

United States Department of the Interior
Bureau of Land Management
Northeastern States District
LLES003420

Draft Environmental Assessment
DOI-BLM-ES030-2015-0013-EA
Rails to Trails Conveyance
Macon County, Illinois

Date: April 2015

Type of Action: Railroad Right-of-Way Conveyance under the Rails to Trails Act

Serial Number: ILES-057666

Location: Macon County, Illinois
4th Principal Meridian, Illinois
Township 17 North, Range 2 East,
Section 14

Project Acreage: 18 acres, more or less

Date of Application: September 6, 2013

Proponent: Village of Forsyth
301 South Route 51
Forsyth, Illinois 62535

Bureau of Land Management, Northeastern States District
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MISSION STATEMENT

It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

1.0 INTRODUCTION

This Environmental Assessment (EA) has been prepared to analyze and disclose the site specific environmental impacts of conveying an abandoned railroad (RR) right-of-way (ROW) to the Village of Forsyth, Illinois pursuant to the 1988 amendment of the National Trails System Act (16 U.S.C. 1248) known as the Rails to Trails Act. The Village of Forsyth applied to the Bureau of Land Management (BLM) to acquire the abandoned RR ROW within their municipality for recreational trail purposes.

1.1 BACKGROUND

The BLM Northeastern States District (NSD) received an application from the Village of Forsyth, Illinois on September 6, 2013 to acquire a 200 foot wide RR ROW that was abandoned by the Illinois Central Railroad (ICR) within municipal boundaries. The ROW was granted by an Act of Congress dated September 20, 1850 (9 Stat 466) (Act) entitled “An Act granting the Right of Way, and making a Grant of Land to the States of Illinois, Mississippi, and Alabama, in Aid of the Construction of a Railroad from Chicago to Mobile.” The 1850 Act, granting land to the State of Illinois for the construction of a railroad, provided a “limited fee” ownership in the 200 foot wide RR ROW and it reserved a right of reversion to the United States if the ROW was no longer used for RR purposes. ICR abandoned its operations in the Village of Forsyth, and upon abandonment the RR ROW within the following land reverted to the Federal government and became subject to disposition under Federal RR ROW regulations:

4th Principal Meridian Illinois
Township 17 North, Range 2 East, Section 14

ICR abandoned operations of its line traveling through the Village in accordance with Interstate Commerce Commission (ICC) regulations. ICR filed a Notice of Exemption with the ICC under regulations at 49 Code of Federal Regulations (CFR) 1152 subpart F-Exempt Abandonment, for a 10.5 mile stretch of railroad line between milepost 755.20 at Forsyth and milepost 765.70 at Maroa in Macon County, Illinois. The Notice of Exemption was published in the *Federal Register* on June 26, 1990 (55FR 26270) and the abandonment became effective July 27, 1990. ICC was later succeeded by the Surface Transportation Board (STB) who maintains all previous records of the ICC.

The Village of Forsyth applied to the BLM to acquire the portion of the 10.5 mile abandonment that is located within the municipality between East Schafer Street and East Weaver Road. The Village proposes to use the RR ROW as a community trail and for other public purposes that are not incompatible with its use for recreation.

1.2 PURPOSE AND NEED OF PROPOSED ACTION, DECISION TO BE MADE

Purpose of Proposed Action

The purpose of the proposed action is to meet the needs of state or local governments or municipalities for public lands required for recreation and other public purposes through the conversion of abandoned RR ROWs for trail use under appropriate laws and regulations.

Need for Proposed Action

The BLM's need for the proposed action is to respond to an application from the Village of Forsyth, Illinois to acquire land within an abandoned RR ROW for recreational purposes.

Decision to be made

Based on the information provided in this EA, the District Manager of the BLM NSD as the Authorized Officer will decide whether a finding of no significant impact can be made regarding the conversion of a RR ROW into a trail for public recreation. If a finding of no significant impact is made, the District Manager will decide whether to convey the reverted land within the abandoned RR ROW to the Village of Forsyth.

1.3 CONFORMANCE WITH BLM LAND USE PLAN

The proposed action is in conformance with the Illinois Planning Analysis and Record of Decision dated September 30, 1987 that calls for the disposal of all remaining Illinois lands and additional lands that may be discovered in the future. The Planning Analysis authorizes land adjustments through the Federal Land Policy and Management Act of 1976 (FLPMA) and other public laws with the objective of improving management of public values and resources. The authority for the conveyance of the RR ROW is the 1988 Amendment to the National Trails Systems Act.

