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October 14, 2020

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E-Filing

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

ENTERED
Office of Proceedings
October 14, 2020
Part of
Public Record

Re: Norfolk Southern Railway Company – Abandonment Exemption – In Bergen County, New Jersey, AB-290 (Sub-No. 407X)

Dear Ms. Brown:

Pursuant to 49 C.F.R. Part 1152, Subpart G –Special Rules Applicable to Petitions for Abandonments Filed Under the 49 U.S.C. 10502 Exemption Procedure, enclosed is a petition for exemption by Norfolk Southern Railway Company (“NSR”) to abandon rail service over an approximately 1.2-mile rail line, extending from Milepost UQ 9.0 to Milepost UQ 10.2, in Bergen County, New Jersey (the "Line").

Pursuant to 49 C.F.R. § 1152.60(c), this submission also includes an electronic copy of the entire petition and a separate electronic file of the draft Federal Register notice. Finally, pursuant to 49 C.F.R. § 1002.2(f)(21)(iii), the filing fee of \$8,100.00 has been paid via pay.gov.

If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com or William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,

FEE RECEIVED
October 14, 2020
SURFACE TRANSPORTATION BOARD

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh
Attorney for Norfolk Southern Railway Company

Enclosures
cc: Hanna Chouest, Laura Hoag

FILED
October 14, 2020
SURFACE TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN BERGEN COUNTY, NEW JERSEY**

PETITION FOR EXEMPTION

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October 14, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN BERGEN COUNTY, NEW JERSEY**

PETITION FOR EXEMPTION

INTRODUCTION

Pursuant to 49 U.S.C. § 10502 and rules applicable thereto at 49 C.F.R. parts 1121 and 1152, Norfolk Southern Railway Company (“NSR”), a Class I railroad common carrier, files this petition (“Petition”) seeking an exemption from the provisions of 49 U.S.C. § 10903, et seq. to abandon an approximately 1.2-mile rail line, extending from Milepost UQ 9.0 to Milepost UQ 10.2 in Bergen County, New Jersey (the “Line”). Through the Petition, NSR is also seeking an exemption from Section 10904 to facilitate the sale of the real estate underlying the Line to Open Space Institute Land Trust, Inc. (“OSI”) for public use.¹ Pursuant to an executed purchase and sale agreement, NSR upon receiving abandonment authority and consummating the authority granted will convey the right of way to OSI with the Line’s rail and track materials intact. In the future, OSI in partnership with Bergen County, New Jersey plans to redevelop the Line, create greenways, and provide for alternative modal access to points located along the Line. Bergen County, New Jersey, or its contractor will be responsible for salvaging should it occur in the future. No traffic

¹ OSI is pursuing redevelopment of the Line on behalf of Bergen County, New Jersey.

has moved over the Line in over two decades.² Given that the Line is needed for a valid public purpose and there is no current traffic on the Line or even the potential for new traffic, an exemption from the Section 10904 Offer of Financial Assistance (“OFA”) statute is appropriate.³

I. INFORMATION IN SUPPORT OF PETITION

The Line traverses the United States Postal Zip Code territories 07070 and 07073. Based on information in NSR’s possession, the Line does not contain federally granted rights-of-way. Any documentation in NSR’s possession will be made available to those requesting it.

NSR is seeking an exemption to abandon the Line because the Line has been dormant for over two decades and Bergen County has asked that NSR sell the Line to OSI and ultimately to Bergen County, so that the Line may be used for a public redevelopment project. As explained herein, the Petition satisfies the statutory criteria for abandonment and for an exemption from Section 10904 and should be granted for numerous reasons.

- Abandonment is consistent with the provisions of 49 U.S.C. § 10502 because (a) application of the Board’s formal abandonment process is not necessary to carry out the Rail Transportation Policy (“RTP”) of 49 U.S.C. § 10101; (b) the proposed action is of limited scope, and (c) given that there has been no traffic over the Line for more than two decades, regulation is not necessary to protect shippers from an abuse of market power;

² NSR has served no customers on the Line since it acquired the property from Conrail in 1999. As such, the Line, which is dormant qualifies for abandonment under the verified notice of exemption process set forth in 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances of Service and Trackage Rights). However, NSR is also requesting an exemption from Section 10904 as part of this filing. Therefore, to avoid any procedural questions, NSR is utilizing the petition for exemption process for both its request for abandonment authorization and its request to be exempted from 49 U.S.C. § 10904.

³ See Norfolk Southern Railway Company – Abandonment Exemption – In Hamilton County, OH, AB-290 (Sub-No. 381X) (STB served Aug. 8, 2016) (granting NSR’s request for an OFA exemption because NSR demonstrated that the rail line was needed for a public purpose and there was no overriding public need for continued freight rail service). See also Union Pacific Railroad Company-Abandonment Exemption – In Pima County, AZ (“Pima County”), AB 33 (Sub-No. 141X), slip op. at 3 (STB served Feb. 16, 2000) (granting an exemption from 10904 because applicant established that the right-of-way was needed for a valid public purpose and there was no overriding public need for continued rail service). See also Central Kansas Railway, L.L.C. – Abandonment Exemption – In Sedgwick County, KS (“Central Kansas”), AB 406 (Sub-No. 14X) (STB served April 10, 2001). Here, there is clearly no public need for continued rail service, and similar to the aforementioned proceedings the rail line is needed for a valid public purpose.

- The real estate underlying the Line is needed for public use and abandonment would facilitate Bergen County's urban development plans, by creating greenways and providing for alternative modal access to various sites located along the Line, which would promote economic growth in the region;
- Abandonment will not deprive any shipper of rail service; and
- Abandonment allows NSR to avoid continuing to incur opportunity and other holding costs associated with ownership of an active rail line with no traffic.

MAP AND EXHIBITS

A map of the Line is attached as Exhibit A. A draft Federal Register notice is attached as Exhibit B, and the certifications of compliance with 49 C.F.R. §§ 1105.12 and 1152.60(d) are attached as Exhibit C. Exhibit D includes a combined E&HR prepared in anticipation of the proposed abandonment, which conforms to the requirements of 49 C.F.R. §§ 1105.7 and 1105.8 and the certificate of compliance with the advance notice requirements for an E&HR as set forth at 49 C.F.R. § 1105.11.

INFORMATION CONCERNING LINE'S HISTORY & USAGE

As explained fully in the E&HR (Exhibit D), the Line was originally part of the Paterson and Hudson River Rail Road ("P&HR"), which was incorporated with an initial capital stock of two hundred and fifty thousand dollars by the State of New Jersey on January 21, 1831. It was New Jersey's second-oldest incorporated railroad company and one of the nation's earliest operating rail lines. The P&HR also facilitated the first direct rail connection to Jersey City, opposite New York City, and formed the oldest segment of the Erie Railroad system (New Jersey State Legislature 1831: 24; Clayton 1882: 88; Cunningham 1997:49).

Construction began in Paterson on July 4, 1831, and initially reached as far as the community of Aquackanonk (present-day Passaic), a busy landing point located at the head of navigation on the Passaic River (Clayton 1882: 377; Lucas 1944: iii). The first horse-drawn train traversed the completed segment on May 31, 1832, and formal operations began on June 22,

1832 (Cunningham 1997: 51; Clayton 1882: 88). This allowed commerce to operate via boats and stagecoaches while construction continued on the more challenging segment between the Passaic and Hudson Rivers, including the route across present-day Carlton Hill.

Tracks finally reached the western side of the Bergen Hill in 1833. This rise of dense volcanic rock standing between the Meadows and the Hudson River presented the most difficult engineering challenge. Jointly with the New Jersey Railroad and Transportation Company (“NJR”), chartered on March 7, 1832, the P&HR constructed the Bergen Cut, a 40-foot deep open channel excavated through the ridge (Cunningham 1997: 53; Messer and Roberts 2002: 117; Lucas 1944: 99). When the Bergen Cut opened in 1838, it was a significant engineering accomplishment in its own right, and it provided the first and only practical rail route through the Bergen Hill to the Hudson River for over 20 years (Messer and Roberts 2002:91; Burgess and Kennedy 1949: 256-257; Cunningham 1997: 60). The P&HR connected with the NJR at what became known as Bergen Junction (present-day Merion Junction). From there, P&HR trains ran across NJR tracks to a terminal adjacent to the NJR’s in Jersey City. Traffic from Jersey City to Paterson began operating through Carlton Hill on November 29, 1833, with connecting stagecoach service to carry passengers across Bergen Hill until the Cut was completed five years later (Lucas 1944: 123).

Meanwhile, the New York and Erie Railroad (“NY&E”), chartered on April 24, 1832, was building a line from the Great Lakes to the Hudson River in competition with the Erie Canal (Hungerford 1946: 19). Its eastern target was New York City, but state legislators forced the line to remain entirely within New York’s boundaries. The general route was first published under date of January 20, 1835, bringing the projected line close to the New Jersey border in the Ramapo Valley near present-day Suffern, New York (Hungerford 1946: 7, 30). As early as November 1831, promoters of the P&HR, recognizing the advantages of a connection with the contemplated NY&E, planned to extend their railroad from Paterson to the New York state

boundary (Lucas 1944: 193). The P&HR interests eventually obtained a charter for the Paterson & Ramapo Railroad (“P&R”) on March 10, 1841 (New Jersey State Legislature 1841: 97). A lack of capital, however, delayed work, requiring several extensions to the charter’s time limits (New Jersey State Legislature 1843: 76; 1847: 32). Construction finally commenced in August 1847, and the line opened on October 19, 1848 (Lucas 1944: 210, 213). Because the P&R was a New Jersey corporation and unable to own property in New York State, the one-mile segment between the New Jersey state line and the NY&E station at Suffern, New York was built across lands owned privately by P&R promoters (Lucas 1944: 228-229).

Passengers recognized the advantages of the shortened journey by traveling the P&HR/P&R route to and from the NY&E at Suffern, where they were able to walk a short distance between the two lines (Lucas 1944: 225). New York’s General Railroad Bill of 1850 finally permitted New York railroads to connect directly with railroads in other states, and through this act, the interests of the P&R chartered the Union Rail Road Company (“UR”) in New York state on January 20, 1851, to receive and operate the one-mile link of track from Suffern to the state line (Mott 1899: 110; Lucas 1944: 229-230). The following day, newspapers reported planned arrangements among the NY&E, the UR, the P&R, and the P&HR to affect a direct rail link to Jersey City (Mott 1899: 110; Lucas 1944: 231). Between 1852 and 1853 the track gauge of the UR, P&R, and P&HR was changed to match the Erie’s six-foot standard (Mott 1899: 113). Meanwhile, on September 9, 1852, the UR formally leased both the P&HR and P&R and the next day the NY&E leased the UR (Lucas 1944: 243). A final act of the New Jersey State Legislature on March 14, 1853 legitimized these leases (New Jersey State Legislature 1853b: 480). The line through Carlton Hill thus became part of the NY&E MainLine.

The initial impact of the P&HR through the Carlton Hill section of present-day Rutherford/East Rutherford was negligible. Most rail traffic passed through the community without

stopping. Few suburban homes were built during the early years, and the first major industry, a bleachery, did not open until circa 1850, following the railroad's union with the NY&E (Mott 1899: 500; Bergen County Office of Historic and Cultural Affairs 1980: 3-4). Related worker housing characterized much of the nearby residential development, together with a railroad station. By the 1860s, however, the natural hot springs in the area attracted leisure travelers and suburbanites taking advantage of the railroad. Residential development increased between 1861 and 1867 (Hopkins 1861; Mott 1899: 500; Bergen County Office of Historic and Cultural Affairs 1980: 4). By 1904, industries, residential developments, estates, and flower nurseries lined the railroad right-of-way (Hughes 1904).

