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Before the  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36666

ENTERED  
Office of Proceedings  
February 6, 2023  
Part of  
Public Record

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
– ACQUISITION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

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**VERIFIED NOTICE OF EXEMPTION  
UNDER 49 C.F.R. §1150.31**

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*(includes color images)*

Paul Stofa  
State of New Jersey  
Department of Environmental Protection  
401 East State Street  
Trenton, NJ 08625-0420  
(609) 292-0449  
paul.stofa @dep.nj.gov

*Attorney for New Jersey Department of  
Environmental Protection*

FILED  
February 6, 2023  
SURFACE TRANSPORTATION BOARD

FEE RECEIVED  
February 6, 2023  
SURFACE TRANSPORTATION BOARD

Dated: February 2, 2023

**Before the**  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36666

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**– ACQUISITION EXEMPTION –**  
**NORFOLK SOUTHERN RAILWAY COMPANY**

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**VERIFIED NOTICE OF EXEMPTION**  
**UNDER 49 C.F.R. § 1150.31**

New Jersey Department of Environmental Protection (“NJDEP”), a non-carrier, files this Notice of Exemption pursuant to 49 C.F.R. §1150.31 to exempt from regulation, under 49 U.S.C. §10901, NJDEP’s acquisition from Norfolk Southern Railway Company (“NSR”), of the residual right to reactivate rail service over a railbanked right-of-way extending between Milepost WD 2.9 in the City of Jersey City and Milepost WD 11.5 in the Township of Montclair, respectively in Hudson and Essex Counties, New Jersey, a distance of approximately 8.6 miles (the “Rail Line”).

In *Norfolk Southern Ry. Co. – Abandonment Exemption – in Hudson and Essex Counties, N.J.*, STB Docket No. AB-290 (Sub-No. 408X) (“*NSR Abandonment Proceeding*”) (served Sept. 29, 2020), the Board granted NSR an exemption from the prior approval requirements of 49 U.S.C. §10903 for NSR to abandon the Rail Line. In that decision, the Board further issued a notice of interim trail use (“NITU”) in favor of Open Space Institute Land Trust, Inc., a New York not-for-profit corporation (“OSILT”), as trail sponsor with respect to the Rail Line. In its decision, the Board ordered that the interim trail use/rail banking would be subject to possible future reconstruction and reactivation of the right-of-way for rail service.” *Id.* slip op. at 6. The NITU

was extended until September 29, 2022, by decision of the Office of Proceedings issued September 3, 2021 in the *NSR Abandonment Proceeding*.

On June 21, 2022, OSILT notified the Board in the *NSR Abandonment Proceeding* that, in accordance with the requirements of 49 CFR §1152.29(f), it intended to terminate its trail use, and that NJDEP intended to become the trail sponsor with respect to the Rail Line. On June 30, 2022, the Board issued a replacement NITU in favor of NJDEP, effective June 30, 2022.

On August 19, 2022, NSR and NJDEP entered into a revised interim trail use agreement under which the property comprising the Rail Line, including the Rail Line's rail, track materials, and bridges, were conveyed to NJDEP for interim trail use and rail banking pursuant to Section 8(d) of the National Trails System Act, 16 USC §1247(d). NSR also agreed to convey to NJDEP all of NSR's residual common carrier interests in the Rail Line, including NSR's right to terminate trail use and reactivate freight rail service. NJDEP, as the trail sponsor, intends to redevelop the Rail Line to create greenways, and to provide for alternative modal access to various sites located along the line, subject to the possible reactivation of rail service as required by the Board and the National Trails System Act. NSR does not wish to retain any residual rights related to the Rail Line, and NJDEP is willing to acquire such residual rights.

Acquisition by a non-carrier of the right to reactivate rail service over a railbanked right-of-way is eligible for an exemption from 49 U.S.C. § 10901 under 49 C.F.R. § 1150.31, *et seq.* See for example, *City of Maplewood, Minn. – Acquisition Exemption – Right to Restore Rail Service Over a Railbanked Right-of-way in Ramsey County, Minn.*, STB Finance Docket No. 35450 (served Dec. 23, 2010); *Atlanta BeltLine, Inc. – Acquisition Exemption – Norfolk Southern Railway, Co.*, STB Finance Docket No. 36286 (served June 14, 2019).

