartztrailer.com><<mailto:glen@schwartztrailer.com>>>, Bradley James Davis <brad.davis@hamiltoncounty.in.gov><<mailto:brad.davis@hamiltoncounty.in.gov>>>
>

Cc: Rhonda Klopfenstein

<rhondask@frontier.com><<mailto:rhondask@frontier.com>>>

Subject: Fishers/Noblesville Press Conference

Dear Board,

I was just informed that our owners will be holding a press conference tomorrow at 10:30am at the fishers train depot to discuss their plans for the line, at least thru fishers and Noblesville. Please attend if you want to hear it first hand.

Sincerely,

Mike

Sent from my Verizon, Samsung Galaxy smartphone

From: Steve Cooke <scooke@noblesville.in.us>
Sent: Sunday, February 26, 2017 1:01 PM
To: Elrod; Ashley; McGrath; Leah
Cc: Robert Herrington
Subject: RE: DRAFT: NPT Media Materials
Attachments: FAQ - 2017 - Nickel Plate Trail_cooke edits.doc; PR - 2017 - Nickel Plate Trail_cooke edits.doc

Team Fishers – Again, great work!

The Run of Show looks good. When we talk to people to seek feedback, we're coming from our Council, and probably other stakeholders who will also be looking for it.

Attached are my revisions to the release and FAQ that I can go for. I will follow up with the quote from Mayor Dittler and possibly other engaged Council members and the opportunity to show trails and our downtown.

Basically – We needed to revise where we say the Nickel Plate ends. The estimate before was up to SR32. But since we're turning the Nickel Plate onto the Indiana Trace ending at Pleasant Street – that's what we need to say where the NP ends. You'll see what I mean when you review my edit. However, we're not revising the budget estimate yet to account for this change. But geographically speaking, it's confusing to say it stops at Pleasant (for now hopefully!).

We'll certainly be excited to pull up the tracks from 8th Street and over SR32/38 – but no need to confuse the public with this specificity.

In the FAQ, I also added paragraphs about Hall's Run and Mass Transit. Feel free to revise accordingly or take out that question altogether. We could certainly put in talking points that could sway people away from both – but I think it's best to remain somewhat neutral to give some cover to our partners.

Let me know if you have any questions.

Thanks,

Steve

From: Elrod, Ashley [mailto:elroda@fishers.in.us]
Sent: Saturday, February 25, 2017 1:09 PM
To: McGrath, Leah <mcgrathl@fishers.in.us>; Steve Cooke <scooke@noblesville.in.us>; Robert Herrington <rherrington@noblesville.in.us>
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EXHIBIT 115

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 - b. Please confirm all facts/statements throughout
 - c. I need Noblesville's boilerplate to add at the bottom.
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 - a. Details the order of the press conference
3. FAQ Sheet
 - a. We've added several FAQs here since the meeting, so please review for accuracy.
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 - a. Noblesville and Fishers renderings are included here.
 - b. *Noblesville – have you sent your renderings to be printed as presentation boards? We also plan to have our trails master plan map printed if you would like to do the same.
5. Website
 - a. URL secured (nickelplatetrail.com)
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 - i. About the Nickel Plate Trail – general overview + “why a trail” supporting documentation from SC
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 - iv. FAQs – general FAQs
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- DPW is hanging the usual signage found at the platform. We'll also have event-specific signage of renderings
- Photography and social media support: let's confirm who is taking photography via cell or high-resolution camera. We'll plan to periscope the event, so any additional social media support we can get during the event will be helpful.

Thanks everyone for your help pulling together the information – it made my job easy!

Enjoy your weekend.

Ashley

Ashley Elrod

Director, Public Relations

P 317.595.3132 C 317.650.9827



www.fishers.in.us



Install the New Nickel Plate App for your smart device:

For Apple [click here](#)

For Android [click here](#)

From: Steve Cooke <scooke@noblesville.in.us>
Sent: Tuesday, February 21, 2017 2:03 PM
To: Mike Howard
Subject: FW: Legal docs on Nickel Plate
Attachments: Executive Summary.pdf

Mike - Attached is Fishers' executive summary on the Nickel Plate railroad work. We'd love. Obviously this is all confidential for now.

Mayor and I met with Mayor Padgett and his back. And they're ready to lead the charge on this. We're planning to do a joint announcement on this on Tuesday, February 28 at 10:00 AM in Fishers. Again - the funding is not there yet.

Chris is available to chat at some point, otherwise get through a PR. Please do no part of any call if possible.

Thanks,

Steve

From: Greisl, Chris [mailto:greisl@fishers.in.us]
Sent: Friday, February 17, 2017 1:03 PM
To: Steve Cooke <scooke@noblesville.in.us>
Cc: McGrath, Leah <m McGrath@fishers.in.us>
Subject: RE: Legal docs on Nickel Plate

Steve,

I apologize for the delayed response. Things have been quite hectic in our first. I'm attaching an executive summary that we are preparing to share with our council for your consideration. It provides a good overview without getting into the legal weeds.

My research included portions of the that within Noblesville as well as no reason to independently research the deeds in your area. I will be happy to share the same with Mike Howard for his review and consideration.

Please let me know if you can anything. Thank you for your time and consideration.

Sincerely,

Chris Greisl

City Attorney, Administration

P 317.595.3414



www.fishers.in.us



EXHIBIT 16

Install the New Nickel Plate App for your Android device:

For Apple [click here](#)

For Android [click here](#)

From: "Steve Cooke" <scooke@noblesville.in.us>
 Date: Sunday, December 11, 2016 8:18 PM
 To: "Burgundy @meyer-najem.com"
 Subject: Update on RAIL Trail Team (CONFIDENTIAL)

Jonathan;

Hope you're doing well. Our team had a good meeting on Friday. There have been 2 major developments that I need to update you on. They are highly confidential so please don't share outside our team. You'll see some notes on these in a Google Doc that summarizes our meeting, but I'm putting more details below for you. In a nutshell:

- **Hamilton County Tourism and Excursion Train:** New plans for excursion train are coming soon from Hamilton County Tourism – with cost to fix train and potential new private operator of rail to make it a destination and tell the history of Indiana rail. HCT is putting out an RFP on this. But Fishers and Noblesville are likely to not support this idea. I'm meeting with Brenda Myers from HCT this week to learn more.
- **Nickel Plate Trail:** Mayor Olshear and I met with Mayor Adness this week, and were surprised to learn that Fishers is already moving ahead with plans to build this trail. They've already done some preliminary design, budget and legal work to resolve some of the issues we would have researched (regarding property reversion rights once the rail is gone). Next, Noblesville will be doing budget work as well to see what our portion of the trail might cost. We're thinking a joint announcement may come as early as January to announce Fishers and Noblesville plans to create this trail.

What if these both get announced during next month? Our HOLA group has decided that this development means our project should take a different approach. There won't be any need for a community meeting / panel discussion in the spring. And we're not sure about a report. We all pretty much support the trail idea anyway – so we are throwing our focus fully on Nickel Plate Trail. You'll see in the planning document that each of us is doing some research and prepping for possibly helping with the January announcement. I'm going to offer that to Fishers and basically ask – what can we do to help? I'm sure there will be plenty for you to help with come January.

And then where our project goes from there will depend on the January announcement. We discussed possibly changing focus to building grassroots support for trail in the northern cities/towns of Cicero, Arcadia and Atlanta assuming Fishers and Noblesville will be announcing their plans for the trail.

If you have any questions – let me know! And I'll bring more about both the above projects to our next meeting.

Speaking of which – are you able to meet in Noblesville on Friday, January 6 from 3:30 to 6:30? That's our tentative date/time, but wanted to ask you first.

Thanks,

Steve Cooke

EXHIBIT 17

From: Brenda Myers
Sent: Wednesday, August 30, 2017, 8:07 PM
To: John Hamilton
Cc: Mayor Disfear
Subject: Re: Hamilton

Mayor Disfear,

I am reaching out because a group of us not connected with the ITM is, on its own without any encouragement, pulling together a potential proposal to rework the tourism railroad operations along the Nickel Plate line should there be interest on behalf of the Hoosier Heritage Port Authority.

This is not news to many — it's out there that we're working on this — but we'd rather not broadcast it. I've already been asked by the media and I've said it is what it is — a fairly, a Brenda crazy idea — and we're just noodling on this as of now. And not ready for any public dissemination. We do not own the rights to operate anywhere. We are just testing a concept.

We do have a trifecta of interest — we would develop the non-profit program provider, the town of Atlanta would work with us on a new location for the train, and a for-profit professional railroad operator would serve as the equipment provider. It would be a whole new business model. We might not freight north of zero even to help it balance the budget.

We are not sure we can get the numbers to work out, but I wondered if we could chat by phone even to help us understand the degree to which you would even allow/desire train operations in Noblesville. or does the operation of the train depend on the desire for just one individual?