In addition to the cut through Carlton Hill, known railroad-related resources once located within the APE but no longer extant included the West Rutherford/Carlton Hill Station at Carlton Avenue (built c. 1833; replaced c. 1870; demolished c. 1970) and the Montross Avenue/Maple Street overgrade bridge (built c. 1880; replaced 1910; replaced c. 1995) (RBA Group, Inc. 2009: Resource RU-5; Hughes 1904; A.G. Lichtenstein & Associates, Inc. 1994: (Structure No. 020012A; National Environmental Title Research 1987, 1995).

After several bankruptcies and name changes, the successor to the NY&E re-emerged as the New York, Lake Erie and Western Railway ("NYLE&W") on April 27, 1875 (Hungerford 1946; 203). By then, a vast increase in traffic and growing congestion through the centers of Paterson and Passaic convinced the NYLE&W management to build a cut-of around these populated areas to speed through freight traffic. The Bergen County Railroad was first chartered by interests of the NY&E back on February 25, 1853, as a potential bypass of the 16 UR/P&R/P&HR combine, but construction was not actually completed until 1880 (New Jersey State Legislature 1853a: 179; Lucas 1944: 277). Called the "Bergen Short-Cut," this line carried long-haul freight and passenger service around Passaic and Paterson, diverging the traffic from

the P&HR section at Rutherford Junction and reconnecting it with the P&R section of the Main Line at Ridgewood Junction (Anderson 1876: DeLeuw Cather & Company, Inc. 1991: 48). The “short-cut” effectively changed the segment of railroad between Carlton Hill and Paterson into a local freight and commuter branch line.

The NYLE&W went into foreclosure in 1895. By charter of the State of New York, it was combined with the New York, Pennsylvania, and Ohio Railroad and other lines to form the Erie Railroad (“Erie”), which was organized on November 13, 1895.

In 1956, the Erie began to discuss potential consolidation with the Delaware, Lackawanna and Western Railway (“Lackawanna”), which served many of the same markets as the Erie, including Paterson, Passaic, and towns near Rutherford. A merger agreement was reached in 1959, and Interstate Commerce Commission authorization of the combination became effective October 17, 1960. The new company, comprising 3,031 route miles, would be known as the Erie-Lackawanna Railroad (the hyphen was retained until 1963) (“EL”). Because of the intervening labor litigation, the merger was not actually placed into effect until June 1961 (Taber and Taber 1980: 145).

Track consolidation between the two railroads included linking the P&HR section of the former Erie’s Main Line to the former Lackawanna’s Boonton Branch, a low-grade freight cutoff running between Dover and Jersey City, near South Paterson. The lower portion of the Lackawanna’s former Boonton Branch then became the eastern end of the EL’s Main Line, while the former Erie’s “Bergen Short-Cut” became the EL Bergen County Line (Yanosey 17 2006:32). The section of the old P&HR between Passaic and Carlton Hill was abandoned⁴ and the bridge across the Passaic River was removed. The remaining segment of track between Rutherford

⁴ Because two parallel tracks were being consolidated into track as part of an ICC authorized consolidation, P&HR did not seek abandonment authority.

Junction and Carlton Hill (including the subject Line) became a dead end. Passenger service from Carlton Hill was formally abandoned by the New Jersey Board of Public Utility Commissioners on May 4, 1966, and the line was relegated to a freight service track called the Carlton Hill Branch (Waggoner 1966: 38).

Like many railroads in the northeast, the EL struggled for most of the 16 years it existed in part due to market forces. The EL's financial vulnerabilities led it to seek inclusion in the merger between the Norfolk and Western and Chesapeake and Ohio systems which was announced and filed but never consummated. As a result, the EL was required to be placed under a new holding company of the Norfolk and Western called Dereco, Inc. (Taber and Taber 1980: 147). The financial condition of the EL continued to decline, however, and the extensive destruction of its physical plant from the impact of Hurricane Agnes in 1972 finally resulted in a filing for Chapter 77 bankruptcy on June 26, 1972.

The EL initially sought to reorganize independently and thus resisted joining other bankrupt eastern and midwestern railroads in reorganization under the aegis of the United States Railway Association pursuant to the Regional Railroad Reorganization Act of 1973 (3-R Act). The financial condition of the EL continued to deteriorate, exacerbated by rapidly escalating materials prices, and on January 9, 1975, it advised the Federal government that it wished to become a "railroad in reorganization" under the 3-R Act. Although this request came too late for inclusion in the Preliminary System Plan which was issued on February 26, 1975, the EL was included in the Final System Plan issued by the U.S. Railway Association in July of that year. The Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) placed the Final System Plan into law. EL lines designated for retention, including the Line, thus came under the operation of the newly-formed Consolidated Rail Corporation (Conrail) effective April 1, 1976.

Norfolk Southern Corporation (“NSC”), the parent to Norfolk Southern Railway Company (“NSR”), entered into a Transaction Agreement (the “Conrail Transaction Agreement”) among NSC, NSR, CSX Corporation (“CSX”), CSX Transportation, Inc. (“CSXT”), a wholly-owned subsidiary of CSX; Conrail Inc. (“CRR”); Consolidated Rail Corporation (“Conrail”), a wholly-owned subsidiary of CRR and CRR Holdings LLC, dated June 10, 1997, pursuant to which CSX and NSC indirectly acquired all the outstanding capital stock of CRR. The Conrail Transaction Agreement was approved by the Surface Transportation Board in a decision served July 23, 1998, in CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation, FD 33388. The transaction was closed and became effective June 1, 1999, and with the closure, the Line was transferred to NSR.

The change contemplated in the operation of the subject railroad Line is for NSR to abandon the segment. The Line has been out of service since prior to 1999. Passenger service ceased on the Line in 1966. The Carlton Hill Branch has not seen freight service since prior to 1999.⁵ Given the absence of traffic on the Line, no major changes are contemplated from the proposed abandonment.

As explained in Section II (*supra*), in the future, OSI in partnership with Bergen County, New Jersey plans to redevelop the Line, create greenways, and provide for alternative modal access to points located along the Line. The redevelopment plans will develop the surrounding area to improve safety and mobility for the nearly one million people living in the immediate region. The Line is located near parks, medical facilities, shopping centers, and public schools. As such,

⁵ Note, in 2007, NSR filed for abandonment authority for the Line. During the pendency of the abandonment an offer of financial assistance was filed and NSR was approached by a local entity about acquiring the line for public purposes. NSR contemplated exercising discontinuance authority rather than abandonment authority and ultimately filed a motion to withdraw its notice of exemption after determining NSR wished to reevaluate plans for the rail line. In decision 38954 served May 14, 2008, the Board granted NSR's motion to withdraw its notice of exemption and dismissed NSR's motion to modify its authority from an abandonment to a discontinuance as moot. As a result, the Line remained subject to the Board ‘s jurisdiction.

redevelopment will provide a safer walking route for school children, and residents seeking access to other nearby public facilities.

EXACT NAME OF PETITIONER

The petitioner is Norfolk Southern Railway Company, a common carrier by railroad subject to 49 U.S.C Subtitle IV, Chapter 105.

PETITIONER'S REPRESENTATIVES

NSR is represented by William A. Mullins and Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20037; telephone: (202) 663-7823 and (202) 663-7831; facsimile: (202) 663-7849; email: wmullins@bakerandmiller.com and czorbaugh@bakerandmiller.com.

THE EXEMPTION STANDARDS HAVE BEEN MET

Under 49 U.S.C. § 10903, a rail line cannot be abandoned without prior Board approval. However, under 49 U.S.C. § 10502, the Board must exempt a proposed rail line abandonment from section 10903's formal requirements when it finds that – (1) regulation of the transaction is not necessary to carry out the RTP of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not needed to protect shippers from market power abuse. This proposed abandonment meets all of the above statutory requirements of section 10502.

A. Regulation Is Not Necessary To Carry Out The Rail Transportation Policy

The RTP obviates the need for detailed Board scrutiny under 49 U.S.C. § 10903 in this instance. Granting NSR's Petition – rather than requiring it to incur the substantial costs and potential delays involved in submitting a full-blown application – promotes a fair and expeditious regulatory decision-making process; ensures the development and continuation of a sound rail transportation system with effective competition among rail carriers and other modes to meet the needs of the public; reduces regulatory barriers to exit from the industry; and provides for the

expeditious handling and resolution of proceedings required or permitted to be brought under this part. See 49 U.S.C. §§ 10101(2), (4), (7), and (15). Moreover, granting NSR's Petition will foster sound economic conditions, and will encourage efficient management in accordance with the RTP by allowing NSR to rationalize underutilized assets and transfer such assets for use by others in further economic development to benefit the community. See 49 U.S.C. §§ 10101(5) and (9).⁶ Additionally, granting the Petition promotes the public interest and is fully consistent with the RTP.

For these reasons, the Board need not, and should not, require NSR to use the formal abandonment application procedures to carry out the RTP. Indeed, absent the need to seek an exemption from 49 U.S.C. § 10904, the proposed abandonment would have qualified for processing under the verified notice of exemption procedures pursuant to 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances of Service and Trackage Rights). As such, granting the Petition promotes the public interest and is fully consistent with the RTP.

B. The Proposed Abandonment Is of Limited Scope

The proposed abandonment is of limited scope, involving approximately 1.2 miles of rail line that has been dormant for more than two decades. No shippers will be affected, and no traffic will be rerouted upon consummation of the abandonment.⁷

⁶ See, e.g., Minnesota Northern Railroad, Inc. Abandonment Exemption - In Red Lake and Polk Counties, MN, AB-497 (Sub-No. 1X) 1997 STB LEXIS 291, at *7, (STB served Nov. 14, 1997); see also Louisiana & Delta Railroad, Inc. – Abandonment Exemption In Lafourche and Assumption Parishes, LA, AB-318 (Sub-No 4X) 1997 STB LEXIS 205, at *3 (STB served Aug. 26, 1997).

⁷ The Board has stated that the proposed abandonment and discontinuance of service over short line railroads where traffic is marginal or nonexistent is of limited scope. Tulare Valley Railroad Company - Abandonment and Discontinuance Exemption – In Tulare And Fresno Counties, CA, AB-397 (Sub-No 3X) 1995 ICC LEXIS 12, at *10-11 (ICC served Feb 9, 1995). Similarly, abandonments of short segments of rail line has traditionally been found to be of limited scope.

C. Regulation of the Abandonment Is Not Necessary to Protect Shippers from Market Power Abuse

Because the proposed abandonment is of limited scope, NSR need not show that regulation is unnecessary to protect shippers from market power abuse. But it is nevertheless clear that the use of the Board's formal abandonment procedures is not necessary to protect shippers from potential abuse of market power in this case because the Line has not had any active shippers in more than two decades. Additionally, given that there is no traffic on the Line, the transaction will not affect rail-to-rail or multi-modal competition.

PUBLIC INTEREST FACTORS

NSR is unaware of any public interest factors that would militate against the Board granting the subject Petition. Moreover, consummation of the subject abandonment will help facilitate the completion of OSI and Bergen County's public project to redevelop the Line, create greenways, and provide for alternative modal access to points located along the Line, all of which would promote economic growth in the region. As such, NSR submits that the proposed abandonment is wholly in keeping with the public interest.

LABOR PROTECTIVE CONDITIONS

The interests of NSR employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

ENVIRONMENTAL AND HISTORIC IMPACTS REVIEW

NSR has prepared a combined E&HR in connection with the proposed abandonment. As stated previously, NSR will convey the right of way to OSI with the Line's rail and track materials intact. In the future, OSI in partnership with Bergen County, New Jersey plans to redevelop the Line, create greenways, and provide for alternative modal access to points located along the Line. OSI or Bergen County, New Jersey, or its contractor will be responsible for salvaging should it

occur in the future. As such, no impacts are anticipated in connection with NSR's abandonment (cessation of rail service). The E&HR is attached hereto as part of Exhibit D. Since the E&HR was last circulated, NSR has received a couple of comments. A copy of the comments received from the consulting parties is included as part of Exhibit D, Appendix C.

