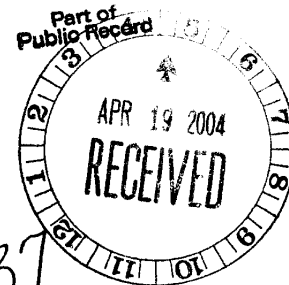


SOMMER BARNARD ACKERSON

ATTORNEYS, PC

ENTERED
Office of Proceedings

APR 19 2004



April 19, 2004

Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

210637

Re: Docket No. AB-290 (Sub-No. 168X),
Norfolk and Western Railway Company – Abandonment Exemption –
Between Kokomo and Rochester in Howard, Miami, and Fulton Counties, IN

Dear Secretary Williams:

Attached please find one duly-executed original accompanied by ten copies *plus* a 'File Copy' of the Supplemented Petition for Reconsideration of William C. Friend, Steven Furnivall and Linda Schanlaub for filing with the Surface Transportation Board. Also attached are the affidavits of Don Tribbett (original), Linda Schanlaub (copy attached, original to follow promptly), and Tedd G Armstrong (copy attached original to follow promptly). Kindly time-stamp the 'File Copy' and return it to the undersigned by hand.

Thank you for your consideration.

Respectfully submitted,

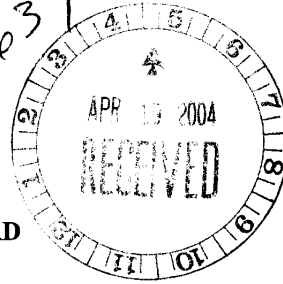
Linda Alston
Secretary for the Firm

/la
Attachments

cc: William C. Friend (With Attachment)
Steven Furnivall (With Attachment)
Ken Spangler (With Attachment)
Linda Schanlaub (With Attachment)

210637

BEFORE THE
SURFACE TRANSPORTATION BOARD



RE: NORFOLK AND WESTERN RAILWAY :
COMPANY – ABANDONMENT EXEMPTION – : Docket No. AB-290
BETWEEN KOKOMO AND ROCHESTER IN : Sub-No. 168X
HOWARD, MIAMI, AND FULTON COUNTIES, IN :

ENTERED
Office of Proceedings

APR 19 2004

Part of
Public Record

**SUPPLEMENTED PETITION FOR RECONSIDERATION OF
WILLIAM C. FRIEND, STEVEN FURNIVALL AND LINDA SCHANLAUB**

Nels Ackerson
Cecilia Fex
Elaine Panagakos
SOMMER BARNARD ACKERSON, PC
1666 K Street
Suite 1010
Washington, DC 20006
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Facsimile: (202) 833-8831

Counsel for Petitioners

Dated: April 19, 2004

Pursuant to 49 C.F.R. § 1115.3, and the Surface Transportation Board's (the "Board") decision in this matter served on April 6, 2004, Petitioners, William C. Friend, Steven Furnivall, and Linda Schanlaub, respectfully submit their supplemented petition for reconsideration of the Decision and Notice of Interim Trail Use or Abandonment served on March 10, 2004 (the "March 10 NITU"). The March 10 NITU involved material error in the following respects:

- (1) It purports to exercise jurisdiction over a portion of a 2.8 mile segment of right-of-way as to which abandonment has concededly been consummated;
- (2) It purports to exercise jurisdiction over a larger, approximately 20 mile segment of right-of-way as to which abandonment has in fact been consummated;
- (3) It reaffirms an earlier NITU as to a segment of right-of-way which was never properly railbanked, and has also been abandoned;
- (4) It purports to exercise jurisdiction over segments of right-of-way which have become severed from the interstate rail system, and over which, accordingly, the Board has no jurisdiction;
- (5) It purports to effect a retroactive taking of property; and
- (6) The prospective trail sponsor for the right-of-way refuses to fulfill its obligations under the Rails to Trails Act and under Indiana law, and is therefore unfit to operate the subject right-of-way as a recreational trail.

The bases for Petitioners' requested relief are set forth in detail below.

FACTUAL BACKGROUND

By its Decision and Notice of Interim Trail Use or Abandonment served May 14, 1996, 1996 WL 249594 (the "May 1996 NITU"), the Board granted the request for exemption of Norfolk and Western Railway Company ("N&W"), the predecessor of Norfolk Southern Railway Company ("NSR"), for N&W to abandon 38.4 miles of rail line between milepost I-57.2 at or near Kokomo and milepost I-95.6 at or near Rochester, in Howard, Miami, and Fulton Counties, Indiana. Also pending before the Board at that time was the request of Indiana Trails

Fund, Inc. ("ITF"), together with Hoosier Rails-To-Trails Council, Inc. ("HRTTC"), for the issuance of a NITU for the entire line. The May 1996 NITU granted that request only as to the segment of the line between milepost I-57.2 and I-74.2 at Peru ("the southern line"), because the remaining portion of the line between milepost I-74.2 and milepost I-95.6 ("the northern line") was subject to the trackage rights of Indiana Hi-Rail Corporation ("IHRC"), then operating as a Chapter 11 debtor under the jurisdiction of the U.S. Bankruptcy Court for the Southern District of Indiana. The May 14, 1996 NITU contained the following specific orders:

Under 49 U.S.C. 10505, we exempt from the prior approval requirements of 49 U.S.C. 10903-04: (a) N & W's abandonment of that portion of the line between milepost I-57.2, at or near Kokomo, and milepost I-74.2 at Peru; (b) N & W's discontinuance of service over the segment of the line between milepost I-74.2, at Peru, and milepost I-95.6, at or near Rochester, and abandonment of this line segment, provided that the abandonment process as to this segment may not be completed until IHRC's discontinuance of its trackage rights has been authorized[.]

* * *

If an agreement for interim trail use/ rail banking for the line segment described in (a) above is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, N & W may fully abandon that line segment, provided the conditions imposed in this proceeding are met.

* * *

N & W must inform the HRTTC and ITF if and when IHRC's trackage rights over the line segment described in paragraph 2(b) above are discontinued. *If and when we are so notified, and another request for a public use condition or NITU is made, we will impose a public use condition and/or issue a NITU for that line segment if the requirements of 49 C.F.R. 1152.28 and 1152.29 are met.*

1996 WL 249594 at *5-*6 (emphasis added). The "Discussion and Conclusions" section of the decision elaborated as follows on the latter portion of the order:

To facilitate our action on the request for trail use, N & W must inform the trail user if and when IHRC's trackage rights are discontinued. We

reserve jurisdiction to impose a trail use condition if an appropriate request is made following IHRC's discontinuance. *If no trail use condition is sought within 10 days after N & W notifies the trail user of IHRC's discontinuance, then N & W may complete the abandonment process as to that portion of the line.*

Id. at *3 (emphasis added.).

The Bankruptcy Court entered its order of confirmation of IHRC's Chapter 11 Plan, which included discontinuance of the trackage rights at issue here, on January 15, 1998. However, no request for a trail use condition or a NITU with respect to the northern line was made at that time. No such request was made in that year, 1998; or the next year, 1999; and no such request was made in 2000, 2001, 2002, or 2003. During those years NSR did, however, cease all operations on the line and remove its tracks. Moreover, NSR disposed of the subject right-of-way, according to its records, as follows: "I-57.2 to I-58.5, reclassify as industrial track; I-58.5 to I-96.5 . . . transfer to Indiana Trails Fund; ***I-72.7 - I-75.5 exception to trails group - fully abandoned. Advised STB.***" (2/17/04 NSR letter to Board at 4 (emphasis added).)