The only way to make it make money is to move south and north, but I am conscious of the fact that you might not be that keen on a lot of trains. if the Hoosier Heritage Port Authority is not the owner of the train, the Hoosier Heritage Port Authority purchases and benefits, this statement indicates that it is not the owner, but the Hoosier Heritage Port Authority is the owner of the ENTIRE rail equipment.

The excursion schedule would be different than the current business model. Better trains, bigger prices, pretty much Friday-Saturdays.

Also, a lot of activity would originate north to south, landing north of the square.

We would not anticipate using the park currently in our business planning as that works through its issues and concerns.

Let me know if you have a moment to talk — what a good time for a phone call might be.

Thank you so much.

Brenda



BRENDA MYERS
PRESIDENT

37 East Main Street
Carmel, IN 46032

EXHIBIT 18

From: Steve Cooke <scooke@noblesville.in.us>
Sent: Wednesday, November 16, 2016 3:07 PM
To: John Ditslear; Brandon Bennett
Subject: RE: Indiana Transportation Museum makes decision on "Polar Bear Express" ride | WISH-TV
Attachments: Project Proposal Worksheet 2016-17_Cooke_Rail or Trail - Nickel Plate_11.3.2016.pdf

Agreed! Just to keep you in the loop, my HCLA project is a study called *Rail or Trail: A Study of the Nickel Plate Railroad*. I've attached the summary of it. At the end of our class, our project will hold a community meeting to reveal the results of our findings and include a conversation to talk about what should be next.

From: John Ditslear
Sent: Wednesday, November 16, 2016 2:49 PM
To: Brandon Bennett <bbennett@noblesville.in.us>; Steve Cooke <scooke@noblesville.in.us>
Subject: Fwd: Indiana Transportation Museum makes decision on "Polar Bear Express" ride | WISH-TV

We need to let them know not to run the train

Sent from my iPad

Begin forwarded message:

From: Michael Obergfell <moberg@usiconsultants.com>
Date: November 16, 2016 at 11:33:17 AM EST
To: Michael Hendricks <mhendricks@noblesville.in.us>, John Ditslear <jditslear@noblesville.in.us>, Brandon Bennett <bbennett@noblesville.in.us>
Subject: FW: Indiana Transportation Museum makes decision on "Polar Bear Express" ride | WISH-TV

FYI on article published yesterday. I have heard through Rhonda's "grapevine" that ITM plans to run caboose rides on the spur in Forest Park in conjunction with the limited Polar Express events noted in the below Wish TV news article.

HHPA has not reinstated ITM's use privileges on the mainline, but HHPA has no authority over ITM's facilities inside the City's park facilities. Therefore, I wanted to make you aware of this so you can deal with as you see fit, seeing as the City has no current lease agreement with ITM, I'm assuming you can tell them not to run any trains on the spur in Forest Park?

FYI, we did receive some information from ITM just this week and Rhonda and our consultant are reviewing it for compliance with our Revised Policy of Use that Board passed back in July. Personally I don't think it's going to be what we are asking for, but that's up to our consultant/Exec. Director to decide and recommend to the Board at our next meeting in December.

Please feel free to call or email me if you have any questions.
Michael J. Obergfell, PE | Vice President
USI Consultants, Inc.
8415 E. 56th Street
Indianapolis, IN 46216

Office: 317 544-4996 | Direct: 317 522-2454 | Cell: 317 955-0167
obergfell@usiconsultants.com | www.usiconsultants.com | Facebook

EXHIBIT I19

Forward

From: rhondask [mailto:rhondask@frontier.com]

Sent: Tuesday, November 15, 2016 7:39 PM

To: Michael Obergfell <obergfell@usiconline.com>; Anne Poindexter
<APoindexter@apwlawyer.com>

Subject: Indiana Transportation Museum makes decision on "Polar Bear Express" ride | WISH-TV

<http://wish4.com/2016/11/15/indiana-transportation-museum-makes-decision-on-polar-bear-express-ride/>

Sent from my Verizon 4G LTE smartphone

From: "Steve Cooke" <steve@stern.com>
Date: Monday, September 11, 2017 10:59 AM
To: "Steve Cooke" <steve@stern.com>
Attach: IMG_5969.JPG; IMG_5970.JPG; IMG_5971.JPG
Subject: SWQ Trail along 7th Street

Driving around Southwest Quad, and spec. really along the street - it is thinking more about replacing the railroad tracks with a trail. Between 5th and 7th St. is a lot of land for the city - the rail tracks and the large City easement - and we are thinking about a trail to connect the neighborhood parking garage structures. Would hope this could encourage private development in neighborhoods on both sides - along 5th Street and in SWQ.

Plan:

- Work with community leaders to bring in and use the rail line. The city is using the tracks and not using enough. Better to use for the city's own use and not for the city's use.
- Plan not rail and road.
- Budget
- Target for completion in 2015 - or before - maybe mid-2015 - 2016.

From: Steve Cooke <sconke@noblesville.in.us>
Sent: Thursday, August 4, 2016 8:14 AM
To: John Ditslear
Subject: FW: Noblesville Mayor's Statement on Indiana State Fair Train Being Canceled

Mayor – We did send out the statement yesterday on the Fair Train – the one below. I had worked with Robert on that, but I should have gotten your approval on it. Sorry about that – I think I was moving a little too fast on that and need to check in with you before those go out.

Greg sent me an email chain with Emily Conners about the Fair Train, so I'll copy you on my response.

Thanks,

Steve

From: Robert Herrington
Sent: Wednesday, August 03, 2016 3:11 PM
To: Robert Herrington <rherrington@noblesville.in.us>
Subject: Noblesville Mayor's Statement on Indiana State Fair Train Being Canceled

Mayor's Statement on Indiana State Fair Train Being Canceled

NOBLESVILLE, IN – As a result of the Hoosier Heritage Port Authority's decision to retain the sanctions preventing operations of the Indiana Transportation Museum, Mayor John Ditslear issued the following statement:

"We're disappointed to hear that the Indiana State Fair Train will not be running this year, but the safety of riders is our top priority. We know thousands of families have a tradition and enjoy riding the train to the fair because of the unique experience it provides. However, we agree with the Hoosier Heritage Port Authority's decision to keep suspending train operations until we are certain that no one's safety is in jeopardy."



Robert Herrington

Public Affairs Manager
Signal Hill
City of Noblesville

www.noblesville.in.us



EXHIBIT 121

From: Greg O'Connor <gpoconnor@att.net>
Sent: Thursday, August 4, 2016 10:33 AM
To: Steve Cooke
Subject: Re: ITM

Thanks Steve! Don't get too wrapped up ... Emily is a concerned citizen, but never seems to lead the charge ... Likes to send lots of E-mails!!! I think there is a financial solution, but the entire management structure there would need to be "blown up" and rebuilt. If Brenda is that big a proponent, maybe the County should take it over and run it.... Just a thought She has the money to make the repairs as does the County overall

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(317) 418-7598 (cellular)
greg.oconnor@bmo.com

On Aug 4, 2016, at 8:50 AM, Steve Cooke <scooke@nobleville.in.us> wrote:

Hey, Greg:

Thanks for email chain below with Emily Compton about the Fair Train. I will chat with Mike Hendricks to see about finding out how much the repairs would cost. However, it's worse than just brush on the tracks that some organization like Serye could handle - rusted and cracked rail fasteners, etc.

I will also see if I can find out the economic impact for not only the Fair route, but the restaurant excursion up north - I'm wondering if Hamilton County Tourism has those figures.

In the meantime, here's the Star's article that includes comments from the Mayor, Dillinger and Fadness:

<http://www.indystar.com/story/news/2016/08/03/safety-concerns-halt-fair-train/87997068/>

Thanks,

Steve Cooke

From: Greg O'Connor
Sent: Thursday, August 04, 2016 7:21 AM
To: Steve Cooke <scooke@nobleville.in.us>
Subject: Fwd: ITM

Hey Steve!

Thought I'd send this on for your review. I have no reason to want to fund the first \$ for ITM since they've been mismanaged for some time. However, do we have any idea w

EXHIBIT 1-22

the maintenance is and the associated cost? The County is sitting on a pile of cash and could lend them the money for the maintenance which could be repaid from the proceeds of the Fair Train, etc. worse case would be the County owns the old rail equipment which could be auctioned off if they default. It's an idea to keep this this alive, but it may just be time for it to go away Would need to get Fadness on board as well

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Begin forwarded message:

From: emilyscompton <emilyscompton@gmail.com>
Date: August 4, 2016 at 7:11:36 AM EDT
To: "Greg O'Connor" <greg.oconnor@bmo.com>
Subject: Re: ITM

Could the city not reach out to them as a potential Serve Noblesville project? The article states brush along the railway being an issue. I know Noblesville can't fund them, but perhaps a hands off approach completely doesn't provide the right message of value and leadership for this Noblesville institution? Maybe I'll contact Fishers then. Or Atlanta, Tipton...
Thanks

*Sent: Friday, September 9, 2016, 4:01 PM
To: Greg O'Connor*

----- Original message -----

From: Greg O'Connor <greg.oconnor@bmo.com>
Date: 8/3/16 9:09 PM (GMT-05:00)
To: emilyscompton <emilyscompton@gmail.com>
Subject: Re: ITM

Hi Emily!