1.4 RELATIONSHIPS TO STATUTES, REGULATIONS AND OTHER PLANS

This EA is prepared pursuant to the National Environmental Policy Act (NEPA) and subsequent regulations adopted by the Council on Environmental Quality (40 CFR §1500). The EA is intended to be a concise public document which analyzes the probable and known environmental impacts of the proposed action and the alternative(s) upon the components of the human environment and reaches a conclusion as to their significance. The ultimate decision of this EA must ensure that the actions approved are not only in the best interest of the public, but would not result in a significant impact to the human environment (40 CFR §1508.13).

The RR ROW proposed for conveyance was established by an Act of Congress dated September 20, 1850 (9 Stat 466) (Act) entitled "An Act granting the Right of Way, and making a Grant of Land to the States of Illinois, Mississippi, and Alabama, in Aid of the Construction of a Railroad from Chicago to Mobile". The Act provided a grant to the State of Illinois to aid in the construction of the RR ROW that was built through the Village of Forsyth. Federal courts in *United States v. Illinois Cent. R. Co.* (E.D.iii.1949), 89 F. Supp. 17, 23 and *United States v. Illinois Centr. R. Co.* (7th Cir. 1951), 187 F.2d 374, 375, and the Supreme Court in *Illinois Central R.R. Co. v. Illinois* (1892), 146 U.S. 387, 444, 36 L. Ed. 1018, 1039, 13 S. Ct. 110, 115 have determined that the 1850 Act of Congress is a limited fee grant subject to an implied condition of reverter if the right-of-way ceases to be used or retained for railroad purposes. When the RR ROW was abandoned by ICR, the land within the ROW reverted to the United States.

Federal regulations at 43 U.S.C. § 912 (1988) (Railroad Right-of-Way Abandonment Act of 1922) established public policy for the disposition of abandoned railroad grants. The statute states that when a right-of-way has been granted to a railroad company and its use for railroad purposes cease, then all right, title and interest in the lands not embraced in a public highway within one year, would be conveyed to the adjacent landowners, except those lands within a municipality, the title to which would vest in the municipality. 43 U.S.C. 912 was modified in 1988 by the National Trails System Improvement Act, 16 U.S.C. 1248 (c). As of October 4, 1988, the date of the enactment of the Act, all right, title, interest and estate in abandoned RR ROWs reverts to the United States and not adjacent landowners or municipalities.

The National Trails System Improvement Act of 1988, which has become known as the Rails to Trails Act, authorizes the Secretary of the Interior where appropriate to release and quitclaim to a unit of government for trail and recreation purposes, all right, title and interests in the surface estate of a right-of-way reverted to the United States of the type described in 43 U.S.C. 912 (Act of March 8, 1922). The National Trails System Improvement Act at 16 U.S.C. 1248 (e)(1) states that:

The Secretary of the Interior is authorized where appropriate to release and quitclaim to a unit of government or to another entity meeting the requirements of this subsection any and all right, title, and interest in the surface estate of any portion of any right-of-way to the extent any such right, title, and interest was retained by the United States pursuant to subsection (c), if such portion is not located within the boundaries of any conservation system unit or National Forest. Such release and quitclaim shall be made only in response to an application therefor by a unit of State or local government or another entity which the Secretary of the Interior determines to be legally and financially qualified to manage the relevant portion for public recreational purposes.

Abandonment procedures for the disposition of a RR ROW grant under the Railroad Right-of-Way Abandonment Act of 1922 (43 U.S.C. 912) required two procedures: 1.) the RR must cease use and occupancy of the RR ROW under appropriate regulations, and 2.) abandonment was declared or decreed by an Act of Congress or by a court of competent jurisdiction. This generally held interpretation of 43 U.S.C. 912 that required a decree of abandonment in a court of competent jurisdiction was found to be an unnecessary requirement by the U.S. Court of Appeals for the 7th Circuit in *Johnson v. Bayfield County*, 649 F.3d 799 (7th Cir. 2011). In the Court's opinion, abandonment of a RR ROW did not require either an Act of Congress or judicial declaration of abandonment. Based on the decision in *Johnson v. Bayfield County*, the process to consider the conveyance of the abandoned RR ROW to the Village of Forsyth will not include a separate court action to declare the RR ROW abandoned. The RR was approved for abandonment by the ICC effective July 27, 1990.