PUBLIC USE AND INTERIM TRAILS USE CONDITIONS

As explained herein, NSR is actually undertaking this abandonment to sell the Line to the OSI (and ultimately Bergen County, NJ) to be dedicated to the broadest range of public uses. OSI (and ultimately Bergen County, NJ) will be acquiring the Line from NSR upon NSR consummating its abandonment. As such, NSR is unwilling to negotiate interim trails use pursuant to the Trails Act.⁸

II. EXEMPTION FROM SECTION 10904 IS ALSO WARRANTED

In instances where the applicant has established that a rail line proposed for abandonment was needed for a public purpose and there was no overriding public need for continued freight rail service, the Board and its predecessor have time and again found an exemption from the OFA process warranted. See FN 3. In this proceeding, OSI, on behalf of Bergen County, has approached NSR with an offer to purchase the Line to redevelop the underlying real estate as part of a public project to improve safety and mobility in adjacent New Jersey cities, townships, and boroughs (including East Rutherford and Rutherford). The proposed redevelopment and revitalization project will reduce/reroute vehicular traffic, create greenways, and provide alternative modal access including biking routes to public facilities and schools. As part of the purchase agreement, OSI and ultimately Bergen County will take ownership and assume

⁸ See Norfolk and Western Railway Company – Abandonment Exemption – In Cincinnati, Hamilton County, OH (“N&WR”), AB-290 (Sub-No. 184X) slip op. at 9 (STB served May 13, 1998) (exempting the abandonment from the OFA provisions because the rail line was an essential component of a 20-year effort of public and private interests to redevelop and revitalize Cincinnati's Riverfront area and would allow for the development of the City's central business district, building multi-purpose structured parking lots to replace surface parking lots; and expanding and reconnecting the City's downtown area).

responsibility for both the control and maintenance of the Line. County ownership, control, and management will greatly improve safety for motorists traveling along the region's roads.

Given the multi-purpose redevelopment and revitalization plans and the complete lack of rail traffic, or even the potential for rail traffic, an exemption from the OFA process will promote the public interest. The Board has routinely granted an exemption from 10904 on similar grounds.⁹ As previously explained, there has been no traffic or requests for service on the Line in over two decades. Currently, the reinstitution of rail freight service under Section 10904 would be incompatible with the OSI and Bergen County's intended use of the Line.

There is no present or reasonably foreseeable future need for freight rail service on the Line; as such, there is no overriding public need for continued freight rail service. Indeed, any potential OFA offer would be based upon pure speculation and conjecture. In such cases, the Board has rejected opposition to requests for exemption from Section 10904 when the OFA offeror cannot conclusively show that it has sufficient traffic to warrant the continued operation of the Line.¹⁰ Likewise, the Board has even exempted abandonments from the OFA provisions on its own initiative when a proposed project serves a public purpose and there has been no traffic over a subject line for a considerable period of time.¹¹

⁹ See Norfolk Southern Railway Company – Abandonment Exemption – In Hamilton County, OH, AB-290 (Sub-No. 381X) (STB served Aug. 8, 2016) (granting NSR's request for an OFA exemption because NSR demonstrated that the rail line was needed for a public purpose and there was no overriding public need for continued freight rail service). See also Union Pacific Railroad Company-Abandonment Exemption – In Pima County, AZ (“Pima County”), AB 33 (Sub-No. 141X), slip op. at 3 (STB served Feb. 16, 2000) (granting an exemption from 10904 because applicant established that the right-of-way was needed for a valid public purpose and there was no overriding public need for continued rail service). See also Central Kansas Railway, L.L.C. – Abandonment Exemption – In Sedgwick County, KS (“Central Kansas”), AB 406 (Sub-No. 14X) (STB served April 10, 2001). Here, there is clearly no public need for continued rail service, and similar to the aforementioned proceedings, the rail line is needed for a valid public purpose.

¹⁰ See N&WR.

¹¹ BNSF Railway Company - Abandonment Exemption - In Oklahoma County, OK, AB-6 (Sub-No. 430X), slip op. at 11 (STB served May 20, 2009). See also Central Michigan Railway Company-Abandonment Exemption-In Saginaw County, MI, AB-308 (Sub-No. 3X) (STB served October 31, 2003).

In this instance, the Board should grant the requested relief. The Line is needed for a valid public purpose, i.e. the revitalization and redevelopment of the corridor and the surrounding area to provide alternative modal access to nearby cities, townships, and boroughs, and, there is no overriding public need for continued rail freight service along the Line.¹² Such an exemption from the statutory provisions of 49 U.S.C. § 10904 is fully consistent with the statutory exemption standards of 49 U.S.C. § 10502. Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C § 10101. Likewise, regulation is not needed to protect shippers from an abuse of market power because the Line has been dormant for over two decades and there are no existing or even potential shippers on the Line. In fact, the Line offers no known freight rail growth opportunities.

Even if there were potential future shippers who would locate in the area, the use of rail is not needed to protect such shippers from the abuse of market power. The area has access to several major highways and roadways, including I-95 and the New Jersey Turnpike. Interstate 95 (to the east) serves over approximately 200,000 cars a day near the location of the proposed abandonment. Likewise, the Garden State Parkway serves over 165,000 cars a day near the proposed abandonment. I-95 has no truck size and limitations, and trucks weighing less than 10,000 pounds are allowed on the Garden State Parkway. The Line is located in between New Jersey Route 21 and New Jersey Route 17. As such, any shippers looking to relocate in the region will have access to several nearby interstates and state roadways. Applying the OFA requirements, in this instance, is not necessary to carry out the RTP or protect shippers.

Selling the line to the OSI and ultimately Bergen County will allow the rail corridor to become publicly owned. It will allow Bergen County to utilize the right-of-way in a manner

¹² In Pima County, the Board granted an exemption from the OFA process for a similar project, which involved expansion of an interstate and creation of bike and pedestrian paths.

that best accounts for the broadest range of possible public use. Moreover, the conversion of the underlying real estate will improve safety and mobility in the region, support the creation of additional economic activity, and facilitate economic redevelopment and revitalization.

CONCLUSION

NSR respectfully requests exemption from the provisions of 49 U.S.C. § 10903-10904 to abandon rail service over an approximately 1.2-mile rail line, extending from Milepost UQ 9.0 to Milepost UQ 10.2, in Bergen County, New Jersey. Application of the regulatory requirements and procedures of 49 U.S.C. §§ 10903-10904 is not required to carry out the RTP outlined in 49 U.S.C. § 10101, as previously described in this Petition, nor is STB regulation required to protect shippers from an abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, NSR asks the Board to grant NSR an exemption for its proposed abandonment of service over the Line and an exemption from the OFA provisions of 49 U.S.C. § 10904 to facilitate the sale of the real estate underlying the Line to OSI and ultimately Bergen County consistent with Bergen County's redevelopment plans.

Respectfully submitted,

Hanna M. Chouest
Deputy General Counsel
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, VA 23510
Tel: (757) 629-2761

October 14, 2020

/s/ Crystal M. Zorbaugh
William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7823
wmullins@bakerandmiller.com

Attorneys for Norfolk Southern
Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

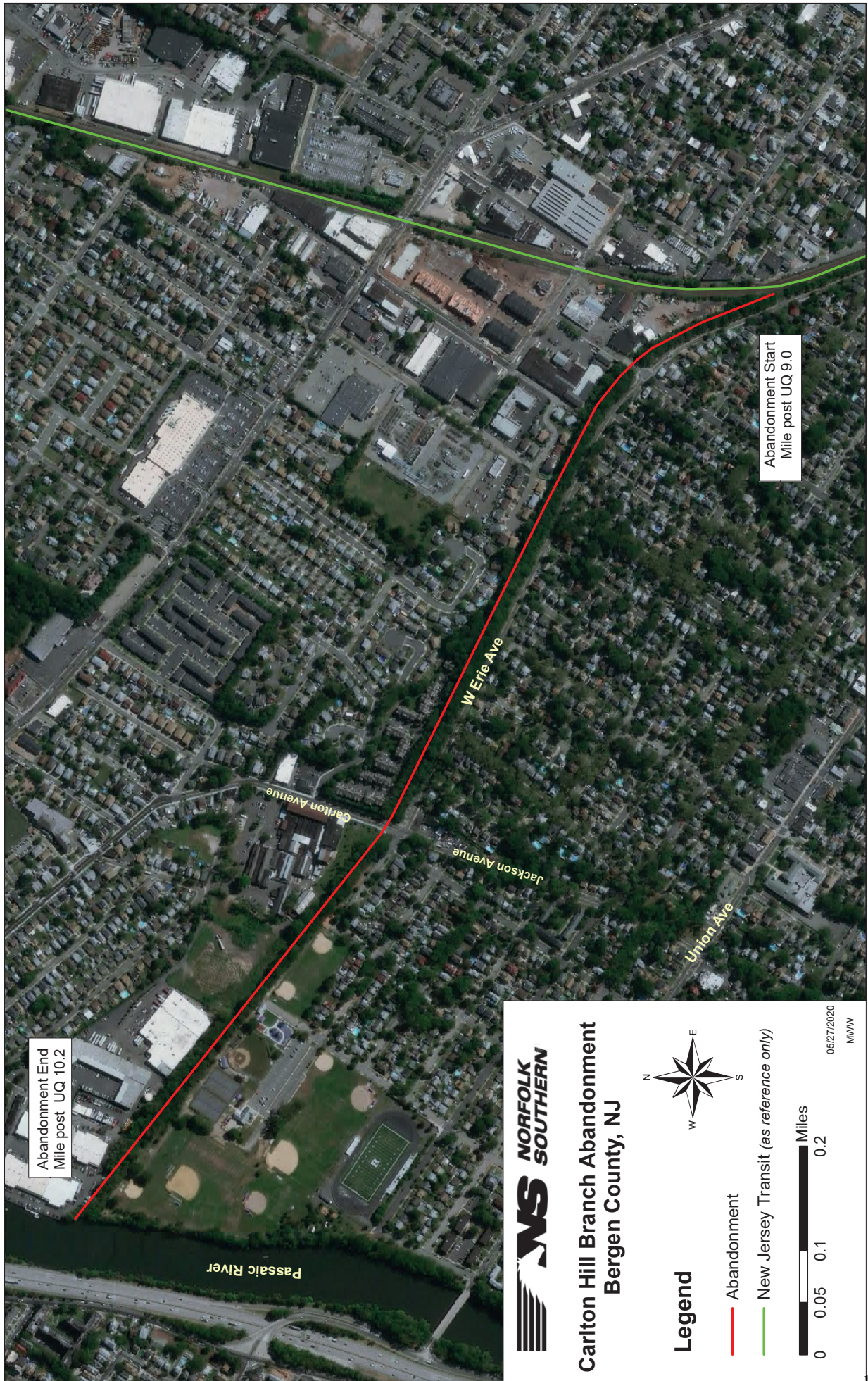
AB-290 (Sub-No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN BERGEN COUNTY, NEW JERSEY**

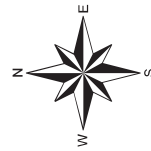
PETITION FOR EXEMPTION

EXHIBIT A

Map



Carlton Hill Branch Abandonment
Bergen County, NJ



Legend

Abandonment

New Jersey Transit (as reference only)

0 0.05 0.1 0.2 Miles

05/27/2020
MWW

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN BERGEN COUNTY, NEW JERSEY**

PETITION FOR EXEMPTION

EXHIBIT B

Draft Federal Register Notice

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[AB 290 (Sub-No. 407X)]

Norfolk Southern Railway Company – Abandonment Exemption – In Bergen County, New Jersey

On October 13, 2020, Norfolk Southern Railway Company (“NSR”) filed a petition under 49 U.S.C. § 10502 for an individual exemption from the provisions of 49 U.S.C. § 10903 to abandon rail service over an approximately 1.2-mile rail line, extending from Milepost UQ 9.0 to Milepost UQ 10.2 (the “Line”), in Bergen County, New Jersey. The Line traverses United States Postal Zip Code territories 07070 and 07073. The Line proposed for abandonment has been dormant for more than two decades.