Would appear the fate of the ITM is left to the board members of the org. From what I understand ITM is responsible for maintenance of the tracks & have not made the necessary repairs to operate their route safely. The City provides their yard/offices free of charge & the track usage is also free. S's generated from previous events have apparently not gone to maintenance of the rail line which has created the problem. The Port Authority owns the R/W (County, Noblesville & Fishers) and the operation is subject to Federal Railroad Authority jurisdiction. At this point the ball is really in the Board's court to provide a course of action in order to continue their operation. I'm sure the Port Authority would be willing to hear from ITM on how they plan to rectify the safety issues. We will see what the ITM Board decides to do from this point forward.

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On Aug 3, 2016, at 6:50 PM, emilyscompton <emilyscompton@gmail.com>
wrote:

Hello Noblesville City Council,

I am writing for information regarding what the Council's position about the closure of Indiana Transportation Museum's operations on the regional railway are. I understand from what I've read that the railway was closed due to safety violations which were not rectified by ITM along the railway. I also understand that the railway and ITM is not a public service, even though it feels like a local institution, as it is an independent not for profit

The reason I'm writing is to let you know that I hope you all recognize the value of ITM to the region. From Indianapolis to Tipton, ITM provides recreation, transportation and tourism activities. Surely in this day and age of urban renewal, you and the other city/county leaders along the railway recognize the value of ITM, its collection and the service it provides and also what could be the potential for transportation expansion in our area. I believe that you all could be leaders within the railway region in consensus building about how to fix the issues and save ITM. What do other local not for profits think about this detrimental action? What do other cities think? What do local businesses think?

This is a problem which has broader ramifications than no Fair Train. How will this affect Tipton restaurants, Atlanta restaurants, The Hedgehog Music Hall and the FFA kids who partner with ITM? And tourism? And the Nickel Plate Arts Trail? And you musn't forget how will this affect ITM's fabulous collection of trains? Noblesville and Hamilton County doesn't have much in the way of museums and culture. ITM is a positive in our area and deserves some support...or at least a second thought.

I appreciate your thoughts regarding this situation.

Sincerely,
Emily Compton
Noblesville

Sent via my Samsung Galaxy S4 at 6:53 PM CDT 8/3/16

From: Pethle!
Sent: Wednesday, August 3, 2016 12:09 AM
To: Michael Obergfell
Cc: Mayor Fadness; Mayor John Ditslear (jditslear@noblesville.in.us); Steve Dillinger (StevenCDillinger@aol.com); Mark Heirbrandt; Christine Aitman; David C. George; Bradley J. Davis; Glen Schwartz (glen@schwartztrailer.com); Michael Hendricks (mhendricks@noblesville.in.us); steve.schwartz@hamiltoncounty.in.gov; jim.dillon@hamiltoncounty.in.gov; amy.massillamany@hamiltoncounty.in.gov; paul.ayers@hamiltoncounty.in.us; rick.mckinney@hamiltoncounty.in.gov; fred.glynn@hamiltoncounty.in.gov; brad.beaver@hamiltoncounty.in.gov; Rhonda Klopfenstein; Cathy Hale (chale@madisonrailroad.com); Anne Hensley Poindexter (apoindexter@apwlawyer.com); jkfisherslaw@msn.com; Michael A. Howard (Howardma@aol.com)
Subject: Re: HHPA Policy of Use Progress with ITM

Mike -

Thank you for the thorough status report.

I want to acknowledge the effort the ITM has put forth to date to try to meet the HHPA's minimum requirements to lift the ban of rail operations.

But I must echo David's comments in that the ITM has had plenty of time to produce required documentation and have yet to do so. When you couple the missing documentation with the noted safety conditions such as line of sight issues and the physical condition of the infrastructure throughout I feel the HHPA cannot be negligent and look the other way and ignore the obvious red flags.

This City of Fishers representative fully supports your position of not lifting the ban of operations at this time.

Thanks for the opportunity to comment.

Sent from my iPhone

On Aug 2, 2016, at 8:12 PM, Michael Obergfell <obergfella@fishers.in.gov> wrote:

Dear HHPA Board Members & Owners,

As noted in my previous email last Wednesday that is copied below, ITM was informed that HHPA required the information highlighted/bolded as listed. The following is an update as of today on those items in the order listed in my previous email:

- 1) HHPA has not received any of the medical, vision, or hearing certifications of their Engineers or Conductors as required by the CFR's listed in our Revised Policy of Use.
- 2) HHPA has not received notification that check rides of these same individuals are up to date or in progress.
- 3) HHPA has not been provided access to any drug or alcohol test results on their personnel or ITM's program in general.
- 4) HHPA did receive a track inspection report from ITM's Inspector (PDF Attached), it listed two items, some ties that needed trimmed and some ties that need replaced in the area near the fairgrounds. ITM reported that they have installed 30 new ties in that area, and were in the process of replacing the remaining ties. **EXHIBIT 11**

[illegible]

- 5) HHPA reviewed, and a draft On-Track Safety Program for ITM. It appears that this is a draft, they apparently have not had a safety program in place and this alone tells me that their personnel are not up to speed on what it involves. I don't know how well it is a draft at least, which is a start. (We attached for your info - review)
- 6) HHPA did receive an updated Timetable by ITM (provided for your information). The Timetable is a document that does required high level information that all train personnel in charge, depends on all records of the train, great things should have been required, etc. However, the only thing ITM changed from previous Timetables provided was the cover page with a new date and the second page of updated contacts/personnel. The DSLE's (ITM) listed are Engineers that either no personnel file was provided to HHPA to review at our inspection of their personnel files by HHPA's Executive Director and Consultant, so we have no records of their qualifications. Their DSLE that was at the file inspection meeting was moved from the DSLE category in the timetable because we informed them that he did not have current certifications to show us. The other DSLE that ITM listed in their updated Timetable we have been told that he was no longer going to volunteer. So basically we have no records to verify any of their DSLE's are certified to the CFR regulations. The DSLE is probably the most important person with any railroad, as they oversee the training of all Engineers and Conductors. This alone, in my opinion, should be reason to maintain our suspension of ITM until a properly certified DSLE is presented to HHPA with all required documentation.
- 7) Cleaning of culverts and bridges. ITM's president sent an email that stated the following: "The abutments on the Fall Creek bridge have been cleaned off and other bridges will have the same done this week as our volunteers can get to them. A thorough cleaning of the Fall Creek, Allisonville Road, and State Road 13 bridge bearing areas and an assessment of each must wait until a contractor can be hired to do the work according to the 5-year Bridge Maintenance Plan. Specialty equipment, reclamation of debris, and traffic control will be required for this work. Our plan will be to complete this in the spring of 2017." I have been unable to verify the cleaning of the Fall Creek bridge as of today, but as of Friday when I inspected the Fall Creek bridge, no work had been completed, and there is some serious rusting issues on the lower chord of the truss that needs to be addressed soon.
- 8) ITM provided HHPA with a copy of the FRA equipment inspection report on the remaining coach cars that were not inspected previously by the FRA (PDF Attached). As with all the other FRA reports since we issued the Revised Policy of Use, nothing was listed except that no violations/exceptions were noted. This is a main concern of mine and our consultants. We do not feel the FRA wants to get in the middle of this issue and has thus issued no violations. It is my understanding from our Executive Director that the inspections could not have been very thorough, as the inspector was there for a very short time on a recent Sunday. Since then ITM is considered a tourist railroad at this time, they really are not subject to FRA inspection.

requirements like a freight or passenger railroad, would be held to. I personally think that the HHPA should take no comfort in these reports, especially after what I was educated on today during a hi-rail inspection with our consultant and a railroad contractor that I will brief you on later in this email. I also believe that ITM's operations need to be held to a higher standard than a normal tourist operation, since they want to operate at speeds up to 25 MPH and due to the fact that all the crossings from Mableville to the Fairgrounds cross very heavily traveled roads, and are loaded with passengers, so no safety issues should be compromised. From the education I've received recently, most if not all tourist operations run at Class I railroad speeds of 10 MPH or less.