Consistent with that description, NSR on January 21, 1999 executed three quitclaim deeds to ITF, which purported to convey four defined "portion[s] of the former Norfolk and Western Railway Company's right-of-way for its main track (now abandoned) as it ran between Indianapolis and Michigan City, Indiana." The portions purportedly conveyed by the three deeds (which are attached hereto as Exhibits 1, 2, and 3) are from milepost 58.5 to milepost 72.7 on the southern line (north of Kokomo to Pen), and from milepost 75.5 to milepost 95.6 on the northern line (Pen to south of Rochester). As noted above, at the time the purported 1999 conveyances were made, there was no NITU in effect for the northern line, nor had one been requested by ITF.

This past February, 2004, ITF and NSR wrote to the Board, asking that a NITU be issued for the northern line. The Board granted that request, and issued the March 10 NITU, ordering that “the decision and notice served on May 14, 1996 . . . is modified to the extent necessary to implement interim trail use/rail banking . . . for the [northern line].”

ARGUMENT

1. The March 10 NITU Errs In Purporting To Exercise Jurisdiction Over Abandoned Right-of-Way

Both NSR’s own admission and the 1999 deeds establish, as an undisputed fact, that the 2.8 mile segment of the right-of-way between mileposts I-72.7 and I-75.5 – comprising portions of both the southern and northern lines – has been abandoned. In the March 10 NITU, however, the Board refers to abandonment having been consummated only as to the portion of the northern line, milepost I-74.2 and to milepost I-75.5. The Board did not acknowledge the abandonment of a portion of the southern line as well, milepost 72.7 to milepost 74.2. Further, the Board modified the May 1996 NITU only to the extent it excluded the northern line, leaving intact the purported railbanking of the entire southern line between milepost 57.2 and milepost 74.2. That is a material error, inasmuch as it encompasses a segment now known to be abandoned. It is an error, in addition, as to the segment between milepost 57.2 and milepost 58.5, which, according to NSR, has been “reclassified as industrial track.”

2. The March 10 NITU Errs, In That the Board Has Lost Jurisdiction Over the Northern Line

It is well settled that, “[o]nce a carrier ‘abandons’ a rail line pursuant to authority granted by the [Board], the line is no longer part of the national transportation system,” and the Board’s jurisdiction over the line terminates. *Preseault v. ICC*, 494 U.S. 1, 5 n.3 (1990); *see also Hayfield Northern Railroad Co v. Chicago and Northwestern Transportation Co.*, 467 U.S. 622,

633 (1984) (“unless the Commission attaches post-abandonment conditions to a certificate of abandonment, the Commission’s authorization of an abandonment brings its regulatory mission to an end.”) Therefore, after an abandonment has been consummated, “the Board is without jurisdiction to reopen the proceedings in order to convert the abandoned right-of-way to trail use under the National Trail System Act[.]” *Montezuma Grain Co., LLP v. STB*, 339 F.3d 535, 540 (7th Cir. 2003); see *Becker v. STB*, 132 F.3d 60 (D.C. Cir. 1997). This is an established rule of law that the Board reiterated just a week ago. See *Consolidated Rail Corporation – Abandonment Exemption – Lancaster and Chester Counties, PA*, STB Docket No. AB-167 (Sub-No. 1095X) (April 12, 2004), 2004 WL 771679 at *3 (“a trail sponsor must make a request for trails use under Section 8(d) of the Trails Act before the abandonment is consummated. . . . Once it is consummated, the Board loses its jurisdiction to impose a NITU” (citing *Preseault* and *Becker*)).

The Board’s issuance of the March 10 NITU in this case was predicated on its determination that NSR did not consummate the abandonment of the northern line, and accordingly that the Board retained jurisdiction over that line. This determination was error.

Becker v. STB is directly on point. In *Becker*, the Board issued a NITU granting a railroad an abandonment exemption and authority to negotiate a trail use agreement. The railroad negotiated with two prospective trail sponsors, but refused to seek extension of the NITU, which expired with no agreement having been reached. In the meantime the railroad “canceled its tariffs and removed all of the rails and ties from the line.” 132 F.3d at 61. More than three months after the NITU expired, the railroad reached a trail use agreement with a third trail sponsor. At its request, the Board “reopened the proceeding, determined it retained jurisdiction because [the railroad] had never consummated abandonment of the right-of-way and

issued the requested NITU.” *Id.* at 61-62. The Board then rejected the petition of an adjoining landowner to rescind the NITU and dismiss the trail use request for lack of jurisdiction.

On appeal, the D.C. Circuit reversed the Board, finding that abandonment had been consummated before the second NITU was issued. Noting that, “[i]n determining whether a railroad has abandoned a line, one must focus on the railroad’s objective intent,” the Court identified the well recognized indicia of such “objective intent” as follows: “a line is fully abandoned when a certificate of public convenience and necessity . . . is issued and has become effective, tariffs have been canceled and operations have ceased.” *Id.* at 62 (citations omitted). The Court found that “[e]ach of these indicia is present here,” and in addition, the railroad “had taken the further step of removing the rails and ties from the line.” *Id.* Finally, the Court rejected the Board’s determination that “the railroad’s expressed desire and intention to continue trail use negotiations beyond the 180 day period” showed a lack of intent to abandon, citing the railroad’s refusal to agree to extend the original NITU. There was “no evidence that [the railroad] intended to negotiate further” until it announced its agreement with the third prospective trail sponsor, three months after the NITU expired. *Id.* at 63.

The *Becker* result is far from unique. The Board has repeatedly rejected trail use requests that were not made until after the Board had lost jurisdiction over the subject right-of-way due to the consummation of abandonment. *See Burlington Northern and Santa Fe Railway Co – Abandonment Exemption – In Washington County, OR*, STB Docket No. AB-6 (Sub-No. 383X) (December 28, 2001), 2001 WL 1659570; *Track Tech, Inc. – Abandonment Exemption – In Adair and Union Counties, IA* (STB Finance Docket No. 33434) (November 1, 1999), 1999 WL 985179; *Illinois Central Gulf Railroad Co.– Abandonment – In Dewitt and Piatt Counties, IL* (STB Docket No. AB-43 (Sub-No. 134) (January 4, 1989), 1988 WL 235412. The *Illinois*

Central case is particularly apposite here, in that it also involved a situation where a request for NITU was not made until years after authority to abandon had been obtained, tariffs had been cancelled, operations had ceased and track had been removed, all of which the Board found to “demonstrate conclusively that [the railroad] did intend to cease permanently its operations” over the subject lines. *Id.* at *5. The Board stated: “It is also clear that [the railroad’s] intent subsequently changed and it wished to enter into a mutually agreeable Trails Act arrangement with [the trail sponsor]. *However, by that time we had lost our jurisdiction and that jurisdiction cannot be resurrected.*” *Id.* (emphasis added).