1.5 SCOPING AND PUBLIC INVOLVEMENT

Scoping is an important part of the NEPA process that determines key issues related to a proposed action (40 CFR §1500.7). Scoping can involve federal, state, and local government agencies, tribal governments, resource specialists, industry representatives, local interest groups,

and other members of the public. Initial scoping for the EA was limited to an internal review by the Interdisciplinary Team.

1.6 IDENTIFICATION OF ISSUES

Key issues defined by the Interdisciplinary Team are those that 1) drive the analysis of environmental effects; 2) prescribe or necessitate the development of mitigation measures; and/or 3) drive the development of additional project alternatives. These issues are carried forward for analysis in Chapter 3.0 of the EA. Only one key issue was identified by the Interdisciplinary Team:

- Would conveying the RR ROW out of Federal ownership to the Village of Forsyth impact current land use(s) and the environment?

2.0 DESCRIPTION OF ALTERNATIVES INCLUDING THE PROPOSED ACTION

2.1 PROPOSED ACTION

The Village of Forsyth proposes to acquire the abandoned RR ROW located on the east side of their community for use as a walking trail and for other public purposes that are not incompatible with its use for recreation. The existing 200 foot wide RR ROW was used for RR transportation for well over one-hundred years between 1850 and 1990. Since ICR abandoned operations, the RR bed has been unofficially used for trail purposes by the local community. The Village would like to add the former RR ROW to their network of multi-use walking and biking trails that interconnects residents with services in the small two square mile area community. The Village would maintain the existing trail and they would permit the use of utility services where needed within the RR ROW to allow for community expansion. A local utility would like to locate a transmission line near the RR ROW and the Hickory Point Fire Protection District would like to lease 25 to 30 feet of the RR ROW behind the existing Fire Department for the construction of a new training and community building.

The Village of Forsyth passed Ordinance Number 893 on October 7, 2013, dedicating the use of the RR ROW for recreational purposes as a walking trail and for other public purposes not incompatible with its use for recreation. Ordinance 893 committed to providing the necessary funding for the development of the trail. The Village of Forsyth is legally and financially qualified to manage the former RR ROW for public recreation purposes. As part of their application, the Village provided a copy of Section 2-3-8 of the Illinois Municipal Code demonstrating the Village's authority to acquire and hold real property.

If a decision is reached to convey the surface estate of the RR ROW to the Village of Forsyth, a quitclaim deed will be issued with the following conditions required by the Rails to Trails Act:

“(A) If such unit or entity attempts to sell, convey, or otherwise transfer such right, title, or interest or attempts to permit the use of any part of such portion for any purpose incompatible with its use for public recreation, then any and all right, title, and interest

released and quitclaimed by the Secretary pursuant to this subsection shall revert to the United States.

“(B) Such unit or entity shall assume full responsibility and hold the United States harmless for any legal liability which might arise with respect to the transfer, possession, use, release, or quitclaim of such right-of-way.

“(C) Notwithstanding any other provision of law, the United States shall be under no duty to inspect such portion prior to such release and quitclaim, and shall incur no legal liability with respect to any hazard or any unsafe condition existing on such portion at the time of such release and quitclaim.

The conditions required by the Rails to Trails Act protect the United States from liability related to the transfer of ownership and any hazardous or unsafe conditions of the ROW. Use of the RR ROW will be restricted to trail and recreational use and other public uses not incompatible with its use for recreation.

2.2 NO ACTION ALTERNATIVE

Under a No Action Alternative the BLM would not convey the RR ROW for recreational trail and other public purposes to the Village of Forsyth. The land would not be acquired by the Village of Forsyth and the trail would not be maintained and improved for increased recreation and community service opportunities. Retaining the RR ROW in Federal ownership may require the BLM to respond to future applications for improved public services within Forsyth. The infrastructure within the Village is expanding and future improvement projects may impact the RR ROW that crosses through the length of the community.

2.3 ALTERNATIVES CONSIDERED BUT ELIMINATED FROM FURTHER ANALYSIS

Disposition of the RR ROW under the Federal Land Policy and Management Act (FLPMA) of 1976 in accordance with 16 U.S.C. 1248 (e)(2) of the National Trail Systems Improvement Act, could have been considered but only after a unit of State or local government was given an opportunity to seek to obtain the RR ROW pursuant to paragraph (1) of this subsection of the Act. Paragraph (1) of this subsection of the Act is the proposed action for this EA. The Village of Forsyth was given the opportunity to purchase the RR ROW in accordance with 16 U.S.C. 1248 (e)(2) but chose to request the conveyance under 16 U.S.C. 1248 (e)(1). Disposal under the sale authority of FLPMA does not provide the hazardous materials protections of a conveyance under regulations at 16 U.S.C. 1248 (e)(1).