- 9) HHPA did receive a maintenance plan from ITM for the remainder of 2016 (PDF Attached). I find it to be woefully inadequate, but you can form your own opinion. My opinion is based on the recent report they provided to us that noted they netted almost \$290,000 (after expenses) on the Polar Bear Express this past winter. Only proposing \$145,000 of maintenance is well short of the \$300k we were told they would be working towards, especially considering the revenue they reported on the Polar Bear Express, and the lack of maintenance over the past several years.

Today, I went on a hi-rail trip with a contractor from the Louisville area that our railroad consultant Ms. Hale secured to come give me an education on what inspectors look for and give us their "off the record" opinion of the current conditions. Both gentlemen that came are FRA Certified Inspectors. Although they said the track was in fairly good condition for a tourist railroad, they showed me several areas that should not have passed an FRA inspection or the inspections of ITM's track inspectors. It is worth noting that the contractor said they would not recommend any speeds over 10 MPH, which is the limit for Class I rails, and what most tourist railroads run at or below, thus the opinion that they were in fairly good condition for a tourist railroad. At one point, I asked them to get up to 25 MPH, which is the limit for Class II rails, and the ride was very bad, which they explained was due to the age of the rail and the fact that the ties were not in good condition overall. As ties weaken/rot, the track shifts more and deflections occur that after time are permanently engrained in the rails. These permanent deflections cause trains to oscillate at higher speeds, which is typically the underlying cause of most derailments. In addition, they found numerous defects for even Class I rails, such as inadequate satisfactory ties at several locations where old abandoned spurs or turnouts and switches are located on the mainline. These areas has no good ties within the turnout limits, which is a Class I defect. This means that no operations at any speeds should occur until a Class I defect is repaired. I was informed by one of the inspectors that previously worked for the company that did our federal aid tie replacement project a couple of years ago, that these ties in the switch and turnout areas were not touched due to the fact that they are longer ties and such ties were not covered by part of the tie replacement project. We also stopped at several spots to inspect the areas on foot, and at two of the handful of spots that we stopped at we found one of the rail splice bars we inspected at each location had a crack in it, which is also a Class I defect. We did not have time to inspect the whole track on foot, and since the contractor donated their time today, I wasn't about to ask them to do so. That said, I'm sure we didn't luck out and find the only two cracked bars on the 11 miles of track from Fishers to the Fairgrounds. How many of these splice bars are cracked is unknown, but finding two at the handful of stops that we made has me very worried as to the overall state of these important splice locations on the rail.

The other major issue is the sight distance at most of the crossings in Marion County. Since brush cutting has not taken place, sight distance is very limited at most crossings. This is a very dangerous situation even though stop signs are present at these streets. At 25 MPH a train comes at you pretty quick if not paying attention, and with the infrequent use our tracks see, this is a serious safety issue in my opinion as most frequent users of these roadways are not used to encountering trains.

A full listing of the items we found are as follows:

Class I defects found (cannot operate even at 10MPH or less):

- Switch ties are bad and loose joints at the switch south of 96th Street
- A center break compound bolt, 3 ½ x 6 on 115 lb side and 2 1/5 x 5 on 90 lb side just north of Masters Road
- Need new Head Block ties at switch south of 82nd Street

Class II defects found:

- Quarter Break Point Bar, 9AR, south of Kessler

Additional Repairs needed before train movements:

- Clean out crossing depression next to rail at Kessler Blvd
- Replace ties North of Fall Creek and in the area of Citizens Energy water treatment plant, Class I due to condition of tie

Additional Requirements to run as Class I:

- Slow order at all crossings and curves
- Site obstruction at Graham Rd due to brush
- Bent Rail south of 71st Street, slow order

What is needed for Class II Service throughout (up to 25MPH max speed):

- Ties and surfacing
- Rail Splice Bolts Tightened
- Brushing cutting at crossing, site obstruction
- Take out turns

With all of this said, I see no way that I can recommend to the Board and Owners that HHPA lift the suspension of ITM's operations and allow the Fair Train to run starting this Friday. I want your feedback before I present this to ITM tomorrow. I see no way ITM can come into compliance that quickly, and these issues are not issues that should be rushed through just for the sake of the Fair Train. The liability is too high to waive our requirements in my opinion. I value your feedback and want to ensure we are all united on this front, so please respond with any concerns or input you have as soon as possible. I would like to know if each and every one of you are in agreement with our findings and direction.

I apologize for the length of these correspondences, but these issues require such. Running a railroad is serious business, lives are at stake each and every time the train runs.

If you would like to discuss any concerns/issues you may have, please feel free to call me on my cell

If everyone is in agreement, I will put together a press release for all communities to review/comment on, and then utilize so our message is consistent and clear when we go public.

Sincerely,

Michael J. Obergfell, PE | President
Hoosier Heritage Port Authority
33 N 9th Street, Suite 215
Noblesville, IN 46060
Office: 317-776-6266 | Cell: 317-965-9167

From: Michael Obergfell

Sent: Wednesday, July 27, 2016 10:36 PM

To: Mayor Fadness <mayorfadness@fishers.in.us>; Mayor John Ditslear (jditslear@noblesville.in.us) <jditslear@noblesville.in.us>; Steve Dillinger (StevenCDillinger@aol.com) <StevenCDillinger@aol.com>; Mark Heirbrandt <Mark.Heirbrandt@hamiltoncounty.in.gov>; Christine Altman

<Christine.Armen@hennepin.org>; Eric B. Pethtel (pethtel@fisher.in.us)
<pethtel@fisher.in.us>; David George (david.c.george@outlook.com) <david.c.george@outlook.com>;
'Bradley J. Davis' <Bradley.Davis@hennepin.org>; Glen Schwartz <jakeandandy@msn.com>;
Glen Schwartz (glen@schwartztrailer.com) <glen@schwartztrailer.com>; Michael Hendricks
(mhendricks@noblesville.in.us) <mhendricks@noblesville.in.us>
Cc: Rhonda Klopfenstein <rhondesk@ironclad.com>; Cathy Hale (chale@madisonrailroad.com)
<chale@madisonrailroad.com>; Anne Hensley Poindexter (apoindexter@spwlawyer.com)
<apoindexter@spwlawyer.com>

Subject: HHPA Policy of Use Progress with ITM

Dear HHPA Board Members & Owners,

Yesterday I accompanied our Executive Director Rhonda Klopfenstein, and Cathy Hale, HHPA's Railroad Consultant, during their review of ITM's records for their Engineer's & Conductor's training. The results were less than stellar on their record keeping, and a lot of these individuals tests for Vision, Hearing and/or Medical physical as required by the Federal CFR's (Code of Federal Regulations) that we now require in our *Revised Policy of Use* were out of date in accordance with the regulations. I did not stay the entire time Cathy and Rhonda reviewed the individual files, however, I did stay long enough to be part of some tough conversations between Cathy/Rhonda and the ITM Volunteers that were present, one of which was a current ITM Board member. We certainly got our point across that the files they currently have are lacking in the documentation that is needed to be in compliance with the CFR's, and that they had to retain their records as far back as possible to show all the training history of their Engineers/Conductors for future inspections by HHPA and the FRA (Federal RR Admin). I've also been impressing the point to ITM's President and Board Members that they have to open up the lines of communication with HHPA and keep us informed if we are to move forward with ITM operating on the line.

However, I do not want to say that their personnel are not qualified. In talking to them, I do feel that the Engineer's/Conductors listed below are experienced and capable of running the fair train in less than two weeks from now. They are just not 100% compliant with all CFR file documentation. For instance, Larry Elliot, who was there yesterday as head of ITM's Engineer/Conductor training/certification program, worked for over 30 years for major railroads such as Conrail/CSX as an Engineer and DSLE. He is ITM's current DSLE (Designated Supervisor of Locomotive Engineers), which is part of the CFR requirements. Larry stated that he was a former DSLE with Conrail and other railroads that Conrail eventually acquired. However, ITM has no supporting documentation that shows us that Larry is qualified or has recent training as required by the CFR's. So thus lies the dilemma of whether we allow ITM to run the fair train, or stick to our Policy of Use and not allow any excursions until every point is met in accordance with the CFR's we have listed in the Revised Policy of Use approved at our July meeting. This could take a long time and likely would sink ITM since they would have no income this year from the Fair Train.

My opinion at this time is leaning towards allowing ITM to move forward with the Fair Train, if they can provide all of the Vision, Hearing, and/or medical paperwork, as well as have all their E/C's Check Rides updated by the Fair Train. If this occurs, they can continue to work on their Programs for Certification of Conductors (49 CFR 242) and Engineers (49 CFR 240), and getting all personnel files in order. They have been working on the items in our Revised Policy of Use, and Mr. Kehler, ITM President and Mr. Pressler, Board Member, have assured me that they will open the lines of communication between our Boards and will strive to meet all our requirements moving forward.