In reaching the opposite result in this case, the Board appears to have accepted NSR’s argument that “because it negotiated an interim trail use agreement with ITF soon after the bankruptcy reorganization plan and the discontinuance of IHRC’s trackage rights had been implemented and confirmed, there was no break in the continuity of the trail use negotiations or period of time where NSR acted with an intent to abandon the subject segment of the line.” March 10 NITU at 2.

At the outset, it is noteworthy that NSR has offered only its own unsubstantiated assertion that it ever, at any time, negotiated or reached a trail use agreement with ITF.¹ In fact, the only evidence of such “negotiation” that exists is the three deeds of January 21, 1999 (which, to Petitioner’s knowledge, are being submitted to the Board for the first time with this Petition). In those deeds, NSR purports to convey to ITF right-of-way lines that it expressly describes as “*now abandoned.*” The purported conveyance, moreover, did not take place until more than one year after IHRC’s discontinuance of its trackage rights had been confirmed, and was made

¹ For reasons to be discussed below, it is also significant that NSR is equally vague as to whether there may have been “only an oral agreement,” and still more vague as to the timing of the purported agreement.

without any NITU ever having been issued with respect to the northern line. In addition, the tracks on this line were removed in August or September of 1997, long before NSR purported to convey to ITF the right-of-way to this line. (Affidavit of Linda Schanlaub, ¶ 5, attached as Exhibit 4.)

The inescapable consequence of the facts presented here is that abandonment of the northern line was consummated, and the Board's jurisdiction over that line terminated, long before NSR and ITF requested, in February 2004, that a NITU be issued with respect to that line. The May 1996 NITU specifically authorized N & W to complete the abandonment of the northern line after IHRC's discontinuance of its trackage rights had been authorized. Indeed, it specifically stated that such abandonment could be completed "[i]f no trail use condition is sought within 10 days after N & W notifies the trail user of IHRC's discontinuance." The decision, moreover, made it absolutely clear that trail use could be pursued as to the northern line *only* if and when the Board was notified, and a second NITU was requested and issued.

The tracks were removed in 1997. The discontinuance of IHRC trackage rights occurred in January 1998. At that point, pursuant to the express terms of the May 1996 NITU, abandonment of the northern line was authorized. No NITU for the northern line was requested. But six years passed, during which railroad operations were terminated; the tracks had been removed; and tariffs, presumably, were cancelled.

This is not a situation where "there was no break in the continuity of the trail use negotiations or period of time where NSR acted with an intent to abandon" the northern line. Rather, it is a situation in which trail use negotiations were *never authorized*, and in which the *only* actions taken by NSR – including its purported conveyance of "abandoned" property – manifest an objective intent to "cease permanently its operations" over the subject line.

Such intent must be accorded its legally prescribed effect.² See *Consolidated Rail Corp. V. STB*, 93 F.3d 793, 799 (D.C. Cir. 1996) (“Conrail’s overt acts made clear beyond cavil that it intended to abandon the line. Conrail having abandoned the line, the Commission lost jurisdiction over it”); *Winter v. ICC*, 828 F.2d 1320, 1323 (8th Cir. 1987) (railroad “had filed an abandonment application, received Commission abandonment authorization, and followed all the Commission’s formal abandonment requirements. In such cases, the carrier’s intent to abandon the line is clear from its regulatory compliance, and thus there is no need for an additional extrinsic finding of intent.”) Abandonment of the northern line was consummated long before February of this year, and the Board had no jurisdiction to issue the March 10 NITU.

3. The March 10 NITU Errs To the Extent It Reaffirms the May 1996 NITU as To the Southern Line

Subsequent to the May 1996 NITU, ITF requested, and obtained, three 180-day extensions of the original 180-day negotiation period. The last one, which the Board granted by decision served March 27, 1998, expired on September 27, 1998. As noted above, there is no evidence that NSR and ITF reached a trail use agreement prior to that date, except for NSR’s unsubstantiated statement to that effect in its February 17, 2004 letter to the Board. That statement is accompanied by the following qualification: “NSR’s legal, planning and real estate personnel were heavily engaged in significant volumes of work on the Conrail control transaction at this time and it is possible that only an oral agreement may have been reached with ITF. In any event, the agreement was performed by NSR, which ultimately conveyed 34.2 miles of the line to ITF by three deeds dated January 21, 1999.”

² As noted by NSR in its February 17, 2004 letter to the Board, this case pre-dated the effective date of 49 C.F.R. § 1152.29(e)(2), which now requires railroads to file a notice of consummation of abandonment with the Board. Thus, NSR concedes that the actions it in fact

The only documented transaction between NSR and ITF, therefore, took place after the May 1996 NITU, as extended, had expired. No further extension of that NITU, as to the southern line, was ever sought. Thus, the purported conveyance of “*abandoned*” property (NSR 2/17/04 letter to Board) in January 1999 was unauthorized as to the southern line as well as the northern line, and that line has never been properly railbanked. Given the passage of time, and the acts of the railroad as set forth above, the southern line as well as the northern must be deemed abandoned.

4. The March 10 NITU Errs In Exercising Jurisdiction Over Right-of-way Which Has Been Severed From the Interstate Rail System

Pursuant to the applicable provisions of 49 U.S.C. § 10501, the Board has jurisdiction over “transportation by rail carrier” “between a place in a State and a place in the same or another State *as part of the interstate rail network.*” (Emphasis added.) The Board has “correctly determined that it does not have jurisdiction over lines that are no longer part of the national rail system.” *RLTD Railway Corp v. Surface Transportation Board*, 166 F.3d 808, 813 (6th Cir. 1999).

The segment of undisputedly abandoned line between milepost 72.7 and milepost 75.5, which is discussed above, severs the connection of the right-of-way north of milepost I-72.7 from the interstate rail system to the south. In addition, the segment of right-of-way south of the southern end of the line, milepost 57.2 to 58.5, has been “reclassified as industrial track,” which is unregulated by the Board pursuant to 49 U.S.C. § 10906. Moreover, there has been no railroad activity or use of that portion of track for several years, and part of it has been paved over. (Affidavit of Tedd G. Armstrong, ¶ 6-7, attached as Exhibit 5.) Thus, the southern end of the

took are no different from what they would have been if “ITF had not wished to negotiate for trail use or request an expanded NITU” for the northern line.

line, as well, has become disconnected from the interstate rail system and therefore this Board no longer retains the authority over this southern segment to permit or authorize so-called “railbanking” of this line.

Likewise, the northern segment has become severed from the interstate railway system. The right-of-way north of milepost 95.6 is owned by a grain company, “Wilson Grain,” which is the sole shipper on that line from Rochester to Argos, Indiana. Wilson Grain uses parts of that line for shipment of its products. Moreover, as to the southern part of that segment, Wilson Grain uses that southernmost portion exclusively for the purpose of storing cars. (Schanlaub Aff., ¶ 6-7.) Thus, the northern end of the line too is disconnected from the interstate rail system.

In sum, the subject right-of-way consists of two stretches of abandoned railroad land which are entirely within the state of Indiana and are disconnected from each other and from the interstate rail system. The Board has no jurisdiction over those severed and abandoned railroad segments.

