

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CITY OF ATLANTA, GEORGIA—
PETITION FOR PRELIMINARY INJUNCTION AND
PETITION FOR DECLARATORY ORDER—
NORFOLK SOUTHERN**

STB FINANCE DOCKET NO. 36485

MOTION TO DISMISS

Norfolk Southern Railway Company requests the STB dismiss as moot the City of Atlanta, Georgia's request for a preliminary injunction filed on February 12, 2021.

NS has terminated its project to construct the rail transfer facility at 3195 Brick Plant Road in Atlanta, Georgia (the "Site"). The press release is attached as Exhibit A.¹ NS believed this project presented an opportunity to create a long-overdue memorial to the painful legacy of the site, and at the same time reshape its future by building new river trails and putting the long-abandoned land back into productive use in a way that benefits the regional economy. Although the company believes the City's petition lacks legal merit, NS listened to the community and has no interest in protracted litigation if the City opposes the project. NS's decision to

¹ Press Release, "Norfolk Southern terminates project on former Chattahoochee Brick Company site," (Feb. 28, 2021), <http://www.nscorp.com/content/nscorp/en/news/norfolk-southern-terminates-project-on-former-chattahoochee-bric.html>.

voluntarily terminate the rail transfer facility project moots this proceeding.

While NS has decided not to pursue this project, it must continue to perform some limited environmental remediation at the Site, to fulfill certain obligations under the Georgia Brownfield Act and a Corrective Action Plan approved by the Environmental Protection Division of the Georgia Department of Natural Resources in November 2020. This may include the removal of contaminated soil that has already been excavated, profiled, treated, and stockpiled. NS will also need to bring fresh topsoil to the Site to backfill the excavation and stabilize the property. NS will keep the City advised of those remediation activities under the corrective action plan. In addition, NS will share with the City archeological surveys of the Site it had conducted between 2019-2020, which uncovered no evidence of cultural resources, grave sites or human remains on the property. All concerned have a common interest in removing the previously excavated contaminated soil quickly and safely, while accommodating the heritage concerns voiced by the City. NS will complete the necessary work to stabilize and secure the site in the near term and may have other environmental cleanup obligations later in time. The STB, however, plainly has no role to play in regulating how NS should perform work under the Georgia Brownfield Act and the state-approved Corrective Action Plan governing the remediation.²

² Pursuant to 49 U.S.C. § 10906, the STB lacks authority to issue an injunction over this industrial project. *Id.* (“The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.”).

For these reasons, NS respectfully requests the Board dismiss as moot the City of Atlanta's Petition for Preliminary Injunction.

Respectfully submitted,

/s/ Raymond A. Atkins

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Dated: February 19, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2021, a copy of the foregoing Motion to Dismiss was served by email on the following counsel of record:

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/s/ Raymond A. Atkins
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Exhibit A

FOR IMMEDIATE RELEASE

Norfolk Southern terminates project on former Chattahoochee Brick Company site

NORFOLK, Va., Feb. 18, 2021 – Norfolk Southern Corporation (NYSE: NSC) today announced it has terminated plans to build a rail transfer facility on the site of the former Chattahoochee Brick Company in Atlanta.

“We accepted from the beginning that we had a special responsibility to develop this site in a socially and environmentally responsible way, given the atrocities that once took place there,” said James A. Squires, chairman, president and CEO. “We believe our project presented an opportunity to create a long-overdue memorial to the painful legacy of the site, and at the same time reshape its future by building new river trails and putting the long-abandoned land back into productive use in a way that benefits the regional economy.”

Norfolk Southern’s decision comes after the City of Atlanta filed a petition for preliminary injunction last week with the federal Surface Transportation Board. Although the company believes the City’s action lacks legal merit, Norfolk Southern listened to the community and has no interest in protracted litigation if the City opposes the project.

“We pride ourselves on being a good corporate citizen in the communities where we operate,” said Squires. “In this case, that means walking away from the project despite our very best efforts to work with the community on the responsible development of the site.”

Throughout 2020, Norfolk Southern worked closely with local elected officials, held multiple meetings to listen to the concerns of community stakeholders, and incorporated that feedback into plans for the site.

Norfolk Southern had offered to work with community representatives to design and build a memorial, at the company’s expense, to ensure the history of the site is never forgotten. The company also expressed support – and conducted site tours with stakeholders – for creating public-access trails on the site along the Chattahoochee River and Proctor Creek, as many environmental and community groups advocated.

In addition to complying with rigorous environmental standards for site redevelopment, Norfolk Southern was working with the Georgia Environmental Protection Division, through the voluntary Georgia Brownfields Program, to perform extensive environmental remediation of the property.

The company also engaged outside experts to perform an archaeological and historical survey, as well as archaeological excavation in certain areas. No evidence was found of a cemetery on the site, but given the site’s tragic legacy, the company committed to exercise great care as development continued.

The company will complete the necessary work to stabilize and secure the site and then withdraw.

About Norfolk Southern

[Norfolk Southern Corporation](#) (NYSE: NSC) is one of the nation's premier transportation companies. Its Norfolk Southern Railway Company subsidiary operates approximately 19,300 route miles in 22 states and the District of Columbia, serves every major container port in the eastern United States, and provides efficient connections to other rail carriers. Norfolk Southern is a major transporter of industrial products, including agriculture, forest and consumer products, chemicals, and metals and construction materials. In addition, the railroad operates the most extensive intermodal network in the East and is a principal carrier of coal, automobiles, and automotive parts.

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