The Line does not contain federally-granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions outlined in Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

NSR has requested an exemption from the offer of financial assistance (“OFA”) provisions of 49 U.S.C. 10904 to sell the property Open Space Institute Land Trust, Inc. (“OSI”) and ultimately Bergen County, NJ for public use. If this request is denied, any OFA under 49 C.F.R. § 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,900 filing fee. See 49 C.F.R. § 1002.2(f)(25).

All interested persons should be aware that following the abandonment of rail service, the Line may be suitable for other public use, including interim trail use. Because NSR is actually undertaking this abandonment to sell the Line to OSI (and Bergen County, NJ) after NSR consummates its abandonment authority to allow the Line to be dedicated to the broadest range of public uses, NSR is unwilling to negotiate interim trails use pursuant to the Trails Act. Regardless, any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full abandonment or abandonment regulations at 49 C.F.R. pt. 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

An environmental assessment ("EA") (or environmental impact statement ("EIS"), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation.

Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

All filings in response to this notice must refer to AB 290 (Sub-No. 407X) and must be sent to (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) William A. Mullins and Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave.,

NW, Suite 300, Washington, DC 20037. Replies to the petition are due on or before _____,
2020.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: _____.

By the Board, Allison C. Davis, Director, Office of Proceedings.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN BERGEN COUNTY, NEW JERSEY**

PETITION FOR EXEMPTION

EXHIBIT C

Certifications of Service/ Publication

Certificate of Service

49 C.F.R. § 1152.60(d) – Notice

I certify that, in keeping with 49 C.F.R. § 1152.60(d), I caused the following parties to be served with a copy of Norfolk Southern Railway Company's foregoing abandonment petition for exemption:

New Jersey Board of Public Utilities
44 S. Clinton Avenue
Trenton, NJ 08625

Ms. Nicole Minutoli
Director
NJ Department of Transportation
Multimodal Services
1035 Parkway Avenue, P.O. Box 0600
Trenton, NJ 08625-0600

David Dorfman
Headquarters Military Surface Deployment
and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA
Railroads for National Defense Program
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

Mr. Stephan Nofield
National Park Service
Rivers, Trails and Conservation Assistance
Program
1849 C Street NW, Room 1344
Washington DC 20240

Vicki Christiansen, Chief
Forest Service
U.S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street SW
Washington, DC 20024

Based on information in NSR's possession, the Line does not contain federally granted rights-of-way.

October 14, 2020

/s/ Crystal M. Zorbaugh
Crystal M. Zorbaugh
Attorney for Norfolk Southern
Railway Company

Certificate of Newspaper Publication

49 C.F.R. § 1105.12 – Newspaper Notice

I hereby certify that a “Notice of Intent to Abandon Rail Service” was published in the form prescribed by the Board for a Petition for Exemption (49 C.F.R. § 1105.12). The notice was published one-time on October 8, 2020, in the Herald News and one-time on October 8, 2020, in the Record, both of which are newspapers of general circulation in the Bergen County, New Jersey.

October 14, 2020

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh

Attorney for Norfolk Southern
Railway Company

NOTICE OF INTENT TO ABANDON RAIL SERVICE

AB-290 (Sub-No. 407X)

Norfolk Southern Railway Company ("NSR") gives notice that on or about October 12, 2020, it intends to file with the Surface Transportation Board ("Board"), Washington, DC 20423, a petition for exemption pursuant to 49 C.F.R Part 1152 Subpart G and 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, permitting NSR to abandon rail service over an approximately 1.2-mile rail line, extending from Milepost UQ 9.0 to Milepost UQ 10.2 (the "Line"), in Bergen County, New Jersey. The Line traverses United States Postal Zip Code territories 07070 and 07073. There are no customers served on the Line, which has been out of service for over two decades. The proceeding has been docketed as AB-290 (Sub-No. 407X).

The proposed action entails the abandonment of rail service over the Line. For abandonments, the Board's Office of Environmental Analysis ("OEA") generally will prepare an Environmental Assessment ("EA"), which normally will be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public. Such comments will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, 395 E Street, SW, Washington, D.C. 20423, or by calling that office at (202) 245-0295.

Appropriate offers of financial assistance ("OFA") to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. Note, NSR is seeking an exemption from Section 10904 (the OFA provisions) to facilitate the sale of the real estate underlying the Line to Open Space Institute Land Trust, Inc. ("OSI") for public use. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails public use, and OFA) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423 [See 49 CFR. §§ 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR § 1104.12(a)]. Questions regarding OFAs, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0230. Copies of any comments or requests for specific Board action should be served on the applicant's representative: Crystal M. Zorbaugh, BAKER & MILLER PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037; phone: 202-663-7820; fax 202-663-7849.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN BERGEN COUNTY, NEW JERSEY**

PETITION FOR EXEMPTION

**CERTIFICATE OF COMPLIANCE WITH
ENVIRONMENTAL AND HISTORIC REPORT
REQUIREMENTS AND COMBINED
ENVIRONMENTAL AND HISTORIC REPORT**

Environmental and Historic Report Certificate of Service

Pursuant to the requirements of 49 C.F.R. § 1105.7(b) and 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Combined Environmental and Historic Report in Docket No. AB-290 (Sub-No. 407X) was mailed via first class mail on August 27, 2020 to the following parties:

STATE HISTORIC PRESERVATION OFFICE

Ms. Katherine Marcopul
Administrator & Deputy State Historic Preservation Officer
Mail Code 501-04B
State of New Jersey
Department of Environmental Protection
Historic Preservation Office
P. O. Box 420
Trenton, NJ 08625-0420

STATE DOT

Ms. Nicole Minutoli
Director
NJ Department of Transportation
Multimodal Services
1035 Parkway Avenue, P.O. Box 600
Trenton, NJ 08625-0600

US ENVIRONMENTAL PROTECTION AGENCY

US EPA
William Jefferson Clinton (WJC) Building
1200 Pennsylvania Ave., NW
Mail Code 1101-A
Washington, DC 20460

REGIONAL/STATE EPA

Mr. Dave Kluesner
US EPA Region 2, Director
290 Broadway
New York, New York 10007-1866

Ms. Catherine R. McCabe
NJ Department of Environmental Protection
Commissioner
401 E. State St. - 7th Floor, East Wing
P.O. Box 402
Trenton, NJ 08625-0402

CITY

Mayor Frank Nunziato.
Rutherford Borough Hall
176 Park Ave
Rutherford, NJ 07070

Mayor Jeffrey Lahullier
Borough of East Rutherford
1 Everett Place
East Rutherford, NJ 07073

COUNTY

Mr. James J. Tedesco
Bergen County Executive
Bergen County
One Bergen County Plaza
Hackensack, NJ 07601-7076

US ARMY CORPS OF ENGINEERS

Mr. Stephan A. Ryba
Chief, Regulatory Branch
NY District US Army Corps of Engineers
26 Federal Plaza, Room 16-406
New York, New York 10278-0090

STATE COASTAL ZONE MANAGEMENT

Ms. Kimberly Springer, Manager
NJDEB Coastal Management Office
Mail Code 401-07D, P.O. Box 420
401 East State Street
Trenton, NJ 08625-0420

FISH AND WILDLIFE SERVICE

Ms. Wendi Weber
Regional Director – Region 5
U.S. Fish & Wildlife Service
Northeast Region
300 Westgate Center Dr.
Hadley, MA 01035

Mr. Dave Golden
Director
N.J. Division of Fish and Wildlife
Mail Code 501-03
P.O. Box 420
Trenton, NJ 08625-0420

NATIONAL PARK SERVICE

Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance Program
1849 C. Street NW, Room 1344
Washington, DC 20240

Ms. Julie Bell
National Park Service, Northeast Regional Office
Rivers, Trails, and Conservation Assistance Program
200 Chestnut St., Third Floor Philadelphia, PA 19106

NATIONAL GEODETIC SURVEY

Communications and Outreach Branch, NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East West Highway
Silver Spring, MD 20910-3282

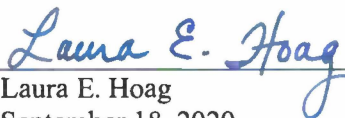
**Environmental and Historic Report
Certificate of Service**

Pursuant to the requirements of 49 C.F.R. § 1105.7(b) and 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Combined Environmental and Historic Report in Docket No. AB-290 (Sub-No. 407X) was mailed via first class mail on August 27, 2020 to the following parties:

NATURAL RESOURCES CONSERVATION SERVICE

Mr. Terrell Erickson
Regional Conservationist – Northeast Region
USDA Natural Resources Conservation Service
1400 Independence Ave SW, #5204-S
Washington, DC 20250

Ms. Carrie Lindig
State Conservationist
USDA-NRCS State Office
220 Davidson Ave 4th Floor
Somerset, New Jersey 08873



Laura E. Hoag
September 18, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub. No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT EXEMPTION –
IN BERGEN COUNTY, NEW JERSEY**

Combined Environmental and Historic Report

Norfolk Southern Railway Company (“NSR”) submits this Combined Environmental and Historic Report (“E&HR”) pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, in connection with NSR’s proposed abandonment of an approximately 1.2-mile long rail line, extending from Milepost UQ 9.0 to Milepost UQ 10.2 (the “Line”), in Bergen County, New Jersey.

August 27, 2020

ENVIRONMENTAL REPORT

49 CFR 1105.7(e)(1)

Proposed Action and Alternatives

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

RESPONSE: NSR proposes to abandon its common carrier obligation over an approximately 1.2-mile-long rail line extending from Milepost UQ 9.0 to Milepost UQ 10.2 in Bergen County, New Jersey to sell the property to Open Space Institute Land Trust, Inc. (“OSI”) for public use.¹ There are no structures (bridges) on the Line.

NSR has served no customers on the Line since it acquired the property from Conrail in 1999. Following abandonment, NSR will convey the right of way to OSI with the Line’s rail and track material intact. In the future, OSI in partnership with Bergen County, New Jersey plans to redevelop the Line, create greenways, and provide for alternative modal access to points located along the Line. OSI or Bergen County, New Jersey, or its contractor will be responsible for salvaging should it occur in the future.

The alternative to abandonment is to not abandon the Line and NSR retain the Line. This alternative is not satisfactory. NSR would incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line to be retained.

A map depicting the Line is attached as **Appendix A**. An example of NSR’s letter to federal, state and local government agencies along with a list of the consulting agencies that NSR has contacted is attached as **Appendix B**. Comments received as a result of NSR’s written

¹ OSI is pursuing trails on behalf of Bergen County, New Jersey, who will eventually assume legal and financial responsibility for the trail to be developed over the Line.

requests for feedback can be found in **Appendix C**. A list of historic resources is attached as **Appendix D**. A bibliography related to historical sources is attached as **Appendix E**.

49 CFR 1105.7(e)(2) Transportation system.

Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

RESPONSE: Effects of the proposed action on regional or local transportation systems and patterns would be negligible. There has been no NSR rail freight or passenger traffic since NSR's acquisition.

49 CFR 1105.7(e)(3) Land use.

(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

RESPONSE: An outline of future land use plans has been requested from the Borough of Rutherford, the Borough of East Rutherford, and the County of Bergen, all of which were asked to comment on the consistency of the proposed abandonment of the Line with existing land use plans.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

RESPONSE: NSR does not believe the abandonment will have any adverse impact on prime agricultural land as the Line to be abandoned is located in municipalities. However, a copy of this E&HR has been mailed to The United States Department of Agriculture Natural Resources Conservation Service ("USDA NRCS") for its information and to provide USDA NRCS an opportunity to comment.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by Sec. 1105.9.