Please review the below notes that Rhonda and Cathy have summarized based on their review at ITM's office yesterday. It is my opinion that the items I have bolded and underlined in Cathy/Rhonda's bullet points below must be completed prior to the Fair Train running:

Comments from review of files at ITM on July 25, 2016

- ITM joined the Regional Railroad Association, they help provide forms and templates for programs
- Larry Elliot has been doing the Certification of Engineers and Conductors for 2016, Larry is not a DSLE (Designated Supervisors of Locomotive Engineers). Rhonda and Cathy would like to start attending training classes. No record of a past DSLE at ITM.
- ITM is not keeping records longer than three years. This needs to change, ITM needs to build and establish a history on the individuals.
- All conductors need Monitoring Evaluation/Check Ride completed along with most of the engineers. This is a yearly evaluation.
- All training and testing needs a specified date on the record, not just the year.
- All engineers and conductors need hearing test, vision testing and a physical done. A CDL exam form would be accepted over the restrictive form used by most railroads. ITM is currently using an internal form with no back up documentation. Most files were missing some or all vision, hearing and physical testing forms. Cathy suggested adding a Medical Review Officer.
- Two individuals ITM had marked as conductors had no conductor training/testing records. (These individuals will not be allowed to operate as a Conductor for the Fair Train until all training/check rides/files are up to date and reviewed by Cathy)
- No drug and alcohol testing in the Engineer and Conductor files. Per ITM, they are kept in a locked file and only accessed by Drug and Alcohol Officer. This can be changed by having the volunteer sign a waiver. (ITM shall provide proof of drug and alcohol test results on all proposed Engineers/Conductors for the Fair Train to Rhonda for viewing only at ITM's Office)

Update on additional items needed:

- Weekly Track inspection reports, should start this week (Provide HHPA with copy of this weeks written report for Fair Train route and perform any necessary maintenance as listed in the report prior to operating the Fair Train route)
- Programs for Engineers and Conductors, getting templates from ASLRRA (ITM to purchase Template and begin work on program immediately and provide proof of such to HHPA's E.D.)
- Roadway Workers Safety Program, will have by August 1, 2016
- Updated Timetable, will have by August 1, 2016
- Waiver from FRA on Cabooses, request sent to FRA last week
- Cleaning on bridges and culvert, should happen soon
- Equipment FRA report, Inspection done July 24, 2016 (Provide HHPA copy)
- Annual maintenance plan for remainder of 2016, will have by August 1, 2016 including work to be done by August 5, 2016

Engineers File Review:

- 1) Steve Roof
 - Outdated Check Ride
 - No Vision Testing
 - No Hearing Test
 - No Medical

- 2) Leslie McConnell
 - Needs updated Vision Test, over 3 yrs old
 - No Hearing Test
 - Check Ride out dates
- 3) Bob McClain
 - Check ride expired on 7/18/2016
 - No supporting documentation for hearing and vision, only ITM form
 - No test date in 2016, only the year
- 4) Francis Parker
 - Check ride expired on 7/3/2016
 - No Vision Test
 - No Hearing Test
 - No Physical
- 5) Wesley Vickery
 - No Vision Test
 - Needs 2016 Testing
 - No Physical
- 6) Larry Elliott
 - No Vision Test
 - No Physical

Conductors File Review:

- 1) Liz St. Clair (Not sure will be back)
 - o No 2016 testing
 - o No hearing test
 - o No vision test
 - o No Physical
- 2) Bob McClain
 - o No Hearing test
 - o No physical
 - o NO vision
- 3) Les McConnell
 - o No hearing test
 - o No vision test
 - o No physical
- 4) Nicholas Kohne
 - o No hearing
 - o No vision
 - o No physical
 - o No Monitoring
- 5) Joel Epstein
 - o No Hearing
 - o No vision

- ☐ No Physical
 - ☐ No check ride
 - ☐
- 6) Bill Duncan
 - ☐ No hearing
 - ☐ No vision
 - ☐ No Physical
 - ☐ No check ride
- 7) Robert Blome
 - ☐ No hearing
 - ☐ No vision
 - ☐ No physical
 - ☐ No check ride
- 8) Derek Zollinger
 - ☐ No Hearing
 - ☐ No vision
 - ☐ No physical
 - ☐ No check ride
 - ☐ No conductor testing for 2015

Conductor and Student Engineer File Review:

- 1) Aaron Hutchinson
 - ☐ No Hearing
 - ☐ No vision
 - ☐ No physical
 - ☐ No conductor testing
- 2) Cameron Nichols
 - ☐ No conductor testing
 - ☐ No hearing
 - ☐ No vision
 - ☐ No physical

I think we all knew when we voted on the Policy of Use that it was going to be a challenge for ITM to meet every detailed requirement of all the CFR's, before the Fair Train was scheduled to run, but that it was imperative to get our requirements on paper so that ITM knows exactly what we expect from them. Also, it is public knowledge that the FRA has been in to inspect their equipment, records and facilities over the past couple of months, with another inspection occurring just last Sunday for more of the Fair Train passenger cars. No violations have been issued to date, but as in our review, there are many items that need work.

Therefore, it is my opinion that we continue to hold ITM to providing the items that are bolded and underlined above prior to the Fair Train operating, to ensure the safety of the users of the line. Rhonda/Cathy will stay on top of these items and work closely with ITM's volunteers in charge of these operations to ensure they understand exactly what we need by day one of the Fair Train. Please let me know by EOD tomorrow (July 28th) if you agree with my recommendations. I have basically stated such to ITM along with some other questions on their proposed 2016 Maintenance Plan that was sent to me this morning. The original email I received and my response are attached for your review and information. Future operations past the Fair Train would be based on continued open communication

lines and further refinement of their Certification Plans, completion of scheduled maintenance as they have proposed, and continued progress towards better record keeping in regards to the training and experience of their personnel.

In addition, ITM will be taking Mayor Fadness and possibly Eric Pethtel with Fishers on a hi-rail inspection of the tracks from Fishers to the Fair Grounds this Friday to show them the condition of the tracks and what they are working on. I hope to get positive feedback soon after. Also, Cathy Hale will be hi-railing the line next Tuesday with an independent railroad contractor to inspect and offer opinions on the condition and allowable speeds we should consider for Fair Train operation, should all file materials get completed in the next week and a half. I will report back to the group once I have met with Cathy after the inspection, which I will likely attend as well.

Please feel free to call or email me or Rhonda your comments, questions or opinions.

PS -- I also inspected the work on the East Street crossing yesterday up in Cicero. ITM's contractor, McCormack Excavating, was working well with personnel from the Cicero Street Department and were supposed to lay asphalt today. I was unable to get back up there today to inspect, but I'm sure that they got it done today and are moving on to the 2nd of the 3 crossings we have contributed monies towards the repairs. I will try to get up there sometime tomorrow evening to inspect and will send some pics.

Sincerely,
Michael J. Obergfell, PE | President
Hoosier Heritage Port Authority
Cell: 317 965-9167

<7-29-2016 Track Inspection.pdf>

<ITM 7-24-16 (3).pdf>

<ITM Proposed Track Maintenance for 2016 2016-07-26.pdf>

<ITM Draft On-Track Safety Program 01 Aug 2016.pdf>

<ITM ETT 10 2016-08-04 Pg 1-2.pdf>

From: Anne Poindexter <apoindexter@apwlawyer.com>
Sent: Wednesday, August 3, 2016 1:45 PM
To: Michael Obergfell; Rhonda Klopfenstein; Cathy Hale (chale@madisonrailroad.com); Eric B. Pethtel (pethtele@fishers.in.us); Glen Schwartz (glen@schwartztrailer.com); David George (david.c.george@outlook.com); Michael Hendricks (mhendricks@noblesville.in.us); Bradley J. Davis
Cc: Mayor Fadness; Mayor John Ditslear (jditslear@noblesville.in.us); Steve Dillinger (StevenCDillinger@aol.com); Christine Altman; Mark Heirbrandt; steve.schwartz@hamiltoncounty.in.gov
Subject: RE: HHPA Revised Policy of Use

Mike, I made two suggested changes in red below. First you do not want to suggest you investigated all parts of the volunteers complaints particularly not about money or improper dismissal of volunteers. You only investigated safety concerns. Next, I don't think you want to promise to work with them until they meet all requirements as they theoretically may never do so. I have said you will continue to work with them in the "hope" they will.

Anne

Anne Hensley Poindexter | Member Attorney
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Paralegal | Cari Bonty | cbonty@apwlawyer.com

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 Please consider the environment before printing this e-mail.

