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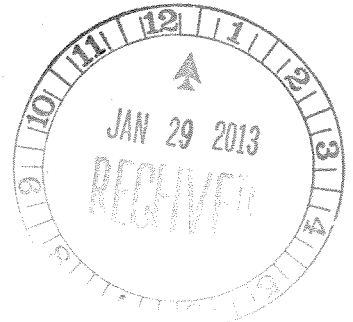
JAN 29 2013

**SURFACE
TRANSPORTATION BOARD**

TIMOTHY E. PETERSON

Attorney at Law
5126 S. Harlan Street
Indianapolis, IN 46227
(317) 409-9925

233749



January 21, 2012

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

FILED

JAN 29 2013

**SURFACE
TRANSPORTATION BOARD**

RE: STB Docket AB-1064X
Fulton County, LLC
Abandonment Exemption in Fulton County, IN
Substitution of Trail User and Responsible Party

ENTERED
Office of Proceedings

JAN 29 2013

Part of
Public Record

Dear Ms. Brown:

Enclosed please find the joint petition of the Northern Indiana Community Foundation (Community Foundation) and the City of Rochester to reopen the proceedings in STB Docket AB-1064X to vacate the prior Notice of Interim Trail Use issued to the Community Foundation, and reissue a new Notice of Interim Trail Use to the City of Rochester, which intends to become the new Trail User and Responsible Party pursuant to the National Trails Act.

Enclosed please find the following filings (one original and ten copies) to complete the Joint Petition

Joint Petition to Vacate and Reissue NITU

Exhibit 1.: Decision and Notice of Interim Trail Use or Abandonment, Decided February, 10, 2011.

Exhibit 2: Statement of Willingness to Assume Financial Responsibility (including map of the subject right-of-way).

Exhibit 3: Letter of No Objection from the Fulton County, LLC

Also included is a check for \$250 to cover the processing of the Joint Petition.

Please note that the date of transfer for the new NITU is included in manuscript in the Joint Petition as February 7, 2013.

Cynthia Brown
January 21, 2013
Page 2

I have contemporaneously served the Fulton County, LLC with a copy of this Joint Petition with the filing of this petition.

Please enter my appearance in the above captioned cause as follows representing the City of Rochester:

Timothy E. Peterson
5126 S. Harlan Street
Indianapolis, IN 46227
(317) 409-9925
timothy@timericpete.com
Representing the City of Rochester

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Peterson', written over a horizontal line.

Timothy E. Peterson

encl., cc: Community Foundation, City of Rochester, Fulton County, LLC

ENTERED
Office of Proceedings
JAN 29 2013
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.

FILED

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SURFACE
TRANSPORTATION BOARD

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JAN 29 2013

SURFACE
TRANSPORTATION BOARD

Fulton County, LLC – Abandonment
Exemption – in Fulton County, IN

AB 1064X

233749

JOINT PETITION TO VACATE AND REISSUE NITU

Pursuant to 49 C.F.R. § 1152.29(f), the Northern Indiana Community Foundation, Inc. (“Community Foundation”) and the City of Rochester Common Council on behalf of the City of Rochester, in Fulton County, Indiana (referenced hereinafter as “Rochester”), jointly petition the Surface Transportation Board (“STB”) to reopen proceedings in the above captioned cause, vacate the Notice of Interim Trail Use (NITU-1) issued to the Community Foundation, and reissue a Notice of Interim Trail Use (“NITU-2”) to Rochester. In support of their joint petitioner, the Community Foundation and Rochester submit the following:

1. NITU-1 was issued by the STB to the Community Foundation on February 7, 2011 for the right-of-way subject to this proceeding, which involves a portion of the Fulton County, LLC’s (“FC”) railroad between milepost 96.9, a point 200 feet north of East 18th Street, and milepost 95.6, the end of the track at the northwest property line of Wabash Road, a distance of 1.3 miles, in Rochester, Fulton County, Indiana. (A true copy of NITU-1 is attached hereto as Exhibit 1).
2. The Community Foundation and the Fulton County, LLC reached a trail use agreement thereafter, in the form of a purchase agreement executed on February 11, 2011.

3. Thereafter, in order to better develop the trail as a community resource, the Community Foundation and Rochester entered into negotiations which have culminated in this joint petition to reissue NITU-2 to the City of Rochester. This transfer was authorized by the Rochester City Council in a resolution passed on October 23, 2012 and is memorialized by Rochester's statement of willingness to assume financial responsibility. (Attached hereto as Exhibit 2 with a map of the subject railroad right-of-way attached).

