

FD 36137

City of Fishers, City of Noblesville, and Hamilton County, Indiana Petition for Partial Revocation of Exemption

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Dear Ms. Brown:

Enclosed for filing to the above-captioned proceeding are an original and ten copies of written comment regarding the "Petition for Partial Revocation of Exemption" filed on August 1, 2017 with the Surface Transportation Board (the "Board"). A copy of this comment has also been served on the attorney, Robert A. Wimbish, who is representing the collective owners, City of Fishers, City of Noblesville, and Hamilton County (the "Owners"), of a railroad line in Indiana.

I am a resident of Terre Haute, IN wishing to express my opposition to the proposed railbanking and interim trail use of the subject railroad line (the "Line") from milepost I- 2.13 at Indianapolis, Indiana, to milepost I-39.69 at Tipton, Indiana. The Owners have petitioned the Board requesting partial revocation extending "only so far as is necessary to facilitate the Owners' objectives" in order to permit them to expedite and simplify the process of railbanking the Line and converting it to a trail for interim use. Allowing the Owners to circumvent the full process of revocation, abandonment, and railbanking proceedings could potentially diminish the public's role and effect in this case. The city and county residents have not been afforded adequate opportunity to engage the Owners in genuine discussion or feedback regarding the plan to railbank this publicly owned Line.

As a resident who utilized the services of the passenger rail operator prior to its suspension in 2016 by the Owners' representative body (the "Port Authority"), I object to the use of the Line as a trail for the following reasons:

- The railroad consistently served the adjoining communities as a valuable passenger transportation and entertainment asset for more than 24 years.
- The Indiana Department of Transportation rated the roadway infrastructure near the center of the Line with the lowest Level of Service ("LOS") rating of "F" in 2008. An LOS rating of "F" is defined as "Capacity is exceeded and breakdowns in flow exist. Any

incident will add significantly to the existing congestion caused by normal operations." While roadway improvements have been made in recent years, a new IKEA store and Top Golf recreation center are projected to bring over 2 million additional annual visitors, and therefore significantly increase passenger and commercial traffic in the Fishers area.

- The Owners have not shown any relevant evidence or data which suggests that they have polled the community or fairly considered feedback regarding conversion of the Line to a trail. Emails obtained through a request made pursuant to Indiana's Access to Public Records Act indicated far more support for retaining the railroad than building a trail. A general sense of the support for retaining the rail can

also be obtained by viewing various online support platforms; most notable of which is the online petition hosted at www.change.org under “Save the Nickel Plate Road” and directly accessible via <https://goo.gl/mkFQ4s>. This petition contains over 6,200 signatures at the authoring of this letter. In addition, there are nearly 800 paper petition signatures collected directly within the affected communities. The railbanking decision should be guided by the residents since the Line is a public asset.

- Data from a 2013 Transportation Plan survey of 590 Fishers residents leads to two significant findings:
 - 80.8% of respondents believe that “Improving connections to between Fishers and other Indianapolis metro areas” is important or highly important.

- 69.6% of respondents agreed or strongly agreed that if light rail were made available to them, they would use it.

- Residents and other potential future users of the Line have expressed their desire and intent to expand the railroad further into Indianapolis for commuter and additional entertainment and recreation purposes.

- Two track inspection reports and an email from the Port Authority President, secured via a request submitted pursuant to Indiana’s Access to Public Records Act, indicate that profitable passenger traffic on the Line was, arguably, unnecessarily impeded (suspended). While rail safety was cited as the primary cause for the suspension, the following evidence suggests that the rails were not in a condition warranting a suspension and eventually removal of the non-profit railroad company as the operator of the Line:

- Federal Railroad Administration Report OMB Approval No: 2130-0509 Inspector’s ID No: 11291 Report No: 84 No violations recommended.

- Private Report Commissioned by the Port Authority The consultant who authored the report made various statements affirming the condition of the track in the executive summary of the report: “The Consultant has never encountered a 37 mile length of track where there has been so little drainage issues for the majority of the trackage...There are isolated locations that must be corrected, but generally the Railroad is high and dry. The light rail, joints,

and turnouts are in surprisingly good to fair condition overall. Work regarding those items will be required to bring the track to a “reliable” Class Two level of service but overall the steel components of the track are in relatively good condition.”

- Email from the Port Authority President “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.”

This excerpt indicates that, with overall conditions being acceptable for Class I track and a tourist railroad, the Port Authority should have reasonably allowed for the repair of isolated defects by the operator and then lifted the suspension after the completion of repairs in order for rail operations to continue.

- The Port Authority published a Request for Proposal seeking a new rail operator of the line. A total of five (5) proposals were received. Four (4) proposals requested use of the entire line for various forms of heritage, commuter, and freight rail traffic. The winning proposal requested use of only the Northern portion of the line, allowed for trail conversion of the Southern portion, and was created by the President of Hamilton County Tourism Inc. in collaboration with the Noblesville Mayor's office approximately five months prior to the announcement of a Request for Proposal by the Port Authority.

Railroads petition the Board for an abandonment exemption when service on their line proves to be financially unsustainable. However, in this unique situation, the railroad is owned by municipal bodies and was operated by a third-party, non-profit railroad operator as a heritage railway. The railroad was sustained and maintained almost exclusively by ticket revenue and donations. While there is not presently a physical connection to the national railroad network, it is believed that the necessary Right-of-Way still exists to easily reconnect the Line with Norfolk Southern to the North or CSX to the South.

The Owners, being governmental bodies, have not demonstrated a genuine interest or intent to consider the concerns and feedback of their residents or other rail service providers regarding the desires and intent for the future of this Line. It is my request that the Board not allow any action that would encumber or otherwise diminish the effect of public participation in the exemption revocation or eventual abandonment proceedings.