From: Michael Obergfell [mailto:obergfell@usiconsultants.com]
Sent: Wednesday, August 3, 2016 1:23 PM
To: Anne Poindexter <apoindexter@apwlawyer.com>; Rhonda Klopfenstein <rhondask@frontier.com>; Cathy Hale (chale@madisonrailroad.com) <chale@madisonrailroad.com>; Eric B. Pethtel (pethtele@fishers.in.us) <pethtele@fishers.in.us>; Glen Schwartz (glen@schwartztrailer.com) <glen@schwartztrailer.com>; David George (david.c.george@outlook.com) <david.c.george@outlook.com>; Michael Hendricks (mhendricks@noblesville.in.us) <mhendricks@noblesville.in.us>; Bradley J. Davis <Bradley.Davis@hamiltoncounty.in.gov>
Cc: Mayor Fadness <mayorfadness@fishers.in.us>; Mayor John Ditslear (jditslear@noblesville.in.us) <jditslear@noblesville.in.us>; Steve Dillinger (StevenCDillinger@aol.com) <StevenCDillinger@aol.com>; Christine Altman <Christine.Altman@hamiltoncounty.in.gov>; Mark Heirbrandt <Mark.Heirbrandt@hamiltoncounty.in.gov>; steve.schwartz@hamiltoncounty.in.gov
Subject: RE: HHPA Revised Policy of Use

To all concerned,

EXHIBIT 24

Per previous email to ITM this morning, I have received non-constructive responses from ITM (attached) on their public statement that they will issue today. I take no exception to their statement, although I wished they would list why they can't comply, but I knew they wouldn't do that. I feel HHPA should also issue a statement on behalf of our Board and all our communities to let the public know why this has taken the course of continuing the suspension of ITM's operations. I am of the opinion we don't have to list the reasons, just the facts that HHPA has deemed the ITM as non-compliant with our Revised Policy of Use and the condition of the tracks warrant more repairs to be made than can happen prior to the start of the Fair in two days.

Please respond immediately if you have any concerns on this press release. Otherwise I will have our executive director issue the below statement as soon as possible this afternoon. I will be meeting with ITM again next week to go over issues that are still unresolved per my email.

Hoosier Heritage Port Authority / Press Release

On March 24, 2016, the Hoosier Heritage Port Authority (HHPA) called an emergency meeting of the Board of Directors and suspended the operations of the Indiana Transportation Museum (ITM) until further notice, due to concerns raised by former volunteers of the ITM in a letter addressed to the Indiana Attorney General's Office. In the following months the HHPA has investigated the safety related portions of those concerns and on July 11th at the HHPA Board's regularly scheduled quarterly meeting, approved a Revised Policy of Use issued to ITM that laid out thirteen items that were required of ITM to gain reinstatement of use privileges. Unfortunately, as of today, the HHPA has informed ITM that the suspension cannot be lifted at this time, due to non-compliance with several of the items listed in the HHPA's Revised Policy of Use. These thirteen items were deemed critical by the HHPA for safe travel of trains, passengers and users of the roadway system in Marion and Hamilton Counties that cross the Nickel Plate tracks at numerous locations.

HHPA will continue to work with ITM in the hopes that all thirteen items are later received and approved by the HHPA. In addition, the HHPA will be working closely with the ITM to ensure necessary repairs to the track are made that are also critical to safe and efficient travel of ITM's tourist railroad operations. This suspension was an extremely difficult decision for all involved, and not taken lightly, as the Fair Train and all the excursions provided by ITM are not only important to our communities that own and oversee the Nickel Plate line, but are truly unique treasures that make our communities such great places to live and work. However, at no time will the HHPA compromise on the Policy of Use items that the HHPA has determined are the minimum standards that must be upheld to ensure the safety and welfare of all the citizens of our communities and the public in general.

It is with a heavy heart that I've had to come to these conclusions, but we can't put the public in jeopardy. I appreciate everyone's support and look forward to hearing any additions or comments you might have before we release this to the press this afternoon.

Michael J. Obergfell, PE | Vice President
USI Consultants, Inc.
8415 E. 56th Street
Indianapolis, IN 46216

Office: 317 544-4996 | Direct: 317 522-2464 | Cell: 317 965-9167
mbergfell@usiconsultants.com | www.usiconsultants.com | Facebook
~~XXXXXXXXXX~~ ~~XXXXXXXXXX~~

From: Michael Obergfell

Sent: Wednesday, August 03, 2016 8:31 AM

To: 'Jeffrey Kehler' <jkehl@cohs.org>

Cc: Anne Hensley Poindexter (apoindexter@apwlawyer.com) <apoindexter@apwlawyer.com>; 'Rhonda Klopfenstein' <rhondask@frontier.com>; Cathy Hale (chale@madisonrailroad.com) <chale@madisonrailroad.com>; Eric B. Pethtel

(nerhtele@fse.net.us) <nerhtele@fse.net.us>; Glen Schwartz (glen@schwartzglen.com)
<glen@schwartzglen.com>; David George (david.george@outlook.com) <david.george@outlook.com>; Michael
Hendricks (mhendricks@ndhiesville.in.us) <mhendricks@ndhiesville.in.us>; 'Bradley J. Davis'
<Bradley.Davis@hamiltoncountynv.in.gov>

Subject: HHPA Revised Policy of Use

Jeff,

Since ITM and the rest of the community needs to know ASAP, and you asked for our current status on the suspension, after consultation with our consultant, executive director, Board members and Owners, I have recommended to the HHPA Board and Owners that the suspension of operations continue until the Revised Policy of Use items are received per my previous correspondence and due to the condition of the tracks per HHPA's inspection of the facilities yesterday. I have received feedback from all the Board members and owners and they are in agreement due to the following reasons:

- 1) As noted in previous correspondence re: per HHPA's inspection of ITM's personnel files on 7/25/16 and my email to you on 7/27/16, ITM was informed that HHPA required the Engineer/Conductor files to be provided with current Medical/Vision/Hearing tests. To date HHPA has received no additional information in this regard.
- 2) Also, no test ride updates have occurred to HHPA's knowledge to date. These are all required per the Revised Policy of Use CFR's listed in the Revised Policy of Use approved by HHPA at our Board meeting on 7/11/16.
- 3) HHPA has not been provided access to any information on ITM's Drug & Alcohol testing program or results of all proposed Engineer/Conductors testing within the past year.
- 4) HHPA did receive a track inspection report from ITM's inspector, it listed two items, some trees that needed trimmed and some ties that need replaced in the area near the fairgrounds. ITM reported that they have installed 80 new ties in that area, and were working down there this week. I have been informed that track inspectors are required to be certified and take FRA certification courses and pass written exams. To date, we have no verification that ITM's inspectors have such certifications. Based on HHPA's hi-rail inspection yesterday, in which we did not get out and walk every section, but stopped at various locations to look at potential issues, we viewed numerous concerns with the track condition from Fishers to the State Fairgrounds that we cannot overlook, they are as follows:
 - a. Class I defects found (cannot operate even at 10MPH or less):
 - i. Switch ties are all bad and loose joints at the switch south of 96th Street
 - ii. A center break compound bolt, 3 1/4 x 6 on 115 lb side and 2 1/5 x 5 on 90 lb side just north of Masters Road
 - iii. Head Block ties at switch south of 82nd Street are all in poor condition
 - b. Class II defects found:
 - i. Quarter Break Point Bar, 9AR, south of Kessler
 - c. Additional Repairs needed before train movements:
 - i. Clean out crossing depression next to rail at Kessler Blvd
 - ii. Replace ties North of Fall Creek and in the area of Citizens Energy water treatment plant, Class I due to condition of tie
 - d. Additional Requirements to run as Class I:
 - i. Slow order at all crossings and curves due to condition of tracks and crossings
 - ii. Site obstruction at Graham Rd due to brush
 - iii. Bent Rail south of 71st Street
 - e. What Is needed for Class II Service throughout (up to 25MPH max speed):

- i. Ties and surfacing
- ii. Rail Splice Bolts Tightened – HHPA found several to be loose, all need to be checked and tightened
- iii. Brushing cutting at all road crossings, to provide adequate sight distance for vehicles at all stop signed crossings – particularly bad at Graham Road Crossing
- iv. Take out turnout switches and frogs due to condition at several locations – ties at these turnouts were found to all be in poor condition which are listed in the Class I defects noted above

As I noted, we did not do a full in-depth inspection of every foot of the line, but based on our limited inspection HHPA cannot recommend any use of passenger trains, until the Class I defects are repaired. To run at 25 MPH, major work needs to be undertaken according to advice from our railroad consultant. Since we only stopped at a few location due to time constraints, finding two cracked rail joint bars indicates that this may be a systemic problem that must be inspected closely and all cracked tie bars replaced before any use can occur. If you need further input please call Rhonda and she can meet you at the sites for discussion, I can attend as well.