RESPONSE: NSR does not believe the abandonment will have any adverse impact on land or water uses within designated coastal zones. However, a copy of the E&HR was mailed to the New Jersey Department of Environmental Protection (“NJDEP”), Coastal Management Program (“NJCMP”) for its information, and to provide NJCMP an opportunity to comment.

(iv) If the proposed action is an abandonment state whether or not the right of way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

RESPONSE: NSR has a mix of fee simple ownership and easements to the right of way underlying the Line proposed for abandonment; thus, NSR may have a corridor available for redeployment for alternative public use(s). In fact, NSR has undertaken this abandonment because it intends to convey the property to OSI, which in partnership with Bergen County, New Jersey will redevelop the Line, create greenways, and provide for alternative modal access to points located along the Line. The Line does not contain any federally granted right of way.

49 CFR 1105.7(e)(4) Energy.

(i) Describe the effect of the proposed action on transportation of energy resources.

RESPONSE: Development and transportation of energy resources will not be affected by the abandonment. There has been no rail freight or passenger traffic originating or terminating on the Line in over two decades.

(ii) Describe the effect of the proposed action on recyclable commodities.

RESPONSE: Movement or recovery of recyclable commodities will not be affected by the abandonment. There has been no rail freight or passenger traffic originating or terminating on the Line in over two decades.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

RESPONSE: The proposed action involves the abandonment of a Line that has been inactive for over two decades, and as such, will not result in an increase or decrease in overall energy efficiency.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:
(A) 1,000 rail carloads a year; or
(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

RESPONSE: The diversion of traffic to motor carriers will not exceed the thresholds set forth in 49 CFR §1105.7(e)(4) as no diversions will occur as there has not been traffic over the Line in over two decades. Accordingly, there is no need to produce data on diverted traffic or to quantify the net change in energy consumption.

49 CFR 1105.7(e)(5) Air.

(i) If the proposed action will result in either:
(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or
(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or
(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

RESPONSE: The above thresholds will not be exceeded.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:
(A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,
(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or
(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan.

RESPONSE: The above thresholds will not be exceeded.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and Freon®) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the

likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

RESPONSE: Not applicable.

49 CFR 1105.7(e)(6) Noise.

If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more; or

(ii) An increase to a noise level of 65 decibels Ldn or greater.

If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

RESPONSE: The above thresholds will not be exceeded.

49 CFR 1105.7(e)(7) Safety.

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

RESPONSE: Abandonment of the Line will have no adverse impact on public health and safety.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

RESPONSE: Not applicable.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right of way, identify the location of those sites and the types of hazardous materials involved.

RESPONSE: NSR has no knowledge of hazardous waste sites or sites where there have been known hazardous material spills on the right of way or in areas adjacent to the Line.

49 CFR 1105.7(e)(8) Biological Resources.

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed

action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

RESPONSE: No construction or removal activities will occur in or around the right of way to achieve this abandonment, and as such NSR does not believe the abandonment will have any adverse impact on surrounding habitats and species. However, a copy of this E&HR has been mailed to the U.S. Fish and Wildlife Service (“USFWS”) to ascertain any impacts to surrounding habitats and species. The New Jersey USFWS office does not conduct reviews of projects and directs outside organizations to its website to perform a self-review. NSR followed the process outlined on its website and attaches to this E&HR a “no effect” determination.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

RESPONSE: The Line does not pass through state parks or forests, national parks or forests, or wildlife sanctuaries. As such, no adverse effects on wildlife sanctuaries, national parks or forests, or state parks or forests are anticipated. Regardless, NSR requested input from the National Park Service.

49 CFR 1105.7(e)(9) Water.

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

RESPONSE: NSR does not intend to remove or alter the contour of the roadbed underlying the Line to be abandoned by way of excavation or other ground-disturbance activity. Accordingly, no soils will be disturbed as a result of the proposed abandonment, and no storm water mitigation measures including but not limited to a National Pollutant Discharge Elimination System permit, will be required. There are no plans to undertake in-stream work or dredge and/or use any fill materials in connection with the proposed abandonment, so the

proposed abandonment will not result in water quality impacts. NSR currently provides no rail service over the Line and has not provided service over the Line since NSR's acquisition.

Consultation has been requested from the NJDEP and the United States Environmental Protection Agency ("EPA") Region 2.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

RESPONSE: NSR does not plan to remove or alter the roadbed underlying the Line, or undertake in-stream work or dredging or use any fill materials. The geometry of the roadbed will not be altered and no in-stream work is contemplated. No discernible effects on either 100-year flood plains or adjacent wetlands are expected in connection with the proposed abandonment. Because no salvage is proposed in the abandonment, NSR does not believe a Section 404 permit will be required. Consultation was requested from the U.S. Army Corps of Engineers, New York District ("USACE").

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.

RESPONSE: No salvage of the Line and related track material is proposed in connection with the proposed abandonment. There will be no excavation or other ground-disturbance activity, and, because no soils will be disturbed, no storm water permitting including a National Pollutant Discharge Elimination System permit, will be required. NSR anticipates that the abandonment will not affect water quality and that additional permitting under Section 402 will not be required. Nevertheless, NSR has requested input from the EPA Region 2 and the NJDEP.

49 CFR 1105.7(e)(10) Proposed Mitigation.

Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

RESPONSE: Abandonment of the Line is not expected to produce adverse environmental impacts for the reasons set forth above. NSR will convey the right of way to OSI with the Line's rail and related track material intact.

HISTORIC REPORT

49 CFR 1105.8(d)

PROPOSED ACTION AND ALTERNATIVES

NSR proposes to abandon its common carrier obligation over an approximately 1.2-mile rail line extending from Milepost UQ 9.0 to Milepost UQ 10.2, in Bergen County, New Jersey in order to sell the property to OSI for public use. NSR has served no customers on the Line since acquiring the Line from Conrail in 1999. The Line remains out of service and no traffic has traversed the Line in over two decades.

Following abandonment, NSR will convey the right of way to OSI with the Line's rail and related track material intact. In the future, OSI in partnership with Bergen County, New Jersey plans to redevelop the Line, create greenways, and provide for alternative modal access to points located along the Line. OSI or Bergen County, New Jersey, or its contractor will be responsible for salvaging should it occur in the future.

The alternative to abandonment is to not abandon the Line and for NSR to retain the Line. This alternative is not satisfactory. NSR would continue to incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line to be retained. A map depicting the Line is attached in **Appendix A**.

ADDITIONAL INFORMATION

- (1) **U.S.G.S. Topographic Map** – A topographic map was furnished to the New Jersey Historic Preservation Office.
- (2) **Written Description Of Right Of Way** – The right of way width ranges from 62 feet to 122 feet along the main track centerline. Pursuant to Board policy, the railroad’s right of way being abandoned will constitute the Area of Potential Effect (“APE”) for this undertaking.
- (3) **Photographs** – As there are no bridges or structures on the segment to be abandoned, no photographs were provided.
- (4) **Date Of Construction Of Structures** – There are no bridges or other structures associated with this abandonment.
- (5) **History Of Operations And Changes Contemplated**² – The Line that is the subject of this proposed abandonment consists of approximately 1.2 miles of rail line extending from Milepost UQ 9.0 to Milepost UQ 10.2 in Bergen County, New Jersey.

Based on research,³ the Line was originally part of the Paterson and Hudson River Rail Road (“P&HR”), which was incorporated with an initial capital stock of two hundred and fifty thousand dollars by the State of New Jersey on January 21, 1831. It was New Jersey’s second-oldest incorporated railroad company and one of the nation’s earliest operating rail lines. The P&HR also facilitated the first direct rail connection to Jersey City, opposite New York City, and formed the oldest segment of the Erie Railroad system (New Jersey State Legislature 1831: 24; Clayton 1882: 88; Cunningham 1997:49).

² A bibliography for the historical information set forth in §5 is provided as Appendix E.

³ NSR commissioned Richard Grubb & Associates, Inc. (“RGA”) to assist with and augment its review of the Line’s history and preparation of the E&HR. This section was drafted from NSR and RGA’s combined research.

Conceived beginning in the late 1820s by promoters of the manufacturing city of Paterson on the Great Falls of the Passaic River, the railroad's initial purpose was to provide a year-round means of moving materials and products to market (Lucas 1944: 11-31). The authorized route for the railroad began within 50 feet of the city's lower raceway at the intersection of Congress and Mill Streets and extended southeast across the Passaic River, down into the Jersey Meadows, across Berry's Creek and the Hackensack River to Weehawken, and thence to any convenient point on the Hudson River opposite the City of New York (New Jersey State Legislature 1831: 26-27).

Construction began in Paterson on July 4, 1831, and initially reached as far as the community of Aquackanonk (present-day Passaic), a busy landing point located at the head of navigation on the Passaic River (Clayton 1882: 377; Lucas 1944: iii). The first horse-drawn train traversed the completed segment on May 31, 1832, and formal operations began on June 22, 1832 (Cunningham 1997: 51; Clayton 1882: 88). This allowed commerce to operate via boats and stagecoaches while construction continued on the more challenging segment between the Passaic and Hudson Rivers, including the route across present-day Carlton Hill.

Known as Berry's Hill originally, Carlton Hill separated the Passaic River from the expansive Hackensack Meadows. Overcoming the river, the hill, and the Meadows required a substantial timber pile and truss drawbridge across the Passaic, reportedly the first railroad drawbridge in the nation, a cut approximately 20 feet deep through the quicksand-like material of the Carlton Hill, embankments, and extensive pile driving and filling of the five-mile-long route across the Meadows quagmire (Cunningham 1997: 51-52; Lucas 1944: 93, 100). A similar drawbridge was needed to overcome the Hackensack River.

Tracks finally reached the western side of the Bergen Hill in 1833. This rise of dense volcanic rock standing between the Meadows and the Hudson River presented the most difficult engineering challenge. Jointly with the New Jersey Railroad and Transportation Company (“NJR”), chartered on March 7, 1832, the P&HR constructed the Bergen Cut, a 40-foot deep open channel excavated through the ridge (Cunningham 1997: 53; Messer and Roberts 2002: 117; Lucas 1944: 99). When the Bergen Cut opened in 1838, it was a significant engineering accomplishment in its own right, and it provided the first and only practical rail route through the Bergen Hill to the Hudson River for over 20 years (Messer and Roberts 2002:91; Burgess and Kennedy 1949: 256-257; Cunningham 1997: 60). The P&HR connected with the NJR at what became known as Bergen Junction (present-day Merion Junction). From there, P&HR trains ran across NJR tracks to a terminal adjacent to the NJR’s in Jersey City. Traffic from Jersey City to Paterson began operating through Carlton Hill on November 29, 1833, with connecting stagecoach service to carry passengers across Bergen Hill until the Cut was completed five years later (Lucas 1944: 123).

Meanwhile, the New York and Erie Railroad (“NY&E”), chartered on April 24, 1832, was building a line from the Great Lakes to the Hudson River in competition with the Erie Canal (Hungerford 1946: 19). Its eastern target was New York City, but state legislators forced the line to remain entirely within New York’s boundaries. The general route was first published under date of January 20, 1835, bringing the projected line close to the New Jersey border in the Ramapo Valley near present-day Suffern, New York (Hungerford 1946: 7, 30). As early as November 1831, promoters of the P&HR, recognizing the advantages of a connection with the contemplated NY&E, planned to extend their railroad from Paterson to the New York state boundary (Lucas 1944: 193). The P&HR interests eventually obtained a charter for the Paterson

& Ramapo Railroad (“P&R”) on March 10, 1841 (New Jersey State Legislature 1841: 97). A lack of capital, however, delayed work, requiring several extensions to the charter’s time limits (New Jersey State Legislature 1843: 76; 1847: 32). Construction finally commenced in August 1847, and the line opened on October 19, 1848 (Lucas 1944: 210, 213). Because the P&R was a New Jersey corporation and unable to own property in New York State, the one-mile segment between the New Jersey state line and the NY&E station at Suffern, New York was built across lands owned privately by P&R promoters (Lucas 1944: 228-229).

