

Public Records Request #2104

The following materials have been gathered in response to public records request #2104. These materials include:

- Letter from Norfolk Southern to John M. Lewis, Jr. – February 21, 2018

This information was provided as a response to a public records request on 3/21/19 and is current to that date. There is a possibility of more current information and/or documents related to the stated subject matter.

Further Information

For further information about this request or the Citywide Records Program, please contact:

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February 21, 2018

Via email only

John M. Lewis, Jr.
Chief Executive Officer
City of Charlotte – Charlotte Area Transit System
600 East Fourth Street – 9th Floor
Charlotte, NC 28202

Re: Proposed Passenger Projects

Dear Mr. Lewis: 

First, I want to thank you for our close working relationship over the past couple of years. It has always been a pleasure.

I wanted to send our recently updated our 2013 passenger planning policy principles. You will note that nothing has changed in the principles – only the final two bullet points have been updated to address wording issues.

These passenger planning policy principles will guide our review of any new passenger initiative. They protect the safety of Norfolk Southern employees and communities, service to our freight customers, and the right-of-way and land needed to fulfill our freight transportation mission.

Please feel free to distribute this document to those who may be involved in progressing passenger initiatives in North Carolina. I am also happy to provide a separate policy that applies to the design and construction of passenger stations, should that be relevant.

As always, three primary conditions must be satisfied for NS to consider a passenger project. First, public and employee safety must be maintained or improved. Second, NS must model the configuration and effects of the proposed project, a process that can take several years. And third, any project – like our freight business – must provide a return for our stockholders. It is helpful to understand that the availability of project funding and an operational feasibility study are not the end of the discussion, but rather the beginning. Therefore, we always urge planning well in advance of when funding could become available.

Sincerely,


John Edwards

GENERAL PRINCIPLES GUIDING
NORFOLK SOUTHERN'S EVALUATION OF
INTERCITY AND COMMUTER PASSENGER RAIL
PROPOSALS

The following principles are a guide for planners of intercity and commuter rail proposals when working with Norfolk Southern. Of course, each proposal necessarily is unique, and NS' application of the principles to particular proposals will often be unique as well.

Safety is our paramount concern. Design, maintenance practices, and operating patterns always will emphasize safety.

An operational feasibility study is necessary to fully understand all potential impacts.

- The proposed passenger operation must create “transparency” in the affected rail system. Transparency is the capacity for passenger trains and freight trains to operate without delay, however minimal, to each other, while still allowing for route maintenance.
 - Passenger projects are meant to be successful, so the study will focus on the proposal's full-build scenario versus any interim plan. Along the same lines, freight volumes will grow, so any study will anticipate future freight levels.
 - Freight operations are long distance and customer-driven, which precludes “passenger only” operating windows and temporal separation such as night-time-only freight operations.
 - Passenger projects might cause “network effects” on the NS system that are broader than the project area. Often, the studied geographic scope will have to be larger than the passenger project area in order to identify and address these effects.
 - Project costs associated with compliance with Federal Railroad Administration regulations are the responsibility of the project sponsor.
- The rail environment changes. Conditions attached to various forms of funding differ. Therefore, until funding is available, any passenger study is necessarily hypothetical.
 - A completed operational feasibility study by NS is a prerequisite to progress a project. NS will support only passenger project requests that have been fully studied and modeled.
 - As the transportation industry is dynamic, any proposal that does not secure funding cannot be shelved for future use – each proposal is unique, requiring its own up-to-date study.
 - Sometimes public funding comes with special conditions and requirements (including so-called “service outcome requirements”), which represent additional costs. Just as NS does not customarily agree to similar guarantees with our freight customers, the public sponsor will be responsible for any passenger guarantees.
 - It is possible that public funding may be taxable to Norfolk Southern, so the public sponsor must indemnify Norfolk Southern for any income taxes paid or incurred as a result of the receipt of public funding.

- NS will coordinate the operational feasibility study. The cost of the study (including NS' time) is the responsibility by the sponsoring public agency. For planning purposes, NS can estimate study costs in advance. Studies are detailed and specific and take a year, and often longer, to complete.

NS will receive fair compensation for use of its transportation corridors.

- NS' corridors consist of track and right-of-way that might, or might not, be fully utilized at any given time. As rail traffic flows change over time, this capacity, and the flexibility and potential it represents, is a key NS asset.
- Amtrak has certain statutory intercity passenger service access rights and therefore is not a good example to use in determining the fair and commercial price for use of NS assets.
- In determining a fair price for use of assets, NS will factor in any new equipment (including Positive Train Control) and costs, as well as additional property and other taxes, that would not be incurred absent passenger service.

New and expanded passenger operations require adequate liability protection.

- Passenger operators must compensate or indemnify NS for additional risk created by passenger projects, and any such indemnification needs to be backed up by an adequate level of insurance.
- Liability issues can create major hurdles. Often, sovereign immunity issues must be overcome. The cost to the passenger carrier for insurance and indemnification is substantial, as borne out by our experience with commuter authorities.

Special considerations are necessary for high speed rail service and corridors.

- Norfolk Southern is pleased to assist states planning for dedicated HSR and will work with planners to insulate those corridors from interference with and from NS freight corridors.
- Passenger trains operating in excess of 79 mph require their own dedicated tracks. Passenger trains operating in excess of 90 mph require their own private right-of-way.
- Where higher-speed trains share tracks with conventional freight trains, they will be able to reach 79 mph maximum. Where shared track is concerned, higher-speed trains must meet the same safety standards as conventional trains.

Special considerations are necessary for light rail service.

- Light rail service involves use of equipment that is not appropriate for use on NS tracks. Physical separation is required.
- Proposals for operating "non-compliant" passenger equipment (equipment that does not meet Federal Railway Administration standards) in joint operations with freight trains are not viable.
- Light-rail and non-compliant project sponsors should approach NS early in the process so that NS can advise if any of the project elements are compatible with freight trains and track.