4. The substitution of Rochester as the interim trail manager will not have any adverse affects upon the FC because Rochester has agreed to be bound by the trail use agreement reached by the Community Foundation and FC, has similarly agreed to comply with all the provisions of railbanking under 16 U.S.C § 1247(d), and the FC therefore has no objection to the issuance of NITU-2 to Rochester. (Said concurrence is attached hereto as Exhibit 3).

5. The date for the transition of total responsibility as the new interim trail manager to Rochester will be ~~January 1, 2013~~ ^{February 7,} 2013 (2/7/2013).



President (chair) of City Council



Northern Indiana Community Foundation

41346
DO

SERVICE DATE – LATE RELEASE FEBRUARY 7, 2011

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1064X

FULTON COUNTY, LLC—ABANDONMENT EXEMPTION—
IN FULTON COUNTY, IND.

Decided: February 7, 2011

Fulton County, LLC (FC) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon its line of railroad between milepost 96.9, a point 200 feet north of East 18th Street, and milepost 95.6, the end of the track at the northwest property line of Wabash Road, a distance of 1.3 miles, in Rochester, Fulton County, Ind. (the line). Notice of the exemption was served and published in the Federal Register on July 22, 2010 (75 Fed. Reg. 42,815-16). The exemption was scheduled to become effective on August 21, 2010.

By Decision and Notice of Interim Trail Use or Abandonment, served on August 20, 2010 (August 2010 decision), the Board reopened the proceeding and modified the notice exempting the abandonment of the line: (1) to permit Nickel Plate Trail, Inc. (Nickel Plate), under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), to negotiate with FC for trail use of the line for a 180-day period until February 16, 2011; and (2) under 49 U.S.C. § 10905, to permit public use negotiations for the line for a period of 180 days until February 17, 2011.

On January 3, 2011, Northern Indiana Community Foundation, Inc. (Community Foundation) also filed a request under 49 U.S.C. § 10905 for a public use condition and for the issuance of a notice of interim trail use (NITU) for the line under the Trails Act and 49 C.F.R. § 1152.29 to negotiate with FC for acquiring the right-of-way for use as a trail.

A new public use condition will not be imposed because, under § 10905, such conditions may only prohibit disposal of the properties involved in a proposed abandonment “for a period of not more than 180 days after the effective date of the [abandonment].” Accordingly, the earlier imposed public use negotiating period, which expires on February 17, 2011, may not be extended. As explained in the August 2010 decision, with respect to the public use condition, FC was not required to deal exclusively with Nickel Plate, but could engage in negotiations with other interested persons. Thus, FC is free to negotiate with Community Foundation for public use of the right-of-way until the February 17, 2011 expiration of the existing public use condition.

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

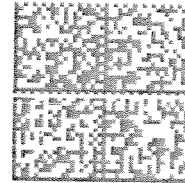
8. If an agreement for interim trail use/rail banking is reached by August 8, 2011, interim trail use may be implemented. If no agreement is reached by that time, FC may fully abandon the line, after the conditions imposed in the August 2010 decision are met. See 49 C.F.R. § 1152.29(d)(1).

9. This decision and notice is effective on its date of service.

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

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423-0001

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300
RETURN AFTER FIVE DAYS



Haster

012H16211216

\$00.440

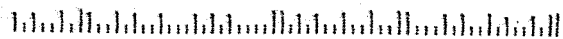
02/11/2011

Mailed From 20024
US POSTAGE

AB 1064 0 X | 196216

William Terry Lee
Nickel Plate Trail
822 Main Street
Rochester, IN 46975 United States

46975+1543





CITY OF ROCHESTER

320 Main Street • P.O. Box 110 • Rochester, Indiana 46975

 ORIGINAL

Mark L. Smiley, Mayor
574-223-4555

www.rochester.in.us
Fax: 574-223-6509

Shoda D. Beehler, Clerk-Treasurer
574-223-7410

December 18, 2012

Daniel R. Elliott III
Chairman
The Surface Transportation Board
395 E Street, SW
Washington D.C. 20423

RE: Statement of Willingness to Assume Financial Responsibility
STB Docket No. AB-1064X

The Honorable Daniel R. Elliott III:

In support of its joint petition to have the Surface Transportation Board ("SSTB") vacate the extant Notice of Interim Trail Use issued to the Northern Indiana Community Foundation, Inc., and reissue a new Notice of Interim Trail Use under 16 U.S.C. § 1247(d) and 49 CFR 1152.29, the Rochester City Council on behalf of the City of Rochester (interim trail user) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way as the Fulton County South End, which extends from railroad milepost 96.9 near 200 feet north of East 18th Street to railroad milepost 95.6 near Wabash Avenue, in Rochester, Fulton County, Indiana, a distance of 1.3 miles in Fulton County, Indiana. The right-of-way is part of a line of railroad proposed for abandonment in Docket AB 1064X.