Passengers recognized the advantages of the shortened journey by traveling the P&HR/P&R route to and from the NY&E at Suffern, where they were able to walk a short distance between the two lines (Lucas 1944: 225). New York’s General Railroad Bill of 1850 finally permitted New York railroads to connect directly with railroads in other states, and through this act, the interests of the P&R chartered the Union Rail Road Company (“UR”) in New York state on January 20, 1851, to receive and operate the one-mile link of track from Suffern to the state line (Mott 1899: 110; Lucas 1944: 229-230). The following day, newspapers reported planned arrangements among the NY&E, the UR, the P&R, and the P&HR to affect a direct rail link to Jersey City (Mott 1899: 110; Lucas 1944: 231). Between 1852 and 1853 the track gauge of the UR, P&R, and P&HR was changed to match the Erie’s six-foot standard (Mott 1899: 113). Meanwhile, on September 9, 1852, the UR formally leased both the P&HR and P&R, and the next day the NY&E leased the UR (Lucas 1944: 243). A final act of the New Jersey State Legislature on March 14, 1853, legitimized these leases (New Jersey State Legislature 1853b: 480). The line through Carlton Hill thus became part of the NY&E Main Line.

The initial impact of the P&HR through the Carlton Hill section of present-day Rutherford/East Rutherford was negligible. Most rail traffic passed through the community without stopping. Few suburban homes were built during the early years, and the first major industry, a bleachery, did not open until circa 1850, following the railroad's union with the NY&E (Mott 1899: 500; Bergen County Office of Historic and Cultural Affairs 1980: 3-4). Related worker housing characterized much of the nearby residential development, together with a railroad station. By the 1860s, however, the natural hot springs in the area attracted leisure travelers and suburbanites taking advantage of the railroad. Residential development increased between 1861 and 1867 (Hopkins 1861; Mott 1899: 500; Bergen County Office of Historic and Cultural Affairs 1980: 4). By 1904, industries, residential developments, estates, and flower nurseries lined the railroad right-of-way (Hughes 1904).

In addition to the cut through Carlton Hill, known railroad-related resources once located within the APE but no longer extant included the West Rutherford/Carlton Hill Station at Carlton Avenue (built c. 1833; replaced c. 1870; demolished c. 1970) and the Montross Avenue/Maple Street overgrade bridge (built c. 1880; replaced 1910; replaced c. 1995) (RBA Group, Inc. 2009: Resource RU-5; Hughes 1904; A.G. Lichtenstein & Associates, Inc. 1994: (Structure No. 020012A; National Environmental Title Research 1987, 1995).

After several bankruptcies and name changes, the successor to the NY&E re-emerged as the New York, Lake Erie and Western Railway ("NYLE&W") on April 27, 1875 (Hungerford 1946: 203). By then, a vast increase in traffic and growing congestion through the centers of Paterson and Passaic convinced the NYLE&W management to build a cut-of around these populated areas to speed through freight traffic. The Bergen County Railroad was first chartered by interests of the NY&E back on February 25, 1853, as a potential bypass of the

UR/P&R/P&HR combine, but construction was not actually completed until 1880 (New Jersey State Legislature 1853a: 179; Lucas 1944: 277). Called the “Bergen Short-Cut,” this line carried long-haul freight and passenger service around Passaic and Paterson, diverging the traffic from the P&HR section at Rutherford Junction and reconnecting it with the P&R section of the Main Line at Ridgewood Junction (Anderson 1876: DeLeuw Cather & Company, Inc. 1991: 48). The “short-cut” effectively changed the segment of railroad between Carlton Hill and Paterson into a local freight and commuter branch line. The NYLE&W went into foreclosure in 1895. By charter of the State of New York, it was combined with the New York, Pennsylvania, and Ohio Railroad and other lines to form the Erie Railroad (“Erie”), which was organized on November 13, 1895.

In 1956, the Erie began to discuss potential consolidation with the Delaware, Lackawanna and Western Railway (“Lackawanna”), which served many of the same markets as the Erie, including Paterson, Passaic, and towns near Rutherford. A merger agreement was reached in 1959, and Interstate Commerce Commission authorization of the combination became effective October 17, 1960. The new company, comprising 3,031 route miles, would be known as the Erie-Lackawanna Railroad (the hyphen was retained until 1963) (“EL”). Because of the intervening labor litigation, the merger was not actually placed into effect until June 1961 (Taber and Taber 1980: 145).

Track consolidation between the two railroads included linking the P&HR section of the former Erie’s Main Line to the former Lackawanna’s Boonton Branch, a low-grade freight cut-off running between Dover and Jersey City, near South Paterson. The lower portion of the Lackawanna’s former Boonton Branch then became the eastern end of the EL’s Main Line, while the former Erie’s “Bergen Short-Cut” became the EL Bergen County Line (Yanosey

2006:32). The section of the old P&HR between Passaic and Carlton Hill was abandoned⁴ and the bridge across the Passaic River was removed. The remaining segment of track between Rutherford Junction and Carlton Hill (including the subject Line) became a dead end. Passenger service from Carlton Hill was formally abandoned by the New Jersey Board of Public Utility Commissioners on May 4, 1966, and the line was relegated to a freight service track called the Carlton Hill Branch (Waggoner 1966: 38).

Like many railroads in the northeast, the EL struggled for most of the 16 years it existed in part due to market forces. The EL's financial vulnerabilities led it to seek inclusion in the merger between the Norfolk and Western and Chesapeake and Ohio systems which was announced and filed but never consummated. As a result, the EL was required to be placed under a new holding company of the Norfolk and Western called Dereco, Inc. (Taber and Taber 1980: 147). The financial condition of the EL continued to decline, however, and the extensive destruction of its physical plant from the impact of Hurricane Agnes in 1972 finally resulted in a filing for Chapter 77 bankruptcy on June 26, 1972.

The EL initially sought to reorganize independently and thus resisted joining other bankrupt eastern and midwestern railroads in reorganization under the aegis of the United States Railway Association pursuant to the Regional Railroad Reorganization Act of 1973 (3-R Act). The financial condition of the EL continued to deteriorate, exacerbated by rapidly escalating materials prices, and on January 9, 1975, it advised the Federal government that it wished to become a "railroad in reorganization" under the 3-R Act. Although this request came too late for inclusion in the *Preliminary System Plan* which was issued on February 26, 1975, the EL was included in the *Final System Plan* issued by the U.S. Railway Association in July of that year.

⁴ Because two parallel tracks were being consolidated into track as part of an ICC authorized consolidation, P&HR did not seek abandonment authority.

The Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) placed the *Final System Plan* into law. EL lines designated for retention, including the subject Line, thus came under the operation of the newly-formed Consolidated Rail Corporation (Conrail) effective April 1, 1976.

Norfolk Southern Corporation (“NSC”), parent to Norfolk Southern Railway Company (“NSR”), entered into a Transaction Agreement (the “Conrail Transaction Agreement”) among NSC, NSR, CSX Corporation (“CSX”), CSX Transportation, Inc. (“CSXT”), a wholly-owned subsidiary of CSX; Conrail Inc. (“CRR”); Consolidated Rail Corporation (“Conrail”), a wholly-owned subsidiary of CRR and CRR Holdings LLC, dated June 10, 1997, pursuant to which CSX and NSC indirectly acquired all the outstanding capital stock of CRR. The Conrail Transaction Agreement was approved by the Surface Transportation Board in a decision served July 23, 1998, in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation*, FD 33388. The transaction was closed and became effective June 1, 1999, and with the closure, the Line was transferred to NSR.

The change contemplated in the operation of the subject railroad Line is for NSR to abandon the segment. The Line has been out of service since prior to 1999. Passenger service ceased on the Line in 1966. The Carlton Hill Branch has not seen freight service since prior to 1999. Given the absence of traffic on the Line, no major changes are contemplated from the proposed abandonment.

(6) Summary of Documents In Carrier's Possession That Might Be Useful For Documenting A Structure That Is Found To Be Historic – There are no structures (bridges) on the Line. As there has been no rail service on the Line since NSR’s acquisition, documents

are not available. Moreover, no salvage of the Line is proposed in connection with the proposed abandonment.

(7) **Opinion Regarding Criteria For Listing In The National Register Of Historic Places**

There are no bridge structures located within the APE for this project. Information on the railroad-related historic resources is included in Appendix D: Railroad-related Historic Resources.

On August 27, 2020, NSR provided the NJDEP Historic Preservation Office with a copy of the E&HR associated with Notice of Exemption filing AB-290 Sub-No. 407X for the Line for comments.

(8) **Subsurface Ground Conditions That Might Affect Archaeological Recovery**

The railroad is not aware of any prior subsurface ground disturbances or environmental conditions that would affect archaeological recovery. Moreover, abandonment of the Line will not affect any potential archaeological resources. The subsurface of the right of way was initially disturbed in the construction of the railroad line by grading and filling. No salvage of the Line is being undertaken in connection with the proposed abandonment.

(9) **Follow-Up Information** – Additional information will be provided as appropriate.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub. No. 407X)

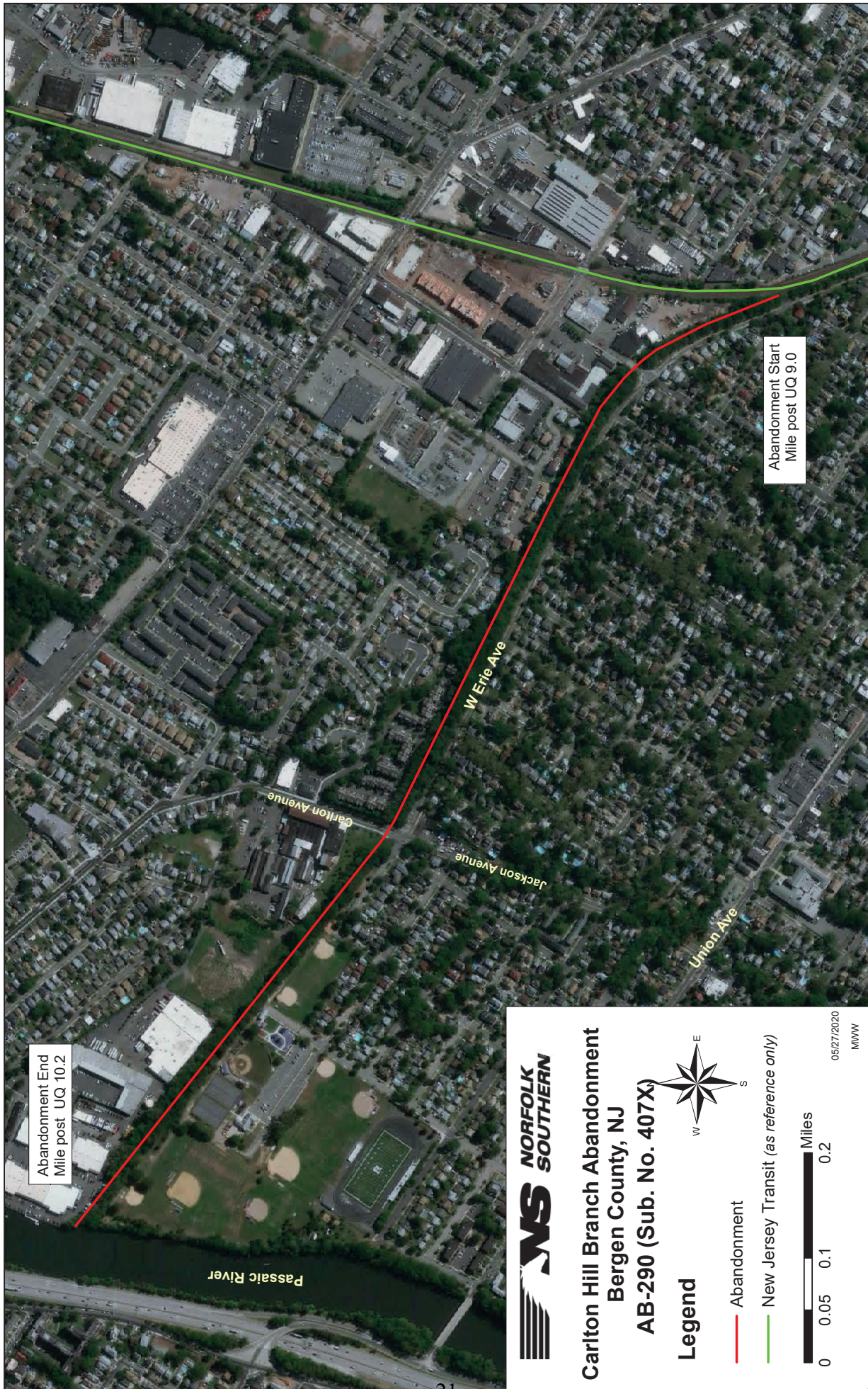
**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT EXEMPTION –**