In addition, HHPA did receive an updated Timetable from ITM. The Timetable lists three DSLE's. No personnel files on the first two DSLE's listed were provided to HHPA to review at our inspection of ITM's personnel files by HHPA's Executive Director and Consultant, so we have no records of their qualifications. The other DSLE that ITM listed we have been told at our inspection that he was no longer going to volunteer. So basically we have no records to verify any of ITM's DSLE's are certified to the CFR regulations, along with the missing medical testing of all Engineers/Conductors. The DSLE is probably the most important person with any railroad, this alone, in HHPA's opinion, is reason to maintain the suspension until a properly certified DSLE is presented to HHPA with all required documentation.

Cleaning of culverts and bridges – I received an email from you that stated the following: "The abutments on the Fall Creek bridge have been cleaned off and other bridges will have the same done this week as our volunteers can get to them. A thorough cleaning of the Fall Creek, Allisonville Road, and State Road 19 bridge bearing areas and an assessment of each must wait until a contractor can be hired to do the work according to the 5-year Bridge Maintenance Plan. Specialty equipment, reclamation of debris, and traffic control will be required for this work. Our plan will be to complete this in the spring of 2017." I will inspect the cleaning of the Fall Creek bridge and other bridges today, but as of Friday when I inspected the Fall Creek bridge, no work had been completed, and there is some serious rusting issues of the lower chord of the truss that needs to be addressed soon. This bridge also should have a load rating completed as soon as possible due to the rusting of the lower chord. HHPA has been provided with a very limited inspection report that did not adequately address the lower chord rusting.

ITM provided HHPA with a copy of the FRA equipment inspection report on the remaining coach cars that were not inspected previously by the FRA. As with all the other FRA reports since we issued the Revised Policy of Use, nothing was listed except that no violations/exceptions were noted. This is a main concern of our Board, especially after finding the issues on the line listed above. HHPA is not confident in the inspection reports we have provided and we must ensure the safety of all who ride the rails and cross the tracks in vehicles. Until these issues are resolved, the Revised Policy of Use will remain in effect. No safety issues should be or will be compromised when passengers are involved, or ITM's volunteers for that matter.

HHPA did receive a maintenance plan from ITM, which we appreciate. Your recent report on the Polar Bear Express this past winter noted approximately \$290,000 in net income. If this is true, funding should be available by ITM to complete the work needed on the lines to run as Class I and Class II for that matter. Not completing this work is unacceptable to the HHPA.

The other major issue is the sight distance at most of the crossings in Marion County. Since brush cutting has not taken place, sight distance is very limited at most crossings. This is a very dangerous situation even though stop signs are present at these streets. At 25 MPH a train comes at vehicles crossing very quick if they are not paying attention, and

with the infrequent use our tracks see, this is a serious safety issue and frequent users of these roadways are not used to encountering trains.

I am still willing to meet with you this afternoon, but with all this said, the HHPA must continue the suspension until these items are resolved.

Sincerely,

Michael J. Obergfell, PE | President
Hoosier Heritage Port Authority
33 N 9th Street, Suite 215
Noblesville, IN 46060
Office: 317-776-3288 | Cell: 317 965-9167

From: Jeff Kehler [<mailto:jeff.kehler@cohs.org>]
Sent: Tuesday, August 02, 2016 8:38 PM
To: Michael Obergfell <mbergfell@usiconsultants.com>
Subject: Re: Policy of Use

2 Aug 2016

Mike,

I can. I have an 11am meeting in Noblesville and could meet you after that after lunchtime, if that works for you?

Your office would be fine. How about 1pm?

You know we have lots of people and the press awaiting a decision on this; even as we continue to prepare for operations by coordinating with the State Fair, Fishers, Hamilton County Tourism, BRAG, and Fishers Kiwanis, just to name a few. There are many pieces to be put in place to make this a success, not the least of which is getting equipment staged and in position before Friday.

Can you tell me if you're leaning towards a 'yes' or a 'no'?

Feel free to call me this evening.
(317) 850-4512 mobile

Thanks for your time.

Sincerely,
Jeff Kehler

On Aug 2, 2016, at 8:20 PM, Michael Obergfell <mbergfell@usiconsultants.com> wrote:

Jeff,

Can you meet with me tomorrow afternoon. Name the place/time. Anywhere between Noblesville and my office is fine. I need to discuss items found during our hi-rail today and other outstanding issues.

Michael J. Obergfell, PE | President
Hoosier Heritage Port Authority
33 N 9th Street, Suite 215
Noblesville, IN 46060
Office: 317-776-3288 | Cell: 317 965-9167

From: Michael Obergfell <obergfell@usiconsultants.com>
Sent: Thursday, July 7, 2016 3:20 PM
To: Christine Altman; Bradley J. Davis; Michael Hendricks (mhendricks@noblesville.in.us); Mayor John Ditslear (jditslear@noblesville.in.us); mayorfadness@fishers.in.us; Eric B. Pethtel (pethtele@fishers.in.us); David George (david.c.george@outlook.com); Glen Schwartz; Steve C. Dillinger; Mark Heirbrandt
Cc: 'Rhonda Klopfenstein'; Cathy Hale (chale@madisonrailroad.com); Anne Hensley Poindexter (apoindexter@apwlawyer.com)
Subject: RE: Hoosier Heritage Port Authority - ITM Revised Policy of Use

Not directly, but we did receive a letter from the state Fair ED supporting the fair train. I asked ITM's chairman to call the state fair executive director to make the same request to them to call our congressional delegation and ask them to get in touch with the FRA immediately about the reclassification issue.

Mike

Sent from my Verizon 4G LTE smartphone

----- Original message -----

From: Christine Altman <Christine.Altman@hamiltoncounty.in.gov>
Date: 7/7/16 6:05 PM (GMT-05:00)
To: Michael Obergfell <obergfell@usiconsultants.com>, "Bradley J. Davis" <Bradley.Davis@hamiltoncounty.in.gov>, "Michael Hendricks (mhendricks@noblesville.in.us)" <mhendricks@noblesville.in.us>, "Mayor John Ditslear (jditslear@noblesville.in.us)" <jditslear@noblesville.in.us>, mayorfadness@fishers.in.us, "Eric B. Pethtel (pethtele@fishers.in.us)" <pethtele@fishers.in.us>, "David George (david.c.george@outlook.com)" <david.c.george@outlook.com>, Glen Schwartz <jakeandandy@msn.com>, "Steve C. Dillinger" <stevenedillinger@aol.com>, Mark Heirbrandt <Mark.Heirbrandt@hamiltoncounty.in.gov>
Cc: 'Rhonda Klopfenstein' <rhondask@frontier.com>, "Cathy Hale (chale@madisonrailroad.com)" <chale@madisonrailroad.com>, "Anne Hensley Poindexter (apoindexter@apwlawyer.com)" <apoindexter@apwlawyer.com>
Subject: Re: Hoosier Heritage Port Authority - ITM Revised Policy of Use

Mike - Has HHPA spoken directly with the State Fair executives to gauge their support of the Fair Train?

Christine Altman
Hamilton County Commissioner
PO Box 108
Carmel, IN 46082
317 575-0599

Please note my new e-mail address: christine.altman@hamiltoncounty.in.gov

From: Michael Obergfell <obergfell@usiconsultants.com>
Sent: Thursday, July 7, 2016 5:32:40 PM
To: Bradley J. Davis; Michael Hendricks (mhendricks@noblesville.in.us); Mayor John Ditslear (jditslear@noblesville.in.us); mayorfadness@fishers.in.us; Eric B. Pethtel (pethtele@fishers.in.us); David George (david.c.george@outlook.com); Glen Schwartz; Steve C. Dillinger; Mark Heirbrandt; Christine Altman
Cc: 'Rhonda Klopfenstein'; Cathy Hale (chale@madisonrailroad.com); Anne Hensley Poindexter

EXHIBIT 25

(apoin Dexter@apwlawver.com)

Subject: Hoosier Heritage Port Authority - ITM Revised Policy of Use

Dear Owners and Fellow Board Members,

Please find attached a draft revised Policy of Use that I will ask for our Board to consider at Monday night's meeting. I have been working with our Rhonda Klopfenstein (HHPA Executive Director) and Cathy Hale (HHPA Railroad Consultant) over the past several weeks to try to cover all items that we feel ITM should be providing to the HHPA Board to ensure the safety and welfare of the ITM passengers as well as the maintenance of our Owner's facilities. It's been almost three and a half months since we last met as a Board and had to make the tough decision to shut down ITM's operations until the FRA (Federal Railroad Administration) could come in and do a full review of their operations and equipment and inspect our facilities that ITM is supposed to maintain, in exchange for free use of the rail line. After 3+ months of FRA inspections, discussions with ITM personnel, numerous emails from the FRA, ITM personnel and from disgruntled fired ITM employees, a recent phone conference with FRA officials and their attorneys, ITM and HHPA members, and several meetings and discussions with our railroad consultant, it is my opinion that the attached Policy of Use covers the items we should be concerned with as the owners and overseers of the railroad. I ask that you please review and offer any comments or opinions you might have on this document so we can adopt this on Monday if the Board is so inclined. All of the items in the revised Policy of Use are items we should have been getting from ITM in the past and ITM has refused to provide. This cannot continue for us to move forward, while ensuring the safety and well-being of all users of the rail line.