The Recreation and Public Purpose (R&PP) Act (43 U.S.C. 869, et seq.) was not considered for disposal or conveyance of the RR ROW because the Act does not apply in situations where the use can be authorized by any other law, and in this case, 16 U.S.C. 12488 (e)(1) provides the authority to convey the RR ROW to the Village of Forsyth.

3.0 AFFECTED ENVIRONMENT - GENERAL DESCRIPTION

The Village of Forsyth is located in the center of Illinois at the crossroads of I-72 and U.S. Route 51, in the County of Macon. The Village is known for its strong schools and park system that is connected through an ever expanding trail system. The community strives to provide a high quality of life with well-planned community development. Residents can easily commute to jobs at major employers and universities throughout the larger Decatur Metropolitan area while enjoying the benefits of a small town atmosphere.

Development in and around the Village of Forsyth began when the RR and its stations were constructed through Macon County in 1854. At that time, the RR represented the eastern boundary of the Village, but as Forsyth has expanded beyond a rural RR community to a residential community of 3,490 residents in 2010, it has become part of a larger metropolitan area that centers around Decatur, Illinois. In general, income earnings and per capita household incomes in Forsyth exceed that of other communities within the county. Forsyth has become a highly desirable place to live and this has resulted in the need for increasing infrastructure to meet the needs of a growing community. Parks, open space and trails are an integral part of the community's expansion and the RR ROW along the eastern expansion of the city is central to the expansion of existing trails in areas of new development.

The existing RR ROW consists of a flat compacted soil railroad bed with no vegetation bordered in areas by trees. The rails, ties and supporting structures were removed by ICR prior to their request to abandon the line. The railroad bed was constructed in 1854 and exposed to the impacts of RR transportation through 1990. Since then it has been used as an unofficial trail by the local community. The Village of Forsyth will incorporate the RR ROW into their community trail system and improve the trail consistent with the character of other trails. The area was disturbed during initial construction in the 1800's and has been continually impacted by transportation uses through the years. The use of the RR ROW bed for trail purposes by the Village of Forsyth is a continued historical use of the land for transportation.

3.1 LAND USE

The compacted railroad bed of the 200 foot-wide RR ROW through the Village of Forsyth has been used as a walking trail by area residents since RR operations were abandoned approximately 25 years ago. If the RR ROW is conveyed to the Village of Forsyth, the community will continue to use the RR bed for trail use. A conveyance document transferring the RR ROW to the Village of Forsyth would restrict its future use to recreational trail use and other public purposes not incompatible with recreation. The land may also be used to extend public utilities across the RR ROW. In the event that the land was used for any purpose other than recreation and other public purposes not incompatible with recreation, the RR ROW would revert back to the Federal government in accordance with the conditions of the conveyance document.

The impact of hazardous material releases and liability resulting from the historical use of the land for RR transportation has not been evaluated as part of this analysis because the Federal government is under no obligation to inspect or incur any liability for hazardous or unsafe

conditions existing within the RR ROW per the terms and conditions of a conveyance under the National Trail Systems Improvement Act. The Village of Forsyth by accepting a quit claim deed for the RR ROW under this Act, accepts all liability and responsibility for hazardous or unsafe conditions. 16 U.S.C. 1248 (e)(1)(C) states that:

Notwithstanding any other provision of law, the United States shall be under no duty to inspect such portion prior to such release and quitclaim, and shall incur no legal liability with respect to any hazard or any unsafe condition existing on such portion at the time of such release and quitclaim.

The proposed action is expected to result in the maintenance and improvement of the trail's surface using added materials such as mulch, gravel, or pavement. None of these options would impact vegetation, or drainage and runoff patterns of the ROW since the trail is already devoid of vegetation and already contoured to shed water.

The use of the land for expanding the Hickory Point District Fire Station would not result in the clearing of any vegetation and is not expected to have any impacts on endangered bats (Indiana bat *Myotis sodalists*) and northern long-eared bat (*Myotis septentrionalis*) which roost and feed in and among trees.

3.2 RESOURCES ELIMINATED FROM ANALYSIS

The following human environment/resource elements were reviewed and determined to be either not present or not affected by the proposed action to convey the RR ROW to the Village of Forsyth for continued trail use. No additional ground disturbance has been proposed to maintain the RR ROW as a walking trail. No sensitive or unique resource values were identified. The following elements will not be discussed further in this document.