IN BERGEN COUNTY, NEW JERSEY

Combined Environmental and Historic Report

APPENDIX A

Map



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub. No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT EXEMPTION –**

IN BERGEN COUNTY, NEW JERSEY

Combined Environmental and Historic Report

APPENDIX B

Sample Consultation Letter & Recipient List

August 27, 2020

[ENTITY}

RE: Norfolk Southern Railway Company Abandonment – in Bergen County, AB-290
(Sub-No. 407X)

[GREETING]

Norfolk Southern Railway Company (“NSR”) is proposing the abandonment of approximately 1.2 miles of rail line between Milepost UQ 9.0 and Milepost UQ 10.2 in Bergen County, New Jersey (“Line”).

Enclosed is a Combined Environmental and Historic Report (“Report”) which describes the proposed abandonment and other pertinent information. A map of the proposed abandonment can be found in **Appendix A** of this report. **Appendix B** of this report lists the various agencies receiving it. **Appendix C** of this report lists the various agency responses. **Appendix D** of this report provides information regarding the known historical resources on the Line. **Appendix E** of this report provides a bibliography of historical references.

The railroad does not anticipate adverse environmental impacts; however, if you identify any adverse environmental effects, please describe the actions that would assist in alleviating them. Please provide us with a written response indicating any concerns or lack thereof, which will be included in the Report and sent to the Surface Transportation Board (“STB”).

This Report is being provided so that you may submit information that will form the basis for the STB's independent environmental analysis of the proceeding. If you believe any of the information is incorrect, if you think pertinent information is missing, or if you have any questions about the STB's Environmental Review process, please contact the Office of Environmental Analysis by telephone at (202) 245-0245 or by mail to:

Surface Transportation Board
395 E Street, S.W., Room 1106
Washington DC 20423-0001

Please refer to the above Docket when contacting the STB. Applicable statutes and regulations impose stringent deadlines for processing this action. For this reason, your written comments (with a copy to us) would be appreciated within three weeks.

Your comments will be considered by the STB in evaluating the environmental impacts of the contemplated action. In order for us to consider your input prior to filing with the STB, NSR must receive your comments within three weeks. Please provide information to Laura Hoag by email or by mail at:

Laura Hoag
Strategic Planning – 12th Floor

Norfolk Southern Corporation
3 Commercial Place
Norfolk, VA 23510

Laura.Hoag@nscorp.com

Best regards,

Laura E. Hoag

Attachment

RECIPIENT LIST
AB-290 (Sub-No 407X)

Proposed Abandonment of Norfolk Southern Railway Company's approximately 1.2 mile rail line segment between Milepost UQ 9.0 and Milepost UQ 10.2 in Bergen County, New Jersey (the "Line").

STATE HISTORIC PRESERVATION OFFICE

Ms. Katherine Marcopul
Administrator & Deputy State Historic Preservation Officer
Mail Code 501-04B
State of New Jersey
Department of Environmental Protection
Historic Preservation Office
P. O. Box 420
Trenton, NJ 08625-0420

STATE DOT

Ms. Nicole Minutoli
Director
NJ Department of Transportation
Multimodal Services
1035 Parkway Avenue, P.O. Box 600
Trenton, NJ 08625-0600

US ENVIRONMENTAL PROTECTION AGENCY

US EPA
William Jefferson Clinton (WJC) Building
1200 Pennsylvania Ave., NW
Mail Code 1101-A
Washington, DC 20460

REGIONAL/STATE EPA

Mr. Dave Kluesner
US EPA Region 2, Director
290 Broadway
New York, New York 10007-1866

Ms. Catherine R. McCabe
NJ Department of Environmental Protection
Commissioner
401 E. State St. - 7th Floor, East Wing
P.O. Box 402
Trenton, NJ 08625-0402

CITY

Mayor Frank Nunziato.
Rutherford Borough Hall
176 Park Ave
Rutherford, NJ 07070

Mayor Jeffrey Lahullier
Borough of East Rutherford
1 Everett Place
East Rutherford, NJ 07073

COUNTY

Mr. James J. Tedesco
Bergen County Executive
Bergen County
One Bergen County Plaza
Hackensack, NJ 07601-7076

US ARMY CORPS OF ENGINEERS

Mr. Stephan A. Ryba
Chief, Regulatory Branch
NY District US Army Corps of Engineers
26 Federal Plaza, Room 16-406
New York, New York 10278-0090

STATE COASTAL ZONE MANAGEMENT

Ms. Kimberly Springer, Manager
NJDEB Coastal Management Office
Mail Code 401-07D, P.O. Box 420
401 East State Street
Trenton, NJ 08625-0420

FISH AND WILDLIFE SERVICE

Ms. Wendi Weber
Regional Director – Region 5
U.S. Fish & Wildlife Service
Northeast Region
300 Westgate Center Dr.
Hadley, MA 01035

Mr. Dave Golden
Director
N.J. Division of Fish and Wildlife
Mail Code 501-03
P.O. Box 420
Trenton, NJ 08625-0420

NATIONAL PARK SERVICE

Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance Program
1849 C. Street NW, Room 1344
Washington, DC 20240

Ms. Julie Bell
National Park Service, Northeast Regional Office
Rivers, Trails, and Conservation Assistance Program
200 Chestnut St., Third Floor Philadelphia, PA 19106

NATIONAL GEODETIC SURVEY

Communications and Outreach Branch, NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East West Highway
Silver Spring, MD 20910-3282

RECIPIENT LIST
AB-290 (Sub-No 407X)

Proposed Abandonment of Norfolk Southern Railway Company's approximately 1.2 mile rail line segment between Milepost UQ 9.0 and Milepost UQ 10.2 in Bergen County, New Jersey (the "Line").

NATURAL RESOURCES CONSERVATION SERVICE

Mr. Terrell Erickson
Regional Conservationist – Northeast Region
USDA Natural Resources Conservation Service
1400 Independence Ave SW, #5204-S
Washington, DC 20250

Ms. Carrie Lindig
State Conservationist
USDA-NRCS State Office
220 Davidson Ave 4th Floor
Somerset, New Jersey 08873

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub. No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT EXEMPTION–**

IN BERGEN COUNTY, NEW JERSEY

Combined Environmental and Historic Report

APPENDIX C

Agency Comments/Responses



United States Department of the Interior

FISH AND WILDLIFE SERVICE
New Jersey Ecological Services Field Office
4 E. Jimmie Leeds Road, Suite 4

Galloway, NJ 08205

Phone: (609) 646-9310 Fax: (609) 646-0352

<http://www.fws.gov/northeast/njfieldoffice/Endangered/consultation.html>



In Reply Refer To:

August 11, 2020

Consultation Code: 05E2NJ00-2020-SLI-1454

Event Code: 05E2NJ00-2020-E-03112

Project Name: Norfolk Southern Abandonment of Common Carrier Obligation

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed, and candidate species that may occur in your proposed action area and/or may be affected by your proposed project. This species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under Section 7(c) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*)

If the enclosed list indicates that any listed species may be present in your action area, please visit the New Jersey Field Office consultation web page as the next step in evaluating potential project impacts: <http://www.fws.gov/northeast/njfieldoffice/Endangered/consultation.html>

On the New Jersey Field Office consultation web page you will find:

- habitat descriptions, survey protocols, and recommended best management practices for listed species;
- recommended procedures for submitting information to this office; and
- links to other Federal and State agencies, the Section 7 Consultation Handbook, the Service's wind energy guidelines, communication tower recommendations, the National Bald Eagle Management Guidelines, and other resources and recommendations for protecting wildlife resources.

The enclosed list may change as new information about listed species becomes available. As per Federal regulations at 50 CFR 402.12(e), the enclosed list is only valid for 90 days. Please return to the ECOS-IPaC website at regular intervals during project planning and implementation to obtain an updated species list. When using ECOS-IPaC, be careful about drawing the boundary of your Project Location. Remember that your action area under the ESA is not limited to just the footprint of the project. The action area also includes all areas that may be indirectly affected

through impacts such as noise, visual disturbance, erosion, sedimentation, hydrologic change, chemical exposure, reduced availability or access to food resources, barriers to movement, increased human intrusions or access, and all areas affected by reasonably foreseeable future that would not occur without ("but for") the project that is currently being proposed.

We appreciate your concern for threatened and endangered species. The Service encourages Federal and non-Federal project proponents to consider listed, proposed, and candidate species early in the planning process. Feel free to contact this office if you would like more information or assistance evaluating potential project impacts to federally listed species or other wildlife resources. Please include the Consultation Tracking Number in the header of this letter with any correspondence about your project.

Attachment(s):

- Official Species List
- USFWS National Wildlife Refuges and Fish Hatcheries
- Migratory Birds
- Wetlands

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

New Jersey Ecological Services Field Office

4 E. Jimmie Leeds Road, Suite 4

Galloway, NJ 08205

(609) 646-9310

Project Summary

Consultation Code: 05E2NJ00-2020-SLI-1454

Event Code: 05E2NJ00-2020-E-03112

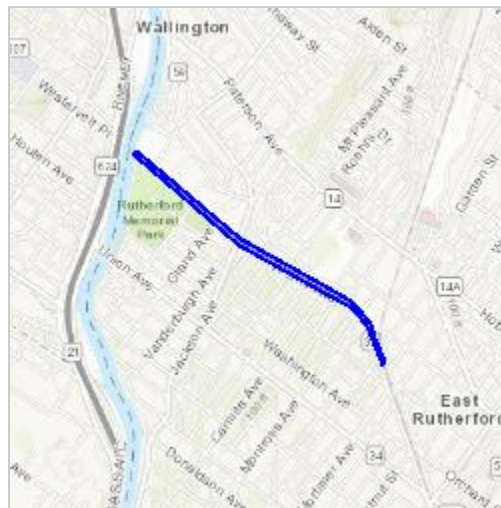
Project Name: Norfolk Southern Abandonment of Common Carrier Obligation

Project Type: ** OTHER **

Project Description: Norfolk Southern proposes to abandon its common carrier obligation on a former industrial track in Carlton Hill, NJ. Norfolk Southern will conduct no salvage activities in relation to this abandonment.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/40.84119407306411N74.11176197782144W>



Counties: Bergen, NJ

Endangered Species Act Species

There is a total of 0 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

USFWS National Wildlife Refuge Lands And Fish Hatcheries

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

Migratory Birds

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

-
1. The [Migratory Birds Treaty Act](#) of 1918.
 2. The [Bald and Golden Eagle Protection Act](#) of 1940.
 3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern](#) (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Bald Eagle <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/1626	Breeds Sep 1 to Jul 31
Blue-winged Warbler <i>Vermivora pinus</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA	Breeds May 1 to Jun 30

NAME	BREEDING SEASON
Prairie Warbler <i>Dendroica discolor</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 1 to Jul 31
Red-headed Woodpecker <i>Melanerpes erythrocephalus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 10 to Sep 10
Rusty Blackbird <i>Euphagus carolinus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds elsewhere
Wood Thrush <i>Hylocichla mustelina</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 10 to Aug 31

Probability Of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ “Proper Interpretation and Use of Your Migratory Bird Report” before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.