5. The March 10 NITU Errs In Purporting to Effect A Retroactive Taking of Property

The March 10 NITU, as noted above, purports to “modify” the May 1996 NITU “to the extent necessary to implement interim trail use/rail banking” for the northern line. The conversion of the former railroad right-of-way to trail use (if it proceeds) will constitute a taking of Petitioners’ property. *Schmitt v. United States*, 2003 WL 21057368 (S.D.Ind. 2003) at *8. Such a taking accrues when railbanking has been authorized by a NITU or CITU, and the railroad reaches an agreement with a trail sponsor. *Caldwell v. United States*, 57 Fed. Cl. 193 (2003). For the Board to “modify” the May 1996 NITU to authorize trail use on the northern line retroactively would constitute a retroactive taking of property, which is not authorized by any provision of law.

6. ITF Is Not A Valid Trail Sponsor

Another landowner on the subject right-of-way was sued by ITF for trespass. Proceedings in that litigation have revealed that ITF flatly refuses to perform the responsibilities required of a trail sponsor by the Rails to Trails Act, 16 U.S.C. 1247(d) (Affidavit of Donald J. Tribbett, ¶ 5, attached as Exhibit 6), which include assuming the obligation to properly maintain the right-of-way. Under Indiana law, such responsibility includes providing for trail security, fencing, maintenance, and drainage. *See* I.C. 8-4.5-6-3(6) (2001). As such, ITF is unfit as a trail sponsor and is unable to meet its obligations under 16 U.S.C. § 1247(d). For this reason as well, the March 10 NITU should not have been issued.

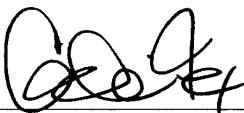
CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Board (1) reconsider and vacate the March 10 NITU; (2) issue an order declaring that the subject right-of-way between mileposts 72.7 and 95.6 (the northern line) has been fully abandoned, and is no longer subject to the jurisdiction of the Board; (3) issue an order declaring that the subject right-of-way between mileposts 58.5 and 72.7 (the southern line) was never properly railbanked, has been fully abandoned, and is no longer subject to the jurisdiction of the Board; (4) find that it lacks jurisdiction over the right-of-way because it is disconnected from the interstate rail system.

Alternatively, if the Board permits railbanking to proceed, the effective date of the NITU as to the northern line should be in 2004 rather than 1996.

Date: April 19, 2004

Respectfully submitted,
SOMMER BARNARD ACKERSON, PC

By 
Cecilia Fex

Nels Ackerson
Cecilia Fex
Elaine Panagakos
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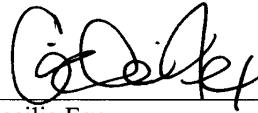
Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2004, I served a copy of the Supplemented Petition for Reconsideration of William C. Friend, Steven Furnivall and Linda Schanlaub by facsimile on the following:

Richard Vonnegut
President
Indiana Trails Fund
Post Office Box 402
Indianapolis, Indiana 46206-0402
Facsimile: (317) 237-9425

James R. Paschall
General Attorney
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241
Facsimile: (757) 533-4872

A handwritten signature in black ink, appearing to read 'Cecilia Fex', is written over a horizontal line.

Cecilia Fex

Exhibit 1

TO FINAL ACCEPTANCE FOR TRANSFER

MAR 19 1999

Julius A. Reed
AUDITOR FULTON COUNTY, INDIANA

FULTON COUNTY RECORDER 12:28

CCG Fee: 14.00

I 9901280 Page 1 of 3

QUITCLAIM DEED OF
BARGAIN SALE AND DONATION

THIS INDENTURE WITNESSETH, that the Grantor/Donor, NORFOLK SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, having its principal office in Norfolk, Virginia, for and in consideration of the public good and to promote the welfare of the citizens of the State of Indiana, and other valuable considerations, in hand paid, and pursuant to authority given by the Board of Directors of said corporation, DONATES and QUITCLAIMS, without warranty of title, and pursuant to Section 8(d) of the National Trails System Act, 16. U.S.C. § 1247(d) and orders of the Interstate Commerce Commission and the Surface Transportation Board pursuant thereto in the proceeding whose docket number is AB-290 (Sub-No. 168X), unto INDIANA TRAILS FUND, INC., a nonprofit corporation organized and existing under the laws of the State of Indiana, whose tax mailing address is *47 So. Pennsylvania St #403 / PO Box 402*
INDIANAPOLIS IND 46206-0402
its successors and assigns, Grantee/Donee, all of its interest in the following described Real Estate situated in the County of Fulton, State of Indiana, to-wit:

All that strip, piece or parcel of land situate, lying and being in the South Half and Northwest Quarter of Section 35, the Southwest Quarter of Section 26, the East Half and the Northwest Quarter of Section 27, the West Half of Section 22 and the Northeast Quarter of Section 21, Township 30 North, Range 3 East, being a portion of the right of way for former Norfolk and Western Railway Company's main track (now abandoned) as it ran between Indianapolis and Michigan City, Indiana, being bounded on the south by the common line between Miami County and Fulton County, Indiana, and being bounded on the north by the southerly line of Section 16 in Township 30 North, Range 3 East located at Railroad Valuation Station 5044+92.8 (approximate Milepost 95.6), more or less, and being more particularly described as follows:

Beginning at a point, said point being the intersection of the original centerline of main track and said common line between Fulton County and Miami County,

Indiana, located at Railroad Valuation Station 4859+16.8 (approximate Milepost 92.1), more or less, and also being the TRUE POINT OF BEGINNING for the herein described strip of land; thence, in a general northwardly direction, with a strip of land of varying width a distance of 18,576 feet, more or less, to a point on aforesaid southerly line of Section 16 located at Railroad Valuation Station 5044+92.8 (approximate Milepost 95.6), more or less, and being the POINT OF ENDING for the herein described strip of land.

Said strip contains 28 acres of land, more or less, and is located substantially as shown on sheets 20 and 21 of 21 sheets of Drawing Number RD-1998-32, revised December 10, 1998, attached hereto and made a part hereof.

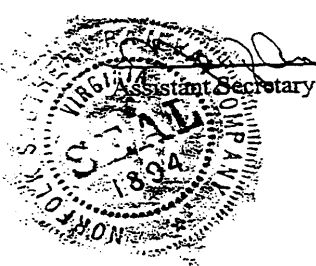
RESERVING unto Grantor/Donor the right to utilize so much of the above-described premises as is presently occupied by railroad tracks owned by Grantor/Donor. Grantor/Donor further reserves to itself, its successors and assigns, all right, title and interest in said railroad tracks and to rails, ties, ballast and appurtenances thereto located upon the above-described premises, together with the right of ingress to and egress from said above-described land for the purpose of removing said railroad tracks, rails, ties, ballast and appurtenances thereto.

SUBJECT, however, to any conditions, restrictions, reservations, licenses or leases as may appear of record or be apparent by an inspection of the premises.

IN WITNESS WHEREOF, NORFOLK SOUTHERN RAILWAY COMPANY has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed this 24th day of January, 1999.

ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY



Assistant Secretary

By C.V. B.