## Notice

In accordance with 49 C.F.R. § 1150.33, NJDEP hereby provides the following information:

- (a) The full name and address of Applicant: New Jersey Department of Environmental Protection, 401 East State Street, Trenton, NJ 08625-0420.
- (b) Applicant's Representatives:
  - Paul Stofa  
401 East State Street  
Trenton, NJ 08625-0420  
(609) 292-0449  
paul.stofa@dep.nj.gov.
- (c) An agreement between NSR and NJDEP has been reached for NJDEP's acquisition of NSR's right to reactivate rail service over the Rail Line.
- (d) NJDEP would obtain a contract operator to operate the Rail Line if rail service were to be reactivated. NJDEP acknowledges that any such operator would need to obtain operating authority from the Board.
- (e) Brief Summary of the Proposed Transaction: By decision of the Board served June 30, 2022, NJDEP was named the replacement trail sponsor for the Rail Line. On August 19, 2022, NSR and NJDEP entered into a revised interim trail use agreement, under which NSR agreed to convey to NJDEP all of NSR's remaining interests in and to the Rail Line, including the rail, track materials, and bridges, as well as NSR's residual rights to terminate trail use and reactivate rail service.
  - (1) The name and address of the company transferring the reactivation rights to the Rail Line is Norfolk Southern Railway Company, 650 W. Peachtree Street NW, Atlanta, GA 30308.

- (2) The transfer of the reactivation rights will be consummated no earlier than 30 days after the filing of this Verified Notice of Exemption with the Board.
- (3) The mileposts of the Rail Line are between Milepost WD 2.9 in the City of Jersey City and Milepost WD 11.5 in the Township of Montclair, respectively in Hudson and Essex Counties, New Jersey.
- (4) The total mileage for which reactivation is to be acquired is approximately 8.6 miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Line.
- (g) NJDEP certifies that since there will be no current freight operations, its projected revenues as a result of the acquisition of reactivation rights will not exceed those that would qualify it as a Class III carrier.
- (h) NJDEP certifies that the transaction does not include an interchange commitment.
- (i) NJDEP certifies that, since there will be no current freight operations, the annual revenues that would result from the acquisition of reactivation rights will not exceed \$5,000,000.

### **Labor Protection**

Pursuant to 49 U.S.C. § 10901(c), approval of this transaction may not be subjected to labor protection.

### **Environmental and Historic Reports**

Pursuant to 49 C.F.R. §1105.6(c)(2), no environmental documentation should be required because this proceeding involves only the acquisition of the right to reactivate service over the Rail Line that will not result in significant changes to carrier operations. As a result, the changes will not exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (e)(5) because there are

no carrier operations existing on the Rail Line, and none are projected to follow at this time. Pursuant to 49 C.F.R. §1105.8 (b)(1), no historic report should be required since, if rail service were ever reactivated, further Board approval would be required to abandon such service. (The proposed abandonment of the Rail Line by NSR was subject to environmental and historic review in the *NSR Abandonment Proceeding*, as reflected in the Environmental Assessment issued by the Office of Environmental Analysis. However, all environmental and historic conditions recommended are suspended during the pendency of the NITU.)

### **Caption Summary**

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. §1150.34.

### **Conclusion**

Accordingly, NJDEP requests that the Board issue a notice allowing the acquisition of NSR's residual right to reactivate rail service to become effective at any time after 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



NSJ014792002

Paul Stofa  
State of New Jersey  
Department of Environmental Protection  
401 East State Street  
Trenton, NJ 08625-0420  
(609) 292-0449  
paul.stofa@dep.nj.gov

*Attorney for New Jersey Department of  
Environmental Protection*

Dated: February 2, 2023

### VERIFICATION

I, Sean D. Moriarty, Deputy Commissioner of the New Jersey Department of Environmental Protection, verify under penalty of perjury that the foregoing is true and correct.