A map of the property depicting the right-of-way is attached.

The Rochester City Council on behalf of the City of Rochester acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the FC on the same date it is being served on the STB.

Sincerely,

Mark McCall, City Council President

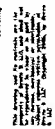
Rochester, IN

Nickel Plate
Trail
Rochester
Extension
Phase 1

Owner
City of Rochester
320 Main Street
P.O. Box 370
Rochester, N.Y. 14675

Contact
 Terry Lee
 Executive Director
 Future Economic Development
 Corp.
 P: 574.223.3326

Landscape Architect
GREEN3, LLC
1104 Prospect Street
Indianapolis, Indiana 46203
P 317.634.4110
F 845.422.2046 toll free
www.green3llc.com



	SIGNATURE		DATE	
	NO	AW		
				

11010	08/30/12	WEST VIRG
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KEY MAP

1

POB Phase 1 to POE Phase 1 only



0051170

COPY

RESOLUTION 11-2012

RESOLUTION REGARDING NICKEL PLATE TRAIL

WHEREAS, the City of Rochester ("the City") desires to facilitate the development of the Nickel Plate Trail into the City of Rochester; and,

WHEREAS, the City has been advised by Nickel Plate Trail, Inc., that it would benefit the residents of the City of Rochester if the City took title to one or more parcels of real property related to the Nickel Plate Trail, including the facilitation of possible financial incentives associated with the trail's development.

WHEREAS, the City has further determined that taking title to any such parcels of real property would benefit the residents of the City of Rochester.

IT IS THEREBY RESOLVED by the Common Council of the City of Rochester that the City should assist in the development of the Nickel Plate Trail where appropriate, including taking title to certain parcels of real estate which are part of the Nickel Plate Trail.

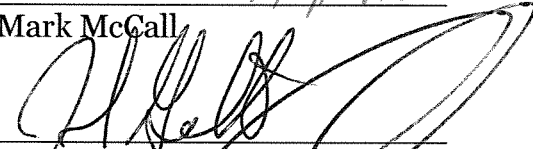
ALL OF WHICH IS RESOLVED by the Common Council of the City of Rochester of Fulton County, Indiana this 23rd day of October, 2012.

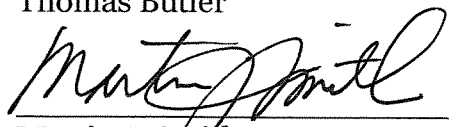
COMMON COUNCIL

Voted Aye to Resolution 11-2012
Burns Becht

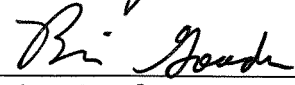
10/23/12 Absent
Mark McCall

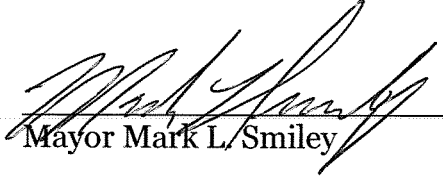

Thomas Butler


John Garrett


Martin J. Smith


Chayse Thompson


Brian Goodman


Mayor Mark L. Smiley

Attest:

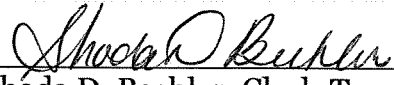

Shoda D. Beehler, Clerk-Treasurer

Exhibit 3

Jeff Zent
President
Fulton County, LLC
1827 E. Lucas Street
Rochester, IN 46975

December 18, 2012

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

RE: Joint Petition To Vacate And Reissue NITU In STB Cause No. AB-1064X,
Fulton County, LLC – Abandonment Exemption In Fulton County, IN

Dear Ms. Brown:

This letter serves to notify the STB that the Fulton County, LLC has no objection to and, therefore, supports the transfer of Trail Manager status from the Northern Indiana Community Foundation to the City of Rochester.

Sincerely,



Jeff Zent
President,
Fulton County, LLC