Real Estate Manager

STATE OF GEORGIA)

COUNTY OF FULTON)

SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named C.V. Baker and Mary Ann Breazeale known to me to be the Real Estate Manager and Assistant Secretary, respectively, of Norfolk Southern Railway Company, a corporation, and acknowledged the execution of the foregoing deed for and in the name of and on behalf of said corporation as their free and voluntary act and deed and as the voluntary act and deed of said corporation.

WITNESS my hand and seal, this 21st day of January, 1999.

My commission expires

Notary Public, Fayette County, Georgia
My Commission Expires May 21, 2002

Sheron W. M. [Signature]
Notary Public



This instrument prepared by:

Kimber M. Culpepper
Attorney at Law
Norfolk Southern Corporation
One Georgia Center - Suite 1702
600 West Peachtree Street, NW
Atlanta, Georgia 30308-3603

KMC:yp
1006321b.bsd
INQCD.W61
12/15/98

Exhibit 2

9936005433

HOWARD COUNTY RECORDER

99 MAR 22 AM 8:10

QUITCLAIM DEED OF
BARGAIN SALE AND DONATION

THIS INDENTURE WITNESSETH, that the Grantor/Donor, NORFOLK SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, having its principal office in Norfolk, Virginia, for and in consideration of the public good and to promote the welfare of the citizens of the State of Indiana, and other valuable considerations, in hand paid, and pursuant to authority given by the Board of Directors of said corporation, DONATES and QUITCLAIMS, without warranty of title, and pursuant to Section 8(d) of the National Trails System Act, 16. U.S.C. § 1247(d) and orders of the Interstate Commerce Commission and the Surface Transportation Board pursuant thereto in the proceeding whose docket number is AB-290 (Sub-No. 168X), unto INDIANA TRAILS FUND, INC., a nonprofit corporation organized and existing under the laws of the State of Indiana, whose tax mailing address is 47 So. Pennsylvania St #403 / P.O. Box 402
INDIANAPOLIS IN 46206-0402 its successors and assigns, Grantee/Donee, all of its interest in the following described Real Estate situated in the County of Howard, State of Indiana, to-wit:

All that strip, piece or parcel of land situate, lying and being in the West Half of Section 6, Township 24 North, Range 4 East, Howard County, Indiana, being a portion of the former Norfolk and Western Railway Company's right of way for its main track (now abandoned) as it ran between Indianapolis and Michigan City, Indiana, being bounded on the north by the common line between Howard County and Miami County, Indiana, and being bounded on the south by a line normal to the original centerline of said main track at Railroad Valuation Station 3088+80, and being more particularly described as follows:

Beginning at a point, said point being the intersection of said original centerline of main track and said common line between Howard County and Miami County, Indiana, said point being located at Railroad Valuation Station 3137+90.4 (approximate Milepost 59.4), more or less, and also being the TRUE POINT OF BEGINNING for the herein described strip of land; thence, in a general

DULY ENTERED FOR TAXATION

MAR 19 1999

southwardly direction with a strip of land of varying width a distance of 4,910 feet, more or less, to aforesaid point located at Railway Valuation Station 3088+80 (Milepost 58.5), said point being the POINT OF ENDING for the herein described strip of land. Said strip contains 8.0 acres of land, more or less, and is located substantially as shown on sheet 1 of 21 sheets of Drawing Number RD-1998-32, dated March 20, 1998, revised December 10, 1998, attached hereto and made a part hereof.

RESERVING unto Grantor/Donor the right to utilize so much of the above-described premises as is presently occupied by railroad tracks owned by Grantor/Donor. Grantor/Donor further reserves to itself, its successors and assigns, all right, title and interest in said railroad tracks and to rails, ties, ballast and appurtenances thereto located upon the above-described premises, together with the right of ingress to and egress from said above-described land for the purpose of removing said railroad tracks, rails, ties, ballast and appurtenances thereto.

SUBJECT, however, to any conditions, restrictions, reservations, licenses or leases as may appear of record or be apparent by an inspection of the premises.

IN WITNESS WHEREOF, NORFOLK SOUTHERN RAILWAY COMPANY has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed this 21st day of January, 19 99.

ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY



[Signature]
By

[Signature]

Real Estate Manager

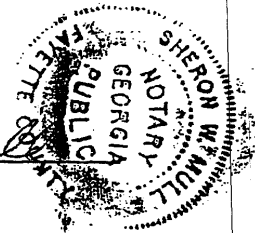
STATE OF GEORGIA)
) SS:
COUNTY OF FULTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named C.V. Baker and Mary Ann Breazeale known to me to be the Real Estate Manager and Assistant Secretary, respectively, of Norfolk Southern Railway Company, a corporation, and acknowledged the execution of the foregoing deed for and in the name of and on behalf of said corporation as their free and voluntary act and deed and as the voluntary act and deed of said corporation.

WITNESS my hand and seal, this 21st day of January, 19 99.

My commission expires Notary Public, Fayette County, Georgia
My Commission Expires May 21, 2002.

Sheron W. Mull
Notary Public



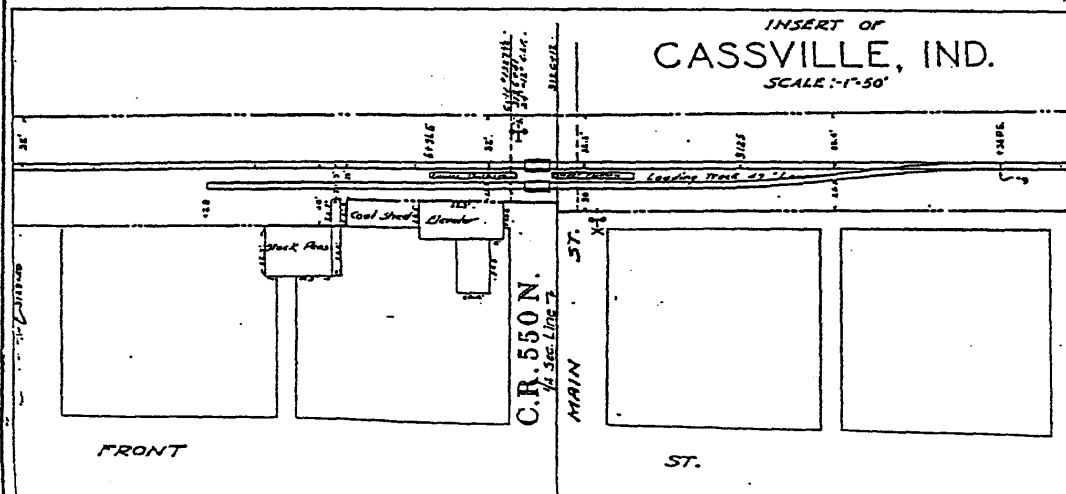
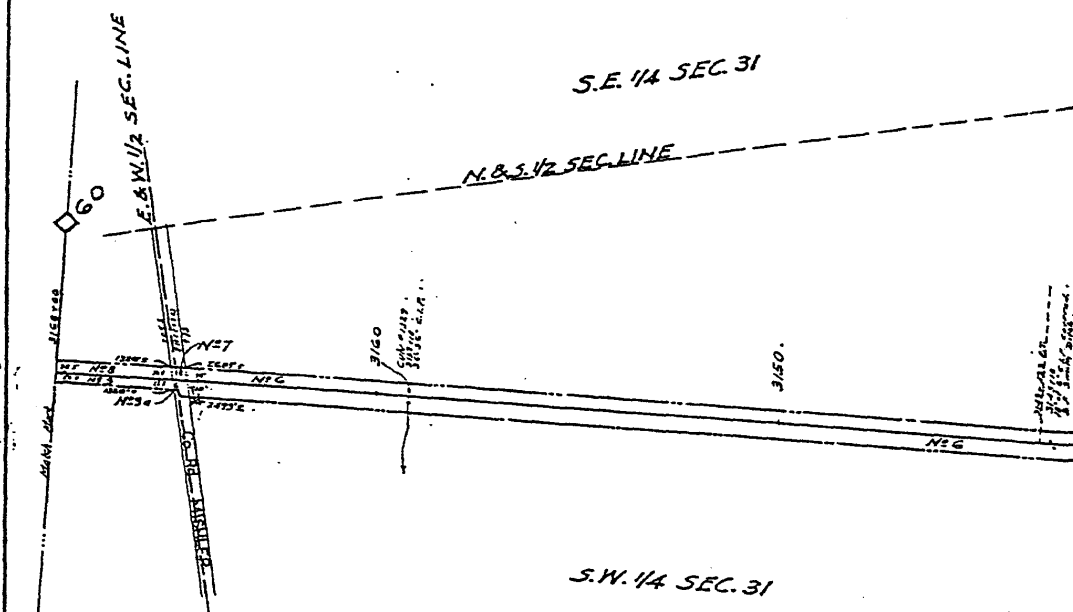
This instrument prepared by:

Kimber M. Culpepper
Attorney at Law
Norfolk Southern Corporation
One Georgia Center - Suite 1702
600 West Peachtree Street, NW
Atlanta, Georgia 30308-3603

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ED FOR TAXATIC

9 1999

J. Lake
WARD CO. IN

IND.

124 ST.

CHURCH ST.

CHURCH ST.

CHURCH ST.

DEER CREEK TWP.

3/40 T.25 N.R.4E.

MIAMI CO. SEC. 31

E.W. SEC. LINE 3127

HOWARD TWP.

T.24 N.R.4E.

HOWARD CO. SEC. 6

END CONVEYANCE

N.W. 1/4 SEC. 6

CASSVILLE, IND.

0.59

3120

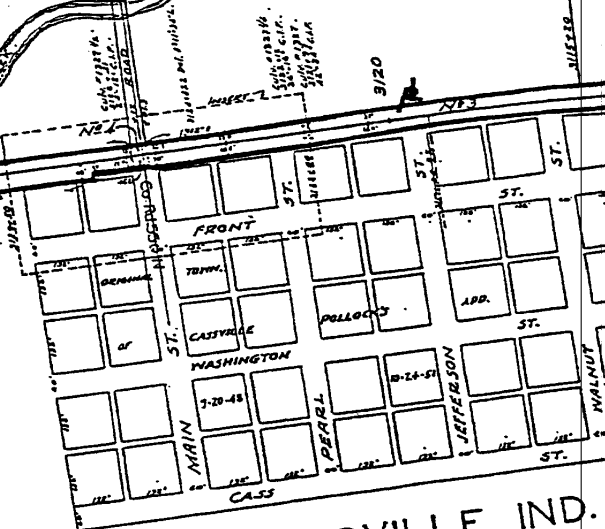


Exhibit 3

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

Mo Mar Day 19, 1999

Auditor Miami Co

QUITCLAIM DEED OF
BARGAIN SALE AND DONATION

Karen Jengelmann 019-10000-00 001-10000-00
015-10000-00 019-36813-00
012-10000-00

THIS INDENTURE WITNESSETH, that the Grantor/Donor, NORFOLK SOUTHERN

RAILWAY COMPANY, a corporation organized and existing under the laws of the

Commonwealth of Virginia, having its principal office in Norfolk, Virginia, for and in

consideration of the public good and to promote the welfare of the citizens of the State of

Indiana, and other valuable considerations, in hand paid, and pursuant to authority given by the

Board of Directors of said corporation, DONATES and QUITCLAIMS, without warranty of

title, and pursuant to Section 8(d) of the National Trails System Act, 16. U.S.C. § 1247(d) and

orders of the Interstate Commerce Commission and the Surface Transportation Board pursuant

thereto in the proceeding whose docket number is AB-290 (Sub-No. 168X), unto INDIANA

TRAILS FUND, INC., a nonprofit corporation organized and existing under the laws of the State

of Indiana, whose tax mailing address is 47 So. Pennsylvania St / PO Box 402

its successors and assigns, Grantee/Donee, all of its interest in the following described Real

Estate situated in the County of Miami, State of Indiana, to-wit:

PARCEL 1

All that strip, piece or parcel of land situate, lying and being in the West Half and the Northeast Quarter of Section 31, the East Half of Section 30, the East Half of Section 19, the Southeast Quarter of Section 18, the West Half of Section 17, the West Half of Section 8, the West Half and the Northeast Quarter of Section 5, Township 25 North, Range 4 East; also, all of Section 32, all of Section 29, the West Half and the Southeast Quarter of Section 20, the West Half of Section 17, the South Half and the Northeast Quarter of Section 8, and the East Half of Section 5, Township 26 North, Range 4 East, Godfrey Reserve, and a portion of Richardsville Reserve, Township 27 North, Range 4 East; being a portion of the former Norfolk and Western Railway Company's right of way for its main track (now abandoned) as it ran between Indianapolis and Michigan City, Indiana,

INDEXED

MIAMI COUNTY RECORDER
BRENDA WEAVER
VALIDATION:
SRP Rec. Date 03/19/99 Time 14:50 22P 60.00

being bounded on the south by the common line between Howard County and Miami County, Indiana, and being bounded on the north by the now or former west corporation line of the City of Peru, crossing the original centerline of said main track at Railroad Valuation Station 3836+20, more or less, and being more particularly described as follows:

Beginning at a point, said point being the intersection of said original centerline of main track and said common line between Howard County and Miami County, Indiana, being located at Railroad Valuation Station 3137+90.4 (approximate Milepost 59.4), more or less, and also being the TRUE POINT OF BEGINNING for the herein described strip of land; thence, in a general northwardly direction with a strip of land of varying width a distance of 69,829.6 feet, more or less, to a point on aforesaid west corporation line at Railroad Valuation Station 3836+20 (approximate Milepost 72.7), more or less, said point being THE POINT OF ENDING for the herein described strip of land.

Said strip contains 96 acres of land, more or less, and is located substantially as shown on sheets 2 through 10 of 21 sheets of Drawing Number RD-1998-32, revised December 10, 1998, attached hereto and made a part hereof.