- Fish Habitat
- Forests and Rangelands
- Migratory Birds
- Native American Religious Concerns
- Threatened or Endangered Species
- Environmental Justice/Socioeconomics
- Farm Lands, Prime or Unique
- Wastes, hazardous or solid
- Water Quality; Drinking/Ground
- Wild and Scenic Rivers
- Wilderness/WSAs/ACECs
- Air Quality
- Global Climate Change
- Paleontology
- Range / Livestock Grazing
- Recreation / Visual Resource Management
- Sensitive Status Plants
- Wetlands/Riparian Areas/Floodplains
- Cultural Resources
- Wildlife

4.0 ENVIRONMENTAL EFFECTS

4.1 LAND USE

PROPOSED ACTION

Conveying the RR ROW to the Village of Forsyth under the Rails to Trails Act for trail purposes will not result in any new environmental impacts to the environment and surrounding land. The land was disturbed when constructed and used for RR purposes for over one hundred years, and improvement for continued use for transportation as a trail and for other public purposes will only impact already disturbed land.

NO ACTION

Retaining the RR ROW in Federal ownership would prevent its incorporation into the community's network of maintained trails. Retaining the RR ROW may also require direct as opposed to custodial BLM management of the land as Federal surface because it is located within an area of the community that needs to address expanding public services. The BLM would be responsible for authorizing appropriate uses of the Federal land for transmission ROWs and other appropriate public purposes that are granted under the public land laws. Granting land use authorizations across reverted RR ROWs has not been a workload previously addressed by the BLM within Eastern States where the majority of the limited fee RR ROWs were constructed. The potential workload associated with these types of RR ROWs would need to be addressed in future workload planning efforts if the land remains in Federal ownership.

5.0 CUMULATIVE AND RESIDUAL EFFECTS

Because there are no direct impacts (section 4.0), there are no cumulative impacts.

6.0 CONSULTATION AND COORDINATION

Name	Purpose & Authorities for Consultation or Coordination	Findings & Conclusions
Jeffrey R. Jurgens Village Attorney	Determine eligibility of the Village to acquire the RR ROW under the Rails to Trails Act	Adequate documentation and an application were filed on behalf of the Village.
Peter Brauer, National Archives and Records Administration	Identification of original railroad right-of-way documentation	NARA records determine that the railroad constructed through the Village of Forsyth was granted by the Act of Congress dated 1850.
Art Spiros, IC Manager Land Sales and Strategic Projects	Determine location of mileposts in relation to the Village of Forsyth and determine if ICR asserts any interest in the RR ROW.	Rail Line segment through Forsyth is part of the charter line abandoned by ICR and it is uncontested, map provided.
David Kruschwitz, Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and	Determine whether RR ROW was administratively abandoned according to regulations	Provided copy of Federal Register Notice that identified the segment abandoned through the Village of Forsyth

Compliance, 202-245-0239		
Dylan Fuge, Attorney-Advisor, Office of the Solicitor, Division of Land and Water Resources	Is a decree in a court of competent jurisdiction required for a conveyance under the Rails to Trails Act.	The 7 th Circuit Court decision in <i>Johnson v. Bayfield County</i> (649 F.3d 799) held that a decree of abandonment as required by 43 U.S.C. 912 is not required.
Katherine J. Barton, Attorney, U.S. Department of Justice	Does the Supreme Court Decision in Brandt change anything with respect to non-1875 Act Railroad Grants	The Brandt decision did not change the administration of pre- 1875 Act Railroad Right-of-Way grants.

List of BLM Preparers

Name	Title	Responsible for the Following Section(s) of this Document
Carol Grundman	Realty Specialist, Preparer	Proposed Action, Purpose and Need, Conformance with Land Use Plans, Relationship to Statues and Regulations, Proposed Action and No Action Alternative, Land Use
Kurt Wadzinski	Planning and Environmental Coordinator, Editor	Document Review, Socioeconomics and Environmental Justice
Derek Strohl	Natural Resources Specialist	Threatened and Endangered Species; Fish and Wildlife; Invasive Species/Noxious Weeds; Threatened, Endangered or Candidate Animal Species/Migratory Birds; Wetlands/Riparian Zones; Vegetation; Air and Water Quality; Farmlands; Floodplains; Soils; Hazardous Wastes, Recreation
Jarrod Kellogg	Archeologist	Cultural Resources, Native American Religious Concerns, Paleontology

7.0 LITERATURE CITED

Forsyth Comprehensive Plan adopted by the Village Board on August 6, 2012, Ordinance Number 858.