As I mentioned, this week FRA held a phone conference with ITM to discuss the potential for the FRA to consider the State Fair Train excursion as a Short Haul Commuter service instead of their current designation as a Historic Railroad Excursion service. Rhonda, Cathy and myself, along with several other Board members sat in on the call to listen to the discussion. This is a big decision by the FRA that could effectively shut down the Fair Train for good, or at least for some time, and definitely for this year. If the FRA considers this service a short haul commuter service, ITM would basically have to meet the same standards the Amtrak has to meet, which would be impossible with the trains/equipment they are using. They would have to meet all ADA requirements, etc., which is virtually impossible with their equipment. They can ask for waivers to certain items due to the historic nature of their equipment, but that would take a lot of time and effort, which certainly couldn't happen before the Fair Train this year (August is coming quickly). I think we all want to see the Fair Train run, as it is a great thing for the Fair and our communities, especially Fishers. It is my opinion that the FRA is going to rule against ITM and classify the Fair Train as a short haul commuter service after listening in on the call. The only way I see to try to stop this ruling is to get in touch with our US Representatives and Senators and ask them to push the FRA to not change the classification of the Fair Train to Short Haul Commuter Service. I've asked ITM's chairman to do the same from their side of the fence, and asked them to get the State Fair people calling, economic development persons calling, etc. If you are so inclined and want to help save the Fair Train, please make calls yet this week (tomorrow!), as the FRA's decision will be coming soon, most likely early next week. If they see how this will basically shut down a long running tradition and hurt the State Fair, they may decide to turn their heads the other way and maintain the rail lines current classifications of historic rail excursions. This would only affect the Fair Train, and their reasoning is that it basically is a commuter service and not a historic tour, since it has regular pickup and dropoff schedules, where all the other excursions are for one trip destination type excursions (Polar Express, Dinner Train, Pumpkin Train, Etc.).

Please let me know who you get in touch with and what you are hearing on this issue with the Fair Train reclassification. Urge our senators and representatives to call the FRA Director and voice our opposition to this reclassification of the Fair Train.

Don't hesitate to call me if you wish to discuss any of these issues further.

Sincerely,
Michael J. Obergefell, PE
President
Hoosier Heritage Port Authority

Cell 317 965-9167

Subject: 1996-03-21 HHPA-INDOT Letter of Intent.pdf
From: "John McNichols" <jmcnichols@energeticsdrivetrains.com>
Date: 9/6/2017 5:20 PM
To: "Mark" <mark@slbolingerlaw.com>
CC: "Josh" <josh@stonespectrum.com>

Mark, we need to attach this letter to the motion as an exhibit. It clearly states that the HHPA received TEA grant and expressly identifies the intended use. They are violating this agreement with the proposed rail banking request and destroying the asset purchased under TEA funding.

Still working on the comments.

John McNichols, Chair

Indiana Transportation Museum
Office 317 773-6000
Cell 317 439-3630

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— Attachments: —

1996-03-21 HHPA-INDOT Letter of Intent.pdf

110 KB

Hoosier Heritage Port Authority

11601 Municipal Drive Fishers, Indiana 46038 Office: (317) 578-1339 Fax: (317) 578-1097

Transmitted Via Fax

March 21, 1996

Indiana Department of Transportation
Debra Simmons-Wilson, Deputy Commissioner
100 N. Senate Room N 755
Indianapolis, Indiana 46204

Dear Ms. Simmons-Wilson:

In 1994 INDOT awarded a TEA grant jointly to the Town of Fishers and the City of Noblesville for \$1,250,000.00 to purchase and improve the Historic Nickel Plate Railroad line. The line runs from 10th Street in Indianapolis to Tipton, Indiana (approximately 37.5 miles) and connects to the Indiana State Fair, Conner Prairie, Ritchey Woods and other significant attractions. It is our intent to use this line to primarily operate historic and recreational trains on the railroad.

In June of 1995, we successfully closed on the sale of the line with the Norfolk and Southern Corporation and purchased the line for \$1,000,00.00 with \$800,000.00 in TEA funds and \$200,000.00 in local matching funds. We are now ready to utilize the remaining \$250,000.00 allocation from our grant (\$200,000.00 TEA funds and \$50,000.00 local match) to finish corridor improvements required to make the line operational for the 1996 season.

These improvements are necessary because of Federal Railroad Administration defects that currently exist on the line. The improvements consist of new signal, corridor crossing, and railroad tie construction. Attached is a project and cost summary of the corridor improvements to be completed. It is our intent to have these corridor improvements finished in time for the Indiana Transportation Museum to begin their excursion trains this spring. The requested improvements are almost exactly the same as those recently approved by INDOT for the Whitewater Valley Historic Railroad with TEA funds.

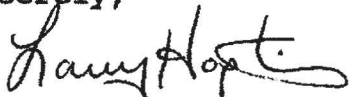
Once the City of Noblesville and the Town of Fishers purchased the railroad they formed a multijurisdictional port authority called the Hoosier Heritage Port Authority. The Hoosier Heritage Port Authority consists of a six member board, three members appointed by each community and an executive director. The Hoosier Heritage Port Authority is responsible for overseeing operations of the railroad and issuing license agreements to utilities crossing or occupying the R-O-W. It is this body which will be utilizing the remaining TEA funds and has raised the necessary local matching funds.

EX 4

Recently, Dennis Blind, the President of Hoosier Heritage Port Authority, and I met with Bruno Canzian and Rich Emery about accessing the remaining TEA funds allocated for this project and they indicated that a letter to you outlining our request would be the appropriate action to take. We are very excited about the prospects for a successful historic railroad operation on the Nickel Plate line and look forward to your response. We stand ready to cooperate with INDOT in any way possible to facilitate this request and get the trains moving this spring.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Hopkins".

Larry Hopkins
Executive Director
Hoosier Heritage Port Authority

CC: Bruno Canzian
Rich Emery

Local gov't colluded to take down private entity

By Sally Knopp SALLYKNOPP@gmail.com

Dear Editor:

The Vice President of USI Consultants, Michael Obergfell, was appointed by the City to be the President of HHPA - or Hoosier Heritage Port Authority. The fox is in charge of the hens. USI is a civil engineering firm based in Indianapolis. It is found they have over \$2 million of various road and other contracts currently existing between USI Consultants and Hamilton County. Amid the safety allegations surrounding the operations of the ITM, Mr. Obergfell was involved with the review of various inspections by the Federal Railroad Administration and private entities on behalf of HHPA. Incidentally, every report and even Mr. Obergfell indicated that the tracks were in appropriate condition for the type of railroad activity (tourist railroad operations) which had been running on the tracks. At the conclusion and review of multiple inspection reports no violations were found. All parties agree on that.

In short: USI has over \$2M in gov't contracts and USI's VP is in charge of the running / operation of the train on the tracks. The VP of USI has been hired to create trails and paving of those very tracks he's in charge of operating. Huge conflict of interest.

To further this point why were ITM

Consultants creates a serious conflict of interest which obliged him to influence the decisions concerning the railroad operations in favor of the will of the Mayors of both Noblesville and Fishers, and the officials residing over the issue with Hamilton County.

This is just one of many circumstances within the rail / trail debate that need to be clarified within the public eye.

In addition, one might argue train vs. trail - but at the end of the day, Mayor Fadness of Fishers' goal is secure the land the rails sit on for development. His trail is only the carrot to appeal to the residents. So the effort by our elected officials to coordinate the demise of a private entity that was self-funded is reprehensible. This sets a precedence. Who will be next?

It's also worth mentioning trails cost the tax payers \$100,000 per trail, per year to maintain. Noblesville's current plan to have Brenda Myers, Hamilton County Tourism, to run the train from Arcadia to Tipton will also have to be subsidized by tax payer money, while the ITM has always been self-funded.

The FOIA emails reveal a coordinated take-down of a private entity for developer money. So much for a gov't of the people. for the people. by the

Local gov't colluded to take down private enti

Dear Editor:

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This is just one of many instances within the rail / trail debate that need to be clarified within the public eye.

In addition, one might argue that the rail vs. trail - but at the end of the day the goal is to develop the land the rails sit on for development. His trail is only the carrot to attract the residents. So the effort by our elected officials to coordinate the development of a private entity that was self-funded is reprehensible. This sets a precedent. Who will be next?

It's also worth mentioning that the tax payers \$100,000 per track

Sent from my iPhone

—Attachments:—

IMG_2406.PNG

546 KB

To further this point, why were ITM rail operations not reinstated after the FRA reports?
It seems to confirm that the HHPA President's position with USI