3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)

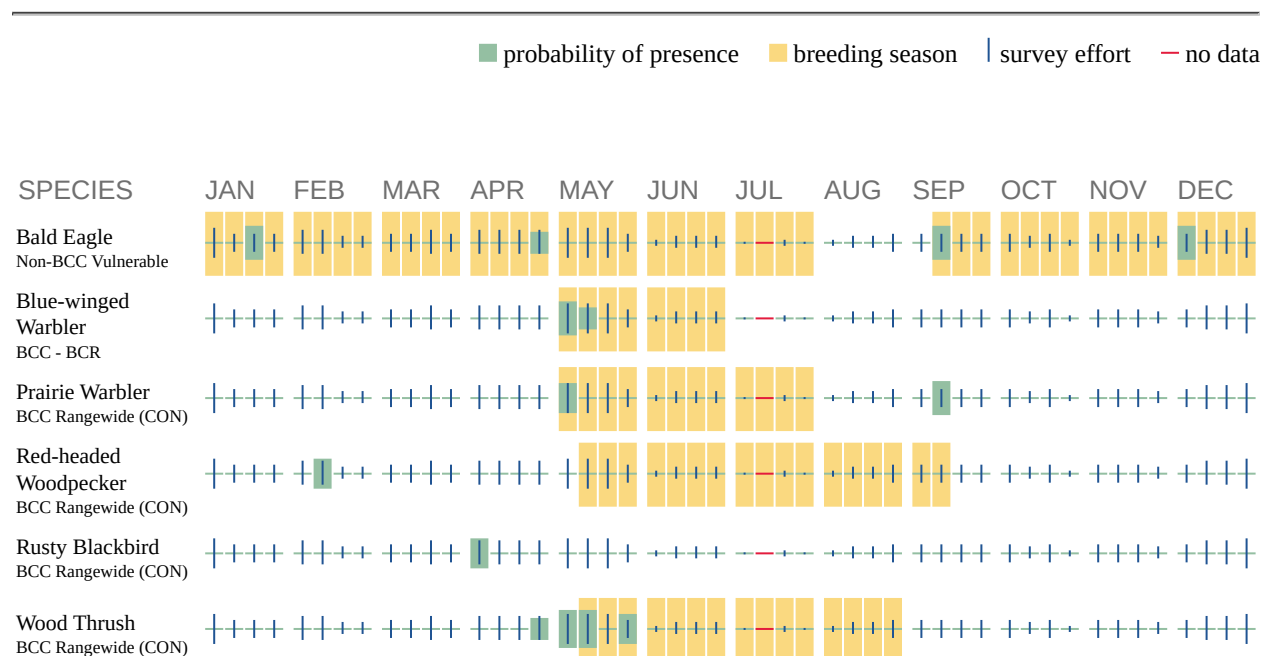
Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

No Data (—)

A week is marked as having no data if there were no survey events for that week.

Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.



Additional information can be found using the following links:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>

- Measures for avoiding and minimizing impacts to birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Nationwide conservation measures for birds <http://www.fws.gov/migratorybirds/pdf/management/nationwidestandardconservationmeasures.pdf>

Migratory Birds FAQ

Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) and/or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the migratory birds potentially occurring in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [AKN Phenology Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and

how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering, migrating or present year-round in my project area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may refer to the following resources: [The Cornell Lab of Ornithology All About Birds Bird Guide](#), or (if you are unsuccessful in locating the bird of interest there), the [Cornell Lab of Ornithology Neotropical Birds guide](#). If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ “What does IPaC use to generate the migratory birds potentially occurring in my specified location”. Please be aware this report provides the “probability of presence” of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the “no data” indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ “Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds” at the bottom of your migratory bird trust resources page.

Wetlands

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

THERE ARE NO WETLANDS WITHIN YOUR PROJECT AREA.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Jersey Field Office
4 E. Jimmie Leeds Road, Suite 4

Galloway, New Jersey 08205

Tel: 609-646-9310

<http://www.fws.gov/northeast/njfieldoffice>

To Whom It May Concern:

Section 7(a)(2) of the Endangered Species Act (ESA) requires Federal agencies to consult with the U.S. Fish and Wildlife Service (Service) to ensure that actions they fund, authorize, permit or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitats. Federal agencies (or their designated representatives) must initiate consultation with the Service if a proposed action *may affect* one or more listed species. In addition, the Service provides review of non-Federal actions that *may affect* federally listed species or their habitats as technical assistance to help non-Federal project proponents ensure compliance with the ESA and with New Jersey land use regulations. Staffing constraints limit the Service's New Jersey Field Office to reviewing only those projects that *may affect* federally listed species. The *may affect* determination is made by the Federal action agency or non-Federal project proponent using the information and instructions on our web site.

<http://www.fws.gov/northeast/njfieldoffice/Endangered/consultation.html>

Federal agencies are not required to contact the Service if a proposed action will have *no effect* on listed species, or if no listed species are present in the action area. No further ESA consultation or coordination is necessary for projects where the Federal action agency or non-Federal project proponent has followed the procedures on our web site and determined that proposed project activities will have *no effect* on federally listed species. Service concurrence with a *no effect* determination is not required under the ESA and will not be provided by the New Jersey Field Office due to limited staffing. In addition to this letter, the Federal action agency or non-Federal project proponent should retain in their files documentation from our web site at the time of their review, including a dated copy of the report generated by our Information, Planning, and Conservation System (IPaC). **Both Federal and non-Federal project proponents are responsible for generating and maintaining in their files adequate documentation to support a *no effect* determination, by following the instruction on our web site.** Note that under the ESA, a species list is valid for only 90 days; thus, the Service recommends consulting our web site regularly during project planning and implementation for updated species lists and information.

Thank you for your cooperation. Please contact Ron_Popowski@fws.gov, if you have any questions or require further assistance regarding federally listed threatened or endangered species.

Sincerely,

Eric Schradin
Field Supervisor

**A NO EFFECT DETERMINATION IS VALID ONLY WITH AN ATTACHED IPaC REPORT
AND SUPPORTING DOCUMENTATION AS DETAILED AT THE ABOVE WEB SITE**

Last updated 3/10/20

From: "Marcopul, Kate" <Kate.Marcopul@dep.nj.gov>
Date: September 24, 2020 at 11:32:00 AM EDT
To: "Hoag, Laura E." <Laura.Hoag@nscorp.com>
Cc: "Baratta, Meghan" <Meghan.Baratta@dep.nj.gov>, "Maresca, Vincent" <Vincent.Maresca@dep.nj.gov>, "Alvarez, Jennifer" <Jennifer.Alvarez@dep.nj.gov>
Subject: [EXTERNAL] AB-290 (Sub-No. 407X) - HPO Project #20-1570-1, HPO-I2020-125 Norfolk Southern Railway Abandonment of milepost 9.0 to milepost 10.2 East Rutherford and Rutherford Townships

This e-mail serves as the official correspondence of the New Jersey Historic Preservation Office as we switch to a temporary remote work environment in response to the ongoing novel coronavirus (COVID-19) outbreak

HPO Project #20-1570-1
HPO-I2020-125

Laura E. Hoag
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia, 23510-2101
Laura.Hoag@nscorp.com

Dear Ms. Hoag:

As Deputy State Historic Preservation Officer for New Jersey, in accordance with 36 CFR Part 800: Protection of Historic Properties, as published in the Federal Register on December 12, 2000 (65 FR 77725-77739) and amended on July 6, 2004 (69 FR 40553-40555), I am providing consultation comments on the following proposed undertaking:

**Norfolk Southern Railway
Abandonment of milepost 9.0 to milepost 10.2
East Rutherford Township and Rutherford Township
Bergen County
Surface Transportation Board (STB)**

The consultation comments below are in reply to your submission dated August 27, 2020 (SIC) and received on August 25, 2020. The submission was comprised of the *Combined Environmental and Historic Report* that included a text description and an aerial map upon which the section of the proposed abandonment was delineated. This information was submitted to the HPO for review and comment pursuant to Section 106 of the National Historic Preservation Act.

800.4 Identification of Historic Properties

The proposed abandonment of this section of the Norfolk Southern Railway is eligible for the National and New Jersey Registers of Historic Places and is known as the Erie Railroad Main Line Historic District (SHPO Opinion 2/20/2003).

800.5 Assessment of adverse effects

Milepost 9.0 to milepost 10.2 of the Erie Railroad Main Line Historic District has no known buildings, bridges, culverts, catenary, or rail present. Therefore, I concur with your finding that, as proposed, the undertaking will have **no adverse effect** on historic properties. Pursuant to 800.5(c), if no consulting parties object to this finding within the 30-day review period, the project may proceed, as proposed, unless resources are discovered during project implementation, pursuant to 800.13.

Additional Comments

Thank you for the opportunity to provide consultation comments on this proposed undertaking. If you have any questions, please feel free to contact Jennifer Balson Alvarez at jennifer.alvarez@dep.nj.gov regarding architecture, or Vincent Maresca at vincent.maresca@dep.nj.gov regarding archaeology.

Sincerely,

Katherine J. Marcopul, Ph.D., CPM

Administrator and

Deputy State Historic Preservation Officer

Historic Preservation Office

NJ Department of Environmental Protection

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub. No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– PROPOSED ABANDONMENT EXEMPTION-
IN BERGEN COUNTY, NEW JERSEY**

Combined Environmental and Historic Report

APPENDIX D

Historic Resources List

Table A: Railroad-related Historic Resources

Item No.	MP No.	Resource Name	Resource Type	Date(s)	Proximity to APE	Municipality	County	NRHP Criteria	Current NRHP Status	Current SR Status	Current Local Status
01	Multiple	Eric Railroad Main Line Historic District	Historic District	1831-1960	Inside	Multiple	Multiple	Criteria A and C: Transportation, Engineering POS: 1831-1960	Individually Eligible SHPO Opinions: 3/10/1999; 2/20/2003; 3/7/2006) ¹	Individually Eligible SHPO Opinions: 3/10/1999; 2/20/2003; 3/7/2006)	N/A

Compiled by Richard Grubb & Associates, Inc., July 6, 2020 from available records; New Jersey Historic Preservation Office files not accessible due to Covid-19 pandemic.
1. The study by the RBA Group, Inc. concluded that the entire length of the former Erie Railroad Main Line to the New York State Line, including the abandoned portions, eligible for listing in the NRHP (RBA Group 2009; 9-12.
APE – Area of Potential Effects
NRHP – National Register of Historic Places
POS – Period of Significance
SHPO – New Jersey State Historic Preservation Officer
SR – New Jersey State Register of Historic Places

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-290 (Sub. No. 407X)

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Combined Environmental and Historic Report

APPENDIX E

§5 Historical Information Bibliography

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-290 (Sub-No. 407X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN BERGEN COUNTY, NEW JERSEY**

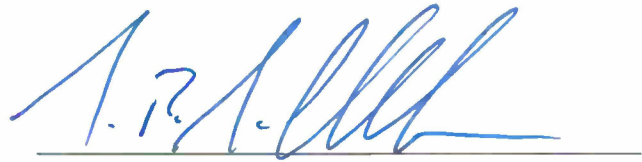
PETITION FOR EXEMPTION

Verification

Verification

I, Michael R. McClellan, Vice President for Norfolk Southern Railway Company ("NSR") hereby verify under penalty of perjury that to the best of my knowledge, the foregoing abandonment petition is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR in connection with this proceeding before the Surface Transportation Board.

Executed this 22 day of September 2020.



Michael R. McClellan
Vice President
Norfolk Southern Railway Company