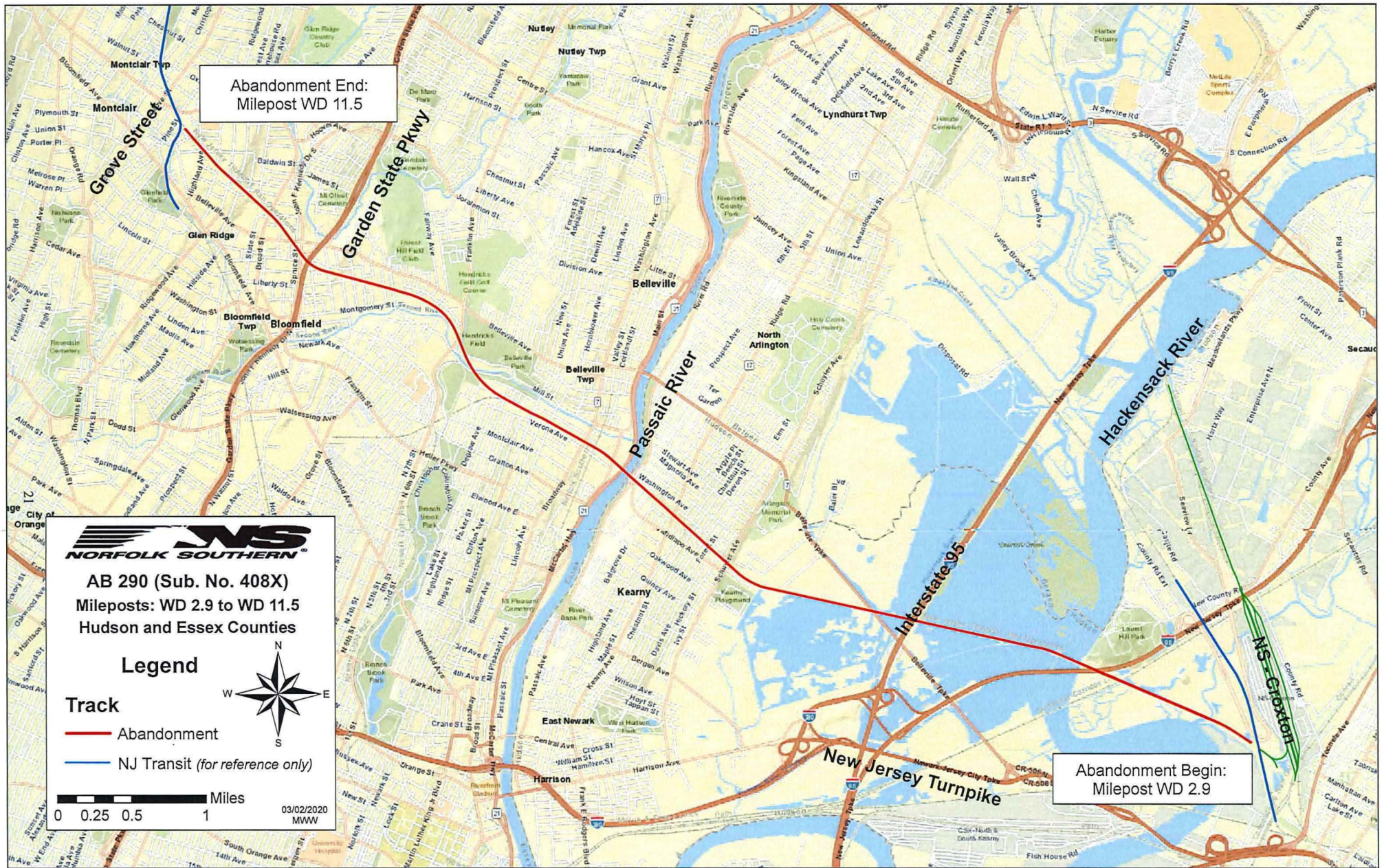
Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 2, 2023.

  
Sean D. Moriarty, Deputy Commissioner

# **EXHIBIT A**

## **MAP**



## **EXHIBIT B**

### **CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36666

**ESSEX COUNTY, NEW JERSEY  
– ACQUISITION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

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The New Jersey Department of Environmental Protection (“NJDEP”), a non-carrier has filed a Notice of Exemption pursuant to 49 C.F.R. § 1150.31 to exempt from regulation under 49 U.S.C. §10901, NJDEP’s acquisition from Norfolk Southern Railway Company (“NSR”), of the residual right to reactivate rail service over a railbanked right-of-way extending between Milepost WD 2.9 in the City of Jersey City to Milepost WD 11.5 in the Township of Montclair, in Hudson and Essex Counties, New Jersey, a distance of approximately 8.6 miles (the “Rail Line”). The Board authorized abandonment of the Rail Line in *Norfolk Southern Ry. Co. – Abandonment Exemption – in Hudson and Essex Counties, N.J.*, STB Docket No. AB-290 (Sub-No. 408X) (the “*Abandonment Proceeding*”) (served Sept. 29, 2020), and in that decision issued a notice of interim trail use. By decision served June 21, 2022 in the *Abandonment Proceeding*, NJDEP was authorized to substitute as the trail sponsor under the NITU. NJDEP states that the Rail Line is currently subject to interim trail use under a trail use agreement between NJDEP and NSR under the National Trails System Act, 16 U.S.C. §1247(d). (*See* Joint Notice of Trail Use Agreement filed August 19, 2022, in the *Abandonment Proceeding*). The transfer of the reactivation rights will complete the transfer of all of NSR’s ownership rights and responsibilities in the Rail Line to NJDEP.

Comments must be filed with the Board and served on NJDEP’s representative,

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The Notice is filed under 49 C.F.R. §1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: \_\_\_\_\_, 2023.

By the Board, Mai Dinh, Director, Office of Proceedings

## CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was served by email on all parties of record and the parties of record in *Norfolk Southern Ry. Co. – Abandonment Exemption – in Hudson and Essex Counties, N.J.*, STB AB Docket No. 209 (Sub-No. 408X).

*Counsel to Norfolk Southern Railway:*

Hanna M. Chouest  
Deputy General Counsel  
Norfolk Southern Corporation  
650 W Peachtree St NW  
Atlanta, Georgia 30308  
Hanna.Chouest@nscorp.com

William A. Mullins  
Crystal M. Zorbaugh  
Baker & Miller PLLC  
2401 Pennsylvania Ave, NW  
Suite 300  
Washington, DC 20037  
WMullins@bakerandmiller.com  
CZorbaugh@bakerandmiller.com

  
Paul Stofa  
Attorney for New Jersey Department of  
Environmental Protection

NS014792002

Dated: February 2, 2023