PARCEL 2

All that strip, piece or parcel of land situate, lying and being in the Northwest Quarter of Section 22, the Southwest Quarter of Section 15, the East Half of Section 16, the East Half of Section 9, the Southeast Quarter of Section 4 and the West Half of Section 3, Township 27 North, Range 4 East; also, the South Half and the Northeast Quarter of Section 34, the West Half and the Southeast Quarter of Section 27, the Southwest Quarter of Section 22, the East Half of Section 21, the South Half and the Northwest Quarter of Section 16, the West Half of Section 9, the East Half of Section 8 and the East Half of Section 5, Township 28 North, Range 4 East; also, the East Half of Section 32, the West Half and the Southeast Quarter of Section 29, the Southwest Quarter of Section 20, the East Half of Section 19, the West Half and the Southeast Quarter of Section 18, Township 29 North, Range 4 East; also, the Northeast Quarter of Section 13, the East Half and the Northwest Quarter of Section 12, the West Half of Section 1 and the East Half of Section 2, Township 29 North, Range 3 East, being a portion of the former Norfolk and Western Railway Company's right of way for its main track (now abandoned) as it ran between Indianapolis and Michigan City, Indiana, being bounded on the north by the common line between Fulton County and Miami County, Indiana, and being bounded on the south by the centerline of Lovers Lane, and being more particularly described as follows:

Beginning at a point, said point being the intersection of the original centerline of said main track and said common line between Fulton County and Miami County, Indiana, located at Railroad Valuation Station 4859+16.8 (approximate Milepost 92.1), more or less, and also being the TRUE POINT OF BEGINNING for the herein described strip of land; thence, in a general southwardly direction with a strip of land of varying width a distance of 87,262 feet, more or less, to aforesaid point on the centerline of Lovers Lane, said point being located at Railroad Valuation Station 3986+55 (approximate Milepost 75.5), more or less, and being the POINT OF ENDING for the herein described strip of land.

Said strip contains 177 acres of land, more or less, and is located substantially as shown on sheets 11 through 19 of 21 sheets of Drawing Number RD-1998-32, revised December 10, 1998, attached hereto and made a part hereof.

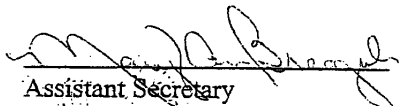
RESERVING unto Grantor/Donor the right to utilize so much of the above-described premises as is presently occupied by railroad tracks owned by Grantor/Donor. Grantor/Donor further reserves to itself, its successors and assigns, all right, title and interest in said railroad tracks and to rails, ties, ballast and appurtenances thereto located upon the above-described premises, together with the right of ingress to and egress from said above-described land for the purpose of removing said railroad tracks, rails, ties, ballast and appurtenances thereto.

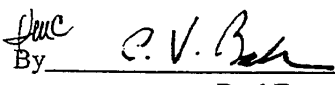
SUBJECT, however, to any conditions, restrictions, reservations, licenses or leases as may appear of record or be apparent by an inspection of the premises.

IN WITNESS WHEREOF, NORFOLK SOUTHERN RAILWAY COMPANY has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed this 21st day of January, 1999.

ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY


Assistant Secretary


By

Real Estate Manager

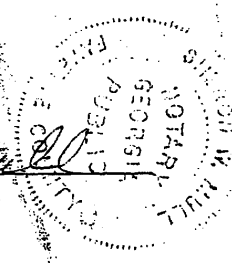
STATE OF GEORGIA)
) SS:
COUNTY OF FULTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named C.V. Baker and Mary Ann Breazeale known to me to be the Real Estate Manager and Assistant Secretary, respectively, of Norfolk Southern Railway Company, a corporation, and acknowledged the execution of the foregoing deed for and in the name of and on behalf of said corporation as their free and voluntary act and deed and as the voluntary act and deed of said corporation.

WITNESS my hand and seal, this 21st day of January, 1999.

My commission expires
Notary Public, Fayette County, Georgia
My Commission Expires May 21, 2002

Sheron W. M. [Signature]
Notary Public



This instrument prepared by:

Kimber M. Culpepper
Attorney at Law
Norfolk Southern Corporation
One Georgia Center - Suite 1702
600 West Peachtree Street, NW
Atlanta, Georgia 30308-3603

KMC:yp
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INQCD.W61
12/15/98;Rev. 12/22/98

Exhibit 4

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Docket No. AB-290 (Sub-No. 168X)

**NORFOLK AND WESTERN RAILWAY COMPANY-
ABANDONMENT EXEMPTION- BETWEEN KOKOMO AND ROCHESTER
IN HOWARD, MIAMI, AND FULTON COUNTIES, IN**

**AFFIDAVIT OF LINDA SCHANLAUB IN SUPPORT
OF PETITION FOR RECONSIDERATION**

STATE OF INDIANA)
) ss.
COUNTY OF FULTON)

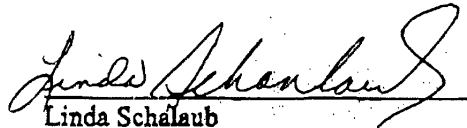
I, Linda Schanlaub, being first duly sworn on oath, state as follows:

1. I am over the age of 21, understand the taking of an oath, and am competent to give this affidavit. The matters set forth in this affidavit are based upon my personal knowledge.
2. I am the owner and President of Macy Elevator, Inc., which is located at 2787 West 1350 North, Macy, Indiana.
3. My property is adjacent to and approximately midway between the portion of the Norfolk and Western Railroad line extending between milepost I-75.5 near Peru, Indiana and milepost I-95.6 near Rochester, Indiana ("Norfolk and Western line"), which was included in the amended decision and notice of interim trail use or abandonment (NITU) that was served March 10, 2004.
4. My counsel requested I make this affidavit to supply the following:

information.

5. The tracks to the Norfolk and Western line that ran by my property and through Macy, Indiana, were removed in either August or September of 1997.
6. Wilson Fertilizer & Grain Company ("Wilson Grain") is the current owner of the right-of-way that starts south of Rochester, at Wabash Road, and runs through Rochester to Argos, Indiana. That right-of-way segment is used exclusively by Wilson Grain, no other shipper uses that segment, and it is used by that company to ship agricultural products.
7. Wilson Grain, however, uses the southern portion of that segment, from Wabash Road to 18th Street, solely for the purpose of storing cars, and for no other purpose.

IN WITNESS HEREOF, I have hereunto set my hand, this 19th day of April,
2004.


Linda Schaub

Sworn to and subscribed before me this 19th day of April, 2004.

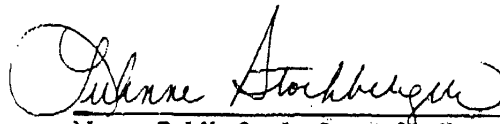

Notary Public for the State of Indiana
LYANNE STOCKBERGER Com Exp-11-12-2006
STATE OF INDIANA FULTON County

Exhibit 5

BEFORE THE SURFACE TRANSPORTATION BOARD**STB Docket No. AB-290 (Sub-No. 168X)**

NORFOLK AND WESTERN RAILWAY COMPANY—
ABANDONMENT EXEMPTION— BETWEEN KOKOMO AND ROCHESTER
IN HOWARD, MIAMI, AND FULTON COUNTIES, IN

AFFIDAVIT OF TEDD. G. ARMSTRONG IN SUPPORT
OF PETITION FOR RECONSIDERATION FILED BY WILLIAM C. FRIEND, ET AL.