Village of Forsyth, Ordinance Number 893, An Ordinance Authorizing the Acceptance of a Quitclaim Deed for the Illinois Central Railroad Right-of-Way and Dedication it Use for Public Recreational Purposes.

Preparer

Date

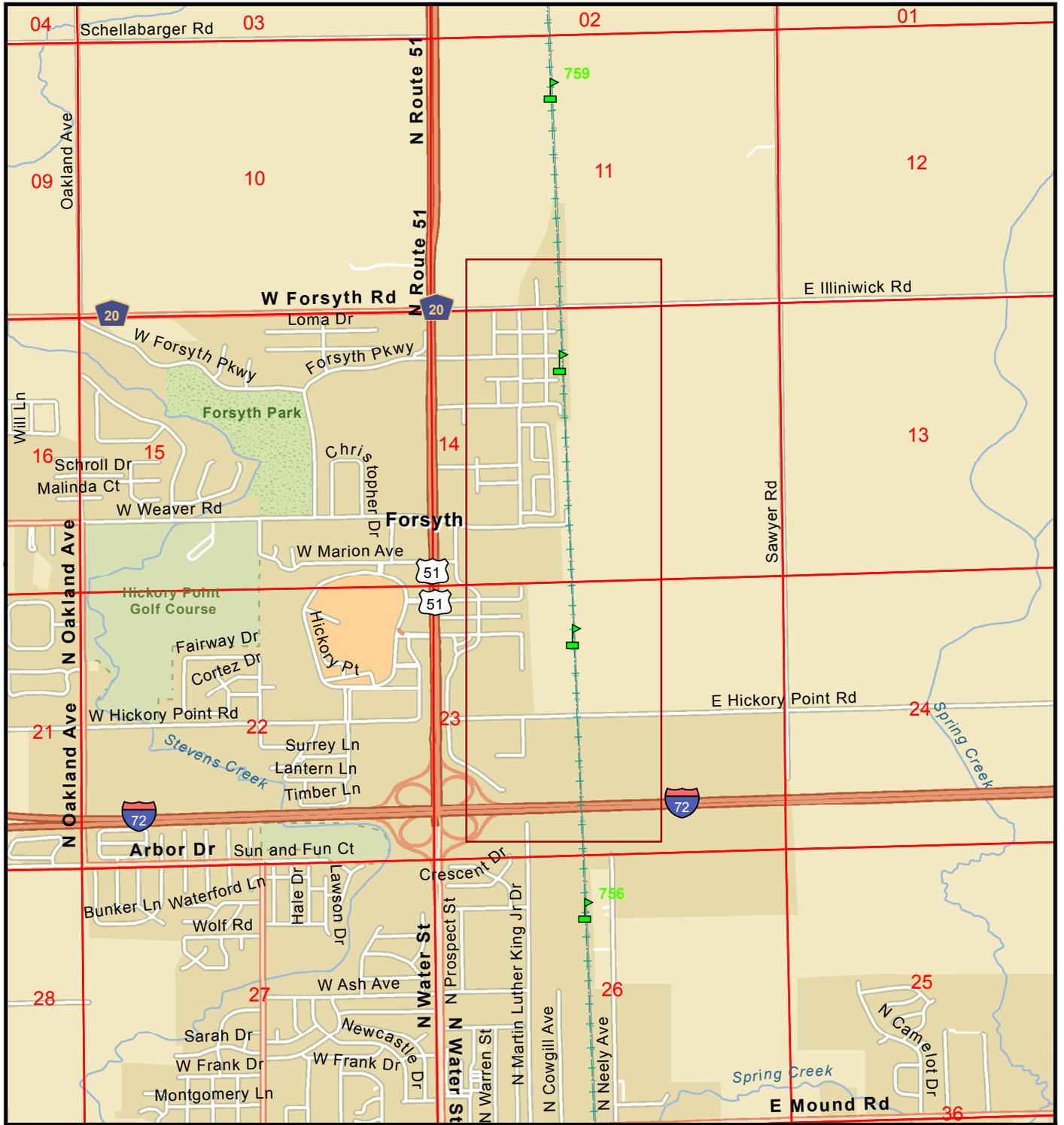
Planning & Environmental Coordinator

Date

Associate District Manager

Date

Appendix A
MAPS



**Abandoned IL Central Track at Forsyth IL
Parcel Information Request
E. Shafer St. to I72**

-  Forsyth Mile Markers
-  IL Central Track
-  Parcel Area

0 0.25 0.5
Miles