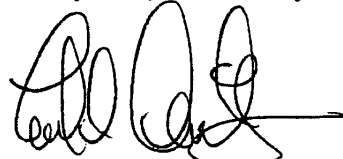
STATE OF INDIANA)
) ss.
COUNTY OF FULTON)

I, Tedd G. Armstrong, being first duly sworn on oath, state as follows:

1. I am over the age of 21, understand the taking of an oath, and am competent to give this affidavit. The matters set forth in this affidavit are based upon my personal knowledge.
2. I am the owner of property in Miami County, Indiana, which is located at 2767 West 1350 South, Kokomo, Indiana.
3. My property is adjacent to the former Norfolk and Western Railroad line — which I have always referred to as the “Norfolk Southern” line — that extends from just north of Kokomo, Indiana, through Peru, and continues northward to Rochester, Indiana. My property is located just north of the point where Miami and Howard Counties meet, at the southern part of this Norfolk Southern segment.

5. I am familiar with the location of the end-point where the Indiana Trails Fund, Inc., has been asserting rights to operate a recreational trail. That point is located slightly south of ~~Casbitt~~^{CASSVILLE}, Indiana, and the tracks have been removed from that point heading northward.
6. From ~~Casbitt~~^{CASSVILLE}, Indiana, and heading southward to Kokomo, there appears to have been no railroad activity or use of the railroad tracks for at least eight years or longer, in that I never see any rail car activity and the tracks still remaining in that location appear to be rusted and neglected.
7. In addition, in the north part of Kokomo, where the tracks are crossed by a street, Apperson Way, the tracks have been completely paved over, thereby burying any tracks that may (or may not) remain.

IN WITNESS HEREOF, I have hereunto set my hand, this 19th day of April,
2004.


Tedd G. Armstrong

Sworn to and subscribed before me this 19th day of April, 2004.


Notary Public for the State of Indiana

S. KIM BREWSTER
Notary Public, State of Indiana
County of Howard
My Commission Expires Aug 30, 2007

Exhibit 6

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Docket No. AB-290 (Sub-No. 168X)

NORFOLK AND WESTERN RAILWAY COMPANY–
ABANDONMENT EXEMPTION– BETWEEN KOKOMO AND ROCHESTER
IN HOWARD, MIAMI, AND FULTON COUNTIES, IN

AFFIDAVIT OF DONALD J. TRIBBETT IN SUPPORT
OF PETITION FOR RECONSIDERATION filed by WILLIAM FRIEND, et al.

STATE OF INDIANA)
) ss.
COUNTY OF CASS)

I, Donald J. Tribbett, being first duly sworn on oath, state as follows:

1. I am an attorney-at-law maintaining an office at 201 South Third Street, Logansport, Indiana. I am admitted to practice before the Indiana state courts, the Illinois state courts, the United States Supreme Court, the United States Court of Appeals, Seventh Circuit, the United States District Court for the Southern District of Indiana, the United States District Court for the Northern District of Indiana, and the United States District Court for the Northern District of Illinois.
2. On September 10, 2003, I took the deposition of Richard Vonnegut in his capacity as President of the Indiana Trails Fund, Inc. ("ITF"), in the civil matter, *Indiana Trails Fund, Inc. v. Sam and Roberta Hoover*, Cause number 52D01-0301-PL-00002 in the Miami Superior Court, Peru, Indiana.

3. That matter concerns a case filed by ITF on January 3, 2003, against my clients, the Hoovers, wherein ITF alleged that Sam Hoover and his deceased wife, Roberta Hoover, had trespassed on former railroad right-of way purportedly transferred by Norfolk & Western Railroad to ITF. Answers to interrogatories submitted by ITF state that the alleged acts of trespass occurred between the summer of 1999 and September 2002 when ITF purportedly had title to that property. The complaint against the Hoovers seeks monetary damages and injunctive relief against the Hoovers.
4. The Hoover's property is burdened by this right-of-way and is located north of Peru, Indiana, between milepost marker I-75.5 and I-95.7, which is the northern segment of a former railroad right-of-way that is the subject of the Board's recent decision of notice of interim trail use or abandonment, served March 10, 2004 ("Decision").
5. In the deposition taken September 30, 2003, I learned the following concerning ITF's acquisition and management of the abandoned railroad right-of-way from milepost marker I-57.2 at or near Kokomo and milepost I-95.6, south of Rochester ("Former Nickel Plate Line") that is subject to this Board's Decision¹:

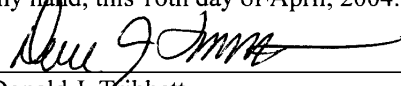
¹ With the exception of that portion deemed abandoned between mileposts I-72.7 and I-75.5 as stated by Norfolk Southern Corp. in its February 17, 2004 letter, filed February 20, 2004, and as noted by the Board in the March 10, 2004 Decision.

- a. In 1994, ITF was formed for the purpose of acquiring former railroad rights-of-way and converting those rights-of-way to recreational trail use;
- b. Mr. Vonnegut has been President of ITF from the time of its inception;
- c. Mr. Vonnegut has personally selected those who serve on the ITF board, and there are no means for a person to achieve a decision-making position within ITF unless that person is invited to do so by Mr. Vonnegut.
- d. ITF received any title or interest then held by Norfolk & Western on the Former Nickel Plate Line through a Quit Claim deed dated January 21, 1999;
- e. The ITF denies it has any obligations to maintain proper drainage along the Former Nickel Plate Line and has not taken any steps to maintain such drainage;
- f. Other than putting up signs warning of road crossings, ITF has done nothing to ensure security along the Former Nickel Plate Line;
- g. The ITF denies it has any obligation to maintain safe and secure private crossings;
- h. The ITF denies it has any obligation to maintain or control weeds along and inside the Former Nickel Plate Line and has done nothing to control or eliminate such weeds. In fact, Mr. Vonnegut testified that he has no knowledge of the problems that might be caused to adjoining landowners,

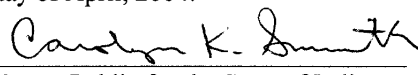
including farmers, by the uncontrolled growth of weeds on the Former Nickel Plate Line;

- i. The ITF has never adopted a budget for trail maintenance on the Former Nickel Plate Line. For the years 2001 and 2003, Mr. Vonnegut drafted a budget but never finalized any budget, and no budget was ever approved by the ITF's Board members concerning this Former Nickel Plate Line;
- j. During the years in which ITF purportedly exercised control over the Former Nickel Plate Line it has spent no money for weed control or trash pick-up on this right-of-way; and,
- k. ITF has taken virtually no action to prevent those using the Former Nickel Plate Line property from trespassing on adjoining private properties.
- l. ITF believed that, as of the deposition of Mr. Vonnegut, it had already obtained a Notice of Interim Trail Use for the northern segment of the Former Nickel Plate Line by reason of the Board's decision served May 14, 1996. Mr. Vonnegut essentially admitted that, without a NITU for the northern segment, its claim against Hoover is meritless.

IN WITNESS HEREOF, I have hereunto set my hand, this 16th day of April, 2004.


Donald J. Fribbett

Sworn to and subscribed before me this 16th day of April, 2004.


Notary Public for the State of Indiana

